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About the Journal

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ANALYSIS OF CHILD-CENTRIC LEGISLATION IN INDIA: SPECIAL REFERENCE TO JUDICIAL OVERVIEW

AUTHORS:

DR. SAURABH KISHOR, Assistant Professor, Sharda School of Law, Sharda University

ABHIJIT CHANDA, Research Scholar, Sharda School of Law, Sharda University

ABSTRACT

The protection to the rights of the children has been derived from the concept of human rights. The need of the protection of child rights has been taken into consideration post World War. India being a signatory has legislated laws to keep liaison with the CRC to protect the interests of the child. There are prevalence of several special child rights and procedural legislation in developing mechanism to protect the interests of the child. The special laws are enforced to take cognizance of discriminatory and abusive practice which derogates the integrity and dignity of the child. The Judiciary play a pivotal role in considering the position of the children involved in any practice in violation of their rights or dispute. The rights violation of the children in the community is primarily tackled by the state mechanism followed by which the justifiability of the rights can be reached only through judicial intervention. The present paper would discuss the landmark view of the judiciary at each level in protecting the rights and safeguarding the interests of the vulnerable groups of children guaranteed under special legislation.

Keyword: Child Rights, Justifiability, Discrimination, Judiciary, Records

Background

The rights protection of the children came into evolvment after the breakout of First World War. The condition of the children was marginalized due to lack of nutrition, protection, education, hygiene, etc. The distress condition of the child across the world led to the adoption of the Declaration by the League of Nation in 1924. The status of the children in the medieval period was not protected due to varied opinion of the community where the children were often considered as "small adults" and subject to contribute in the economic system. The children above the age of seven years were severely exposed to labour work and were pushed to take care of the family. The concern for the child rights protection came into subject prominently after the Second World War through the establishment of the United Nations.

The prime objective behind the establishment of UN is to ensure international peace and security. The foremost application of the objectives of UN can be achieved through the protection of human rights. In 1948, the General Assembly of the UN adopted the Universal Declaration of Human Rights. The rights of the children been derived from the human rights which were needed to be separately protected due to various notion of discriminatory practices enrolled in the society to jeopardise the status and recognition of the children. The Declaration of the Rights of the Child were adopted by the General Assembly in 1959 which were not ratified by most member nations and subsequently tends to uplift the standard of living of children across the world through the Convention. In 1989 the Convention of the Rights of the Child (CRC) came into establishment which served as the principle guidelines to protect the rights of the

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children. The CRC has been signed and ratified after multiple discussions, suggestions, etc., been incorporated by the member countries. India became the signatory to CRC in 1992, legislates and amends the state legislation by keeping tie up with the CRC.

The major backbone of the protection of the Child rights has been propagated through the procedural law and establishment of the monitoring bodies solely responsible for the implementation of the child legislations in India. After 1992, two major steps has been taken by India likewise repealing the Juvenile Justice Act of 1986 by the Juvenile Justice (care and Protection of Children) Act 2000 and enforcing the Commission for the Protection of the Child Rights Act 2005. There were several category of the child been recognized within the provisions of the CRC, but till yet some of them has been recognized by India either through enacting special legislations or rendering protection through Act of 2000 or an Act of 2005. The major protection has been rendered through judicial interpretation which is sine qua non in protecting the rights of the children. The role of the Judiciary in upholding the objectives of the child legislations and to protect the children with adequate legal remedy alongside punishing the paedophile with adequate punishment is indispensable in child rights protection. Thus the discussion would be floated in covering the several aspects of the child legislation and would cover the major step taken by the Judiciary to protect the child rights.

Child-Centric Procedural Laws in India

Since independence, the laws concerning protection to the children across India has been evolved in diverse area of possible discrimination been practice against the integrity and dignity of the children. The Children Act 1960 came has been enforced to safeguard the interests of the children been neglected in the society and also came in conflict with law. The provisions in the Act of 1960 were discriminatory in terms of defining the child, as a boy under the age of sixteen and a girl below the age of eighteen years. The Act of 1960 also encompasses distinctive monitoring bodies that are Child Welfare Board to deal with the neglected children and Children's court to deal with the child committed violation of law. The Act of 1960 has been amended in 1978 in order to expand the scope of power of a litigator to represent before the children's

court. The prevalence of separate legislation by the States marked the ambiguity in securing justice and child rights protection. Thus the lack of uniform treatment of the children was in contradiction towards attaining the objective of the legislation and contrary towards the interests of the children. In 1986, to incorporate uniform treatment across the country, the Juvenile justice Act came into enforcement repealing the prior legislations. There were some changes been implemented through the Act of 1986 are advisory boards, children's fund and provisions for monitoring the status of the child or juvenile. The Act of 1986 continued the discriminatory recognition of the child has been envisaged under the Act of 1960 and only dealt with the limited scope of both category of children been neglected and came in conflict with law. The major changes came into reflect after India became the signatory to the CRC in 1992 and repealed the Act of 1986 by the Act of 2000. Some major changes has been brought through the Act of 2000, likewise substituting the term "Child" with "Juvenile", establishment of Juvenile Justice Board, and expanded the scope of the category of children covered that is "juveniles in conflict with law" and "child in need of care and protection", recruitment of special police officers, mandatory provision of bail to every juvenile delinquent unless it is contrary with the justice system or in pursuance to any danger. Further some relative form of uniformity are been implemented through the enactment of Act of 2000. But there was an urgent need in the repealing of the Act of 2000 in due recourse to the rate of crime been increased by the Juveniles aged between 16 to 18 years. The Juvenile Justice Act 2015 came into enforcement especially after the brutal incidence of Delhi Gang-rape case. The intrusion of some special provisions been incorporated through the Act of 2015 such as heinous crime juvenile aged between 16 to 18 years may be decided by JJB to be trailed before adult courts, evaluation of reports of the CWC periodically by the District Magistrate, uniform and smooth adoption mechanism, etc.

The Commission for Protection of Child Rights Act 2005 has been enforced to establish the monitoring bodies at the national and state level to be responsible for the implementation of child legislations enforced by the State and to ensure the protection and safeguarding the interests of child irrespective of any form of discrimination.

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The commission established has been delegated with powers and functions to take stringent action against any anti-social activities prevalent towards child victimization. The legislative piece of 2005 also provides the power to every Session Court of district to try the matters relating to the vulnerability or rights violation of any children.

Child-Rights Legislation in India

In surveillance to the protection of child rights, various vulnerable groups of children have been identified and subsequent special legislations have been brought in lieu of Article 15(3) of the Constitution of India. There are several provisions been envisaged under the Constitution of India towards uplifting the status of the child are compulsory right to education up to the age of fourteen years, prohibition of child labour, ensure health and overall development and protection from abusive or degrading environment, etc. The effort of legislation in exercising function under Article 15(3) legislation been introduced and enforced to secure the rights of the children of various vulnerable groups of the society been laid hereunder:

- a) **Child Labour-** The primary form of vulnerable group of children been identified as child labour. The traditional approach to expose the child to labour work at an early stage has been prohibited through the enforcement of The Child Labour (Prohibition and Regulation) Act, 1986. The practice of child labour has been prohibited where any child below the age of fourteen is engaged in any employment or establishment. The Act of 1986 has established the advisory committee to advise the Union Government regarding the inclusion of varied occupation to be exempt from employing any child has attained fourteen years or more age. The category of adolescents has been included in the Amendment Act of 2016 to protect the adolescents from employing in any hazardous work.
- b) **Child Trafficking-** The vulnerable group of children exposed to exploitation in the form of prostitution and children are subject to commercial use. The trafficking of human beings including child has been prohibited and punished under The Immoral Traffic (Prevention) Act, 1956. The person not yet attained the age of 18 years has

been classified into two i.e. "child" as any person not yet attained the age of sixteen years and "minor" as any individual who has already attained sixteen years but not yet attained the age of eighteen years. The Act of 1956 emphasized upon harder form of punishment in terms of involving any individual less than eighteen years or sixteen years. Thus the protection has been given through recruitment of special officers to be deal with the offences under the legislation piece of 1956.

- c) **Child Marriage-** The child in early and forced marriage has been a traditional practice since long ages. It is pertinent to consider that the voice against the practice of child marriage is nurtured since pre-independence period. In 1929, the Child Marriage Restraint Act has been enforced to restrict the solemnization of child marriage which has undergone several amendments in terms of determining the legal age as 14 years for female and 18 years for male to undergo marriage. In 2006, the Prohibition of Child Marriage Act came into effect by repealing the earlier legislation and enumerates effective provision to prohibit the solemnization of child marriage through establishment of Child Marriage Prohibition Officer (CMPO). The Act of 2006 has marked the age for undergoing marriage as 18 years for girls against 21 years for boys. The criticism been still prevalent in the existing legislation lies in declaring the child marriage to be voidable at the option of the minor contracting parties within two years counting from attainment of majority. Some remarkable development has been persuaded at the level of Karnataka State Government by declaring "all child marriage to be void-ab-initio" in the form of amending the State PCM Act. The same path has been followed by the Haryana State Government by introducing the Bill before the floors of State legislative assembly to declare child marriages as void-ab-initio, and recently been enforced as an Act which uplift the status of the children especially girls from getting into the trap of immature and illegal marriage. Recently the PCM (Amendment) bill of 2021 has been introduced in Lok Sabha to eradicate the age discrimination for between sexes and also to declare any form of child marriage would be

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null and void in the eyes of law.

- d) Educational Rights of Children- Another vulnerable category of children being deprived of compulsory education is a threat to the entire nation. In 2002, the Constitution of India has been amended to insert a fundamental right under Part III, in order to ensure the full-fledged exercise of right to education up to 14 years by every child without any forms of discrimination. The effective implementation of the Amendment Act of 2002 has been shaped on or after 2009 after the enforcement of Right to Free and Compulsory Education Act 2009. The intention and objective of the Act of 2009 is to provide up to the stage of elementary education i.e. eighth standard. The implementation of the Act of 2009 has a collaborative effect in protecting the fundamental right ensured under Article 21A of the Constitution of India.
- e) Sexual Offences against Children- In tie up with the discriminatory practices prevalent in the community against the integrity and dignity of the children, the most vulnerability factor lies with the children exposed to sexual offences. The enforcement of the Protection of Children from Sexual Offences Act 2012 keeps in conformity with the provisions of the CRC in terms of protecting the children from sexual exploitation. The vulnerable group of children identified under the Act of 2012 can be tried before the special courts established under the Act of 2005 or can be tried before the Court of Session for disseminating any obscene material involving children. The Act of 2012 takes care of the overall health care and mental development by providing medical treatment, rehabilitation, psychological grooming, etc. and accordingly the procedural codes before the Session court to be held in considering the better interest of the minor victim and the maximum period to conclude any trial fixed under POCSO should not exceed the period of one year.. There are some degree of offence been explicitly defined by the root legislation are any form of sexual penetration committed by paedophiles, sexual penetration committed by people of varied authorities of the State, sexual assault and harassment, exploitation of children for pornographic use, etc.
- been committed to which are being accompanied with the harder form of punishment been introduced by The Protection of Children from Sexual Offences (Amendment) Act, 2019. The Act of 2012 further provides a space of Juvenile Justice Act if any crime under POCSO is being committed by any child, and accordingly the age factor would be decided by the Special Court with sufficient evidence.
- f) Child Adoption- The law has been established to cover the legal status of the children been eligible for adoption. Preliminary the adoption of the child are been regulated under the Hindu Adoption and Maintenance Act 1956 concerning the jurisdiction of personal laws. With the development of laws of the land, the adoption of any children irrespective of any class, category, religion, etc., is being governed under the Juvenile Justice Act 2015. The Act of 2015 also confers with the establishment of the agency i.e. Central Adoption Resource Authority (CARA) to ensure the implementation and regulation of inter-country adoption. Thus, the children who are in need of care and protection can be taken in adoption after due inquiry been made by the Committee to declare about the status of the children is devoid of any parent or ostensible support and thus fit for adoption and in continuance of need and protection.
- g) Children of Prisoners- The most overlooked form of vulnerable section of children are that of the children of incarcerated parents. The status of the children of prison inmates are covered under the legislative piece of 2005 while delegating powers to the commission established for protecting all category of vulnerable groups of children but not been recognized under the scope and ambit of the Juvenile Justice Act. The mere protection been provided to the children of prison inmates through the judicial intervention i.e. in the case of R.D. Upadhyay v. State of Andhra Pradesh whereby the guidelines has been served to uplift the living standard and considering the interest of the children accompanying parents inside the prison. It is pertinent to mention that the status of the children of prisoners is readily covered by the CRC, but adequate mechanism is still not in operation and resulting in compromise the childhood and mass

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violation of child right. Whereas mere protection has been given to the children accompanying their mother prisoners inside the prison are facilitated through the mechanism build under the Act of 2015.

There are various categories of the vulnerable groups of the child has been discussed above and highlighting the efforts of the legislature in enacting special legislation targeting the several vulnerable groups of children in the society. The main intention of the child-centric legislation is to cover the status under the roof of legislature and to protect them from any discriminatory or abusive practices meant to degrade the integrity and dignity of the children.

Judicial Intervention towards Child Rights Protection

The Judiciary has played a pivotal role in the protection of child rights and in carrying forward the intention of the child-rights legislation. The rationale behind the child-right legislation is tied with the justice delivery system through eradication and prohibition of all forms of discriminatory practices against the children. The role of the judiciary in protecting the rights of the children has been analysed through the discussion of various case laws involving children of different vulnerable groups of the society. The judicial intervention in securing the rights of the child from the discriminatory practice of child labour has been decided in many cases keeping in consideration the facts and circumstances of the disputes and taking the interests of the children in priority.

- In the case of Bandhua Mukti Morcha, the Writ petition been filed to highlight the miserable conditions of the workers due to inadequate living and hygienic standards of life. The Supreme Court stated to prohibit the engagement of child into any form of labour and also protect every children from any exploitation and discrimination. Thus the direction rendered by the Apex Court ban the prevalence of “bonded labour” and to protect the human beings including children from being part of social injustice.
- The case of Peoples Union for Democratic Right, the Supreme Court held the true prevalence of Article 24 along with the principle of International Labour Organization stating the complete restriction upon employing of the children less than 14 years of age in any construc-

tion activity.

- A major observation and guidance been delivered by the Apex Court in the case M.C. Mehta in regard to abolish the practice of child labour. The guidelines gave emphasis to impose compensation to every employer to be ensured by the inspector a sum of Rs. 20000/- for employing any child and in contrary to the Constitutional provision. The compensation amount to be deposited with the fund referred as “Child Labour Rehabilitation-cum-Welfare Fund”.

The action of the judiciary in safeguarding the childhood of endangered groups of children covered to the practice of human trafficking for the purpose of profiteering and prostitution. The contention of the judiciary would be reflected through various cases like:

- The Supreme Court laid down stringent guidelines and appropriate action to prohibit the practice of trafficking in the case of Vishal Jeet in 1990. The Apex Court emphasized upon the protection and securing the children from the grasp of trafficking in the form of prostitution or been rescued from the brothel house. The direction been guided to the respective governments in lieu of taking appropriate action vide enforcing agencies to tackle the threat of child trafficking and separate Advisory Committee needs to be set up to deal with the rehabilitation process of the youngsters been rescued from the mouth of child prostitution and to employ qualified trainers to contribute towards the best interests of the rescued children. The direction also been suggested surrounding the implementation of varied welfare programs to deal with the children exposed to trafficking for illicit purpose. There shall be active participation of the Union Government to introduce several schemes and programs for the better protection and development of the children from getting sexual exploited at the cost of trafficking.
- A notable decision has been taken by the Apex Court in the case of Gaurav Jain v. Union of India, to ensure the protection and development of the women and children subject to victimization of trafficking. The order has been issued by the Apex Court directing the Union Government to constitute a Committee in order to pursue a

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depth study of the problems been faced in the Rehabilitation of the trafficked beings. The major role of the established Committee would be to frame the “National Plan of Action” and introduce various schemes for the swift sailing of the rehabilitation process of the trafficked women and also to uplift the status of their children in terms of equality and dignified life.

- In the year 2006, the High Court of Delhi has observed in the case of Kamaljit, that the objective of the Action Plan of 1998 has not been achieved which results in the disguise instances of trafficking of the women and children for the purpose of prostitution. The Court also stated that the enforced penal statutes must deal and restrict the practice of trafficking especially of women and children. The Court also emphasized about the ratification of India to the “UN Convention Against Trans-National Organized Crime” in 2002, and beside being a signatory the member States are obligated to tackle and combat the Trafficking and punish the offenders in accordance with the law of the land.

The child marriage being a prevalent discriminatory practice in the society and the Judiciary has provided varied justification in upholding the validity or nullifying the child marriage.

- In the year 2012, the High Court of Delhi reiterated the prevalence of the personal law over the statutory law. The High Court in the case of Mrs. Tahra Begum, upheld the marriage of Muslim girl post-attainment of puberty i.e. 15 years of age, and stated the liberty to commence without the consent of the family and also permissible to repudiate the marriage.
- While in the same year, the Karnataka high Court took a contrary view in the case of Ms. Seema Begum. The High Court nullify the marriage been commenced where one of the contracting party is a Muslim girl aged around 16 years of age. The declaration been sought in the petition that the marriage has been governed in accordance with the personal law. The Court stated that the personal law cannot prevail over the statutory provisions, and thus the marriage is void in accordance with the provision of legal age of a girl child i.e. 18 years to enter into marriage under the Prohibition of Child Marriage

Act 2006. The contention of the High Court has been reproduced hereunder:

“...no Indian citizen on the ground of his belonging to a particular religion, can claim immunity from the application of the P.C.M”

- In 2010, the Karnataka High Court took an affirmative action in the case of Muthamma Devaya, to constitute a Core Committee to extent the practice of the child marriage and to recommend the solution to such social issue. Thus the petition has been disposed in accordance with the consultation of the core committee. Thereafter the detailed study been pursued by the Core Committee which led in introducing and further enacting the Karnataka Prohibition of Child Marriage (Amendment) Act 2016 emphasizing every child marriage to be void-ab-initio.
- In 2013 a Writ Petition has been filed by the National Human Rights Organization Independent thought, challenging the constitutional validity of Exception 2 of Section 375 of Indian Penal Code. The Supreme Court after the long battle of 4 years or more passed a harmonious constructive judgment. The judgment substitute the word “fifteen years” with “eighteen years” remarked in the sub clause 2 of Exception Clause of Section 375. The above view of the Supreme Court has triggered down the loophole to commence legal child marriage. But no amendment has been till date came into force following the judgment of Independent Thought.
- In the case of Aisha Kumari, the Petitioner has sought the help of Judiciary to repudiate her marriage been commenced while she was a minor. The petitioner has been forced to retrieve her marriage by her spouse and in-laws and tried to relocate her in the state of Gujarat. The Petitioner has taken the shelter of the amendment enforced by the State government of Karnataka by inserting sub-section 1A in Section 3 to Karnataka Prohibition of Child Marriage Amendment Act 2016 reproduced hereunder:

“(1A) Notwithstanding anything contained in sub-section (1) every child marriage solemnized on or after the date of coming into force of the Prohibition of Child Marriage (Karnataka Amendment) Act, 2016 shall be void ab initio”

The Petitioner further relied on the distinctive

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judgment been passed by the Supreme Court in the case of Independent Thought. The High Court of Delhi also sought a reply from the Central Government towards invalidating any form of child marriage. Thus, the landmark view has been taken by the central government in terms of introducing an amendment to the existing Prohibition of Child Marriage Act 2006 before the floors of Lok Sabha in 2021 taking remarkable action like declaring any form of child marriage as “void ab initio” and removing the age discrimination and sought for attainment of uniform age i.e. 21 years for both male and female to commence legal marriage.

The children of the society are been subjected to sexual offence at various instance despite the enforcement and implementation of the penal laws through monitoring bodies established under the special legislation.

- The case of Tuka Ram, shaken the premise of justice delivery system, where a 16 year old girl has been raped by the officials of the police station. During the trial stage, it has been found that the medical report clearly stating that the intercourse has been pursued with the consent of the Complainant as there is no mark been found usually appeared while resisting for intercourse. The Session Court acquitted the accused, while the High Court set aside the judgment which later observed by the Supreme Court and held the judgment been passed by the Session Court relying upon the evidentiary value been brought through the medical report.
- The Supreme Court has taken a contrary view in the case of Gurmit Singh, where a minor girl has been kidnapped and committed repeated rape by three of the accused. The Session Court after the conclusion of trial period acquitted the accused on the ground of delay in filing FIR, unable to describe the car through which the victim has been kidnapped, and for not alarming while the victim has been kidnapped and taken away by putting inside the car. The Apex court while adjudicating all the evidences and circumstances of the case upheld the conviction of the accused and set guidelines to hear the matter related to sexual offences at the trial court.
- The petition has been filed by a NGO before the Apex Court named “Sakshi” elaborating the

menace growth of rape cases especially been committed against the children. The limited scope been illustrated under the provision of Section 375 defining “Rape” triggers the commission of sexual offences against children which is beyond the scope of “penile and vaginal penetration”. The Supreme Court taking in consonance with the petition urged the Parliament to adopt amendments in existing penal statutes reproducing hereinafter:

“The suggestions made by the petitioners will advance the cause of justice and are in the larger interest of society. The cases of child abuse and rape are increasing at an alarming speed and appropriate legislation in this regard is, therefore, urgently required. We hope and trust that the parliament will give serious attention to the points highlights by the petitioner and make appropriate legislation with all the promptness which it deserves.”

Emphasis supplied

The Apex Court further direct the law Commission to take the submission of the petitioner in consideration and to check upon the scope of Section 375 of IPC in regard to the protection and development of the children against the heinous crime of sexual offences.

- The Supreme Court in the case of Om Prakash, upheld the conviction of the accused who was charged for committing rape of a 8 year old girl and the mother of the victim was the sole eye-witness. During the trial period the accused was acquitted by the lower court only on the basis of the medical examination report of the victim, but later convicted by the Apex Court only based upon the testimony of the victim.
- In lieu of protecting the interest of minor victim of sexual offence, a PIL has been filed by the NGO working deliberately towards the protection of the human rights affected from trafficking, bonded labour, etc. in the State of Uttar Pradesh. The petition was filed to include Rules 7(4) of POSCO Rules 2012 under the scope and ambit of victim compensation fund been constituted under the provision of Section 357-A of Criminal Procedure Code, 1973. While the petition was pending adjudication before the Apex Court, the respondent filed the affidavit stating the griev-

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ance raised vide the petition has been notified already by the State government. The Apex Court had pin pointedly opined that the scope of Victim Compensation Fund was limited to some specific offences such as been defined under section 4, 6, and 14 of the POCSO Act 2012. The notification has been issued in same regard to the state government to include the scope of other offences defined under section 7, 9 and 11 of the POCSO Act within the purview of Fund.

- The judgment delivered in the case Independent Thought helped in prevention of sexual offences committing against the minor child in the name of illegal child marriage. The Apex Court has sought an harmonious amendment to the challenging provision of Exception 2 of Section 375 of IPC and thereby read as produced hereunder;

“Sexual intercourse or sexual acts by a man with his own wife, the wife not being 18 years, is not rape”

- Recently in a case of sexual assault committed against a girl child, where the accused forcibly touches and insert finger into the vagina of the victim. The trial court upheld the conviction of the accused under section 8 of POCSO Act. When the matter filed as an appeal against the decision of trial court, the High Court of Calcutta stated that the mere penetration or the ground of medical examination could be a sufficient ground to corroborate the charge. The High Court clearly stated the scope of Section 8 is expanded even to touching sexual organs would be enough to punish the offender and therefore upheld the decision of lower court.

The adoption of the child is being in practice in order to secure the future of the child who are abandoned, orphan, etc., to get under the shelter of the family wilfully and intentionally adopts the child in due regard to the best interests of the child following legal norms and procedures. The Judiciary has a vital role in securing the interests of the adoptive child.

- The Judiciary has sought for the essential elements of adoption in the case of Balu Sakharam Powar. The High Court of Bombay states that prior adopting any child two elements needs to be borne in mind that is the right to adopt and

the adoption extends to the inheritance upon the property.

- In the case of Lakshmi Kant Pandey, the petitioner contended that the practice of child taken in adoption abroad results in engaging the children in begging and prostitution. Thus, the Apex Court sought the suggestion from the Union Government, ICCW, and ICSW in order to propose for the procedural norms to be stringently followed in the adoption of the child by the foreign parents. Thus the guidelines been provided by the authoritative body protect the future and interests of many adoptive children taken in abroad.

The right to education is a constitutional and legal right been enshrined under the Constitution of India before the amendment act of 2002. Later onwards the compulsory educational rights become a fundamental right by insertion of Article 21A. Thus every child has the right to pursue free and compulsory elementary education up to the age of 14 years. The Judiciary holds a vital role in protecting the educational right of the children.

- In the case of Mohini Jain, the petitioner has challenged the validity of the notification been issued by the state government of Karnataka charging captivate fees by the private educational institutions. The Supreme Court held that the fundamental right to pursue education at any stage of a citizen cannot be violated by charging captivated fees which is stringent violation of the Article 14 and is discriminatory, arbitrary and contrary with the provisions of the Constitution of India. The Supreme Court further stated that though the right to education does not included within Part III but envisaged under Part IV of the Constitution. The Fundamental rights and Directive principles are complimentary to each other and the right to education derives from the right to life which is being guaranteed under Article 21.

- In the preceding year, the petition was filed by the private educational institutions challenging the judgment delivered in the case of Mohini Jain. The Supreme partly agreed with the decisions of the Mohini Jain case in regard to derivation of right to education emancipate from the right to education. But the Apex Court overruled

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the other part of the earlier decision and stated that the free and compulsory education are to be implemented only up to the age of 14 years and beyond it would be subject to the condition precedent upon economic status of the state. Therefore the obligation enshrined under the directive principles would be furnished in establishing institutions by the State and by way of recognizing any affiliation to the private institutions.

- The Supreme Court in the case of Islamic Academy of Education held that the management body of the private educational institutions in order to frame rules and regulations in regard to fixing of fees structure and admissions of the students. The Apex Court stated that the educational right is a compulsory right to every human being and the educational institutions must keep an affordable economic structure to ensure the equal participation and development to education.

The overlooked category of child vulnerable group covers the status of children of prisoner of the society. The loophole in the legislation enriches the vulnerability to the identity of the children of inmates. The Judiciary owes a major role in safeguarding the interests of the children of prisoners accompanying their parents inside the prison.

- In the case of R.D. Upadhyay, the petition was filed concerning the status of the children accompanying their incarcerated mothers inside the prison. The Apex Court take in cognizance of the situation of the children of prison inmates referred to the suggestion been provided by the National Institute of Criminology and Forensic Sciences, where it reflects the degraded condition of the children living with their incarcerated mothers in terms of health, sanitation, hygiene, education, etc. The Supreme Court issue a direction to the States and Union Territories to envisage the status of the children of prisoners and thereby provided a detailed guidelines to be followed by the prison administration across the nation to uplift the status and protect the interest and development of the children of mother prisoners.
- The High Court of Allahabad also plays a vital

role in the case of Bachchey Lal, where the NGO named PRAYAS was invited as amicus curiae to conduct a detailed research reports upon the condition prevailing in the prisons in the state of Uttar Pradesh. The recommendation made by the PRYAS has a deliberate concern towards improving the condition of the children of prisoners by outlining the creation of Balwandi Space and crèche facilities; recruitment of female prison staff in order to meet the welfare and development of the women and child deployed in the female barracks and requirement of Liaison Officer to cater the needs of the dependents especially children of the prisoners living in the community during the incarceration period of their parents. It further emphasized about the inclusion of the status of children of prisoners in the Integrated Child Protection Scheme and the District Child Protection Unit must owe the responsibility to make periodic visit to the children living in the community i.e. either to house/relative place or any child care institutions and inform the condition of such child to the parents detained inside the prison. Thus a circular must be issued at the end of the Director General of Police so that the police officials must take consideration to the welfare and development of the children placed outside and if any supervision is required then adequately the child would be placed with the mother prisoners if the age criteria fulfils or does not want to keep inside prison, or else would be looked after by the Child Welfare Committee. Every action taken about any children living outside the prison must be taken into record before the Court of law and adequately the District Child Protection Officer (DCPO) must be informed regarding the same.

Conclusions and Suggestions

The concern towards protecting the interests and rights of the children emancipate from the international instruments. The signatories to the UN Convention adopted towards the welfare and development of the children confers upon eradication of arbitrary and virulent practices which are enough to demise the dignity and integrity of the children. India being the member states has developed varied child-centric legislation with the passage of time

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to eradicate and prohibit the anti-social practices derogatory toward the interests of the children. The Legislative efforts limited to legislation-making and would be diluted towards the protection of victim and punishing the offender through interpretation of the existing law is solely upon the shoulder of the Judiciary. The Judiciary helps in safeguarding the rights of the children who were exposed to vulnerable practices and adequately processed through the justice delivery system to reach into decision. The role of Judiciary towards upholding the objective of the child legislations are indispensable and protect the minor victim from every possible threat or danger in the course of proceedings or post trial or judgement stage and also provide proper medical and counselling services to get rid from the trauma and unforgettable incident of rights violation.

The present study has covered the various child rights legislations rooted from the traditional or anti-social practices and its wide range of judicial overview in reaching out the objective of the legislation and protect the interests and rights of the minor victim. Thus, the study would lie over some suggestions which might be taken into cognizance towards the better development and welfare of the children vulnerable to the society:

- a) There should be strong prevalence of the special legislation made in lieu of Article 15(3) over any personal and statutory laws.
- b) The decision of the Judiciary sometime over-reach the jurisdiction of the existing legislation to secure the rights and interests of the vulnerable groups like minor victims, and such needs to be taken into earliest consideration by the legislation.
- c) The Union Government must devote adequate budgetary allowances to meet the objectives of the child legislations keep liaison with the CRC.
- d) Apart from the efforts of the judiciary, the role of enforcement officials are sine-qua non in dealing with the crime in the society. Thus the enforcement officials must get exposed to proper training and learning programs to act diligently and carefully into various crimes committed against children or where a minor is involved.
- e) The procedural laws governing the era of protection of child rights in the light of justice delivery system must cover all vulnerable sections of the children under the scope and ambit of Juvenile Justice Act.
- f) All the state governments must keep uniform tie up with the Union government in establishing an effective mechanism towards reaching the objectivity of the procedural and special legislation.

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DOES ARBITRATION REALLY PROVIDE A VIABLE ALTERNATIVE TO COMMERCIAL LITIGATION? : A CRITICAL ANALYSIS

AUTHORS:

AKANSHA GULATI, Assistant Professor, DME Law School

PRANSHU PALLAV, Advocate at Patna High Court

ABSTRACT

Justice is something that people have been trying to achieve for a very long time. Aspirations for “justice-social, economic, and political”¹ are reflected in the Preamble of our Constitution. Adversarial litigation is not the only way disagreements may be resolved, as the world has seen. The need for new alternatives is made clear by the overcrowding in courtrooms, the lack of staff and resources, and the delay, expense, and procedure. Alternative Dispute Resolution procedures are urgently needed to augment the existing court infrastructure in this setting. However, is arbitration really a viable alternative to commercial litigation? Considering the loopholes in the present act pertaining to public policy clause, neutrality requirements, court involvement and absence of independent authority for appointing arbitrators. The present research is an attempt to discover whether arbitration in its present form as prevalent in India could be considered as a viable alternative to commercial litigation.

¹ Preamble, Constitution of India

INTRODUCTION

Arbitration is a out of court settlement method in which the parties agree to submit a disagreement to one or more arbitrators, who issue a binding ruling on the matter ².

Businesses have admitted that they know more about the litigation process than the arbitration procedure. Businesses have resisted employing litigation to save time in most developed countries, especially when big sums of money are at stake. Companies that have gone through arbitration report that on average, the process takes less than three years from beginning to end. Concerns such as these

and herein after mentioned make litigation a less desirable option, like mandatory rules that litigation must follow and proceedings cannot be treated as secret because of this.

Many of businesses chose arbitration because of its apparent benefits, not everyone was pleased with their outcome owing to various challenges interalia are, high arbitrator fee, lack of standardisation, high probability of biased arbitrator thereby high frequency of court intervention via setting aside proceedings.

1. GENERAL TRENDS OF LITIGATION

Based on the record and tendency followed, the following are some of the conclusions that may be drawn about the general pattern of litigation in India:

² Investopedia, Arbitration: What it is ? (July 27, 2024), <https://www.investopedia.com/terms/a/arbitration.asp>

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- a. The annual number of cases resolved is somewhat lower than the institution of cases in the court. Inevitably, this will lead to yearly pending of number of cases.
- b. The backlog of cases may be the primary cause of the large number of pending cases.
- c. This indicates that a case is pending in the justice system annually as every previous year's pending cases is being added on to the next year.
- d. This trend strengthens the general public's conviction that the judicial system is corrupt. Litigation increases workload and wait times, which leaves an impression that India's legal system does nothing to advance the cause of justice administration³.

1.1 How long and how much money does it take to get a legal matter handled in India through Litigation?

Many estimates have been made on the length of time it takes for Indian courts to rule on cases., but none have been based on empirical research. Nevertheless, a recent study conducted in Mumbai has revealed some illuminating details. The research indicates that, it took a total of 1420 days from the filing of a lawsuit to the enforcement of the court's decree. This time frame may be broken down even further into its 3 constituent parts. First, it takes 20 days to serve a summons once it has been filed. Second, the duration of the trial and the resulting decree is 1095 days; third, the duration of the implementation of the decree is 305 days.

The study found that the cost of commercial litigation is 39.6% of the totality. In the present case, attorney's fees made up 30.6% of the entire claim. Legal fees amounted to 8.5 percent of the claim, with another 0.47 percent going towards seeing the decree execution.

The analysis presented hereinabove reveals that the pendency rate is significantly greater than the institution rate and the disposal rate. On the other hand, the disposal rate is very variable and often falls

below the institution rate. Possible causes include insufficient court facilities, an insufficient number of judicial officers, poor cadre management, a lack of skill, efficiency, and techniques adopted by the judicial officers, the nature of the case itself, a failure to properly manage the case, a lack of cooperation between attorneys, a strained relationship between the parties, and an absence of effective alternative dispute resolution methods, among other things.

1.2 "Commercial Litigation & Section 12 A of Commercials courts act, 2015"⁴

Since business disputes account for a substantial portion of all cases brought before the courts, the govt. decided to implement pre-institution mediation in order to cut down on the amount of time that lawsuits take to reach a conclusion and to facilitate the speedy resolution of commercial disputes. According to sec. 12A of the Commercial Courts Act, 2015⁵, the parties are required to participate in pre-institution mediation prior to the complaint is filed, with the exception of situations in which a "urgent" temporary relief is requested. India decided to implement pre-institution mediation in order to enhance the "ease of doing business" in the nation and to boost the financial standing of the nation in its entirety. This technique depends on the "opt-out" technique, which is used in numerous nations. Under this method, parties to a dispute are barred from approaching courtrooms until they can provide evidence that they participated in the initial session of mediation.

The following are some of the disadvantages associated with the "pre-institution mediation" that was established in accordance with Sec. 12 A of the Commercial Courts Act⁶:

In accordance with Sec. 12A, it is the responsibility of the plaintiff to launch the preliminary stages of the mediation procedure. However, pursuant to rules, 2018, the other party has the option to decline to engage in the mediation process. This provision was established in order to facilitate the resolution of disputes before the institution of commercial courts. The failure of the other side to show up to the mediation session causes the process of mediation to fail to get off the ground, which leaves

3 Legal500, Commercial disputes: Litigation is a crucial step while arbitration can be alternative (July 27,2024), <https://www.legal500.com/developments/thought-leadership/commercial-disputes-litigation-is-crucial-step-while-arbitration-can-be-alternative/>

4 The Commercial Courts Act, No. 4 of 2016, §12A (India)

5 Ibid

6 Ibid

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the person who was wronged without any options for redress. Because of this, Section 12A is rendered meaningless.

A claim for “urgent interim relief” is excluded from the requirement to participate in “pre-institution” mediation by Sec.12A. The Act, on the other hand, does not specify what constitutes an “urgent” temporary remedy. This is frequently abused by the parties’ attorneys or by the parties themselves in order to induce a delay in the proceeding or to annoy the other party.

2. CRITICAL ANALYSES OF MERITS OF ARBITRATION

2.1 Is Arbitration Really Cost Effective?

It is well settled undisputed fact that arbitration in India is not particularly cost effective. Many surveys have shown that even court litigation is a far more cost-effective alternative to ad hoc arbitration. The consensus was that ad hoc arbitration is not a viable choice in modern India.

The arbitral tribunal has the authority to determine the expenses of the arbitration in accordance with the specifics of Sec. 31A⁸ of the Arbitration & Conciliation Act, 1996. The amount, method, and timing of arbitration expenses are within the discretion of the Court and the arbitral tribunal, according to Section 31A of the Act.

The Act’s Fourth Schedule specifies model fee to be paid to the arbitrator(s) based on the value of the dispute. It is important to remember that if the arbitral tribunal consists of a single arbitrator, the price owed to the arbitrator will increase by twenty-five percent (25%) in accordance with the schedule. The fees and expenses of the parties’ legal representatives account for a significant portion of the total costs incurred, cost concerns are inextricably linked to the pace at which the arbitration proceeds. According to research conducted in 2015 by the International Chamber of Commerce Commission on Arbitration and Alternative Dispute Resolution, only 15% of arbitration costs are attributable to arbitrators’ fees

and expenses, while another 2% is attributable to administrative fees, and the remaining 83% is attributable to lawyers’ fees and other party costs.

In *ONGC v. Afcons Gunanusa JV*⁹, the S.C dealt held that Rs. 30,00000/- is max. fee that could be given to an arbitrator, & the maximum amount cumulatively applicable includes variable as well as base cost, as envisioned under the 6th entry to the 4th Sch. of present arbitration act & unilateral fixation of arbitral fee. The court also ruled that aforementioned cap applies to the fees of each arbitrator and not the total fees of the panel. The Indian S.C recognised the problem of arbitrator costs being too expensive and too variable in *UOI v. Singh Builders Syndicate*¹⁰. According to the 2015 Amendment to the Arbitration & Conciliation Act, 1996, Due to the excessive costs of arbitration processes, the Law Commission suggested a model schedule of fees to be used for future cases. This would seem to render null and void the subsequent provisions u/s 31-A.

Therefore, considering there is no conclusive judicial finding nor any provision on the applicability of the 4th sch., it appears, arbitrators and panel keep going to have unlimited freedom in determining their fee, particularly in adhoc arbitration proceedings.

There is so little to guide or restrict arbitrators in the setting of their fee, unless the parties contractually agree to a prior fee structure, or the procedures are governed by institutional regulations prescribing the same. If the tribunal is already biased against one of the parties, then they may have to accept whatever charge is decided. Other options include parties refusing to pay the price and challenging it in court, or arbitrators just resigning, all of which can have a major impact on the outcome of the arbitration. The Fourth Schedule fees seem to be resolved by the 2019 Amendment Act, which grants authority to a graded arbitral institution to set those fees. The new subsections (3-A) and (14) to Section 11 are ambiguous as to whether they would apply to party-appointed arbitrators in ad hoc procedures, and it has been almost a 4 years since the amendment was enacted, and no notification of the said amendment has been issued.

7 Aishwarya Sandeep, Myths of cost effectiveness of arbitration, WordPress (June 29th, 2024) <https://aishwaryasandeep.com/2021/12/13/myth-of-cost-effectiveness-in-arbitration/>

8 The Arbitration and Conciliation amendment Act, 2021, No. 3 of 2021(India)

9 *ONGC v. Afcons Gunanusa JV Civil Appeal*, (2022) SCC 5880

10 *UOI v. Singh Builders Syndicate*, (2007) SCC 3632

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• **Payment Of Fee**

Ad hoc arbitration proceedings leave a lot of room for ambiguity for the payment and, thus, arbitrariness, whereas institutional standards typically provide for simplified and streamlined methods for the deposit and payment of the arbitrators' costs. An advance for costs, including the tribunal's fees, is required by Sec. 38¹¹ of the Act, and the amount of the deposit is determined by the tribunal. Sub-sec. (2) requires that the parties equally split the cost of the deposit, or that one party pay the full amount if the other fails to do so. The Act grants the tribunal the authority to delay or terminate such proceedings if the other party refuses or is unable to pay the entire deposit. Interestingly, while no such provision can be found in the Model Law (upon which the Act is founded), identical clauses may be found in a number of institutional norms including the SIAC and LCIA. In addition, the Act does not provide the tribunal with authority to enforce compliance should a party fail to pay the charge, and there is no remedy available to a party that is justifiably unwilling to pay the cost.

Although the S.C.'s decision in *Alka Chandewar v. Shamshul Ishrar Khan*¹² interpreted the Act to grant broad powers of contempt, the same may not hold in light of the Section 38 (2). There are a variety of circumstances in which a party can refuse to pay the deposit, and the Act does not specify any of them. If one party contests the arbitral tribunal's composition or jurisdiction, or challenges the impartiality of the arbitrators, that party may refuse to pay any amount that could subsequently be considered frustrated costs. As a result, there is a need for a standard structure and procedure that safeguards the rights of the parties and the needs of the arbitrators without reducing the effectiveness of the arbitration itself. One such set of rules is the one governing the fees charged by the Delhi International Arbitration Centre, which allows for different portions of the total price to be paid at different points in the process. After the modification is notified, the Arbitration Council of India, which is scheduled to be established under the new Part I-A of the Act, will be able to address and better control these issues.

The Sec. 38(3)¹³ of the Act states that upon conclusion of arbitration procedures, the tribunal "must restore any such unexpended balance" and provide an accounting of any deposits received from the parties. As a result, arbitrators are legally required to account for all monies they collect from the parties as deposits (including any costs). But, if the tribunal fails to do so, as is typically the case, the parties have no legal remedy under the Act. Whether or whether the same would constitute misconduct is not addressed either. Sec. 42B¹⁴, on the other hand, provides immunity to arbitrators for any and all actions taken in good faith. For this reason, the termination of proceedings for lack of jurisdiction, the setting aside of a patent illegal award, or the resignation of an arbitrator may not always indicate a lack of due care and caution on the part of the tribunal. In effect, it appears that the parties' ordinary civil law recovery rights have been eliminated as well.

Notwithstanding the fact that a number of awards have been terminated and the mandate of tribunals has been terminated for various reasons, the subject of recovery of arbitral fee has yet to be determined by Indian courts.

2.2 Arbitrators' Rule Of Conduct And Professional Ethics

According to the debates, arbitrators are not currently bound by any code of conduct or principles of professional ethics. There must be a solution to this. Some arbitral institutions are more selective in who sits on their panel of arbitrators than ad hoc arbitrations. It is possible that these organisations will also establish and tightly enforce comprehensive codes of conduct and professional ethics.

The *State trading corp. vs Molasses Co. Bengal Chamber of Commerce*¹⁵, a permanent arbitral institution, ruled against the corporation and didn't permit Co. to be represented by law officer, who was employee of the co. The Court found both the arbitrator's conduct and the arbitration process's to be improper. It is a classic situation where the arbitrator misconducted the procedures and also

¹¹ Arbitration and Conciliation Act, No. 26 of 1996, §38 (India)

¹² *Alka Chandewar v. Shamshul Ishrar Khan*, (2017) SCC 8720

¹³ Arbitration and Conciliation Act, No. 26 of 1996, §38(3) (India).

¹⁴ Arbitration and Conciliation Act, No. 26 of 1996, §42B (India)

¹⁵ *State trading corp. v. Molasses Co. Bengal Chamber of Commerce*, (1981) Cal 440

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misconducted himself. The principles of law, process, and justice were disregarded entirely.

2.3 Is Arbitration Really Free From Court Clutches?

The Arbitration and Conciliation Act (as revised in 2015) does limit judicial involvement by requiring parties to apply to the court for a ruling on their dispute, and no court has the authority to take *Suo moto* cognizance of a case unless one of the parties files an application for it to do so. The load on the courts only grows as a result of these judicial interventions into the arbitration process. This is counter to the very idea of arbitration.

Notwithstanding that arbitration is considered as autonomous proceeding free from the rigid procedure of court. However, unfortunately the same isn't the case with Indian arbitration law, hereinafter mentioned are certain situation where court step in the arbitration proceedings: -

- To refer dispute to arbitration (Sec. 8¹⁶)
- To grant temporary measures to help with arbitration (Sec. 9¹⁷)
- Appointment of Arbitrators (Sec. 11¹⁸)
- the procedure for challenging an arbitrator's decision (Sec. 13¹⁹)
- settling any disputes concerning the mandate of an arbitrator's authority (Sec. 14²⁰)
- Interim award enforcement by the arbitral tribunal (Sec. 17²¹)
- Help with evidence-gathering tasks including calling witnesses and providing paperwork (Sec. 27²²)
- The imposition of sanctions on the noncompliant parties by the arbitral tribunal (Sec. 27²³).
- To extend the time limit for arbitration proceedings, replacing one or more arbitrators on an arbitral tribunal, or penalising the tribunal or the

parties responsible for delay (Sec. 29(A)²⁴).

- Consideration of a motion to set aside an arbitral award (Sec. 34²⁵).
- An appeal of the award (Sec. 36²⁶).
- Considering appeals from the arbitral tribunal (Sec. 37) when the arbitral tribunal accepts a party's plea of lack of jurisdiction under Sec. 16 or rejects a party's request for an interim remedy under Sec. 17²⁷
- Costs must be paid to the tribunal before an award may be issued (Sec. 39²⁸).
- The Arbitration Act allows the parties to extend the deadline within which they must initiate arbitration proceedings (Sec. 43(3)²⁹)

2.4 Arbitration Vis A Vis Autonomy Of Parties

The concept of "party autonomy" is used to announce that the parties to the arbitration agreement have complete independence in the selection of legislation and the management of the arbitration proceeding itself.

The S.C of India ruled that party autonomy is envisioned under the Indian Arbitration Act of 1996. However, the idea of party autonomy, the *de facto* worldwide acknowledged standard in arbitration, was violated in the recent Bombay HC decision by Judge R.D. Dhanuka. The court ruled that domestic parties can't have foreign seat, & that Indian parties should follow law of India. The inconsistency may be examined alongside the S.C's most lauded prior ruling, which was reached by a 5 judge bench in the case of BALCO³⁰. Both parties to an arbitration within India need not be Indian for Part I to apply, while both parties to an arbitration outside of India need not be Indian for Part I to not apply. According to the "seat-centric approach" used by the court, the only distinction that matters under the Act is between "domestic arbitrations" (arbitration having a seat within India) and "foreign arbitrations" (arbitrations having seat outside of India).

16 Arbitration and Conciliation Act, No. 26 of 1996, (India)

17 Ibid

18 Ibid

19 Ibid

20 Ibid

21 Ibid

22 Ibid

23 Ibid

24 Ibid

25 Ibid

26 Ibid

27 Ibid

28 Ibid

29 Ibid

30 Bharat Aluminium Co v. Kaiser Aluminium Technical, (2005) SCC 7019

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When it comes to Perkins Eastman Architects DPC and Others Versus HSCC³¹, the S.C ruled that an arbitrator cannot be appointed by a party with a vested interest in the outcome of the dispute. The respondent has proposed appointing the arbitrator; nevertheless, the Court makes clear that each party has the exclusive authority to do so. Three judges agreed in the TRF verdict, which was relied on by the court to reach its conclusion that a person who is unable to serve as an arbitrator cannot appoint one. Using the rule that you shouldn't try to accomplish anything indirectly if you can't do it straight up.

Case of Perkins Eastman, The S.C has ruled that a person who is not eligible to act as an arbitrator isn't also eligible to appoint a "Arbitrator" under S.11 & the Sch. of the present arbitration act, as amended by the Arbitration & Conciliation amendment act, 2015, in order to guarantee the impartiality of arbitrators. Some solo arbitrators chosen by one party to the arbitration agreement have resigned in light of the aforementioned ruling, either voluntarily or at the request of the other party to the agreement, causing a commotion in a number of current arbitration processes across the nation. Furthermore, requests for the removal of arbitrators appointed by one party have been made under Sec. 14 and Sec. 15 of the Act.

The S.C's decision in Perkins has reignited debate over the TRF ruling. The issue before the S.C was whether or not a single party to the agreement may designate the lone arbitrator, and whether or not the Courts could step in to prevent an improper appointment.

After reviewing the TRF decision, the S.C decided that the Managing Director in question served as an arbitrator and an appointing authority under the dispute resolution clause. The S.C has ruled that a disqualified person's interest in the outcome of the case makes him ineligible to serve as an arbitrator under the Act. As a result, the S.C ruled that arbitration clauses that do nothing more than provide the Chief Executive Director of a party the authority to appoint an arbitrator are similarly unenforceable under the Act. The S.C's rulings in

Bharat Broadband Network Ltd³² v. United Telecoms Limited and TRF (above) were interpreted to mean that ineligibility under Sec. 12(5) read with Sch. VII of the Act will have retrospective application rather than being limited to prospective application.

Another sec. under arbitration act that limits party autonomy is sec. 29 A of act. Arbitration's many benefits include giving the two sides in a dispute the power to determine their own fate in court. While deciding between arbitration and litigation, parties value the ability to select the rules of process that will apply to their case. Others feel that the parties' independence and power in the arbitration process are curtailed by Sec. 29A. Because the next stage in the proceedings is predetermined by the clause of judicial intervention, the parties' freedom of action is effectively nullified.

2.5 Is flexibility indeed a merit of arbitration proceedings³³

The fact that alternative conflict resolution occurs outside of the judicial system is a major selling point for this method. Maybe, but is there a limit? One of the main selling points of ADR is that it doesn't involve the judicial system, therefore the processes involved in ADR aren't as formalised as those in litigation. Hence, ADR choices provide more leeway. But how flexible is too flexible? To what extent do we go? Is it even possible to have too much of a good thing when it comes to ADR flexibility?

The parties' willingness to agree on the arbitration processes at a time when there may already be a disagreement is a significant drawback of the ad hoc method. When one or both sides aren't willing to play ball, it might delay the resolution process or even lead to legal action.

The parties to the issue are able to determine the conflict resolution method through the ad hoc approach, which is a major benefit. However, the parties will need to expend more time, energy, and experience in determining the arbitration rules. When dealing with partners of various nations and

³¹ Perkins Eastman Architects DPC and Others v. HSCC, (2019) SCC 32

³² Bharat Broadbaand Network Ltd v. United Telecoms Limited, (2019) SCC 3972

³³ Monash University, Too much of a good things? The case for less flexibility in International commercial arbitration, Monash University (June 27, 2024), <https://impact.monash.edu/legal/too-much-of-a-good-thing-the-case-for-less-flexibility-in-international-commercial-arbitration>

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legal systems, communication might be slowed due to misunderstandings. Again, once a conflict has formed, this might scuttle any attempts at an ad hoc resolution.

2.6 Legal Questions of Competence: Violation of principles of Natural Justice

Competency-based competence is recognised in India. It is up to the arbitral tribunal to determine whether or not it has jurisdiction (Sec. 16, Arbitration Act³⁴). Nonetheless, Sec. 16(2) requires that challenges to the tribunal's jurisdiction be made in a timely fashion (that is, before filing the statement of defence). If a party does not challenge the tribunal's authority within the allotted period, it will lose the opportunity to do so. The verdict of an arbitral tribunal might be contested in court if the tribunal determines it lacks jurisdiction. But, if the arbitral tribunal determines that it does have jurisdiction, no further appeal or challenge may be made, and the sole recourse is to dispute the arbitral tribunal's final decision on the basis that it lacked jurisdiction.

2.7 Whether Arbitration Is Time Bound & Confidential Process?

The 2019 Amendment Act makes various improvements and gives the parties more leeway in terms of the length of time for the arbitration. This serves two functions. First, it helps to understand why people choose arbitration over going to court to settle their differences. Second, the modification does not dissuade arbitrators from pursuing claims since all parties would be given a chance to present their side.

Unfortunately, the legislature failed to take into account the procedural implications of a six-month filing deadline for the statement of claims. There wouldn't be a chance for parties to separate out jurisdictional or preliminary concerns from pleadings or substantive problems. Hence, this limits the parties' freedom and control over the pleas they submit.

The arbitration's privacy may also be jeopardised by the short time frame of six months. This defeats the Act's intended aim. One advantage of arbitration over litigation is that the proceedings may be kept private. This is in contrast to the public nature of court records. Because of this need, Sec. 42³⁵ of

the Act was enacted to protect the privacy of arbitral proceedings. Yet, if the deadline is missed and the parties appear in court, divulging the case's sensitive elements, a contradiction between Sec.29A³⁶ and 42³⁷ arises. Judicial involvement in arbitration proceedings should continue to be confined to supporting the work of arbitral institutions rather than taking on that work itself. The two laws need to be harmonised so that the parties can benefit from private, swift, and time-limited processes.

Under the leadership of Hon'ble Judge B.N. Srikrishna (Retd.), a Committee was formed (the "Committee") to address gaps in the Act and advance institutional arbitration. On 30 July 2017, the Committee released its report.

As detailed in the Report, the international community was divided on the required deadline established by Sec. 29-A³⁸. Timelines for arbitration procedures are often established by the institution administering the arbitration or by the arbitration rules itself. As a result, parties may view India as a less desirable seat of arbitration due to Sec. 29-A's non-derogable nature, which interfered with the authority of arbitral institutions to govern the conduct of arbitrations. It was unreasonable to set an inflexible deadline without considering the specifics of the issue at hand, such as the number of papers involved. The time constraints ran against the spirit of an effective conflict resolution procedure, which called for giving the parties a fair chance to present their case to a tribunal.

When parties were compelled to repeatedly approach the court for extensions of time, the already lengthy process of securing such extensions was slowed down even further.

It was, however, determined that a court-controlled arbitral tribunal would become an instrument of the court rather than a party-structured conflict settlement system, which would be counter to the expansion of arbitration in India and contrary to international best practises.

It is being asserted that time limit that is of

³⁴ Arbitration and Conciliation Act, No. 26 of 1996, (India).

³⁵ Ibid

³⁶ Ibid

³⁷ Ibid

³⁸ Kranjawa & Company, purpose, parameters & problems of section 29A, Mondaq (June 27, 2024), <https://www.mondaq.com/india/arbitration--dispute-resolution/1168310/purpose-parameters-and-problems-of-section-29a>

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18 months is placed on arbitration, the courts are becoming more involved in the process³⁹. Parties that seek a neutral, expedient, and financially reasonable settlement to their dispute and who wish to restrict disclosures to the press, public, rivals prefer arbitration because of the confidentiality of the process. Yet, the need that the parties go to court in order to get an extension on the set time limit is seen as requiring the parties to renounce this arrangement mutually.

2.8 Delay In Arbitral Proceedings⁴⁰

Significant time lags have developed over the past several years at each step of judicial intervention during arbitration. This was due to the courts' eagerness to weigh in on the merits of arbitration and the overwhelming volume of pending cases. However there have been advancements in the former.

In the past, submitting parties to arbitration and/or assigning an arbitrator were preceded by long judicial inquiries concerning the legitimacy and impact of the arbitration agreement, which significantly slowed down proceedings. Nonetheless, the Arbitration Act has been updated recently, greatly limiting the potential for involvement. Now, the sole issue for a court to decide is whether or not an arbitration agreement exists; any and all other issues must be submitted to the arbitrator for resolution.

In similar fashion, courts have previously re-evaluated the merits of arbitration or an arbitrator's erroneous application of law or interpretation of evidence in procedures brought to set aside arbitration verdicts. These hearings typically lasted far longer than the original arbitration.

The Arbitration Act suggests that any setting aside procedures be finalised in a year. While courts have accepted certain restrictions on their ability to investigate, in practise they have seldom been able to wrap up cases within the allotted amount of time .

Several legislative and judicial changes have aimed to limit the amount to which courts can

intervene; but, in reality, parties can submit repeated petitions and postpone proceedings before and after arbitration processes have concluded.

CONCLUSION & SUGGESTIONS

Most people have the impression that each side has complete control over the arbitration procedure and arbitration is free from court clutches as well as other merits of arbitration are absolute. If India wants to become a global arbitration hub, it must take into account the efficiency and cost effectiveness and autonomous of the arbitral process, as it is one of the few jurisdictions where ad hoc proceedings are largely favoured over institutional arbitrations. Mandatorily capping arbitrators' fees by law and allowing the introduction of a rationalised, transparent system of payment will effectively hold the parties and the arbitrators accountable. Nevertheless, these benefits can only be fully evaluated when the 2019 amendment's intended purpose—"to encourage institutional arbitration"—would be notified & put into practise.

The provision for time-limited arbitration appears to damage the very foundations upon which arbitration rests, and as such, it might be perceived as a legislative overreach. The Sec. purpose and rationale were to ensure the smooth operation of the courts and the prompt resolution of disputes; however, they appear to have made a mistake that renders the entire arbitration procedure meaningless and capricious.

In the light of aforesaid loopholes in the apparent merits of Arbitration proceeding it could be concluded that arbitration act as in the present form needs to amended and reformed to make it really viable alternative to commercial litigation.

³⁹ Ibid

⁴⁰ S&A Law Offices, Analysis of Unexplained Delay In Rendering The Arbitral Award As a Ground For Challenge Under Section 34 Of The Arbitration And Conciliation Act, Mondaq (June27,2024) <https://www.mondaq.com/india/arbitration--dispute-resolution>

EXPLORING SOVEREIGNTY IN PUBLIC LAW: ANALYZING MAX WEBER'S CONCEPT OF STATE MONOPOLY ON LEGITIMATE USE OF FORCE

AUTHOR:

ANEESH SINGH, LL.M (Corporate And Finance Law and Policy), O.P Jindal Global University, Haryana

ABSTRACT

This article delves into the intricate concept of sovereignty and its critical role within the realm of public law, framed by Max Weber's seminal assertion that the State holds the "monopoly of the legitimate use of physical force within a given territory." Sovereignty, a cornerstone of modern statehood, encompasses the supreme authority of the state to govern itself and make laws within its borders, free from external interference. This paper explores the evolution of sovereignty, its theoretical foundations, and its practical implications in contemporary public law. Central to this discussion is Weber's definition, which underscores the state's unique position as the sole legitimate enforcer of law and order. By examining case studies and legal frameworks, the article elucidates how Weber's concept of state monopoly on force shapes the enforcement of legal norms, maintains social order, and upholds the rule of law. Furthermore, it addresses the challenges and criticisms of this monopoly in the face of globalization, supranational entities, and internal dissent. Through this comprehensive analysis, the article aims to provide a nuanced understanding of sovereignty's enduring significance in public law and its pivotal role in the architecture of modern governance.

Keywords: Sovereignty, Public Law, Max Weber, State Monopoly, Globalization, Supranational Entities.

Introduction:

When it comes to the concept of Public Law and political theory, the concept of sovereignty holds a pivotal position. It embodies the power and the authority a State holds and defines its autonomy and control it holds on the defined boundary. Max Weber, a German sociologist, contributed significantly to the understanding of sovereignty through his seminal works on bureaucracy and political authority. In his work "Politics as a Vocation," he elucidates that the monopoly of the legitimate use of physical force is a core concept of modern public law.

The concept of sovereignty can be intertwined and understood in the light of the statement given by Max Webber that the State has "the monopoly of the legitimate use of physical force within a given territory." According to Weber, the state's legitimacy is derived from its ability to monopolize the use of physical force within a given territory. This monopoly distinguishes the state from other entities and empowers it to uphold law and order through the legitimate exercise of coercion. He believes that the legitimacy of the modern state's control was established by seizing the tools of political dominance and organization,

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including violence.¹ While rationalizing this we see how sovereignty is related to the concept of monopoly of force by the way of maintaining order, using legitimate force to the reasonable extend and as a multifaceted way for law enforcement. Hence, this essay revolves around the similar understanding and takes the understanding of Max Webber's theory and its applicability in the present day sovereignty as in accordance to its application in the regime of Public Law.

A historical perspective and evolution of State Sovereignty:

The idea of sovereignty emerged with the rise of modern states and the significant shift from feudalism to centralized government. In the medieval Europe, monarchs represented the height of sovereignty, exercising unquestionable authority over the domains and asserting a divinely granted prerogative to rule. However, the idea of sovereignty was redefined during the Age of Enlightenment and Renaissance as nation-states gained power and political authority consolidated.

The Treaty of Westphalia, which brought an end to the thirty years of war in 1648, strengthened and popularized the idea of state sovereignty. The treaty established the notion of territorial integrity and non-interference in their internal affairs, laying the groundwork for the contemporary concept of sovereignty. Over time, sovereignty has changed from belonging inky to monarchs to now being associated with the state as an independent entity separate from the leaders.

Realizing sovereignty as a component of Public Law:

The presentation of sovereignty as a component of public law has been a recent concept and has evolved with time. Various authors like Walker in "Late Sovereignty in the European Union"² and Loughlin in "Ten Tenets of Sovereignty"³ have interpreted

sovereignty as the concept which has evolved in such a manner that the features of the theory of public law can be seen in the features of sovereignty and it holds a huge significance when it comes to the constructive application of public law. It governs the relationship between the State and its citizens and realizes its significance in the propaganda of supremacy of law, legitimacy of the government, international recognition and many such public law realms.

When it comes to considering the same, sovereignty is interpreted in the lens of supremacy of law as it establishes a legal framework that applies to the individuals and the entities within its territories which defines the permissible and prohibited actions with a certain level of assurance to the predictability of order. Talking about the legitimacy of government, sovereignty provides the basis of the legitimacy of the State's government which provides to be an integral organ for the application of public law.

A view of sovereignty through the lens of Max Weber's interpretation of State's legitimate use of physical force:

As we reach to the interpretation of sovereignty in the terms of Max Weber's definition of modern state we realize that it has sociologically been the core for defining the same. The said definition brings the notion of monopoly closest to sovereignty. Coming to the application of the same with respect to who actually deploys the force, Weber made his contention's clear that the ruler and his staff as a whole are the ones responsible for the said action. The same might not be exactly embedded in the definition but it is prominently vocalized throughout Weber's writings and ideology of state formation.

Understanding the key outlines of Max Weber's theory w.r.t. Sovereignty:

Weber, while accepting Trotsky's statement that "every State is based on force," defines a state by its means rather than its ends. Although Weber contends that force alone is insufficient and it needs to be perceived as legitimate for both pragmatic and normative reasons. As we underline the term "legitimate" in the said concept we realize that state is not the only actor that have a control over using force but rather, state is the only actor that can

1 Karl Dusza, Max Weber's Concept of State, International Journal of Politics, Culture, and Society (1989), <https://www.jstor.org/stable/20006938?seq=1>

2 N. Walker, Late Sovereignty in the European Union, Sovereignty in Transition (pp. 3-32) (2003)

3 Martin Loughlin, Ten Tenets of Sovereignty, Relocating Sovereignty, (2006)

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legitimize the use of violence. Hence, it can grant certain other actors the right to use violence and not loose monopoly on it as long as it remains the source of the right use of violence and the capacity to do the same is maintained.⁴

Talking about the capacity mentioned we realize that the concept of sovereign state which has the wholesome power to decide and apply its own actions can regulate the use of force accordingly considering the same to be legitimate. In the Weberian theory, the state, governed by willing and charismatic leaders, is limited in what it can lawfully do by custom and law. Even if Weber's claim that states have the exclusive right to use force is accepted, this does not mean that all the state violence is acceptable.

Critical interpretation in the current scenario:

On analyzing Max Weber's interpretation of modern state and the same has been a concern of state's unrestricted rule despite the principle of legitimacy we analyse that there could be certain parameters on which the sovereign state can be critiqued and the Weber's interpretation cannot be taken in literal sense yet, can be a direction in which a state's society can work in its functioning. Understanding this we see, maintenance law and order is one of such parameter on which this theory is based. Weber's interpretation of modern state is in accordance with the use of legitimate force to ensure that there must be a sense of security for the citizens of the state, externally or internally with a consonant of peace that shall be maintained under this notion. The same can be an applicable methodology but the extent of State's idea of legitimacy to the maintenance of peace can vary and the same can be regulated with the current role of comparative law that is done and adopted by many states. This highlights the role crucial judicial institutions, law enforcement agencies, and legal mechanisms are in upholding the law while also ensuring public safety.

Adding to this, the boundaries of state sovereignty plays an important role in defining the similar concept. The boundaries between a state's autonomy and independence of power are outlined

in Max Weber's assertion of sovereignty. The state exercise control over its internal affairs through the implementation of law and governance, although its sovereignty may be limited by international law, human rights standards, and other commitments resulting from treaties and agreements. With this, Max Weber's interpretation highlights the significance of two important democratic principles, maintaining responsibility and guaranteeing the legitimacy of the state authority. The issue of sovereignty articulates Max Weber's well-known claim that the state has the only right to use force legitimately inside a certain area; nonetheless, it does present important difficulties and ramifications for the field of Public Law. A subjective examination of all these issues and their consequences offers important new perspectives on how government, the state, and the rule of law function.

Challenges to Sovereignty as seen from the Max Weber's theory in the realm of Public Law:

The above discussed concept of sovereignty in the context of public law as seen from the Max Weber's theory is said to be a bit narrow in this developing and rapidly intertwining society. The major challenge could be Globalization as the same puts this idea of sovereignty under a test for growing without the independence to choose to evolve the global economy, policy influence and application of comparative evolution of the sovereign state, which is important in the present day scenario. Transnational issues like migration, terrorism, climate change, corporation environmental depletion which interlink the national borders are to be managed as well.⁵

Moreover, as a developing concern, protection and promotion of human rights is a significant challenge to this traditional approach of Max Weber's perspective of modern state and sovereignty as a constructive enabler of the same. The cases where the state engages in suppression of human rights can be of major concern and it gets difficult to uphold the law and order. Striking a balance between state sovereignty and the duty to respect and promote

4 Gregor Fitz; Sovereignty, legality and democracy: Politics in the work of Max Weber, Project Muse, (2009) <https://muse.jhu.edu/article/808847>

5 Herbert Wulf; Challenging the Weberian Concept of the State: The Future of the Monopoly of Violence, The Australian Centre for Peace and Conflict Studies, (2007) <http://www.wulf-herbert.de/ACPACS-occ-paper9.pdf>

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human rights presents moral challenges for the international community. Furthermore, sub-national movements, like separatist movements or regional autonomy movements, contest the unitary nature of state sovereignty. The demands of these movements for increased autonomy or independence from central authority resulted in confrontations over political representation and territorial integrity.

Conclusion:

When we analyze the concept of sovereignty in the realm of public law and look at it through the lens of Max Weber's theory of legitimate control of violence by the state, we see that sovereignty has a hint of influence from the said philosophy. The rise of sovereignty gave a rise to the rule of the state with state's control in internal and external aspects of the functioning. This gave a rise to the state's monopoly

in conduct of society of that particular state and the same includes the monopoly in the regulation of violence. Yet, in the current scenario where the exclusive sovereign rule is not the only factor governing the state's action, it is hard to interpret Weber's statement in the current societal regime.

We see that factors like globalization, the need and demand of human rights and the international treaties and transnational activities are highly influential for the betterment and functioning of state. The same is the importance of comparative legal analysis which helps the improvement of a state by taking ideas from another state's legal structure. It is important to know that Weber's statement can be of good use for the regulation of society but the same has a less effective implementation in the current societal dynamics.

CITIZENSHIP OF REFUGEES

AUTHOR:

BHAVIKA RATHI, Advocate, High Court of Delhi

INTRODUCTION

The research paper discusses the post-secular trend in citizenship and the politics revolving around refugees all across the world. It sheds light on how the inclusive and secular principles are under attack, particularly in India. Refugees in India are susceptible to the arbitrary actions of governmental procedures and authorities because there are no established regulations or determination procedures. It also emphasizes how ethnic and patriotic discourses have politicized immigration and citizenship, that is, especially in the context of migrants and refugees coming into the Indian subcontinent. Due to an absence of rights, refugees residing in camps are limited to living on the bare minimum; but, in actuality, fascinating assertions are being made, for instance in the situation involving Sri Lankan Tamils in Tamil Nadu.

India firmly claims to be secular, yet how do we have two different approaches or policies towards refugee communities? The paper goes on to say that India's generosity towards some refugee populations and ignorance towards Muslim refugees have cast doubt on its approach to dealing with refugees and then the paper further calls into question the state's very own secularism. Muslim Rohingya refugees are a stark illustration of a stateless group. The Indian government does not provide protection and opportunities to reside legally, and hence refugees continue to experience arrests and detentions.

The paper highlights the issue that the categorization of refugees in India is ambiguous. The level of security that they get from the Indian government, which is frequently affected more by politics than by humanitarian or legal parameters, largely determines how they are treated.

The paper, then, also delves into the question that whether the refugees are provided with inadequate and skewed protection under Indian law and state policy. One of the top nations in the world for taking in refugees is India. Although India doesn't have a clear refugee statute, we have handled a few refugee populations fairly. The study argues, relying

on citizenship rhetoric, that right-based assessment has made an effort to interact with noncitizens, and India is no exception.

It, then, makes an argument that initiatives that blatantly discriminate against a certain set of community, like the CAA and NRC, have exacerbated a number of issues among its very own citizens. With the aim of identifying and harassing Muslim immigrants living in India and prohibiting them specifically from obtaining specific rights and advantages in India, the NRC and CAA have been introduced to be extensively utilized as a tool of politics.

It is further argued that, in order to protect the refugee community in India, accessing institutions has become extremely difficult due to the lack of refugee laws and clarity surrounding refugees. The lack of a national legislation pertaining to the rights and entitlements of refugees in India has prevented them from receiving even the most basic protection, and hence, placing them in further danger. The refugees are now completely dependent on the government and have no legal redressal when the government commits any violation.

A CITIZEN'S CITIZENSHIP

A citizen is a person who has equal rights and obligations with all other citizens and is a member of a national or political community.¹ As per Hammar, citizenship has been seen as a byproduct or a 'fruit' of the contemporary state, where residents are expected to be dedicated to the state's goals and prepared to make any necessary sacrifices.² In the same state, foreigners are perceived as less reliable or even as possible security problems. As the officially recognized status as a citizen of a state, and thus citizenship is not considered to be optional. It is frequently used to imply a state of democratic

1 Macfoy, M K (2014): "Introduction: Who is a Citizen? Feminism, Multiculturalism and Immigration," Citizenship, R Belamy and M K Macfoy (eds), Vol II, New York: Routledge.

2 Hammar, T (1986): Citizenship: Membership of a Nation and of a State, International Migration, Vol 24, pp 735-48

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inclusion or belonging, although this inclusion is typically predicated on an idea of a closed-off and exclusive group.³

The discrimination against non-citizens by denying them public benefits not only violates the human rights of immigrants, but also reflects a longstanding devaluation of marginalized families who suffer from higher levels of hunger and food insecurity due to welfare reform⁴. The concept and institution of citizenship has various shortcomings, limitations, conflicts, and is often associated with systems of subordination, which have been criticized by many scholars, particularly in postcolonial societies like India that have been shaped by caste, class, race, religion, and gender hierarchies. The principle of equality, a key aspect of citizenship, remains difficult to achieve and constrained. The formation of a civic community is often regarded as an important objective of citizenship⁵.

The second part of the Constitution and the Citizenship Act of 1955 establish the concept of citizenship and establish various norms for acquiring it. Articles 5 to 9 of the Constitution define citizenship from the very commencement. The Citizenship Act of 1955 provides for acquiring citizenship through birth, descent, naturalization, and the incorporation of territories after the Constitution was enacted, specifically in Articles 3 to 7. However, there is ambiguity regarding stateless individuals who are recognized as refugees by the United Nations High Commissioner for Refugees (UNHCR) and their ability to obtain citizenship for their children.⁶

In the modern age of globalization, the concept of citizenship extends beyond one state and is essentially global in scope. This has two aspects: firstly, it stems from the idea of cosmopolitanism and involves a lasting awareness of a global community that surpasses nationalism; and secondly, the global nature of citizenship is rooted in the belief that

globalization has created conditions that allow for a cosmopolitan way of life. According to Roy, universal human rights go beyond the rights of citizens and apply to all individuals as moral beings.⁷ As a result, citizenship is seen as a complex concept in liberal democracies, encompassing both inclusive and exclusive aspects⁸.

According to Jacques Derrida's concept of "unconditional hospitality," it is necessary to greet the immigrant before placing any restrictions on them. Allowing refugees to take advantage of the legal system and legal defense to uphold, defend, and enhance their rights as well as gain more autonomy over their life may have significant ramifications. Social policy's growing emphasis on citizenship feeds into the ongoing devaluation of immigrant families.⁹

REFUGEES IN INDIA

According to international law, refugees are people who have been forcibly removed from their place of origin and who, for fear of facing persecution because of inter alia their race, religion, ethnicity, or political opinions, are unable or in some instances unwilling to return back.¹⁰ It is believed by many that refugees pose a threat to the security of a host nation by placing more demands on its available limited resources or by simply existing there. They vary from migrants or foreigners in the sense that they are forced to leave their nation, as opposed to the latter who do so willingly and more importantly legally for a variety of factors. The influx of refugees has become increasingly important as it can potentially trigger international intervention. The notion that certain individuals are a "national security threat" has historically been misused to prevent political dissenters from entering nations and has caused in the formation of categories of such "undesirable" aliens.¹¹

India has not provided a clear definition for the

3 Bosniak, L (2006): *The Citizen and the Alien: Dilemmas of Contemporary Membership*, New Jersey: Princeton University Press.

4 Fujiwara, L (2005): "Mothers without Citizenship: Asian Immigrant and Refugees Negotiating Poverty and Hunger in Post-Welfare Reform," *Race, Gender & Class*, Vol 12, No 2, pp 121-41.

5 Jayal, N G (2013): *Citizenship and Its Discontents: An Indian History*, US: Harvard University Press.

6 Chaudhury, S B and R Samaddar (2015): *Rohingyas: The Emergence of a Stateless Community*, Kolkata: Mahanirban Calcutta Research Group.

7 Roy, A (2010): *Mapping Citizenship in India*, New Delhi: Oxford University Press.

8 Supra note 3

9 Derrida, J (2005): "The Principle of Hospitality," *Parallax*, Vol 11, No 1, pp 6-9.

10 Bhattacharjee, S (2008): "India Needs a Refugee Law," *Economic & Political Weekly*, Vol 43, No 9, pp 71-75.

11 Benhabib, S (1999): "Citizens, Residents and Aliens in a Changing World: Political Membership in the Global Era," *Social Research*, Vol 66, No 3, p 709.

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term “refugee.” The degree of legal protection that the refugees receive from the Indian government largely determines their position, and this protection is frequently shaped more by political calculations than by humane or legal requirements. The partition of the Indian subcontinent in 1947 and the independence of Bangladesh in 1971 constituted the highest bilateral flow in South Asia. In order to enter and remain in refugee camps established and maintained by the Indian government, it is reported that about seven million Bengali Hindus had migrated into West Bengal, Tripura, and Assam.¹² In contrast to previous population movements, present-day international migratory patterns within South Asia are primarily unacceptably big, unmanageable, and a cause of conflict both within the nation that receives or hosts the refugees and among the other states of the region.

The Indian government, on one hand, has provided adequate protection to some refugee communities, such as the Tamils of Sri Lanka, Tibetan refugees, and the Chakma. However, refugee populations that practice Islam, such as those of Bangladeshi Muslims, Burmese, Afghans, and numerous others, have experienced multiple forms of discrimination from the same state. They haven't, in general, promised any protection from the government. Though they have blended in with the local population, Chin refugees in Mizoram are not recognized by the UNHCR or the Indian government. As a result, they frequently face abuse and harassment not only from the police but also from their employers and people in general. This prompts the question: How can the Indian government, which takes pride in its secular identity, deal with refugee groups using two different approaches or policies?

Governments, when unable to regulate entry, frequently try to sway their neighbors' exit strategies. The government has used a number of tactics to cope with an unauthorized and unwelcome entry. A variety of tactics have been used, including violent attacks and abuses by the local ruling class of the receiving country, armed involvement, border conflicts, and the good old application of diplomatic pressure on the sending country.

12 Weiner, M (1993): “Rejected People and Unwanted Migrants in South Asia,” *Economic & Political Weekly*, Vol 28, No 34, pp 1737–47.

STATELESSNESS AND THE ROHINGYAS

A stateless person is an individual who is not recognized as a national by any state under the terms of that state's legal system, according to the 1954 UNHCR convention pertaining to the status of stateless persons.¹³ One conspicuous instance of a stateless community is the Rohingya refugee population. Many have been and still are being detained for violating the Foreigners Act, 1946, the Passports (Entry into India) Act, 1929, and other laws because they are perceived as being disadvantaged foreigners, or potential citizens of Bangladesh. After being driven from Myanmar by force, the Rohingya Muslims currently reside in extreme poverty and have mostly relocated to India and Bangladesh.

Many of them were forced to leave Myanmar due to the military attack on them, which was intended to endanger their lives. They are primarily multilingual Bengali and Burmese speakers who are Muslims from Burma. When the Burmese government began a campaign to check on “illegal immigrants” in the beginning of 1978, they also took off. The Burmese Army then intervened multiple times in an attempt to put a halt to local insurgencies in the Arakan region. Rohingyas are primarily the offspring of agricultural laborers who moved to the Arakan area during a time when borders were hazily drawn from Bengal. They were forced to leave because they could not establish that they were Burmese citizens since they did not possess national registration credentials.

They are currently the most oppressed non-citizen minority in the entire world. They are known as the “boat people” because of their constant need to flee from oppression and in quest of a living.¹⁴ They are not able to obtain government employment or schooling. They are regarded as de jure stateless under international law, which means that they are not recognized as nationals by any state in the context of its existing legal system. The aforesaid convention protects stateless people's right to freedom of movement while they are legally on the territory and mandates that nations issue identity documents and travel credentials to them in order to lessen the severe vulnerability that surrounds them.

13 UNHCR (1954): “Convention Relating to the Status of Stateless Persons,” United Nations High Commissioner for Refugees, <https://www.unhcr.org/en-lk/stateless-people.html>.

14 Supra note 6

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The plight of the Rohingyas has hardly improved in spite of the presence of such conventions.

Consequently, one could argue that using legal citizenship status as a means of defining who is entitled to life-sustaining entitlements further isolates the refugees as being “outside” the scope of a country’s social, economic, and political policies.

This section aims at establishing four fundamental prospective assertions after presenting certain powerful accounts involving certain Rohingya refugees who have been the victims subjected to unfair treatment, genocide, ethnic cleansing, murder, and acute vulnerability in Myanmar for a period of over forty years, as well as different kinds of vulnerability and unfair treatment in Bangladesh. First and foremost of all, the government continues to play a key role in the perpetuation of vulnerability, as noted by Green and Ward¹⁵, who defined “state crime” as the treatment of those who are marginalised in the country because of their race, religion, or ethnicity. Secondly, individuals are forced to choose amongst “giving up their home nation by crossing borders of the country” and “obtaining probable inevitable death” due to the vulnerability imposed by the government. Refugees decide to travel across borders in order to survive as a vital lifesaving tactic because they are practically alive and well, that does in fact speed up transborder mobility. The government encourages transborder mobility in this way. Furthermore, excessive vulnerability leaves individuals with absolutely nothing to whine about, nowhere to turn, and nowhere to seek redress.

Vulnerability is a specific kind of disadvantaged posture that makes refugees even more vulnerable. Since the country views the Rohingyas as “bare life”¹⁶, “non-life”¹⁷, “rejected people”¹⁸, and “subhuman”¹⁹, the Rohingyas’ existence in Bangladesh amply demonstrate that the vulnerability is self-productive.

This section ultimately reveals the tripartite relationship that exists between the state, vulnerability, and transborder mobility as a combination of “reasons” and “consequential” relationships between and among them and the government plays the key role in the same. The status of the Rohingyas, who are regarded as “the most severely tormented and oppressed ethnic minority worldwide,” in both their home country of Myanmar and their host country of Bangladesh, demonstrates their relationship with the rich and personal experiences of the Rohingya refugees.

CAA AND NRC

The newly enacted Citizenship (Amendment) Act (CAA), 2019, modernises the 1955 Citizenship Act to grant Indian citizenship to minority populations escaping oppression and terrorism in bordering nations. It aims to grant citizenship to those who practise Buddhism, Sikhism, Jainism, Christianity, Zoroastrianism, and Hinduism from Bangladesh, Afghanistan, and Pakistan. Its explicit purpose, as stated in the election declarations of the party that is currently holding the office, is to provide citizenship to those who practise Hinduism who are escaping oppression and preventing themselves from being persecuted in bordering nations with a large proportion of Muslims. This endeavour, nevertheless, may be considered a significant Hindutva endeavour with far-reaching consequences for Muslims living in India along with those who are immigrants. The measure, which seeks to combine citizenship with religion, has sparked anxiety throughout the nation since it goes against the fundamental ideas and secularism norms of the Constitution. Furthermore, not just did the Muslim community in the nation fiercely condemn the CAA and NRC, but a number of protests occurred in colleges and universities as a result. A number of states also approved measures against it in addition to this matter.

It’s obvious that the decision caused a significant rift amongst its proponents and opponents. The NRC was introduced with the goal of stopping Muslim immigrants in particular from obtaining specific advantages and privileges in India. For those who wanted to register on the NRC, individuals were instructed to provide proof of their Indian citizenship descent by displaying legacy data and their ancestral

15 Green, P., & Ward, T. (2004). *State crime: Governments, violence and corruption*. London: Pluto Press.

16 Agamben, G. (1998). *Homo sacer: Sovereign power and bare life* (D. Heller-Roazen, Trans.). Stanford: Stanford University Press.

17 Povinelli, E. (2016). *Geontologies: A requiem to late liberalism*. Durham: Duke University Press.

18 Weiner, M (1993): “Rejected People and Unwanted Migrants in South Asia,” *Economic & Political Weekly*, Vol 28, No 34, pp 1737–47.

19 Uddin, N. (2019 [Forthcoming]). *The Rohingyas: A case of “Subhuman”*. New Delhi: Oxford University Press.

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lineage. A nationwide initiative with the slogan “*Kaagaz nahi Dikhayenge*” (we are not disclosing our documents) and further demonstrations were triggered by this. One could bring forward an argument that the NRC and CAA were enacted shortly after the Rohingya crisis in South Asia because the Indian government refused to assume responsibility for offering sanctuary to Muslim immigrants. These laws were subsequently employed as political instruments for identifying and persecuting Muslims living in India.

The statement made by the union home minister on the application of the NRC to locate “intruders” across the country serves as an excellent illustration of the right wing’s Hindutva goal in India. In addition to targeting and excluding a sizable portion of the Muslim population, irrespective of their roots and lineage, by taking away their citizenship entitlements, his well-known “chronology” of modifying the CAA initially to grant citizenship to non-Muslim refugees afterwards incorporating the NRC for identifying adversaries also expands the scope of stateless individuals. Since there are no plans in place for their deportation to any of the South Asian countries—India, Bangladesh, Pakistan, or any other—it is uncertain that precisely what is going to take place to these individuals subsequently along with how to resolve the issues they are facing. Furthermore, the persecuting Muslim immigrants who are being targeted, like as the Rohingyas, would worsen as a result of this recognition, making them even more victims of statelessness.

REFUGEES AND THE CONSTITUTION

Every Indian citizen is entitled to a number of rights under the country’s constitution. The Constitution refers to outsiders or individuals who don’t qualify as citizens of India as “aliens,” even if the expression “refugee” is not used specifically in this context. As a result, those who are applying for asylum in India were awarded some essential rights. According to Article 14 of the Constitution, that prohibits the government from denying anybody equality before the law or equal protection under the law throughout the territory of India, these privileges include equality before the law. Another privilege is the safeguarding of life and liberty under Article 21, which stipulates that no one can be deprived of

their life or personal liberty other than in accordance with the proper legal procedures. In the decisions of *State of Arunachal Pradesh v. Khudiram Chakma* (1993) and *Louis De Raedt v. Union of India* (1991), the Supreme Court of India widened this privilege and encompassed foreigners within the purview of this legislation.²⁰ This protection, which is equally enforceable for both, Indian citizens and foreign nationals, now includes the right to a fair trial. The central government is empowered to enact legislation pertaining to issues that typically belong under the purview of foreigners, aliens, and immigrants under Articles 245 and 246.²¹

A combination of court declaration of constitutional privileges and administration ad hocism has frequently defined the country’s legal structure for protecting refugees.²² Several basic rights are guaranteed by the Constitution of India and are frequently further enhanced by the Indian judiciary. The case of *National Human Rights Commission v. State of Arunachal Pradesh* (1996), whereby the Indian Supreme Court blocked the government’s attempt to forcibly remove Chakma refugees, serves as a stark illustration for this claim. In addition, the court instructed the state government to guarantee the protection of each and every Chakma refugee’s right to life and liberty within the Indian territory. Nevertheless, accessibility to those privileges and organisations has frequently been hampered by the unpredictable and capricious actions of the government, that appear to be determined more by political necessities than by legal requirements.

NEED FOR THE REFUGEE LAW

Among the most well-known nations worldwide for accepting refugees is India. The Indian government has not created a clear refugee statute, although it has handled a small number of refugee settlements rather successfully. Government strategies that are contradictory and arbitrary are applied to refugees and asylum seekers in the lack of explicitly stated legislative requirements. The ad

20 Bhattacharjee, S (2008): “India Needs a Refugee Law,” *Economic & Political Weekly*, Vol 43, No 9, pp 71–75.

21 Chaudhury, S B and R Samaddar (2015): *Rohingyas: The Emergence of a Stateless Community*, Kolkata: Mahanirban Calcutta Research Group.

22 Supra note 20.

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hoc character of Indian refugee law and practise is brought to the forefront by the Foreigners Act of 1946. There is no domestic refugee legislation in India that may define refugee rights or regulate how they are treated. As a result, various refugee populations have experienced differing levels of support. This was apparent in the Citizenship (Amendment) Bill of 2016. India appears to be completely devoted to protecting refugees conventionally, but in practise, India handles various populations differentially. India is neither a signatory to the 1967 Protocol nor the 1951 United Nations Convention Relating to the Status of Refugees. Numerous people have claimed to have believed the convention's strong Eurocentricity is the primary cause why India refused to ratify it. However, India has upheld its fundamental pledge of providing humanitarian protection for refugees and has acknowledged that they are entitled to nonrefoulement. In actuality, India has ratified a number of treaties relating to human rights, including the International Convention on Civil and Political Rights (1966), the Universal Declaration of Human Rights (1948), and others. These treaties require India to provide refugees with the opportunity to determine their status, which it has done.

CONCLUSION

In Conclusion, we can infer that refugees are not fully and accurately protected by Indian law and governmental practise. In actuality, policies like the NRC and CAA, that are blatantly discriminatory towards a certain population, have caused a number of issues for their own populace. The absence of unambiguity and legislation pertaining to refugees has made it difficult for people to get hold of organisations that safeguard the Indian refugee population. The manner in which the India has divided specific refugee populations and treated them in different ways has left the refugees fearful of being persecuted and powerless, casting doubt on the religious foundations of the country. Due to the lack of domestic legislation regarding the privileges, safeguards, and entitlements of refugees, essential and fundamental protection has been denied to the refugees, further placing them in a vulnerable position. The refugees are now totally reliant on the government as a result of this, which means they don't have any way to stop the government from violating them on a regular basis. The issue of being stateless cannot be resolved by the Indian laws. Since the Indian government does not provide safety or a path to permanent residency, stateless individuals like the Rohingyas are subjected to ongoing imprisonment and apprehensions.

ROLE OF JUDICIARY IN INDIA AND PENDING OF CASES: AN OVERALL VIEW

AUTHOR:

BHAVIKA RATHI, Advocate, High Court of Delhi

INTRODUCTION

Instead of having just one factor, the increasing number of lawsuits is beyond the capacity of the present legal system to handle. Currently, courts place a higher priority on providing justice quickly and affordably, although procedural requirements frequently place past practices over efficiency.

In the near future, numerous additional instances are expected due to increased literacy rates. Because of this, the lower courts need to improve their managerial skills in order to deal with the present backlog and any potential future caseload growth.¹

In this situation, it is critical to acknowledge the significance of contemporary management practices and technological advances, providing prospective ways to expedite judicial procedures. It is the duty of the government to guarantee that everyone has access to justice through the legal system, regardless of social, political, or economic constraints. In India's democratic system, the judiciary plays a crucial role in protecting and advancing citizens' rights along with the executive and legislature departments.

Courts are set up at every tier to protect citizens' rights and offer redress when those rights are violated. The Indian Constitution's Article 21 guarantees the basic right to a prompt trial, which has been emphasised by the Supreme Court.

Nonetheless, the public's faith in the judiciary's ability to resolve complaints in a timely and efficient manner is being undermined by the ongoing backlog

of cases that are pending in all Indian courts.²

India is the second most populated country throughout the world, hence the pressure on courts and judges is disproportionate. Taking this into consideration, the Supreme Court authorised the National Court Management System Scheme in 2012 to provide a structure for efficient case handling.

According to this plan, within the next thirty years, there will likely be a considerable spike in the number of fresh lawsuits filed yearly, which would need an enormous boost in the number of judges to handle the anticipated workload.

It is clear from examining the judiciary's role in Indian democracy and the problem of case backlogs at all judicial levels—the Supreme Court, High Courts, and Lower Courts—that structural modifications and effective case management are necessary in order to maintain the values of justice and preserve the public's confidence in the legal system.

JUDICIARY AND ACCESS TO JUSTICE

In the Indian constitutional system, the judiciary is one of the powerful pillars with the legislature and executive institutions, and it plays a noteworthy and important function. It hears issues involving all facets of human life and relationships and is frequently seen as the keeper of the values of the constitution, an advocate for human rights, and a promoter of social peace. It serves as an essential check and balance between different branches of government.

The timely and easy access to justice is a sign of a healthy democracy. Postponed justice not merely

1 Neelam Faizan, Need of the court management in the present scenario, Volume 4 Issue 6, South-Asian Journal of Multidisciplinary Studies 291.

2 Chapter 4, The Judiciary in India, By Mamta Kachwaha, available at: <https://www.icj.org/wp-content/uploads/2013/06/India-judiciary-independence-CIJL-report-1998-eng.pdf> (last accessed on April 23, 2024)

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hinders individuals' ability to use the legal system but also fosters disenchantment among residents, both locally and globally.³ The courts' administration of justice is made up of many elements. First and foremost, it demands that every member of society be treated equally and that laws provide complete equality free from prejudice.

It also requires that there be an easily accessible legal system and a capable, unbiased judiciary. Laws and court rulings being successfully implemented are further factors that support the administration of justice, as are a strong legal system and efficient courts. It is essential to have a system in place to handle complaints thoroughly and expeditiously administer justice.

Around the globe, there are differences in the extent of judiciary involvement in various legal systems. For instance, the judiciary's judicial review authority is restricted in Britain since the country does not have a codified constitution. Whereas the Constitution gives the judiciary in the United States the authority to review any possible abuses by the legislative and president. The Indian judiciary possesses broad jurisdiction for conducting judicial reviews.⁴ The Supreme Court and High Courts protect and uphold peoples' basic rights against capricious state acts while mediating conflicts amongst the State and the Centre.

One of the unique characteristics of the Indian court is its ability to examine the legitimacy of constitutional modifications, a power not found in any other written constitution.

The Indian judiciary performs a wide range of duties, such as protecting the Constitution, enforcing the application of the law by issuing writs, overseeing subordinate courts to guarantee the administration of justice, and managing administrative duties like marriage registration.

INDIA'S DAUNTING CASE BACKLOG

The primary factor contributing to the length of cases pending in the Indian legal system is definitely

delay, which eventually undermines the fundamental principles of justice. "Justice denied is justice delayed," as the saying goes. All court levels have seen a dramatic rise in the backlog of cases over the last ten years; between 2006 and 2019 alone, there was a rise of 22 percent in cases, or 64 lakh cases, in the backlog. Subordinate courts accounted for the majority of the backlog, accounting for over 87.3%, followed by High Courts at 12.5% and the Supreme Court at 0.2%. As of August 2019, the total number of cases still pending in the Supreme Court, High Courts, and subordinate courts exceeded 3.5 crore.⁵

The main cause of this massive backlog is the unequal increase in new case files in comparison to the pace of case disposal, which causes an increasing number of cases to remain pending. This problem highlights structural inadequacies that need to be fixed right now.

Examining the underlying reasons for delays, the Indian legal system has shortcomings that are made worse by procedural roadblocks, even if it is naturally susceptible to a certain level of delay. It is the burden of litigants to substantiate or refute facts, yet occasionally, judge neutrality might unintentionally drag out proceedings.⁶ In addition, the increasing number of cases is a result of sociological variables like population growth, increased knowledge of individual rights, and the passing of new laws, particularly those related to tenancy and marital rights.

Increased industrialization and changing labour regulations are two components that exacerbate the problem by increasing the amount of lawsuits.

Delays can occur at several phases of the procedures in trial courts, where the majority of cases begin. There is a delay between filing and registration when court authorities review whether all the procedures were followed, and fees were paid. This happens when a plaint is filed. The procedure is further prolonged by administrative obstacles that affect summons issued to defendants. Delays are made worse in many courts by a lack of staff, which emphasizes how urgently complete change is

3 Swachh Bharat Abhiyan Essay, By Naveen Tyagi, available at: <https://www.indiacelebrating.com>

4 Omdutt, Role of Judiciary in Democratic System of India (Judicial Activism under the Supreme Court of India): Golden Research Thoughts, September; 2012, Vol.2, Issue 3.

5 Explaining the draft Bill on violence against healthcare professionals and clinical establishments, By Gayatri Mann, available at: <https://www.prsindia.org/theprsblog/examining-pendency-cases-judiciary>

6 <https://www.latestlaws.com>

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needed.

Higher courts, such as the Supreme Court and High Courts, have quite different problems than do lower courts. The two most important ones are the long wait times for vacancies in judiciary to be filled and the shortage of judges in comparison to caseloads.⁷ These systemic flaws make it difficult to resolve cases quickly, which feeds the downward spiral of backlog building.

In addition to institutional ineffectiveness, there are many other reasons why delays occur, such as court-, government-, and litigant-induced delays. In order to effectively tackle these complex issues, a comprehensive strategy that includes both structural changes and manpower expansion is required.

In order to reduce the backlog of cases and improve the delivery of justice, the courts must be strengthened with the necessary facilities and staff. Promising initiatives to improve the problem include the implementation of Lok Adalats, fast-track courts, mobile courts, and modernising legal systems.⁸ The problem of case backlogs can be lessened by creating a competitive legal environment supported by sufficient personnel, effective case management, and modernization programmes. This would provide fair access to justice for all societal groups, especially the underprivileged.

Case backlogs are a widespread and a long-running problem in the Indian judiciary, affecting both high courts and specialised tribunals. High courts are currently dealing with an astounding 5.8 million cases that are outstanding, even though between 2015 and 2019, they disposed of over 1.8 million cases yearly on a typical basis. Since more cases are being submitted than are being resolved, the queue of cases grows over time and prevents important legal concerns from being resolved in a timely manner.⁹

There are significant ramifications from this backlog, especially in the areas of the criminal justice system and constitutional laws. Many important matters pertaining to constitutional law, especially those that affect people's fundamental rights, are left unresolved for several years or even decades. Excessive delays in criminal proceedings cause great suffering; accused people, who are sometimes imprisoned, have to patiently wait years for judgements while living in ambiguity.

In addition, when enforcing agreements costs become unaffordable, economic activity suffers, which lowers India's standing in the World Bank's 2020 Ease of Doing Business rankings for contract enforcement, which place it at 163 out of 190 nations.

The problem of backlog affects specialised tribunals as well as the conventional court system, as the Indian economy became more liberalised in the 1990s. This difficulty is best shown by the National Company Law Tribunal (NCLT), which is charged with settling the country's financial problems. The NCLT's important mission is beset by serious infrastructural and operational inefficiencies that make it difficult for it to meet deadlines, especially those related to the Insolvency and Bankruptcy Code.¹⁰

The NCLT's shortcomings in operation and insufficient facilities have led to a significant accumulation of cases, so impeding the effectiveness of critical measures aimed at tackling India's economic difficulties. According to reports, in the 2020 fiscal year, the NCLT admitted around 480 cases on a quarterly basis. This means that, at the present rate of admission, it will require six years for it to eliminate the pile of cases.¹¹

To sum up, the widespread problem of case backlogs in India's courts—which affect both regular courts and specialised tribunals—highlights the pressing necessity of thorough reforms aimed at improving effectiveness, facilities, and capability to operate. It is imperative to tackle these structural

7 All about the appointment of judges of the Supreme Court, By Ishita Rathor, available at: <https://blog.ipleaders.in/appointment-judges-supreme-court/>

8 Chapter 5, The Judiciary in India, By Mamta Kachwaha, available at: <https://www.icj.org/wp-content/uploads/2013/06/India-judiciary-independence-CIJL-report-1998-eng.pdf>

9 How to Start Resolving the Indian Judiciary's Long-Running Case Backlog, By Pratik Datta, Suyash Rai, available at: <https://carnegieendowment.org/2021/09/09/how-to-start-resolving-indian-judiciary-s-long-running-case-backlog-pub-85296>

10 Sharma, Yogender. (2023). A Study On The Pendency Of Cases In Indian Courts Vis-À-Vis Human Rights. *Russian Law Journal*. 11, available at: https://www.researchgate.net/publication/371679025_A_STUDY_ON_THE_PENDENCY_OF_CASES_IN_INDIAN_COURTS_VIS-A-VIS_HUMAN_RIGHTS

11 The Role of Judiciary in India and Pendency of Cases: An Overall View, By Akshay Sagar, available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3798261

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shortcomings in order to maintain the prompt settlement of legal cases, protect constitutional rights, streamline the criminal justice system, and cultivate an atmosphere that is favourable for economic endeavours.¹²

CAUSE OF DELAY IN JUSTICE

The citizens now have more legal rights and are more confident to use the legal system to pursue justice because of contemporary socioeconomic advancements. Nevertheless, due to a lack of financial support from both the central and state governments, India's current judicial system is unable to sufficiently address the country's growing need for judicial recourse. The obvious need for more courts and benches is made worse by the current court infrastructure' poor computerization and modernization.¹³

The lack of judges is a significant element in the backlog of cases. Even with continuous hearings, matters remain unresolved, frequently due to continual postponements.¹⁴ In order to relieve the pressure on the court, activists stress that it is crucial to raise the number of judges per million population from the present 11 to at least 50.¹⁵

Furthermore, the problem is made worse by the improper use of Public Interest Litigation (PIL). The wide definition of PIL permits the filing of pointless lawsuits for private benefit as opposed to actual public interest. This overflows the Supreme Court and High Courts with pointless cases, underscoring the necessity for more stringent regulations to reduce pointless PIL petitions.¹⁶

The persistent flood of new cases combined with a slow case disposition rate highlights the

structural inadequacies that beset the lower courts. This situation is caused by a multitude of causes, such as the lack of judges, judge absence, lengthy trial stages, advocate strikes, and recurring judicial transfers. Government agencies contribute to approximately half of all ongoing cases, which frequently involve inter-agency conflicts weighing down the legal system. This contributes to the overcrowding of subordinate courts.¹⁷

Moreover, the perpetual modification of legislation presents a noteworthy obstacle to the prompt administration of justice. Regular changes to the law require cumbersome labour to understand and apply the updated legal framework, taking precious judicial time out of the resolution of cases.

Delays are made worse by weak case administration, which is made worse by a dearth of information technology systems for efficient handling of cases. Laws that apply uniformly to small and big situations do not take into consideration the unique circumstances of each case, which might result in drawn-out court cases. Furthermore exacerbating delays is the practice of assigning the exact same judges to both civil and criminal cases, as they must manage the intricacies of distinct legal fields.¹⁸

Extensive changes are required to deal with these structural problems. These improvements must include building out the court system, hiring more judges, enforcing tougher PIL filing requirements, and using information technology to process cases efficiently. In addition, the optimization of judicial allocation and the simplification of procedural procedures can improve the effectiveness and promptness of case settlement, so contributing to the overall objective of providing fair access to justice for everyone.¹⁹

REMEDIES

It is imperative that swift action be taken to tackle the growing backlog of cases, beginning with the timely establishment of new posts to increase the judiciary's competence and the prompt filling of current vacant seats in the judiciary. It is critical that

12 Conference Proceedings of National Initiative to Reduce Pendency and Delay in Judicial System, available at: https://main.sci.gov.in/pdf/PublicationOther/Proceeding_Book_SupremeCourt.pdf

13 Gagan Gandhi, How to reduce the pendency in the courts, available at: <https://www.latestlaws.com> (last accessed on April 20, 2024)

14 Alex Andrews George, The problem of pending cases in Indian courts: how to tackle, available at: <https://www.clear-ies.com> (last accessed on April 23, 2024).

15 Ibid.

16 Sandeep Dangi, Causes for litigation pendency in India, available at: <https://www.legalserviceindia.com> (last accessed on April 25, 2024).

17 Ibid.

18 Supra note 10.

19 Vandana Ajay Kumar, Judicial delays in India: cause & remedies, Volume 3, Journal of Law 50 (2012).

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open positions of judge be filled as soon as possible in order to guarantee the courts' smooth operation and hasten the settlement of cases.

In order to ease the burden on the court system, efforts to decrease litigation have to be given top priority. Judges must use rigorous examination to separate meritorious claims from bogus ones, deterring the former from moving further. This preventative strategy can expedite the courtroom proceedings and drastically reduce the number of needless lawsuits that are filed.²⁰

In order to strengthen the judiciary, case and court administration techniques must be prioritised. One practical way to reduce the length of time cases remain unresolved and speed up case settlement is to use alternative dispute resolution processes. Furthermore, the utilisation of technological advances can improve the effectiveness of legal processes by expediting the delivery of justice and mitigating delays.²¹

Obtaining professional guidance, such as from management consultants, can help with case preparation for accelerated trials, court resource optimisation, and settlement process acceleration. Furthermore, establishing firm deadlines for both case proceedings and decision-making procedures can promote transparency and hasten the resolution of cases.²²

Constraints on adjournments, such as restricting them to exigencies and exceptional situations, can help avoid needless delays and guarantee the effective use of court resources. It is possible to speed case settlement and simplify court procedures by barring baseless adjournment petitions.²³

In order to reduce the accumulation of cases and reinforce the capacity of the judiciary to deliver justice in the quickest way possible, a comprehensive approach that includes expeditious appointment of judges, rigorous case examination, efficient court administration, alternative dispute resolution mechanisms, the incorporation of technology, consulting with experts, and the implementation of time constraints and adjournment limitations is

necessary.²⁴

Maintaining the judiciary's accessibility and responsiveness to the demands of all people, especially the marginalised, is crucial to upholding this confidence. In order to address the backlog of cases, serious efforts and dedication are needed. Some of these efforts include the creation of venues for competitive alternative dispute settlement, the training of judicial officials, and the prompt filling of vacancies in the Supreme Court and other High Courts.

In conclusion, notwithstanding the difficulties facing India's court, systematic changes, improved effectiveness, and fair access to justice must be prioritised. India can strengthen its legal system and promote democracy and justice for all by resolving institutional flaws, encouraging cooperation, and implementing creative solutions.

CONCLUSION

In India, recent times have witnessed coordinated attempts to tackle the enduring problem of court system backlog and accelerate the settlement of cases. The country's leading judges met in 2015 to draft a National Vision Document for 2015–2020, with an emphasis on bolstering district and high court surveillance systems, increasing the judicial branch's budgetary independence and accelerating the adjudication of cases. Nevertheless, in spite of these efforts, the core factors that cause the issue frequently go unchecked, and the suggested fixes fall short. To properly monitor judicial operations, it is imperative that court administrators be appointed who possess the necessary qualifications, skills, and competence. Court management is a vital idea.

The government, judiciary, and bar must work together in order to strengthen the foundation of justice. However, the effectiveness of any plan, even the judiciary as a whole, comes down on the people who are charged with carrying it out. In the era of rapid advances in technology, people's increased understanding of their rights emphasises their ability to seek legal remedy when those rights are violated, as provided by Article 39 of the Constitution. In

²⁰ Dipak Misra, National initiative to reduce pendency and delay in judicial system (2018) (The Indian Law Institution).

²¹ Ibid.

²² Supra note 15.

²³ Supra note 14.

²⁴ Rashmi Sawant, Causes of pendency in judiciary of Pune district with special reference to regular civil suits, (2019) (Gokhale Institute of Politics and Economic).

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order to improve judicial coherence and speed case settlement, government intervention is required to provide fair treatment and access to free legal counsel.

To enable more efficient justice delivery and lessen the burden of the court, the government should aggressively support initiatives like Alternative Dispute Resolution, Lok Adalat, Fast Track Courts, and Gramme Nyayalay. In order to tackle the backlog of cases in court and facilitate the nation's economic rebound following the epidemic, India needs a comprehensive approach that tackles both current issues and ingrained institutional deficiencies. Harnessing the nation's financial potential calls for

tackling these institutional flaws, particularly in light of the legal system's escalation amid the public health emergency.

The Indian judiciary plays a crucial role in the country's democracy, with the Supreme Court acting as the highest authority and establishing the fundamental principles of the Constitution. The judiciary regularly evaluates the legality of legislative legislation and upholds safeguards and keeps a check on the other arms of the state in its capacity as the primary defender of the Constitution. Preserving people's rights and upholding constitutional values are of utmost importance; yet the courts should also use caution and avoid going beyond their authority.

CONTEMPORARY SETBACKS IN PRISONER'S RIGHTS AND THEIR LEGAL IMPLICATIONS

AUTHORS:

MONORANJAN HALDAR, Assistant Professor of Law, Affiliated to Kingston Law College

ABSTRACT

The article aims to analyse the challenges related to prisoner's rights and speedy justice under the Indian legal system. This article also examines the historical developments in prisoner's rights and landmark judgments. The impact of lengthy pretrial detention and challenges like overcrowding and inadequate medical detention have been discussed in this article. The article also emphasises the need for policy reforms, technological advancements, and judicial efficiency to accelerate the speedy delivery of justice and safeguard prisoners' rights. It ends with several recommendations to policymakers and legal professionals on how they can promote a more benevolent and structured criminal justice system in India.

INTRODUCTION:

The conviction of a human does not in any way render him into a non-human entity. He has every right to make fundamental human rights available to everyone, provided his freedom should be subject to certain reasonable restrictions. Several laws, like the Code of Criminal Procedure, the Prisons Act of 1894 and the Constitution of India, preserved prisoner's rights in India.

The Supreme Court of India has stated in multiple cases like **DBM Patnaik v. State of AP** and **Sunil Batra v. Delhi Administration** that a prisoner is a human being as well as a natural person and being a legal person, due to mere conviction, no one can take away their fundamental rights. Similarly, in the case of **AP v. Challa Ramakrishna Reddy and Others (2000)**, the Supreme Court passed a landmark judgment. The Court stated that the fundamental rights of a prisoner will be available until his liberty has been constitutionally curtailed.

The report of the National Crime Records Bureau shows more than three-fourths of jail detainees are undertrial prisoners. In 2021, the NCRB data says out of 5,54,034 prisoners, 4,27,165 were undertrials,

i.e., 77% of the total number. It was 14.9% higher than the data for undertrial prisoners in 2020¹.

HISTORICAL EVOLUTION:

Since the ancient period, a well-structured system has been prevalent in India. It has been found from the Kautilya's Arthashastra that the prisoners in ancient times used to engage in several outside works to make their lives easy and comfortable.

In the medieval period, the jail system in India considered the Quran to be a jurisprudence of that period. After the Mughal invasion of India, the punishment system started to follow the deterrent theory, and wrong-doers got the punishment of flogging, hanging, starving to death, mutilation, as well as a death sentence, etc.

Lord Thomas Babington Macaulay played a critical role in the modern prison system in India. A Prison Discipline Committee was appointed, due to poor conditions of Indian prisons till 1835, by

1 Rights of Undertrial Prisoners in India, SlideShare (last visited [insert date accessed]), available at <https://www.slideshare.net/slideshow/rights-of-undertrial-prisoners-in-india/267351433>.

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the Government of India in 1836, which submitted its report in 1838, criticising the laxity of discipline. After receiving several pieces of advice from the Committee, Central prisons were established in India in 1846, and multiple steps were taken to eradicate corruption among the prison staff. In 1864, the Second Commission also made similar suggestions to the previous one, along with a few specific recommendations related to accommodation for prisoners, healthy diet, clothing, bedding, medical care, etc. In 1888, the Fourth Jail Commission recommended a consolidated prison bill, which finally got the assent of the then Viceroy Lord Lansdowne and became the law which forms the basis for present-day jail administration in India. However, the problems related to the process of prison review continued in India. Therefore, after getting several recommendations from Sir Alexander Cardio, who led the Indian Jail Reforms Committee in 1919-1920, Sir Alexander Cardio stated that mere evolving theories of the institutions are not enough; instead, they have to maintain a reformation and rehabilitation facility like other prisons across the globe.

Finally, after independence in 1949, the Pakwasa Committee suggested utilising prisoners for road construction-related works without intensive supervision. The concept of wages for the prisoners for their labour was started at this time. Subsequently, the concept of remission in the punishment as a reward for the propriety of the prisoner evolved. After that, in 1951, Dr. W.C. Reckless, a United Nations expert on correctional work, was invited to India to suggest any policy reform, if required. After going through a thorough study on prison administration in India, Dr Reckless suggested the revision of outdated jail manuals, which was supported by the Eighth Conference of the Inspectors of General of Prisons in 1952.² The ultimate object behind all these reforms was the upliftment of the offenders as human beings. After that, the Indian government appointed a Committee named the All India Jail Manual Committee in 1957, which submitted its report in 1960. This report made an essential recommendation for the classification and treatment of offenders and mentioned the need for a national prison policy. In 1980, the government of India set up the All India

Committee for Jail Reforms, popularly known as the Mulla Committee, under the Chairmanship of the then Justice A.N. Mulla. In 1983, the recommendations which pointed out in the report were, namely-

- Availability of sufficient food, clothing, sanitation in the prison,
- All the staff in the prison must be adequately trained and organised,
- Press media and the public must be allowed inside the prison,
- The undertrial prisoners must be kept separate from convicted prisoners,
- The government should provide adequate resources and funds for prison reforms, etc³.

In 1987, the government of India appointed the National Expert Committee on Women Prisoners, also known as the Krishna Iyer Committee, to study the conditions of women prisoners in India, which submitted its report to the government in February 1988. The said Committee recommended the induction of more women into the police force, as they play a critical role in managing women and child offenders⁴.

CLASSIFICATION OF PRISONERS:

Criminal Prisoners:

Section 3(2) of the Prisons Act, 1894 puts up a better definition stating that a criminal prisoner is an individual who has committed a crime consequent to which has been subjected to imprisonment by the order of a Court⁵.

Convicted Criminal Prisoner:

In the Prisons Act 1894, the 'convicted criminal prisoner' term has been defined, which says the convicted criminal prisoner is such a person who got the sentence in the form of imprisonment from the concerned Court after his trial and did not get acquittal from the Court.

² M.H. Hoskot vs. State of Maharashtra, AIR 1978 S.C. 1548.

³ Diganth Raj Sehgal, Rights of prisoners and major judgments on it - iPleaders, IPleaders (Nov. 6, 2020), <https://blog.ipleaders.in/rights-prisoners-major-judgments/>.

⁴ Rights of Prisoners in India, Law Bhoomi, <https://lawbhoomi.com/rights-of-prisoners-in-india/>

⁵ Mariya Paliwala, Maneka Gandhi v. Union of India, 1978 AIR 597 1978 SCR (2) 621 197, IPleaders (Feb. 21, 2024), <https://blog.ipleaders.in/maneka-gandhi-v-union-of-india/>.

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Civil Prisoner:

The term 'civil prisoner' has been mentioned under Section 3(4) of the Prisons Act 1894, which means a person imprisoned for committing an offence which is not a crime.

Under-trial Prisoner:

The Model Prison Manual 2016 has defined the term 'under-trial prisoner', which means a person has been sent to judicial custody, but the charges against him have not been proven yet, and the case is pending before the concerned Court⁶.

LEGAL FRAMEWORK

Constitutional Provisions:

As far as prisoner's rights are concerned, articles 14, 19 and 21 of the Constitution play a crucial role. Articles 14, 19 and 21 are popularly known as the 'golden triangle'. The Supreme Court in **AP v. Challa Ramkrishna Reddy & others. (2000)** case stated that every person, whether a convict or under trial prisoner, will be entitled to retain his fundamental rights, including the right to life. The Supreme Court in **T.V. Vatheeswaran v. State of Tamil Nadu** case said articles 14, 19 and 21 of fundamental rights would also be applicable to the prisoners⁷.

Prisoners are entitled to fundamental human rights like other persons living in India. Article 14 of the Indian Constitution guarantees two things: 'equality before the law' and 'equal protection of law'. The first concept connotes that no person will get any special privilege, which is of British origin and is considered a negative concept, whereas the second concept is regarded as a positive concept, taken from the American Constitution, which says the equality of treatment under equal circumstances. In the Indian Constitution, the concept of 'equality' is similar to Article 7 of the Universal Declaration of Human Rights. Article 19 deals with six freedoms, but the prisoners can exercise only two freedoms out of these six freedoms, i.e., Article 19(1)(a), which says the right to freedom of speech and expression and Article 19(1)(c) which says the right to become

a member of an association. Article 20(2) protects the prisoner from prosecution and punishment for the same offence more than once. Article 21 plays a pivotal role in protecting individual rights, considered as the most important fundamental right of the Indian Constitution. Article 21 declares that no person shall be dispossessed of his life and personal liberty except by the procedure established by law.⁸ In **Maneka Gandhi (1978) case**, the Supreme Court overruled its judgement passed in the AK Gopalan case by taking a broader interpretation, and in this case, for the first time, the Supreme Court introduced the American expression 'due process of law'. In the **Hussainara Khatoon v. State of Bihar (1979) case**, the Supreme Court expressed its concern regarding the unnecessary delay in the trial, especially to those who were not financially capable and stated that the rights that are essential for every prisoner, i.e., firstly, the right to the speedy trial and secondly, the right to free legal aid⁹.

Other Statutory Provisions:

The Prisons Act of 1894 is considered the first legislation about prison regulation. The Criminal Procedure Code 1973 provides multiple safeguards to prisoners. Section 50A of the said Act deals with the prisoner's right to be informed of the grounds for their arrest. Section 54 deals with the right to medical examination of an arrested person by a registered medical practitioner¹⁰. Section 76 says that the person arrested will be brought before the Court without any delay. Section 173(1) states that every investigation must be completed as early as possible, without unnecessary delay, and section 173(1A) states that the investigation must be completed within three months. It also says under section 273 that all evidence and statements must be recorded in front of the accused or his counsel. Section 309(1) deals with the right to speedy trial. Section 360 deals with the right to be released on probation for good conduct. In the Indian Penal Code, Section 53 deals with the right to reasonable wages in prison in cases related to rigorous imprisonment, etc. Moreover, there are other laws available, like the Probation of

6 Rights of Prisoners Development in India, Law Bhoomi, <https://lawbhoomi.com/rights-of-prisoners-development-in-india/>

7 (1983) 2 SCC 68.

8 Prem Shankar vs. Delhi Admn., AIR 1980 S.C. 1535.

9 Varsha Kumari Mishra, Rights of Prisoners in India: Prisoner Rights Under Indian Laws and Judgment, B&B Associates LLP, <https://bnblegal.com/article/rights-of-prisoners-in-india-prisoner-rights-under-indian-laws-and-judgments/>

10 Aeltemesh Rien vs. UOI, AIR 1988 S.C. 1768.

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Offenders Act, 1958; the Legal Services Authorities Act, 1987; the Juvenile Justice (Care and Protection of Children) Act, 2015, etc., for the protection of prisoner's rights.

International Laws:

India, in 1979, ratified the International Covenant on Civil and Political Rights, 1966 treaty, which is internationally one of the core treaties for the protection of prisoner's rights. The Geneva Convention, which occurred in Geneva, Switzerland, in 1949, are an international humanitarian law consisting of exhaustive provisions for treating prisoners of war. The United Nations General Assembly, on 9th December 1988, without a vote, adopted several principles for the rights of prisoners all across the globe.

LANDMARK JUDGMENTS:

Maneka Gandhi v. U.O.I (1978) SC 597:

Initial judgment delivered in the case of AK Gopalan v. State of Madras was overruled by the Supreme Court in the concerned case and paved pathway for the American concept of 'due process of law'. Prior to the Maneka case, the shield of Article 21 was only available against arbitrary executive action, but subsequent to it, the provision of the concerned article defended against arbitrary legislative action¹¹. The Supreme Court stated that the 'right to life' is not confined to animal existence but includes the right to live with human dignity to make a person's life meaningful and worth living¹².

Hussainara Khatoon v. State of Bihar (1979):

Necessity of speedy trial and free legal aid for the effective administration of justice has been stressed upon through this case. Human rights of prisoners, a much pressing issue has been put up through this case. Hence, the Supreme Court, in its judgment, specified certain things to be done, namely:

- Under-trial prisoners should be released immediately without unnecessary delay,

- Safeguard the innocent from undue punishment,
- If the accused has been in prison for more than the maximum period mentioned in the statute, then it violates Article 21 of that prisoner,
- The concerned state government should appoint legal counsel under Article 39A for those not financially capable¹³.

Sunil Batra v. Delhi Administration (1980) AIR 1579:

In this landmark case, the Supreme Court allowed the prisoners to meet with their friends and relatives within the jail premises once they met the essential security criteria for a checkup before the visit. The Supreme Court further held that unless and until a death sentence given to the prisoner is final, the jail authority cannot shift him into a different cell¹⁴.

State of AP v. Challa Ramakrishna Reddy (2000) SC 2083:

A writ petition against the state government was filed in this case, wherein compensation for insufficient protection was claimed. The Supreme Court allowed the petition and held that the state government was Constitutionally duty-bound to ensure the safety of the prisoners. The Supreme Court found gross negligence on the part of the state government and, therefore, awarded compensation to the petitioner.

Sheela Barse v. U.O.I (1986) AIR 1773:

In this case, the petitioner, who was a journalist, filed a writ petition before the Supreme Court under Article 32 for the bestial treatment women prisoners were facing in several jails. The Supreme Court showed its concern for the barbaric conditions of the women prisoners and held that the jail authority should arrange separate lock-ups for women prisoners, whether undertrial or convicted. The Supreme Court further stated that the police officer must inform the relatives of such a female person while arresting her and about the legal aid system. Moreover, the Supreme Court also directed the

11 National Human Rights Commission, "Rights of Prisoners" (accessed on October 20, 2021) <https://nhrc.nic.in/sites/default/files/11%20Rights%20of%20Prisoners-compressed.pdf>.

12 Kumar, Rupesh. Fundamental Right of Prisoners of speedy Trial. IX. 4679.

13 Rights of Undertrial Prisoners in India, SlideShare (last visited [insert date accessed]), available at <https://www.slideshare.net/slideshow/rights-of-undertrial-prisoners-in-india/267351433>.

14 Custodial Death. (n.d.). Drishti IAS. <https://www.drishtias.com/daily-updates/daily-newsanalysis/custodial-death-1>

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concerned authority to appoint a female judge who would occasionally visit the prison and interrogate the cells of female prisoners¹⁵.

P. Ramchandra Rao v. State of Karnataka:

In this case, the petitioner had filed a petition before the Supreme Court and demanded a speedy trial for his pending case, which is guaranteed under Article 21. The Supreme Court, in this case, laid down a few factors to determine whether an accused has been deprived or not, namely:

- The reason behind the delay in giving the judgment,
- The role of the judiciary is significant to ensure the duration of any trial,
- Was prejudice caused to the accused by such delay or not?
- If nothing is found to establish an assumption that the accused had been prejudiced, then there is no need to quash his case.

T.V. Vatheeswaran v. State of Tamil Nadu:

In this case, the petitioner was a convicted person and was sentenced to death for murder. However, even after the expiration of eight years, the jail authority could not execute the sentence passed by the Honorable Supreme Court. Therefore, the petitioner filed a petition under Article 21 for the unnecessary delay. The Supreme Court held in this case that an unjustified and prolonged delay in the execution of a death sentence will be considered as one of the valid reasons for commutation of the sentence to life imprisonment. The Supreme Court further held that if it takes two years or more to execute a death sentence, then it will automatically invoke Article 21 of the Constitution.

Supreme Court Legal Aid Committee v. UOI (1994):

The Supreme Court, in this case, stated that legal aid committees should be established at the national, state and district levels so that poor people, including prisoners, could easily access the legal

system¹⁶.

KEY CHALLENGES

Lack of Humane Treatment:

The living conditions in Indian prisons are lousy. Overcrowding is one of the key issues that Indian prisoners face on a daily basis, and as a result, it creates acute psychological pressure like stress, anxiety, mental breakdown, etc., for the prisoners¹⁷.

Access to Legal Representation:

Undertrial prisoners can not afford well-known legal counsel due to their high fees, mainly those who belong to an economically backward class. In remote areas, prisoners cannot access free legal aid services due to a lack of information about the legal aid system¹⁸.

Rehabilitation Programs:

The criminal justice system in India was punitive from the mediaeval period. Even in this present time, prisoners face challenges in accessing comprehensive rehabilitation programs during detention in jail due to a lack of infrastructure. In addition to that, limited resources like lack of funding and trained personnel make it challenging to provide proper rehabilitation facilities to the prisoners¹⁹.

Vulnerable Groups:

Women, minor children and prisoners from SC and ST communities frequently face gender-based discrimination, sexual violence, mental harassment,

15 David Brown, Prisoners as Citizens: Human Rights, Stimulating Prisoners Voice, 21, https://books.google.co.in/books?id=hY-CDFek7nAC&dq=right+to+prisoners&source=gbs_navlinks_s

16 Dr. Durga Das Basu, Introduction to the Constitution of India, 20th ed., 2009, Lexis Nexis, Butterworths Wadwa Publication.

17 In India and Around the World, Prisoners' Rights Violated During Pandemic: Report. (n.d.). The Wire. <https://thewire.in/rights/prisoners-rights-covid-19-pandemic-amnesty-international>.

18 Jain, R. (2016). Textbook on Human Rights Law and Practice (3rd ed., Vol. 1).

19 Rawat, P., & Bhatt, A. (2016). The Shades of Legal Mechanism of Human Rights and Prisoners with a Special Reference to National Human Rights Commission. Dehradun Law Review, 8 (1), 67-79.

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lack of sanitary facilities and a lot more²⁰.

Healthcare and Medical Services:

In providing adequate healthcare to prisoners, shortage of medical staff, inadequate medical infrastructure and essential medicines with limited resources often create serious hurdles. Overcrowding and sub-standard living conditions in prison make it more complicated to maintain proper hygiene. As a result, the mental health of prisoners is affected.

Delay in Trial and Prolonged Detention:

The large number of pending cases before the courts is the root cause of delays in the trial process. Limited judicial resources and lack of infrastructure are prime reasons for a slow-moving legal system. Lastly, procedural complexities and inefficient investigation play a critical role in slowing down the trial procedure.

SUGGESTED REFORMS:

Prison Infrastructure:

The central and state governments must construct new prisons with modern facilities to improve the living conditions of the prisoners.

Overcrowding:

Overcrowding is a very concerning issue in Indian jails, and the government need to act on an immediate basis to implement effective population management strategies to deal with this overcrowding and the congested situation in prisons.

Healthcare and Hygiene Facilities:

The government must hire a sufficient number of medical staff to maintain sustainable healthcare facilities in the prison, which will help to balance the ratio between medical staff and prisoners. Adequate training is required to ensure quality healthcare services for prisoners.

Rehabilitation Facilities:

The government needs to focus on various indispensable programs to minimise the crime rate

in society, and that can only be achieved once the concerned government bodies act consistently to implement a comprehensive rehabilitation and reintegration program with a vision of making a crime-free society. Therefore, they have to indulge themselves in vocational training, education, counselling, addiction treatment, etc. and also have to generate employment opportunities for the released prisoners²¹.

Legal Aid Services:

The government need to spread awareness among prisoners about their legal rights and how they can, especially financially incapable undertrial prisoners, access justice, and to do so, they need to strengthen legal aid services across the country.

Accountability of the Concerned Authority:

The government needs to create various oversight bodies to check and balance the overall conditions of all the prisons in India.

Digital Record and Data Collection:

The government should use technology to monitor prisoner's movement and maintain a digital database of prisoner's records. Sometimes, as needed, they can also use video conferencing as a medium for court hearings instead of physical transportation of prisoners, which will help expedite the trial.

CONCLUSION:

In conclusion, it can be said that as prisoners are also human, hence they deserve humane treatment, and that can only be possible when the government acts proactively to mitigate the issues that Indian prisoners are facing and prohibit the violation of their rights through the implementation of a modern and realistic approach. The current data says Indian prisoners are not in good condition. They are constantly facing challenges like overcrowding, inadequate healthcare facilities, prolonged pretrial detention, lack of rehabilitation and reintegration programs, ineffective legal aid services and many more, which violate their fundamental rights guaranteed under the Indian Constitution as well as undermine the principles of justice and equity.

²⁰ Essentials, L. (n.d.), HUMAN RIGHTS OF PRISONERS AND THEIR PROTECTION IN INDIA. Law Essentials. <https://lawessential.com/constitutional-law/ff-human-rights-of-prisoners-and-theirprotection-in-india?blogcategory=Constitutional+Law>.

²¹ N.V.Paranjape. (2016). Criminology and Penology with Victimology. Central law publications, Allahabad.

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The government must work on comprehensive legal and policy reforms to address all these challenges. The pre-independence laws need a significant amendment. However, mere amendment is not enough; instead, the executive bodies must implement those laws on a ground level to meet the international human rights standards. Finally, the judiciary's role is crucial here to convert the jails into a reformatory centre for the well-being of the prisoners. The judiciary occasionally played a significant role through its landmark judgments. However,

the government must keep an eye on successfully enforcing these judicial pronouncements because safeguarding prisoner's rights holds equivalent importance both morally as well as legally. A humane and efficient criminal justice system conveys a nation's character and reflects a civilised society's values. Through properly implementing these reforms, the government can strengthen its legal system and uplift the confidence of the prisoners and the general public in its justice system.

LAND ENCROACHMENT- THE POWER OF CONNECTION AND WEALTH

AUTHORS:

SONAL KHATRI, Advocate, High Court of Delhi

VANSH CHAUDHARY, Student at Government Law College, Mumbai

ABSTRACT

Land encroachment is a major problem in India, where the lawful owners of the property often become the victims, not only of the encroachers but also of a powerful system at large. The civil and criminal remedies available prove insufficient in providing fair and speedy justice to the poor victims. The article discusses the major issues and the remedies available. This article explores the primary challenges and the available remedies, highlighting the obstacles faced by those seeking justice. It also proposes long-term solutions to address the problem.

The article discusses land encroachment, easement rights, civil remedies such as injunctions, and filing criminal complaints with local authorities. The proposed solution involves a top-down approach, starting with legislative reforms and extending to the executive branch, with the judiciary serving as a key pillar to ensure fair justice for victims. To address the issue, it is essential to dismantle corruption and implement a checks and balances system to ensure transparency and prevent abuse of power. Since the right to property is a constitutional right, it is vital for the government and justice system to protect the rights of the property owners.

Land Encroachment: The Power of Connection and Wealth

In our society, the allure of connections, power, and money often leads to ethical and legal conflicts, particularly in matters of property and land. Land or a house is probably the most invaluable asset for anyone. The word **'land'** refers to everything permanently attached to the earth, and the **'beneficial enjoyment of the land'** denotes convenience, advantage, any amenity, or any necessity. It is probably the last asset a person wants to part away with. Land holds an important place in one's life not only because of the monetary value it holds but also because of the sentiments and memories attached to it. Over the years, the price of land in the Indian market has skyrocketed. This is mainly due to high

demand, rapid urbanization and land being a viable investment option. The land being a highly valuable asset, makes it crucial for owners to be equally diligent in protecting it from encroachments. People who have earned their property through hard work, years of savings, and lawful means frequently have to deal with strong neighbors, a local goon, or any other miscreant intruding on their property.

Such land encroachments are an increasing problem in our country, and the victims are often forced to surrender their land owing to the protracted litigation process and lackadaisical working of the local authorities. **"Land encroachment" is an act of illegally acquiring someone's property, partially or wholly and the person illegally acquiring the property knowing it to be the property of others**

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is known as the “Encroacher.” The major targets of these encroachers are properties of Non-Resident Indians (NRIs), poor aged couples whose kids live away for work, and unattended properties bought for investment purposes. These are usually soft targets who do not possess the immediate power and knowledge to take the necessary steps to protect their land. By means of their connections and influence, these powerful people i.e encroachers are able to impose undue pressure, manipulate systems, and essentially seize land that is legally the property of others. Despite their legal status, the legitimate owners are severely disadvantaged by this abuse of power and influence, which compromises justice and fairness. Such situations highlight how urgently strong legal safeguards and unbiased enforcement are needed to guarantee that justice is served and that the rights of legitimate property owners are protected from being exploited by those who wield disproportionate power and money.

The Constitution of India, as the supreme law of the country, guarantees certain fundamental rights to its citizens. Among these, the **Right to Life**¹ stands out as one of the most crucial rights, ensuring that every person, whether a citizen or a foreigner, is entitled to this protection. **The Right to Life encompasses more than mere existence; it includes the fulfillment of basic needs such as food, clothing, and shelter.** Regarding shelter, the Constitution also addresses the **right to own property**². This constitutional right protects individuals' enjoyment of their legally acquired property and stipulates that no person shall be deprived of their property except by the authority of law. This provision ensures that property rights are safeguarded, reinforcing the broader spectrum of rights and freedoms that contribute to a dignified life.

Additionally, a person possesses fundamental human rights for the lawful and beneficial enjoyment of their property in a full and proper manner and these are known as the **easement rights**³. An easement is a legal right and a form of privilege that does not arise out of a contract but are inherent right present with the purchase of land. Such a right grants an individual the ability to use land that they do not

own. This includes rights such as the right of way, the right to discharge rainwater, the right to sunlight, and so on. For instance, if you own a house and your driveway crosses through your neighbor's property, you may have an easement that allows you to drive across their land to access your own. This easement ensures your right to reach your property and must be honored by the current and any future owners of the neighboring land. Unauthorized encroachment on another individual's land constitutes unlawful appropriation of property and infringes upon their established easement rights. Consequently, land encroachment also involves depriving a person of their easement rights through illegal construction on government land, blockages, and other means.

In view of the above, it is correct to say that no one has the right to violate the fundamental or constitutional rights of another person. In India, the breach or violation of such rights entitles individuals to approach the Hon'ble Supreme Court or High Courts to seek directions and remedies through writs. The Constitution of India provides for various writs, such as habeas corpus, mandamus, prohibition, certiorari, and quo warranto, to protect and enforce these rights. Under **Article 32** of the Indian Constitution, individuals can directly approach the Supreme Court for the enforcement of fundamental rights. Similarly, under **Article 226**, individuals can approach the High Courts to seek redress for the violation of their fundamental as well as Constitutional rights. These provisions ensure that citizens have a robust mechanism to protect their Fundamental and Constitutional rights against any unlawful infringement.

Indeed, the courts in India have consistently held that no one has the right to encroach upon another person's property. The judiciary has emphasized that encroachment is illegal, regardless of the nature of the encroachment. In the case of **Arulmighu Palapattarai Mariamman Tirukoil Rep. by its Executive Officer Namakkal vs. Pappayee & Others**⁴, the Madras High Court held that whoever commits the illegal act of encroaching upon a public street, even if it is a temple, should be prevented from doing so. Furthermore, any structure erected on a public street that restricts or prevents public

1 Under Article 21 of the Constitution of India

2 Under Article 300A

3 Under Section 4 of the Indian Easements Rights Act, 1882

4 (S.A.No. 190 of 2013 & M.P.No. 1 of 2013)

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access must be immediately removed. This judgment underscores the principle that public streets are meant for public use and should not be obstructed by any unauthorized structures, including those associated with religious or other institutions. Such rulings are important in upholding public rights and ensuring free and safe passage on public thoroughfares.

In the case of **Union of India vs. State of Gujarat and Ors.**⁵, the Hon'ble Supreme Court of India reiterated that religious structures cannot be permitted to encroach upon public land. The court emphasized the importance of removing such encroachments to uphold the rule of law.

Another relevant case is **Sodan Singh & Ors. vs. New Delhi Municipal Committee & Ors.**⁶, where it was held by the Hon'ble Supreme Court that no person, irrespective of religious sentiments, can claim the right to encroach upon public property.

Hence, these rulings emphasize the principle that property rights are to be respected and that encroachment, whether by individuals or institutions, is not permissible under the law.

In a case of land dispute or encroachment, both civil and criminal remedies are available to the victim. The civil remedy involves the process of filing a case of injunction in the court while the criminal remedy involves registering a **First Information Report (FIR)** at the local police station. The very first remedy any common citizen avails is to seek help from local police and authorities. In most cases, they are met with resentment. When lawful property owners approach authorities to file complaints or FIRs against powerful and wealthy encroachers, they often face significant obstacles. Authorities may refuse to accept their complaints, and even if accepted, no action might be taken due to the influence wielded by the encroachers. Instead of receiving the protection they deserve, the lawful owners may be threatened with severe consequences and subjected to malicious prosecutions. On the very surface, the system reeks of corruption or is driven by powerful or influential people. The victims often even take the route of **RTIs**⁷ to seek information about the

proceedings of their complaint. However, the replies to RTI are often unclear, arbitrary, or irrelevant. This makes the innocent victim often helpless to the circumstance. The executive body plays a critical role in implementing and enforcing laws enacted by the legislature. When the execution of these laws is not done properly, significant loopholes emerge, leading to a failure in the delivery of justice which often results in law-abiding citizens facing substantial challenges despite their adherence to due process.

Land encroachment, which is commonly known as criminal trespass, as defined by **Section 441 of the Indian Penal Code (IPC), 1860** is the act of unlawfully entering someone else's property without permission to commit an offense, threaten possession of the property, or stay on the land uninvited. Those found guilty of land encroachment may be **punished with a fine extending to five hundred rupees and imprisonment of up to three months or both**. Apart from the sanctions delineated in the Indian Penal Code, the judiciary is empowered to intervene and prevent encroachment, as well as grant damages compensation for any harm caused by the encroachment, in accordance with the Land Encroachment Act. Property owners who wish to seek damages for land encroachment may file a claim in court according to **Order 39 (rules 1, 2, and 3) of the Civil Procedure Code (CPC)** which provides the remedy for an injunction. **Injunction** is an order of the court whereby the encroacher is required to do or refrain from doing a specific act. There are two kinds of injunctions that is permanent and temporary. A temporary injunction is a short-term order that forbids using the property for a set amount of time, whereas a permanent injunction is a long-term order that forbids using the property. To seek an injunction, you can file a case against the encroacher according to Order 39, Rules 1 and 2 of the CPC. After reviewing the application, the court could ask the encroacher to submit a reply. The court will then decide whether to grant or deny the request for an injunction based on the response. In some situations, the court may decide to issue an ex-parte injunction without waiting for the opposing party to respond. This may occur if the defendant refuses to respond to the application or if the potential delay in response would result in significant loss for the applicant. You

5 (2013)

6 (1989)

7 Right to information

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can be entitled to damages or compensation from the encroacher if you are a property owner who has lost money as a result of land grabbing or encroachment. This can cover monetary damages for harm done to the property or the owner, as well as damages for emotional distress.

When lawful property owners find no relief through executive measures, they often turn to the judiciary with faith that it will protect their rights. The courts fail to grant relief because of the inherent nature of working of courts in India, the cases are often not listed on time. Even if it is listed, there might be intentional attempts to delay the matter from the other side. In such cases, the courts might give an ex-parte injunction order which brings temporary relief. Despite all these, the victim is not completely relieved. His property is under trial and stays under pressure and distress. The person is harassed by regular court visits, especially when the jurisdiction of the matter is not in his hometown. All this is also compounded by the litigation charges that he has to bear to secure his land. The RTIs fail to provide you with the required information. The entire scenario highlights a grave miscarriage of justice and a failure of the legal system to uphold the rights of all individuals. The intimidation and manipulation by the powerful undermine the rule of law, erode public trust in legal institutions, and perpetuate a cycle of injustice. It is imperative for the authorities and judiciary to recognize and address these issues, ensuring that justice is not only done but also seen to be done. This includes taking firm action against those who abuse their power and influence, providing protection to vulnerable complainants, and ensuring that the legal process is transparent and equitable. Only through such measures can the integrity of the legal system be preserved and the rights of lawful property owners be safeguarded.

A key issue arises when authorities, influenced by powerful and wealthy individuals, either refuse to accept legitimate complaints or fail to act on them. This non-registration of an FIR not only violates a person's legal rights but also infringes upon their constitutional rights.

This not only undermines the rule of law but also erodes public trust in the legal and executive systems.

The legislative, executive, and judicial branches make up the three branches as the cornerstones of our democracy, which are interconnected and interdependent on each other for the performance of their respective tasks more effectively and efficiently as they directly impact the lives of citizens. However, out of these pillars, the most important part is the Executive body as it is in direct contact with citizens in their day-to-day affairs. It connects the citizens with the government and implements policies laid down by the government. The U.S. President, Thomas Jefferson, once said that the execution of laws is more important than making them. This clearly articulates the critical role of the executive in the proper implementation of laws. When these laws are not properly enforced, significant loopholes arise, leading to failures in delivering justice. This often results in law-abiding citizens facing substantial challenges despite their adherence to due process.

Consequently, the rightful property owners, despite following the legal procedures, find themselves vulnerable to threats, intimidation, and malicious prosecutions.

When poor but lawful property owners, despite providing all necessary evidence and documentation, find no relief through executive measures, they often turn to the judiciary with faith that it will protect their rights. However, the judicial process is frequently lengthy. During this protracted period, encroachers typically proceed with their unlawful activities, further undermining the rightful owners' confidence. It is important to note here that the lack of prompt action against these intruders not only demoralizes the affected individuals but also erodes the general public's faith in the justice system, discouraging others from seeking legal recourse due to threats and undue pressure.

Our esteemed judiciary has emphasized time and time again that "justice should not only be done but also seen to have been done" as a cornerstone of our legal system. This principle highlights the value of transparency and public trust in the legal system and the process of the judiciary. Justice must also be rendered in a way that is equitable and fair to the general public and equitable procedural justice is insufficient. The community's continued faith in the

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legal system's capacity to defend the rule of law and preserve rights is ensured by its visibility. It is much more important for the judiciary to act impartially and firmly in the administration of justice when powerful people use their connections and influence to trespass on the property of legitimate owners. By guaranteeing that everyone, regardless of power or status, is subject to the same rules and protections, upholding this concept helps prevent the erosion of public trust and strengthens the integrity of the legal system.

The courts must strive to resolve disputes timely and effectively, as justice delayed is justice denied. Courts should aim to conclude the cases within designated, self-imposed deadlines. Victims should be compensated fairly, not only for their physical damages but also for the mental agony endured throughout the entire process. Additionally, the judicial system should implement fast-track courts or special tribunals dedicated to land disputes to expedite resolution. Utilizing digital tools and advanced case management systems can further streamline the entire legal process, ensuring timely and effective justice delivery to those seeking redress.

Alternate methods of dispute resolution could also be adopted to save time and come to an amicable solution without indulging in court proceedings. These include arbitration, mediation and negotiation. The courts being extremely burdened with cases, these modern methods provide faster resolution of disputes. It also reduces the legal cost and fosters more cooperation between the parties. Greater public awareness about such legal recourses can bring trust in people to seek these pathways.

There is also a pressing need to enhance the accountability of the local authorities and officials.

Citizens should not face difficulties when dealing with local authorities. The legislature and judiciary must ensure that officials are held accountable for their actions. In cases where officials fail to meet their obligations to citizens, they should face appropriate reprimands. Everyone should be treated equally and anyone facing any discrimination to seek justice should have quick remedies to file a digital complaint against the official, ensuring that grievances are addressed promptly and transparently. Implementing these measures will foster trust and efficiency within the land administration system.

Furthermore, the effective use of technology can act as an essential tool to mitigate land disputes. This involves large-scale surveillance of land and property employing drone technology and the use of artificial intelligence to draw graphical maps of the cities with clearly demarcated public and private land holdings. Technology can also be utilized in digitizing the entire land registry process, thereby enhancing transparency. Implementing digital land registries reduces the risk of fraudulent activities and simplifies the process of verifying land ownership. Additionally, using mobile applications and online platforms can make land records easily accessible, ensuring that information is readily available and up-to-date.

All these steps will take us one step forward in providing swift justice to the victim. Undeniably, it is the duty of the government to enact and implement laws for the smooth working of society. However, it is also the responsibility of the citizens to abide by those laws. A citizen while enjoying his rights must not infringe on the rights of others. Nevertheless, in case of infringements, our system must be capable of ensuring justice for the victim and proper punishment for the infringer. With systematic changes, we can hope that land disputes can be resolved smoothly without unnecessary harassment of the victims.

EVALUATING THE EFFICACY OF CYBERSECURITY MEASURES IN SAFEGUARDING DATA PRIVACY: A COMPREHENSIVE ANALYSIS OF EXISTING STRATEGIES

AUTHOR:

DR. SUVRAT JAIN, Associate Consultant in Cybrotech Digiventure Pvt Ltd

ABSTRACT

This research paper meticulously evaluates the effectiveness of cybersecurity measures in safeguarding data privacy, offering a comprehensive analysis of existing strategies and vulnerabilities. As society becomes more reliant on technology, the paper underscores the critical need for robust cybersecurity, given the prevalence of cyber attacks and data breaches. The study investigates various cybersecurity measures, including data encryption, access control, firewalls, antivirus software, and more, providing an in-depth exploration of their strengths and limitations. Notably, it identifies the challenges posed by evolving cyber threats, human error, and resource constraints, emphasizing the importance of a layered and proactive security approach. The paper outlines a structured approach for organizations to identify and mitigate vulnerabilities, incorporating elements such as vulnerability assessments, patch management, strong authentication, and employee training. Furthermore, it establishes a set of criteria for evaluating cybersecurity effectiveness, encompassing threat detection, vulnerability management, access control, data protection, and regulatory compliance. The conclusion emphasizes the necessity of proper implementation and ongoing evaluation, especially in the context of IoT devices, while providing guidelines for nations formulating cybersecurity strategies. Acknowledging potential study limitations, the paper underscores the importance of continual improvement and future research to address evolving cybersecurity challenges. Overall, this research significantly contributes to advancing knowledge in cybersecurity and offers practical insights for enhancing data privacy protection.

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Introduction:

In the contemporary era characterized by an escalating reliance on technology, the imperative for robust cybersecurity measures to uphold data privacy has attained unprecedented significance. The ubiquity of cyber attacks and data breaches has inflicted considerable financial and reputational repercussions upon both organizations and individuals, underscoring the urgency of appraising the effectiveness of current cybersecurity protocols.¹ This research endeavors to furnish a comprehensive scrutiny of extant cybersecurity methodologies and vulnerabilities with a specific focus on preserving data privacy. Moreover, the paper is poised to assess the efficiency of these cybersecurity strategies and establish evaluative criteria.

Evaluation of Existing Cybersecurity Measures

Effective cybersecurity measures are crucial in our technology-dependent society to protect data privacy from the growing threats of cyber attacks and data breaches. This research paper aims to comprehensively analyze existing cybersecurity strategies and vulnerabilities, evaluating their effectiveness and providing criteria for assessment. The evaluation encompasses various cybersecurity measures, including data encryption techniques.

Encryption in transit, achieved through secure communication protocols like HTTPS and TLS/SSL, ensures data is protected during transmission over networks. Encryption at rest involves securing data stored on devices, servers, and databases to prevent unauthorized access if the physical storage medium is compromised.²

Access Control:

Access control constitutes a pivotal component of robust cybersecurity practices, aiming to guarantee that only authorized individuals gain access to

sensitive data. This involves the implementation of robust user authentication protocols and access controls to establish stringent barriers against unauthorized entry.³ Furthermore, the adoption of Role-Based Access Control (RBAC) serves as an effective mechanism to refine access permissions based on individuals' specific job roles and associated responsibilities. By aligning data access with job functions, RBAC ensures that users are granted precisely the level of access requisite for their designated roles, mitigating the risk of unauthorized data exposure. This dual-layered approach, combining robust user authentication with RBAC, contributes to a comprehensive and tailored access control strategy that fortifies the overall cybersecurity posture of an organization.⁴

Firewalls and Intrusion Detection/Prevention Systems (IDS/IPS):

The implementation of Firewalls and Intrusion Detection/Prevention Systems (IDS/IPS) is integral to bolstering cybersecurity defenses. Firewalls play a crucial role by filtering both incoming and outgoing network traffic, thereby acting as a barrier against potentially malicious data packets. This proactive measure helps prevent unauthorized access and blocks potentially harmful elements from infiltrating the network.⁵ Concurrently, IDS/IPS is employed to actively monitor network traffic, continuously scanning for patterns indicative of suspicious or unauthorized activities. In the event of detecting such anomalies, IDS/IPS systems are designed to respond promptly by either automatically blocking the malicious traffic or triggering alerts to notify cybersecurity personnel. This dual functionality enhances the organization's ability to identify and thwart potential threats in real-time, contributing to a proactive cybersecurity

1 "The Global Cyber Threat to Financial Systems – IMF F&D," available at: <https://www.imf.org/external/pubs/ft/fandd/2021/03/global-cyber-threat-to-financial-systems-maurer.htm> (last visited March 30, 2024).

2 "Encryption in transit | Documentation | Google Cloud," available at: <https://cloud.google.com/docs/security/encryption-in-transit> (last visited March 30, 2024).

3 Michael Marvin, "Securing Your Digital Eco-System: The Role of Access Control in Network Security" Portnox, 2023 available at: <https://www.portnox.com/blog/network-access-control/securing-your-digital-eco-system-the-role-of-access-control-in-network-security/> (last visited March 30, 2024).

4 "The Definitive Guide to Role-Based Access Control (RBAC) | StrongDM," available at: <https://www.strongdm.com/rbac> (last visited March 30, 2024).

5 Tashina, "The Role of a Firewall in Network Security" Aardwolf Security, 2020 available at: <https://aardwolfsecurity.com/the-role-of-a-firewall-in-network-security/> (last visited March 30, 2024).

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posture. The synergy between firewalls and IDS/IPS forms a robust defense mechanism, creating layers of protection to safeguard against diverse cyber threats and unauthorized intrusions.⁶

Implementing a robust cybersecurity strategy involves a multifaceted approach to safeguard data integrity. One crucial aspect is the use of antivirus and anti-malware software, requiring regular updates to detect and remove malicious software that poses a potential threat to data. Simultaneously, maintaining the security of systems involves regular updates and patch management, ensuring that operating systems, applications, and software are equipped with the latest security patches. The categorization of data based on sensitivity, coupled with appropriate security measures, is fundamental to effective cybersecurity. This includes limiting the storage and sharing of sensitive data and employing data loss prevention (DLP) solutions to prevent inadvertent data leakage.

Employee training and awareness form the bedrock of a resilient cybersecurity defense. Educating personnel about cybersecurity best practices and instilling the significance of data privacy, organizations can establish clear policies for data handling and conduct routine security awareness training programs. In the event of a security incident, having an incident response plan becomes imperative. Organizations should develop a robust plan to respond to and mitigate security incidents promptly. Additionally, continuous monitoring of systems and networks is essential to detect signs of suspicious or unauthorized activities in real-time.

A proactive approach to cybersecurity includes backup and disaster recovery measures. Regularly backing up critical data and having comprehensive disaster recovery plans in place ensures data recovery in the event of a breach or data loss. Secure development practices, such as following secure coding practices and conducting security testing, contribute to identifying and rectifying vulnerabilities in software applications. Embedding data privacy

6 "Understanding Firewalls and IDS/IPS for Robust Network Security | Infosec," available at: <https://www.infosecinstitute.com/resources/network-security-101/firewalls-and-ids-ips/> (last visited March 30, 2024).

considerations into the design and architecture of systems from the outset, known as Privacy by Design, enhances the overall security posture.⁷

Moreover, effective vendor and third-party risk management involve evaluating the security protocols of external entities with data access. Ensuring compliance with security and privacy criteria is paramount. Regulatory compliance is a foundational element, mandating adherence to data privacy regulations applicable to the industry or jurisdiction. Regular security audits and assessments help identify and address vulnerabilities and compliance gaps. Implementing multi-factor authentication (MFA) adds an additional layer of security to user accounts and systems. Encouraging end-users to adopt privacy tools like virtual private networks (VPNs) and browser extensions enhances online privacy and contributes to a comprehensive cybersecurity strategy.⁸

Deploying these cybersecurity measures in a holistic and layered approach is instrumental in fortifying data privacy and mitigating the inherent risks tied to data breaches and unauthorized access. The effectiveness of these measures is contingent upon tailoring the implementation to the specific needs of an organization or individual. Factors such as distinct security requirements, individual risk profiles, and compliance with regulatory obligations play a pivotal role in determining the most appropriate combination of cybersecurity strategies. A nuanced understanding of these variables enables organizations and individuals to craft a customized and robust defense against potential threats, fostering a resilient security posture. As the digital landscape continues to evolve, the adaptability of these measures becomes paramount, ensuring that the cybersecurity strategy remains dynamic and aligned with emerging challenges and regulatory changes. Ultimately, the success of safeguarding data privacy hinges on the strategic and context-specific application of these measures, creating a formidable defense against an ever-evolving threat landscape.

7 Robb Hiscock, "A guide to Privacy by Design," available at: <https://www.onetrust.com/blog/privacy-by-design/> (last visited March 30, 2024).

8 "Ensuring Data Security And Privacy Compliance With Duebills," FasterCapital available at: <https://fastercapital.com/keyword/ensuring-data-security-and-privacy-compliance-with-duebills.html> (last visited March 30, 2024).

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Evaluating the Effectiveness of Existing Cybersecurity Measures in Safeguarding Data Privacy

The efficacy of existing cybersecurity measures in safeguarding data privacy is contingent upon a multitude of factors, introducing a nuanced landscape where their effectiveness can vary. The specific measures adopted, the prevailing cybersecurity posture of an organization or individual, and the dynamic nature of cyber threats all play pivotal roles. Although integral to a robust data privacy protection strategy, these measures are not foolproof, and their effectiveness is susceptible to various influences:

- **Implementation and Configuration:** The robustness of these measures relies heavily on meticulous implementation and configuration. Misconfigurations, outdated security practices, or irregular updates can compromise their effectiveness.
- **Continuous Monitoring:** Given the perpetual evolution of cyber threats, regular monitoring and adjustment of security measures are imperative to address emerging vulnerabilities.
- **User Behaviour:** Human errors, such as falling victim to phishing attacks or mishandling data, pose significant threats. Training initiatives and cybersecurity awareness programs become crucial to mitigate these risks.
- **Complexity of Attack Vectors:** Cyber attackers employ sophisticated techniques, including zero-day vulnerabilities and social engineering attacks, which may circumvent certain security measures.
- **Resource and Budget Constraints:** Limited resources, especially for smaller organizations or individuals, may impede the implementation and maintenance of advanced security measures, rendering them more susceptible to specific threats.
- **Regulatory Compliance:** Adherence to data protection laws and regulatory compliance significantly influences cybersecurity measure effectiveness, as non-compliance can result in legal and financial consequences.
- **Third-Party Risk:** Relying on third-party vendors introduces additional security risks, necessitating the continuous assessment and monitoring of their security practices.
- **Incident Response:** The efficacy of security measures relies on an organization's capacity to detect, respond to, and recover from security incidents promptly.
- **Privacy by Design:** Integrating privacy considerations into system and application design is paramount, as failure to do so can lead to inherent vulnerabilities that are challenging to rectify retroactively.
- **Technology Advancements:** The ever-evolving technological landscape introduces new security threats. Technologies like AI and machine learning, while beneficial, are dual-edged, with attackers and defenders leveraging them to their advantage.

Despite these influencing factors, it is crucial to recognize that a layered security approach, employing multiple measures in concert, offers a more robust defense against threats. No singular security measure can be wholly effective in isolation. Additionally, a proactive and risk-based security approach, involving regular risk assessments and security audits, empowers organizations and individuals to adapt and enhance their security posture over time. Ultimately, the effectiveness of cybersecurity measures in safeguarding data privacy is contingent upon the steadfast commitment, diligence, and resources dedicated to security, coupled with an acute understanding of the specific threats and vulnerabilities faced by an organization or individual.⁹

Limitations of Existing Cybersecurity Measures in Safeguarding Data Privacy

Understanding the limitations of existing cybersecurity measures is crucial for the development of a comprehensive and effective strategy to safeguard data privacy. These limitations

⁹ Kevin Mabry, "How can Risk Assessment and Analysis protect you and your organization?," available at: <https://sentreesystems.com/risk-assessment-and-analysis-services/> (last visited March 30, 2024).

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encompass a variety of challenges that impact the overall effectiveness of cybersecurity initiatives.

Firstly, the constant evolution of cyber threats poses a significant hurdle. Traditional security measures may struggle to keep pace with the speed at which new attack vectors and malware are developed, making them less effective against sophisticated and targeted attacks. Additionally, the prevalence of human error, including falling for phishing attacks, misconfigurations, and weak password practices, remains a persistent challenge that cannot be entirely mitigated by cybersecurity measures.¹⁰

The existence of zero-day vulnerabilities, exploited by attackers before patches are available, adds another layer of complexity and risk to data privacy protection efforts. The complexity of modern IT environments, involving a mix of on-premises, cloud, and hybrid solutions, further complicates the task of overseeing security effectively.¹¹

Smaller organizations and individuals may face resource constraints, limiting their ability to implement and maintain advanced security measures. Insider threats within organizations, third-party risks, and the challenge of balancing compliance requirements with robust security practices contribute to the limitations of existing cybersecurity measures.

False positives and negatives generated by security solutions can result in alert fatigue or missed threats, undermining the effectiveness of the overall cybersecurity strategy. Dependencies on supply chains, limitations of signature-based detection methods, and potential privacy implications of certain security measures highlight the multifaceted nature of these challenges.

As cybersecurity measures continue to improve, cybercriminals may respond with increased

determination and creativity, adding another layer of complexity to the defense landscape. Recognizing and addressing these limitations is essential for enhancing the resilience of data privacy protection efforts in the face of evolving cyber threats and challenges.

To overcome the identified limitations, organizations and individuals must embrace a proactive and adaptive approach to cybersecurity. This involves the implementation of ongoing training and awareness programs to empower individuals in recognizing and mitigating potential threats. Furthermore, the sharing of threat intelligence and conducting regular risk assessments are crucial components to stay ahead of the evolving threat landscape.

Flexibility in adjusting security measures is paramount, considering the dynamic nature of cyber threats. Organizations should prioritize fostering a culture of security, instilling a collective responsibility for cybersecurity among employees. This cultural emphasis on security should be complemented by strategic investments in the right balance of technology, processes, and skilled personnel.¹²

A robust cybersecurity strategy requires a comprehensive integration of these elements, acknowledging that no single solution can address all potential challenges. By fostering a security-conscious culture and leveraging a well-balanced combination of technology, processes, and human expertise, organizations and individuals can enhance their ability to protect data privacy effectively.¹³ This proactive and adaptive approach ensures resilience in the face of evolving cyber threats and strengthens the overall cybersecurity posture.

Analysis of Cybersecurity Vulnerabilities

Common vulnerabilities in existing cybersecurity measures expose weaknesses and gaps that malicious actors exploit to compromise data privacy and security. Unpatched software, particularly the failure to promptly apply security updates, leaves

¹⁰ harshavardhan, "Conventional Threat Intelligence: A Relic in the Evolving Cyber Landscape" CYFIRMA, 2023 available at: <https://www.cyfirma.com/blogs/conventional-threat-intelligence-a-relic-in-the-evolving-cyber-landscape/> (last visited March 30, 2024).

¹¹ "Security 101: Zero-Day Vulnerabilities and Exploits - Security News," available at: <https://www.trendmicro.com/vinfo/us/security/news/vulnerabilities-and-exploits/security-101-zero-day-vulnerabilities-and-exploits> (last visited March 30, 2024).

¹² Manpreet, "Creating a Cyber Security Mindset" Scrut Automation, 2022 available at: <https://www.scrut.io/post/cyber-security-culture-csc> (last visited March 30, 2024).

¹³ Ibid.

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systems exposed to known vulnerabilities. Insecure passwords, including weak or default ones, pose a significant risk, as attackers exploit them through brute-force attacks or password spraying for unauthorized access. Phishing attacks, employing deceptive emails or messages, trick users into revealing sensitive information.¹⁴

Misconfigured systems, whether on networks or in the cloud, inadvertently expose sensitive data or create security holes. The absence of encryption for data at rest and in transit makes it vulnerable to interception, especially by attackers with network or storage access. Insufficient access control, such as lax user authentication, enables unauthorized users to breach sensitive systems. Outdated or unsupported software further elevates vulnerability risks, as unsupported products no longer receive security updates.¹⁵

Unsecured Internet of Things (IoT) devices, lacking robust security measures, become susceptible targets for compromising network security. Inadequate security awareness among employees fosters poor security practices and susceptibility to social engineering attacks.¹⁶ Supply chain attacks target software or hardware supply chains, introducing vulnerabilities before reaching end-users. Data exposure and leaks occur due to mishandling or misconfiguration of data storage, potentially exposing sensitive information.

Cross-Site Scripting (XSS) and SQL injection vulnerabilities in web applications allow attackers to inject malicious scripts or manipulate databases, compromising user data.¹⁷ Denial of Service (DoS) attacks disrupt services, potentially exploiting

vulnerabilities amidst chaos. Insecure APIs, especially in mobile apps and web services, expose weaknesses, enabling unauthorized data access or service manipulation. Inadequate monitoring and incident response capabilities lead to delayed or insufficient responses to security incidents.¹⁸

Zero-day vulnerabilities, for which no patches are available, expose systems to unknown risks. Human error, supply chain vulnerabilities, unauthenticated access, and data interception in transit all contribute to the cybersecurity landscape's complexity.¹⁹ Addressing these vulnerabilities demands a holistic approach, combining technical solutions, user education, and proactive security practices. Regular security assessments and staying informed about emerging threats are essential to minimize exposure to these vulnerabilities.

How can organizations identify and mitigate these vulnerabilities?

Organizations can establish a proactive and structured approach to identify and mitigate vulnerabilities in their cybersecurity measures. Initiating with regular vulnerability assessments, a combination of automated scanning tools and manual testing helps identify weaknesses in systems, networks, and applications. Prioritizing vulnerabilities based on severity and potential impact allows organizations to address high-priority risks promptly.

Patch management is crucial, involving the establishment of a process to promptly apply security patches and updates to all software, operating systems, and hardware. Ensuring patches undergo testing in a controlled environment mitigates the risk of disrupting critical operations.²⁰ Implementing strong authentication mechanisms, such as multi-

14 Rohan Timalisina, "The Risks of Delayed Patching: Lessons Learned from High-Profile Cyber Attacks" TuxCare, 2023 available at: <https://tuxcare.com/blog/the-risks-of-delayed-patching-lessons-learned-from-high-profile-cyber-attacks/> (last visited March 30, 2024).

15 "Security Misconfiguration: Impact, Examples, and Prevention," available at: <https://brightsec.com/blog/security-misconfiguration/> (last visited March 30, 2024).

16 Kinza Yasar, Sharon Shea, Ivy Wigmore "What is IoT Security? | TechTarget," IoT Agenda available at: <https://www.techtarget.com/iotagenda/definition/IoT-security-Internet-of-Things-security> (last visited March 30, 2024).

17 KirstenS, "Cross Site Scripting (XSS) | OWASP Foundation," available at: <https://owasp.org/www-community/attacks/xss/> (last visited March 30, 2024).

18 Nsrav, "Denial of Service | OWASP Foundation," available at: https://owasp.org/www-community/attacks/Denial_of_Service (last visited March 30, 2024).

19 "Security 101: Zero-Day Vulnerabilities and Exploits - Security News," available at: <https://www.trendmicro.com/vinfo/us/security/news/vulnerabilities-and-exploits/security-101-zero-day-vulnerabilities-and-exploits> (last visited March 30, 2024).

20 Rohan Timalisina, "The Risks of Delayed Patching: Lessons Learned from High-Profile Cyber Attacks" TuxCare, 2023 available at: <https://tuxcare.com/blog/the-risks-of-delayed-patching-lessons-learned-from-high-profile-cyber-attacks/> (last visited March 30, 2024).

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factor authentication (MFA), reduces the likelihood of unauthorized access resulting from weak or stolen passwords.²¹

Phishing awareness programs educate employees and users about phishing threats, fostering a cautious approach towards email sources, discouraging clicking on suspicious links, and promoting the reporting of phishing attempts. Regularly reviewing and updating system configurations eliminates misconfigurations, ensuring systems and networks are secure by design.

Encryption plays a pivotal role in protecting sensitive information, both at rest and in transit, guarding against unauthorized access, interception, and theft. Robust access controls, including role-based access and the principle of least privilege, limit user access to only what is necessary for their roles.

For securing Internet of Things (IoT) devices, organizations should segment them from critical network assets, apply firmware updates, and change default passwords. Ongoing security training and awareness programs reduce human error and enhance cybersecurity hygiene.²²

Supply chain risk management involves assessing the security practices of third-party vendors and supply chain partners. Establishing security requirements in contracts and due diligence on suppliers is crucial. Data classification based on sensitivity, coupled with relevant security measures and the use of data loss prevention (DLP) solutions, monitors and protects data effectively.²³

Secure development practices, including following secure coding practices and regular security testing such as code reviews and penetration testing, ensure the security of applications and software.

Employing web application firewalls and regularly testing for common vulnerabilities like XSS and SQL injection in web applications enhances web application security.²⁴

Developing and regularly updating an incident response plan facilitates addressing security incidents promptly and effectively. Proactively addressing zero-day vulnerabilities involves leveraging threat intelligence sources for information on emerging vulnerabilities and potential threats.

Regular security audits and assessments are essential to identifying and addressing vulnerabilities and compliance gaps. Continuous monitoring solutions contribute to real-time detection and response to security incidents. A risk management framework aids in prioritizing security measures based on potential risks and allocating resources accordingly.

Securing APIs involves regular assessment and enforcement of authentication and authorization mechanisms. Collaboration and information sharing with industry groups and government agencies contribute to staying informed about emerging threats and vulnerabilities. By following these steps, organizations can create a comprehensive strategy to identify, prioritize, and mitigate vulnerabilities effectively, establishing a robust security posture in the face of an evolving threat landscape.

What steps can organizations take to address these vulnerabilities?

Addressing vulnerabilities in an organization's cybersecurity measures is a critical aspect of maintaining data privacy and security. Here are the steps that organizations can take to address vulnerabilities effectively:

1. Conduct regular vulnerability assessments and penetration tests to identify and prioritize vulnerabilities in systems, networks, and applications.
2. Establish a structured patch management process to ensure the prompt application of security patches and updates to all systems and soft-

21 Tance Suleski, Mohiuddin Ahmed, Wencheng Yang, and Eugene Wang, "A review of multi-factor authentication in the Internet of Healthcare Things - PMC," available at: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC10214092/> (last visited March 30, 2024).

22 "What is IoT Security? | TechTarget," IoT Agenda available at: <https://www.techtarget.com/iotagenda/definition/IoT-security-Internet-of-Things-security> (last visited March 30, 2024).

23 Alexander Babko, "Data Loss Prevention (DLP) Systems: What They Are & Key Benefits | Ekran System," available at: <https://www.ekransystem.com/en/blog/dlp-systems-pros-and-cons> (last visited March 30, 2024).

24 Jaydeep R. Tadhani et al., "Securing web applications against XSS and SQLi attacks using a novel deep learning approach," 14 *Scientific Reports* 1803 (2024).

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- ware. Test patches before deployment.
3. Develop and document clear security policies and procedures outlining best practices and guidelines for mitigating vulnerabilities. Ensure all staff members are informed and comply with these policies.
 4. Implement a risk management framework to assess and prioritize vulnerabilities based on their potential impact on the organization. Allocate resources according to the risk level.
 5. Develop and maintain an incident response plan outlining how to respond to and mitigate security incidents and data breaches.
 6. Provide regular cybersecurity training and awareness programs to educate employees about security best practices, including recognizing and reporting security threats.
 7. Implement strong access controls and authentication mechanisms to ensure only authorized users have access to sensitive systems and data.
 8. Use encryption for data at rest and in transit to protect sensitive information from unauthorized access and interception.
 9. Educate employees about phishing threats and provide guidance on recognizing and responding to phishing attempts.
 10. Regularly review and update system configurations to eliminate misconfigurations that can introduce vulnerabilities.
 11. Follow secure coding practices and conduct regular security testing (e.g., code reviews, penetration testing) for applications and software.
 12. Secure IoT devices by isolating them from critical network assets, updating firmware, and changing default passwords.
 13. Classify data according to its sensitivity and implement suitable security measures. Use data loss prevention (DLP) solutions to monitor and protect data.
 14. Assess the security practices of third-party vendors and supply chain partners. Ensure security requirements are established in contracts and agreements.
 15. Stay informed about emerging vulnerabilities and potential zero-day threats through threat intelligence sources. Implement proactive security measures and monitoring.
 16. Conduct regular security audits and assessments to identify and address vulnerabilities and compliance gaps.
 17. Deploy continuous monitoring solutions for real-time detection and response to security incidents.
 18. Assess and secure APIs, including enforcing strong authentication and authorization mechanisms.
 19. Engage in information sharing with industry groups, government agencies, and other organizations to stay informed about emerging threats and vulnerabilities.
 20. Ensure compliance with relevant data protection and cybersecurity regulations and standards, such as GDPR²⁵, HIPAA²⁶, and ISO 27001²⁷.
- This comprehensive set of steps constitutes an effective cybersecurity strategy aimed at addressing vulnerabilities. It is crucial to acknowledge that cybersecurity is a continuous process, requiring organizations to consistently adapt and enhance their security measures to stay ahead of evolving threats and vulnerabilities. The key elements for maintaining a robust security posture include regular monitoring, sharing threat intelligence, and implementing proactive security measures. By integrating these practices into their cybersecurity framework, organizations can significantly enhance their resilience against potential cyber threats and safeguard their data privacy and security effectively.

Evaluation of Cybersecurity Strategies

Evaluating the efficacy of cybersecurity

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- 25 "General Data Protection Regulation (GDPR) – Official Legal Text," General Data Protection Regulation (GDPR) available at: <https://gdpr-info.eu/> (last visited March 30, 2024).
 - 26 "HIPAA Home | HHS.gov," available at: <https://www.hhs.gov/hipaa/index.html> (last visited March 30, 2024).
 - 27 14:00-17:00, "ISO/IEC 27001:2022" ISO available at: <https://www.iso.org/standard/27001> (last visited March 30, 2024).

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measures is vital for ensuring the protection of an organization's data and systems against evolving threats. To assess the effectiveness of cybersecurity strategies, organizations can follow key steps and methods. First, defining Key Performance Indicators (KPIs) aligned with cybersecurity goals is essential, encompassing metrics such as incident response time and successful attack prevention.²⁸ Regular security audits, including penetration testing and compliance audits, help identify vulnerabilities. Simulated incident response exercises test the response plan and team readiness. Evaluating the impact of security awareness training programs on user behavior and threat recognition is crucial. Monitoring threat intelligence feeds ensures timely information on emerging threats.

The effectiveness of patch management and vulnerability mitigation can be measured by assessing the speed of patch application and vulnerability reduction. Monitoring access control and authentication mechanisms guarantees that only authorized users access systems and data. The implementation and effectiveness of data encryption and protection measures must be evaluated to secure sensitive data. User and Entity Behavior Analytics (UEBA) tools help identify deviations from normal behavior. Phishing simulations and detection assessments measure employee responses and system effectiveness.²⁹ Reviewing Security Information and Event Management (SIEM) alerts identifies false positives and enhances threat detection accuracy.³⁰

Incident response metrics, user authentication strength, and access control effectiveness should be regularly assessed. Data Loss Prevention (DLP) solutions should be evaluated for preventing unauthorized data transfer. Regulatory compliance audits, red team exercises simulating advanced

attacks, and vendor/supply chain risk assessments help identify and address potential risks.³¹ Engaging in threat hunting activities proactively searches for hidden threats within the network. Collecting end-user feedback and conducting post-incident reviews contribute to continuous improvement. Monitoring for regulatory violations or fines related to data protection highlights potential gaps in cybersecurity measures. Regular assessment in these areas empowers organizations to make data-driven decisions for ongoing improvement and adaptation to maintain a robust cybersecurity posture against evolving threats.

Criteria for determining the effectiveness of cybersecurity measures?

Evaluating the effectiveness of cybersecurity measures is integral to ensuring robust data and system protection against evolving threats. Several key criteria can be employed to assess cybersecurity efficacy comprehensively:

Threat Detection and Response:

- *Timeliness:* Swift identification of security incidents and threats.
- *Accuracy:* Distinguishing genuine threats from false positives.
- *Incident Response Time:* Rapid containment and mitigation of security incidents.

Vulnerability Management:

- *Patch Management Effectiveness:* Swift identification and application of security patches.
- *Vulnerability Mitigation:* Proactive measures to reduce exposure to vulnerabilities.

Access Control and Authentication:

- *Access Control Policies:* Strength and enforcement of measures preventing unauthorized entry.
- *Authentication Strength:* Robustness of user authentication mechanisms.

²⁸ Manpreet, "Incident Response Beyond Security KPIs" Scrut Automation, 2023 available at: <https://www.scrut.io/post/incident-response> (last visited March 30, 2024).

²⁹ "What is User and Entity Behavior Analytics (UEBA)? | IBM," available at: <https://www.ibm.com/topics/ueba> (last visited March 30, 2024).

³⁰ Chrissy Kidd, "SIEM: Security Information & Event Management Explained," Splunk available at: https://www.splunk.com/en_us/blog/learn/siem-security-information-event-management.html (last visited March 30, 2024).

³¹ "Data Loss Prevention (DLP) Systems: What They Are & Key Benefits | Ekran System," available at: <https://www.ekransystem.com/en/blog/dlp-systems-pros-and-cons> (last visited March 30, 2024).

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Data Protection and Encryption:

- *Data Encryption:* Extent of sensitive data encryption at rest and in transit.
- *Data Masking or Tokenization:* Level of protection applied to sensitive data.

User Awareness and Training:

- *Employee Security Awareness:* Recognition and response to security threats.
- *Training Effectiveness:* Impact of security training on user behavior.

Regulatory Compliance:

Compliance with Regulations: Adherence to data protection and privacy laws.

Auditing and Reporting: Accuracy and thoroughness of compliance reporting.

Incident Response Preparedness:

- *Incident Response Plan:* Effectiveness in responding to security incidents.
- *Post-Incident Review:* Learning from incidents to enhance future responses.

Endpoint Security:

- *Endpoint Security Solutions:* Effectiveness in detecting and preventing threats.
- *Device Management:* Level of control and security applied to devices accessing the network.

Third-Party Risk Management:

- *Assessment of Vendors:* Evaluation of security practices of third-party vendors.
- *Vendor Contracts:* Establishment and enforcement of security requirements in contracts.

Data Loss Prevention (DLP):

- *DLP Solution Effectiveness:* Preventing unauthorized transfer of sensitive data.
- *Detection and Response:* Responding to incidents of data loss.

Continuous Monitoring:

- *Ongoing Monitoring:* Continuous tracking of network and system activities.
- *Real-Time Alerting:* Immediate notification capabilities for security threats.

Security Information and Event Management (SIEM):

- *SIEM Efficiency:* Accuracy and efficiency in analyzing security events.
- *Centralized Logging:* Effective centralization and correlation of event logs.

Governance and Policy Adherence:

- *Policy Adherence:* Consistency in adhering to security policies.
- *Governance Oversight:* Effective governance and oversight of security practices.

Threat Intelligence Integration:

- *Threat Intelligence Use:* Incorporation of threat intelligence into security operations.
- *Timely Alerts:* Prompt alerts and actionable information from threat intelligence.

User Authentication and Access Control:

- *Authentication Strength:* Robustness of user authentication methods.
- *Monitoring Access:* Detection of unauthorized access and privilege escalation.

Regulatory Compliance Audits:

- *Audit Compliance:* Success in internal and external audits related to data protection.
- *Remediation:* Addressing findings and recommendations from audits.

Data Privacy Impact Assessment (DPIA):

- *DPIA Capability:* Assessing the impact of new technologies on data privacy.
- *Risk Mitigation:* Effectiveness in mitigating identified privacy risks.

Security Awareness Training with AI:

- *AI-Driven Training Impact:* Influence of AI-driven training on user knowledge.
- *User Adoption:* Level of user engagement with training programs.

Privacy Impact Assessments (PIAs):

- *PIA Implementation:* Conducting and documenting PIAs as per regulations.

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- *Risk Evaluation:* Assessing potential privacy risks and implementing mitigations.

Regulatory Violations and Fines:

- *Monitoring Violations:* Detection of regulatory violations and associated fines.
- *Preventive Actions:* Measures taken to address violations and prevent future occurrences.

Comprehensive assessment using these criteria offers insights into the organization's security posture, guiding improvements for effective cybersecurity against evolving threats and regulatory changes. Continuous monitoring and adaptation are imperative in this dynamic landscape.

Utilizing Criteria for Evaluating the Effectiveness of Cybersecurity Strategies in Organizations

Organizations can effectively evaluate the performance of their cybersecurity strategies by employing a structured assessment process based on the outlined criteria. The initial step involves defining clear objectives for the evaluation, specifying the aspects of the cybersecurity strategy to be scrutinized. Subsequently, organizations should carefully select criteria that align with their unique cybersecurity goals, recognizing that different organizations may prioritize distinct security elements.³²

The next phase involves the collection of relevant data from diverse sources, encompassing log data, incident reports, audit findings, and feedback from employees and users. The evaluation of each criterion requires a comprehensive analysis utilizing both quantifiable metrics and qualitative data to ascertain the cybersecurity measures' effectiveness. Through this process, organizations can identify both strengths and weaknesses in their cybersecurity strategies.³³

Setting realistic performance targets for each criterion serves as a pivotal benchmark for future assessments. Prioritizing improvement areas based on assessment outcomes involves considering the potential impact on security and the resources required for enhancement. Developing a detailed action plan that outlines specific steps, responsible individuals, and timelines is crucial for addressing identified weaknesses.

Implementation of improvements may encompass technological enhancements, process refinements, or targeted employee training initiatives. Continuous monitoring of progress towards achieving performance targets ensures the ongoing effectiveness of implemented enhancements. Periodic follow-up assessments are essential to measure the impact of improvements and reevaluate the overall effectiveness of the cybersecurity strategy.³⁴

Comprehensive documentation of assessment results, action plans, and progress reports is crucial for accountability and compliance. Transparent communication of assessment outcomes and progress to relevant stakeholders, including executives, IT teams, and employees, fosters collaboration and understanding. Organizations must also verify compliance with pertinent data protection regulations and industry standards to ensure alignment with legal requirements.

External audits by engaging independent assessors contribute to the validation of the robustness of cybersecurity measures. A feedback loop that incorporates continuous input from employees, users, and security experts is essential for refining and enhancing the cybersecurity strategy. Staying informed about emerging threats, vulnerabilities, and best practices allows organizations to adapt their cybersecurity strategies proactively.³⁵

32 Chris Romeo, "6 ways to develop a security culture in your organization" TechBeacon available at: <https://techbeacon.com/security/6-ways-develop-security-culture-top-bottom> (last visited March 30, 2024).

33 Frank Cremer et al., "Cyber risk and cybersecurity: a systematic review of data availability," 47 *The Geneva Papers on Risk and Insurance. Issues and Practice* 698–736 (2022).

34 Chris Romeo, "6 ways to develop a security culture in your organization" TechBeacon available at: <https://techbeacon.com/security/6-ways-develop-security-culture-top-bottom> (last visited March 30, 2024).

35 Muhammad Fakhru Safitri, Muharman Lubis, and Hanif Fakhurroja, "Counterattacking Cyber Threats: A Framework for the Future of Cybersecurity," available at: <https://www.mdpi.com/2071-1050/15/18/13369> (last visited March 30, 2024).

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Benchmarking cybersecurity measures against industry benchmarks and best practices facilitates the identification of areas for continuous improvement. By consistently applying these steps and regularly assessing cybersecurity strategies using the established criteria, organizations can uphold the effectiveness of their security measures and adapt to the dynamic threat landscape. This iterative evaluation and improvement process are pivotal for maintaining a resilient cybersecurity posture.³⁶

Conclusion:

The research paper evaluated the efficacy of cybersecurity measures in safeguarding data privacy through a comprehensive analysis of existing strategies. The study also highlighted the inadequacy of existing cybersecurity measures, particularly in IoT devices, which can be entry points for unauthorized access to other interconnected systems, creating risks for users' privacy and security. The study offered a set of guidelines for nations that are planning to implement a Cybersecurity Strategy, which includes sound regulations, good information sharing, and effective implementation. The discussion section of this research paper emphasizes the need for organizations to properly implement security measures to maximize the security of all IoT devices and to go beyond mere compliance with regulations. It also identifies potential weaknesses or biases in the study and suggests future directions for research to address these limitations.

³⁶ Ibid.

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AUTHOR:

SUVRAT JAIN, B.Tech., LL.B and CIPP/E, Associate Consultant in Cybrotech Digiventure Pvt Ltd

ABSTRACT

The volume of digital data to be dealt with in the current digital environment, along with the fine refinements of cyber threats, calls for a complete overhaul of cybersecurity practices. This paper discusses the use of Artificial Intelligence (AI) and Machine Learning (ML) to strengthen cybersecurity. It would look to expose the various roles that AI and ML play in diverse domains of cybersecurity, including but not limited to threat detection, behavioral analytics, incident response, and enhanced data privacy protocols. The paper elaborates on how the extensive analysis of the theoretical frameworks and practical implementations by AI and ML technologies allows the quick discovery of potential threats, security operations automation, and even fosters predictive capabilities of pre-empting a cyberattack. This paper provides a critical review of the challenges and limitations that are inherently attached to integrating AI and ML with cybersecurity, including adversarial attacks, issues of privacy concern, and indispensability of human oversight. It goes further to look at the possible channels of increased cybersecurity through emerging technologies such as the Zero Trust Architecture, quantum-safe cryptography, and blockchain, all of which heighten the relevance of these development streams in consonance with AI/ML frameworks. It concludes that there is a need for a comprehensive approach to include the AI and ML innovations with the conventional security of cyber and its measures with human expertise. This blueprint is meant to be comprehensive and also recommends constant adaptation with a line of ethical consideration in deploying AI and ML technologies, both of which protect an increasingly interconnected and data-driven world.

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Introduction:

In an era marked by an unprecedented influx of digital data and the relentless evolution of cyber threats, the modernization of cybersecurity has become an imperative for organizations worldwide. The convergence of technology and security is epitomized by the pivotal role of AI and ML in fortifying digital defences and preserving the sanctity of data privacy. This research paper embarks on an exploration of the intricate relationship between AI, ML, and cybersecurity, charting the innovative strategies employed to detect and mitigate cyber threats.¹ Furthermore, it delves into prospective avenues that hold the promise of further enhancing cybersecurity measures in an ever-changing threat landscape. By examining the advantages and disadvantages of AI and ML in the context of cybersecurity, this paper aims to provide a comprehensive understanding of the challenges and opportunities inherent in the modernization of cybersecurity to safeguard data privacy.

Role of Artificial Intelligence and Machine Learning in Cybersecurity:

The augmentation of cybersecurity through the application of AI and ML stands as a pivotal development in the field, offering substantial improvements in threat identification, response capabilities, and the efficiency of security operations.² This section delineates the multifaceted contributions of AI and ML to cybersecurity, underscoring their significance in advancing the domain.

- **Threat Detection and Analysis:** AI and ML can analyze massive datasets in real-time to identify patterns indicative of cyber threats. They can detect anomalies and potential security breaches more quickly than traditional methods. ML algorithms can learn from historical data and identify
- **Behavioural Analytics:** AI-driven behavioural analytics can identify unusual or suspicious behaviour among users and devices. By establishing baselines of normal activity, AI can flag deviations that may indicate a security incident.
- **Phishing Detection:** ML models can analyze email and web content to detect phishing attempts and malicious URLs, helping to protect against social engineering attacks.⁴
- **Malware Detection:** ML models can identify malware based on known signatures and behavioural characteristics, and they can detect previously unseen malware by analyzing code and behaviour.⁵
- **Network Security:** AI can enhance network security by monitoring network traffic for unusual or unauthorized activities. It can identify patterns of data exfiltration and lateral movement associated with cyberattacks.
- **Endpoint Security:** AI and ML can provide real-time endpoint protection by analyzing user and device behaviour to identify potential threats and automate responses to block or contain them.
- **Incident Response:** AI can assist in incident response by prioritizing and classifying alerts, providing context for incidents, and suggesting actions to mitigate and contain threats.
- **Security Automation:** ML models can automate routine security tasks, freeing up security analysts to focus on more complex and critical tasks.
- **User and Entity Behaviour Analytics (UEBA):** UEBA leverages ML to establish a baseline of typical user and entity behaviour. It can detect

1 EC-Council University, "Artificial Intelligence and Machine Learning in Cybersecurity Defense" Accredited Online Cyber Security Degree Programs | EC-Council University, 2023 available at: <https://www.eccu.edu/blog/cybersecurity/artificial-intelligence-in-cybersecurity/> (last visited March 30, 2024).

2 "AI in cybersecurity: A double-edged sword | Deloitte Middle East | ME PoV 42," Deloitte available at: <https://www2.deloitte.com/xe/en/pages/about-deloitte/articles/securing-the-future/ai-in-cybersecurity.html> (last visited March 30, 2024).

3 "The Role of AI and Machine Learning in Zero Trust Security - Pilotcore," available at: <https://pilotcoresystems.com/insights/role-of-ai-and-machine-learning-in-zero-trust-security/> (last visited March 30, 2024).

4 Samer Atawneh and Hamzah Aljehani, "Phishing Email Detection Model Using Deep Learning," 12 Electronics 4261 (2023).

5 Jagsir Singh and Jaswinder Singh, "Detection of malicious software by analyzing the behavioral artifacts using machine learning algorithms," 121 Information and Software Technology 106273 (2020).

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deviations from these baselines, which may indicate insider threats or compromised accounts.⁶

- **Predictive Analysis:** AI can provide predictive analysis of potential security threats and vulnerabilities, allowing organizations to proactively address issues before they are exploited.
- **Authentication and Access Control:** ML can assist in multi-factor authentication by continuously evaluating the risk level of login attempts and adjusting security measures accordingly.
- **Phishing Prevention:** AI can analyze email content and sender behaviour to identify phishing emails, helping to prevent employees from falling victim to such attacks.
- **Threat Intelligence:** AI can process and analyze vast amounts of threat intelligence data to identify emerging threats and provide organizations with timely alerts and recommendations.
- **Security Monitoring and Alert Prioritization:** AI can sift through large volumes of security alerts and prioritize them based on their severity and relevance, reducing the burden of alert fatigue on security teams.
- **Adaptive Security:** AI-driven systems can adapt to changing threat landscapes and dynamically adjust security measures to counter evolving threats.

While AI and ML present considerable benefits in cybersecurity enhancement, they are accompanied by challenges including susceptibility to adversarial attacks, privacy concerns, and the indispensable need for human oversight. A comprehensive cybersecurity strategy typically integrates AI and ML with conventional security measures and expert human judgment to form a robust defense against cyber threats.⁷

6 "User and Entity Behaviour Analytics Tool | ManageEngine Log360," available at: <https://www.manageengine.com/log-management/ueba/user-and-entity-behavior-analytics-software.html> (last visited March 30, 2024).

7 Irshaad Jada and Thembekile O. Mayayise, "The impact of artificial intelligence on organisational cyber security: An outcome of a systematic literature review" *Data and Information Management* 100063 (2023).

The Merits and Demerits of Leveraging Artificial Intelligence and Machine Learning in Cybersecurity

The employment of AI and ML within the domain of cybersecurity is marked by a spectrum of advantages and challenges. This section elaborates on the distinct benefits and potential drawbacks associated with the integration of AI and ML in cybersecurity frameworks.

Advantages:

- **Rapid Threat Detection:** AI and ML possess the capability to swiftly sift through voluminous datasets, detecting patterns and anomalies that signify potential security threats, thereby facilitating prompt threat identification.
- **Scalability:** These technologies are adept at scaling to accommodate extensive datasets and complex workloads, rendering them appropriate for enterprises of varying sizes.
- **Continuous Real-time Monitoring:** AI and ML systems are equipped to offer perpetual monitoring of network and user behavior, enabling the early detection of threats.⁸
- **Adaptive Security Postures:** AI systems have the flexibility to adjust to new threats, autonomously refining security measures and responses as per the evolving cyber threat landscape.
- **Minimization of False Positives:** Through learning the nuances of benign versus malicious activities, ML aids in diminishing the occurrence of false positive alerts, thus allowing security personnel to concentrate on genuine threats.
- **Automation of Security Processes:** ML empowers the automation of mundane security tasks, thereby liberating analysts to tackle more sophisticated and strategic challenges.
- **Enhanced Threat Intelligence:** AI's ability to digest and analyze extensive threat intelligence data furnishes organizations with actionable insights into looming threats.

8 "AI Cybersecurity and Machine Learning," available at: <https://www.kaspersky.com/resource-center/definitions/ai-cybersecurity> (last visited March 30, 2024).

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- **Predictive Analysis:** AI's predictive capabilities enable the anticipation of potential security threats and vulnerabilities, providing a proactive stance against potential exploits.
- **Behavioral Analytics:** Through establishing benchmarks of typical activity, ML can pinpoint unusual or suspect behavior amongst users and devices.
- **Phishing Detection:** AI's analysis of email and web content assists in identifying phishing attempts and malicious URLs, contributing to the mitigation of social engineering threats.⁹

Disadvantages:

- **Vulnerability to Adversarial Attacks:** AI and ML models may fall prey to adversarial tactics aimed at misleading these systems into erroneous decision-making by manipulating input data or algorithms.
- **Implementation Complexity:** The deployment of AI and ML in cybersecurity contexts can be intricate, necessitating specialized knowledge and possibly leading to configuration errors or interpretative inaccuracies.
- **Privacy Implications:** The operation of AI and ML systems could incite privacy concerns, particularly when it involves the analysis of user data or behavior, necessitating a delicate balance between security enhancements and privacy preservation.¹⁰
- **Data Dependence:** The efficacy of AI and ML models is heavily contingent upon the volume and quality of training data, with subpar data potentially compromising model performance.
- **Incidence of False Negatives:** While adept at reducing false positives, AI might inadvertently overlook certain threats, resulting in false negatives.
- **Financial Implications:** The adoption and on-going maintenance of AI and ML solutions could entail significant expenses, particularly burdening smaller entities with limited financial resources.
- **Need for Human Expertise:** Despite their advanced capabilities, AI and ML systems still require human intervention for oversight, interpretation of outcomes, and incident management.
- **Transparency Issues:** The inherent complexity of AI and ML models may obscure their decision-making processes, potentially hampering trust and understanding.
- **Potential for Bias:** Training data biases can be inadvertently encoded into models, leading to biased outcomes that could manifest as discrimination or unfair treatment in certain scenarios.
- **Ongoing Model Adaptation:** The dynamic nature of cyber threats necessitates continuous updates and adjustments to AI and ML models to maintain their effectiveness, requiring sustained investment of resources.

AI and ML technologies hold great potential toward strengthening cybersecurity defenses but are not the panacea. Pros and cons need to be judiciously weighed against the background of such importance accorded to these innovations within the broader and encompassing cybersecurity strategy that aligns and synergizes the traditional security protocols with human insight.¹¹

Strategies for Protecting Data Privacy with AI and ML

In the contemporary digital landscape, AI and ML emerge as pivotal technologies in the crusade to safeguard data privacy. These advanced tools offer a panoply of strategies and technological solutions designed to bolster privacy protections.¹² This section elucidates the diverse methodologies through which AI and ML can be harnessed to enhance data privacy

⁹ Abdul Basit et al., "A comprehensive survey of AI-enabled phishing attacks detection techniques," 76 Telecommunication Systems 139–54 (2021).

¹⁰ Pawel Maczka, "The Role of AI and Machine Learning in Data Protection" Storware, 2024 available at: <https://storware.eu/blog/the-role-of-ai-and-machine-learning-in-data-protection/> (last visited March 31, 2024).

¹¹ "Using Artificial Intelligence in Cybersecurity," Balbix, 2019 available at: <https://www.balbix.com/insights/artificial-intelligence-in-cybersecurity/> (last visited March 31, 2024).

¹² "AI Cybersecurity and Machine Learning," available at: <https://www.kaspersky.com/resource-center/definitions/ai-cybersecurity> (last visited March 30, 2024).

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within organizations.

- **Data Classification and Labeling:** ML algorithms are instrumental in the automated classification and labeling of data according to its sensitivity, thereby streamlining the identification and protection of sensitive information.¹³
- **Data Loss Prevention (DLP):** DLP solutions, augmented by ML, scrutinize data whether in motion, at rest, or in use, aiding in the detection and prevention of unauthorized data disclosures or breaches.¹⁴
- **User and Entity Behavior Analytics (UEBA):** AI-powered UEBA systems establish normative behavioral baselines for users and entities, facilitating the identification of deviations that might signal insider threats or account compromises.¹⁵
- **Access Control and Authentication:** AI-driven access control mechanisms assess and adapt to the risk levels associated with login attempts, ensuring that access to sensitive data is restricted to authorized personnel.
- **Privacy-Preserving AI:** Organizations are increasingly adopting AI and ML techniques that permit the analysis of data while concealing raw, sensitive details. Approaches like federated learning and homomorphic encryption exemplify privacy-preserving AI methodologies.
- **Encryption and Tokenization:** AI aids in the management of encryption keys and the monitoring of suspicious encryption-related activities, while encryption and tokenization practices safeguard data both in transit and at rest.
- **Anonymization and Pseudonymization:** Through the application of AI, data can be anonymized or pseudonymized, reducing identifiability without compromising the utility of the data for analytical purposes.
- **Data Masking:** ML technologies enable the dynamic masking or redaction of sensitive information in real-time, tailored to the access rights and contextual requirements of the user.
- **Privacy Impact Assessments** AI technologies assist in automating privacy impact assessments, pinpointing potential privacy risks associated with data processing endeavors.
- **Natural Language Processing (NLP):** NLP and ML tools proficiently identify and categorize sensitive information within unstructured text data, enhancing privacy protections.¹⁶
- **Incident Detection and Response:** AI facilitates the swift detection and mitigation of data breaches and privacy incidents, thus minimizing potential privacy infractions and damages.
- **Consent Management:** AI-driven consent management frameworks aid organizations in efficiently managing and documenting user consent for data processing activities.¹⁷
- **Regulatory Compliance:** AI systems continuously monitor and ensure adherence to data privacy regulations, dynamically adjusting organizational policies and practices as necessary.
- **Security Awareness Training:** Personalized, AI-powered security awareness training modules educate employees and users on data privacy best practices, bolstering organizational data privacy culture.
- **Data Governance:** AI supports the development and enforcement of data governance policies, ensuring compliance with data privacy standards and regulations.
- **Data Inventory and Mapping:** AI tools automatically discover and map data across organi-

13 Mohammad Mustafa Taye, "Understanding of Machine Learning with Deep Learning: Architectures, Workflow, Applications and Future Directions," 12 Computers 91 (2023).

14 "What Is Data Loss Prevention (DLP) Compliance?," Palo Alto Networks available at: <https://www.paloaltonetworks.com/cyberpedia/data-loss-prevention-dlp-compliance> (last visited March 31, 2024).

15 "User Entity Behavior Analytics (UEBA) | Ontinue," available at: <https://www.ontinue.com/user-entity-behavior-analytics/> (last visited March 31, 2024).

16 IABAC, "Data Engineering for Natural Language Processing (NLP)" Medium, 2023 available at: <https://iabac.medium.com/data-engineering-for-natural-language-processing-nlp-c80a69624a53> (last visited March 31, 2024).

17 "Navigating AI consent management: Data deluge & privacy," 2023 available at: <https://www.datadynamicsinc.com/blog-navigating-consent-management-in-the-age-of-ai-balancing-data-deluge-and-privacy/> (last visited March 31, 2024).

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zations, identifying privacy risks and managing data flows effectively.

- **Automated Incident Documentation:** The automation of incident documentation through AI enhances compliance with regulatory reporting obligations, streamlining the documentation process.

While AI and ML offer significant advantages in the realm of data privacy enhancement, it is critical to acknowledge that these technologies are not panaceas. Their integration into a comprehensive data privacy and security strategy, encompassing robust policies and a commitment to privacy-conscious practices, is imperative. Moreover, organizations must navigate the ethical considerations associated with AI deployment in data privacy, such as mitigating bias and ensuring transparency and fairness in AI applications.¹⁸

Prospective Avenues for Enhancing Cybersecurity

Emerging technologies for enhancing cybersecurity?

The field of cybersecurity is continually evolving to combat new and evolving threats. Several emerging technologies are being explored and adopted to enhance cybersecurity. Some of these prospective avenues for improving cybersecurity include:

- **Artificial Intelligence (AI) and Machine Learning (ML):** These technologies are at the forefront of augmenting threat detection capabilities, offering enhanced analytical precision in behavioral analytics and anomaly detection. Their application facilitates a more proactive and efficient response to cybersecurity threats.
- **Zero Trust Architecture (ZTA):** ZTA operates on the principle that trust is never assumed, irrespective of whether the source is internal or external to the organization. It employs stringent access controls and continuous verification pro-

cesses to ensure resource access is securely restricted to verified users and devices.¹⁹

- **Homomorphic Encryption:** This revolutionary technology enables the processing of encrypted data without necessitating decryption, thereby preserving the privacy of the data whilst still allowing for the extraction of valuable insights.²⁰
- **Quantum-Resistant Cryptography:** In anticipation of the potential vulnerabilities introduced by quantum computing advancements, quantum-resistant cryptography has been developed to safeguard against the computational capabilities of quantum computers.²¹
- **Blockchain Applications in Cybersecurity:** Blockchain technology offers a robust solution for securing data transactions through its immutable ledger system, finding applications in secure data sharing and identity management.
- **Secure Access Service Edge (SASE):** SASE represents a convergence of network security functions with wide-area networking (WAN) capabilities, addressing the needs of organizations, particularly in facilitating secure remote access.²²
- **Deception Technologies:** By deploying decoy assets and honeypots, deception technology aims to misdirect attackers, enabling organizations to detect and counteract threats more effectively.
- **Biometric Authentication Methods:** The exploration of advanced biometrics, including fingerprint, facial, and voice recognition, is enhanc-

¹⁹ "Zero Trust Architecture Principles | Mia-Platform," 2023 available at: <https://mia-platform.eu/blog/zero-trust-architecture-principles/> (last visited March 31, 2024).

²⁰ "Homomorphic Encryption: How It Works," Splunk available at: https://www.splunk.com/en_us/blog/learn/homomorphic-encryption.html (last visited March 31, 2024).

²¹ Tammy Xuarchive "What are quantum-resistant algorithms—and why do we need them?," MIT Technology Review available at: <https://www.technologyreview.com/2022/09/14/1059400/explainer-quantum-resistant-algorithms/> (last visited March 31, 2024).

²² "SASE: What is Secure Access Service Edge? | Zscaler," available at: <https://www.zscaler.com/resources/security-terms-glossary/what-is-sase> (last visited March 31, 2024).

¹⁸ Nagadivya Balasubramaniam et al., "Transparency and explainability of AI systems: From ethical guidelines to requirements," 159 Information and Software Technology 107197 (2023).

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ing authentication processes.

- **Security for the Internet of Things (IoT):** As IoT devices proliferate, dedicated security technologies are being developed to protect these devices and their networks from cyber threats.²³
- **AI-Enhanced Security Orchestration, Automation, and Response (SOAR):** SOAR platforms leverage AI and automation to optimize incident response operations, aiding security teams in the efficient analysis, prioritization, and management of cybersecurity incidents.²⁴
- **Post-Quantum Cryptography:** This technology is being developed in response to the emerging threat posed by quantum computing to existing cryptographic standards, aiming to provide quantum-attack resilience.²⁵
- **Advancements in Multi-Factor Authentication (MFA):** Innovations in MFA, such as continuous and adaptive authentication methods, are evolving to offer more sophisticated security solutions.²⁶
- **Threat Intelligence Collaboration:** Platforms facilitating the collaborative exchange of threat intelligence among organizations and security communities are crucial for the preemptive identification of emerging threats.
- **Behavioral Biometrics:** This approach ana-

lyzes unique user behavior and biometric patterns, such as keystroke dynamics, for more nuanced authentication and identification.

- **Cybersecurity for Cloud and Hybrid Environments:** The growing reliance on cloud services and hybrid infrastructures necessitates the development of advanced security technologies to protect data and applications within these contexts.
- **Privacy-Enhancing AI Technologies:** Techniques such as federated learning and secure multi-party computation are enabling AI models to analyze data without compromising sensitive information, thus enhancing privacy.
- **AI-Driven Security Awareness Training:** Personalized, AI-powered training modules are being deployed to provide timely education on cybersecurity threats and best practices to users.
- **Cyber-Physical Systems Security:** Protecting critical infrastructure systems from cyber threats is of paramount importance, encompassing sectors like energy, water treatment, and transportation.
- **Quantum Key Distribution (QKD):** Utilizing principles of quantum mechanics, QKD offers a method for generating secure encryption keys that are theoretically immune to compromise.²⁷
- **Security in Augmented Reality (AR) and Virtual Reality (VR):** As AR and VR technologies gain traction, new security challenges emerge, necessitating the development of solutions tailored to these immersive environments.²⁸

These emerging technologies, when integrated into a comprehensive cybersecurity strategy, have the potential to enhance an organization's ability to detect, prevent, and respond to cyber threats and to protect data and systems effectively. However,

23 "What is IoT Security? | TechTarget," IoT Agenda available at: <https://www.techtarget.com/iotagenda/definition/IoT-security-Internet-of-Things-security> (last visited March 30, 2024).

24 Cyware Labs, "SOAR and AI in Cybersecurity | Reshaping Security Operations | Cyware Security Guides | Educational Guides" Cyware Labs available at: <https://cyware.com/security-guides/security-orchestration-automation-and-response/from-insight-to-action-how-ai-and-soar-are-reshaping-security-operations-13d9> (last visited March 31, 2024).

25 Information Technology Laboratory Computer Security Division, "Post-Quantum Cryptography | CSRC | CSRC" CSRC | NIST, 2017 available at: <https://csrc.nist.gov/projects/post-Quantum-cryptography> (last visited March 31, 2024).

26 Katerina Pavliukovich, "Enhancing Security through Adaptive Multi-Factor Authentication: A TrustNet Perspective" TrustNet, 2023 available at: <https://trustnetinc.com/enhancing-security-through-adaptive-multi-factor-authentication-a-trustnet-perspective/> (last visited March 31, 2024).

27 "National Security Agency/Central Security Service > Cybersecurity > Quantum Key Distribution (QKD) and Quantum Cryptography QC," available at: <https://www.nsa.gov/Cybersecurity/Quantum-Key-Distribution-QKD-and-Quantum-Cryptography-QC/> (last visited March 31, 2024).

28 Mohammed A. M. AlGerafi et al., "Unlocking the Potential: A Comprehensive Evaluation of Augmented Reality and Virtual Reality in Education," 12 *Electronics* 3953 (2023).

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it's crucial to stay vigilant and adapt to the rapidly changing threat landscape.

Implementation of Emerging Technologies for Data Protection

The incorporation of novel technologies into the frameworks designed to protect data privacy demands a systematic approach, encompassing careful planning, comprehensive evaluation, and seamless integration within the existing cybersecurity infrastructure of an organization. This discourse presents a structured methodology for the efficacious deployment of these avant-garde technologies, aimed at bolstering data privacy protections.

- **Assessment and Prioritization:** An initial step involves a detailed examination of an organization's specific requirements related to data privacy, considering both the nature of the data handled and the regulatory obligations incumbent upon the organization. This phase is crucial for identifying sectors within which the adoption of new technologies could yield significant enhancements.
- **Education and Capacity Building:** A foundational aspect of this strategy is ensuring that IT and cybersecurity personnel possess a thorough understanding of both the capabilities and limitations of these emergent technologies. Training programs should be instituted to cultivate the necessary skills for their implementation and ongoing management.
- **Evaluation of Vendor Solutions:** A critical analysis of potential vendors, focusing on those offering the desired technological solutions, is essential. Criteria for evaluation should include the scalability of solutions, their compatibility with existing systems, and the overall reputation of the vendor.
- **Pilot Project Execution:** The initiation of pilot projects serves as a preliminary assessment of the technology's applicability within a controlled environment. This stage is vital for the identification of potential challenges, the evaluation of the technology's impact, and the implementation of requisite adjustments.²⁹
- **Integration with Existing Systems:** A key consideration is the compatibility and integration of new technologies with the organization's pre-existing security infrastructure, potentially requiring customization to meet specific operational requirements.
- **Data Mapping and Classification:** The employment of data mapping and classification tools is essential for accurately locating sensitive data within the organization, determining the level of sensitivity, and establishing protective measures.
- **Policy Development:** The formulation of clear data privacy and security policies, incorporating the application of emerging technologies, is necessary. Such policies should outline procedures for data management, access control, and incident response.
- **Regulatory Compliance Assurance:** Organizations must ensure their compliance with relevant data protection regulations and industry standards, remaining vigilant to changes in privacy legislation.
- **Encryption and Tokenization Implementation:** The deployment of encryption and tokenization solutions aims to safeguard data both during transit and at rest, with AI playing a role in key management and the detection of encryption-related anomalies.³⁰
- **Incident Response Strategy Adjustment:** The organization's incident response plan should be revised and tested to encompass potential scenarios involving the new technologies, ensuring readiness to address possible breaches effectively.
- **Privacy Impact Assessment Automation:** Automating privacy impact assessments, integrat-

²⁹ apleasant, "Pilot Projects," 2013 available at: <https://www.ndi.org/e-voting-guide/pilot-projects> (last visited March 31, 2024).

³⁰ "Mitigating Security Risks in RAG LLM Applications | CSA," available at: <https://cloudsecurityalliance.org/blog/2023/11/22/mitigating-security-risks-in-retrieval-augmented-generation-rag-llm-applications> (last visited March 31, 2024).

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ing them within the data processing lifecycle, is advisable for proactive identification of privacy risks.

- **Enhancement of Security Awareness Training:** AI-driven training initiatives should be leveraged to heighten awareness among employees about the importance of these technologies in protecting data privacy.
 - **Continuous Monitoring:** The implementation of continuous monitoring tools is recommended for the regular assessment of the deployed technologies' effectiveness, with attention to anomalies in logs and reports.
 - **Documentation and Compliance Auditing:** Maintaining comprehensive documentation of technology utilization, configurations, and incident management, coupled with regular compliance audits, is essential for demonstrating adherence to data privacy standards.
 - **Ethical Considerations in AI and ML Deployment:** Attention to ethical concerns such as fairness, transparency, and the potential for bias is critical when employing AI and ML technologies, necessitating the development of ethical guidelines for their use.³¹
- In sum, the dynamic and continuous nature of data privacy mandates that organizations adopt a vigilant approach to the deployment of emerging technologies, continually refining and adapting their strategies to mitigate evolving threats and address privacy concerns effectively.

Challenges Associated with Emerging Technologies

While emerging technologies offer significant advantages for data privacy and cybersecurity, they also come with a set of challenges and considerations that organizations need to address. Some of the challenges associated with using these technologies include:

31 Bahar Memarian and Tenzin Doleck, "Fairness, Accountability, Transparency, and Ethics (FATE) in Artificial Intelligence (AI) and higher education: A systematic review," 5 Computers and Education: Artificial Intelligence 100152 (2023).

- **Complexity and Integration:** Implementing emerging technologies can be complex and may require substantial integration efforts with existing systems. Ensuring seamless integration is crucial for their effective use.³²
- **Cost:** Adopting and maintaining these technologies can be costly. Organizations must carefully budget for hardware, software, licensing, and on-going operational expenses.
- **Skills Gap:** There is a shortage of professionals with expertise in some of these emerging technologies, which can make it challenging to find and retain qualified personnel.
- **Data Quality and Volume:** Many technologies, especially AI and ML, depend on the quality and quantity of data. If the organization's data is of poor quality or insufficient, it can impact the effectiveness of these technologies.
- **Regulatory Compliance:** Meeting data protection regulations, such as GDPR³³ or CCPA³⁴, can be challenging when implementing emerging technologies, as they often require careful handling of personal data and transparency in processes.
- **Privacy Concerns:** Some technologies, like AI and blockchain, can raise privacy concerns due to the potential for misuse, surveillance, and data breaches.
- **Adversarial Attacks:** AI models, in particular, can be vulnerable to adversarial attacks where attackers manipulate data to fool the system. Ensuring robust defenses against such attacks is essential.
- **Ethical Considerations:** Emerging technolo-

32 Arkadiusz Krysiak, "System Integration: Uniting Technology for Seamless Business Operation" Stratoflow, 2023 available at: <https://stratoflow.com/system-integration/> (last visited March 31, 2024).

33 "General Data Protection Regulation (GDPR) – Official Legal Text," General Data Protection Regulation (GDPR) available at: <https://gdpr-info.eu/> (last visited March 30, 2024).

34 "California Consumer Privacy Act (CCPA) | State of California - Department of Justice - Office of the Attorney General," available at: <https://oag.ca.gov/privacy/ccpa> (last visited March 31, 2024).

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gies can raise ethical questions, such as bias in AI algorithms, the impact on user privacy, and the potential for discrimination.³⁵

- **Scalability:** As organizations grow, the scalability of these technologies must be considered. Ensuring that they can handle increasing data volumes and user loads is crucial.
- **Transparency and Explainability:** Some AI and ML models are complex and challenging to understand. Ensuring transparency and explainability in AI-driven decisions is important, especially for compliance and trust.
- **Legacy System Compatibility:** Legacy systems may not be compatible with or easily integrated with new technologies, leading to issues with interoperability and data sharing.
- **Vendor Lock-In:** Organizations may become dependent on specific vendors or technologies, making it difficult to switch or adapt to new solutions in the future.
- **Data Privacy Impact:** The collection and use of personal data for technologies like biometric authentication or IoT can pose risks to individual privacy if not handled properly.³⁶
- **Continuous Monitoring and Updates:** Ongoing maintenance and monitoring of these technologies are necessary to address vulnerabilities and adapt to evolving threats.
- **User Adoption:** Ensuring that employees and users are comfortable and knowledgeable about these technologies is crucial for successful implementation.
- **Data Residency and Sovereignty:** Complying with data residency and sovereignty laws may be challenging, especially for cloud-based solu-

tions.³⁷

- **Misconfiguration:** Human error or misconfigurations can lead to security vulnerabilities, especially in cloud-based solutions and network security technologies.
- **Supply Chain Risk:** Using third-party vendors for emerging technologies may introduce supply chain risks if those vendors have security vulnerabilities.³⁸
- **Environmental Impact:** Some emerging technologies, especially those involving high computational power, may have environmental concerns related to energy consumption.³⁹

Addressing these challenges requires a combination of careful planning, strong governance, security awareness, and a proactive approach to security and data privacy. Organizations should also stay informed about evolving threats and regulations related to the use of these technologies.

Conclusion:

The research paper evaluates the role of AI and ML in enhancing cybersecurity. It discusses how AI and ML contribute to cybersecurity by improving threat detection, response, and overall security operations. The conclusion of the paper highlights the significant advantages and disadvantages of using AI and ML in cybersecurity. The paper also discusses how organizations can use AI and ML to protect data privacy, including strategies like data classification, encryption, and automated incident response. It emphasizes the need for a holistic approach to data privacy that includes policies, compliance, and ethical considerations.

Also, The paper concludes by discussing

35 Bahar Memarian and Tenzin Doleck, "Fairness, Accountability, Transparency, and Ethics (FATE) in Artificial Intelligence (AI) and higher education: A systematic review," 5 Computers and Education: Artificial Intelligence 100152 (2023).

36 "What is IoT Security? | TechTarget," IoT Agenda available at: <https://www.techtarget.com/iotagenda/definition/loT-security-Internet-of-Things-security> (last visited March 30, 2024).

37 "Data Sovereignty and Cloud Computing | Seagate India," Seagate.com available at: <https://www.seagate.com/in/en/blog/data-sovereignty-and-cloud-computing/> (last visited March 31, 2024).

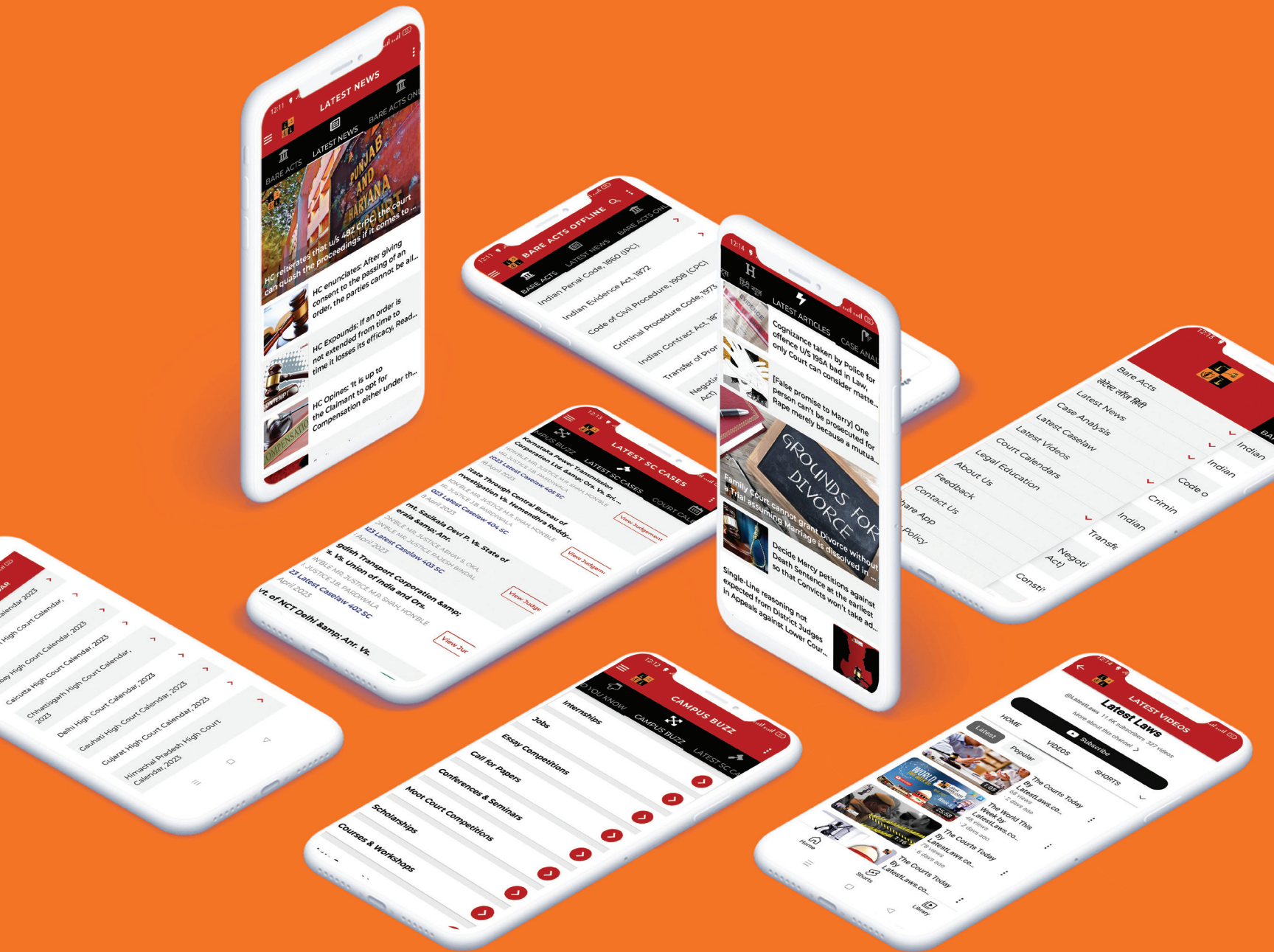
38 "Cybersecurity Risks in Supply Chain Management," RiskOptics available at: <https://reciprocity.com/blog/cybersecurity-risks-in-supply-chain-management/> (last visited March 31, 2024).

39 Junaid Shuja et al., "Greening emerging IT technologies: techniques and practices," 8 Journal of Internet Services and Applications 9 (2017).

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emerging technologies for enhancing cybersecurity, including AI, zero trust architecture, homomorphic encryption, and quantum-safe cryptography. It highlights the importance of addressing the challenges associated with these technologies, such as complexity, cost, and privacy concerns, in their implementation.

Overall, the research paper provides insights into the role of AI and ML in cybersecurity, their advantages and disadvantages, and strategies for implementing these technologies effectively. It also highlights the challenges and considerations that organizations should be aware of when adopting emerging technologies for data privacy and security.



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