EDITORIAL NOTE

-Editors

The first issue for Volume VI presents a set of 6 articles which seek to challenge the notions that appear prima facie to be viable, by using law and economic tool. They present a new perspective on issues of child labour and service charges. The present compilation also looks into the welfare economics and assesses socio-economic efficacies of various measures taken by the government such as attempting to formulate Uniform Civil Code and anti-rent measurement. It also moves into the statutory laws and legal system of India to look into pendency of cases in Excise cases and how rule of law is imperative to peace promotion.

The first paper titled "**A Uniform Civil Code for the Eradication of Disconsolate Practices in the name of Religion and to Ensure Socio-Economic Justice**" authored by Prof. (Dr.) Mamata Biswal discusses prevalent harmful practices like Sati, child marriage, Triple Talaq, and Nikah Halala which are not fundamental to religion and are not constitutionally valid in India. These practices stem from economic factors and lead to the deprivation of rights, particularly for women. Therefore UCC should be implemented in a phase wise manner wherein, in the first phase, the harmful, discriminative religious practices in different religious laws and provisions will be eradicated leading to improved economic conditions for women. Subsequently the UCC can evolve a code covering all religion in order to create a value maximising balance between religious rights and social equilibrium, thereby promoting equality and harmony, while respecting religious freedom.

The paper titled **"Law and Economic Analysis of Service Charge in Restaurants"** authored by Niharika Agarwal and Diya Parikh investigates the controversial issue of service charges in India and analyzes three scenarios from an economic and consumer rights perspective. The study concludes that all three scenarios, including tipping, mandatory service charges, and incorporating the charge within the food price, are economically inefficient. Tipping is deemed ineffective due to the lack of a strong tipping culture, while mandatory service charges remove consumer discretion and can lead to deception. Incorporating the charge within the food price results in lost producer surplus and limits consumer discretion. Overall, the paper recommends against implementing any of these scenarios and highlights their drawbacks.

The next paper **"Socio-economic Cost of Pending Excise Case in Bihar: a Search for Way Out"** by Adil Ameen discusses the slow disposal and pendency of cases in the Indian judicial system have negative consequences for society, particularly in Bihar where liquor prohibition has led to illegal trade networks and increased crime. The low conviction rate and easy availability of liquor have eroded trust in authorities. Prohibition-related cases burden the judiciary, resulting in delayed trials and overcrowded courts. These issues have social and

ISSN 2582-2667

economic impacts, especially on marginalized communities. The administration should target major liquor suppliers and producers instead of small consumers and distributors, and view drunk individuals as patients for rehabilitation rather than punishment. This approach would have a greater societal impact and alleviate the burden on the judiciary

The fourth paper **"Does Rule of Law Impact Crime: a Cross Country Analysis"** is authored by Anuradha S. Pai, Shantanu R. Shinkre and Dr. Nairita Bhattacharjee. This paper highlights the importance of the rule of law in promoting peace and security in society. It emphasizes the deterrent effect of strict laws and the need for equality before the law. The paper also discusses the correlation between unemployment and crime rates, suggesting that high unemployment can lead to an increase in criminal activities. Additionally, the potential impact of migration on crime rates is mentioned. Overall, the paper underscores the role of the rule of law in maintaining order, examines the relationship between unemployment and crime, and touches on the influence of migration on criminal activity.

The paper authored by Prakhar Aditya and Priyansh Pratap Tiwari titled **"The Seasonal Nature of Child Labour and its Forbidden Upsides"** challenges the negative perception of child labor, particularly seasonal child labor in India. It argues that existing laws fail to address the issue of children's seasonal absence from education and proposes a fresh policy approach to tackle the downsides of child labor. The paper highlights the complexities surrounding child labor and suggests that seasonal child labor can provide a solution to long standing problems. Overall, it aims to provide a new perspective on child labor and offer a comprehensive policy prescription

The last paper titled **"Anti-Rent Control Legislation a Boon or Bane: an Economic Analysis of the Waqf (Amendment) Act, 2013"** is authored by Ishita Kohli. It seeks to understand an anti-rent approach enshrined in the amendment in Waqf Act in 2013 in congruence with sections of the Waqf Properties Lease Rules of 2014, the amendment which regulates waqf properties with regards to evictions and bidding based on circle rates so as to fall outside the scope of the State Rent Control Laws and promote free market transactions. The amendment is tested in a pro-tenant background, taking Delhi Rent Control Act and various court decisions as the base to apply economic tool and support the present Amendment.

ISSN 2582-2667

ADVISORY BOARD OF THE GNLU JOURNAL OF LAW AND ECONOMICS (VOLUME VI – ISSUE I)

ISSN 2582-2667

ISSN 2582-2667

TABLE OF CONTENTS

ISSN 2582-2667

A UNIFORM CIVIL CODE FOR THE ERADICATION OF DISCONSOLATE PRACTICES IN THE NAME OF RELIGION AND TO ENSURE SOCIO-ECONOMIC JUSTICE

Prof (Dr.) Mamata Biswal[1]

Ideally, the UCC must address the Conflicting and Prejudicial areas of Personal Law, Socio-Economic Rights of Women and the object of the UCC must be to eradicate Disconsolate Practices in the name of Religion.

ABSTRACT

The practice of Sati, child marriage, Triple Talaq and Nikah Halala etc. - Are they fundamental to Religion and constitutionally valid? What are their economic origins and consequences?– Are they fundamental to Religion and Constitutionally valid?

Religious rights are fundamental to every citizen of India. Nonetheless the evil practices in the name of religion are not fundamental to religion. Religion and Religious practices are very closely allied with the rule of law. The right of 'freedom of religious practice' has its origin from the Constitution of India. 'Secularism' as the basic structure of the Constitution of India and Freedom of Religion (Article 25-28 of the Constitution) are the allure in the Constitution of our Country. These provisions provide the freedom to practice and profess religion, subject to morality, public order and health[2]*. But India has been witnessing many cruel practices in the name of Religion with no demarcated frontier. Although, the Legislative action, judicial intervention and social intermediation provide interim relief to the problems, but no permanent key. The yardstick for sanction all religious practices must be the Constitutional validity which factor in economic justice. The Triple Talaq Act 2019 is a welcome step to confront some issues but the enactment of many small pieces of legislations would create inconsistencies among the common men and incongruities for the interpretation and implementation. Seldom the Uniform Civil Code (UCC) had been proposed to be a solution to these evils, but to me 'Uniform Civil*

[1] Professor of Law and ICSSR Senior Research Fellow,
Gujarat National Law University

[2] Article 25 of the Constitution of India

ISSN 2582-2667

Code' is not the ultimate riposte for the prejudiced issues of Personal Laws. Initially, the proposed UCC must address the areas related to the deprivation of legal and economic rights of the citizens. The UCC can cover a complete code for each religion eliminating the religious practices which are not constitutionally valid having adverse gender based economic impact, would maintain the balance between the secularism, religious rights, economic justice and social equilibrium. Unified Personal law Codes for all Indian citizens like a Hindu Code for the Hindus, a Muslim Code for Muslims and likewise a special code for each religion in the matters of personal nature under the UCC would solve the purpose for few decades.

Key Words: *Uniform Civil Code, Secularism, Constitution, Religion, Violation, Fundamental right, Woman, Society.*

1. INTRODUCTION

'Whatever is irregular and sinful cannot have the sanction of law.[3] Custom, Religion, Tradition, Culture are the integral parts and elegance of any civilisation. However, unfounded practices in the name of freedom of religion must not be endorsed by the society, which are societal injustices leading to economic inequalities. Our country was and has been witnessing such melancholies continuously. At different times, different flavours and colours have been added in different forms and features.

The economic realities of women in India, across all religions form the backdrop of the significance of the legal issues involved in evolving the UCC. Issues relating to gender-based poverty, women's participation in the workforce, literacy levels, the health status of women, issues of financial inclusion etc, remain predominant, albeit with improvements on account of government schemes for women.

Few decades back, the matter of Roop Kanwar, where an 18-year-old Hindu widow was burnt alive on the funeral pyre of her husband on 4th September 1987 for practice of sati, Shah Bano, a 60-year-old Muslim woman approached the Court for maintenance after she was divorced by her husband by pronouncement of irrevocable talaq [4], the plight of many Hindu women (Geeta

[3] Shayara Bano V Union of India and others SC,2017.
[4]Mohammad Ahmed Khan v. Shah Bano Begum AIR 1985 SC 945

ISSN 2582-2667

Rani, Sushmita, Meena Mathur, Sunita cited in Sarla Mudgal case)[5] whose husbands got married after converting to Islam, Shayara Bano[6], whose husband divorced her by pronouncing triple talaq and so on and so forth. In all these incidents, those practices are linked with religion, neither the entire Hindu community practice this nor the Muslims. But due to the sanction of these practices in our society, one from us, is being victimised. A public Interest Litigation (PIL) was filed (March 2018) in the Hon'ble Supreme Court[7] challenging the constitutional validity of polygamy and Nikah Halala as recognised under the provisions of the Muslim Personal Law (Shariat) Application Act, 1937, which are unconstitutional and grossly violate the fundamental rights of married Muslim women under Article 14, 15 and 21 of the Constitution. Another controversy arose with regard to the Triple Talaq Act or The Muslim Women (Protection of Rights on Marriage) Act, 2019 since the time it was tabled in the form of a Bill i.e, [The Muslim Women (Protection of Rights on Marriage) Bill], 2017. The Bill was introduced subsequent to the judgement of the Hon'ble Supreme Court of India, pronouncing the instant Triple Talaq as unconstitutional and void[8]. Reference can be made to the Dissolution of Muslim Marriage Bill, 2016, which was introduced in the Rajya Sabha as a private member's bill (by the MP Husain Dalwai, August 2016) and which speaks about both triple talaq and nikah halala. The Triple Talaq Act. [The Muslim Women (Protection of Rights on Marriage)] Act, 2019, and the Dissolution of Muslim Marriage Bill, 2016, could have been merged and after due deliberation, a new law could have been brought to curb both triple talaq and nikah halala. These evil practices are not new to our country, they are prevalent in our society since inception in different forms.

There is a writ petition filed by the All India Muslim Personal Law Board challenging the criminalisation of triple talaq[9] . The Hon'ble Supreme Court had agreed to examine the newly enacted statute i.e. The Muslim Women (Protection of Rights on Marriage)] Act,2019. Such

[5] AIR 1995 SC 1531
[6] Ibid p-2
[7] *Supreme court against polygamy*, Indian Express, 6th March, 2018, https://www.newindianexpress.com/nation/2018/mar/18/pil-filed-in-supreme-court-against-polygamy-temporary-marriages-under-muslim-law-1789053.html Last visited June,2018 (last visited May 2023_
[8] Ibid 2
[9] *Supreme court seeks centres response*, NDTVhttps://www.ndtv.com/india-news/supreme-court-seeks-centres-response-on-plea-challenging-triple-talaq-act-2131965, Last visited on 26/02/2020

ISSN 2582-2667

disconsolate practices inevitably leave the wife in acute distress bereft of the security of a home and economic sustenance leading to states of destitution for her and her children. It is not only Hinduism or Islam, *Sati practice and Child marriage to Triple Talaq and Nikah Halala*, wherever such kind of social stigmas prevail, they ought to be removed by hook or crook. The practice of sati reminds us, how heinous can be our customary practice in the name of religion?

the question is, all those practices, with any belief or any form which deprives the right to life, dignity of women with increasing economic deprivation of women in the name of religion, 'are they fundamental to religion'?

SECULARISM AND FREEDOM OF RELIGION

'Secularism' as the basic feature of our Constitution and 'freedom of religion' as enshrined in Art 25-28 of the Constitution as fundamental right are the most important and very precious constitutional provisions and provides the right to every citizen to be governed by their own personal laws. The liberty to profess religious practices and freedom of religion within the secular Constitution has adverse social effect also. 'In a pluralist society like India, in which people have faith in their respective religions, beliefs or tenets propounded by different religious or their offshoots, the founding fathers, while making the Constitution, were confronted with problems to unify and integrate people of India professing different religious faith, born in different castes, sex or subsections in the society, speaking different languages and dialects in different religions and provided secular constitution themselves visualise diversity and attempted to foster uniformity among people of different faiths. This social cohesion was seen as fundamental to economic growth and development. A Uniform Civil Code (UCC), though is highly desirable, enactment thereof in one go perhaps may be counterproductive to unity and integrity of the nation[10].

Religion is not created by any statute or any book, rather is a matter of faith and belief or beyond that, which has been derived from the readings of Holy Scriptures like Vedas, Bible, Quran, Ramayana, Guru Granth Sahib Nevertheless, the bleak Practices in the name of religion are hindrances to the growth of any nation. Freedom of religion ought not to sanction the unreasonable practices which are callous to others. With the passage of time, the country had experienced with many such kind of desolate practices in the name of custom or religion

[10] Lily Thomas Vs Union of India, SC, 2000

ISSN 2582-2667

Nikah halala is another form of religious practice, where a Muslim married woman can't remarry to her ex-husband unless another person get her marry and divorces her. In the B.R Chopra-directed movie *nikah,* both triple talaq and nikah halala have been pictured, where one can understand the real position of a woman in the process of talaq and nikah halala. In this scenario, we can witness both women's empowerment and embargo in their own religion. Similarly, the plight of a Hindu woman is the same, when her husband converts his religion to Islam and gets married during the existence of the previous marriage just to escape from the punishment. Under the un-codified Hindu Inheritance law, before the enactment of the Hindu Succession Act, 1956, a Hindu woman was not entitled for property right. Even before the amendment (2005) to the Hindu Succession Act, 1956, a Hindu female did not have any right to ancestral property in a Hindu Undivided joint family property. Property right is integral to defining the agency of women and enhancing their bargaining power leading to economic autonomy and social protection. There are many such practices in the name of caste, community, religion which are immoral. To eradicate such kind of social stigmas the combined exertion of Legislative action, judicial intervention and social intermediation are required. There are numerous inconsistencies in the personal laws of India and ultimately resulted in social glitches. In Hindus almost all the laws are codified except very few, in case of Muslim Personal Laws, many of the personal laws are un-codified.

In the name of freedom of religion, not only customary practices but also new issues and challenges are emerging. Very interestingly, recently the matter of 'Azaan' and use of microphones as the freedom of Religion were discussed in the High Court of Punjab and Haryana. The tweet of well-known singer Sonu Nigam criticising use of microphones for Azaan was challenged in court as a violation of right to freedom of religion under Article 25 and 26 of the Constitution[11]. 'Public Street' and 'Public Road' were claimed to be a place of worship as a matter of fundamental right i.e., right of freedom of religion[12].

ABUSE OF RELIGIOUS LIBERTY AND UNREASONABLE PRACTICES: GENESIS AND PREVAILING PRACTICE:

[11] Aash Mohammad V State of Punjab and Haryana, AIR 2017,Punjab and Haryana
[12]Hindu Front for Justice Thru. Secy. Ms. Ranjana Agnihotri V Union of India, AIR 2017, Allahabad

ISSN 2582-2667

Our Freedom of Religion and Secularism are the essence of our Constitution and social fabric of our country, at the same time the ugly side of our religious practices are also uncalled-for. One can comprehend the reality, after going through the stories of Roop Kanwar,, Shah Bano, Geeta Rani and Meena Mathur Shayara Bano and so on and so forth. All these stories speak about the abuse of our freedom of religious practices. Shamim Ara[13], a Musllim woman, whose claim for maintenance under section 125 of the CrPC was not granted by the (Family Court) on the ground that, she was already divorced by her husband. The single issue of the case before the Apex court was that, 'whether Shamim Ara can be said to have been divorced or not?' The strange and sad part of the case was the argument of the husband, that he had not communicated talaq by any mode oral or writing, rather in the written statement to these proceedings. The husband had claimed that he had divorced Shamim Ara 15 months before. He claimed the declaration in the affidavit in the written statement to this proceedings to be treated as the communication of divorce 'Should Muslim Wives suffer this tyranny for all times? Should their personal law remain so cruel towards these unfortunate wives? Can it not be amended suitably to alleviate their sufferings? My judicial conscience is disturbed at this monstrosity.'[14]

Freedom of Conversion or Reconversion is another aspect of religious freedom. To convert into Hinduism, bona fide intention to be converted accompanied by conduct unequivocally expressing that intention is sufficient. A person may be a Hindu by birth or by conversion. A mere theoretical allegiance to the Hindu faith by a person born in another faith does not convert him into a Hindu, nor is a bare declaration that he is a Hindu is sufficient to convert him to Hinduism. But a bona fide intention to be converted to the Hindu faith, accompanied by conduct unequivocally expressing that intention may be sufficient evidence of conversion. No formal ceremony of purification or expiation is necessary to effectuate conversion[15].

The Hon'ble Supreme Court held that, a scheduled tribe person Converting to Christianity again professing Hindu religion and if accepted by members, he becomes member of his original caste On reconversion to Hinduism, a person can once again become a member of the caste in which he was born and to which he belonged before conversion to another religion, if the members of the caste accept him as a member. Since the freedom to convert

[13] Samim Ara V State of U.P,SC, 2002
[14] Justice V.R Krishna Iyer, quoted in the Shamim Ara judgment.
[15] In Perumal Nadar (dead) by Legal Representative, Appellant v. Ponnuswami Nadar AIR1971, SC, 2352

ISSN 2582-2667

and reconvert are the freedom of religion, the origin of the conflict there[16]Due to freedom of conversion and reconversion, the conflicting issues have emerged in relation to marriage, divorce, maintenance and inheritance, future of children.

FREEDOM OF RELIGION AND CONFLICTING ISSUES IN PERSONAL LAWS (BIGAMY TO NIKAH HALALA, AGE OF MARRIAGE, REMEDY UNDER MULTIPLE LEGISLATIONS ETC.)

Marriage, divorce, maintenance, inheritance etc. are the base of any religious belief. Because of the secularism and freedom of religion in Articles 25-28 of the Constitution, people in India are governed by their own personal laws with diversified religious ceremonies and practices.. In India, numerous marriage laws prevail under different personal laws. The Hindu Marriage Act 1955,The Special Marriage Act 1954., the TheIndianChristianMarriageAct,1872,The Parsi Marriage and Divorce Act, 1936,The Foreign Marriage Act 1969, The Anand MarriageAct,1909, The Jammu and Kashmir Hindu MarriageAct,1980,The Muslim Women's (Protection of Rights on Divorce) Act,1986, TheDissolutionofMuslimMarriageAct,1939 and many more.

When it comes to rights and duties under the marital laws, the conflicts in marriage laws has been arisen from time to time. In Hindus polygamy is prohibited whereas, among the Muslims in India, it is not so. The Hindu husbands solemnise their second marriage during the existence of the first marriage, under the camouflage of conversion, converting themselves to Muslim religion, which are evident from the real stories (fact of Meena Mathur and Sunita, Geeta Rani, Sushmita Ghosh) recorded in the leading cases of the Supreme Court. (Sarla Mudgal and Lily Thomas). The controversy between the applicability and binding legal obligations under the personal laws, escape from the matrimonial duties and applicability of the penal provision for bigamy i.e., section 494 of the Indian Penal Code penalizing the Hindu husbands, were challenged on the ground of violation of the Fundamental right of freedom of religion as enshrined in article 25-28 of the Constitution.

[16]Sarla Mudgal V Union of India,AIR 1995 SC 1531

ISSN 2582-2667

The core legal issue in these controversies is, whether the conversion would automatically bring an end to the previous marriage?

In the Sarla Mudgal[17] , four writ petitions were filed based on the various real stories relating to bigamy by Hindu husbands without the dissolution of the first marriage by converting to Islam. To analyse the conflicting issues in marriage laws within the religious liberty, it would be prudent to highlight the legal questions raised for consideration by the Hon'ble Supreme Court of India in the case.

- Whether a Hindu husband, married under Hindu law by embracing Islam, can solemnise second marriage before the dissolution of the 1st marriage?
- Whether the apostate husband would be guilty of the offence under section 494 of the Indian Penal Code?

.It was held that the second marriage of a Hindu husband after his conversion to Islam is void marriage in terms of S.494. It is violative of justice, equity and good conscience; said marriage would also be in violation of rules of natural justice(In Sarla Mudgal). Assuming that a Hindu husband has a right to embrace Islam as his religion, he has no right under the Act to marry without getting his earlier marriage dissolved under the Act. The second marriage after conversion to Islam would, thus, be in violation of the rules of natural justice and as such would be void. The expression "void" under Section 494, has been used in the wider sense The second marriage of a Hindu husband after his conversion to Islam would therefore be in violation of the Act and as such, void in terms of section 494, IPC. Any Act which is in violation of mandatory provisions of law is per se void. And the apostate husband would be guilty of an offence under S.494. In such cases the Court shall act and the Judge shall decide according to justice, equity and good conscience. The second marriage of a Hindu husband after embracing Islam being violative of justice, equity and good conscience would be void on that ground also and attract the provisions of Section 494, IPC. The second marriage of an apostate-husband would also be in violation of the rules of natural justice. There was a hue and cry regarding the conflict between the applicability of the Hindu Marriage Act declaring the bigamy of the Hindu persons converting to the Muslim religion and getting married during the existence of the previous marriage as void, the applicability of section 494 of the Indian Penal Code declaring bigamy

[17] Ibid 15

ISSN 2582-2667

as an offence and on the other hand the freedom of religion under Article 25 to 28 of the Indian Constitution. Series of judicial decisions (like Sarla Mudgal vs. Union of India and Lily Thomas vs. Union of India) became the milestone in these areas, reflecting the judicial victory. When maintenance is concerned, the issue was raised about the differential treatment under section 125 of the CrPC and the personal laws of India. All married women were entitled for maintenance in under section 125 (Cr.P.C) with lot of controversies.

UNIFORM AGE OF MARRIAGE:

Recently, the Supreme Court said to examine a matter related to a conflicting issue between the Prohibition of Child Marriage Act, 2006 , The Hindu Marriage Act,1955 , the Special Marriage Act, 1954 and Muslim personal laws . Such kind of conflicts invite numerous issues in society. In this case, the girl was married to a Muslim boy at the age of 16 . The girl's father has lodged an FIR against the boy for kidnapping the girl. The legal question involved here is that as per the Muslim personal laws, a Muslim girl, after attaining the age of puberty (15) gets the right to take decisions about her marriage. At the same time, the age of marriage of a girl is 18, according to the other applicable laws of India. According to the Prohibition of Child Marriage Act, of 2006, this marriage is prohibited. Such kind of issues invite numerous legal issues like FIR against the male person, validity of the marriage, the age to be considered for such marriage to be considered under personal law or other applicable laws, future of the parties I the marriage is declared as void etc. UCC on such matters, can be a valuable way out. It can also pave way for bettering levels of education, health and economic independence for young girls who can significantly contribute and invest in their families and ensure better futures for their children. Maintenance and Conflicts Maintenance for women is another conflicting area for women. The right to maintenance is one of the valuable economic right of women in India. Nonetheless, multiple applicable laws create complications in terms of legal overlapping and as a result the women asking for maintenance are with no law. A long time goes to decide the applicable law and the provision has been misused by the petitioner in claiming maintenance before various forums and under different laws.

ISSN 2582-2667

LEGISLATIVE ACTION, JUDICIAL INTERVENTION AND SOCIAL INTERMEDIATION

Law is an instrument for social change. In the past there are plethora of laws which have played very positive roles for social upliftment, like The Immoral Traffic (Prevention) Act, 1956, The Dowry Prohibition Act, 1961, The Child Marriage Restraint Act, 1929/2006,The Indecent Representation of Women (Prohibition) Act, 1986,The Widow's Remarriage Act,1856,The Commission of Sati (Prevention) Act, 1987, The Protection of Women from Domestic Violence Act, 2005, The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 and many more. If we take the example of the practice of *Sati*, it is believed that the practice of sati / sati glorification was a very long (700-year-old) practice. The practice of sati is beyond the imagination of any mankind. There was a believe that the origin of sati glorification has been attributed to Vedas. In reality this practice stems from the basis of economic insecurity of the woman for the family and community. In 1829, when the constitutionality was not the yardstick to testify the reasonableness of the practice, the effort of Raja Ram Mohan Roy had brought the practice of sati to the limelight and was declared illegal first time by Lord William Bentinck, the then Governor General of the East India Company through the Bengal Sati Regulation, 1829 in British India. Roop Kanwar's sati glorification led to the enactment of state-level legislation to prevent the debauched practice amongst the Hindus. The Sati Prevention Act, 1987 the state-level law of Rajasthan, led to enact the Commission of Sati (Prevention) Act, 1987 by the Parliament. The punishment for the abetment of Sati was death or life imprisonment. (Section 3 of the Commission of Sati Prevention Act, 1987). To remove this social stigma, even an amendment was made to the Representation of People Act, 1951, that if any person convicted by the special court for contravention of the Commission of Sati Prevention Act, 1987, shall be disqualified from the date of such conviction and the disqualification shall continue for a period of five years since the date of his release.

The practice of Child marriage was looked into in different stages. Apart from its social injustice, child marriages deprived the girl child of any possibility of attaining capabilities towards economic freedom. The prevention of child marriage started with the Sarda Act and finally resulted in the enactment of The Child Marriage Restraint Act, 1929 and replaced by the Child Marriage Restraint Act, 2006 with suitable changes according to social needs. At present, the Triple Talaq Act 2019 has been passed by the lower house of the Parliament and

ISSN 2582-2667

awaiting for approval in the upper house of the Parliament. In between the Bengal Sati Regulation 1829 and the Triple Talaq Act 2019 numerous legislations have been enacted to remove evil practices from the society.

JUDICIAL APPROACH

In parallel, the role of the Judiciary is very efficient in bringing social reformations with the pronouncement of landmark and leading judgments with guidelines and special directions. In particular, in response to the unfounded practices in the name of religion, the Supreme Court of India has been playing a key role. When the conflict of maintenance law came before the Court, the issue was raised about the differential treatment to the all married women under section 125 of the CrPC and the diversified personal laws of India. These reflect the persistent Gender gap in literacy, high drop out rate among girls in the secondary level, gender gap in women participation rates in labor force, low financial inclusion, low ranking in gender gap index etc.

With regard to the controversy of the maintenance right of a Muslim woman under section 125 of the CrPC, the Hon'ble Supreme Court had taken a very strong stand while considering the issue of the conflict between the provisions of section 125 of the CrPC and that of the Muslim Personal law on the liability of Muslim husband to provide the maintenance to his divorced wife. The Hon'ble Supreme Court held that, she is entitled to get maintenance under section 125 of the CrPC. (Shah Bano Judgment) The Shah Bano judgment was overturned by the legislation i.e. the Muslim Women (Protection of Rights on Divorce) Act, 1986.

Similarly, with regard to bigamy by non-Muslim husbands converting to Islam, the Hon'ble Supreme Court held that, the second marriage of a Hindu Husband after conversion to Islam, without having his first marriage dissolved under law would be invalid. The second marriage would be void in terms of the provisions of section 494 of the IPC, and the apostate husband would be guilty of the offence under section 494 of the IPC. Also, the Apex court said the Government may also consider enacting the Conversion of Religion Act. It was further held that every citizen who changes his religion cannot marry another wife unless he divorces first wife and the provision should be applicable to every person whether he is a Hindu or Muslim or Christian or a Sikh or a Jain or a Buddhist. Also provisions be made for maintenance and

ISSN 2582-2667

succession etc. to avoid the clash of interests after the death. (Sarla Mudgal Judgment).The Hon'ble Supreme Court [18]pronounced that, the marriage between the parties has not been dissolved by mentioning about talaq in the written statement of the proceedings without any pronouncement orally or in writing and the payment of maintenance to be continued until the obligation comes to an end by law.

In the landmark judgment (Shayara Bano Judgment), the Hon'ble Supreme Court declared, that the practice of Instant Triple Talaq is arbitrary and in violation of the fundamental right under Article 14 of the Constitution of India. The practice of Triple Talaq under section 2 of the Muslim Personal Law Shariat Application Act,1937, in so far as seeks to recognise and enforce Triple Talaq is within the meaning of the expression 'laws in force' in Article 13(1)and must be struck down as being void. It was declared void on the narrower ground of it being manifestly arbitrary[19]. In response to the PIL, the Hon'ble Supreme Court has asked the Centre and the law commission to make their stance to abolish the practices of polygamy and Nikah halala. (The bench of the Apex court headed by CJI Justice Dipak Mishra)

Social activism is also a very important instrument to eradicate such kind of social hindrances. If we examine the social reformations 19th to 20th century the social obstacles like the practice of sati, women's education, child marriage, property right of women, widow remarriage, cast system and untouchability, bonded labour and many others have been eradicated from society by active participation of the social reformers. Few names are always being remembered like Raja Ram Mohan Roy, Pandit Ishwar Chandra Vidyasagar, Swami Dayanand Saraswati, Dr. Atmaram Panduram, and Justice Mahadev Govind Ranade for the movement of social reformation in India, which was missing for some time.

There was a report [20] (Bangalore Mirror) to overcome the uncertainty over the applicability of Muslim Personal law in the Indian Judiciary; several Muslim couples are opting for divorce declaration certificates from the family courts. This they do to avoid disharmony after the divorce. There is no centralised system in the community hence Muslim couples are approaching the family court. The Muslim Personal Law (Shariat) Application Act was

[18] Ibid 12

[19](The then CJI J. S Khehar, Justice Kurian Joseph, Justice R.F Nariman, Justice U.U Lalit, Justice S. Abdul Nazeer)

[20] *Muhammad Akbar Shariff, President Discover of Islam Educational Trust,* 12/04/2018, http://bangaloremirror.indiatimes.com/bangalore/others/parting-muslim-couples-take-the-legal-path-to-make-it-firm/articleshow/52841415.cms

ISSN 2582-2667

passed in 1937 with the aim of formulating an Islamic Law Code for Indian Muslims. The British, who were at this point of time governing India, were trying to ensure that Indians be ruled according to their own cultural norms. (Bangalore Mirror, Muhammad Akbar Shariff) .While introducing the private member's bill on triple talaq, i.e., The Dissolution of Muslim Marriage Bill,2016, Mr Dalwai said, 'India must join the league of many other Muslim countries like Iraq, Turkey and our neighbours Bangladesh and Pakistan, which have codified the law related to divorce thereby bringing certainty and removing discrimination in the application of personal laws[21]. (The Telegraph, Hussain Dalwai, Private Bill on Talaq)

THE TRIPLE TALAQ ACT/ {THE MUSLIM WOMEN (PROTECTION OF RIGHTS ON MARRIAGE) ACT, 2019 AND THE PRIVATE MEMBER'S BILL, I.E. THE DISSOLUTION OF MUSLIM MARRIAGE BILL, 2016}: A LEGAL SCRUTINY

On 28th December 2017, The Muslim Women (Protection of Rights on Marriage) Bill 2017(Bill 247 of 2017) was passed in the lower house of Parliament. The proposed legislation became very controversial after being tabled in the Upper House of the parliament. Considering the pronouncement of talaq as cognisable and non-bailable is a very affirmative approach. As per the judgments of the Hon'ble Supreme Court, triple talaq is unconstitutional and void ab initio. So, there is no impact on the existence of the marriage after the pronouncement of triple talaq. The word 'void' (section 3) makes the pronouncement of triple talaq *void ab initio*, which is null and has no legal effect and most importantly, which can never be enforced by law. The use of the word *void* gives no legal sanction to the pronouncement of triple talaq. The section enables to nullify the pronouncement of the triple talaq. The combined reading of the Hon'ble Supreme Court verdict (Shayara Bano) with the word 'void' shall make the pronouncement of talaq unenforceable. Punishment for the pronouncement of talaq, would be required if any person will act out after the pronouncement of talaq. Similarly, the requirement of subsistence allowance and custody of children do not arise unless and until any person has not acted out after the pronouncement of talaq. The legal understanding of the section is, only if any person will act out after pronouncement of talaq, then the want of subsistence, and custody of children during his punishment has to be

[21] The Telegraph, Hussain Dalwai, Private Bill on Talaq

ISSN 2582-2667

mentioned. 'Punishment for pronouncing talaq' (section 4) requires more attention and analysis. This Act is very essential for our country, and as 66 cases of triple talaq have been reported even after the judgment of the Hon'ble Supreme Court. This piece of Legislation has shown success. According to a news report[22] the cases of instant triple talaq has been dropped by 80 %. The Supreme court will hear the petitions filed challenging the constitutional validity of this Act in November 2023[23].

Private Member's Bill on Triple Talaq

The Dissolution of Muslim Marriage Bill,2016 (bill no XL of 2016), which was introduced as a *private member's bill* in 2016, speaks about the re-enactment of the Dissolution of Muslim Marriage Act,1939 in order to ensure that the Muslim women have equal opportunities to dissolve the marriage. This piece of legislation with 21 sections provides the grounds of divorce both for husband and wife. It provides the procedure, jurisdiction for the dissolution of Muslim marriage. Section 17(2) of the proposed bill would stop the nikah halala, which says that no Muslim woman shall be compelled to undergo a consummated marriage, and subsequent dissolution of that marriage in order to remarry a man with whom she was married earlier and that marriage is dissolved. [sec 17(2)]. Similarly, the proposed bill does not allow any other mode of dissolution of marriage outside the court. Any kind of dissolution of marriage by whatever name called initiated outside the court shall be concluded only through the procedure mentioned under section 9 [sec 11]. Section 11 indirectly prohibits the triple talaq. This bill could have been considered while enacting the Triple Talaq Act, 2019.

DOES INDIA NEED A UNIFORM CIVIL CODE?

Whether Uniform Civil Code is the ultimate riposte for the issues of Personal Laws? Can Practice of Sati to Triple Talaq and Bigamy to Nikah halala be resolved through a Uniform Civil Code? Since the Shahbano judgment (1985) to Shayara Bano judgment (2017), one of the core issue which has been raised time and again in the judicial forum is the demand for the formulation of the Uniform Civil Code. In these legal battles and judicial pronouncements , the issue has been

[22] "*Cases of Triple Talaq Dropped by 80% After Enactment of Law: Naqvi*," NDTV accessed May 1, 2023, https://www.ndtv.com/india-news/cases-of-triple-talaq-dropped-by-80-pc-after-enactment-of-law-naqvi-2499994.(May 1, 2023)

[23] *Supreme court to hear batch of pleases*; THE DAILY GUARDIAN https://thedailyguardian.com/supreme-court-to-hear-batch-of-pleas-in-november-2023-challenging-triple-talaq-law/, accessed on 5th May,2023.

ISSN 2582-2667

raised again and again to formulate the Uniform Civil Code in India to tackle the conflicts in personal laws. But the biggest challenge before the Government of India would be the formulation and implementation of Uniform Civil Code. Most of the controversies related to UCC involve both religious feelings and the acts of secular nature. In 1954, the then Prime Minister of India Pandit Jawaharlal Nehru while introducing the Hindu Code Bill instead of a Uniform Civil Code said, 'I do not think that at the present moment, the time is ripe in India for me to try to push it (Uniform Civil Code) through'. 'A common Civil Code will help the cause of national integration by removing the disparate loyalties to law which having conflicting ideologies' (the then CJI Justice YV Chandrachud). The debate of Uniform Civil Code started after the judgment of the Apex Court in 1985 (Shah Bano judgment).It is very difficult to unify all the diversified practices under the different religions. India is a country with numerous, language, culture, tradition and customary practices as recognised by the practices under the personal laws. Even, the harmonisation of the religious and customary practices in one community or in a single religion is hard-hitting. So, it will be difficult for the Government to bring all practices together under one law? Without discussing the legal aspects of the 'secularism' under the preamble of the Constitution, 'Freedom of Religion' as fundamental right and the 'Uniform Civil Code' under the 'Directive Principles of State Policy', it can be stated that very unpretentious approach should be given to the introduction of a Uniform Civil Code in India, as Secularism, Freedom of religion and Uniform Civil Code are sensitive socio legal issues of the Indian society. Ours is a Secular Democratic Republic. Freedom of religion is the core of our culture. Even the slightest deviation shakes the social fibre. 'But religious practices, violative of human rights and dignity and sacerdotal suffocation of essentially civil and material freedoms, are not autonomy but oppression.' Therefore, a unified code is imperative both for the protection of the oppressed and the promotion of national unity and solidarity. (Justice R.M. SAHAI in Sarla Mudgal case)

'The respective personal laws permitted by the British to govern the matters relating to inheritance, marriages etc., only under the Regulations of 1781 framed by Warren Hastings. The Legislation - not religion - being the authority under which personal law was permitted to operate and is continuing to operate, the same can be superseded/supplemented by introducing a uniform civil code for all the citizens in the territory of India. The successive

ISSN 2582-2667

Governments till date have been wholly remiss in their duty of implementing the constitutional mandate under Article 44. Therefore, Supreme Court requested the Government of India, through the Prime Minister of the country to have a fresh look at Article 44 of the Constitution of India and "endeavour to secure for the citizens a uniform civil code throughout the territory of India." (Justice Kuldip Singh)

In realistic view, the practices under any personal/religious law are so deeply rooted, it is very difficult to unify the practices. When it comes to Uniform Civil Code, it will take another couple of decades to change the mindset of the people and bring all religious practices under the Uniform Civil Code in the matters of personal in nature like marriage, divorce, maintenance, adoptions etc. Instead of thinking for a Uniform Civil Code, the Government of India must constitute high-power committees to look into the controversial usage and practices in each religion and recommend for suitable changes in legislation and introduce specific Codes for each religion, which may be workable for few decades focusing few questions: Why these practices? What is this practice? How can it be eradicated?

The UCC can positively bring uniformity in certain conflicting areas like Maintenance, Divorce, Succession and Inheritance Law, Age of Marriage etc, In Rajnesh Vs Neha[24] the Supreme Court has passed directions to bring uniformity in conflicting issues of overlapping of jurisdiction in maintenance applications under the multiple laws and in bringing uniformity in the orders of Family Court, Magistrate Court, District Court throughout the country and has made mandatory for the applicant to disclose about the previous orders and proceedings in maintenance matters. Recently the Supreme court has dismissed the PIL filed to challenge the decision of the State forming committees for the enforcement of UCC. The Supreme Court held that there should not be any objection if states form committee for enforcement of UCC, because the subject matters of ‘marriage and divorce’ are mentioned in entry 5 of concurrent list of schedule VII of the Constitution.

CONCLUSION

Personal Laws exist in custom and practice and derives its validity from its reasonableness. Any practice, which in any form is disparaging is irrational and any custom which is unreasonable are constitutionally invalid. Without giving any colour of religion, caste, creed,

[24] Supreme Court, 2020

ISSN 2582-2667

it should be removed from the society with cohesion. Various practices in the name of religion like practice of sati, child marriage, nikah halala, Triple Talaq etc should not be seen either as civil wrong or as criminal act rather very serious and sensitive socio-legal issues or violence against women in the name of religion. As held by the Hon'ble Supreme Court, the triple talaq is not integral to religious practice and violates Constitutional morality. Even as per the judgment, the holy Quran has attributed sanctity to permanency of marriage. It is a matrimonial offence against women. In case of various past instances, bigamy by Hindu husbands after conversion was declared illegal (Sarla Mudgal judgment, Lily Thomas judgment) and bigamy has been criminalised.

After a comprehensive assessment, it can be concluded that, at any point of time, whenever any issue or challenge relating to the socially absurd incidents due to abuse of religious freedom has been brought to limelight, there has been the instant judicial intervention followed by a legislation. Subsequent to any legislation, a social assessment must be done to know the social impact and effectiveness of the legislation. The first and foremost problem in our country is ignorance of law. Lack of awareness is the imperceptible reason. Even after the Child marriage Restraint Act, the child marriages are prevalent. The Hon'ble Supreme Court expressed consternation over an alarming figure of 23 million of child brides in the country and said that one out of every five marriages contravened the Child Marriages Restraint.[25]. Legal literacy campaign about the law and rights with duties, can have greater impact. Accountability at different levels of the Governance system must be the feature of all socio welfare legislations.

'The interpretation of a legislation, obviously intended to protect a weaker section of the community, like women, must be informed by social perspective and purpose and within its grammatical flexibility, must further the beneficial object. Since infallibility is not an attribute of the judiciary, the view has been ventured by Muslim jurists that the Indo-Anglian judicial exposition of the Islamic law of divorce has not exactly been just to the holy prophet or the

[25] "23 million child brides in India, Supreme Court expresses dismay." (2018, January 2). Retrieved from http://www.livemint.com/Politics/PRft3fAiTAnZj6KVZR3FHN/23-million-child-brides-in-India-Supreme-Court-expresses-di.html

ISSN 2582-2667

holy book. Marginal distortions are inevitable when the judicial committee in Downing Street has to interpret Manu and Muhammad of India and Arabia' (Justice V .R. Krishna Iyer)

In the present scenario, the Government, must step in to rewrite the personal laws, by constituting high power expert committees. This is the high time to remove the anomalies and to make corresponding amendments to the major laws of the Country to tackle these issues.

The attempt for Uniform Civil Code is an option nonetheless very careful approach is required. The area of personal law is a socially and personally sensitive matter. The diversified and scattered custom and practices are deeply rooted in our society. Unification of all personal laws together would be a big challenge. The chairman of 21st Law Commission of India Justice Balbir Singh Chauhan said, 'UCC is not possible and even not an option[26]. With the existing plethora of legislations in India, enactment of many small pieces of legislations would create inconsistencies amongst the common man and incongruities for the implementation.

The 22nd Law Commission of India has started the process of public consultation for the Uniform Civil Code. The idealistic approach would be to bring UCC phase wise. In the first phase, the Government should identify the harmful, discriminative religious practices in different religious laws and provisions must be brought in the UCC to eradicate them. In the second phase the UCC may introduce a Code covering all religions. A complete code for every religion would maintain the balance between the religious right and social equilibrium. Unified Specific Personal law Codes within UCC for all Indians like a Hindu Code for the Hindus, a Muslim Code for Muslims in the matters of personal nature would solve the purpose for few decades. Today's embryonic religious issues are the key for tomorrow's national and international issues. A thorough reading of Article 25 manifests that 'freedom to profess religion is subject to public order, morality, and health. So, the time has come to elucidate all these issues under the scanner of constitutional validity and to protect the society from such atrocious practices and to make the country free from all these legal incongruities.

[26] "*Uniform Civil Code is Not Possible, It's Not Even an Option: Law Commission Chairman,"* News18. aDecember 5, 2017, https://www.news18.com/news/india/uniform-civil-code-is-not-possible-its-not-even-an-option-law-commission-chairman-1595623.html.

ISSN 2582-2667

LAW AND ECONOMIC ANALYSIS OF SERVICE CHARGE IN RESTAURANTS

Niharika Agarwal and Diya Parikh[1]

ABSTRACT

The levy of service charge in India is at present highly contented, which has led to a war of words among various authorities of the country. This paper investigates three scenarios through an economical lens and within the boundaries of the consumer rights. The pros of the three scenarios are then weighed against its cons to reach a final recommendation of the study which in turn also proves all the three scenarios which are contended in the country at present as economically inefficient. The findings of the study show that the first scenario of tipping is proved inefficient as India does not have a strong tipping culture leading to undertipping, along with that tips are only realised to the front-end workers and not the back-end workers or the cleaning staff. Secondly, the next scenario contemplates on mandatory service charge being added by default to the bill itself which is proved inefficient as it takes away the discretion of the consumers and also leads to deception of consumers resulting in the violation of consumer rights and reducing consumer surplus as a high cost. Finally, the paper looks into the aspect ofthe service charge being added within the price of the food itself, being inefficient because a part of the producer surplus is lost as rent paid due to revenue sharing clauses in lease agreements and the consumer being worse off due to lack of discretion in price paid for service.

Keywords*: service charge, economic efficiency, tipping, consumer rights*

[1] Students, Gujarat National Law University, Email: niharika21bal045@gnlu.ac.in; diya21bal093@gnlu.ac.in.

ISSN 2582-2667

1. INTRODUCTION

'Service Charge,' these two unholy words have recently sparked a heated debate in India surrounding the levying of service charge by hotels and restaurants on food services provided to customers. The academic discourse has included propositions on three broad scenarios: whether remuneration for good service should be encouraged through tipping, mandated through the levy of service charge through the bill itself, or included in the prices of food items as presented on the menu. The crux of the debate lies in the ambiguity regarding the legality of levying a service charge and its implications for the two primary stakeholders: restaurants, i.e. the producers, and consumers. Various authorities in the country, including the Central Consumer Protection Authority, the Delhi High Court, and the Union Food and Consumer Affairs Department of the Government, have given their individual and conflicting inputs on the topic creating further uncertainty. This unresolved legal grey area provides an opportunity to delve into the law and economic analysis of the three scenarios, taking into account concepts such as maximisation of market surplus, true price disclosure, and incentivisation of service providers, to achieve clarity on the topic and provide recommendations for an efficient outcome.

Contextual Background

On the 4th of July, 2022 the Central Consumer Protection Authority (herein after CCPA) had issued guidelines on grounds of section 18(2)(1) of the Consumer Protection Act, 2019 barring hotels and restaurants from levying a service charge by default, upon receiving several complaints from consumers for the same, in the interest of the protection of consumer rights.[2]

The Federation of Hotel and Restaurant Associations of India (hereinafter FRAI) and The National Restaurant Association of India (herein after NRAI) challenged these guidelines through a petition filed in the Delhi Hight Court. On 20th July, 2022 the Delhi High court in response to the petition ordered a stay to be imposed on CCPA's guidelines arguing that service charge did not violate consumer choice and upholding the legal validity of the practice. Justice Yashwant Varma, directed the CCPA to file its reply and listed the issue for further deliberation

[2] Central Consumer Protection Authority, Guidelines to prevent unfair trade practices and protection of consumer interest with regard to levy of service charge in hotels and restaurants, 2022, F.No. J-25/57/2022-CCPA (Issued on July 4,2022), https://consumeraffairs.nic.in/sites/default/files/file-uploads/latestnews/Guidelines%20to%20prevent%20unfair%20trade%20practices%20and%20protection%20of%20Consumer%20Interest%20with%20regard%20to%20levy%20of%20service%20charge%20in%20hotels%20and%20restaurants.pdf.

ISSN 2582-2667

on 25th November, 2022. The Delhi High Court also sent a notice to the Ministry of Consumer Affairs awaiting their input on the matter at hand[3].

Piyush Goyal on behalf of the Ministry of Food and Consumer Affairs asserted that restaurants may increase the rates on their food menus as an alternative to service charge which cannot be imposed[4].

In the contemporary context of the conflicting and unsettled views of the various authorities, this study becomes significant to analyse the arguments made by said authorities of the country and through the application of relevant economic tools study the costs and benefits of every scenario thereby determining a solution that is most efficient for all stake holders involved. The purpose of the study is to strike a balance between the protection of consumer rights, and also upholding the objective of service charge or tipping which is to incentivise the service providers to work better and reap the benefits of the same.

Statement of the Problem

The problem at hand lies in the absence of a solution which protects the interests and rights of all stakeholders impacted by the levying of service charge which also falls within the ambit of the law. Each of the scenarios proposed by the various authorities has been strongly opposed by a particular stakeholder resulting in ambiguity and dissatisfaction.

This paper thus aims to take into consideration all arguments put forth to arrive at a conclusion which will help in clarifying what the legal position ought to be so as to solve this problem in an economically efficient way which can satisfy all the involved stakeholders.

Structure of the Study

The paper will first review existing literature on the topic of contention, identifying and emphasising on the glaring gap in the literature. Further, the paper will establish the hypothesis, scope and objective of the current study for clarity.

The paper then establishes the importance of a remuneration for workers through tips or a

[3] National Restaurant Assn. of India v. Union of India, 2022 SCC OnLine Del 2172 [hereinafter "National"].

[4] PTI, *Restaurants can't impose 'service charge' to food bills: Piyush Goyal*, THE HINDU (June 03, 2022, 18:19 IST), https://www.thehindu.com/news/national/restaurants-cant-impose-service-charge-to-food-bills-piyush-goyal/article65491118.ece [hereinafter "PTI"].

ISSN 2582-2667

service charge and their primary objective thereby establishing the foundation of the entire study.

After establishing preliminary points, the paper analyses each of the following scenarios correlating to the legal stance of each authority using relevant economic tools:

1. If discretionary tipping was the law.
2. If including service charge in the prices of the food items was the law.
3. If service charge added mandatorily to the bill by default was the law.

After having established all the pros and cons of each scenario, the paper intends to weigh them for an economically efficient outcome. Lastly the paper arrives at a conclusion on the basis of which it makes various recommendations.

2. RESEARCH QUESTION

From a law and economics perspective what should the law pertaining to the levy of service charge in alternative to tipping be, for an economically efficient outcome for all involved stakeholders?

Scope

- The scope of the study is limited to the consumer behaviour trends existing in India.
- The assumptions made and models established in the proposed study cannot be appliedto any other socio-economic model other than India.
- The paper is constrained by the limited secondary data available on consumer trends,since this paper is purely doctrinal in nature.
- The scope is limited to the Indian legal framework.
- The paper assumes the primary objective of service charge to be the incentivisation ofworkers to provide better quality services.
- The paper does not account for other legal aspects, but purely aim to reach aneconomically efficient conclusion.

Objective

- The paper primarily aims at determining the most economically efficient means of incentivising workers to provide better quality services.

ISSN 2582-2667

- The paper intends to fit this economic analysis within the ambit of the Indian Legal framework and cultural context for it to be possible to implement.
- This paper aims to determine whether or not the levy of mandatory service charge is economically deceptive or not as contended by the CCPA
- This paper aims to analyse which scenario helps fulfil the primary intent ofincentivisation of workers
- This paper therefore aims to compare the pros and cons of the various proposedscenarios and make recommendations on the same.

3. LITERATURE REVIEW

1. Published by American Economic Association, the paper talks about the existence of awide spread market that exists because of tipping. The paper attributes tipping not justto its economic implications but also establishes the psychological and behavioural aspects of consumers that come into the picture. The paper then establishes economic behaviour upon these consumer aspects. The paper proposes tipping to be a welfare increasing and sustainable social norm [5]. This paper limits itself to the scenarios wherethere already exists a strong tipping culture which is not present in India.
2. Published on behalf of the Canadian Economics Association this paper engages into the consumer behavioural aspect with respect to tipping. The paper revolves around the question, whether people tip strategically, to improve future services or only because tipping is a social norm. To which the paper attributes that if future service was the reason for tipping the sensitivity of tips to service quality should be higher for repeatingcustomers than for non-repeating customers., thus suggesting future service is not a reason for tipping [6]. The study proves contrary to the basic objective of tipping for whichit was introduced as a social norm.
3. This paper studies which pricing alternative to tipping is most suitable to adopt if and when restaurants decide to abandon voluntary tipping. The participants of the study rated menus with service charge being added to the bill by default over service charge included prices when the service charge component was below the 15% tipping rate. However, the reverse was true when the service charge component was above 15%. The study explored how these practices impeded

[5] Ofer H.Azar, *The Economics of Tipping*, 34 THE JOURNAL OF ECONOMIC PERSPECTIVES, 215-236 (2020), https://www.jstor.org/stable/26913191.
[6] *Id.*

ISSN 2582-2667

participants' menu price judgement.[7] The study establishes the consumer behaviour with respect to service charge added bydefault to the bill and service charge being added in the price of the food.

4. A study conducted on a model based in Kenya explores the interrelation between customer tipping behaviour and its inspiration on foodservice empathy. The findings ofthe study reveal a substantial association between rewards for perceived service and food service empathy, but they were unable to detect a meaningful relationship betweenincentives for better future service or social norms[8] This paper is again in contrary tothe objective of the introduction of tipping to be used as a social norm.

Gap in literature

There exists ample literature investigating upon the consumer behavioural trends when it comes to tipping or service charge of international clientele market however there exists little to no literature which analyses the same behavioural trends in the Indian socio legal atmosphere. Moreover, there is shortage of literature of any kind on the specific topic of this paper which engages in an economic analysis of Indian laws with respect to the levy of service charge. This paper aims to address this glaring literature gap by conducting a law and economics analysis limited to the Indian consumer behaviour trends.

METHODOLOGY

This research paper employs a law and economics interface to address the research question.

Economic Tools

This paper employs various economic models, theories, and tools to analyse the three proposed scenarios of levy of service charge. Economic concepts of demand-supply, cardinal utility approach, consumer behaviour, market economics and cost benefit analysis have been employed to adequately answer the research question.

[7] Shuo Wang, *The Effects of Service Charges Versus Service-Included Pricing on Deal Perception,* 20 JOURNALOF HOSPITALITY & TOURISM RESEARCH, 1-9 (March 5, 2014), https://www.researchgate.net/publication/261721146_The_Effects_of_Service_Charges_Versus_Service-Included_Pricing_on_Deal_Perception [hereinafter "Shuo"].

[8] Simon Were, *Restaurant tipping behavior and its inspiration on food service empathy: a focus on two- and three-star hotels in Kenya,* 35 INTERNATIONAL HOSPITALITY REVIEW, 57-69 (2021), https://doi.org/10.1108/IHR-07-2020-0026.

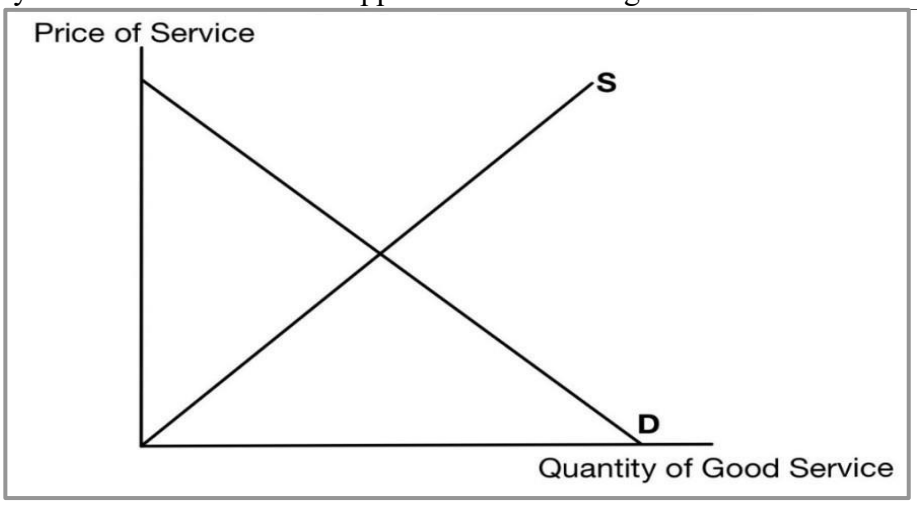
ISSN 2582-2667

Doctrinal

This paper uses secondary data and information from various credible sources including published research papers, articles, government resources to corroborate the theories presented and apply them to the relevant context, in an attempt to answer the research question.

5. STATUS QUO

Tipping as a concept evolved in the 17th Century, in the form of giving staff a small amount of money to incentivise and show appreciation for their good service. The word 'tip' itself



evolved in the 18th Century, from the phrase 'To Insure Promptitude'[9] Tipping provides an incentive to workers to produce good quality services which ensuring better service to be enjoyed by the consumers. This in turn ensures growth of consumer welfare along with a fair remuneration for the staff who usually come the lower rungs of society.

However, it is an established fact that Indians are culturally not very generous tippers. Hence this induced restaurants to start adding service charge to the bills as an alternative to relying on tips solving the problem of stingy tipping. Therefore service charge was introduced keeping in mind the same objective of incentivization[10].

In the status quo, it is known that various restaurants in the country based on their discretion either levy a mandatory service charge or rely on the voluntary tips of their consumers.

These can be analysed graphically through the basic model shown above, which has been used throughout the paper for economic analysis. The figure above depicts this concept's demand

[9] Shephali Bhatt, *A look at the evolution of tipping culture*, THE ECONOMIC TIMES (Dec 01, 2018, 11:15 PM IST), https://economictimes.indiatimes.com/industry/miscellaneous/a-look-at-the-evolution-of-tipping-culture/articleshow/66900516.cms?from=mdr.

[10] *Id.*

ISSN 2582-2667

and supply curves and establishes the foundation of all economics models graphically depicted ahead. In the figure given above, the X axis denotes the Quantity of GoodService provided the staff who are the producers. In essence, a higher quantity of good servicerelates to a better quality service, while a lower quantity of good service relates to a poor qualityof service. The Y axis establishes the price paid at the end of the meal for the service received.

The diagram portrays the demand curve as downward sloping because the consumers demand higher quantity of Good Services at lowers prices of tipping or service charge so as to ensure utility maximisation i.e. the inverse relationship between quantity demanded and price.

Further if at any point of mandatory service charge the price of service charge falls it will increase a demand for the restaurant thereby increasing the demand for quantity for Good Services. Lower prices of service charge increase the affordability of the restaurants therefore increases the demand for quantity of Good Services.

Further it can be seen that the supply curve is upward sloping indicating a direct relationship between price and quantity supplied. With increasing price of service charge or tipping the supply for quantity of Good Services increases as a result of incentivisation. With a gain in prices of Good Services, it leads to an increased desire among the producers to produce more of the same so as to ensure profit maximisation.

6. SCENARIO 1: TIPPING

Position of the authorities on tipping

The CCPA highly recommends the conventional system of tipping which ensures maximum consumer benefit by allowing the consumers to tip on their own discretion in direct correlation to the satisfaction that they obtain based on the quality of service provided. In this scenario the CCPA argues that the consumers are not deceived in any manner and can chose to spend only that much for tipping that they seem fit to the quality of service they have received. In this context, the CCPA has issued guidelines which stops hotels and restaurants from adding service charge automatically or by default in the food bills to prevent any 'unfair trade practice' and ensure protection of consumer rights as laid down by the Consumer Protection Act, 2019.[11] The arguments advanced by the NRAI and the FRAI against tipping state that the tips are onlygiven to the front-end workers however the final output of good quality of service is a combinedeffort of the back-end workers and the cleaning staff. Thus, the distribution of the tips is unequitable

[11] National, *supra* note 2.

ISSN 2582-2667

and unfair to a particular set of stakeholders all together[12]

Tipping Culture in India

One may observe in common practice that not many of us are good tippers. In most situations we either undertip or we end up not tipping all together. The Indian tipping culture lacks the societal backing, that exists in most of the other international countries. This is indicated both by empirical data and various restaurant owners who have commented on the tipping trends in India:

"People usually leave 6-7% of the bill amount as tips," says one such Mumbai based restaurant owner Tanu Narang. This is far below international standards which calls for 15 – 20% of the bill. "*Tip for restaurant staff must be 10-15% of the bill in India"* says Pria Warrick a Delhi based corporate etiquettes trainer. Liji Thomas, Director, Nouvo Image Consultancy, says, *"Indian customers tip better when they pay through their corporate credit cards. But otherwise, theamount is too little.*[13][12] Another survey on tipping culture in India was conducted among 1400 respondents by TripAdvisor India. The survey indicated that Indians were the least generous tippers in comparison to other international countries, with only around 35% of Indian customersactually tipping. Nikhil Ganju, country manager, TripAdvisor India commented, *"It is strange tonote that our perception of Indians as a community of generous tippers is very low, with only 15%respondents indicating Indians are generous tippers."*[13]

Further 47% respondents said they tip if the staff have met basic expectations, 40% said they only tip if they have gone that extra mile in their service. "It also seems that people feel obliged to tip as a social norm or courtesy as 35% respondents agreed they tipped simply because they think it's expected,".[14] Taking into consideration the comments provided by stakeholders of the industry and the secondary data that has been provided, one can come to the conclusion that the tipping culture in India has definite scope for improvement. It can be noted that the Indian tipping culture does not realise the objective of tipping in the first place as it is not adopted by most Indians.

[12] Arnab Dutta, *India's restaurant body calls service charge guidelines illegal,* BUSINESS TODAY (Jul 06, 2022, 12:40 PM IST), https://www.businesstoday.in/latest/economy/story/indias-restaurant-body-calls-service-charge-guidelines-illegal-340493-2022-07-06.

[13] Bindisha Sarang, *The complete guide to tipping,* THE TIMES OF INDIA (Jan 5, 2015, 05:15 IST), http://timesofindia.indiatimes.com/articleshow/45755289.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst.

[14] *Indians fear 'cheap' tag, tip liberally abroad,* THE ECONOMIC TIMES (Jul 27, 2013, 06:37 AM IST), https://economictimes.indiatimes.com/indians-fear-cheap-tag-tip-liberally-abroad/articleshow/21387177.cms?from=mdr.

ISSN 2582-2667

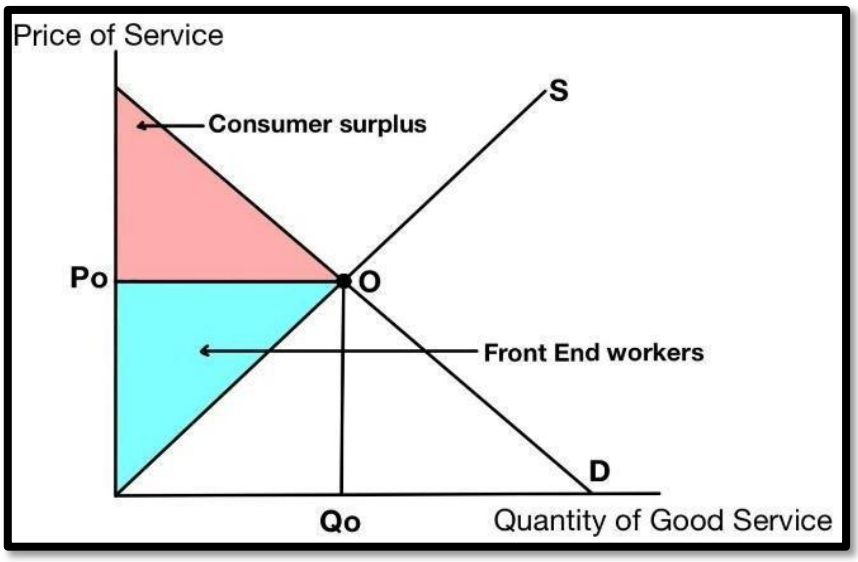
Analysis of Tipping

One of the biggest benefits of tipping compared to the other two scenarios that willbe discussed below is that the consumer gets to retain its discretion. This allows the consumer topay in direct proportion to the utility that he/she feels has been obtained based on the quality of theservices provided. In an optimum scenario where we ignore the bleak tipping culture in India thisscenario would be the most ideal situation for both the parties which are the consumers as well asthe producers as they are in part delicto indicated by an equal consumer surplus and producer surplus *(explained economically through Fig 1)*. However, there are few cons of this scenario which make it an economically less efficient option to opt for. The cons include:

1. The lack of a strong tipping culture in India there by leading to undertipping. As consequenceof this, the incentive to work with which the staff members provide their services to the customers are not rewarded with an equitable tip. Thus, the staff members end up workingmore in expectation of a higher tip however they are given a significantly lower tip. This leads to dissatisfaction among the service providers which debunks the main objective of tippingwhich is the incentive to provide better services. This also leads to a significant loss in theproducer surplus. *(Explained economically through Fig 2)*
2. The tips are only directed towards the front-end workers thus the earnings are not realised tothe back-end workers and cleaning staff which too contribute to the overall quality of services. Due to this an entire stakeholder is not engaged in the profit sharing, which makes it unfairand against the rights of the staff.

Economic Analysis of Tipping

The above provided rationale can be economically analysed for its impact on all involved stakeholders.



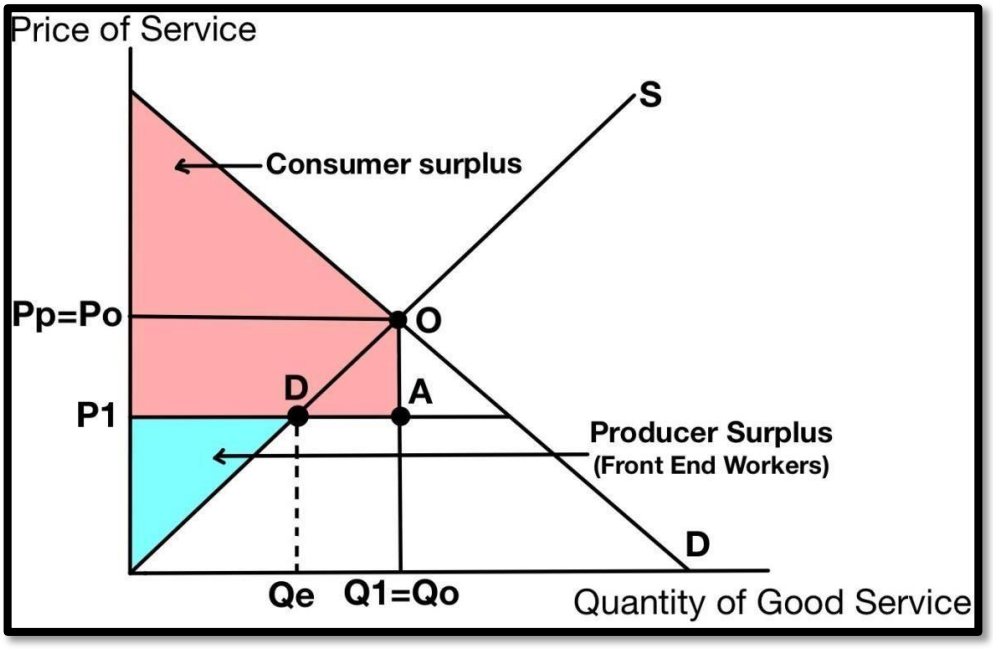
ISSN 2582-2667

The impact of tipping, in an ideal scenario can be graphically represented as shownbelow:

Fig 1 Market of Tipping when culture of undertipping is ignored

In the diagram above, the Y axis in this scenario denotes the price of tips. The X axis denotes the quantity of Good Service that would ideally be provided at the specific price of tip that is given by the customer. Point 'O' represent the equilibrium point of the demand and the supply curve which also denotes the point at which the current market is operating. 'Po' is the point which denotes the optimum tip from a consumer for the optimum quantity of Good Services provided by staff members which is denoted as 'Qo'. Here the utility derived by the customer for optimum quantity of Good Service provided is equivalent to the optimum price, and the consumers are willing to pay this price. In this scenario there is pareto optimality between consumers and the producers, depicted by the equal consumer surplus and producer surplus, the consumers are paying as per their utility and the producers are being incentivised for their efforts resulting in economic optimality. However, it is imperative to note that even in this case the producer surplus is realised only to the front-end workers. Thus, even though the scenario seems economically optimum it is limited to particular stakeholders and the benefit of all is not protected.

However, one should consider that this scenario denotes an ideal scenario and in reality due to the lack of tipping culture in India the probability of this scenario itself is very low, making this option not viable to be opted for. The actual outcome given the socio-cultural behaviour trends of consumers in India, results in undertipping as shown below:



ISSN 2582-2667

Fig 2 Market of Tipping when culture of undertipping is included

ISSN 2582-2667

Point 'A' on the diagram denotes the point at which this particular market operates which is at price 'P1' and quantity 'Q1'. It is imperative to note that P1 is significantly below Po denoting the optimum price indicating that customers in this market undertip significantly in comparison to the expected price in an ideal situation. Since tipping is done after the services have already been provided, the staff provides optimum quantity of services (hence Q1 = Qo) in expectation of the optimum tipping price (Po = Pp). However the staff ends up receiving a tip which is much lower at P1 instead of the perceived Pp. This situation then observes an increased consumer surplus denoted by the red shaded triangle on the figure along with an decreased producer surplus shown as the blue shaded portion which is only realised by front end workers. The rectangle Po-P1-A-O represents the loss caused to the producer. The loss occurs due to the decrease in tipping price from the optimum price that the producer would have perceived or expected to have received thus (Pp=Po) for the quantity of good service provided. Hence even at a lower tipping price the consumers are obtaining optimum quality of services (Q1=Qo). Whereas, had the producers had full information about the tip they would receive they would only have been willing to provide Qe quantity of services, but are not able to regulate that since tips are received only after the service is provided. The triangle DOA in fact represents those portion of workers who would not be willing to provide any service at all at that price P1 as it lies below the supply curve. The foundation of this loss exists in the fact that the producers provide optimum quantity of Good Services after which the consumers at their discretion pay for the services and due to the lack of tipping culture the consumers end up under tipping.

7. SCENARIO 2 : INCLUSION OF SERVICE CHARGE IN THE PRICE OF FOOD

Position of Food and Consumer Affairs Minister

Food and Consumer Affairs Minister Piyush Goyal made a statement on the controversy of Service Charge denouncing the practice of levying a mandatory service charge by restaurants on consumers.[15] An argument often put forward by Restaurants as also claimed by NRAI is that the service charge helps ensure proper wages and payment to workers and thus must not be done away with.[16] In response to the same, Piyush Goyal argued that restaurants may increase the prices of their food since there exist no price controls in India, so as to increase the pay of their staff

[15] PTI, *supra* note 3.
[16] Thomas Fenn, *Barring restaurants from levying service charge is unfair, reeks of discrimination,* NRAI (July 7, 2022), https://nrai.org/barring-restaurants-from-levying-service-charge-is-unfair-reeks-of-discrimination/ [hereinafter "Thomas"].

ISSN 2582-2667

but cannot pass on this cost arbitrarily to consumers through mandatory service charge.[17]

In light of this proposition by the Government, in this section we analyse the economic implications of increasing the price of goods on the menu itself to incorporate the service charge amount.

Economic Analysis of Higher Prices

When the service charge is incorporated into the price of the goods provided, this defeats the entire purpose for which service charge as a concept was created, i.e. to incentivise workers to provide better service and remunerate them for the same. With higher prices on the menu, the discretion of the consumer is entirely snatched such that regardless of the nature of service received, the consumer is forced to pay that component of service charge reflected in the higher prices.

Additionally, there is a lack of transparency in such a circumstance pertaining the distribution of the revenue from the price of the goods between the restaurant as profits and the workers' remunerations. As a result, it is also possible that the extra amount paid through the higher

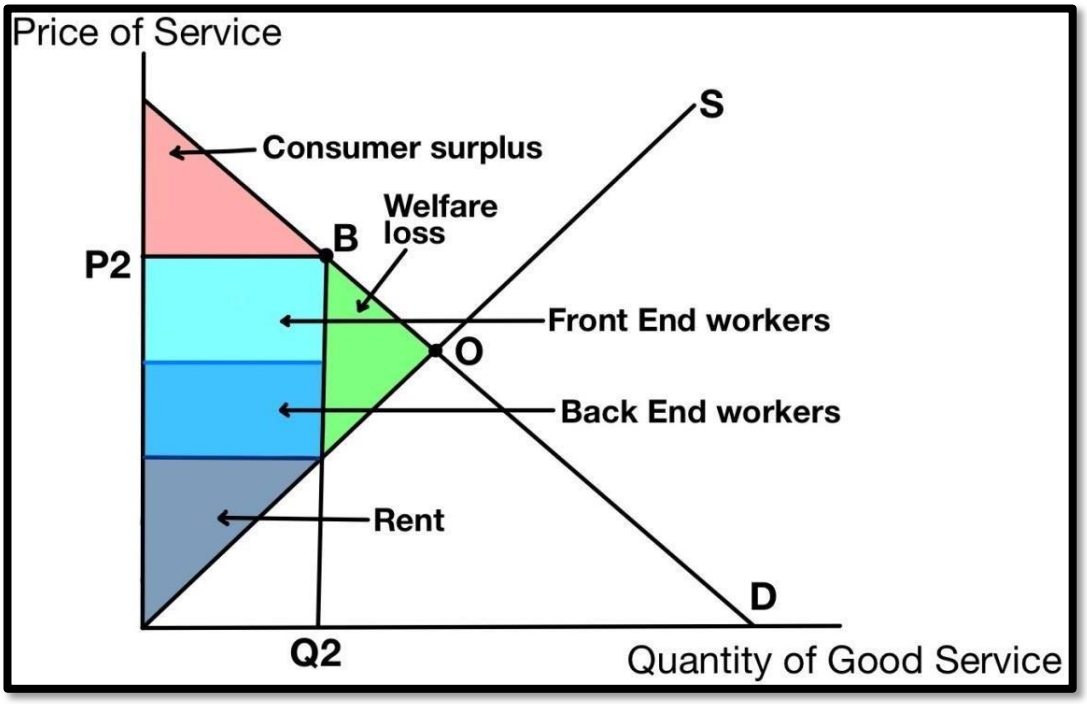


Fig 2.0 Market of Service Charge when it is included in the Price of the Food

prices is not actually realised to the workers and is siphoned by the owners themselves.

However, it has been contended by the NRAI as a representative of restaurant owners that often restaurants enter into lease agreements having revenue sharing clauses. When they earn the

[17] PTI, *supra* note 3

ISSN 2582-2667

additional revenue through higher prices a portion of the same would have to be paid as rent under the agreement defeating the purpose of increasing the prices. However, when servic charge is collected, this is acknowledged by landlords as a charge to be paid to workers directly and outside the ambit of restaurant revenue. They thus do not include it within the calculation of revenue for the payment of rent.[18]

The above mentioned arguments can be graphically presented as follows:

In the above diagram, Market Equilibrium 'O' represents the optimum point of functioning where the marginal cost for good service i.e. the price paid equal the marginal demand for the service i.e. the utility or satisfaction derived by the consumer as a result of good service.

However, when the price of the service is included in the price of the food, the consumer can longer reduce the amount paid for the service in accordance with the quality of service received i.e. the quantity of good service. As a result, often consumers end up paying more for the service than the quantity of good service received. This is represented by point 'B' where the market operates when the service charge is included in the price of the food. At this point, theprice paid, 'P2' is higher than it would have been at equilibrium, and the quantity (representingthe amount of good service provided) is lower at 'Q2'.

At point 'B', the consumer is worse off due to the reduced utility derived from the poor quality service received as compared to the price paid for that service as marked by the red shaded region. The producer is able to benefit from the higher producer surplus due to the assured income even when the service provided is sub-par. The producer surplus is distributed into 3 segments marked on the diagram as the blue shaded region. Part of the producer surplus is paid as rent due to the revenue sharing clause under lease agreements resulting in a smaller portion of the revenue benefitting the workers. However, unlike the problem faced in the first scenario of tipping, in this case the service charge can be evenly distributed among both front end and back end workers ensuring equitable distribution of the surplus.

Yet, it is important to note that as a result of the higher price paid for the service as compared to the utility derived, in this scenario the market is not functioning at the equilibrium resulting in market inefficiencies. Not only is this resulting in a smaller quantity traded seen as Q2 but also in a welfare loss to society marked on the diagram as the green shaded region.

We can therefore see from the diagram, that in such a circumstance the primary objective of service charge which was to incentivise workers and improve the quality of service is not

[18] Thomas, *supra* note 15

ISSN 2582-2667

achieved as reflected by the reduced quantity Q2 and neither the consumers nor producers are better off due to the reduced consumer surplus, and loss in surplus to rent, respectively.

8. SCENARIO 3 : MANDATORY SERVICE CHARGE

Delhi High Court Ruling

On the grounds of a plea challenging the Guidelines issued by the Central Consumer Protection Authority, the Delhi High Court in its order, the Delhi High Court upheld the charging of service charge by Restaurants which if included in the bill would be mandatory for the consumer to pay. The court argued that those unwilling to pay the service charge may choose not to eat at that restaurant at all. The Court however also instructed eateries charging service charge to prominently display a notice of the same on their menus and other places.[19]

Analysis of Mandatory Service Charge

One of the benefits of a mandatory service charge as compared to the first scenario of tipping is that the revenue generated can be equitably distributed among all the workers (both front end and back end workers) as was also seen in the case of service charge included prices.

But the same glaring cons as were also present in the second scenario of service charge included prices remain even in the circumstance of mandatory levying of service charge. This includes the lack of incentive to provide good quality service by restaurant workers and a lack of discretion on the part of consumers to be able to pay in proportion to the utility derived from the service received. Besides the benefit of labelling it as a service charge- in that no portion of it is needed to be paid as rent - the singular glaring difference between the second and third scenario is the deception created when service charge is added to the bill by default. As a result of this deception levying of service charge on the bill has been termed as an "unfair trade practice" by the CCPA which lead to its guidelines as explained earlier in this paper.

Mandatory Service Charge as Deceptive

It is important to note that although the Delhi High Court has instructed for service charge to be displayed, as per a report by LiveLaw the CCPA had received numerous complaints by consumers on the National Consumer Helpline saying that restaurants were levying service charge without informing the customer and by default.[20] Therefore, there is an information asymmetry which is created, because the producers, i.e. the Restaurant is aware of the service

[19] National, *supra* note 2

[20] Business Desk, *Service Charge Row: Delhi HC Stays Guidelines Banning Levy of Service Charge by Restaurants*, NEWS 18 (July 20, 2022, 13:16 IST), https://www.news18.com/news/business/service-charge-row-delhi-hc-stays-ccpa-order-banning-levy-of-service-charge-by-restaurants-5589553.html.

ISSN 2582-2667

charge being added mandatorily at the end of the bill, but the consumer being unaware of the same makes decisions without proper knowledge of the pricing. As a result, relative to Scenario 2, where the prices are increased to include service charge, there is an element of deception in this scenario.

Due to lack of information pertaining to the levy of service charge, consumers are unable to properly evaluate their demand for the goods being provided as the price of the goods seem deceptively lower than they actually are upon payment of the bill. As a result, consumers are unfairly forced into purchasing goods that they otherwise may not have had they had complete information about the service charge and its impact on the final price of the good.

A study published in the Journal of Hospitality and Tourism Research collected empirical data on the effects of service charges versus service-included pricing on deal perception of consumers. When the service charge was 12%, it was found that menus stating the percentage of service charge to be added later lead to a better deal perception by consumers (M = 4.57) as compared to equivalent service included prices on menus (M=3.92)[21].[21] This indicates that even when the menu explicitly states that a given percentage of service charge would be added to the bill at the end of the meal, it still hinders the ability of consumers from making informed choices about their demand for that good, and is hence deceptive. The matter is worsened significantly when such a notice of service charge is either not provided before the customer orders, or if provided, it is placed in a small font in a not easily visible location on the menu.

In fact, the impact of the service charge on the ability of the consumer to determine their demand based on the price is increased due to the taxes that become applicable on that service charge. If for example, a restaurant were to levy a 10% service charge, and fall within the 10% GST bracket, then in effect the consumer would end up paying 11% more in the final bill (10% + 10% of 10%) as compared to when the consumer is allowed to leave a voluntary tip. What this means is that such factors are often not considered by consumers when demanding goods and made that much harder for them to properly assess the price on the basis of which to demand goods.

Economic Analysis of Mandatory Service Charge

The above provided rationale can be economically analysed for its impact on all involved stakeholders. The impact of levying a mandatory service charge can be graphically represented as shown below:

[21] Shuo, *supra* note 7.

ISSN 2582-2667

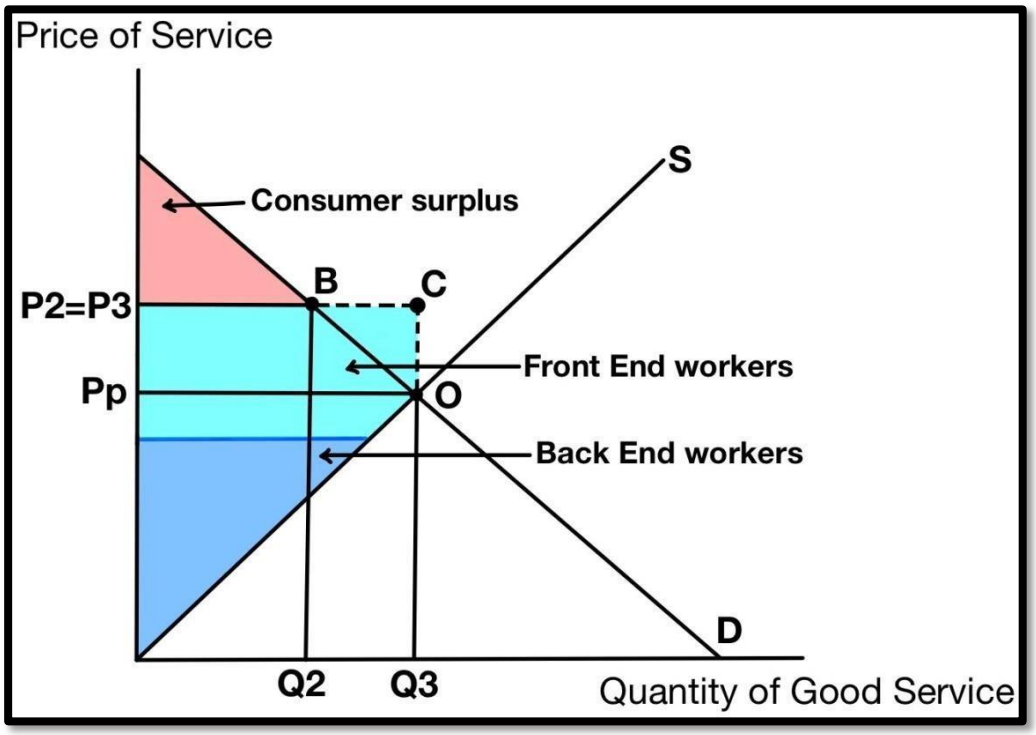


Fig 3.0 Market of Service Charge when it is Levied Mandatorily

In the diagram above, the point 'C' represents the point at which the market operates when Service Charge is levied mandatorily. In the diagram it is assumed that there is a complete lack of information about the levy of service charge to the consumer, as result of which the consumer demands goods i.e. places their order in the restaurant without accounting for its impact on the final price at all. However, it is possible that in certain circumstances notice is provided but the consumer underestimates its impact on the resultant price, in which case the impact of the deception would exist but be reduced than as shown in the diagram.

In this situation, where there is a complete lack of information pertaining to the mandatory levy of service charge, the consumer expects the price of service to be at the equilibrium price 'Pp' i.e. the perceived price, which lies at point 'O'. This is because they assume that the price that they would pay for the service received would be discretionary and in the form of an additional tip which would be proportional to the utility that they derived from the service. At this perceived price, the quantity of service demanded by the consumer is Q3.

However, after having purchased the goods, they are forced to pay the mandatory service charge added by default to their bill, thereby increasing the price of the service from the expected Pp to price 'P3' which is the same price as charged when the service charge was included in the price of the food 'P2' in the second scenario. However, in this scenario, since

ISSN 2582-2667

the consumer was not given adequate notice of the real price, they demand a far greater quantity than they would have had they known the true price, reflected by the difference between Q2 and Q3. This in effect artificially increases the demand by deceiving the consumer about the real price. On the graph, this is represented by the triangle 'OCB' which shows those consumers who would not have demanded the goods had they known the true price, as it now lies beyond the demand curve 'D'. Although the ultimate consumer surplus, marked by the red shaded region remains the same in scenarios 2 and 3, there is a feeling of deception on the part of the consumer, making them worse off in this scenario. The area enclosed between 'Pp-P3-O-C' represents the loss in consumer surplus suffered by the consumers due to this deception wherein they are made to pay a higher price of P3 as compared to the expected price of Pp. Therefore, the rectangle enclosed within 'Pp-O-C-P3' represents graphically the impact of the deception caused by a service charge when there is improper information provided to the customer about its levy which has been termed an "unfair trade practice" by the CCPA.

However, the producers are better off in this scenario as a result of the increase producer surplus in this context. Not only is a higher quantity traded, but they also benefit from the higher price charged for the service charge. The producer surplus is graphically represented by the blue shaded region, which is equitably distributed between both front-end and back-end workers. From the graph it is clear why this scenario is most beneficial for producers and therefore why NRAI and other restaurant owners are in this debate defending and promoting the levy of mandatory service charge.

Although at a first glance, the scenario appears economically efficient due to the absence of a welfare loss, it is imperative to note that the loss caused to the consumer as a result of the deception as marked by rectangle 'Pp-O-C-P3' can be considered economically inefficient as it prevents utility maximisation for the consumer and rational decision making. It would also mean, that after having been deceived once a consumer is unlikely to return to the same restaurant reducing the market size in the long run rather than promoting market efficiency.

Impact on Consumer Welfare

The contentions established conceptually above can be corroborated by empirical data. A survey conducted across India with over 21,000 respondents from consumers in 291 different districts ranging across Tier 1, 2 and 3 cities found that over 70% consumers were unwilling to pay the service charge. Out of this, 20% planned to put up a fight at restaurants so as to not pay, 37% intended on avoiding restaurants that levy a service charge and only 20% expressed

ISSN 2582-2667

willingness to pay the service charge is included in the bill.[22]

We can infer from these statistics that due to the poor quality of service and feeling of deception faced by consumers when forced to pay such a mandatory service charge, a portion of the consumers would be willing to put up a fight or even stop consuming those goods i.e. frequenting those restaurants in an attempt to ensure that their utility is maximised and they are able to benefit from their payments.

Parameter	**Scenario 1: Tipping**	**Scenario 2: Increased pricing**	**Scenario 3: Mandatory Service Charge**
Is the primary objective of incentivizing the workers achieved?	Yes to some extent (tipping is not adequate for proper incentivization)	No	No
Are the workers adequately remunerated for their service?	No	Yes to some extent (part of the remuneration is lost to rent)	Yes
Are the back-end workers able to benefit from the remuneration?	No	Yes to some extent (part of the remuneration is lost to rent)	Yes
Do the consumers get discretion to pay as per the utility deriver?	Yes	No	No
Do the consumers have proper information for decision making? i.e. they are not deceived	Yes	Yes	No

This data shows a largely adverse response from consumers towards service charge. The rationale for the same becomes apparent based on the admission of 71% respondents that they had had one or more experiences in the past 5 years where service charge was levied by an air-conditioned restaurant but their service was below expectations. In fact, as per the survey 23% stated it had twice, 18% said it happened on 3-5 occasions, 24% revealed that it had occured up to 10 times, while 6% admitted to having suffered such a bad experience in spite of service charge being levied in the bill, more than 10 times[23]

[22] FE Bureau, *Majority of consumers unhappy with High Court allowing service charge: Survey*, THE FINANCIAL EXPRESS (July 26, 2022 4:20:00 am), https://www.financialexpress.com/industry/majority-of-consumers-unhappy-with-high-court-allowing-service-charge-survey/2605931/.

[23] *Id.*

ISSN 2582-2667

This points to the fact that although the mandatory levying of service charge does not necessitate poor service in all cases, but the lack of incentive for workers coupled with lack of discretion provided to consumers means that there can often be cases where consumers pay for service charge and still receive sub-par quality service as demonstrated in the diagram above.

9. CONCLUSION

In order to objectively compare each of the three scenarios analysed above, it is necessary to compare the result that they produce for each stakeholder to determine the economic efficiencies and what the position of law should be. The table below attempts to summarise the findings of the study so as to draw this final conclusion.

Therefore, it is apparent from the table above, that none of the three scenarios are economically efficient as they do not achieve pareto optimality. In each scenario one of the stakeholders is better off at the cost of the other, resulting in inefficiencies. It therefore explains the grey area in the law receiving competing arguments from the consumers and the NRAI (i.e. the producers) and the academic debates surrounding.

10. RECOMMENDATIONS

Given that each of the existing scenarios discussed in the paper have significant cons and limitations which either prevent them from attaining the essential objective of incentivisation or cause unfair loss to one of the stakeholders, it is recommended that a different model from the ones discussed above is implemented so as to achieve the basic objective and reach closer to the economically efficient point of pareto optimality.

Keeping the above in mind, it is recommended that:

1) *A service charge of 10% be levied on the bill.*

This would ensure that despite the lack of a cultural or social environment to tip, the levy of the same would promote individuals to remunerate workers for their service and help fulfil the objective of incentivising workers to provide good service. The only downside to the same would be the inability to decide the amount of service charge to be paid in proportion to the quality of service, which although economically efficient has been practically found to be flawed. This is because the amount left when entirely discretionary is often arbitrary, and subject more to cultural and social factors than proportionate to the type of service. Therefore, by placing the 10% on the bill it would indicate to the consumer the amount to be left **if** they

ISSN 2582-2667

are satisfied with the service and in a way prevent undertipping.

2) *However, a very clear notice be also provided alongside that service charge stating clearly that the payment of the same is not mandatory and upon the discretion of the consumer depending upon satisfaction achieved by the quality of service provided.*

   By making the payment of such a service charge voluntary rather than mandatory, it will ensure that the consumer still retains discretion so that they only pay when they are satisfied with the service received ensuring that their utility is maximised in proportion the amount paid.

3) *An option be provided to the consumer to remove aforementioned service charge fromthe bill upon request.*

   Culturally it is seen that consumers do not voluntarily leave adequate tips. But through the survey discussed earlier, it was seen that when dissatisfied with the quality of service respondents had stated that they would be willing to fight for removing the service chargeindicating the cultural norm to have the incentive to do so. As a result it would allow consumersto retain discretion while also increasing the likelihood of workers being adequately remunerated when good service is provided. Further, by allowing the consumer to remove the service charge from the bill as compared to it being mandatory, the element of deception is entirely removed, and the workers remain incentivised to provide good service under the fear that their income may be reduced if not.

4) *A clear notice be provided to both consumers at the start of the meal prior to placing their order about such a voluntary service charge as well as the workers that their receipt of income through service charge would be dependent upon the quality of service provided by them.*

   By providing clear notice to both stakeholders, it would remove the information asymmetry and allow both parties to make better, informed decisions and as a result increase the efficiency of the market as a whole.

REFERENCES

1. Central Consumer Protection Authority, Guidelines to prevent unfair trade practicesand protection of consumer interest with regard to levy of service charge in hotels and restaurants, 2022, F.No. J-25/57/2022-CCPA (Issued on July 4, 2022), https://consumeraffairs.nic.in/sites/default/files/file-uploads/latestnews/Guidelines%20to%20prevent%20unfair%20trade%20practices%20and%20protection%20of%20Consumer%20Interest%20with%20regard%20to%20le

ISSN 2582-2667

vy%20of%20service%20charge%20in%20hotels%20and%20restaurants.pdf.

2. National Restaurant Assn. of India v. Union of India, 2022 SCC OnLine Del 2172.

3. PTI, *Restaurants can't impose 'service charge' to food bills: Piyush Goyal*, THE HINDU(June 03, 2022 18:19 IST), https://www.thehindu.com/news/national/restaurants-cant- impose-service-charge-to-food-bills-piyush-goyal/article65491118.ece.

4. Ofer H.Azar, *The Economics of Tipping*, 34 THE JOURNAL OF ECONOMIC PERSPECTIVES,215-236 (2020), https://www.jstor.org/stable/26913191.

5. Shuo Wang, *The Effects of Service Charges Versus Service-Included Pricing on Deal Perception*, 20 JOURNAL OF HOSPITALITY & TOURISM RESEARCH, 1-9 (March 5, 2014), https://www.researchgate.net/publication/261721146_The_Effects_of_Service_Charges_Versus_Service-Included_Pricing_on_Deal_Perception.

6. Simon Were, *Restaurant tipping behavior and its inspiration on food service empathy:a focus on two- and three-star hotels in Kenya*, 35 INTERNATIONAL HOSPITALITY REVIEW, 57-69 (2021), https://doi.org/10.1108/IHR-07-2020-0026.

7. Shephali Bhatt, *A look at the evolution of tipping culture*, THE ECONOMIC TIMES (Dec 01, 2018, 11:15PM IST),https://economictimes.indiatimes.com/industry/miscellaneous/a-look-at-the-evolution-of-tipping-culture/articleshow/66900516.cms?from=mdr.

8. Arnab Dutta, *India's restaurant body calls service charge guidelines illegal*, BUSINESS TODAY (Jul 06, 2022, 12:40 PM IST), https://www.businesstoday.in/latest/economy/story/indias-restaurant-body-calls- service-charge-guidelines-illegal-340493-2022-07-06.

9. Bindisha Sarang, *The complete guide to tipping*, THE TIMES OF INDIA (Jan 5, 2015,05:15 IST) http://timesofindia.indiatimes.com/articleshow/45755289.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst.

10. *Indians fear 'cheap' tag, tip liberally abroad,* THE ECONOMIC TIMES (Jul 27, 2013, 06:37 AM IST), https://economictimes.indiatimes.com/indians-fear-cheap-tag-tip- liberally-abroad/articleshow/21387177.cms?from=mdr.

11. Thomas Fenn, *Barring restaurants from levying service charge is unfair, reeks of discrimination*, NRAI (July 7, 2022), https://nrai.org/barring-restaurants-from-levying-service-charge-is-unfair-reeks-of-discrimination/.

ISSN 2582-2667

12. Business Desk, *Service Charge Row: Delhi HC Stays Guidelines Banning Levy of Service Charge by Restaurants*, NEWS 18 (July 20, 2022, 13:16 IST), https://www.news18.com/news/business/service-charge-row-delhi-hc-stays-ccpa- order-banning-levy-of-service-charge-by-restaurants-5589553.html.

13. FE Bureau, *Majority of consumers unhappy with High Court allowing service charge: Survey*, THE FINANCIAL EXPRESS (July 26, 2022 4:20:00 am), https://www.financialexpress.com/industry/majority-of-consumers-unhappy-with-high-court-allowing-service-charge-survey/2605931/.

ISSN 2582-2667

SOCIO-ECONOMIC COSTS OF PENDING EXCISE CASE IN BIHAR: A SEARCH FOR WAY OUT

Adil Ameen[1]

ABSTRACT

This work is an analysis of the effect of the pendency of excise-related cases in Bihar on society and the economy also it provides possible remedies that can curb the problem of pendency. The rise in pendency is witnessed after the Blanket ban on liquor in Bihar in 2016. Since then a lot of people have been arrested and there is reporting of a huge number ofcases. Pendency in the judiciary has a very serious effect but when it is attached to a state like Bihar its study becomes very essential as the state comes under one of the least developed states. The pendency is affecting both the society and the economic condition of people as well as the government. A joint and serious effort from the administration and civil society is needed to curb the problem of pendency.

Keywords: *Excise Case, Socio-Economic Cost, Pendency, Bihar, Way Out*

[1]3rd Year B.A. LLB (Hons.) student at Chanakya National Law University, Patna.

1. INTRODUCTION

"If litigation were to be included in the next Olympics, India would be quite certain of winning at least one gold medal"

These are the words of Nani Palkiwala regarding the status of the Indian judicial system where the slow rate of disposal has led to huge pendency of cases. As per data around 36% ofcases are pending for more than 3 years.[12] The pendency of cases has various serious effects on society.

Bihar one of the backward states of India announced it to be a dry state in 2016. Around 51.91% of the population as per Niti Aayog's Multidimensional Poverty Index (MPI), In Bihar is poor.[23] Prohibition was aimed at women's empowerment and human development as it was stated bythe government that a lot of money was being invested by the poor in the name of liquor intake which results in violence against women, street nuisance, and causes obstacles in the path of education of children.

More than 89% of the population of Bihar, lives in rural areas[4] with agriculture being a key economic activity but there exists disguised unemployment in it due to a lack of modernization of technique, unequal distribution of land, and also fragmentation. Only 31.2 percent of the population of Bihar was employed in 2021, compared to 37.2 percent for India"[5] Also in the industrial sector, Bihar lags far away as the contribution of the industrial sector in GSVA in Bihar is 19.4 percent in the year 2020-21 while 30.1 percent at the national level.[6] The state also witnesses a large number of migrants of labor in search of employment in big cities as the data indicates that many of the households have more than one migrant with an average of 1.34 migrants per household in Bihar.[7]

---

[2] NATIONAL JUDICIAL DATA GRID, https://njdg.ecourts.gov.in/njdgnew/index.php (last visited Dec. 25, 2022).
[3] Deepak Sood, *India Can't Eradicate Poverty Without Industrialization Of States Like Bihar, Jharkhand & Chhattisgarh,*OUTLOOK,(Jan 14, 2023, 9:29 PM), https://www.outlookindia.com/business/india-can-t- eradicate-poverty-without-industrialization-of-states-like-bihar-jharkhand-chhattisgarh-news-224337.
[4] Debabrata Samanta & Shivani Narayan, *Human Development in Bihar and Impact of Liquor Prohibition Policy: An Analysis*,7 JGPP,27,27,(2017)
[5] Kritika Sharma, Nirmal Poddar, *Unemployed for years, craving govt job: Why the story of Bihar's youth is of struggle & despair*, THE PRINT, (March 16, 2023, 9:29 PM), https://theprint.in/india/unemployed-for-years-craving-govt-job-why-story-of-bihars-youth-is-of-struggle- despair/826066/.
[6] Finance Department, Bihar Economic Survey (2022-23), Economic survey 2022-23,49 (Finance Department, Government of Bihar,2022).
[7] Archana ET AL, *Causes and Consequences of Out Migration From Middle Ganga Plain*,46 International Institute of Popular Sciences, (2021).

ISSN 2582-2667

Lack of leisure activity and unemployment cause a distraction for youth and led to their involvement in unlawful activity and liquor consumption.

As Bihar ranks 21 st out of 23 Indian states in terms of human development, it has achieved comparatively little progress in that area. (United Nations Development Programme) in 2011[8] the prohibitionis anticipated to empower women and cause them to have more disposable cash to spend on human development inputs, the policy is intended to help Bihar develop sustainably through this method. Liquor prohibition is claimed to be a crucial step that would indirectly cause savings in households, which could then be better invested in Human Development inputslike better education, and health care.

The power to make laws regarding liquor was given to the states by The Constitution makers as they thought it appropriate to mention it in the explicit language in Article 47[9] of the Constitution while requiring the State to raise living standards and improve public health. The Bihar Prohibition Law was passed with the stated goal in mind. When Karpoori Thakur was in office, Bihar already had a liquor ban in place as of March 1979. Ram Sundar Das, however, relaxed the prohibition as a result of rising corruption and bootlegging.

Bihar has witnessed a heavy surge in reporting of excise cases after the prohibition of consumption, and production distribution of liquor completely in 2016 At its peak, the law resulted in over 3.5 lakh arrests, or one every ten minutes, on average[10] under the stringent prohibition law since 2016 leading to crowded jails and clogged courts. However, only 2,629 cases have been disposed of.[11] The Patna High Court has approximately 200,000 prohibition-related matters pending, including 40.000 bail petitions.[12] Resulting in a serious concern for the judicial system which was already suffering from the problem of pendency and lack of infrastructure.

Among all the other costs of banning alcohol completely like loss of revenue, smuggling, and administration burden it also has badly affected the working of courts. The Pendency is

[8] DEBABRATA *supra* note 3, at 29.
[9] INDIA CONST. art. 43.
[10] Manish Kumar, 2.*7 lakh prohibition cases pending, High Court asks Bihar for plan*, NDTV, https://www.ndtv.com/india-news/2-7-lakh-prohibition-cases-pending-high-court-asks-bihar-for-plan-2103363 (last visited Dec. 25, 2022).
[11] *Id.*
[12] Tarun Sharma, *Huge Numbers Of Pending Prohibition-Related Cases In Bihar*, SPIRITZ (Dec 27, 2022, 9:29 PM), https://spiritz.in/2019/11/25/huge-numbers-of-pending-prohibition-related-cases-in-bihar/.

ISSN 2582-2667

affecting both societies as well as the economy and the losses due to pendency are the costs of pendency. We will discuss the cost of pendency to both society and the economy and will try to find a possible way out which could enhance the productivity and efficiency of the judicial system.

2. SOCIAL COST OF PENDENCY

When an item is prohibited in our nation, a new system is born where the same products are sold on the black market for a greater price. Even though alcohol has been prohibited for the past six years, the same thing is taking place in Bihar. The ban has created a network of mafias who are illegally smuggling and manufacturing liquor and they are creating huge money by selling at high rates. the rate of conviction of statute is 1 percent[13], and the same is favorable for the morale of big mafias as they have no fear of the law. This is quite evident from the data that more than 13.87 lakh liters of alcohol were seized in the first five months of 2022.[14] in the state which shows the existence of an illegal trade network in the state.The emergence of mafias and illegal trade has caused a threat to law and order.

The pendency has vitiated the very aim of the prohibition law as an increase in hooch tragedies, a large number of seizer, and arrests shows that even after 6 years of law its effectiveness is negligible. Only in October 2022, 2.56 lakh liters of illicit alcohol were confiscated from locations around Bihar, and 172 arrests are made on average per day, Bihar Police stated that substantial amounts of illegal alcohol were confiscated in five different districts throughout the state. The Bihar state capital Patna is followed by Muzaffarpur, Madhubani, Vaishali, and Samastipur.[15] This demonstrates that alcohol is readily available in the state and can be smuggled, proving that the statute's objective to prohibit alcohol has been unsuccessful.

The police force is the backbone of any civil society and ought to be trusted above all by the people it protects, but due to the low conviction rate, easy access to alcohol, and lack of

[13] *Bihar liquor law: Less than 1% convicted since 2016*, INDIAN EXPRESS, (last visited Dec. 28, 2022). https://indianexpress.com/article/cities/patna/bihar-liquor-law-less-than-1-convicted-since- 2016-8329112/
[14] *In dry Bihar, 13 lakh litres of liquor seized in 5 months*, TIMES OF INDIA, https://timesofindia.indiatimes.com/city/patna/in-dry-bihar-13l-litres-of-liquor-seized-in-5 months/articleshow/92506830.cms#:~:text=PATNA%3A%20The%20first%20five%20months,the%20state%20 po lice%20on%20Monday (March 26, 2023, 9:29 PM).
[15] *DNA Special: Why Bihar continues to reel under hooch tragedies despite blanket ban on liquor?*, DNA, https://www.dnaindia.com/analysis/report-dna-special-why-bihar-continues-to-reel-under-hooch- tragedies-despite-blanket-ban-on-liquor-3010755 (last visited Dec. 27, 2022).

ISSN 2582-2667

oversight of the big fish, the public has lost faith in the police and the government. The pendency has made the law infamous among commoners due to these factors.

The Prohibition Act of Bihar criminalizes even consumption and distribution so the administration has to focus on a large number of people including petty offenders who are mainly poor together with big fish. To locate those involved in smuggling alcohol in the state, some 180 anti-alcohol task force teams, 25 trained dog squads, drones, a speed boat, and a helicopter are being deployed. [16] they are not enough. The administration has to face four-sided challenges as together with the regular responsibility of law and order, they also have to engage in more number of trial due to liquor prohibition.

Due to more focus on excise cases, the resources of police and administration has distributed and this has led to an increase in other crimes as is evident from the data cognizable crimes and major crimes increased- In 2016, 189681 cognizable cases were recorded in Bihar which increased to 236037 in 2017 and 262802 in 2018, also the number of major crimes increased from 52316 in 2016 to 58846 in 2017 and 64118 in 2018.[17] The police resources were already suffering from huge deficiency as against the strength of 1.11 lakh policemen, Bihar police only have 77000 also in the police public ratio Bihar ranked 33rd in the country with a ratio of 1:839.[18]

The pendency of cases has to severe effect on the communities, who were earlier involved in the manufacture and selling of liquor and related products which was their source of livelihood. These communities mainly come under Scheduled Castes and Scheduled Tribes. Many of the person arrested belongs to these community as per data Scheduled Castes (SCs) account for just 16 percent of the population while their share among those arrested is 27.1 percent and Scheduled Tribes (STs) account for just 1.3 percent of the population, however, they comprise 6.8 percent of those arrested.[19] Now, these communities, on the one

---

[16] *In dry Bihar, 13 lakh litres of liquor seized in 5 months*, TIMES OF INDIA, https://timesofindia.indiatimes.com/city/patna/in-dry-bihar-13l-litres-of-liquor-seized-in-5 months/articleshow/92506830.cms#:~:text=PATNA%3A%20The%20first%20five%20months,the%20state%20 police%20on%20Monday (March 26, 2023, 9:29 PM).

[17] *What did Nitish get from the liquor ban in 80 months how much benefit and loss to Bihar*, NEWSGOSSIP24, https://newsgossip24.com/trending-news/what-did-nitish-get-from-the-liquor-ban-in-80- months-how-much-benefit-and-loss-to-bihar/ (last visited Dec. 24, 2022).

[18] Bihar ranks 33rd in police-public ratio, Jharkhand better, TIMES OF INDIA, https://timesofindia.indiatimes.com/city/patna/bihar-ranks-33rd-in-police-public-ratio- jharkhand-better/articleshow/58098827.cms (last visited Dec. 26, 2022).

[19] *Prohibition in Bihar: Marginalised bear the brunt of the law* NEWSCLICK,

ISSN 2582-2667

hand, don't have a source of livelihood, and on the other hand, they have to suffer the cost of expensive judicial proceedings. So the pending cases are creating a huge burden for the poor and marginalized communities who lost their livelihood.

The prohibition has directly affected the working of the judiciary as the rate of disposal of the case in subordinate courts of Bihar is already 6.28 years for a case which is expected to go upward as in subordinate courts pending excise cases being around 25%, as per official figures.[20] Working of subordinate courts and the high court in Bihar has been affected badly as the subordinate courts were already facing a huge burden of cases data shows the total number of civil cases pending in Bihar's subordinate courts stands at a staggering 3.337 million, including over 2.878 million criminal cases.[21] Due to the overburdening of Prohibition and Excise cases, judges are not able to start a fresh trial and only deal with bail petitions in which the accused is competent for bail under clauses (a) and (b) of section 37.[22]Also, there exists 46% vacancies in the subordinate courts in Bihar.[23] All these have resulted in the pendency of cases related to otherdepartments and have slowed the rate of disposal of cases in the subordinate judiciary which was already working at a glacial pace. The high court is also facing this challenge of overloadas already 40,000 bail petitionsare pending with the Patna High Court.[24]

Consequently, these pending cases are creating a huge burden for the poor and marginalized communities as they have to wait for long periods.

3. ECONOMIC COSTS OF PENDENCY

It has mainly two aspects one upon the people and the other on the expenditure of the government. Since most of the people arrested for drinking or purchasing and selling alcohol are from low-income households, a high number of arrests and a slow pace of case disposition are hurting mostly the impoverished part of society. The report suggests that 90 percent of the

https://www.newsclick.in/prohibition-bihar-marginalised-bear-brunt-law (last visited Mar23, 2023).

[20] Arun Kumar, *One-fourth pending cases in Bihar courts related to excise, shows HC data*, HINDUSTAN TIMES, https://www.hindustantimes.com/cities/patna-news/onefourth-pending-cases-in-bihar- courts-related-to-excise-shows-hc-data-101630480917935.html#:~:text=The%20total%20number%20of%20civil%20cases%20pending%20in,anticipatory%20bail%20and%20314%20for%20quashing%20besides%20others. (last visited Dec. 25, 2022).

[21] *Id.*

[22] The Bihar Prohibition and Excise Act, 2016,§ 37, No. 20, Acts of Bihar State Legislature, 2016(India).

[23] PRSINDIAN, .https://prsindia.org/policy/vital-stats/pendency-cases-judiciary (last visited Dec. 25, 2022).

[24] Tarun,*supra* note 12.

ISSN 2582-2667

illegal sale of liquor is among poor and backward people.[25] Many times even the accused are unable to furnish bail due to lack of money In such a situation, the duration of the arrest got extended. The implication in False cases is also a serious concern. Many arrests are also made by implicating people in false cases. And lengthy and slow court proceeding is torturing the poor both mentally and economically. It was proposed by the government that a ban will be led to the utilization of money by the poor for healthy purposes but in contrast, a lot of money is going into court proceedings. In a country where the cost of defending a suitis very high, the people of the state with, a Per Capita NSDP of only Rs. 28,127 in 2020-21 in Bihar which is just 33.1 percent of the national average i.e Rs. 85,110[26] is just unbearable. The involvement of people in a costly and lengthy judicial process is just worsening the economic condition of people and leading them into debt while big fishes those who are organizing the whole network roam around free and making huge money due. This is provingthe words of Charles Dickens true who while noting the ills of the English legal system lamented, "Law grinds the poor, the rich rides on them".

Pending cases have resulted in the long duration of arrest and this has resulted in overcrowding in the jails. In Bihar, there are 59 jails with a combined capacity of roughly 47 thousand inmates, but according to media reports, more than 66 thousand, or 42 percent more inmates, are kept there.[27] As per data, 1,71,749 persons were arrested in 2022 which was just the double total of 82,903 arrests made in 2021.[28] This data shows a serious concern for the human rights of prisoners and this is also violative of fundamental rights as the jail infrastructure in most of the jails is very poor additionally, overcrowding means even the basics essentials of life will be ignored. This is also creating a burden on the state expenditure as it has to spend more on the prisoners The National Crime Records Bureau (NCRB) has information that shows that the average monthly cost of a prisoner is Rs. 29538 in 2014-15.[29] This means the pendency of

---

[25] *CIABC urges Bihar govt to end liquor prohibition*, Financial Express, ,https://www.financialexpress.com/industry/ciabc-urges-bihar-govt-to-end-liquor- prohibition/2369025/ (last visited Dec. 25, 2022).

[26] *supra* note 6, at 5.

[27] *Thousands of Deaths Loss Of Revenue Burden On Police And Courts What Did Prohibition Give To Bihar* NEWS TIME EXPRESS, https://www.newstimeexpress.com/knowledge-utility/thousands-of-deaths-loss-of-revenue-burden-on-police-and-courts-what-did-prohibition-give-to-bihar/ (last visited Dec. 25, 2022).

[28] *1.7 Lakh Held For Flouting Liquor Law In-Bihar In 2022*, THE TIMES OF INDIA, https://timesofindia.indiatimes.com/city/patna/1-7-lakh-held-for-flouting-liquor-law- in-bihar-in-2022/articleshow/96979557.cms (last visited Mar24, 2023).

[29] *How much is spent on a prisoner in India*, NEWSLAUNDRY, https://www.newslaundry.com/2016/06/22/how-much-is-spent-on-a-prisoner-in-india/#:~:text=Average%20expenditure%20per%20prison%20inmate%20increased%20by%20over,19447%20i

ISSN 2582-2667

cases is causing an economic burden together with serious concern about human rights violations.

Hence the pendency of excise cases have various social and economic costs as happening in the delays of other cases but in the context of Bihar, it has some additional cost like a burden on poor people and marginalized communities, the burden on low infrastructure judiciary, losing faith in administration, increase in other crimes and most importantly vitiating the very aim of the statute i.e prohibition. In terms of economic losses, the pendency is harming the poor by putting them into debt as well as the state by overcrowding jails.

4. Possible Way Out

To resolve the problems of pending cases several ways are suggested but here we would try to find an additional solution concerning excise cases and the state of Bihar which would increase the efficiency of the judicial system. As it is said that The A, B, C, and D of judicial reforms are all interlinked. Stands for Access, B for the backlog, C for cost, and D for delay [30] it says both the cause and effect of the problems are connected so the need of the hour is to make a serious attempt to resolve the issue.

The main weapon of the fight against delay and pendency increasing productivity through improved infrastructure, and the adoption of better strategies of management and training. Efficiency and productivity are closely related to the infrastructure that an organization controls. In terms of the judiciary, infrastructure includes both physical and human resources. As there are many vacant posts in the judicial system, their appointment is essential to improve infrastructure.

Model code of conduct for subordinate judiciary refers to the norm in which proceedings have to be done. It has been seen that daily, heavy posting of cases on an unscientific basis leads to fruitless activity, which wastes valuable court working hours. Also, no rules are prescribing how a trial judge has to set his board for calling and hearing cases.[31] Therefore, certain norms of conduct should be formulated by high courts which to be followed by subordinate

n%202010-11%20to%20Rs%2029538%20in%202014-15. (last visited Dec. 25, 2022).

[30] Abhishek Singhv, *Reforms In The Administration Of Justice: Beating The Backlog*, Vol. 58,JILI 115,pg.124 (2016), https://www.jstor.org/stable/45163064.

31 K. Sreedhar Rao, CRIMINAL JUSTICE SYSTEM — REQUIRED REFORMS, Vol. 43, ILI,172(2001), https://www.jstor.org/stable/43951765.

ISSN 2582-2667

courts. This will make the judicial work uniform easier and time efficient andwill help in the easy disposal of cases.

Creating a suitable number of courts and judges commensurate to the amount of litigation in the area in question would be a scientific approach. District with the most number of cases should be highlighted and special attention must be given to them. The creation of separate databse for the excise-related offense would help in special attention and disposal of cases. This will also make the tracking of cases easier and will save time.

Another option is the Appointment of ad-hoc judges in order of reducing the large number of vacant judicial positions by making ad-hoc judicial appointments. This is sanctioned by Article 224A of the Constitution.[32] The constitutional provision permits ad-hoc appointments of judges in high courts for either five years or till such time an identified class of cases is cleared. This will be very effective as Patna high court have around 2,00,000 excise-related cases pending.[33] Also, the state government can make provisions in the statute for such appointments in the subordinate judiciary.

The promotion of ADR as a movement, particularly at the first level of courts where the majority of low-income litigants seek justice, is another manner of settlement that can help dispose of other cases which will lessen the burden of the judiciary and they can focus on excise and other important criminal cases.

The trust of the citizens it serves is the first and foremost thing for the Police force as they are the backbone of any civil society, As noted "disregard for the police is a perfect setting for a civil war"[34] Policing has to work with the support of community as Sir Robert Peel said: "the city police are not in a war zone and it needs reform, not power".[35] The police department plays the most vital role in the administration of justice so reform in the department became quite essential and helpful for the judiciary. The investigating agency will be able to handle the crimes in a muchmore straightforward and uncomplicated manner with the aid of improved information technology infrastructure. The development of IT infrastructure will aid in tracking cases and addressing delays that cause backlogs. Investment in management strategies

32 INDIA CONST. art. 224A.
33 *supra* note 12.
[34] DR. Kamal Kishore Singh, *Police Administration: Issues & Challenges,* https://scrb.bihar.gov.in/assets/Police%20Admn%20Issues%20&%20Challenges.pdf.
[35] *Id.*

ISSN 2582-2667

and the creation of criminal databases would contribute to a rapid decline in crime. This will also make the judicial process easy and time efficient.

The administration must focus on big fish who made the supply and production of liquor in the state rather than poor consumers and distributors who merely get a small amount. Rather than arresting 10 suppliers and consumers and 10 separate trials action on 1 mafia and his trial will have a lot of impact on society. This will also save the time of the court. Action upon the masterminds will reduce the supply and bring the faith of people in the administration.

The drunker must be seen as a patient rather than an offender and they should be sent to a rehabilitation center rather than jail in the case of the former there is a high chance that he will lose addiction but later it will only increase the expenditure of the state. In other words, the aim must be reformation rather than punishment.

Amendments in a few provisions of the act can also be helpful to lessen the burden on the judiciary and curb the problem of the pendency of the suit. As section 30[36] clause B states the Penalty for unlawful manufacture, import, export, transport, possession, sale, purchase, distribution, etc. of any intoxicant or liquor.[37] provides the same punishment for the owner as well as the worker in any manufactory, distillery, brewery, or warehouse. Instead of punishing the worker, we can impose fines on them and the focus must be shifted to the people who are organizing the whole system this will help in effective prohibition and will reduce the number of cases. Section 37[38] provides a Penalty for the consumption of liquor which is imprisonment and a fine but instead sending the drinkers to a jail rehabilitation center will be effective and also reduce the burden on the judiciary. Section 84[39] states the provision for the establishment and designation of Special Courts in each district to exclusively try the cases related to prohibition. The establishment of special courts proportionate to a case registered in the district will help in the timely disposal of cases. Also instead of designating existing court establishment of special courts must be made compulsory as the lower judiciary is already overburdened and mere designation will onlyadd to the burden.

Hence all the stakeholders of the legal system have to contribute to reducing the burden on the

[36] The Bihar Prohibition and Excise Act, 2016, § 30, No. 20, Acts of Bihar State Legislature, 2016 (India).
[37] The Bihar Prohibition and Excise Act, 2016, § 30(B), No. 20, Acts of Bihar State Legislature, 2016 (India).
[38] The Bihar Prohibition and Excise Act, 2016, § 37, No. 20, Acts of Bihar State Legislature, 2016 (India).
[39] The Bihar Prohibition and Excise Act, 2016, § 84, No. 20, Acts of Bihar State Legislature, 2016 (India).

ISSN 2582-2667

judiciary and making justice easily accessible to all classes of people.

5. CONCLUSION

The liquor ban in Bihar was done to make a better society with a high level of human resource development and to prohibit the evil of liquor consumption. As the law criminalizes consumption, distribution, and production it has led to reporting of too many cases that have eventually affected the working of the lower judiciary which was suffering from the problem of a lack of resources. The rise in reporting of cases has resulted in huge pendency and low conviction rate.

The direct effect of pendency has boosted the morale of big mafias as they have no fear of laws people lose their trust in the police and administration, and failure of the objective of the statute All these perceptions are not a positive sign of civilized society. Also, increased crimes are evident from the data, and pending cases are creating a huge burden for the poor and marginalized communities who have lost their livelihood as they were involved in selling other forms of liquor like *Tari,* etc. It has slowed the rate of disposal of cases and the pendency of cases related to other departments. the Patna High Court too is facing this challenge of overload due to the huge bulk of bail petitions related to the excise department. with Court. The involvement of people in a costly and lengthy judicial process is just worsening the economic condition of people and leading them into debt while big fishes roam around free and making huge moneydue. pendency of cases is causing an economic burden on the government together with serious concern about human rights violations as a large number of arrests is done regularly.

Some of the ways out can be increasing productivity through improved infrastructure, Amendments in a few provisions of the act, provision of legal aid to be made available for those accused of excise cases, focusing on big fishes and their trial, The development of IT infrastructure will aid in tracking cases and addressing delays that cause building backlogs Appointment based on the requirement the appointment of judges and staff should be made. Also, the District with the most number of cases should be highlighted and special attention must be given to them. The creation of a separate database for the excise-related offense would help in special attention and disposal of cases. Another option is the Appointment of ad-hoc judges in order of reducing the large number of vacant judicial positions can helpreduce the burden on the judiciary.

ISSN 2582-2667

A serious effort from all three organs together with the support of lawyers is the need of the hour to curb the problem of pending excise cases.

REFERENCES

WEBSITE

- National Judicial Data Grid, https://njdg.ecourts.gov.in/njdgnew/index.php.
- DEEPAK SOOD, India Can't Eradicate Poverty Without Industrialization Of States Like Bihar, Jharkhand & Chhattisgarh,OUTLOOK, https://www.outlookindia.com/business/india-can-t-eradicate-poverty-without-industrialization-of-states-like-bihar-jharkhand-chhattisgarh-news-224337.
- NDTV,https://www.ndtv.com/india-news/2-7-lakh-prohibition-cases-pending-high-court-asks-bihar-for-plan-2103363 .
- Indian Express, https://indianexpress.com/article/cities/patna/bihar-liquor-law-less-than-1-convicted-since-2016-8329112/ .

ISSN 2582-2667

- Times of India, https://timesofindia.indiatimes.com/city/patna/in-dry-bihar-13l-litres-of-liquor-seized-in-5-mths/articleshow/92506830.cms#:~:text=PATNA%3A%20The%20first%20five%20months,the%20state%20police%20on%20Monday .
- DNA, https://www.dnaindia.com/analysis/report-dna-special-why-bihar-continues-to-reel-under-hooch-tragedies-despite-blanket-ban-on-liquor-3010755.
- The Times of India,https://timesofindia.indiatimes.com/city/patna/in-dry-bihar-13l-litres-of-liquor-seized-in-5-mths/articleshow/92506830.cms.
- NewsGossip24,https://newsgossip24.com/trending-news/what-did-nitish-get-from-the-liquor-ban-in-80-months-how-much-benefit-and-loss-to-bihar/.
- Times of India,https://timesofindia.indiatimes.com/city/patna/bihar-ranks-33rd-in-police-public-ratio-jharkhand-better/articleshow/58098827.cms.
- Newsclick,https://www.newsclick.in/prohibition-bihar-marginalised-bear-brunt-law.
- Hindustan Times, https://www.hindustantimes.com/cities/patna-news/onefourth-pending-cases-in-bihar-courts-related-to-excise-shows-hc-data-101630480917935.html#:~:text=The%20total%20number%20of%20civil%20cases%20pending%20in,anticipatory%20bail%20and%20314%20for%20quashing%20besides%20others.
- Prsindian.https://prsindia.org/policy/vital-stats/pendency-cases-judiciary
- Financial Express,https://www.financialexpress.com/industry/ciabc-urges-bihar-govt-to-end-liquor-prohibition/2369025/.
- News time express,https://www.newstimeexpress.com/knowledge-utility/thousands-of-deaths-loss-of-revenue-burden-on-police-and-courts-what-did-prohibition-give-to-bihar/.
- The Times of India, https://timesofindia.indiatimes.com/city/patna/1-7-lakh-held-for-flouting-liquor-law-in-bihar-in-2022/articleshow/96979557.cms.
- Newslaundry,https://www.newslaundry.com/2016/06/22/how-much-is-spent-on-a-prisoner-inindia/#:~:text=Average%20expenditure%20per%20prison%20inmate%20increased%20by%20over,19447%20in%202010-11%20to%20Rs%2029538%20in%202014-15.

ARTICLE

- Abhishek Singhv, REFORMS IN THE ADMINISTRATION OF JUSTICE: BEATING THE BACKLOG, Vol. 58,JILI 115,115-126 (2016), https://www.jstor.org/stable/45163064.
- DR. Kamal Kishore Singh, POLICE ADMINISTRATION: ISSUES & CHALLENGES, https://scrb.bihar.gov.in/assets/Police%20Admn%20Issues%20&%20Challenges.pdf .
- Debabrata Samanta & Shivani Narayan, Human Development in Bihar and Impact of Liquor Prohibition Policy: An Analysis,7 JGPP,27,27,(2017) HumanDevelopmentinBiharandImpactofLiquorProhibitionPolicy.pdf.
- KRITIKA SHARMA, NIRMAL PODDAR, Unemployed for years, craving govt job: Why the story of Bihar's youth is of struggle & despair, The Print, (March 16, 2023, 9:29 PM),

ISSN 2582-2667

https://theprint.in/india/unemployed-for-years-craving-govt-job-why-story-of-bihars-youth-is-of-struggle-despair/826066/.

- K. Sreedhar Rao, CRIMINAL JUSTICE SYSTEM — REQUIRED REFORMS, Vol. 43, ILI, 155-173 (2001), https://www.jstor.org/stable/43951765.

REPORT

- Finance Department, Bihar Economic Survey(2022-23), Economic survey 2022-23,49 (Finance Department, Government of Bihar,2022).
- Archana ET AL, Causes and Consequences of Out Migration From Middle Ganga Plain,46(International Institute of Popular Sciences,2021).

STATUTE

- The Bihar Prohibition and Excise Act, 2016, No. 20, Acts of Bihar State Legislature,

CONSTITUTION

The constitution of India,1950, Act of Parliament 1950(India).

ISSN 2582-2667

STRENGTHENING RULE OF LAW TO CONTROL CRIME : A CROSS COUNTRY ANALYSIS

Anuradha S. Pai[1], Shantanu R. Shinkre[2], Dr. Nairita Bhattacharjee[3]

ABSTRACT

Economists have studied the psychology of crime and how individuals react to changes in the economy. One basic idea is laws are enacted to lower down crime rates and discourage potential offenders from committing crimes. This research analyses how the effect of rule of law on crime index variates in countries with different unemployment rates. The paper uses a cross-country analysis of high, moderate and low unemployment rate countries to examine the relation between rule of law and crime index. Further, we see how migration and unemployment rate affects crime index. This paper investigates how the effect variates in different countries and if the variables have a negative, null or positive effect on levels of crime. In this paper, we examine and clarify the relationship between rule of law, migration, unemployment rates and crime index over the period 2012–2020 by developing a model that depicts the structural effect of these variables on the crime index of a country using panel data regression. Through this research, we find that the rule of law has a negative impact on the crime index. Further, we find that migration and unemployment have a positive impact on the crime index.

Keywords: *Economics of Crime, Rule of Law, Crime index, Unemployment, Migration*

JEL Code : *E24, J19, J60, K42, O15*

[1] Assistant Professor, Faculty of Law, PES University, Bangalore, corresponding author, email: anuradhaspai11@gmail.com,Ph:8281430945

[2] Student, School of Economics, Dr.Vishwanath Karad MIT World Peace University, Pune

[3] Assistant Professor, School of Economics, Dr.Vishwanath Karad MIT World Peace University, Pune

ISSN 2582-2667

1. INTRODUCTION

By passing laws, rules, and regulations, we aim to achieve peace in our society where every person feels safe and secure. A strict law ensures that potential criminals know that they will face severe consequences before committing a crime, which brings fear into their minds. By enacting strict punishments, it is important to establish fear in public mind against any criminal activity. Rule of law is the only way nations can maintain law and order, control crimes, enforce contracts and ensure individual freedom and rights (Nwabuzor 2005).

The rule of law implies that laws are created, enforced, and regulated, such that no one, not even the most powerful official, is above the law. Laws bind rulers in the same way citizens are bounded by laws. Similarly, equality before the law, which holds that no legally recognized person should enjoy privileges that aren't extended to all, and no one should be immune from legal penalties, is closely related to this concept. The most important assurance required by people, both individually and as a society, is the rule of law principle, which is the cornerstone of rule of law and democracy. Factors such as restricting the state's power by law and protecting individual rights and liberties, providing an equitable and fair environment, and respecting the superiority of law above any individual all contribute to the rule of law notion. (Ozpolat 2016).

In many developed economies, a crime epidemic appears to have arisen, raising issues about whether more unemployment leads to higher crime rates and whether the rule of law is weak in such nations. When there is high unemployment, people lose their disposable income which causes them to be frustrated, their entire lifestyle changes which makes them suffer with anxiety. This forces them to find new ways to maintain their lifestyle, some might have the resources to find other options to generate an income but those that were entirely dependent on a particular skill or job have high chances of being exposed to part-take in criminal activities. Hence, we investigate if rule of law and involuntary unemployment increases participation in illegal activity. Further, we also examine the impact of migration on crime in a nation since, from a social standpoint, migration is frequently regarded as a possible cause of social chaos and criminality.

1.1. Objective

ISSN 2582-2667

To examine the relationship between rule of law and incidents of crime across different categories of countries.

2. LEGAL FRAMEWORKS

The *Universal Declaration of Human Rights (UDHR)* provides a framework for understanding the relationship between rule of law, migration, unemployment rates, and crime index in different countries. The UDHR recognizes the inherent dignity and equal rights of all individuals and establishes a set of fundamental human rights that should be protected by all nations. Several articles of the UDHR are particularly relevant to our research topic. For example, Article 7 recognizes the right to be free from torture or cruel treatment, which is relevant in addressing issues related to crime. Article 9 recognizes the right to liberty and security of person, which is relevant in addressing issues related to migration. Article 23 recognizes the right to work and just conditions of employment, which is relevant in addressing issues related to unemployment rates. Furthermore, the UDHR emphasizes the importance of rule of law by recognizing the right to a fair trial (Article 10) and establishing principles such as equality before the law (Article 7) and presumption of innocence (Article 11). These principles are essential for ensuring that legal systems are fair and just. Overall, the UDHR provides a comprehensive framework for understanding how issues related to rule of law, migration, unemployment rates, and crime index are interconnected with fundamental human rights. By recognizing these rights and establishing principles for their protection, the UDHR provides a basis for promoting justice and equality in all nations.

One of the key provisions of the *International Covenant on Civil and Political Rights (ICCPR)* that is relevant to our topic is Article 14, which guarantees the right to a fair and public hearing by an independent and impartial tribunal. This right is closely tied to the rule of law, as it ensures that individuals are not subject to arbitrary or unjust treatment by the criminal justice system. By examining how the rule of law impacts crime, our research can contribute to the development of criminal justice systems that uphold this fundamental human right. Another relevant provision of the ICCPR is Article 9, which prohibits arbitrary detention or imprisonment. This provision highlights the importance of ensuring that criminal justice systems are fair and impartial, and that individuals are not detained or imprisoned without proper legal justification. Additionally, the ICCPR recognizes the right to privacy in Article 17. This right is closely tied to the rule of law, as it ensures that individuals are protected from

ISSN 2582-2667

arbitrary or unjustified interference with their privacy. Overall, the ICCPR provides an important framework for understanding the relationship between the rule of law and crime.

3. THEORETICAL FRAMEWORK

According to the deterrence theory, people are less likely to engage in criminal behaviour when they believe the costs exceed the benefits. The threat of punishment and the efficacy of legal systems in enforcing laws impact this perception of costs. The deterrence theory suggests that factors such as migration and unemployment rates can influence an individual's perception of the costs associated with criminal behaviour in the context of the study subject. Individuals who migrate to a new nation, for example, may encounter economic challenges and a lack of legal employment opportunities. This increases their chances of engaging in criminal behaviour for survival or economic benefit. Similarly, unemployed people may see criminal activity as a means to get money or resources.

The social control theory suggests that factors such as migration and unemployment rates can weaken social bonds and increase the likelihood of criminal behavior. Individuals who migrate to a new country may lack social connections and support networks, which can make them more vulnerable to engaging in criminal behavior. Similarly, individuals who are unemployed may experience feelings of isolation and hopelessness, which can also increase the likelihood of criminal behavior. The theory also suggests that rule of law plays an important role in preventing criminal behavior by strengthening social bonds and promoting conformity to societal norms. When laws are enforced fairly and consistently, individuals are more likely to view them as legitimate and comply with them. This can help to strengthen social participation and bondings and reduce the possibility of involving in criminal activity.

The rational choice theory suggests that factors such as migration and unemployment rates can influence an individual's decision to engage in criminal behavior. Individuals who migrate to a new country may face economic challenges and lack access to legal employment opportunities. This can increase their likelihood of engaging in criminal behavior as a means of survival or economic gain. Similarly, individuals who are unemployed may view criminal activity as a way to obtain income or resources. The theory also suggests that rule of law plays an important role in preventing criminal behavior by increasing the perceived costs of engaging in such behavior. When laws are enforced fairly and consistently, individuals are more likely to view them as legitimate and comply with them. This can help to increase the perceived costs of engaging in criminal behavior and reduce its prevalence.

ISSN 2582-2667

The procedural justice theory suggests that factors such as migration and unemployment rates can influence an individual's perception of fairness in legal systems. Individuals who migrate to a new country may face discrimination or bias in legal proceedings due to their status as immigrants. Similarly, individuals who are unemployed may view legal systems as biased against them due to their economic status. The theory also suggests that rule of law plays an important role in promoting procedural justice by ensuring that legal systems are transparent and impartial. When laws are enforced fairly and consistently, individuals are more likely to view them as legitimate and comply with them. This can help to promote greater levels of trust in legal systems and reduce the likelihood of criminal behavior.

4. LITERATURE REVIEW

The link between crime and the rule of law is a hotly debated issue in academic forums. There appear to be two primary categories of literature in this topic. The first strand of research analyses the link between crime and the rule of law by including other relevant variables, whereas the second strand of literature investigates the influence of the rule of law on crime. Our attention is drawn to the second strand, which assesses the impact. This study, on the other hand, contributes to the literature by empirically determining the association between incidents of crime and law enforcement, migration considering cross country differences.

The importance of strict devotion to the rule of law in crime control has not been decisively established. The burden of proof is on the opposite side. Even less evidence exists that illicit techniques are more effective. The best-known data indicates that the immediate gains of breaching the rule of law are at best small, if not mythical, and that the long-term consequences are significant. It is in the best interests, to follow the rule of law. There may be times when breaching it is justifiable, but such instances are few, and the value of doing so in any given case should not be assumed (Bayley 2002). Deterrence and prevention of crime are two very different things; neither is sufficient to prevent all criminal acts. A third method of deterrence is that of making the commission of a crime more difficult through physical means or careful planning (Biddle 1969).

The rule of law has various components. They include property rights, respect and enforcement, the operation of authorities for law enforcement and order maintenance, such as

ISSN 2582-2667

police and customs, and the judiciary. A robust rule of law ensures that people feel comfortable in the knowledge that their personal belongings will be protected. The rule of law stimulates economic activity because individuals save and invest when they know their property, assets, and the results of their labour will not be taken from them (Nwabuzor 2005). No country has achieved full democratic rule of law—and it may be undesirable to do so in the future. Furthermore, contrary to the rather positivistic inclinations of earlier legal views, virtually all legal theories today—despite their differences in other ways—hold that, like any other rule, the dominant or authorised interpretations define the true meaning or intent of the laws. One of the primary themes on which political wars are fought is the "correct" interpretation of laws and, indeed, constitutions. Contrary to technocratic and positivistic conceptions, we must never forget that the law, in its substance and application, is largely a dynamic stream of power relations, rather than a rationalised technique for the ordering of social relations. Modern societal change as well as ceaseless struggles for establishment of new rights and reinterpretation of old ones, make the rule of law, particularly the democratic rule of law, a movable target (Donnell 2004).

According to another study, an efficient institutional framework produces positive exogeneity, effectively distributes resources, eliminates asymmetric knowledge and market uncertainty. Important elements of institutional structure include the rule of law, the prevention of corruption, freedom of speech, political stability, the calibre of the bureaucracy, and the protection of property rights. Investigations have been done on the connection between economic growth and governance in high-, middle-, and low-income countries from 2002 to 2015. According to research findings, GDP in high income nations is positively connected with rule of law, corruption control, and voice and accountability (Ozpolat 2016). Police may reduce crime, but only if they use tactics that are blatantly at odds with those prescribed by the professional law enforcement paradigm, according to a chapter. Even seemingly pointless police initiatives like doorstep campaigns seem to be effective, perhaps because they engage neighbourhoods and make the "legal threat" known to plenty of prospective offenders (Homel 1994).

A recent study’s findings imply that internalised moral standards are the most potent restrictions on dishonest behaviour across civilizations and cultures. Policy initiatives to promote moral internalisation may be more effective than measures to increase the frequency or likelihood of legal punishments. However, the process of internalisation is still little

ISSN 2582-2667

understood, and it represents a significant area for future research targeted at lowering crime and improving social welfare (Mann 2016). A study examined how the old informal rules and regulations kept crime under control in China and how China has made much praiseworthy progress in the criminal justice field, but more needs to be done to make it truly representative and effective. "Government policies and legal practices influence public opinion, and public opinion then becomes a force of resistance against reforms of state policies" (Qi 2009).

In their paper by Debnath et al., (2013) where linkage between interstate migration and crime in India was examined, it was found that there is no significant association between these variables. Further, it was confirmed that poverty rate has a significant positive contribution on crime, while factors like percentage of civil police, education, and urban concentration act for reduction in crime. Thus, government should concentrate on boosting economic development by opening up more employment opportunities. Education can go a long way in preventing criminal activity by improving the skills and thereby increasing the reward and as such involvement in legal work and hence, increasing the opportunity costs of criminal activities. Whereas another study mentioned that population migration and immigration patterns have had distinct political, economic, and cultural effects. The necessity for work in the rising Western European economies attracted many immigrant groups to rather racially homogeneous national populations in the second half of the previous century. Furthermore, an influx of refugees and asylum seekers as a result of global instability, as well as population movement in Central and Eastern European countries following the fall of the Berlin Wall and the end of Communism, brought a game-changing number of ethnically and culturally diverse groups. These influences resulted in significant changes in European demographics. As a result, in recent decades, European countries have been populated by young people who are second-generation ethnic minorities. Many of these countries now have a multi-ethnic, multi-cultural society (Decker 2009). According to one study, internal migrants positively contribute to South Africa's crime problem. It is clearly no coincidence that the victims of crime survey conducted in South Africa likewise reveals that only a small percentage believed foreigners were responsible for the crime (Kollamparambil 2018). Again, the recent incident in France raises an eyebrow on this issue and the country is demanding a ban on in-migration. When unemployment is considered, a paper stated that crime imposes tremendous economic costs on society, with unemployment being thought to have a role in the supply function of crime. 2 The correlation between the

ISSN 2582-2667

longest economic growth since World War II and the overall decrease in crime rates in the 1990s appears to support this notion. The yearly unemployment rate in the United States fell significantly between 1991 and 2000, from 6.8 percent to 4.8 percent (Lin 2008).

5. METHODOLOGY

5.1. Data Description

The paper intends to explore the effect of rule of law on crime. We obtained secondary data from three sources, including the World Bank, the Worldwide Governance Indicators (WGI) and the Numbeo database. This study selects three panel groups (High unemployment rate countries, moderate unemployment rate countries and low unemployment rate countries) composed of 30 countries in the world from 2012 to 2020[4]. The panel data of these countries are used as samples. To measure crime, we used the crime index which is an estimation of overall level of crime in a given city or a country[5]. Then, the impact on crime index is explored from the perspective of three variables, including rule of law (ROL) which reflects perceptions of the extent to which agents have confidence in and abide by the rules of society, and in particular the quality of contract enforcement, property rights, the police, and the courts, as well as the likelihood of crime and violence; net migration which is the number of immigrants minus the number of emigrants, including citizens and noncitizens.[6] Along with this, we have taken unemployment rate that largely impacts the level of crime in a country. unemployment rate (UR) which refers to the share of the labor force that is without work but available for and seeking employment. The selected countries are classified into three groups according to the World Bank Data (2020).

[4] The list of each category of countries is given in **Appendix A**.

[5] We found that there were significant gaps and inconsistencies in the data available for specific crimes in many of the countries we studied, due to resource constraints or lack of political will. As a result of these limitations, we were unable to include specific crimes such as homicide, burglary, and fraud in our analysis.

[6] Countries with weaker economies and fewer job opportunities, such as Romania, Indonesia, Lithuania, and Jamaica tend to experience higher levels of emigration as individuals seek better economic prospects elsewhere. On the other hand, countries with stronger economies and more job opportunities, such as Singapore, Japan, and the Netherlands, tend to experience higher levels of immigration as individuals seek better economic prospects within these countries. Political stability, economic opportunity, and cultural factors all play a role in determining net migration patterns.

ISSN 2582-2667

Variable	Abbreviation	Source
Crime Index	CI	Numbeo
Rule of Law	ROL	Worldwide Governance Indicators (WGI)
Net Migration in Lakhs	NMIG	World Bank
Unemployment Rate	UR	World Bank
Unemployment dummy = 1 for countries with high unemployment in model 2 =1 for countries with high and moderate unemployment in model 3	Dummy	World Bank

Table 1: Description of variables

5.2. Modelling Strategy

The deterrence theory of punishment serves as the theoretical foundation for this research. The theory states that that criminal punshments do not just punish violators, but also restricts others from committing such offenses. It states that the threat of punishment will discourage criminal behaviour and results a decline in the magnitude of offending in the society. As such, a causal relationship runs between law and crime. Initially, we conducted a regression analysis to examine the relationship between rule of law and crime rate, but the results did not give a nuanced understanding. We decided to add in more factors such as migration and unemployment rates to our analysis, which allowed us to develop a more comprehensive model that depicted the structural effect of these variables on crime rate. By including additional factors, we were able to control for potential confounding variables that may have influenced the relationship, and test more complex models that could better capture the relationship. We use panel regression model to examine the influence of rule of law, net migration and unemployment rate on crime index. The empirical approaches begin with a unit root test to verify the level of integration of the variables using the Levin, Lin, and Chu common root test. The unit root test must be used to avoid erroneous and irregular results in the panel regression

ISSN 2582-2667

analysis. The LLC test is adequate for determining the level of integration of dynamic factors. In our empirical investigation, we employ the following model:

$$CI = \beta_0 + \beta_1 ROL + \beta_2 NMIG + \beta_3 UR$$

where CI is the crime index, ROL represents the rule of law index, NMIG refers to the net migration in lakhs and UR denotes the unemployment rate. CI is the dependent variable in the regression model. ROL, NMIG and UR are the independent/input variables, β0 is the intercept. β1, β2, β3, β4 and β5 are the slope/regression coefficient values. Breusch–Godfrey Serial correlation LM test was used for checking and correcting autocorrelation. Breusch-Pagan-Godfrey test was used to check for heteroskedasticity. The estimates are free of heteroscedasticity and autocorrelation.

6. RESULTS AND DISCUSSION

This section provides a comprehensive analysis of the research findings while highlighting their broader implications for understanding crime rates in different countries.

6.1. Stationarity Test – Unit Root Analysis

The first step in the analysis is to evaluate the variables' stationarity, and we apply the Levin, Lin, and Chu (LLC) test to guarantee that all variables are integrated. When the data of a variable is time-invariant, the variable is integrated. It does not have a unit root problem if its mean and variance are unable to co-vary with time. LLC test is one of the most commonly used statistical test when it comes to analyzing the stationarity of panel groups. The test allows for individual effects, time effects and possibly a time trend in the panel. If there aren't any unit roots, the series is thought to be stationary.

Table 2 displays the examination's outcomes.

Table 2: Levin, Lin and Chu Unit Root Test Results

Variable	Order of Difference	t-statistics
CI	0	-10.85***
ROL	0	-22.16***
NMIG	0	-8.77***
UR	0	-4.52***

ISSN 2582-2667

*Notes: 1. Order of Difference: 0 indicates no difference. 2. ***denotes statistical significance at 1% level.*

The findings of the LLC tests conducted on variables in the level form indicate that they are stationary, we obtain a test statistic that is significant at 1% level. It can be seen that all data series are stationary at level I(0). Therefore, the variables adopted in this paper are all stationary at level I(0). Since all the variables are stationary at level, there was no necessity to transform variables for our panel regression.

6.2. Descriptive statistic and correlation matrix

After conducting the unit root test, we obtained descriptive statistics and correlation matrices, which are presented in **Table 3**. Panel A provides the descriptive statistics, while Panel B displays the correlation matrix. The descriptive statistics include measures such as mean, standard deviation, minimum, and maximum values of the observed data. Notably, the Rule of Law (ROL) indicator exhibits the lowest mean value among the descriptive statistics, whereas the Crime Index (CI) variable displays the highest mean value. Additionally, the standard deviation analysis reveals that the CI variable demonstrates the highest variability, whereas the ROL variable is characterized by the lowest variability. Moving on to the correlation matrix in Panel B of Table 3, the results of the correlation test indicate varying degrees of correlation among most of the variables.

Table 3: Descriptive statistic and correlation matrix

	CI	ROL	NMIG	UR
Panel A				
Mean	39.609	0.673	2.442	9.811
Maximum	78.530	2.026	49.617	28.740
Minimum	5.750	-0.927	-26.634	2.400
Std. Dev.	15.465	0.872	11.247	6.639
Panel B				
CI	1			
ROL	-0.529	1		
NMIG	0.063	0.324	1	
UR	0.387	-0.441	-0.113	1

6.3. Panel Regression Results

ISSN 2582-2667

Table 4 shows the log-run outcome of the regression analysis for the variables crime index (CI), rule of law (ROL), net migration (NMIG), and unemployment rate (UR) after providing the descriptive statistics and the correlation matrix. We have considered three models in this study, model 1 is the initial regression in which the study regressed rule of law (ROL) with crime index (CI) without considering any other factors. The aim was to study the relationship between these two variables and understand the impact of rule of law on crime. However, the results showed that the adjusted R square was low, indicating that other factors may be influencing crime rates in addition to rule of law. As a result, the study expanded its analysis to include other factors such as net migration and unemployment rates. By doing so, it was able to better understand how these factors interact with rule of law to influence crime rates in different countries. Hence, the newer models considered all these factors. Model 2 is the overall panel regression where we consider high, moderate and low unemployment rate countries altogether, model 3 is the panel regression of countries with a dummy for high unemployment rate countries, and model 4 is the panel regression of the countries with a dummy for moderate and high unemployment rate countries. We performed a diagnostic test on models (1-4) for normality, serial correlation, and heteroskedasticity to ensure the reliability of the results. The diagnostic tests were successful for all models.

The results of model 2 shows that rule of law (ROL) has a negative and significant relationship with the crime index (CI) of the selected countries panel group. It also tells us that net migration (NMIG) and unemployment rate (UR) has a positive and significant relationship with crime index (CI). Here, the independent variables ROL, NMIG and UR are found to be significant as $|t| > 2$ showing that these variables have a causal relationship with CI which is confirmed by the probability values being < 0.05. The adjusted R-square tell us that the model is 0.361 fit which is around the same as what the R-square interprets. However, here the coefficients are comparatively lower since we have also included low unemployment rate countries in the panel data but the problem with the low unemployment rate countries was that, there was no significant relation between unemployment and crime in these countries as their unemployment rates are very low, which is why further regressions need to be carried out using a dummy to actually understand the impact of explanatory variables on our dependent variable.

Furthermore, the results of model 3, wherein we include a dummy variable which is the unemployment rate dummy where low and moderate unemployment rate countries are the control group and high unemployment rate countries are the treated group, show that rule of

ISSN 2582-2667

law (ROL) has a negative and significant relationship with the crime index (CI) of the selected countries panel group, and that, net migration (NMIG) has a positive and significant relationship with crime index (CI). Again, the independent variables ROL, NMIG and UR_{Dummy} are found to be significant as $|t| > 2$ showing that these variables have a causal relationship with CI which is confirmed by the probability values being < 0.05. The adjusted R-square tell us that the model is 0.378 fit. The dummy that captures the unemployment shows that unemployment rate (UR) contributes higher to crime in this model as compared to model 2. Here, we observe that the coefficient values are significantly higher than the values for model 2. This implies that the independent variables have more effect on the crime index in this scenario wherein we use a dummy for high unemployment rate countries.

Additionally, the results of model 4, wherein we include a dummy variable which is the unemployment rate dummy where low unemployment rate countries are the control group and high and moderate unemployment rate countries are the treated group, show that rule of law (ROL) has a negative and significant relationship with the crime index (CI) of the selected countries panel group, and that, net migration (NMIG) has a positive and significant relationship with crime index (CI). Here too, the independent variables ROL, NMIG and UR_{Dummy} are found to be significant showing that these variables have a causal relationship with CI. The unemployment dummy demonstrates that the unemployment rate (UR) contributes more to crime in this model than in models 2 and 3. In this case, the coefficient values are much higher than in models 2 and 3. This means that unemployment in the country has a greater impact on the crime index for moderate and high unemployment countries. Thus, we derive that the contribution of unemployment to crime varies across country category.

To reach a conclusion, we look at the findings of the panel data regression model (2-4), in which we look at the impact of significant coefficients of each independent variable on the crime index. We conclude from this similarity that (i) the rule of law has a negative impact on the crime index of the selected countries. (ii) Net migration has a positive impact on the crime index of the selected countries. (iii) Unemployment rate has a positive impact on crime index but the effect variates depending upon the level of unemployment in the country.

Table 4: Panel regression estimation results

ISSN 2582-2667

	Dependent Variable - CI			
Variables	*Model 1*	*Model 2*	*Model 3*	*Model 4*
ROL	-9.393 (-5.437)***	-9.444 (-5.437)***	-8.422 (-4.329)***	-7.330 (-4.452)***
NMIG	-	0.352 (3.716)***	0.338 (3.331)***	0.280 (3.254)***
UR	-	0.423 (1.658)*	-	-
DUMMY	-	-	8.130 (2.057)**	10.970 (4.478)***
C (Constant)	45.926(12.640)***	40.951(12.640)***	41.737(16.004)***	36.541(15.129)***
Diagnostic Statistics				
Adjusted R-squared	0.278	0.361	0.378	0.411
F-statistic	104.336	51.647	55.473	63.553
Prob (F-statistic)	0.000	0.000	0.000	0.000
Wald F-statistic	15.465	14.346	15.257	19.502
Prob (Wald F-statistic)	0.000	0.000	0.000	0.000
Durbin-Watson stat	1.980	1.980	1.980	1.999

*Note: ***, ** and * represent significance at 1%, 5% and 10% respectively. Source – estimated by the authors.*

7. CONCLUSION

Laws are implemented to reduce crime rates in the country and instil fear in potential offenders, causing them to refrain from committing crime. This study's main focus was to determine if there is a significant relationship between the crime index and indicators of law implementation, migration and unemployment over the period 2012–2020 using econometric analysis. Our dependent variable was crime index (CI) and independent variables were rule of law (ROL), net migration (NMIG) and unemployment rate (UR). The analysis of interactions between crime index, rule of law, net migration and unemployment rate in the context of the three panel groups (High unemployment rate countries, moderate unemployment rate countries and low unemployment rate countries) composed of 30 countries is carried out in this study.

As a primary step, a panel unit root analysis was conducted making use of Levin, Lin and Chu common root test. A panel unit root analysis was performed as a first step, using the Levin, Lin, and Chu common root test. Our objective was to check the effect of the explanatory variables on the crime index of the selected countries. The results from the panel regression models lend support for the feedback hypothesis that there is a causal relationship between the variables. The empirical findings state that there is some causality between crime index and indicators of law implementation, migration and unemployment over the period 2012–2020.

Rule of law, net migration, and unemployment rate all had varied degrees of impact on the crime index in the three panel groups (high unemployment rate countries, moderate

ISSN 2582-2667

unemployment rate countries, and low unemployment rate countries). As a result, the following conclusions summarise the most important findings of this study:

(i) From the perspective of rule of law, ROL has a negative and significant relationship with the crime index (CI) in all the three panel groups – high, moderate and low unemployment rate countries. This tells us that rule of law has some significant impact on the crime index of a country which supports the theory that law implementation does have a significant effect on the crime index of a nation.

(ii) From the perspective of net migration, NMIG has a positive and significant relationship with the crime index (CI) in all the three panel groups – high, moderate and low unemployment rate countries. This implies that net migration has a favourable effect on crime index, indicating that, with an increase in migration, crime index may also increase slightly.

(iii) From the perspective of unemployment rate, UR has a positive impact on crime index but the effect variates depending upon the level of unemployment in all the three panel groups – high, moderate and low unemployment rate countries. Unemployment rate (UR) contributes more to crime in countries with high and moderate unemployment rates as compared to countries with low unemployment rate countries as there is no significant relation between unemployment and crime in such countries. This indicates that countries with higher unemployment rates are more likely to experience the greater impact of unemployment rates on the crime index.

It is important to note that study also has a few limitations such as the several factors which haven't been considered in the estimation such as social factors, morality, cultural factors, poverty level, education, prevalent family structure and a few others which have a significant relationship with crime. Although the study wants to look at more country-specific indicators, it is constrained by the data that is available. These limitations are worth exploring in future research.

Appendix A

Description of Countries

Panel	List of Selected Countries	No.of Countries

ISSN 2582-2667

Low Unemployment Rate Countries	Singapore, Romania, Japan, Netherlands, Malta, Indonesia, Germany, Hong Kong, Norway, Switzerland	10
Moderate Unemployment Rate Countries	Serbia, France, Sweden, Lithuania, Jamaica, United States, Saudi Arabia, Cyprus, Croatia, India	10
High Unemployment Rate Countries	South Africa, Georgia, Bosnia & Herzegovina, Greece, Spain, Colombia, Argentina, Brazil, Algeria, Uruguay	10

REFERENCES

Aslı Ozpolat, Gulsum Gunbala Guven, Ferda Nakipoglu Ozsoy, Ayse Bahar, *Does Rule of Law Affect Economic Growth Positively?*, 7 RWE. 107, 117 (2016).

Augustine Nwabuzor, *Corruption and Development: New Initiatives in Economic Openness and Strengthened Rule of Law*, 59 J Bus Ethics. 121, 138 (2005).

Avijit Debnath, Niranjan Roy, *Linkage between internal migration and crime: Evidence from India*, 41 International Journal of Law Crime and Justice. 203, 212 (2013).

David H. Bayley, *Law Enforcement and The Rule of Law: Is There a Tradeoff?*, 2 Criminology & Public Policy. 133, 154 (2002).

Guillermo O'Donnell, *The Quality of Democracy: Why the Rule of Law Matters*, 15 Journal of Democracy. 32, 46 (2004).

Heather Mann, Ximena Garcia-Rada, Lars Hornuf, Juan Tafurt, *What Deters Crime? Comparing the Effectiveness of Legal, Social, and Internal Sanctions Across Countries*. 7 Front Psychol. (2016).

Ming-Jen Lin, *Does Unemployment Increase Crime? Evidence from U.S. Data 1974-2000*, 43 The Journal of Human Resources. 413, 436 (2008).

ROSS HOMEL, UNPEELING TRADITION: CONTEMPORARY POLICING 7-34 (K. Bryett & C. Lewis, Macmillan Australia, 1994)

Scott H. Decker, Frank van Gemert, David C. Pyrooz, *Gangs, Migration, and Crime: The Changing Landscape in Europe and the USA*, 10 Int. Migration & Integration. 393, 408 (2009).

Shenghui Qi, Dietrich Oberwittler, *On the Road to the Rule of Law: Crime, Crime Control, and Public Opinion in China*, 15 Eur. J Crim. Policy Res. 137, 157 (2009).

Umakrishnan Kollamparambil, *Immigration, Internal Migration and Crime in South Africa: A multi-level model analysis*, 37 DPR. 672, 691 (2018)

W. Craig Biddle, *A Legislative Study of the Effectiveness of Criminal Penalties*. 15 SAGE. Crime & Delin. 354, 358 (1969).

ISSN 2582-2667

THE SEASONAL NATURE OF CHILD LABOUR AND ITS FORBIDDEN UPSIDES

Prakhar Aditya & Priyansh Pratap Tiwari[1]

ABSTRACT

Child labour has often been seen as a completely negative phenomenon. However, it lies in the midst of the moral, social and economic grey area. Although no one can deny the former assertion, the latter puts things into perspective and forces us to look at the other end of the spectrum, especially in the Indian context. This paper tries to break this negative taboo and uncover a fresh perspective where seasonal child labour can be a cure to the long-standing downsides of child labour in general. While there are several existing legislations to combat these downsides, they fail to look at the seasonal absence of a child from his educational pursuits. The pre-existing laws merely propose a blanket ban on the idea of children being involved in work. These provisions work at a national scale, but keeping in mind India's vast diversity, they miss their aim when it comes to seasonal dropouts on the grassroots level. This paper further explores foreign regulations to put forth a fresh policy prescription to address all possible downsides, which may seem evident from the newly suggested model promulgated by the authors.

Keywords: *Child Labour, Seasonal Nature, Upsides, NAGCAT.*

[1] The Authors are currently in their second-year of study in BA. LLB. (Hons.) in the West Bengal National University of Juridical Sciences, Kolkata under the guidance of Dr. Soumya Sahin, faculty of Economics at the West Bengal National University of Juridical Sciences, Kolkata.

ISSN 2582-2667

1. INTRODUCTION

Child labour does not need to be defined, as it is a widespread and widely known subject. However, it is not an explicitly defined term in any Indian legislation. The ILO (International Labour Organisation) defines child labour as 'work that deprives children (any person under 18) of their childhood, their potential and their dignity, and that is harmful to their physical and/ or mental development.'[2] However, these are more stringent in the Indian context[3]. The Child Labour (Prohibition and Regulation) Act, 1986 gives a definition of 'child' as an individual who has not reached the age of fourteen, as given under Section 2(ii)[4]. Although it was stated above that there is no explicit definition of child labour; however, it can be interpreted that child labour points to the involvement of individuals under the age of fourteen in work in the formal or informal sector which may or may not be against a wage.

This article focuses, in particular, on the effects of seasonal involvement of children in work. These effects are even worse than that witnessed by regular employment of underaged individuals in child labour. Seasonality of child labour refers to seasonal variations in the number of instances of child labour or the number of children under age 14 that are working.

The negative effects of child labour have been widely discussed through an infinite number of journal articles. However, this article takes up a unique perspective. It explores two possible ways wherein the involvement of children in a professional setup may have positive benefits. This involvement can have two roles – it can act as a supplement to the other activities of the children, or it can be complementary. The intricacies of these possible benefits shall be explored in this article.

2. Seasonal Nature

As mentioned earlier, seasonality refers to the seasonal variations in the involvement of children in labour. The seasonal nature affects the child, where he is employed for a few months and is kept out of school for that period. This creates a gap in his studies which makes a child generally averse to education, given the employment scenario in this country where most of

[2] ILO, https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo yangon/documents/publication/wcms_531953.pdf (last visitedDecember 23, 2022).
[3] Fatima Juned, *No Glimmer of Hope: Jharkhand's Mica Mines and Child Labour*, SOCIAL & POLITICAL RESEARCH FOUNDATION (2022).
[4] The Child Labour (Prohibition and Regulation) Act, 1986, §2(ii), No. 61, Acts of Parliament, 1986 (India).

ISSN 2582-2667

the workforce is unemployed. Even higher education cannot guarantee a job, let alone primary education.

While there has been sufficient research on child labour as a concept, there remains the question of its seasonal nature. The studies conducted in these domains largely remain confined to the involvement of children in work in general. Thus, an in-depth study of seasonal child labour is essential.

This seasonality can be seen due to various reasons:

3. Causes

There are a lot of factors that work behind the stage to bring this seasonal divergence to the statistics of child labour, but the major factors are discussed below:

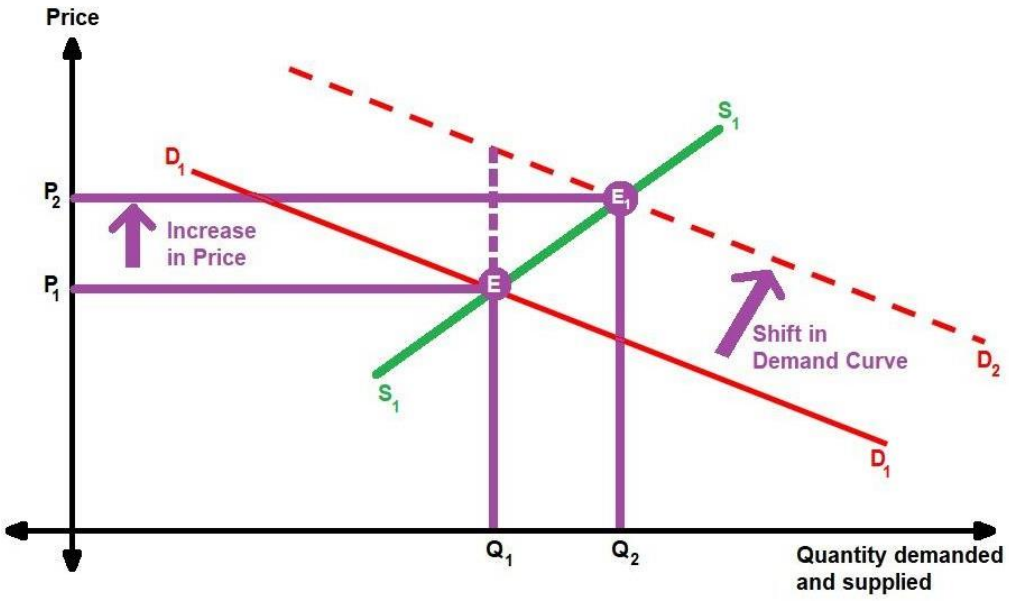
3.1. The Game of demand and supply at play

Any divergence in any market, be it price or production, results from the interplay between the market forces i.e., Demand and Supply. As insensitive as it may sound, there certainly exists a market for child labour. This depends on the divergences in the respective labour demand and supply curves. The interplay between demand and supply causes this divergence, which gives a seasonal aspect to child labour as with any other commodity. These are caused by the following:

In the primary or the agricultural sector

Here, during the sowing or the harvesting season, the demand for labour is very high, while the existing labourers at work are limited and constant in the short run. This creates a deficit which can have two results – either the additional worker would be hired, but with a much higher wage rate due to this rise in demand *(as an increase in demand with constant supply results in a rise of prices, see Graph 1)* This results in increased costs for the employer, which a poor farmer cannot bear and thus looks for other alternatives.

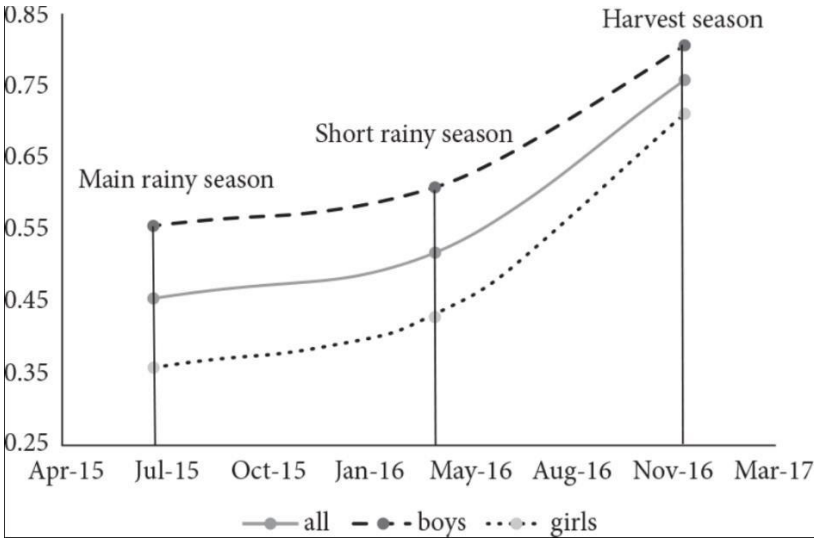
ISSN 2582-2667



Graph 1

The other alternative for the employer is to hire children for work who would be willing to work at extremely low wage rates or sometimes even for free for cases of their own kin. Mostly the employer prefers the latter alternative, which leads to this seasonal divergence in child labour.

The quantified form of this result from a study conducted in Ethiopia may be seen in Graph 2:

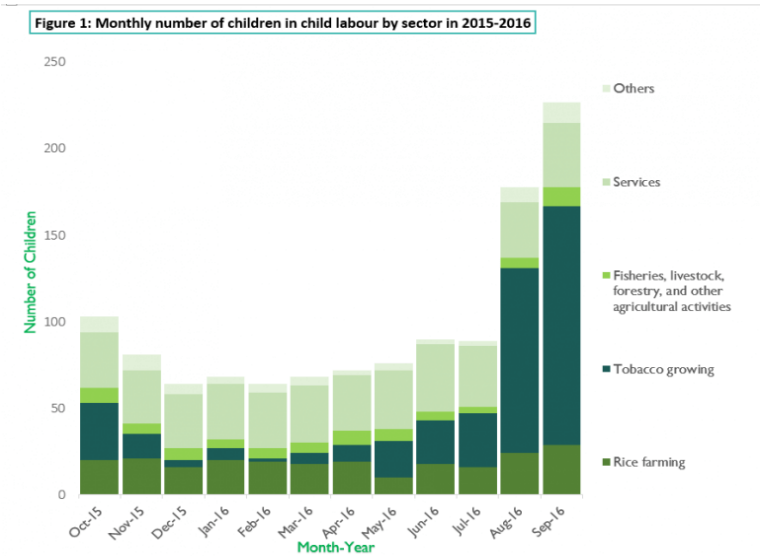


ISSN 2582-2667

Graph 2[5]

It is clearly visible from the above graph that during the harvest season, the instances of child labour rise.

The following graph represents seasonal variation in the number of children employed in different sectors:



Graph 3[6]

3.2. Effects of this seasonal phenomenon on the child vis-à-vis the economy and adult employment rate

Now that we have gone through the causes of this seasonal phenomenon, we will now analyse the effect of this phenomenon on various stakeholders in the situation.

[5] Jose Galdo, Ana C. Dammert and Degnet Abebaw, *Child Labor Measurement in Agricultural Households: Seasonality, Proxy Respondent and Gender Information Gaps in Ethiopia*, 43 GLM LIC WORKING PAPER (2018).
[6] ECLT Foundation, https://www.eclt.org/en/news/understanding-child-labour-in-agriculture-lessons-from-eclt-studies (last visited December 27, 2022).

ISSN 2582-2667

Effect of this seasonal nature on the child

While one might think that if, due to this seasonal divergence, many children are working only for a few months, it might be a change for the better. It may be wrong to suggest this for many reasons. Firstly, studies have suggested that the longer children engage in seasonal labour, the greater the likelihood that they may drop out of school or encounter issues (these issues and their probable solutions have been discussed in Section 6 of the paper), such as a poor attitude toward their educational experience, skipping classes, and receiving worse marks[7]. A 25- 30-day drop in attendance for a student at the grassroots level may result in a child being averse to education, lack of concentration, and not focusing on studies. Another caveat is that these seasons are different for different parts of the country, and in a country as wide as India, these children are illegally trafficked to other parts of the country for work in unliveable conditions.

Effects on Economy and Household Income

The income of the family is significantly impacted by child labour. Some low-income families even rely only on the child's income to make ends meet. The following table shows this in a quantifiable manner.

Category	Average Annual Income (in Rupees)
Before contribution of child labourers	15,419
Contribution of child labourers	4,490
After contribution of child labourers	19,909

Table 1[8]

The accompanying table illustrates that the average household income is increased considerably due to the income of the child. The contribution of Child Labour is around ₹4,500, which accounts for nearly one-fourth of household income. The contribution of child labourers has a favourable effect on the households' annual income.

[7] Poch Bunnak, *Child Workers in Brick Factories: Causes and* Consequences, PHNOM PENH: RESEARCH PROJECT IN CENTER FOR POPULATION STUDIES AT ROYAL UNIVERSITY (2007).
[8] Prasant Kumar Behera and Subhasmita Das, *Factors Responsible for the Incidence of Child Labour: A Study in Cuttack City, Odisha*, 7.4 IOSR JOURNAL OF ECONOMICS AND FINANCE, 24-32 (2016).

ISSN 2582-2667

But what this quantifiable data mises is that while the income of a child could have a short-term positive effect on the household income and economy, the overall long-term effect that it has is the opportunity cost associated with this problem. When a child joins work at a very young age, an age fit for learning and acquiring new skills, he closes all the other avenues for him, which could have had a multiplier effect on his productivity in the long term, for example, education.

4. UPSIDES OF CHILD LABOUR

Child labour has often been seen as a social malaise. However, as advocated earlier, it may not be a 'black' or negative object. There are two possible ways of looking at the probable benefits of child labour. These are -

- Child labour as a complement to Human Development.
- Child labour as a supplementary object.

The two outlooks essentially observe the presence of child labour vis-a-vis the other available work of the children. These outlooks compare the role that labour would play with the other aspects of Human Development, particularly the child's education.

4.1. Child Labour as a complement to Education - Labour as a 'side business'

This model was promulgated by Dr Bourdillon, a specialist in African studies with a keen eye on child labour in the continent. He aspires to propose an alternative model to combat child labour, which would not seek to impose a blanket ban on child labour but would target the adverse effects of child labour to ensure proper growth and education of children[9].

There can be numerous reasons for children taking up work. These are primarily economic, social and educational reasons for a child to work. Although economic reasons often result in the exploitation of the young and tender generation, the same cannot be said about the other reasons for child employment. Social reasons are visible when, in a household, work and personal life are inseparable. In the name of protecting children, if they are made not to work,

[9] Michael Bourdilon and Richard Carothers, *Policy on Children's Work and Labour*, 33(4) CHILDREN & SOCIETY, 387-395 (2019).

ISSN 2582-2667

it shall amount to social exclusion. This is because social beings view themselves as members of a group by participating in work.

Apart from this, working can help children in relieving stress. Children acquire status and a degree of independence by helping their families through work. This has helped them achieve a sense of satisfaction and success which helps relieve themselves of the external stress that plagues them. Thus, blanket legislation which eliminates children's employment would rid them of this assistance.

Educational reasons for children's involvement in labour are much more important, as it would affect not only the social development of the child but also other aspects of his life. In cases where work and life are indistinguishable, the child mimics the parent's work playfully at first and eventually into a helpful worker due to psychological reasons. Apart from this, in cases where the child cannot be left alone at home, she accompanies the parent to her workplace. Thus, the child picks up the parent's skills. These social values, which help in the development of cooperative values, can be destroyed by the modern formal education system.

As for the economic factors, work undertaken by the child helps them learn various forms of life skills which are essential for employment at a later point of time or even self-employment. These skills can range from technical skills to business skills to even general life skills. These job-specific skill acquisitions help lower-income countries to gain a diversified group of skilled labourers.

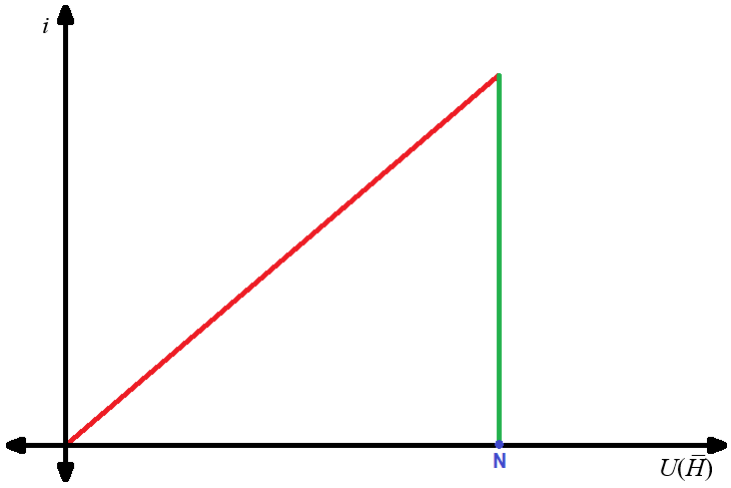
Thus, the work undertaken by children has a positive connotation due to its complimentary nature with respect to their education. It inculcates social values in addition to skills which cannot be learnt through formal education.

4.2. Child Labour as a Supplementary Object - Economic Contribution Outweighing Benefits of Education

ISSN 2582-2667

Although the long-term benefit of gaining an education would far outweigh the probable benefits of working as a child, we must investigate the specifics of this balance. Referring to the article by Dr Sahin and Dr Ghosh, the model reads as follows:[10]

Each generation comprises *N* members, with each parent having a child (a couple having two children). The utility derived by each parent from education is given as $U(\bar{H})$, and from the child's income, in time period *t* is given as $U(W_t^c)$. $U(\bar{H})$ is assumed to be unique for each parent, and an integer *i* is assigned to each $U(\bar{H})$. Thus, a graph of this system would look like this:



Graph 4

A minimum threshold would be set, wherein the parents would believe that the income generated from child labour outweighs the benefits that educating their child would provide **at that point of time**. At this point, the utility of the income W_t^c would outweigh the utility of the education $\bar{H}$. Hence,

For this point:

$$U(W_t^c) \leq U(\bar{H})$$

[10] Soumya Sahin and Ambar Nath Ghosh, *Effect of Ban on Exports Containing Child Labour in a Dynamic Model in Presence of Imperfect Monitoring*, 51(1) FOREIGN TRADE REVIEW, 26-45 (2016).

ISSN 2582-2667

With regards to $U(W_t^C)$, the diminishing marginal utility of income is ignored for simplicity, and we assume that,

$$U(W_t^C) = W_t^C$$

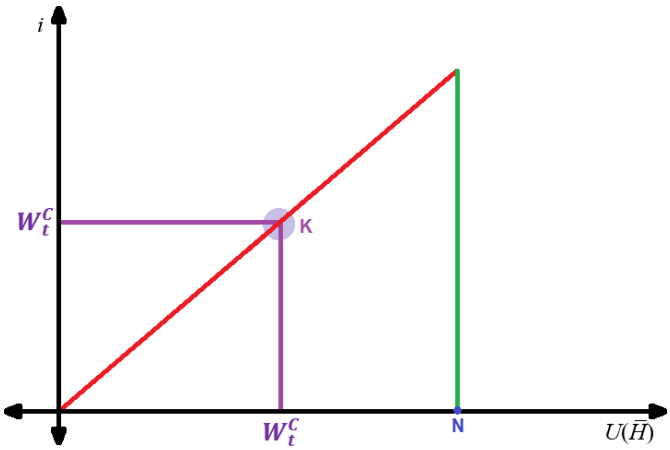
Thus, a child would be sent to gain education only if,

$$W_t^C \leq U(\bar{H}) = i$$

At the margin of this limit, the following condition shall be fulfilled,

$$W_t^C = i$$

For this, the above-given graph shall be edited, and a conditional line shall be added. After the addition of this condition, Graph 1 would look like this,



Graph 5

The red line denotes the number of children, each denoted by a unique number i. This line is 45° to the x-axis, as each value of $U(\bar{H})$ has been assigned a unique value of i. At K, the utility derived from the child's education and from his income as a child labourer are equal. However, as we move 'north-east' from K, along the red line, the parents would be more likely to send their children to school as the utility derived from the same, $U(\bar{H})$, would heavily outweigh W_t^C.

ISSN 2582-2667

The conclusion that we can draw from this model is simple. The comparison of the utility of education and income may be a method of determining a possible upside to child labour, specifically the economic aspect.

5. Downsides of Child Labour

As mentioned earlier, there are innumerable downsides and disadvantages of hiring children into the workforce instead of letting them enjoy their childhood and gain education. These disadvantages may be faced by the individuals, or the repercussions may reflect upon the whole society at large[11]. Some major disadvantages, which need to be discussed in depth, are:

5.1. The Unethical nature of Child Labour

The biggest and most concerning downside of child labour is its extremely unethical nature. Children are the future of the world and the torchbearers of the upcoming generation. This group is meant to earn an education for themselves and prepare to be a part of the skilled labour force. To rid this part of their lives is extremely inhumane[12].

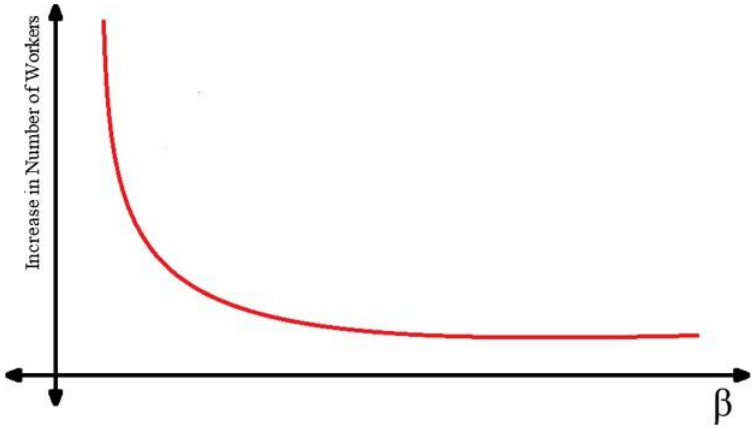
5.2. Reduced Work Output and Underutilisation of the Workforce

The children are unable to provide a similar amount of labour as may be provided by an adult unskilled labourer[13]. This fraction has been denoted by β, which has a range of (0,1) as the child would not have zero output or an equal output as that of an adult.

[11] Ali Asghar Mirakzadeh, Kiumars Zarafshani and Faranak Karamian, *Analyzing the Attitudes of the Experts to Compare the Advantages and Disadvantages of Rural Child Labour in Agricultural Activities*, 8 JOURNAL OF RURAL RESEARCH 1, 68-81 (2017).
[12] Ethical Trading Initiative, https://www.ethicaltrade.org/issues/child-labour (last visited December 30, 2022).
[13] *Supra* note 10.

ISSN 2582-2667

For a similar number of workers, children would produce 1- β per cent less output. Thus, to restore the work output of the workforce, a greater number of children would have to be employed. This number would be equal to 1/ β, denoted by κ. The value of κ would be more than 1, and the number of workers will be increased by a multiple of κ-1. Thus, there will be an increase in the workforce accompanied by a stagnated output, which may be seen in the following graph:



Graph 6

5.3. Increase in Unskilled Labour

As discussed in an earlier sub-section, child labour is a major damper in the acquisition of skillsets in children. This lack of acquisition is a problem which grows exponentially with time, and solving this also becomes more difficult. As the age of an individual grows, their ability to learn new skills, as well as inculcate education as a part of their lifestyle, becomes more difficult. Hence, the lack of skills becomes permanent and unfixable. This lack of skill increases the unskilled labour force, which has limited use as compared with skilled labour.

6. Is Seasonal Child Labour a possible cure to the downsides?

Up until now, it has been established that the unilateral perspective taken with regard to child labour since time immemorial is a grossly misconstrued notion. In fact, child labour operates in a grey area. This grey area, on the one hand, encompasses the innumerable downsides which have been discussed in-depth through the years. However, as has been noted herein, there can be several possible benefits of children's involvement in work. This aspect of child labour has been blatantly ignored, as it has been considered taboo to explore this angle.

ISSN 2582-2667

Although an objective approach regarding the balance of upsides and downsides was presented in Section 4.2 of the paper, it does not fully account for all angles which encompass the outlook regarding child labour. The comparative analysis of the utility derived from income and education merely serves as an income qualifier. However, when we consider this outlook from a wider perspective, it clearly misses other evident factors. First and foremost, the opportunity cost of choosing work over education, as education can have a compounded multiplying effect on the productivity of the child at a later stage. Apart from this, there lies a gigantic problem related to the human rights aspect, discussed by the United Nations and the International Labour Organization. Finally, other aspects which affect child labour also need to be considered, especially the factor related to the health of the children. From this perspective, it appears evident that the discourse regarding the negative nature of child labour outweighs these possible benefits in the case of continued involvement of children in labour.

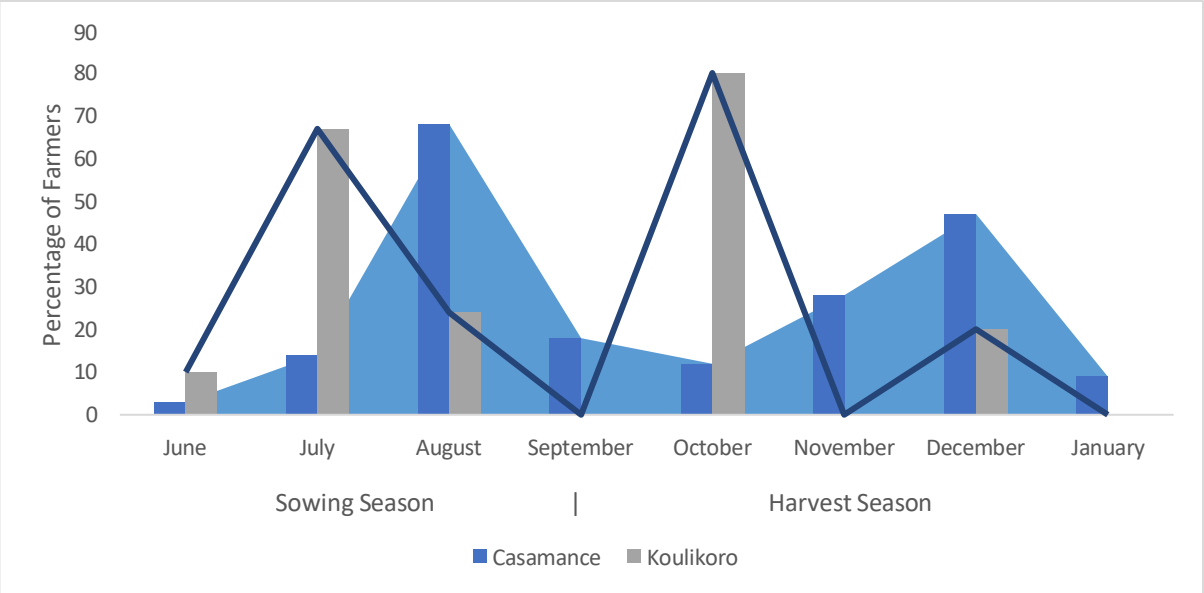
Statistically speaking, the International Labour Organization has noted that over two-thirds of child labourers between the ages of 5-17 are involved in unpaid labour for their families. Of these children, a large chunk amounting to 70% are involved in the primary or the agrarian sector[14].

A complex economic theory need not be established to realise that agriculture is a seasonal sector. In this sector, there are essentially three phases of work – sowing, inter-cultivational work and harvesting. Sowing and harvesting are extremely labour-intensive in nature, whilst

[14] ILO, *Global Estimates of Child Labour: Rights and Trends 2012-2016*, GENEVA ILO, 31-33 (2017).

ISSN 2582-2667

inter-cultivational work mostly refers to irrigation, weeding, spraying of pesticides or insecticides and maintenance of the agricultural estate in general.



Graph 7

However, we may look at Graph 7, presented above, to confirm the same. The given figure lays out the number of farmers working on farms for the production of sesame in two towns of Senegal (Casamance) and Mali (Koulikoro)[15]. There is a clear element of seasonality involved in this sector. As discussed in Section 3.1, this seasonal hike is often fulfilled by employing children. This is done to avoid the increase in production cost, which would happen as a result of hiring additional labour at a higher wage. The employment of children on their family farm fulfils the need for labour without incurring any extra cost.

The demand for a child's involvement in work only subsists for a short period of time, usually accumulating to 20-30 days at a time, especially in the Indian context. Primary education, especially in government schools, is not given importance in comparison to the employment

[15] Komivi Dossa, Mariama Konteye, Mareme Niang, Youssouf Doumbia and Ndiaga Cissé, *Enhancing Sesame Production in West Africa's Sahel: A comprehensive Insight into the Cultivation of this Untapped Crop in Senegal and Mali*, 6(1) AGRICULTURE & FOOD SECURITY, 1-15 (2017).

ISSN 2582-2667

of the child on the family's farm. This is because of two factors – (i) Poor quality of the public education system; and (ii) High dependence on agriculture for survival due to extreme poverty.

Thus, a child, no matter the number of legislations or their severity on banning child labour, **WILL** go to work in the fields for this limited period in the ground reality of poverty rampant in rural India. Moreover, a number of studies suggest that the employment of underaged individuals in unpaid family work is more detrimental to the child's education than being employed in an external setup[16].

This paper aims to propose a model which shall make the best of both worlds a possibility. The 20–30-day period when a child is employed can, as established before, have a complimentary effect on the education obtained by the child, as discussed in Section 4.1[17]. This proposition is based on the findings of Dr Michael Bourdillon[18]. Hence, we believe that this period shall be exempted from the blanket ban currently enforced by Indian legislation. Thus, the sector shall be formalised. This needs to be a regulated field, to ensure that only the benefits of this work are extracted and that the children are not burdened by the noxious effects of labour. A method of enabling this model can be through a provision of a formalised break in the academic year, which shall be integrated into the curriculum to ensure that the process of education continues without unnecessary interludes in the sowing or harvesting season.

6.1. Are we boarding a sinking ship?

The proposition given in the preceding segment may seem extremely ignorant, especially viewed from the perspective of the child's health. These vary along a wide axis – ranging from the general dangers of agriculture on children, such as the development of asthma and other breathing problems, to the negative effects of the physically intensive nature of work[19]. Agriculture is a very physically challenging occupation, and the integration of children at their tender age may lead to severe health ailments like stunting and horrendous posture, among

[16] Diane L. Putnick and Marc H. Bornstein, *Is Child Labour a Barrier to School Enrollment in Low-and Middle-Income Countries?*, 41 INTERNATIONAL JOURNAL OF EDUCATIONAL DEVELOPMENT, 112-120 (2015).
[17] Binita Sharma and Megh R. Dangal, *Seasonal Child Labour in Nepal's Brick Kilns: A Study of its Educational Impact and Parents' Attitudes Towards It*, 32(6-7) JOURNAL OF EDUCATION AND WORK, 586-596 (2019).
[18] Michael Bourdillon, *Ignoring the Benefits of Children's Work*, OpenDemocracy (November 14, 2017, 10:25 PM), https://www.opendemocracy.net/en/beyond-trafficking-and-slavery/ignoring-benefits-of-children-s-work/
[19] Catherine Karr, *Children's Environmental Health in Agricultural Settings*, 17(2) JOURNAL OF AGROMEDICINE, 127-139 (2012).

ISSN 2582-2667

others. The operation of heavy equipment such as sharp sickles and other tools also has an element of danger associated with it. But it would be wrongful to suggest that this postulation is akin to a sinking ship as these problems can easily be dealt with through policy prescription, which shall be laid out in the following section.

7. Curative Policy Prescription

The "formalisation" of child labour, as given in the preceding section, shall be a culmination of regulations. This procedure is necessary to mandate that the proposed model is a viable option and is not in contravention of any human rights violations. These regulations would also ensure that the children are not exploited in the name of an increased skillset or any other "benefit" that has been suggested so far.

For possible regulations, we may look to the more developed nations. A possible guideline is presently in practice in the United States of America. As seen in India, children were working on farms here as well. Thus, farmers who had their children working in fields sought counsel with regard to the assignment of work to said children. The National Children's Center for Rural and Agricultural Health and Safety stepped in to provide the required guidance. This resulted in the creation and promulgation of the North American Guidelines for Children's Agricultural Tasks, also called the NAGCAT[20].

NAGCAT is a group of voluntary guidelines to help with the regulation of the assignment of work to children within the age group of 7-16 years[21]. These are based focusing on the overall development of children, and they provide instructions for the conduction of 62 different agricultural tasks by children, such as harvesting corn and installing irrigation systems[22]. For example, in the guidelines for detasseling corn, various precautions like removal of work hazards such as sharp and heavy objects, regular hydration and regular breaks have been

[20] Centers for Disease Control and Prevention, https://www.cdc.gov/niosh/docs/2011-129/default.html (last visited January 3, 2023).
[21] William Pickett, Barbara Marlenga and Richard L. Berg, *Parental Knowledge of Child Development and the Assignment of Tractor Work to Children*, 112(1) PEDIATRICS, e11-e16 (2003).
[22] Jamie Zentner, Richard L. Berg, William Pickett and Barbara Marlenga, *Do Parents' perceptions of Risks Protect Children Engaged in Farm Work?*, 40(6) PREVENTIVE MEDICINE, 860-866 (2005).

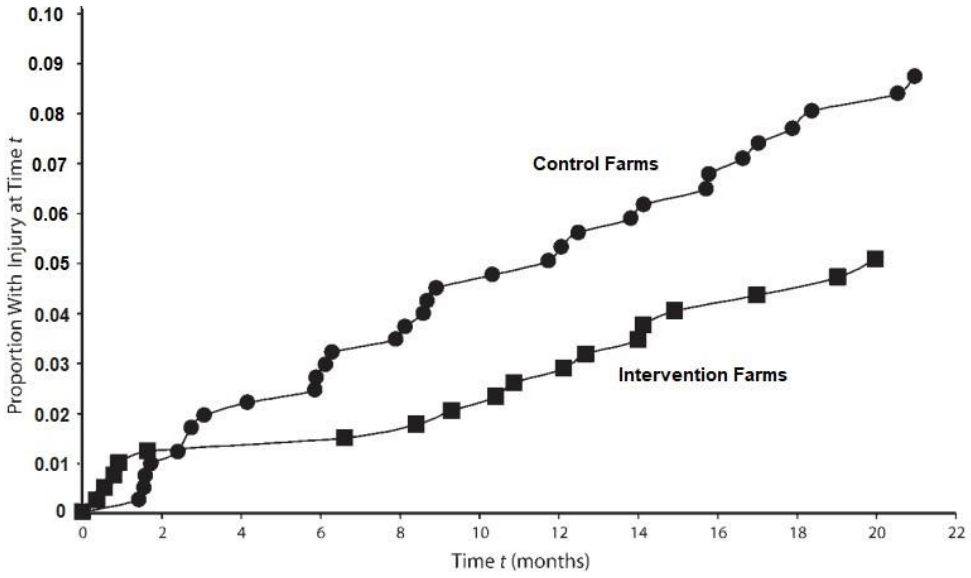
ISSN 2582-2667

suggested for the child. The document further lays out supervisory guidelines for different age groups[23].

Whilst NAGCAT appears to be the miraculous cure to all the presented problems, we must look at the ground reality. As stated in a study undertaken by Dr Barbara Marlenga, NAGCAT's application is very widespread. Of a total of 934 observations, of which 283 cases involved children engaged in farming, NAGCAT's guidelines were applicable to about 65% of cases. Furthermore, over 59% of total injuries endured by children would have been prevented directly had NAGCAT been implemented[24].

The findings of the above study only point towards the applicability and the scope of NAGCAT, and it does not answer the question – Has NAGCAT been effective in helping reduce and eliminate injuries faced by a child?

To answer this question, we refer to the work of Anne Gadomski, which provides raw data related to the actual implementation and the benefits of NAGCAT. This was done through surveys of two kinds of farms – Intervention farms and Control farms. The former were farms where instructors were sent to familiarise the farmers with the new guidelines, whilst the latter



[23] National Agriculture Safety Database, https://nasdonline.org/7064/c000026/north-american-guidelines-for-childrens-agricultural-tasks-nagcat.html (last visited January 3, 2023).
[24] Barbara Marlenga, Robert J. Brison, R. L. Berg, J. Zentner, James Linneman and William Pickett, *Evaluation of the North American Guidelines for Children's Agricultural Tasks using a Case Series of Injuries*, 10(6) INJURY PREVENTION, 350-357 (2004).

ISSN 2582-2667

were farms where the farmers were left to continue with their own methods. The data shows that the intervention farms had a significant fall, especially compared with the control farms[25].

Graph 8 :The Roadblock faced by the NAGCAT in the United States of America

One may wonder, with all the apparent beneficial aspects, why has NAGCAT not become a mainstream policy in the domain of child labour? Three major reasons hold back NAGCAT from being embraced fully.

Firstly, due to its very nature, 'G' stands for guidelines. Thus, NAGCAT is only a set of suggestions which are not enforceable by any means. This puts an onus on the parents to voluntarily take up and execute these prescriptions, which haven't been disseminated widely. This is a precursor to the second possible issue.

These suggestive measures have never been pursued actively by the U. S. Govt. This inaction can be seen through the lack of spreading awareness as well as the lack of execution of this policy.

Finally, the scope of NAGCAT is extremely limited. According to several studies, the highest number of injuries occurred for children aged under the age of 7 years or for children not working at the time of injury[26]. Apart from this, NAGCAT only provides guidelines only for 62 tasks. Furthermore, these tasks are not related to the mainstream crops grown in the U. S. agricultural system, such as barley or oats.

7.1. Envisaging the Indian NAGCAT

The transplantation of a legislative measure from one jurisdiction to another is a delicate process. It must be ensured that the original legislation is moulded, shaped and pruned in

[25] Anne Gadomski, Susan Ackerman, Patrick Burdick and Paul Jenkins, *Efficacy of the North American Guidelines for Children's Agricultural Tasks in Reducing Childhood Agricultural Injuries*, 96(4) AMERICAN JOURNAL OF PUBLIC HEALTH, 722-727 (2006).

[26] Brit Doty and Barbara Marlenga, *North American Guidelines for Children's Agricultural Tasks: Five-year Assessment and Priorities for the Future*, 49(11) AMERICAN JOURNAL OF INDUSTRIAL MEDICINE, 911-919 (2006).

ISSN 2582-2667

accordance with the required needs and wants of the jurisdiction it is supposed to govern. Thus, we must contextualise NAGCAT with respect to the sociological and economic concerns probable in the agricultural sector of India.

To ensure that this procedure is undertaken successfully, certain factors must be considered:

- **Enforceable nature –** As discussed earlier, NAGCAT is a set of unenforceable suggestions. The implementation of such guidelines may be futile, given that it is to be done in a country where the Highest Court of the land has noted that even the Government is not known for following laws, as remarked by Mishra J. and Shah J.[27] Hence, it is mandatory that this proposed policy ("Policy") is not relegated to the status of guidelines, but is raised to the standard of legislation that remains strictly enforceable.
- **Wider ambit** – The agricultural output of India is much more diverse, as there are a variety of crops ranging from cereals such as rice, wheat and millets to pulses to oilseeds. Hence, this Policy shall account for this crop diversity. Additionally, the range of tools and technology is much wider, going from petty sickles and sharp knives to the modern combine harvester.
- **Active executive pursual** – As seen with NAGCAT, the failure of proper execution resulted in the derailment of the success that NAGCAT could have accrued. Had the Policy been actively executed through informative campaigns accompanied by a proper administrative mechanism assisting the execution of the same. The active dissemination of the Policy is a must to ensure its viability.
- **Diversity** – India is an extremely diverse country, and the same is also reflected in the agrarian field. For example, even for the same state, say Uttar Pradesh, the soil as well as the techniques and crops vastly vary across different parts of the state itself and must be accounted for in the policy. There are two distinctions which must be separately acknowledged:

[27] TNN, *State is known for not following law*, TIMES OF INDIA (January 6, 2023, 8:43 PM), https://timesofindia.indiatimes.com/india/state-is-known-for-not-following-law/articleshow/71018646.cms

ISSN 2582-2667

- **Agrarian diversity –** For starters, the soil diversity is immense, as there are more than ten types of soil[28]. These are cultivated with different cropping patterns, along different seasons and by different levels of technology. Thus, this diversity must be accounted for in the Policy for its application in India.
- **Technical diversity -** Similarly, technical variation, especially the agricultural tools and methods ranging from bare hands to modern Combine Harvesters, can be noted across the nation

- For this purpose, this Policy must be designed by the State Legislatures to account for State-wise diversity and shall be pushed by the system of Local Governance. This would be in accordance with List II of the Seventh Schedule of the Indian Constitution, which places the subject of 'Agriculture' in the lap of the State legislatures[29]. Furthermore, the local authorities – such as the bureaucracy, Gram Panchayats and the Municipal Corporations shall be consulted and considered to account for minute variations across states.

7.2. Possible Challenges to the Policy

The biggest challenge to such sort of a regulation is enabling the involvement of children in labour. Our conceptualization of the issue presents a three-fold Challenge.

- **The Illegality Challenge –** There are two fronts which target the concept of labour by underaged individuals being legalized. These are:
  - **The Domestic Regulations** – In India, the Child Labour (Prohibition and Regulation) Act, 1986 is the biggest opposition to the inclusion of labour in the lives of children[30]. However, a public policy prescription is meant to replace an existing law, and change the landscape around a particular subject with a fresh perspective. The paper explicitly lays out that a blanket ban, as has been given by the legislation, is futile. Furthermore, the complimentary benefits enunciated under Section 4.1 have been blatantly ignored in the current legislative landscape.

[28] Tapas Bhattacharya, *Soil Diversity in India*, 64 J INDIAN SOC SOIL SCI, S41-S52 (2016).
[29] INDIA CONST. sched. VII, List II.
[30] *Supra* note 4, §3.

ISSN 2582-2667

- **The International Conventions** – There are two ILO conventions which govern the entire ambit of child labour, and the relevant legislative measures around the same internationally. India has recently become a signatory to both these conventions on June 13th 2017[31]. These are:
  - **C182 – Worst Forms of Child Labour Convention, 1999[32]**

    This convention directs its signatories to take steps to eliminate the worst forms of child labour. The term "worst forms of child labour" has been defined under four heads in Article 3 of the Convention[33] –

    a) Slavery and related practices
    b) Prostitution or for production of pornography
    c) Production and trafficking of drugs
    d) Work which is harmful for the health, safety, or morals of children

    India has an obligation to uphold these terms, as it is a signatory. Although it may seem that the proposed policy goes against the aims of the convention, it is evident that the first three clauses shall continue to remain banned under the given policy. As for the fourth clause, the purpose of transplanting the conception of NAGCAT to an Indian sub-context is to streamline the involvement of underaged individuals in labour, and to protect them from any health, safety, or moral hazards. Thus, the entire policy prescription fits into the requirements of C182.
  - **C138 – Minimum Age Convention, 1973[34]**

[31] International Labour Organisation, *'Ratifications of C138 – Minimum Age Convention, 1973 (No. 138)'*, Available at https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO::P11300_INSTRUMENT_ID:312283 (Last accessed March 28, 2023); ILO, *'Ratifications of C182 – Worst Forms of Child Labour Convention, 1999 (No. 182)'*, Available at https://www.ilo.org/dyn/normlex/en/f?p=1000:11300:0::NO:11300:P11300_INSTRUMENT_ID:312327 (Last accessed March 28, 2023).

[32] ILO, Convention 182, Worst Forms of Child Labour Convention, 1999.

[33] *Id.*, art. 3.

[34] ILO, Convention 138, Minimum Age Convention, 1973.

ISSN 2582-2667

This convention prescribes a minimum age for children getting involved in work[35]. The purpose for doing so is to protect children from health, safety, and moral hazards[36]. As given above, these concerns have already been accounted for in the prescribed policy. Furthermore, Article 7 of the Convention, lays out that light work may be undertaken by children between the ages of 13 to 15 years[37]. It is evident that the convention does not put a bar for children to work, the policy makers have arbitrarily decided that 13 shall be the minimum age for work. As elucidated earlier, the Indian NAGCAT accounts for an age-wise breakdown of possible work undertaken by children. Hence, the minimum age can be reduced from 13 to 7, when children can take up basic training and learn more vocational skills[38]. Thus, the requirements of C138 can also be fulfilled, although the same must be accompanied by a minor amendment to the technicalities of the Convention.

- **The Mindset Challenge –** This challenge is based on a taboo of making children work, and the human instinct of avoiding possible risks. This risk aversion stems from the factor that the complementary nature of labour with education may have unforeseeable consequences. Psychologists have shown that risk aversion is often a motivation to avoid economic rationality compared with the factor of loss. But this has been addressed through the curative policy of the Indian NAGCAT which aims at deriving all the benefits of the child's work while avoiding the Noxious effects of labour on the child's health

However, these issues have been considered, and the scope of the Policy has been determined accordingly. It accounts for these probable unforeseeable consequences. Hence, the exogenous factors in this equation are not impossible to deal with.

[35] *Id.*, art. 2.
[36] *Id.*, art. 3.
[37] *Id.*, art. 7.
[38] Ilona Bidzan-Bluma and Malgorzata Lipowska, *'Physical Activity and Cognitive Functioning of Children: A Systematic Review'*, 15 INTERNATIONAL JOURNAL OF ENVIRONMENTAL RESEARCH AND PUBLIC HEALTH, 4 (2018).

ISSN 2582-2667

8. Conclusion

To summaries, this paper first described the ins and outs of the seasonal involvement of children to set the foundation of this discussion. Then, we moved on to a cost-benefit-esque analysis of child labour in general. This involved two angles: complementary and supplementary, which were discussed in-depth. These benefits involve the inculcation of various life skills in children, the early financial independence attained by children and the opportunity for the child to help the family through its income. However, child labour also has a number of downsides, mainly the restriction that it poses on the child's education. This was countered with the help of the combination of seasonality and child labour.

Thus, a model was proposed to formalise and regulate the seasonal involvement of children in work. This model followed the lines of NAGCAT, a set of suggestions promulgated by the National Children's Center for Rural and Agricultural Health and Safety. The limitations, which could have plagued the integration of NAGCAT into the Indian setup, were also thought of before envisaging a probable solution. Hence, we conclude that child labour's position in the moral spectrum may lean towards the better side if we were to put in sufficient fail-safes to protect the health and rights of the children.

ISSN 2582-2667

ANTI-RENT CONTROL LEGISLATION A BOON OR BANE: ECONOMIC ANALYSIS OF THE WAQF(AMENDMENT) ACT, 2013

Ishita Kohli[1]

ABSTRACT

With various governments enacting laws in its favour, Rent Control is among the leading welfare measures to have endured the test of time in Indian polity. However, occasionally one comes across legislation that promotes an anti-rent control stance. One such example and the legislation analysed by this paper is the 2013 amendment to The Waqf Act. When read in congruence with sections of the Waqf Properties Lease Rules of 2014, the amendment leads to the regulation of waqf properties with regards to evictions and bidding based on circle rates to fall outside the scope of the State Rent Control Laws and promotes free market transactions. This research paper aims to use law and economics as a lens to decipher the viability of the Amendment Act and examines if, in a relatively pro-tenant jurisprudence, this legislation stands out like a sore thumb or a welcome change? The Delhi Rent Control Act is the Rent Control law adopted for this study. Various pedagogical tools from the field of law and economics, be it a cost-benefit analysis, game theory, pareto efficiency and bargaining theory aid this discovery. The research paper also looks at judgments passed by Indian courts considering the tenants' rights at stake vis-a-vis the benefits sought to be gained by the Waqf Board and the public. Facilitated by these various means, this paper makes an argument in favour of the amendment.

Keywords: *Waqf, Rent-control, Game theory, Incentives, Pareto Efficiency*

[1] 5th Year B.A.LLB (Hons.) student at O.P Jindal Global University.

ISSN 2582-2667

1. INTRODUCTION:

Rent control is a popularly used welfare measure both across the world and in India. While its economic efficiency is questionable and shall be the primary focus of this paper, it is seen as a policy that helps tenants and protects them from landlords. The recent amendment to The Waqf Act, however, goes on to take an anti-rent control characteristic and promotes more free-market transactions. This paper shall use law and economics as a lens to decipher the viability of the Waqf Amendment Act. The paper aims to explore if, in a relatively pro-tenant jurisprudence, an anti-rent control provision stands out like a sore thumb or a welcome change. This paper is divided into four parts. While the first section shall give the reader a foundational understanding of both rent control laws and Waqf properties, the second will present an in- depth economic analysis of the implications the Amendment Act has had in Delhi. The third part will conclude. Various pedagogical tools from the field of law and economics, be it a cost- benefit analysis, game theory, pareto efficiency and bargaining theory shall aid this research.

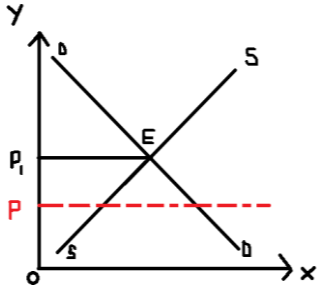
2. WHAT IS RENT CONTROL?

Rent control is a system of rent regulation that covers a spectrum of policies that can vary from setting the absolute amount of rent that can be charged to varied limits based on geographical factors. Such restrictions may continue between tenancies or may be applied only within the duration of a tenancy. Rent control is therefore inclusive of price control and eviction controls and lays a multitude of obligations on the landlord.[2] In economic terms, rent control is also called a price ceiling wherein the government sets a price for a commodity when it believes that the equilibrium price in the free market is too high for the common man to afford.[3] In the given diagram, OP is the price ceiling, while the equilibrium price is OP_1-

[2] Lok Sang Ho, *Rent Control: Its Rationale and Effects*, 7 URBAN STDS. 1184, 1183–89 (1992). http://www.jstor.org/stable/43083470.

[3] John W. Willis, *Short History of Rent Control Laws*, 36 CORNELL L. REV. 54 (1950), http://scholarship.law.cornell.edu/clr/vol36/iss1/3.

ISSN 2582-2667



2.1. THE EVOLUTION OF RENT CONTROL

Rent control as a policy measure has been adopted since time immemorial to combat the adversities causes by crisis such as war, plague, and the collapse of economies. However, in modern times it has taken shape of a welfare measure that aims at aiding the economically compromised sections of society. This section of the paper explores this evolution of the rent control laws both at a global, as well as national level.

a) Around The World

Rent Control can be traced back to Ancient Rome wherein Caesar himself promulgated a law under which villas in Rome could not be priced over 2000 sesterces a year.[4] In medieval France, on account of war, paralysis of commerce and plague, various rent control measures were introduced be it a 3/4th reduction in rentals on all leases prior to 1589 or moratoria on agricultural rents.[5] In Portugal, the havoc caused by the great Lisbon earthquake in 1755 prompted King Jose to freeze rents to rates of the previous year.[6]

Rent control as we know it today was a concept devised by the Europeans at the beginning of the 20th century to prevent landlords from charging exorbitant rentals and evicting tenants during emergencies that the World War brought with it.[7] The first degree in this regard was the 1914 French rent moratorium and subsequently in 1915 a comprehensive rent control law namely, the British Act was promulgated.[8]

The situation of acute shortage of rental accommodation owed to warfare intensified over the 20th century and spread on a global level.[9] The end of the Second World War brought with it

[4] New York Times, May 27, 1923, § 8, p. 13, col. 3.
[5] Grasilier, *La Question des Loyers aux Temps de la Ligue et de la Fronde*, 22 NouvErlE REVUE 161, 279, 23 NOTVErLE REVUE 45 (4e Ser. 1916).
[6] John Willis, *Some Oddities in the Law of Rent Control*, 11 U. PIrs. L. Rxv. 609 (1950).
[7] WILLIS, *supra* note 2 at 54.
[8] A Evatt, *Fair Rent Experiment in New South Wales*, 2 J. CoMP. LEais. & INT. LAw 10 (1920).
[9] WILLIS, *supra* note 2.

ISSN 2582-2667

an inflow of returning soldiers that steeply raised the demand for rental accommodations. The end of the war also coincided with the industrial revolution that was already facilitating an increase in urban-rural migrations. These factors caused rentals to soar through the roof, and to prevent this unprecedented rise, countries across the world introduced rent control legislations.[10] In 1939, Australia, Nicaragua, Cuba and Australia took action by implementing rent control policies. Elsewhere, the Portuguese colony of Macao restricted rents, the Canadian began rent regulations, the Japanese promulgated laws and the South Africans revived their legislation.[11] In the United States rent control was introduced in the form of local rent control ordinances in the states of New York, Puerto Rico, and Hawaii, however there was no federal law mandating price ceilings.[12][13]

b) In India: Delhi

Along with the rest of the Commonwealth, India too adopted rent control in the aftermath of the second World War.[14] For the purpose of this paper, the evolution of rent control law in Delhi has been chosen. It was under the Defence of India Rules in 1939 that rent control was first introduced in Delhi.[15] While its applicability was limited to certain parts of the National Capital Region, eventually the remaining regions came under the control on the Punjab Urban Rent Restriction Act, 1941.[16] This was later supplemented by an additional order under the Defence Rules of 1944.[17] After the end of the second World War, a new legislation was passed titled the Delhi and Ajmer Marwara Rent Control Act 1947.[18] This was later repealed in 1952 and application of other state rent control on Delhi was ceased.[19] The rent control law prevalent in Delhi today is the 1958 Delhi Rent Control Act.[20]

With various governments enacting laws in its favour, Rent Control continues to be among the leading welfare measures to have endured the test of time in Indian polity. However,

[10] Joseph Gyourko & Peter Linneman, *Equity and Efficiency Aspects of Rent Control: An Empirical Study of New York City Department*, UNI. OF PSLV PHILLY, 19104-6302 (Received February 3, 1986), http://www.socsci.uci.edu/~jkbrueck/course%20readings/gyourko%20and%20linneman2.pdf.
[11] WILLIS, *supra* note 2.
[12] H.R. 7695, 77th Cong., 2d Sess. (1942), H. R. REP. 2568, 77th Cong., 2d Sess. (1942).
[13] Ambassador East, Inc. v City of Chicago, 399 Ill. 359, 77 N. E. 2d 803 (1948).
[14] Aditya Alok & Pankti Vora, *Rent Control In India – Obstacles For Urban Reform*, MANUPATRA, (2011), http://docs.manupatra.in/newsline/articles/Upload/9B58E8ED-1417-4224-AC9C-C06F4A03DCFC.pdf.
[15] The Defence of India Act, 1939, No. 35, Acts of Parliament, 1939 (India).
[16] The Punjab Urban Rent Restriction Act, 1941, No.10, Acts of Parliament, 1941 (India).
[17] The Defence Rules, 1944, No. 23, Acts of Parliament, 1944 (India).
[18] The Delhi and Ajmer Marwara Rent Control Act, 1947, No. 19, Acts of Parliament, 1947 (India).
[19] The Delhi and Ajmer Marwara Rent Control Act, 1958, No.38, Acts of Parliament, 1947 (India).
[20] Kiran Wadhwa, *Delhi Rent Control Act: Facts and Fallacies*, 21 ECO. POL. WKLY 1347,1351–56 (1991), http://www.jstor.org/stable/4398063.

ISSN 2582-2667

occasionally one comes across legislation that promotes an anti-rent control stance. One such example is the 2013 amendment to the Waqf Act.

2.2. WAQF

Waqf is an appropriation or settlement as defined by many Arabic scholars.[21] It is a property, both immovable or movable, that is given in the name of Allah for religious, pious, or charitable purposes. Once created it becomes reserved without any right to absolute alienation.[22] The Waqf distinguishes itself from trusts by virtue of having a narrower scope and a non-dissolvable nature.[23] Funds collected from such properties are typically used to alleviate the economic misfortunes of the Muslim community.[24]

a) The Indian Context

In the Indian context, the Waqf Act of 1954 was passed to promote better administration of the waqf properties.[25] Subsequently, whether it be the lack of a proper procedure for collecting rentals or the absence of a clear division of power, owed to deficiencies arising out of the legislation and the amendments succeeding it, the Waqf Act, 1995 was enacted with the object of bringing uniformity and preventing mischief.[26]

Under the Waqf, a survey commissioner is directed to highlight all properties that qualify as Waqf in a particular region.[27] A 'mutawalli' or supervisor then proceeds to manage the Waqf and has the exclusive decision-making authority in matters pertaining to its administration.[28] Owing to this immense power bestowed on these actors and the boards both at the state and national level, properties under the Waqf are often misused for personal benefits. Indeed in 2015, Maulana Kalbe Jawwad, a prominent U.P. politician and mutawalli was accused of

[21] A. Majid, *Waqf as Family Settlement among the Mohammedans*, SOCIETY OF COMP LEGIS, 9, (1908), https://www.jstor.org/stable/752189.
[22] Abdul Sathasr Hajee Moosa Sait v Smt. Maimuna Bai, Crp. No. 779 of 2008.
[23] *Id.*
[24] Haitam Suleiman, *The Islamic Trust Waqf: A Stagnant or Reviving Legal Institution?*4 EJIMEL, (2016), http://www.ejimel.uzh.ch.
[25] The Waqf Act, 1954, No. 29, Acts of Parliament, 1954 (India).
[26] The Waqf Act, 1995, No. 43, Acts of Parliament, 1995 (India).
[27] *Id.* at 3(p).
[28] *Id.* at 3(i).

ISSN 2582-2667

selling Waqf properties to build graves and use funds collected to construct his personal properties.[29]

As per the Joint Parliamentary Committee in its ninth report, as much as, 70% of all Waqf properties in the national capital region are under illegal occupancy.[30] Further, as per the 'Sanchar committee report' this encroachment has primarily materialised in two ways, *firstly the absolute usurpation of property without incurring any costs and secondly by way of transgenerational occupancy of rented property at nominal prices that remain stagnant*.[31] These private encroachers are both state-endorsed and often wealthy. Owing to these factors and the lack of funding of the Waqf boards, effective legal action against them is rendered impossible. While the poverty-stricken Muslim suffers, these actors thrive in a system that facilitates corruption and the misuse of Waqf land.[32]

A prime example of this was the *Karnataka Waqf Board Scam* wherein over 50% of the land under the Karnataka Waqf Board had been misappropriated by politicians and board members, in collusion with the real estate mafia.[33] In contravention of the proposed rent of two to three lakhs per annum, in Delhi, as many as 120 shops were found paying less than ten thousand rupees.[34] Other famous examples include the Windsor Manor Hotel worth Rs. 600 cr. being leased out for a mere Rs.12,000 per month and the alleged illegality of Mukesh Ambani's 27 storied house in Mumbai.[35] The Waqf is not a financially stable institution and most of them find it difficult to pay employees let alone maintain properties.[36] This is due to the non-competitive nature of the rental properties in addition to the meagre funds the boards receive in the form of donations.

---

[29] *Syed Waseem Rizvi hits back at Maulana Kalbe Jawwad: 'Sold waqf properties, land for graves',* THE INDIAN EXPRESS, June 18, 2015, https://indianexpress.com/article/cities/lucknow/syed-waseem-rizvi-hits-back-at-maulana-kalbe-jawwad-sold-waqf-properties-land-for-graves/.
[30] Rajya Sabha, 2008: Qur'ān, al-Ma'idah 05:1.
[31] Government of India, Status of Muslim Community, 221.
[32] Khan I.A., 'Administration of Waqf's properties in India: Rhetoric or Realities' (2014) Proceeding of the International Conference on Masjid, Zakat and Waqf, http://conference.kuis.edu.my/imaf/images/eproceedings/2014/wakaf/w01-imaf2014.pdf.
[33] Neil Munshi (27 March 2012). "Another $39bn Indian corruption scandal: this time it's land". *The Financial Times.*
[34] Neil Munshi (8 December 2021) 'Pay revised rents or evict shops, Wakf Board to traders'. *The Tribune.* https://www.tribuneindia.com/news/archive/delhi/pay-revised-rents-or-evict-shops-wakf-board-to-traders-695691.
[35] Nitish Kashyap, *Sale Of Land For Mukesh Ambani's House 'Antilia' Illegal, Against Provisions Of Wakf Act: Maharashtra State Board Of Wakfs*, LIVELAW, 2017, https://www.livelaw.in/sale-of-land-for-mukesh-ambanis-house-antilia-illegal-against-provisions-of-wakf-act-maharashtra-state-board-of-wakfs-read-affidavit/.
[36] Neil Munshi (27 March 2012). "Another $39bn Indian corruption scandal: this time it's land". *The Financial Times.*

ISSN 2582-2667

Indeed, Section 72 of the Waqf Act,1956 limits donations to 7% even from mutawallis.[37] The sheer economic inefficiency of Waqf properties can also be seen on comparing the meagre Rs.165 cr. annual income of the organisation with its property value that exceeds 1.2 lakh cr.[38] It is to prevent cases of corruption and to improve the economic efficiency of these properties that various amendments are brought about to the legislation.

b) The Amendment and Its Implications

The 2013 amendment to the Waqf Act (**"**Amendment Act**"**) was brought about to streamline procedures preventing the encroachment and misuse of properties in Delhi.[39] Section 5 of the Amendment Act expands the scope of the term "encroacher" to include persons whose tenancy, lease or license has expired or been terminated.[40] This labels all tenants with expired leases as "encroachers" that lie outside the purview of Section 14 of the Delhi Rent Control Act which provides for the protection of "tenants" from eviction.[41] Further, Sections 54, 56 and 57 of the Amendment Act provide for tenants occupying premises after termination to be dispossessed, based on the judgement of Waqf tribunals regarding the rights and obligations of the lessor and lessee of the property.[42]

The Waqf Properties Lease Rules (**"**WPLR Rules**"**) enacted in 2014 are in congruence with the Amendment Act and advance the streamlining and transparency agenda of the legislators. Rules 4, 5, 6, 7, 18 and 19 of the WPLR Rules, when read conjointly with the Amendment Act, facilitate the regulation of Waqf properties with regard to evictions and increase in rents.[43] Whether it be the procedure for short duration leases or the fixing of reserve price at 2.5%, the rules promote an increase in rent on a periodic level and move towards market competition.[44]

c) The Indian Housing Paradox

[37] WAQF ACT, *supra* note 25, at 72.
[38] Ahmad EU, 'Family Wakf: Colonial Law and Modernist Sharia' (2010-2011) Vol. 71 Proceedings of the Indian History Congress' https://www.jstor.org/stable/44147543.
[39] The Waqf (Amendment) Act, 2013, No. 27, Acts of Parliament, 2013 (India).
[40] *Id.* at § 5.
[41] The Delhi Rent Control Act, 1958, § 14, No. 59, Acts of Parliament, 1958 (India).
[42] The Waqf (Amendment) Act, 2013, § 54, 55 & 57, No. 27, Acts of Parliament, 2013 (India).
[43] The Waqf Properties Lease Rules, Rules 4,5,6,7,28, & 19, 2014 (India).
[44] *Id.*

ISSN 2582-2667

The Indian housing paradox is a situation wherein there simultaneously exists a shortage of approximately 19 million housing units and a vacancy of over 11 million units.[45] Urban India has seen a 35% decline in those opting for rental accommodations while the growth rate of vacant rental homes stands at an alarming 12.5%.[46]

This is a result of market friction caused due to unintentional vacancies and intentional vacancies in the form of rational landlord owners withdrawing their properties from the market. These factors are further guided by poor contract enforcement and pro-rent control measures such as the Waqf or the Delhi Rent Control legislation. This empirical data was gathered via the 2011 census and hence reveals a situation prior to the Waqf Amendment Act its corresponding Property Lease Rules.[47] This phenomenon has gathered worldwide prominence with cities in China and Mexico also facing similar problems.[48][49]

Indeed, Sahil Gandhi his paper titled, *"Explaining India's housing vacancy paradox"* has asserted that a pro-landlord policy change liberalizing rent adjustments could potentially reduce vacancy rates by 2.8 to 3.1 percentage points.[50] Further, as assertion has been made that such policies could potentially lead to the reduction of the Indian housing shortage by 7.5%.[51]

3. ECONOMIC ANALYSIS OF THE AMENDMENT: WHAT PROPERTY LAW SOUGHTS TO ACHIEVE

One must acknowledge that the economic analysis of law as a field, primarily belongs to the classical and neoclassical schools of thought. Therefore, this school brings with it, its fair set of assumptions and fundamental criticisms at the hands of Marxist and Frankfurt schools of economic thinking. However, this does not imply that one must completely disregard the field. It is precisely this convergence that makes the economic analysis of law essential to test the true efficiency of legislation and facilitates a well-rounded analysis. Therefore, one must understand theories of the classicals and then apply them to the anti-rent control stance taken

[45] Boehm, J., & Oberfield, E. (2020*), Misallocation in the Market for Inputs: Enforcement and the Organization of Production*, THE QUARTERLY JOURNAL OF ECONOMICS, 135(4), 2007-2058.
[46] *What can developing cities today learn from the urban past? Regional Science and Urban Economics*, 94 (2022), p. 103698, 10.1016/j.regsciurbeco.2021.103698
[47] CENSUS, 2011.
[48] P. Monkkonen, *Empty houses across North America: Housing finance and Mexico's vacancy crisis Urban Studies*, 56 (10) (2019), pp. 2075-2091
[49] C. Zhang, S. Jia, R. Yang, *Housing affordability and housing vacancy in China: The role of income inequality*, JOURNAL OF HOUSING ECONOMICS, 33 (2016), pp. 4-14
[50] Sahil Gandhi, et.al., *Insecure property rights and the housing market: Explaining India's housing vacancy paradox*, JOURNAL OF URBAN ECONOMICS, Volume 131, 2022,https://doi.org/10.1016/j.jue.2022.103490.
[51] *Id.*

ISSN 2582-2667

by the Waqf Amendment. Hence, the four primary questions to answer in the economic analysis of property law as per Cooter and Ulen are -

a) *What can be privately owned?*

   This question distinguishes private from public property.

   In India there are two types of Waqfs, namely public waqfs and private waqfs.[52] Public Waqfs are those which are administered by the Waqf Board in furtherance of religious, pious, and charitable purposes.[53] On the other hand, a private Waqf or a Waqf-alal-aulad, authenticated by the Musselman Wakf Validating Act, is a property bestowed by the settlor upon their family and descendants.[54]

b) *What are the ownership rights of properties?*

   The answer to this question helps establish property rights to benefit from the increase in productivity; the rule of perpetuity is also encompassed under this.

   When it comes to Waqf properties in the Indian context, the title of public waqfs cannot be passed on to private individuals. This is contrast to the practice in Pakistan wherein the Chief Commissioner has the power to transfer the title of public waqfs to private individuals.[55]

c) *How much can the state intervene?*

   This is the substantial question that this paper aims to answer.

d) *What is a better form of repayment?*

   Be it damages or injunctions, bargaining theory is used to determine the most efficient form of payment i.e.- when cost is high, damages and when low, injunctions.[56]

   In case of Waqf properties, as shall be depicted in the subsequent sections of this paper, landlords are more likely to breach contractual obligations and pay damages as this exercise emerges to be more economically viable.

In response to the third question, Coase's theorem postulates that the transactions between individuals should take place in an efficient matter i.e., with low costs of exchange. This implies that if such transactional costs are low, people will bargain and find the most valuable

[52] G.M.A Bhaimia v The Madras State Wakf Board, (1968) 1 MLJ 410
[53] WAKF ACT, *supra* note 25 at s. 2.
[54] G.M.A Bhaimia v The Madras State Wakf Board, (1968) 1 MLJ 410
[55] The Islamabad Capital Territory Waqf Properties Act, 2020, s. 17(a).
[56] Robert Cooter and Thomas Ulen, *Law and Economics, 6th edition,* BRKLY LAW BOOKS 72 (2016), http://scholarship.law.berkeley.edu/books/2.

ISSN 2582-2667

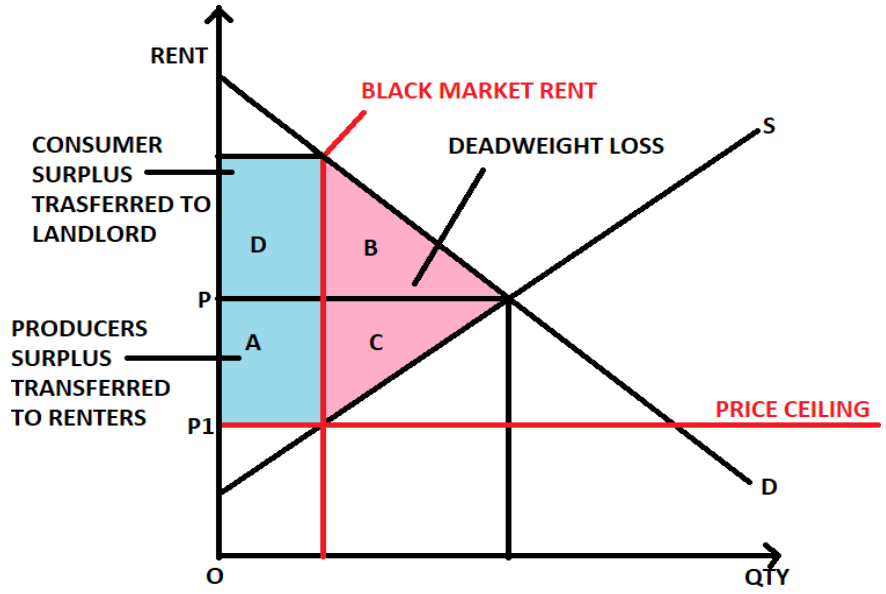
use.[57] Hence, the object behind any property law should be to either help in reducing transactional cost or intervene when either the transactional costs are too high or when parties are unable to negotiate voluntarily.[58] By analysing the Waqf Amendment Act, the WPLRs and the old legislation through this lens, this paper shall establish whether an anti-rent control stance is a boon or a bane.

3.1. MARKET EQUILIBRIUM

The figure **(1)** depicts the problem associated with rent control. When the equilibrium price (P) is greater than the price ceiling (P1), the consumers, in this case, the tenants, value the property at a greater price than the landlords and are willing to pay more than the price ceiling i.e., P1. This creates a situation of excess demand with landlords charging above the price ceiling and leads to emergence of a black-market rent that in some cases is greater than even the original market equilibrium, P.[59] It also gives leeway to the landlords to exploit tenants—in the case of the Waqf properties, exorbitant rates are often charged and the mutawallis collude with other actors, such as wealthy tenants who are not in need of the concession, to mutually benefit. One may argue that the motive behind rent control is solely to help the poor by reducing rental prices, but this is only a short-run phenomenon. However, in the long run, rent control has a negative effect on both the demand and supply of rental housing. While both the supply and quality of rental properties reduces owed to the lack of monetary incentive, the demand skyrockets leading to a large shortage of rental houses.[60] The advantages of rent control in Waqf properties are nullified by these factors, leaving tenants worse off than before.

[57] R. H. Coarse, *The Problem of Social Cost*, 3 JRNL OF LAW & ECO 2, 1-44, (1960), http://www.jstor.org/stable/724810.
[58] COOTER & ULEN, *supra* note 55, at 72.
[59] Neva Goodwin, Jonathan Harris, Julie Nelson, Brian Roach and Mariano Torras, *Macroeconomics in Context*, ROUTLEDGE, 79, (2015), ISBN 978-0-7656-3882-3.
[60] Choon-Geol Moon and Janet G. Stotsky, *The Effect of Rent Control on Housing Quality Change: A Longitudinal Analysis*, 6 JRNL OF POL. ECON 1132,1114–48, (1993), http://www.jstor.org/stable/2138574.

ISSN 2582-2667



(1)

3.2. ECONOMIC EFFICIENCY

a) Game Theory, Pareto Efficiency and Potential Pareto Improvement – The Landlords Perspective

Game Theory

The study of how and why rational individuals make choices in a competitive atmosphere using strategies of cooperation and non-cooperation is known as game theory.[61] Originally framed by Merrill Flood and Melvin Dresher, the most common game is that of the prisoners' dilemma.[62] In figure **(2)**, varying strategies of two different rational individuals are highlighted. This game depicts why individuals do not cooperate, despite mutual benefit.

The basic assumptions –

Player A – Is the Waqf board and complies with stringent rent control regulations.

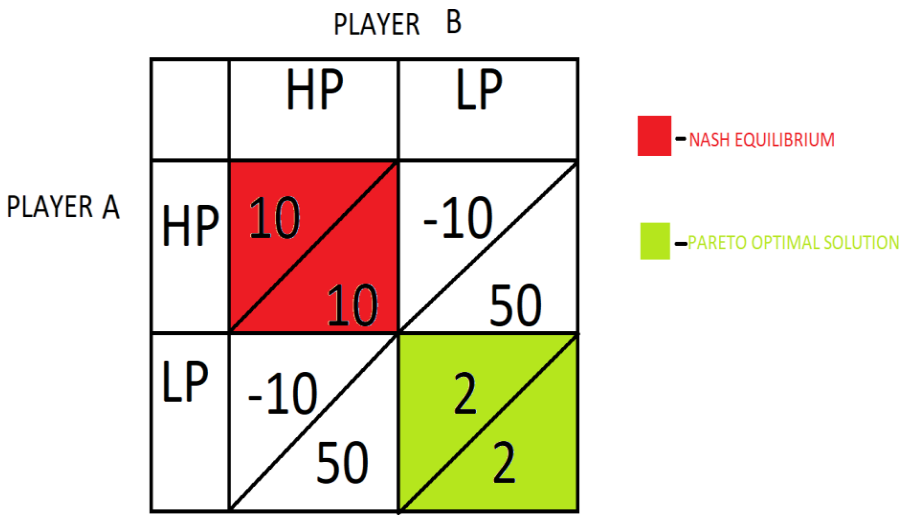
Player B – Owes property that does not fall under rent control.

Applying this concept to the case of rental accommodations and taking into consideration the aforementioned assumptions, we find that if two landlords, A and B are left in a free market to decide the cost of their rental properties, they shall both choose to charge lower prices or the

[61] COOTER AND ULEN, *supra* note 55, at 33-36.
[62] GOODWIN, *supra* note 58, at 405.

ISSN 2582-2667

pareto optimal solution (2,2) even though the most profitable or the Nash equilibrium would be in the situation wherein they both charged higher price (10,10).

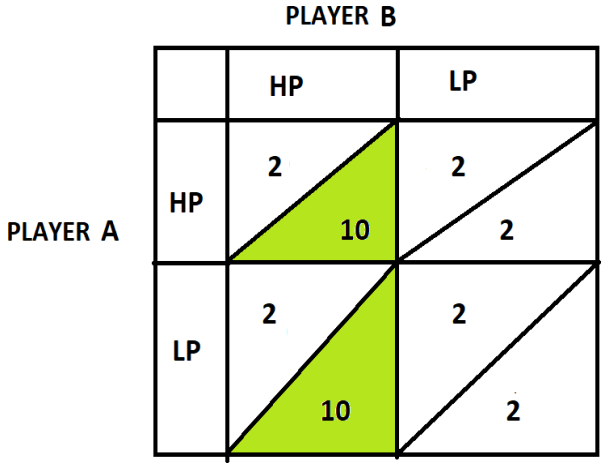


(2)

Therefore, in arguendo, a free-market transaction would not lead to shortages or a situation of excess demand and there would be less scope to exploit tenants due to the competitive nature of the market. However, in the same game, if we assume that Landlord A comes under stricter rent control laws while B's situation remains the same, the result will be different.

In such a situation (figure **(3))**, B will always charge the higher price (10) since he shall be aware of the fact that irrespective of his price, A will not be able to do anything. For B, charging higher rent will always be the dominant strategy. This shall further worsen the already inflationary situation caused by the rent control itself.

ISSN 2582-2667



(3)

It is at this point that one can question whether the existence of multiple Waqf properties around Delhi's posh Khan Market area has a role to play in cause the market to be ranked the 20th most expensive retail location.[63]

Pareto Efficiency and Pareto Improvement

Any policy that improves the position of one without harming another is said to be Pareto efficient.[64] As was showcased in the game above, if there exists strict rent control then the likelihood of a Pareto efficient outcome is negligible. However, the chances of such an outcome increase if both landlords are allowed free market transactions. Therefore, the anti-rent control stance adopted by the Amendment Act and the WPLR is more Pareto efficient than the previous legislation.

One may argue that if the amendment did not happen then Landlord B would be better off than Landlord A and once it had happened Landlord A would be better off than Landlord B. However, this is not entirely true. As opposed to Pareto efficiency, the Kaldor-Hicks, or the

[63] Delhi's Khan Market world's 20th most expensive retail location: Report Nov 24, 2019 https://economictimes.indiatimes.com/industry/services/property-/-cstruction/delhis-khan-market-worlds-20th-most-expensive-retail locationreport/articleshow/72209987.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst.

[64] COOTER AND ULEN, *supra* note 55, at 42.

ISSN 2582-2667

potential Pareto improvement approach postulates that any policy that improves the position of one more than it harms the position of another is economically efficient in nature. The idea behind this is that in theory, those benefiting can compensate those being harmed even if they do not do so.[65]

While the situation of the Waqf board, in this case Landlord A, has improved by the introducing a slightly relaxed rent control, the reserve price has been increased to up to 2.5% from the original bar (that was lower as per rule 7 of the WPLR) and a competitive bidding process has been adopted (as per rule 6 of the WLPR), Waqf properties are still not at an equal footing with regular landlords.[66] Therefore, the advantage is not significant enough to render any substantial disadvantage to other properties. If anything, the amendment seeks to improve a Pareto inefficient situation by trying to make the aggrieved party better off. Therefore, the amendment is both Pareto and Kaldor-Hicks efficient.

b) Bargaining Theory and Efficient Breach – The Landlord and The Tenant

Bargaining Theory

A form of game theory, this matrix is often used to understand property-related decisions. This theory postulates that bargaining helps in the movement of resources from those who value it less, to those who value it more, thereby, increasing the overall prosperity of the economy.[67] Applying it to properties up for rent, one can assume that a bargain exists only when a potential buyer values a property more than the potential seller values it.

Let's assume that A is the landlord willing to rent property and B is a tenant interested in it:

In the first situation, A wants to charge Rs. 33,000. B has with him Rs. 50,000 and is willing to pay Rs.40,000 for the rented accommodation. Herein, the scope of bargain lies between Rs. 33,000 and 40,000 and the value generated, or the cooperative surplus is Rs.7,000.

The cooperative solution, therefore, is 33,000 (cash to A) + 40,000 (value of rental property to B) + 17,000 (amount B retains from the original 50k) = 90,000.

In the same situation rent control limits the chargeable amount to Rs. 3,000. Now while A may want to charge 33,000, B will be willing to pay the rent control price of Rs. 3000 even though he has Rs. 50,000 out of which he is willing to spend Rs.40,000. This will lead to a non-

[65] *Id.*
[66] WAQF PROPERTIES LEASE RULES, *supra* note 42, at Rules 6 & 7.
[67] COOTER AND ULEN, *supra* note 55, at 400-405.

ISSN 2582-2667

cooperative situation wherein, ideally no transaction will take place since there shall be no scope of bargaining. However, the transaction will take place because the law compels it. It will be an inefficient one though.

What the rent control acts do is that they force the parties to bargain to the non-cooperative solution. Left to their own devices, they would either not cooperate or reach the cooperative solution. Indeed, the well-known fact that pro-tenant rent regulations reduce incentive of landlords to rent out their premises is highlighted by this example.[68]

While the amendment does not completely support free-market transactions, it has raised rent control closer to the paying capability of the tenants by increasing the reserve price and adopting competitive bidding.[69] This makes the price more realistic, generates value in the economy and incentivises the Waqf to maintain the property. Further, the introduction of Section 5 of the Amendment Act which facilitates the speedy eviction of those overstaying their lease agreements, increases the liquidity of the market.[70] Additionally, the increase in rent also improves the financial standing of the Waqfs thereby helping them help those in need.

Efficient Breach

When only parties to a contract are impacted by it, the liabilities associated with expectation damages give incentive to the promisor the breach or perform contract.[71] There are instances wherein breaching a contract is more economically efficient than performing it, even though it involves liabilities.[72] In such a situation the net loss (N_L) from the transaction outweighs the net benefit (N_B).

When,

$$N_L > N_B - \text{BREACH}$$

$$N_L < N_B - \text{PERFORM}$$

[68] Sahil Gandhi, et al., *India's housing paradox: Empty houses and housing shortages,* CENTRE OF SOCIAL AND ECONOMIC PROGRESS, (Feb. 2021), https://csep.org/wpcontent/uploads/2021/02/India%E2%80%99s-housing-paradox-policy-brief_F.pdf.
[69] WAQF PROPERTIES LEASE RULES, supra note 42, at Rules 6 & 7.
[70] WAKF AMENDMENT, *supra* note 38, at § 5.
[71] COOTER AND ULEN, *supra* note 55, at 289.
[72] Melvin A. Eisenberg, *Actual and Virtual Specific Performance: The Theory of Efficient Breach and the Indifference Principle in Contract Law*, 93 CAL. L. REV. 975 (2005).

ISSN 2582-2667

Rent control results in a situation wherein the rental income generated from the property is often less than the expenses the landlord has to incur in order to upkeep the property.[73] In such a situation, the incentive to upkeep the property reduces significantly as the cost associated with the breach of contract, i.e., expectation damages are equivalent or less than the rental income being generated.[74]

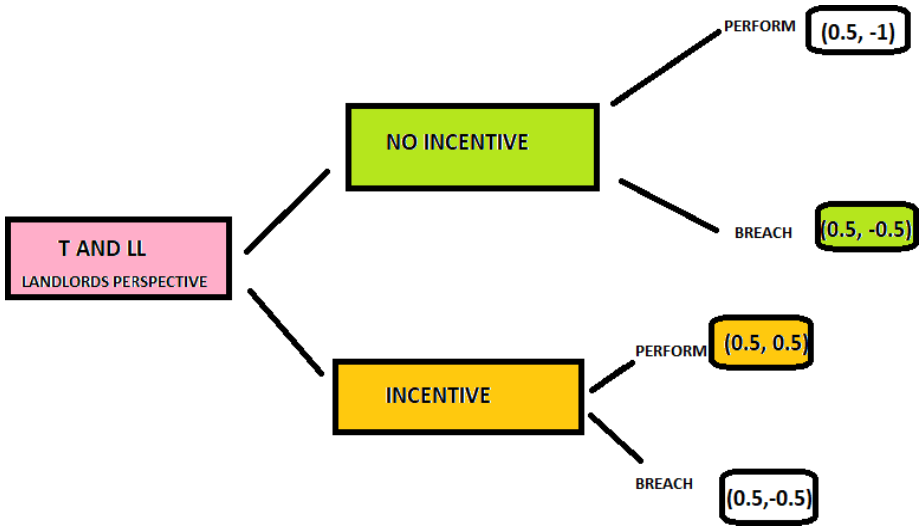
Assuming,

0.5 – performance (Payment of rent)

0.5 - breach (damages)

1 - expenses upkeep of property

The aforementioned numerical values depict the difference in wealth of the Tenant (T) and Landlord (LL) before vis-à-vis after partaking in the agency game.



(4)

In figure **(4)**, both the tenant (T) and the landlord (LL) enter into a rental agreement for the property. From the landlord's perspective, when there is no incentive for maintaining the property, it is less costly to breach the contract. The expense for him shall be only 0.5 i.e., the cost of damages as opposed to 1, which is the cost of upkeep if he intends to perform the contract. However, in a situation where there already exists an incentive upkeep the property, the landlord will prefer performance over breach as he will receive 0.5 as opposed to having to

[73] James Burling, *The Destructive Power of Rent Control*, PACIFIC LEGAL FOUNDATION, July 12, 2019, https://pacificlegal.org/the-destructive-power-of-rent-control/.
[74] *Rent Ceiling*, INVESTOPEDIA, 27 September 2022, https://www.investopedia.com/terms/r/rent-ceiling.asp.

ISSN 2582-2667

pay 0.5 if he breaches. Therefore, rent control by leaving no incentives to upkeep property perpetuates fewer successful rental contracts this leads to the non-cooperative solution being more profitable and favourable.

Cooter and Ulen correctly postulate that the primary purpose of contract law ought to be to convert non-cooperative solutions into cooperative ones.[75] Indeed, rent control with its restrictive nature is not in compliance with the same.

4. CONCLUSION AND RECOMMENDATIONS

This research paper sought to conduct a systematic economic analysis of the anti-rent control stance adopted by the Waqf Amendment Act of 2013 and the Waqf Properties Lease Rules of 2014. To aid this analysis, reliance was placed on the Indian housing paradox and statistical findings from the 2011 census prior to the amendment act and corresponding lease rules. Aimed at exploring whether, in an otherwise relatively pro-tenant jurisprudence, this legislation stood out like a sore thumb or a welcome change, it was found that in a strictly economic sense, it was both more Pareto efficient and efficient under the Kaldor-Hick's approach when compared to the older provision. The issues of black-marketing, inflation and excess demand were used to substantiate these claims. Further, it was established that there exists an inverse relationship between the strictness of rent control laws and the amount of value generated by the rental market in an economy. It has been succinctly hypothesised by the Centre of Social and Economic Progress that any policy to improve housing must make penalization of tenants an easier process, reduce the impediments faced by landlord for revising market rent and seek to improve contractual enforcement of pre-existing rental agreements.[76] This same study further aids the assertion that rent control measures and the weak contract enforcement culture in India are the two primary reasons for the housing paradox in India.[77]

An interesting parallel can be drawn with the Bangladeshi Waqf structure which also seems to echo the ethos of promoting fair price and market competition. Indeed, under Section 69 A mentions consistence with prevailing market price as a prerequisite for all applications regarding redetermination of waqf property prices.[78] Additionally, even the Pakistani

[75] COOTER and ULEN, supra note 55, at 283.
[76] GANDHI, *supra* note 50.
[77] *Id.*
[78] The Wakf ordinance 1962, s. 69A.

ISSN 2582-2667

legislation, namely, the Waqf Properties Act, 2020, states under Section 17(a) that maximization of economic benefits is a prerequisite for the sale of waqf properties.[79]

Cooter and Ulen correctly hypothesized that the public ownership of a conventionally private good leads to misallocation. This essentially means that the good in question is utilized by individuals other than those who value it the most.[80] Efficiency requires that private goods be privately owned, and public goods be publicly owned.

Murphy's law of Economic Policy states that, *"Economists have the least influence on policy where they know the most and are most agreed and have the most influence on policy where they know the least and disagree most vehemently."*[81] Indeed, while this amendment is a step in the direction of free-market transactions. Interestingly enough the Model Tenancy Act of 2021 seems to have recognised this problem and has sought to limit the extent of rent control by promulgating that rental prices shall be determined based on a written agreement between the landlord and the tenant. However, the continued existence of rent control laws in today's capitalistic world reinstates their importance. Thus, while this paper views the changes to the Waqf law from a purely economic efficiency perspective, one must not disregard it. Conclusively, this paper attempts at showcasing a perspective that would otherwise not come to light when it comes to the discussion surrounding minority rights and its adjoining socio-political discourse in order to put forth the assertion that rent control is not the most effective measure when it comes to public welfare. Hence, the introduction of the Model Tenancy Act and the Amendments made to the Waqf legislation are all steps in the right direction. Well maintained accommodation is provided to tenants, landlords are given a fair price and the courts are not burdened with claims of damages on account of non-performance. Indeed, these changes by promoting free-market transactions in the rental sector, are promulgating a rental policy that is not only more economically viable but also benefits all parties. It is recommended that the Indian legislators continue on this trajectory.

[79] The Islamabad Capital Territory Waqf Properties Act, 2020, s. 17.
[80] COOTER and ULEN, *supra* note 55, at 104.
[81] Paul Krugman, *Reckonings: A rent Affair*, NY TIMES, 7 June 2000, 31 https://www.nytimes.com/2015/04/26/upshot/economists-actually-agree-on-this-point-the-wisdom-of-free-trade.html.

ISSN 2582-2667