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EDITORIAL NOTE

-Editors

The second issue for Volume VII comprises of 6 articles that provide an insight into the economic implications of a variety of societal issues. From presenting a critical analysis of anti-defection laws to identifying patterns of female criminality in the 21st century, this edition is a unique blend of novel topics that cover pressing concerns of the day and age. The themes mutually conclude with the need for policymakers to balance their regulatory approach in order to accommodate the interests of all economic actors.

The paper titled **"Information Asymmetry and High Transaction Costs: Challenges for MSMEs in Securing Financial Support"** authored by Anu Singh, explores the struggles faced by Micro, Small, and Medium Enterprises (MSMEs) in India when seeking financial support. It highlights the role of information asymmetry and high transaction costs as major barriers, often deterring financial institutions from lending to new entrants. Despite government initiatives like the MSME Development Act and schemes promoting credit access, a significant credit gap persists. The study advocates for mandatory MSME registration and innovative financial strategies, such as adopting Indonesia's ultra-microcredit model, to improve loan accessibility and foster sustainable growth. The paper underscores MSMEs' crucial role in India's economic resilience post-pandemic while calling for systemic reforms to address inefficiencies and disparities.

The paper titled **"Application of Economic Tools in Environment and Law: A Step Towards Sustainable Development and Green Economy in India"** authored by Advocate Ambika Gupta, advocates for the application of economic tools, such as the Environmental Kuznets Curve, Pigouvian taxes, and cost-benefit analysis, in environmental law to achieve sustainable development without hindering economic growth. The author critiques the command-and-control approach, proposing alternatives that align with green economy principles. The paper highlights the adverse economic impacts of environmental degradation in India and emphasises balancing ecological protection with GDP growth. Recommendations include adopting property rights frameworks and integrating economic evaluation methods to guide sustainable and inclusive development policy-making.

The paper titled **"The Curious Case of Criminalizable Corporate Harms in India: The 1991 Economic Reforms and the Neoliberal Turn"** authored by T.H. Vishnu, delves into the

transformation of India's rationale for criminalizing corporate harms, transitioning from protecting public interest (pre-1991) to promoting the ease of doing business (post-1991 economic reforms). The study critiques the neoliberal framework introduced by the reforms, which emphasises deregulation and wealth creation while exacerbating income inequality and marginalising public interest. The author analyzes the inherent contradictions within this neoliberal shift and its adverse impact on the scope and purpose of criminal law in India. Through legislative and empirical analysis, the paper advocates for a more balanced approach that aligns corporate regulation with public welfare.

The paper titled **"A Critical Analysis of Anti-Defection Law Through an Economic Lens"** authored by Manasa Murali and Rutu Muppidi, explores India's anti-defection law, enacted to curb political instability caused by defections, through economic tools like game theory and public choice theory. The authors critique the law's inefficacy in deterring defections, illustrating instances where defectors have been re-elected despite legal disqualifications. The study identifies systemic loopholes, such as delayed disqualification decisions and the lack of a robust deterrent framework, proposing reforms to ensure political accountability. By linking legal mechanisms with strategic behaviour and incentives, the paper underscores the need for a revised anti-defection statute that aligns with democratic principles.

The paper titled **"Regulation of Gambling in India: A Way Forward in the Direction of Responsible and Sustainable Gambling"** authored by Satyam Mangal examines the regulation of gambling in India through historical, legal, and economic lenses, emphasizing the socio-economic repercussions of gambling, such as addiction and financial instability. It proposes concepts like "gambling-worthiness" and "gamble scoring" to address these issues. The author contrasts prohibitory, permissive, and regulatory legislations, highlighting the benefits of balanced regulation for curbing harms while safeguarding individual and societal welfare. Policy suggestions for integrating formal and informal education alongside legislative measures are provided to ensure a sustainable and responsible gambling framework, especially in the digital age.

The paper titled **"An Economic Perspective on Female Criminality in the 21st Century: Trends, Patterns, and Societal Implications"** authored by Barnali Deka and Prof. Subhram Rajkhowa, examines the rise of female criminality in the 21st century, exploring its socio-economic underpinnings, evolving crime patterns, and societal implications. It reveals how economic hardship, unemployment, and systemic gender disparities drive women into criminal

activities ranging from petty theft to cybercrime. The authors discuss the strain female criminality places on families and the justice system, emphasising the need for gender-sensitive rehabilitation programs. They propose solutions like poverty alleviation, vocational training, and legal reforms to address structural inequities. The analysis highlights the importance of understanding intersectionality and creating inclusive policies to curb the rise in female criminal behaviour.

The Editorial Board of GNLU Journal for Law and Economics also extends appreciation to the review process committee consisting of Dr Chitra Saruparia, Dr Shivani Mohan, Dr Himanshu Thakkar, Dr Rohit Bhaskar Jadhav, Ms Anuradha S Pai, Dr Aman Deep Singh and Dr Manoranjan Kumar. We also acknowledge Mr Abhimanyu Ayush Vyas, Mr Parthiv Joshi, Ms Akshita Bhansali, Mr Digvijay Singh and Mr Adya Desai for their assistance in the initial stage of the review process. The Editors further acknowledge Ms. Harshita for her assistance in formatting preliminary pages.

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INFORMATION ASYMMETRY AND HIGH TRANSACTION COSTS: CHALLENGES FOR MSMES IN SECURING FINANCIAL SUPPORT

- *Anu Singh*[1]

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ABSTRACT

MSMEs are an untapped sector of the Indian economy with the potential to foster growth by benefiting the affluent industry and the country's middle class. There are multiple schemes run by Indian governments to cater to this agenda, but they are still unable to actualize the true potential of the MSME sector. This research paper explores the historical context and contemporary challenges faced by Micro, Small, and Medium Enterprises in India, which struggle to keep pace with other sectors of the economy. Despite their potential to drive economic growth and enhance middle-class livelihoods through increased productivity and employment generation, MSMEs' potential remained underutilized and constrained by various obstacles. This study uses secondary data from credible sources to investigate key factors contributing to the persistent credit gap between credit demand and supply to MSMEs. The findings reveal that information asymmetry poses a significant barrier to accessing financing, as lenders often lack reliable data on the creditworthiness of potential borrowers. This uncertainty drives financial institutions to favor existing borrowers, leading to a skewed loan disbursement process that favors existing borrowers to reduce the enforcement cost of loan disbursement and collection. It also increases the difficulties for new entrants in getting easy loans from lenders. The paper highlights the urgent need for strong institutions to address these imbalances and capture gains from trade by expanding the credit market to small and new borrowers without any hassle.

Keywords: *MSMEs, Asymmetric Information, Transaction Costs, Credit demand and supply Gap.*

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1. INTRODUCTION

The fundamental principle of economics is exchange. 'Exchange creates surplus,' making it a key factor in economic growth. In the context of law and economics, the market is not limited to the buying and selling of goods and services; it also means the lending and borrowing of money. To an extent, the market for law and economics also represents the interaction between two individuals, active or passive.

If the market works entirely on the assumptions of classical economists, the market is self-sufficient in efficiently producing and allocating resources (Myint, 1977). Unfortunately, the beliefs of perfect rationality, perfect information, and zero transaction costs are unrealistic in the real world. Bounded rationality, high transaction costs, and information asymmetry are the sources that can hinder such exchanges in the market (Hodgson, 1998).

Transaction costs are the cost of the transaction; they can be monetary, such as brokerage fees, legal fees, and transportation costs, or/and non-monetary, such as time, effort, and resources required to gather information, negotiate, and complete a transaction (North, 1986). It has three elements: the search and information costs, the bargaining and negotiation costs, and the enforcement costs. The market fails to perform if transaction costs are high due to any or all of these elements. These costs persist in the financial market, too, and if high, can create market failure (Hau, 2006).

In the following few pages, we have analyzed the MSMEs in India and their performance in production, employment generation, and number of units registered under the Udyam scheme. We are also exploring the factors that can improve the performance of MSMEs with the main focus on Credit Demand, Supply, and Credit Growth.

2. LITERATURE REVIEW

The review of literature has been done under two categories: historical context and new policies of the government.

i. The Historical Context

A strong industrial base is essential for any economy's growth and development. Industries serve as the backbone of a nation. During India's Second Five-Year Plan (1956-1961), the Mahalanobis model, developed by Prasanta Chandra Mahalanobis, provided a crucial framework for India's industrialization and economic growth goals. This model emphasized the importance of heavy industries, such as steel and coal, over consumer goods. The key aspect of the model is the strategic investment in heavy industries to maximize India's manufacturing

potential. Later, this model was criticized for underestimating the power of agriculture and small and medium enterprises (Komiya, 1959).

Since independence, India had policies to support small-scale industries. To identify and promote small and medium enterprises (SMEs), in the 1950s, India adopted a formal definition of small-scale industries (SSI), which was based on investment and employment, particularly to identify and promote this segment accordingly. The government has also established organizations to develop a network for institutional support, such as Small Industries Development Organization (SIDO). It has also introduced measures to protect this segment, like price preferences, product reservations for SSI, and fiscal incentives, which were lately criticized in the study done by Ramaswamy as he observes that the output share of reserved items has not increased as per the estimate (Ramaswamy. 1994).

The work towards boosting small-scale industries post 1991 among competition has taken flight by establishing Small Industries Development Bank of India (SIDBI) and, more importantly, in 2006, establishing the Micro, Small and Medium Enterprises Development (MSMED) Act 2006. MSMED Act of 2006 is considered to be a milestone in the evolution of MSMEs in India (Subrahmanya, 2021)

Naya, S., in his writing, mentions the attention this segment requires from the government and policymakers for overall growth and development. He has demonstrated that small and medium enterprises are crucial in India and Asia. He notes that production in developing countries largely focuses on agriculture. As this sector experiences growth in output and income, new markets emerge for consumer and intermediate goods essential to agriculture. This contributes to GDP and helps small farm households and landless labourers get employment(Naya, S. 1985). Subrahmanya, in his article, mentions how The Small Scale Industries (SSI) and Small and Medium Enterprises (SME) segment in India has evolved significantly, especially following the MSMED Act of 2006. This growth reflects their increasing contribution to the economy since the pre-liberalization era. We can gauge the strength of the SME sector with 63 million enterprises employing 120 million people before COVID-19, which made the SME sector the second largest sector, giving employment after the agriculture sector in India. Small and medium-sized enterprises (SMEs) play a crucial role in manufacturing production, national revenue, and exports, yet their innovative potential is often overlooked nationally. (Subrahmanya, 2021).

ii. New Policies of The Government

According to the newest booklet, Schemes for MSMEs, published by the Government of India, India has implemented many policy measures to promote small-scale industries, including micro, small, and medium enterprises (MoMSMEs, GoI, 2024). These policies aim to reduce the challenges small and medium-sector enterprises face in getting financial support and becoming productive and competitive in the era of globalization. After the Industrial Policy Resolution 1956, which reserved certain products for small-scale industries, initiatives like the MSME Development Act of 2006 established a legal framework for enterprise classification.

To provide financial support to the small sector, the GoI introduced a Priority Sector Lending Policy, ensuring that banks disburse a significant amount of their credit to MSMEs. Schemes such as the Credit Guarantee Fund Scheme have been introduced to simplify access to finance for these units. The National Manufacturing Competitiveness Programme was initiated to improve manufacturing processes. Atma Nirbhar Bharat Abhiyan introduced significant revisions in defining MSMEs and added emergency support measures in the face of economic challenges.

Similarly, according to the MSME Scheme Booklet 2024 of the Government of India, 17 schemes have been introduced to promote Micro, Small, and Medium Enterprises (MSMEs), including five new initiatives. These schemes aim to boost entrepreneurship and employment, guarantee credit for MSMEs, and promote skill development and innovation. Moreover, programs like the MSME Champions Scheme and the Entrepreneurship Skill Development Programme (ESDP) aim to enhance sustainability and competitiveness among enterprises. Under new initiatives like PM Vishwakarma support artisans, the Self Reliant India (SRI) Fund and RAMP Work to help small and medium-sized businesses (MSMEs) do better and create a friendly environment for their growth.

The objective of these schemes, as per the booklet, is “The scheme aims to provide financial assistance to set up self-employment ventures and generate sustainable employment opportunities in rural and urban areas. To generate sustainable and continuous employment opportunities for rural and unemployed youth and prospective traditional artisans and thereby halt occupational migration.” (MoMSMEs, GoI, 2024)

3. RESEARCH METHODS

This study's research methodology involves secondary data sources. The secondary data includes reports from reliable institutions and the Government of India. The data comes from

interviews with CEOs of MSMEs featured in newspapers. The objective is to analyze credit-related aspects within the MSME sector, including credit demand, supply, gap, and growth dynamics. The data collected from interviews with MSME CEOs featured in newspapers provides valuable first-hand insights. This approach ensures a comprehensive exploration of credit dynamics while acknowledging and mitigating the limitations of relying on pre-existing data and news sources. The process involves gathering data from various reports to gain insights into borrowing trends, lending activities, and potential credit gaps. The study examines any imbalances that could lead to potential credit gaps by comparing demand and supply. The findings are then analyzed in the context of these potential pitfalls, considering their implications on research outcomes. Recommendations for overcoming these pitfalls are provided to enhance the research's robustness.

4. ANALYZING THE ECONOMIC PERFORMANCE OF MSMES

As per the MSME website, MSMEs are Manufacturing Enterprises and Enterprises rendering Services. Micro stands for enterprises with Investment in Plant and Machinery or Equipment of not more than Rs.1 crore and an Annual Turnover of not more than Rs. 5 crores. Small enterprises have investments in Plant and Machinery or Equipment that are not more than Rs.10 crore, and Annual Turnover is not more than Rs. 50 crores. Medium enterprises have investments in plants, machinery, or equipment of more than Rs.50 crore and Annual Turnover of not more than Rs. 250 crore (Ministry of MSMEs, 2020).

MSMEs in India are the key players in generating employment and contributing to economic growth (IFC, 2018). As per the latest press release by the press information bureau of the government of India, MSME contributes nearly 29% of India’s gross domestic product, with a total share of 36 percent in all of India's manufacturing output. MSMEs employed almost eleven crore workers last year (Press Information Bureau, GoI, 2023).

The Micro, Small, and Medium Enterprises (MSME) sector plays a pivotal role in the Indian economy even after the hit of the pandemic. It is often called its backbone (Behera, Mishra, Mohapatra, & Behera, 2020). This sector, known for its labor-intensive nature, contributes significantly by offering employment opportunities with relatively lower turnover requirements. Given India's substantial population, the demand for employment avenues is significant, and the MSME sector effectively addresses this demand. Characterized by a reasonably short gestation period, MSMEs foster a growth cycle by promoting entrepreneurship and concentrating on niche markets. In a broader context, this sector has made

substantial contributions to rural development through industrialization, employment generation, and related initiatives.

What sets MSMEs apart is their ability to achieve substantial growth even with modest capital investment, indicated by their lower capital-output ratio. The MSME Act of 2006 outlines enterprise definitions based on capital expenditure ceilings for plant and machinery or investment in equipment for service-oriented activities. As of 2018, their classification is determined by annual turnover levels (Reserve Bank of India, 2019). Given India's status as a burgeoning economy, this sector holds untapped potential that, once harnessed, promises substantial growth. This is underscored by the notable rise in the number of MSMEs in India, which surged 18.5 percent between 2019 and 2020 (SIRU, 2022).

The MSME sector is crucial in driving overall economic growth, narrowing the gap between rural and urban development, and addressing gender inequality. This is particularly evident in rural India, where the increasing presence of women-owned MSMEs signifies progress in grassroots-level socio-economic development. According to the MSME Annual Report of 2020-21, out of the 32.48 million enterprises in rural India, an impressive 51 percent are owned by women. These enterprises also make a substantial contribution to India's export trade. The expansion of export activities is demonstrated by the fact that MSME products accounted for 49.5 percent of total exports in the fiscal year 2020-21, 45.0% in 2021-22, and 43.6% in 2022-23 (Press Information Bureau, 2023).

i. Exploring MSMEs Post-Pandemic Performance

In the following pages, we will explore the post-performance of MSMEs based on authentic reports from the Government of India and other sources.

Economic Survey 2022-23: The performance of MSMEs has been documented in the economic survey of 2022-23. The MSME sector experienced impressive growth in credit, averaging over 30.6% between January and November 2022, thanks to the government's extended ECLGS. This shift from unstable bond markets and higher-cost external borrowing to banks also contributed to an overall increase in credit (Economic Survey 2022-23).

The recovery of MSMEs is evident in the increased GST payments and eased debt concerns due to the ECGLS. The credit growth surpassed 30.5% on average between January and November 2022, supported by the government's extended ECLGS. Banks aggressively provided credit, prompted by better financial health, similar to corporates.

The introduction of ECLGS in FY21 protected micro, small, and medium-sized enterprises from financial distress. An August 2022 CIBIL report on ECLGS Insights revealed that 83% of borrowers were micro-enterprises, with many having exposure under ₹10 lakh. ECLGS users had lower non-performing assets than eligible non-users. GST payments by MSMEs rebounded and crossed pre-pandemic levels, demonstrating resilience and effective government intervention.

In recent times, industrial policies have been geared towards reforming MSMEs. These policies include ECLGS and revised MSME definitions under Aatmanirbhar Bharat. The ECLGS scheme has assisted many MSMEs with collateral-free loans amounting to ₹2.38 lakh crore. Other measures, such as TReDS, have extended non-tax benefits to these small businesses, while digital platforms have strengthened them. The Open Network for Digital Commerce and the inclusion of GSTN on the Account aggregator platform have also helped boost MSMEs' credit access and market reach.

It is important to continue implementing reforms that reduce compliance burdens, improve finance access, and promote responsible growth. State governments should also play their part in advancing market reforms. Industrial credit growth has surged thanks to ECLGS, government incentives, and capacity enhancement. The share of MSMEs in industry credit increased from 17.7% in Jan 2020 to 23.7% in Nov 2022.

Despite the setbacks caused by the pandemic, MSMEs' contribution to GVA in FY21 reached 26.8%. The Samadhaan Portal and RAMP scheme has been instrumental in supporting MSMEs' cash flow and expansion. Digital solutions like e-commerce have also boosted revenues and market access for these small businesses. MSME credit growth has thrived thanks to ECLGS, while other reforms and digital solutions have fueled recovery. All these factors showcase the sector's resilience and growth potential.

ii. MSME Pulse August 2023

The Indian economy has continued to grow and display resilience in economic activities, a trend reflected in the MSME sector. The sector has shown consistent credit growth as the backbone of India's economy. In this edition of MSME Pulse, we explore Commercial credit insights from FY23-Q4, revealing the following findings:

New credit originations for FY23-Q4 reached INR 241K Crore. The 'Micro' segment (with credit exposure below INR 1 Crore) showed a remarkable 23% year-on-year growth in originations, while the 'Small' segment (credit exposure between INR 1 Crore to INR 10

Crores) experienced marginal 1% growth. On the other hand, the 'Medium' segment (credit exposure between INR 10 Crores to INR 50 Crores) saw a decline of 19% year-on-year in originations.

States with higher levels of industrialization witnessed more robust MSME credit growth. An analysis by state highlights Uttar Pradesh, Karnataka, Telangana, and Haryana as the leaders in credit growth, primarily driven by 'microloans. Among these, Karnataka stands out with the highest growth rate of 8%. Notably, credit supply from Public Sector Banks to 'micro-enterprises in Karnataka surged by an impressive 119% year-on-year.

After facing challenges posed by the pandemic, delinquency rates initially increased. However, these rates have gradually decreased over subsequent quarters as MSMEs diligently met their credit obligations. Delinquency rates have declined across all three lender categories, with private banks showing the lowest rate at 1.4%.

iii. Rajya Sabha Q&A

Bhanu Pratap Singh Verma, Minister of State in the MSME Ministry: In FY23, the MSME sector's outstanding credit from scheduled commercial banks increased by 12.3% to Rs 22.6 lakh crore compared to Rs 20.11 lakh crore in FY22. The outstanding amount was Rs 17.83 lakh crore in FY21 and Rs 16.13 lakh crore in FY20. Over the past five years, there has been a 49.6% increase in credit outstanding to the MSME sector, which was Rs 15.10 lakh crore in FY19 (Soni, 2023).

5. Challenges Faced by MSMEs in Securing Financial Support: An Economics Perspective

Although MSMEs have shown promising and progressive performance in the wake of the pandemic, India has not fully leveraged their potential to achieve a $5 trillion economy. Despite the plethora of schemes to boost the MSME sector, small and medium enterprises face various challenges that impede their ability to take advantage of the resources offered by government policies. As noted, policymakers are aware of the potential of the MSME sector and have taken various measures to boost the sector. However, we observe the gap between policymaking, its implementation, and its effectiveness. To revitalize the small and medium-sized enterprise (SME) sector, especially during the COVID-19 pandemic, it is crucial to pin down the fundamental challenges MSMEs face. This understanding will aid in formulating effective policies and bridging the gap between policy implementation and its impact on businesses,

ultimately supporting the sector's growth. Based on secondary data, the following challenges have been identified.

i. Asymmetric Information and Credit Gap

Asymmetric information can be one of the significant sources of credit gaps in MSMEs. If perfect information is too costly to gather, information asymmetry exists in the market between the parties involved in the financial transaction. Information asymmetry is when one party knows more about the transaction than another. In such a situation, one party's welfare depends on the relevant information the other party possesses and does not share. The costlier it is to get the information for better decision-making, the more significant the information gap will be, which leads to higher information and enforcement costs. There would be distrust, lower satisfaction, and, therefore, lesser trade in such markets, which can be represented as credit gaps in the financial market (Henderson, 2002).

India's Micro, Small, and Medium Enterprises (MSMEs) face a significant obstacle known as the 'credit gap,' which refers to the difference between the credit demand and supply. In an economy, credit demand is the term used to describe the quantity of funds that individuals, businesses, and other entities require or wish to obtain from financial institutions such as banks, credit unions, and lenders. This is an important metric to assess the level of funding needed for various purposes, such as personal consumption, investing in businesses, purchasing homes, and more.

Inquiry volumes Year-over-year (Y-o-Y) growth and other data sources were used to gauge India's credit demand indicators. Inquiry volumes Year-over-year (YoY) growth represents the change in the number of requests related to credit from one year to another. It is expressed in percentage form (Corporate Finance Institute, n.d.). For example, if in 2020 the number of requests is 100 and in 2021 it is 120, then YoY will be 20% from 2020 to 2021. This data source helps us understand trends in credit demand in the MSMEs sector while also evaluating financial activity and borrowing patterns.

Collecting data on year-over-year inquiries for credit loans by MSMEs and the final loan disbursement by the banks is essential for evaluating the gap between loan demand and supply. This process includes everything from inquiry on loans by the borrowers to the initial approval and creation of credit and, finally, allocation of funds to borrowers.

Micro, Small, and Medium Enterprises in India have often faced challenges in obtaining the money they need and the actual financial support they get. This credit gap has consistently hindered the progress of these crucial contributors to the economy. The Reserve Bank of India

formed a committee in December 2018 to focus on Micro, Small, and Medium Enterprises. The committee projected that the credit gap in the MSME sector would be between Rs 20 lakh crore and Rs 25 lakh crore (Reserve Bank of India, 2019). According to the World Bank, India's MSME industry has a credit gap of almost $380 billion. Recently, an investment banking firm called Avendus Capital estimated the credit gap in the MSME sector to be $530 billion. The report highlighted that only 14% of the 64 million MSMEs in India have access to credit (PTI, 2020).

After the pandemic, a report by SIDBI and CIBIL revealed that credit demand increased by 33% in FY 23-Q4 compared to the previous year, while inquiries for credit doubled. Credit demand from public and private sector banks increased by 1.3 times the last year's volume, and non-banking financial companies experienced a 1.5-fold expansion in credit demand, positioning them as competitive contenders in the commercial credit market. The driving forces behind the increase in MSME credit demand are improved business operations, enriched credit data availability, and the swift adoption of digital lending practices. In FY 23-Q4, while credit demand surged by 33%, the supply only grew by 11%. As of March 2023, new MSME credit origination in FY 23-Q4 amounted to INR 241K Crores, with commercial loan disbursements expanding by 1.7 times compared to FY 20-Q4 (SIDBI, 2023)

The Reserve Bank of India press release of July 2023 indicated that bank credit growth for Micro, Small, and Medium Enterprises (MSMEs) had slowed down in the first three months of the current fiscal year compared to the previous year (Reserve Bank of India, 2023).

Despite the growing need for credit among Micro, Small, and Medium Enterprises (MSMEs), financial institutions are cautious regarding commercial lending. This is due to various factors and considerations influencing lenders' uncertainty decision-making. In credit markets where borrowers have more information about loan repayment than lenders, there is a risk of non-performing assets dominating the market, making it riskier for lenders to lend money. George Akerlof's article, published in 1970, discussed that the presence of uncertainty leads to information asymmetry in the credit market. He observed that the market with uncertainty has an information asymmetry between the buyers and sellers, leading to the problem of adverse selection, which is the prominent source of market failure. The article discusses how, due to asymmetric information, the market fails to capture the surpluses that could be created through exchange. In other words, if lenders do not know the quality of the borrowers and their creditworthiness, they will be reluctant to offer loans, causing reduced access to credit and economic inefficiencies (Akerlof, 1970).

The government of India has implemented measures to address the credit gap problem. For instance, the Prime Minister's Employment Generation Programme, a credit guarantee scheme, and a ₹50,000 crore equity infusion through Self-Reliant India (SRI) Fund intend to provide funds to borrowers of MSMEs. Additionally, they have launched the Udyam platform and Udyam Assist Platform to bring more MSMEs into the formal sector for Priority Sector Lending benefits. Despite the Indian government's implementation of credit schemes and a 33% yearly increase in credit demand, creditors still hesitate to lend money to MSMEs. Press Information Bureau, GoI, 2021).

Despite the government's efforts to improve credit growth through various schemes, individual MSMEs face challenges securing bank loans. Unfortunately, many of these businesses are struggling to obtain loans due to banks' risk aversion, which has resulted in a slowdown in credit growth. According to Anil Bhardwaj, the Secretary General of FISME, the credit barriers faced by MSMEs are not purely procedural but rather stem from banks perceiving these businesses as the market for lemons, such as risky borrowers bad loans, and treating them accordingly. The credit gap in India, as observed by Puneet Kaura, Managing Director and CEO of Samtel Avionics, is primarily caused by inadequate loans and delayed disbursement of loans to MSMEs, which puts them at a disadvantage compared to larger enterprises. Kaura believes that the current system favors larger borrowers. Meanwhile, Rohit Arora, co-founder and CEO of Biz2Credit, notes that MSMEs in India face challenges when it comes to obtaining credit from banks and financial institutions due to factors such as collateral requirements, limited credit history, high interest rates, and the informal nature of businesses. Lack of financial records, risk perception, and high non-performing assets (NPAs) in the banking sector further hinder MSMEs' access to loans (PTI, 2023)

ii. High Transaction Costs and Skewed Loan Disbursement

Transaction costs encompass three key elements that influence economic interactions:

1. Search and information costs involve efforts and expenses to gather relevant data about potential transactions, including assessing various options and comparing terms.
2. Negotiation and bargaining costs arise from reaching mutual agreements, involving time, resources, and sometimes even expert assistance to finalize terms satisfactory to all parties.
3. Enforcement costs refer to the expenses of ensuring that contractual obligations are upheld, often involving legal procedures and monitoring mechanisms.

These elements collectively shape the decision-making process in economic transactions, influencing the efficiency and feasibility of interactions within markets and business relationships.

The press release of June 2023 on the sectoral deployment of credit by RBI states that in June 2023, industrial credit experienced slower growth at a rate of 8.1% YoY compared to the 9.5% growth in June 2022. Credit for large industries expanded by 6.4%, an improvement from the 3.2% growth seen the year before, while medium enterprises experienced a growth of 13.2%, a decrease from the previous year's 47.8% growth. Credit for micro and small enterprises also increased by 13.0%, a slight decline from the 29.2% growth one year earlier (RBI, 2023). These trends suggest that lenders have shifted their focus toward larger enterprises where the enforcement cost of lending and repayment is lesser than small and medium-sized businesses.

The report by TransUnion Cibil of 2022 states that Financial institutions often prefer existing borrowers over new ones due to the high transaction costs involved in enforcing loans. These costs include monitoring, managing legal procedures, and the risk of potential defaults, which are significantly higher when dealing with new borrowers. Established borrowers have proven track records and relationships, making the enforcement process smoother and more predictable. High enforcement costs make these lenders choose borrowers with lower uncertainty and reduce administrative costs.

As it is already known how transaction costs hinder trade, this arrangement of lowering administrative burden by lenders in India creates barriers to fair loan distribution (Herath, G. 1994). In the report by TransUnion, under the 'micro-segment of borrowers', the vintage delinquency rate is 8%, the highest among MSMEs borrowers. Vintage delinquency is the percentage of loans in arrears during a specific time frame from the loan's origination. The 8% delinquency rate indicates that many borrowers in the micro-segment, especially in semi-urban areas, struggle to pay back their loans. Vintage delinquency at 8% is a good enough reason for lenders to avoid lending money to such a category to avoid high transaction costs (TransUnion Cibil, 2022).

TransUnion Cibil report of 2022 also looks into the credit preferences of new-to-credit (NTC) and existing-to-credit (ETC) borrowers. As per the report, 61 percent of the new-to-credit borrowers have opted for smaller loans of less than one lakh rupees. On the contrary, 48% of the existing-to-credit borrowers prefer loans ranging from rupees 10 to 25 Lakhs. This information again proves the point that wherever the transaction costs of lending are lower, the lenders have been provided loans. The new borrowers were offered a lesser amount of loans

than the existing borrowers who already had established their creditworthiness in the market. Lenders are often skeptical about providing large loans to NTC borrowers due to the high search and information costs of finding their credit histories. The report highlights the problems of adverse selection in the credit market, which lenders avoid, affecting their lending decisions and making the loan distribution skewed towards one segment.

6. SUGGESTIONS

In light of such issues, the government has initiated measures to ease the flow and distribution of credit to the MSME sector. From April 1, 2023, the credit limit for Guarantee Coverage under the Credit Guarantee Scheme for Micro & Small Enterprises has been raised from Rs 2 crore to Rs 5 crore. Additionally, the annual guarantee fees have been reduced by 50%. Furthermore, the government has announced a Fund of Funds under the Atmanirbhar Bharat package to inject Rs 50,000 crore equity into MSMEs with the potential and viability to expand. MSME, Government of India.

Two policies are suggested to bridge information between lenders and borrowers and reduce transaction costs to help small borrowers get loans: making registration mandatory for MSME and following the Indonesian model of the UMi program.

i. Compulsory Registration of MSME

Lakhs of MSMEs have still not registered themselves on the Udyam portal. (Soni, S. 2022). It is common for banks to prefer lending to Micro, Small, and Medium Enterprises (MSMEs) that are registered due to their legal recognition, transparent financial reporting, more accessible collateral provision, and access to government incentives. Unregistered MSMEs can still apply for credit, but they may need to improve their documentation and financial track record to increase their chances of successfully borrowing. MSMEs in India do not have compulsory registration, which can enhance their creditworthiness and provide them with more accessibility to credit. Registration with the government gives lenders confidence in providing loans at lower interest rates with government support. Registering through online portals makes the registration process smooth and easy. With its incentive schemes, the government of India can ensure that each MSME is interested in registering with the government portal to take advantage of government support and lower interest rates with higher loan amounts.

ii. Ultra-Microcredit Program of Indonesia (UMi program)

Ultra-Microcredit Program is a social assistance initiative in Indonesia that aims to enhance the economic capacity of individuals, particularly those who own and operate small and underprivileged businesses. Since its launch in August 2017, the UMi program has experienced significant growth in borrower numbers and loans disbursed. From August 2017 to July 2020, the program's loan disbursement increased by 10.4 times, from IDR753 million to IDR7.8 trillion, while its borrower base expanded eightfold, from 307,000 to 2.5 million. The program initially had nine participating NBFIs (two direct and seven indirect mechanisms) but has now grown to include forty-six NBFIs (two direct and forty-four indirect mechanisms). Over the same period, the program's coverage area has expanded from 372 to 464 districts/cities (Adam, Soekarni, & Inayah, 2021).

iii. Other Measures to Build Strong Market Signals for Borrowers

It is evident from the interviews with some of the owners of MSMEs that acquiring funding from small borrowers is still an uphill task, regardless of the government schemes that have been implemented. Moreover, the reason is mainly that lenders consider these small borrowers as bad borrowers (the market for lemons). Akerlof suggested strong market signals can be a good way to avoid the situation of adverse selection and market for lemons (Riley, J. G. 2002) *Credit Scoring Models:* Developing robust credit scoring models specific to Indian MSMEs can enable lenders to assess risk more accurately. This involves analyzing various data points, including financial history, business transactions, and industry-specific factors. (Ramachandran, Obado-Joel, Fatai, Masood, & Omakwu, 2019).

iv. Introduction of Collateral Registries and Awareness Among Lenders

A World Bank report suggested that the introduction of collateral registries for even movable assets has increased the firm’s access to bank loans. The study is based on a survey of 73 countries where firms in seven were introduced to movable asset registries. The study concludes that introducing such options has significantly helped firms to access bank loans.

Countries like China have established collateral registries, which have helped MSMEs to use movable assets as collateral. It has reduced the uncertainty among lenders in extending credit due to reduced risks associated with non-performing assets. China has observed a significant increase in lending to small and medium-sized enterprises after the introduction of collateral registries. The People's Bank of China, with the help of the World Bank, has established a registry for movable assets of small enterprises. The initiative has facilitated the financing of $10.4T for small businesses in China. (Love, Martínez Pería, & Singh, 2013).

In India, the government, with the help of the World Bank, tried establishing a registry for movable assets of small enterprises. However, lenders with limited awareness and a traditional attitude tend to prioritize immovable assets. Educating lenders about these systems is another important measure the Government of India must take to encourage responsible lending systems by bringing transparency and lower risk associated with credit extension. Initiatives include training sessions, educational campaigns, case studies, and simplified registry platforms so the system can work without any hassles (IFC, 2018).

7. CONCLUSION

The Government of India has made significant progress supporting its MSME sector through various policies and programs. However, there is a gap between implementing the policies and their impact on the sector. This study explores the ineffectiveness of the policies due to the presence of sources of market failures in these markets, such as information asymmetry and high transaction costs. India has the potential for improvement, but rather than merely initiating new measures, it should prioritize addressing economic challenges such as adverse selection and moral hazard. This can be achieved by bridging the information gap between lenders and borrowers through accurate credit risk assessments and enhancing credit scoring models. It should also focus on streamlining the lending process by promoting digital platforms and strengthening cybersecurity laws to develop trust between the parties involved in the transaction. In the era of information technology, reducing transaction costs is no longer a herculean task. The adoption of better technology and the provision of digital platforms and knowledge of the same to small and medium enterprises can minimize the transaction costs between lenders and borrowers. Simplification of documentation and streamlining lending processes through digital platforms and regulations can reduce administrative costs and foster a more conducive environment for the MSME sector to grow.

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APPLICATION OF ECONOMIC TOOLS IN ENVIRONMENT AND LAW: A STEP TOWARDS SUSTAINABLE DEVELOPMENT AND GREEN ECONOMY IN INDIA

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ABSTRACT

The phrase "green economy" has gained popularity worldwide, with every nation presently emphasizing environmental concerns, embracing the green economy as their main economic model, and pursuing sustainable development. India is currently having trouble balancing its slow attempts to reduce the effects of climate change and coping with its usual economic expansion agenda. Currently, in order to combat climate change, closing down industries or scaling back the production system will have an impact on the Indian economy. Adopting the strict green approach will have detrimental consequences on trade, employment, agricultural output, and business practices. As a result, new policies, budgetary changes, and the advancement of resource efficiency are unquestionably needed. In light of this, the manuscript uses a variety of economic tools, including the Kuznets Curve, the Law relating to Property Rights and how it relates to the Law of Demand, and Cost (Benefit) Analysis, to argue against the use of the command-and-control method of punishing environmental offenders. The author, among other things, makes the case that the use of economic tools in the field of environmental law can aid in the effort to transform the conventional economy into a green economy without having a negative effect on GDP, while also highlighting the effects of environmental degradation on per capita income and the marginal cost of pollution associated with society and developmental projects. However, in doing so and offering a different paradigm for aligning the green economy's tenets with economic growth, the question of how these financial instruments should be used is also raised.

***Key Words**: Cost-Benefit Analysis, Environmental Kuznets Curve, Green Growth, Marginal Cost of Pollution, Pigouvian tax, Property Rights.*

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1. INTRODUCTION

Countries have been attempting to address the dreadful environmental circumstances in recent years by transforming the traditional type of national economy to Green Economy in order to ensure sustainable development. (Singh, 2011-2013) A sustainable model, as enunciated by UNEP, significantly reduces planetary risks and resource scarceness while enhancing social justice and individual satisfaction. (Fedrigo-Fazio & Ten Brink, 2012) The global green economy concept gained traction following the 2008 Global Financial Crisis, with the goal of lowering hazards associated with ecological decline and carbon addiction while still meeting the Millennium Development Goals (MDGs) of 2000. However, Pearce et al.'s (1989) vision for a green economy for the UK's Department for the Environment was the first to introduce the notion. (Georgeson, 2017) Worldwide gatherings have also thoroughly addressed strategies related to the environmentally conscious financial spectrum, such as the 1992 Rio UNCED. Like for instance, the Rio Declaration contained guidelines encouraging the use of economic tools and the internalization of environmental costs, additionally the abolition of insurmountable production and consumption. To put it succinctly, through combining governmental and financial backing, the ecological economy seeks to improve earnings and career development both domestically (Babel & Poduvai, 2020) and internationally. It does this by reducing carbon emissions, preserving habitats and nature, as well as optimizing the use of resources. (Sharmila, 2023)

The "Beyond GDP Principle" is one of the tenets that the Northern Alliance for Sustainability separated out of the concept of the "green economy" in 2012. The idea is that, in an environmentally conscious economy, economic expansion should be measured by considering the environmental consequences of the country's production, compared to the existing finances, where GDP development is estimated using traditional approaches. (Goud, 2019) Few economists, however, believe that emerging nations like India may not benefit from the GDP concept since any kind of output reduction or cessation could have a detrimental impact on the nation's economic growth and citizens' level of life. The estimate that a 30% decrease in particle emissions will result in a $97 billion drop in GDP further supported this point. In addition, a 2016 analysis from the World Bank estimated that the annual expenses of ecological decline in India is around 3.75 trillion, or 5.7% of the country's GDP. But this is just one aspect of the situation!

i. *The dangerous effect that the environment has on the national income makes matters worse. According to a number of estimates, severe weather events brought*

> *on by climate change damaged crops across more than 36 million hectares between 2016 and 21, which resulted in losses for the nation's farmers. The study, "The Costs of Climate Change in India," examines the financial toll that climate-related hazards may have on the nation and raises the prospect of greater poverty and inequality. According to the report, climate change may cause India to lose 3–10% of its GDP per year by 2100.*

The degradation of the environment and its lasting effects on the economy persist despite the numerous regulations that govern the actions of environmental offenders. Without a doubt, all industries may close under the guise of environmental preservation, which would severely restrict the economy. Thus, the necessity of reconsidering expansion tactics has increased. Therefore, economic instruments are helpful in finding a middle ground where the green economy's tenets can be upheld while yet allowing for the sensible application of the command-and-control strategy.

The manuscript is therefore divided into several sections. The first section will give a theoretical overview of the subject and will examine judicial activism related to sustainable development and the effects of environmental degradation on the economy, keeping in mind the necessity of ensuring green growth through alternative growth strategies. The second section of the manuscript will explore the use of economic instruments in the green economy. In this section, the relationship between per capita income and environmental deterioration will be established through the use of the Environmental Kuznets Curve. It is stated that as people become wealthier, they will begin to value the environment. It will then be proven that the application of property rights will deter people from causing environmental damage. Additionally, using cost-benefit analysis, the project's economic impact and the marginal cost of pollution will be evaluated. The letter will close with a few practically sound recommendations that the government can implement to guarantee a green economy in which businesses are not outright closed and green growth is guaranteed.

2. LITERATURE REVIEW

In recent years, the nexus between economic development and environmental sustainability has gained attention worldwide, especially in countries like India that are striving for rapid economic growth while managing the accompanying environmental degradation. The concept of the green economy, rooted in the United Nations Environment Programme (UNEP) and advanced through global frameworks like the Sustainable Development Goals (SDGs), seeks to harmonize economic progress with ecological sustainability (Pearce et al., 1989; UNEP,

2012). The green economy is an essential pathway toward achieving sustainable development by reducing carbon emissions, preserving ecosystems, and optimising resource use. India's commitment to this agenda is reflected in its adoption of the 2030 Agenda for Sustainable Development, which sets ambitious goals for environmental protection while ensuring economic prosperity (UNDP, 2023).

However, as Sarkar (2011) notes, India faces unique challenges due to its high dependence on natural resources and a growing population that intensifies environmental degradation. Studies show that India's GDP suffers significantly from ecological damage; for instance, air pollution alone cost the country 8.5% of its GDP in 2013 (Jain, 2013). In this context, scholars advocate for the adoption of economic tools such as the Environmental Kuznets Curve (EKC), property rights, and Pigouvian taxes to ensure green growth without stifling economic development (Fernandes & Gopal, 2019; Stern, 2003).

Cost-benefit analysis (CBA) is another widely recognized economic tool that helps assess the environmental impacts of development projects. Murty et al. (2006) argue that CBA can provide a more comprehensive evaluation of both short-term economic gains and long-term environmental costs. In India, the Delhi Metro project is often cited as a successful example of using CBA to ensure that infrastructure development aligns with sustainability goals (Alfredsson, & Wijkman, 2014). However, there is room for expanding the application of CBA across other sectors like mining, manufacturing, and energy production, where environmental costs are often overlooked. The Environmental Kuznets Curve (EKC) hypothesis, as developed by Grossman and Krueger (1991), postulates an inverted U-shaped relationship between environmental degradation and per capita income. Initially, economic growth leads to higher pollution levels, but as societies become wealthier, they prioritize environmental protection, leading to a decline in degradation (Stern, 2003). Although this hypothesis has been tested in numerous contexts, its application in India is still under debate due to the country's unique economic structure and high poverty levels (Gupta, 2021). New studies could explore the nuances of applying the EKC in developing countries like India, particularly considering recent advances in green technology and energy efficiency.

3. CONCEPTUAL UNDERSTANDING OF GREEN ECONOMY AND SUSTAINABLE DEVELOPMENT IN INDIA

According to the Brutland Report, the environmentally conscious economy aims to achieve steady growth and a harmonic balance between fiscal growth and environmental progress. This is in line with a perspective that views the economy as a tool, ecological

sustainability as a basic necessity, and socially sustainable development as the ultimate goal. (Gehring, 2016). India has embraced the "2030 Agenda for Sustainable Development" as a member state of United Nations Environment Programme (UNEP). This agenda is an action plan for prosperity, the earth, and people. It incorporates and acknowledges the need to end poverty everywhere, eliminate inequality within the membership, protect the environment, and maintain economic growth.

In spite of having numerous laws governing environmental preservation, India badly failed and, as of 2023, obtained a poor ranking of 112 out of 193 UN Member States in the SDGs 2023 rating. This makes it abundantly evident that India nonetheless has plenty of miles to travel prior to attaining the SDGs, which will serve as the cornerstone of the green economy. (Ge, 2017) As a result of this falter, the author recommends using economic tools to ensure green growth. As a result, the following research issues will be addressed using the economic tool lens in the paper's later sections:

- Is there a relationship between environmental deterioration and per capita income?
- Is it less likely for people to overuse natural resources if they are granted property rights over them?
- Does cost-benefit analysis help to lower pollution and damage of the environment?
- Is it economically feasible to impose a tax like the Pigouvian tax in order to guarantee green growth?

i. Environmental Degradation and Downfall of Economy: A Double Helix

In a developing nation like India, where GDP is growing more quickly than before, environmental effects pose a concern since they will eventually put significant restrictions on the economy. The extraordinary vulnerability of nature and ecological systems, which means that we will all struggle if there are any significant modifications to the natural world in a few years or afterwards that leads to the extinction of some important plant and animal species, reducing biodiversity, and having an impact on our biological system, has led to the notion that sustainability of nature and ecological systems is essential. The most compelling evidence for this is the fact that India lost 8.5% of its GDP in 2013 due to air pollution.

A World Bank report estimates that by 2050, changes in variations in precipitation and climate rise could be catastrophic to India. Low labour productivity, poor agricultural yields, and deteriorating health are the outcomes of this. There will be food and water shortages, which will increase demand for and raise the cost of necessities.

The creation of a financial system that can combat sustainability issues and the exhaustion of ecosystems is the aim of the sustainable sector. India will ultimately have to endure hardships if such concerns are ignored. (Rosencranz, 2017) As a result, India's financial system will not simply run seamlessly sans obstructing GDP growth, but it will also consider court decisions on environmentally friendly growth to promote construction and direct other Indian economies in the direction of an economy based on sustainability.

ii. Tenor of Existing Legislation and Judiciary towards Environmental Degradation and Economic Development

India experienced advancements in environmental jurisprudence following the Bhopal Gas Disaster in 1984, and the country has witnessed an astounding array of subsequent environmental law cases. The Environment Protection Act of 1986 was passed as one such piece of law. This "umbrella" law was created to provide a framework for the Central Government to coordinate the efforts of many Central and State agencies that had been set up under earlier statutes, including the Water Act and the Air Act. The job of striking a balance between development and the environment, often known as sustainable development, is placed on the creators of environmental legislation whenever it is being developed.

The UN conference on Human Environment, Stockholm of 1972 and the World Summit of 2002 highlighted the necessity of guaranteeing the simultaneous achievement of environmentally conscious growth in the economy, growth in society, and environmental protection. *(Narmada Bachao Andolan v. Union of India, 2000)*

The Indian judiciary has been a key player in adopting sustainable development in an effort to safeguard the environment and maintain the ecological system. The *Vellore Citizens' Welfare Forum v. Union of India (1996)* case established the "Principle of Sustainable Development" for the first time. The court determined that "remediating environmental damage is a necessary step in the process of Sustainable Development, and as such, polluters are responsible for both the costs associated with compensating affected individuals and mitigating ecological damage".

Eventually, the court in *M.C. Mehta* v. *Union of India (2004)*, attempted to maintain a careful balance between ecology and growth, noting that the two are not antagonistic. The expansion of businesses, watering supplies, electricity assignments, and other endeavours, as well as the improvement of job prospects and income generation, require expansion even though it is feasible to do so while upholding the values of equitable advancement. There must be a balance. The idea that the need to protect the environment and ecology shouldn't impede

advancements in the economy and other fields was reaffirmed by the court in *Indian Council for Enviro-Legal Action* v. *Union of India (1996).*

These rulings on the meaning of sustainable development make it abundantly evident that the environment and sustainable development must be prioritized. In order to create a green economy, we must thereby enact strict economic policies, rules, regulations, and cutting-edge technologies.

4. A NOVEL MOVE TOWARDS GREEN ECONOMY: APPLICATION OF ECONOMIC TOOLS FOR ENSURING BALANCE BETWEEN ECONOMIC DEVELOPMENT AND ENVIRONMENTAL PROTECTION

This segment will use economic tools like the Kuznets Curve, Property Rights in relation to the Law of Demand, and Cost-Benefit Analysis to argue for a green economy that does not entirely shut down economic development and does not punish environmental offenders with a command-and-control approach from both a macroeconomic and microeconomic perspective. Econometric instruments are employed to investigate how different fees, incentives, laws, and regulations contribute to a favourable ecosystem from a socioeconomic standpoint. In order to determine a predictable environment evaluation, economic methods are utilized to investigate how at the microeconomic scale, rules and guidelines influence company and domestic conduct. (Antonio, 2022)

i. Impact of Environmental Degradation on Per Capita Income

In this section, the relationship between environmental deterioration and per capita income will be emphasized using the economic tool of the Environment Kuznets Curve (EKC). It is now recommended that the state of the environment deteriorates as GDP rises.

The EKC is a proposed correlation between a number of environmental degradation indices and per capita income. (Stern, 2003) The idea is predicated on the idea that while pollution and environmental degradation occur during the early stages of economic development, these trends eventually alter and high-income economic growth results in better environmental outcomes.

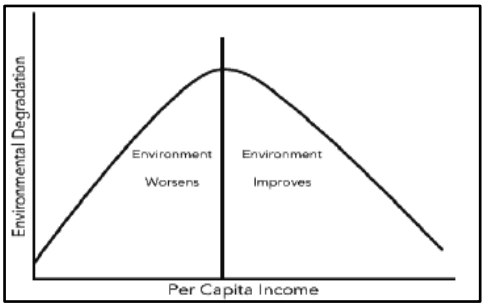

Figure 1: Environmental Kuznets Curve: Relationship Between Economic Development and Environmental Degradation

Source: Author's Construction

The current scenario expresses environmental degradation on the Y axis and economic development on the X axis. The argument for Environmental Kuznets Curve testing is that when a country has a sharp increase in its economy, people begin to value natural resources more and acquire new technology and make plans for its advancement. Early humans exploit nature and its resources because they value development. The environment and ecosystem are valued by them when they have accumulated some riches. EKC has an inverted U-shaped form because of this. (Hauff & Mistri, 2015)

ii. Application of Environment Kuznets Cure for Ensuring Green Economy

The administrative arrangements play a major role in how well the environment and conditions improve along with income growth. Strategies to reduce pollution and outflows will have a significant impact on the State of EKC. A U-shaped EKC curve will be produced by using innovation in environmental protection and using alternative modalities.

Once the economic criterion is met, people prefer to favour things that will improve the environment. People's priorities will shift as their income rises because they will begin to prioritize a clean environment and the detrimental impacts of pollution. Moreover, rising incomes are a reflection of the nation's expanding economy. An increase in the economy causes the environment to deteriorate, assuming that the technology effect remains constant. Additionally, as the nation grows, the economy moves away from manufacturing and toward the service sector. These sectors should have fewer emissions per unit of output, thereby reducing the level of environmental degradation at the local level. When trying to understand the factors that are driving the proportional and unconditional dissociation between pollutant trends from economic growth, the environment Kuznets Curve may be helpful in identifying instruments that are driven by the market and those that are driven by arrangements.

As was previously mentioned, a nation with green policies and technologies will aim to balance economic expansion with reducing environmental damage as a result of rising prosperity. It is important that environment policy enables the largest extension for creative technology solutions to environmental challenges, as it appears that neither moderating development nor decreasing the output of specific industries is the motive behind it.

iii. Property Rights in Environment Protection

The fact that economic development results in overuse and depletion of ecological wealth is primary argument against it. Natural resource property rights are ill-defined; therefore, the polluter is not forced to absorb the costs of their actions on other people. Moreover, victims are not incentivized to take action against the polluter. It has been argued below that enforcing property rights will lessen the problem of over-exploitation of resources, which will help to resolve this issue. A set of guidelines for the use of limited resources and commodities is what is known as property rights. The collection of rules consists of rights and obligations. The rules may be institutionalized by social norms and a pattern of punishment or they may be codified in legislation. Policies based on property rights grant the ability to exploit biological assets and, to some extent, pollute the surroundings in addition to also permit the trading of these rights. These actions could have the effect of making people consider natural resources over a longer period of time and handle them economically if they have the opportunity to use them.

iv. Entrustment of Property Rights: Tool to Reduce the Demand and Over-Exploitation of Natural Resources

Property rights are more uncommon. They will cost more the more in demand there is for them, ensuring that the rights be used most efficiently and are not wasted. In order to bolster this claim, let us consider the case of overfishing in India. Research on fishing activities suggests that over 2/3rd of the country's fisheries resources have been overfished, moreover, the business fleet has reached its maximum potential The environment will be adversely altered and destroyed by overfishing. By granting property rights to fishermen, fisheries management will be able to control overfishing and avoid fishery collapse. This is due to the fact that giving property rights, when correctly outlined and vigorously upheld, will incentivize owners to align with the underlying natural resource. The majority of economists support and advocate for the provision of such property rights. (Allen & Clouth, 2012) More economists have emphasized how important it is to grant private property rights over natural resources in order to support a country's long-term growth and development.

Consider an alternative scenario: urban lakes are some of the best sources for replenishing groundwater, but in the modern era, people have either encroached onto them or have used them as disposal sites for rubbish. The administration or private organizations with the ability to revitalize these lakes can be granted full property rights in order to restore these bodies of water. Granting property rights to the lakes will undoubtedly help to preserve them to some extent. (Environmental Taxation: A Guide for Policy Makers, 2011)

These illustrations should make it clear that the loss of biodiversity and the annihilation of creatures can result from unfettered accessibility to a common supply. The severity of the issue has led to this situation being referred to as a catastrophe of the people. Therefore, such a measure would guarantee that the emitter ultimately externalizes the expenses. of his actions and provide the affected party with an incentive to file a lawsuit against the polluter. Should a risk to one's exclusive resources or rights exist due to contamination, the polluter would be obliged to take into account the adverse effects of their actions on the affected population.

a. Cost Analysis of Economic Development

In this subsegment, cost analysis is used to support the argument that, rather than entirely closing down industries, a green tax should be implemented and a cost-benefit analysis should be done before beginning any development projects.

i. Marginal Cost of Pollution and Imposition of Green Tax

The point at which pollution's overall benefits outweigh its overall costs to the maximum extent feasible is known as the efficient level of pollution. This happens when the marginal cost of pollution, or the optimum advantage of a further piece of contamination equals its minimal expense, or when the expense of a healthier atmosphere is spent to generate one more unit of contamination.

According to this economic theory, a 100% decrease in pollution is not achievable. Because factories that produce commodities and services are necessary for human survival, they will undoubtedly contaminate the environment. However, the question of how much it can contaminate the environment emerges. This makes sense from two distinct angles. Let's first assume that there is no pollution in the planet when we first start. Some things are more important to us than a completely clean environment, and we manufacture those things until we determine that any further pollution is no longer worthwhile. Alternatively, if we begin with a somewhat contaminated planet, we can more realistically consider the amount of

contamination we could potentially eliminate prior to the costs surpass the benefits of a world without pollutants. (Cost-Benefit Analysis and the Environment: Recent Developments., 2006) Achieving an optimal degree of contamination—where the advantages far outweigh the costs—may necessitate the administration taxing enterprises or requiring them to use environmentally favourable innovations. The overall advantages would outweigh the marginal cost reduction of these items. Taxes that include environmental effects in prices can directly address the incapacity of markets to account for them. By using this imaginary situation and corelating pricing with taxation, we observe the way this can assist mitigate the adverse ecological effects.

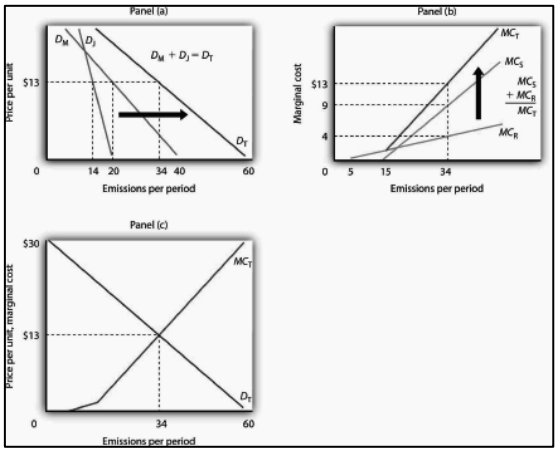

Figure 2: Marginal Cost of Pollution and Optimal Green Taxation for Sustainable Development

Source: Author's Construction

The marginal benefit of the 34th unit of emissions, as determined by the demand curve DT, matches MCT, at that point when a tax is imposed (panel c). The net benefit of an activity is maximized at the point where the marginal benefit and marginal cost curves converge. (Ahluwalia, 2008) An industry owner will incur more costs as a result of having to pay a particular amount of green tax, let's say $13. In order to cover the cost of manufacturing, he will either reduce his emissions or switch to a more environmentally friendly technology than the 60 units he used when there was no tax obligation. In order to determine the contamination indicators that finds the solution where minimal advantage matches marginal cost, or where overall advantages exceed the entire cost by the greatest amount practical—this economic instrument is crucial.

v. Cost Benefit Analysis: Benefit Of Economic Development must exceed Environmental Degradation

The most popular method for evaluating a project's financial impact is cost-benefit analysis (CBA). The fundamental theoretical underpinnings of CBA are: costs are considered as

decrease in individual welfare, while benefits as increase in human well-being (utility). Economists focus on the expenses and benefits associated with producing or consuming the next unit. A project or program must have more social benefits than social costs in order to be eligible on the basis of cost-benefit analysis. Cost-benefit analysis is "here to stay" and can be considered as a key tool for assessing and defending regulatory choices in the industrialized arena, despite the fact that it is still controversial when used to determine environmental policy. The Delhi Metro's CBA revealed a 1% boost in the economic rate of return on investment, which was calculated to be 22.5% after taking into consideration variations in the market and shadow prices for unskilled labour, foreign exchange, and investment in the Indian economy when calculating the Metro's costs and benefits.

The cost and benefit study are a helpful mechanism for estimating the financial impact of environmental pollution damage, enabling policymakers and the government to take preventative measures to lessen the harm and cut costs.

5. FINDINGS: SOME KEY TAKEAWAYS

From the foregoing discussion of relationship between per capita income and environment degradation in the backdrop of the EKC, it can be deduced that as the per capita income increases the environmental degradation also increases however, eventually the individuals will be disincentivise and they will give more attention to the ecological protection. When these individuals are conferred with property rights, they are more inclined to protect the resources in respect of which they have been conferred privileges and may carry the environmental development in judicious manner. However, if the level of pollution exceeds the marginal level of pollution, then it becomes imperative to impose green tax and perform cost benefit analysis. Consequently, the authorities can control, create strategies, and impose strict regulations to safeguard the ecology by using these measures, which can be used in an environmentally friendly economy. From this angle, the law has the potential to empower people and accelerate the shift to a green economy. They can replace environmentally friendly products by getting rid of outdated technology, changing things up, and providing fresh energy. They can support more environmentally friendly open acquisition, redirect open speculation, and strengthen market foundation and market-based components.

6. CONCLUSION: SOME FINAL REFLECTIONS

Developing nations face several barriers in their endeavour to transfer their economies toward more environmentally viable practices. At one side, this shouldn't discourage efforts to

integrate environmental factors into economic growth. However, in order to promote and facilitate efforts towards sustainable development, it is crucial to identify and differentiate between the various barriers. In order to accomplish sustainable development goals and transition to a "green economy," policies in India need to be executed more effectively.

Law and economic development employ monetary theory and tactics within the legal domain. It confirms that the tools of economic reasoning provide the highest likelihood for recommended and consistent lawful behaviour. It is purportedly one of the most widely held statutory theories. According to the prevailing notion, legal practice can be guided by financial investigation and efficacy as an ideal. The combination of sound reasoning and financial analysis has also generated new research interests in the areas of game theory, which aims to understand important behaviour in a legal context, open decision theory, which explores how collective behaviour should impact enactment, and conduct financial aspects. The government can create laws more effectively and efficiently and work toward converting the conventional economy into a green economy by utilizing suggested measures. Even when the government employs a command-and-control strategy to punish environmental offenders or close down industrial facilities, applying economic logic to the legal system will not have an impact on GDP development and can eventually prevent resource scarcity.

7. (LAW)GICAL FRAMEWORK: RECOMMENDATIONS

The UNGA has affirmed its belief that development and the rule of law are closely linked and mutually supportive. It further states that “in order to achieve sustainable development, eradicate poverty and hunger, promote inclusive economic growth, and fully realize all fundamental freedoms and human rights, including the right to development, national and international efforts to advance the rule of law are necessary.” It is hereby humbly suggested that the government adopt the aforementioned economic tools in the manner mentioned below rather than blatantly imposing the command-and-control approach that is used to punish environmental offenders, after analysing the economic tools such as EKC, property rights, and cost benefit analysis.

i. Conferring Property Rights

Economic instruments, including property rights over natural resources, assist protect our heavily fished water resources. As many individuals employ lakes as landfills, stringent regulations must be put in place to protect these magnificent water bodies.

ii. Cost- Benefit Analysis and Green Marketing

India needs to do a better job of protecting the environment by analysing the costs and benefits of clean innovation and technology. Furthermore, it is imperative that green marketing become the norm rather than the exception in light of the possible threat posed by global warming. This covers recycling of garbage, metals, plastic, and so forth. To leverage this idea and achieve green marketing, the government must impose strict laws. In order to build a sustainable economy, sustainable marketing takes a more radical turn.

iii. Imposition of Pigouvian Tax

Pigouvian taxes are levied by the government to reduce pollution emissions. It is imposed on an item on a per-unit basis, creating adverse repercussions at the socially optimal quantity equal to the marginal externality. One such instance would be imposing a carbon fee on individuals who release carbon emissions. Because a Pigouvian tax grants the freedom to pollute, higher taxes result in greater environmental pollution reduction. By establishing an emission tax at the proper level and creating laws and regulations to do the same, the government and environmental authority can achieve the intended amount of pollution.

From this angle, the law has the potential to empower people and accelerate the shift to a green economy. They can replace environmentally friendly products by getting rid of outdated technology, changing things up, and providing fresh energy. They can support more environmentally friendly open acquisition, redirect open speculation, and strengthen market foundation and market-based components.

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THE CURIOUS CASE OF CRIMINALIZABLE CORPORATE HARMS IN INDIA: THE 1991 ECONOMIC REFORMS AND THE NEOLIBERAL TURN

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ABSTRACT

In this study, I argue that the rationale determining criminalisable corporate harms has undergone a radical transformation from protection of public interest to boosting ease of doing business in India. The economic reforms (reforms) of 1991 is identified as the root cause of such transformation. I argue that corporate harms were initially criminalised majorly to protect public interest in the pre-reforms era. With the new mandate of creating a market-friendly economy, the reforms transformed this rationale having public interest as its major focus, to ease of doing business. Consistent with the neoliberal framework of the reforms, the ease of doing business rationale and the consequent decriminalisation of corporate harms are justified as incentivising private participation and generating wealth, benefitting all through the trickling-down effect. However, the data on economic inequality in India post-reforms suggests that, in practice, the reforms have disproportionately benefitted a few. On this basis, I argue that the ease of doing business rationale, stemming from the reforms as an important tool to achieve its promise, inherently carries this contradiction of the reforms between its promise and actual effects. Finally, I argue that this rationale, with its focus on profits benefitting a few, is contradictory to the purpose of criminal law to benefit the interest of all.

Keywords: *Corporate harm, Ease of doing business, Decriminalisation, Neoliberalism, Economic reforms, Public interest.*

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1. INTRODUCTION

In India, with the recent passing of the Jan Vishwas (Amendment of Provisions) Act, 2023, the nature of criminalisable harms relating to corporate entities is undergoing a significant transformation. The Act proposes decriminalising 183 provisions in 42 laws, including environmental, pharmaceutical, intellectual property, public liability insurance laws, and so on., to promote 'ease of doing business' and 'ease of living' in the country. This Act can be situated in two contexts. In the narrow context, the Act is consistent with the current government' recent measures to decriminalise various laws to boost the ease of doing business. In the broader context, it is consistent with the larger agenda of 1991 economic reforms ('reforms'), which aimed to liberalise, privatise, and globalise the Indian economy. Since the reforms aimed to promote private capital and create a market-friendly economy, the government took various measures to deregulate the private sector and boost ease of doing business. However, this was a radical shift from the pre–reforms era, where the state structured its relationship with the market on socialistic lines, thereby having extensive control over the private sector. The reforms instilled a new economic rationality radically different from the preceding era, resulting in a paradigm shift in the state's policies. Considering the political context in which the reforms were formulated, this new economic rationality was not implemented in its entirety immediately after the reforms (Kaviraj, 2012, p. 266). Instead, it was instilled in various institutions of the state in stages, resulting in the gradual yet inconsistent shift of the Indian state from socialistic to neoliberal rationality. The current trend of decriminalising corporate harms in India, which I will be analysing in this paper, can be situated in this gradual shift of the state post-reforms.

Although the broad focus of the study is the decriminalisation of corporate harms in the post-reforms era, the study specifically aims to analyse an underlying significant phenomenon in the decriminalisation process: the transformation of the rationale determining criminalisable corporate harm from pre- to post-reforms era. In the pre-reforms era, corporate harms affecting the public and commons were extensively criminalised to protect public interest. Essentially, the protection of public interest was used as a rationale to determine whether a particular corporate harm should constitute *a crime* or stay criminalised. However, in the post-reforms era, with its mandate to create a market-friendly economy, various such corporate harms were decriminalised to boost the ease of doing business. In other words, the need to boost the ease of doing business is now employed as the rationale to determine criminalisable corporate harms. This study aims to theorise and

critically analyse this radical transformation of rationale from protecting the public interest in the pre-reforms era to boosting ease of doing business in the post-reforms era in the context of shifting economic policy of the Indian state and its impact on the nature and extent of state's penal control over the market.

The second section of the paper surveys the existing literature on the interplay between shifting economic policy of the state and its impact on the rationale determining criminalisable corporate harm. The third section elaborates the methodology and framework adopted to carry out this research. The fourth section analyses the impact of economic policy on the rationale in the pre-reform era. The fifth section elaborates on the nature of the 1991 economic reforms and the consequent shift of the state from a socialist framework to a neoliberal framework. The sixth section deals with the impact of neoliberal mandate of the reforms on the transformation of rationale determining criminalisable harm related to corporate entities in the post-reforms era. The seventh section attempts to critically analyse this transformation and cull out certain inherent contradictions with the rationale of boosting the ease of doing business. Thereafter, I conclude.

2. LITERATURE REVIEW

The trajectory of penal control of the state over the market in India has been highly unpredictable. Post-independence, the Indian state, with its socialist ideology and consequent dirigiste policies, gave itself extensive regulatory control over the market. According to Kaviraj (2012), a significant reason for this extensive control was the general mistrust on the capitalist class primarily due to colonial experiences with exploitative tendencies of corporations. Tripathi and Jumani (2013) and Varottil (2016) also acknowledge the existence of this mistrust post-independence. The state's extensive control over the market naturally led to extensive criminalization of corporate harms. This era, for the purpose of this study, may hence be called an era of 'mistrust-based criminalisation'. Varottil (2016) also argues that the post-independence period witnessed extensive criminalisation of company law while infusing it with the 'concept of public interest' .

However, the reforms of 1991 resulted in a paradigm shift in the state-marker relationship from socialistic to neoliberal lines (Gupta, 2016). As per Gupta (2016) and Ganti (2014), these reforms were neoliberal in nature demanding the state to 'roll back' from the market and significantly reduce its control over it to liberalise, privatise and globalise the economy. Bell (2011) argues that the 'neoliberal turn' transforms the state from a 'public service provider' to merely a 'facilitator of market solutions', signifying the prioritizing of market efficiency over welfare concerns. While

certain literature (Manor, 2020; Ranjan, 2018) argues that India is not neoliberal because her economic policies are still welfare-oriented, Peck, Brenner, and Theodore (2018) argue that the form of neoliberal policies is highly subjective to the socio-political context of the state instead of having a universal objective form. India, has been significantly welfare-oriented since reforms; hence, will incorporate the same even in its policies post-reforms. Bell (2011) and Harcourt (2011) agree with this view. With the new-found trust in the market post-reforms, the extent of the state's penal control over the market also underwent a significant transformation to align it with the mandate of the reforms and this translated to the decriminalisation of numerous laws to boost the ease of doing business in the country. Hence, the corporate penal policy transformed from 'mistrust-based criminalisation' in the pre-reforms era to 'trust-based decriminalisation' in the post-reforms era. This suggests that the economic policy of the state significantly impacts the nature and extent of its penal control over the market.

Doshi (2019) highlights the extensive decriminalisation of numerous provisions of certain laws relating to the market post-reforms, including in company law, while Paliwala (2023) observes the widespread decriminalisation of numerous offenses, especially in the last decade. The transformation from mistrust to trust-based decriminalisation is also evident from the preamble of the Jan Vishwas (Amendment of Provisions) Act, 2023, which aims to decriminalise numerous provisions across various laws 'to boost ease of doing business'. Further, a survey of decriminalisation post-reforms also suggests the radical transformation of rationale determining criminalisable corporate harms, from the 'protection of public interest' (leading to extensive criminalisation) in the pre-reform era to boosting 'ease of doing of doing business' (leading to extensive decriminalisation) in the post-reform era. For the sake of convenience, let us call the new rationale as 'EoDB' rationale. Decriminalisation of the Public Liability Insurance Act (Maheswari, 2020), labour laws (Sharma, 2022), environment laws (Sinha et al, 2023), etc., to boost ease of doing business, initially criminalised to protect the public interest, are some examples of this transformation. The purpose of this decriminalisation aligns with the neoliberal mandate of the reforms to boost the ease of doing business, resulting in the generation of wealth that would benefit the least well-off through its trickle-down effect.

However, as Anand and Thampi (2016), Chauhan et al. (2015), Chancel et al. (2021), Bharti et al. (2024), and many other literatures suggest, there is an outbreak of income and wealth inequality in India post-reforms. This challenges the core promise of the reforms to general wealth that would

benefit all sections of society through its trickle-down effect. Harvey (2007) also highlights the inherent contradictions within a neoliberal framework between its 'publicly declared promise of the benefit of all' and 'its actual consequence', which is the 'benefit of a few'. The data on widening economic inequality also suggest a similar contradiction with the neoliberal framework of the 1991 reforms. Consequently, the actual effect of various measures that stem from the neoliberal framework of the reforms is also in stark contrast with the promise of the reforms. In this context, broadly, this article argues that, *first*, the EoDB rationale, being a crucial product of the neoliberal framework of the reforms formulated to achieve its objectives, inherently carries this contradiction, too; *second*, that the EoDB rationale acts as a powerful force, among many other measures of the reforms, that reinforces, exacerbates, and proliferates this contradiction and; *third*, consequently, using this rationale to determine criminalisable corporate harms have a significant adverse impact on public interest and the functioning of the criminal law.

Essentially, the literature surveyed indicates a radical transformation of the Indian state from 'mistrust-based criminalisation' to 'trust-based decriminalisation'. Concomitant to this, a survey of laws suggests a transformation of the rationale determining corporate criminalisable harm from the 'protection of public interest' to boosting 'ease of doing business'. Considering, *first*, the decriminalisation of laws has become a trend, especially in recent times, and; *second*, there is a dearth of literature analysing the transformation of the rationale from pre-reform to post-reform era and its impact on public interest and the function of criminal law, this study aims to fill this research gap and provide an analysis of how the change in the economic policy of the state impacts the nature and extent of its penal control over the market. This research will lay down a foundation to analyse the future impact of the Indian state's shifting economic policy on the nature and extent of its penal control over the market

3. RESEARCH METHODOLOGY

This study employs an analytical doctrinal approach to critically examine the radical transformation of the rationale determining criminalisable corporate harms. To carry out this exercise, this study adopts a law and economics framework. Specifically, the transformation of the rationale is critically analysed in the context of shifting economic policies of the state and its impact on the nature and extent of state's penal control over the market. By examining this impact, this study aims to critically analyse the dynamic interplay between legal reforms and its economic objectives. Further, this framework focuses on the economic justifications for the transformation

of the rationale, precisely the promise of wealth generation and its trickle-down effect, and contrasts it with the empirical evidence on rising economic inequality in India. This study also illustrates how market efficiency has been employed as the dominant rationale in restructuring corporate penal policy, resulting in the marginalization of the concept of public interest. Informed by the works of scholars such as of Peck, Brenner, and Theodore (2018), Gupta (2016), Ganti (2014), Harvey (2007), and others, this study employs a critical neoliberal theoretical lens with the law and economics framework. Adopting such a lens allows the author to critically analyse the core precepts and the inherent contradictions within the neoliberal reforms and their impact on the rationale determining criminalisable corporate harms in India.

Further, since the transformation of the rationale is analysed in the context of shifts in the state's economic policy, specifically from the socialist framework post-independence to a neoliberal one post the economic reforms of 1991, historical analysis is central to the methodology. Such an analysis helps locate the socio-political-economic context and the key moments in the history of independent India, which resulted in significant changes in its economic policy and the consequent changes in the nature and extent of its penal control over the market. The historical analysis mentioned above is further supplemented by a legislative analysis of numerous laws and policies since independence. Various legislations introduced in India to regulate the market, such as company law, environmental laws, etc., are analysed to identify the transformation of the rationale determining criminalisable corporate harms from the 'protection of public interest' to the boosting of 'ease of doing business'.

Further, this research integrates empirical evidence to supplement its theoretical, historical, and legislative analysis by incorporating various data on economic inequality in India since reforms. Primarily, this study relies on the most recent data on economic inequality in India, such as the report by the World Inequality Lab (Chancel et al, 2021) and Bharti et al. (2024). This is further supplemented by other data sources such as Oxfam (2023), Wani (2023), Bardhan (2022), Jayaraj & Subramanian (2018), Anand & Thampi (2016), Chauhan et al. (2015), and so on. The purpose of analysing this data is to highlight the inherent contradiction existing in the neoliberal framework of the reforms and its policies, such as the EoDB rationale, between its 'publicly declared promise' and its 'actual effects'.

Essentially, the methodological approach of the study, through a confluence of theoretical, historical, legislative, and empirical analysis, facilitates a comprehensive analysis of the shifts in

economic policy in India and the consequent radical transformation of the rationale determining criminalisable corporate harms from the 'protection of public interest' to the boosting of 'ease of doing business'. The findings of this research substantiate the argument regarding the adverse impact of the 'EoDB rationale' on public interest and in the functioning of criminal law.

4. PRE-REFORMS: ERA OF MISTRUST-BASED CRIMINALISATION

Post-independence, it was common knowledge that the Britishers had left the country, draining all its wealth and leaving a highly stratified society, socially and economically. Therefore, the Nehru government's primary agenda was to develop infrastructure, technology, and other resources essential to create a strong foundation for the Indian economy. With the global crisis of capitalism and its detrimental consequences at the beginning of the century, a strong interventionist state was considered necessary to revive the Indian economy. Living amid extreme poverty, the public readily agreed to a strong interventionist state that would actively pursue policies for their welfare (Kaviraj, 2012, p. 246). Interestingly, the Indian capitalist class pushed for a strong state with economic nationalist policies, too (Kaviraj, 2012, p. 242). They understood that only a strong state could provide them with the necessary economic infrastructure amidst scarcity of resources and provide protection from foreign competition. Hence, there was a 'rare economic consensus' among the state, the public, and the capitalist class to establish a 'mixed economy' wherein economic functions crucial to the development of the state are carried out by the state, leaving the rest to the capitalist class (Kaviraj, 2012, p. 246).

However, there was a '*theoretical mistrust of the capitalist class*', primarily due to the social and economic crisis brought out by capitalism at the beginning of the century (Kaviraj, 2012, p. 245). The pre-independence experience of the nation with the exploitative nature and tendency of corporations, such as the East India Company, and the black-marketing and profiteering during the inter-war years further cemented this mistrust (Kaviraj, 2012, p. 245). Agreeing with Kaviraj (2012), Tripathi (2013, p. 19) observes '*that the dominant mood in the country in 1947 was one of antipathy, if not downright hostility, towards the private enterprise system as a whole*'. Also, the popular consciousness of all countries under colonial subjugation equated colonialism and capitalism as inseparable (Tripathi, 2013, p. 19). Further, the general global trend of economic policy moving towards Keynesian economics also reflected this mistrust on capitalist class (Tripathi, 2013, p. 20). Due to this antagonistic mood, any attempt to structure the Indian economy on capitalist lines would have gone against the general mood of the country (Tripathi, 2013, p. 18).

Umakanth (2016) also observes that the state desired extensive control over the market, via numerous laws and policies, including company law due to this general mistrust on the capitalist class. In this context, for the limited purpose of this study, the state-market relationship in the post-independence period can be characterized as that of '*mistrust-based governance*'.

This 'mistrust-based governance' meant that the state would assume enormous regulatory powers over the private sector**.** In the penal policy sphere, this mistrust, coupled with the state's socialistic inclinations, where the public interest is given paramount importance, translated into criminalising various harms such businesses *cause* (Varottil, 2018, p. 387). Criminalisation was thus seen as a necessary step to *protect the public interest*. This led to the introduction of numerous penal provisions across various statutes, such as the Capital Issues Control Act, 1947, the Imports and Exports (Control) Act, 1947, the Essential Commodities Act, 1955, the Companies Act 1956, the Mines & Minerals (Development & Regulation) Act 1957, various labour laws, and so on. In 1973, the government passed the Foreign Exchange Regulation Act (FERA), having penal provisions in almost all sections. Further, the global environmental movement introduced a host of environmental legislations with penal provisions during the latter half of the twentieth century. This included the Environment Protection Act 1986, the Air Act 1981, the Water Act 1974, etc.

The passing of the above legislations, coupled with the larger socialistic framework of the state, how it structured its relationship with the market on the lines of mistrust and its need to protect the interest of the poverty-riddled population, suggests that the fundamental purpose of criminalising corporate harms was to protect the public interest and to promote the welfare *of all* citizens. This purpose was also consistent with the general purpose of criminal law to protect the interests of all citizens. Hence, the protection of public interest was employed as a rationale to determine what constitutes and should remain criminalisable harm related to corporate entities. However, with the introduction of the reforms, which radically changed the relationship between the state and the market, this rationale underwent a radical transformation too.

5. THE NATURE OF REFORMS: THE NEOLIBERAL TURN.

The reforms can be understood in two contexts: global and Indian. In the global context, the reforms form part of a larger neoliberalisation of various economies since the 1970s. It starts with the post-war consensus of 'embedded liberalism' premised on Keynesian policies failing to achieve its desired results, leading to crises in many Western countries. The search for a new economic rationality led to the revival of classical liberalism but in its aggressive form – neoliberalism. At

its core, the *theory* of neoliberalism holds the integrity of the market as sacred. It aims to achieve human progress by protecting the free market, free trade, and private property (Harvey, 2007, p. 2). The presence of a strong state is seen as a situation of unfreedom because it allocates privileges and burdens on an arbitrary basis (Harvey, 2007, p. 37). Further, the state has only imperfect information about the market. Therefore, its artificial intervention with the market, such as, policies of redistribution of wealth, is looked at with utmost caution.

Consequently, only the market and its forces are seen as the legitimate institution that can allocate privileges and burdens because, first, it is natural, unlike the state, and second, it possesses perfect information regarding the working of the economy (Ganti, 2014, p. 92). Hence, it condemns any interference, including that of the state, with the 'natural' functioning of the market. Further, the market is also assumed to have a 'self-correction' mechanism, which would correct any irregularities in the economy using its invisible hand (Harvey, 2007, p. 2). An example is the 'Kuznets's Bell Curve'. According to Kuznets, as capitalist societies develop, inequality initially rises, peaks, and eventually decreases (Piketty and Goldhammer, 2014, p. 13).

Essentially, the state transforms from a 'public service provider' to merely a 'facilitator of market solutions' (Bell, 2011, p. 4). The state, thus, 'rolls back' from its traditional welfare functions and creates a neoliberal state apparatus to assist the market in its functions (Bell, 2011, p. 140). It proposes disinvestment in the public sector, reduced government spending, deregulation of welfare laws, privatisation, liberalisation of the economy, and, thereby, minimal state intervention. This rolling back of the state leads to wealth generation, and which is assumed to trickle down to the least well-off, ensuring the progress of all. Upon transformation, the fundamental purpose of the state is to protect and promote private capital and to eliminate barriers to the ease of doing business. The logic of neoliberalism now substitutes the logic of welfare underlying the state's policies. This logic has penetrated numerous countries since the 1970s, including the U.S., the U.K. and, certain Latin American countries. The wave of neoliberalism sweeping across the globe reached India, too.

Towards the beginning of the 1980s, the economic consensus of Nehruvian thought started to disintegrate primarily due to the weak implementation of economic policies, excessive bureaucratic power leading to corruption, and the gradual recomposition of the economic classes due to socialistic policies (Kaviraj, 2012, p. 256). Although these factors weakened the economic

consensus, it did not garner enough political will to oppose the same for a more liberal economy strongly. However, the situation started to change in the late 1980s.

The 1991 balance of payment deficits led to a severe economic crisis in the country. The IMF and the World Bank discontinued their financial assistance to India. They exerted pressure to carry out structural adjustments in the Indian economy and to implement policies to liberalise, privatise and globalise the economy. This garnered enough political will to discard Nehruvian policies and implement new economic reforms. Consistent with the neoliberal framework, it primarily involved making the Indian economy more market-friendly by protecting and promoting private capital, including foreign investments and boosting the ease of doing business.

Consequently, various measures radically different from the Nehruvian thought were introduced by the state. It included privatisation, deregulation, disinvestment, tariff reduction, promoting foreign investments, etc. The wealth, thus, created by the capitalist class was believed to have the *trickle-down effect*, benefitting the least well-off and benefiting *all classes* of society. Therefore, the Indian state radically transformed, discarding Nehruvian policies that were socialist in nature and incorporating neoliberal rationality in its state apparatus.

i. Is India Neoliberal?

At this juncture, it is pertinent to address the argument that India, although liberalised, is not strictly a neoliberal country (Manor, 2020; Ranjan, 2018). As per the argument, the reforms do not fit within the above theoretical framework of neoliberalism since the Indian state is still primarily welfare-based and has not aggressively rolled backward from the economic sphere. This argument has certain issues. First, this argument primarily arises from a wrong assumption that neoliberalism has one universal objective manifestation as formulated in the West. However, according to Brenner and Theodore (2002), neoliberalism does not have one universal objective definition or form; rather, its manifestations depend upon the country's socio-cultural-political-economic context. They named it *'actually existing neoliberalism*' (Brenner & Theodore, 2002, p. 351). Essentially, neoliberal policies take different forms in different jurisdictions based on the state's ideological inclinations and its subjective context. For instance, the implementation of neoliberal policies in a country with socialist inclinations will be different from that of a country with liberal inclinations primarily because the form such policies take depends upon the pre-existing ideological inclinations of the state. India, being a welfare-oriented state since independence with

policies formulated in a socialistic framework, may not aggressively pursue neoliberal policies as opposed to the U.S.A., which was liberal.

Second, the nature of 'actually existing neoliberalism' can be understood if a distinction is made between neoliberalism *in theory* and neoliberalism *in practice*, which are often contradictory to each other. For instance, despite neoliberalism, in theory, demanding the state to aggressively roll back from the market, in practice, a neoliberal state simultaneously rolls back and forth (Bell, 2011, p. 140). This is primarily because a neoliberal economy, in practice, cannot survive without the continuous intervention of the state. For example, the Thatcher government in the U.K. used extensive state power to make the trade unions powerless to pursue its neoliberal policies (Bell, 2011, p. 140), or the U.S. government created a 700-billion-dollar fund to bail out the financial sector post-2007 financial crisis (Johnson, 2008). In both these instances, the state has used its regulatory power to build or sustain the neoliberal economy. Free markets are created and sustained by the state through rules and regulations (Harcourt, 2011, p. 15). This phenomenon is often called the 'free economy and the strong state' (Gamble, 1994).

Third, in the Indian context, neoliberal policies did not take an aggressive form because of the political context in which they took place and the intentional strategy of the Narasimha Rao government to implement the policies in phases. Those policies that would give short-term results were preferred over long-term ones for securing legitimacy to the entire liberalisation process and, thereby, his weak government (Kaviraj, 2012, p. 266). This resulted in the gradual but inconsistent implementation of neoliberal policies. Therefore, considering the above arguments, while the case of India does not fit within the objective understanding of neoliberalism or 'neoliberalism in theory', it is consistent with the framework of 'actually existing neoliberalism' or 'neoliberalism in practice'.

However, despite these contradictions in the neoliberal framework, the larger agenda of neoliberal policies to protect and promote private capital and market interest remains constant regardless of its subjective forms. Now, let us understand how economic reforms, being neoliberal in nature, transformed the rationale that determines what constitutes criminalisable harm related to corporate entities.

6. POST-REFORMS: ERA OF TRUST-BASED DECRIMINALISATION

As mentioned above, neo-liberalisation involves a fundamental transformation of the economic rationality of the state and the relationship between the state, the market, the public and the

commons. Such transformation occurs through the instillation of neoliberal logic in the state and its institutions, either aggressively or gradually, depending upon the socio-political-economic context of the state. Naturally, neoliberal logic penetrates the criminal justice system as well.

According to certain scholars, neoliberal logic has resulted in the transformation of the penal functions of the state (Cavadino et al, 1999; Garland, 2001; Bell, 2011). When the Western countries took the 'neoliberal turn', these countries witnessed mass incarceration, increased prison budgets, criminalisation of poverty, decriminalisation of corporate offences, and so on. The focus of the present study is the phenomenon of decriminalisation of offences related to corporate entities specifically on the transformation of rationale that determines criminalisable corporate harm.

As discussed in the previous section, neoliberal logic demands the state to 'stay away from the market' and leave the market and its institutions (such as corporations) to govern themselves. The state must deregulate the private sector and only undertake minimal intervention when it is indispensable without violating the sanctity of the market. Essentially, the state must *trust* the market and its institutions, and this '*trust-based governance'* will boost the ease of doing business and bring prosperity to all citizens. This trust, coupled with the need to boost the ease of doing business and create a market-friendly economy, naturally translates into decriminalising offences related to corporate entities, among other measures. In the Indian context, such decriminalisation meant a radical shift from the post-independence era of extensive criminalisation of corporate offences.

Post reforms, the Indian government took various measures to decriminalise numerous provisions across various laws, citing the rationale of boosting ease of doing business. The first such instance was the repeal of the Foreign Exchange Regulation Act, 1973, which had penal provisions in almost all the sections and was replaced by the Foreign Exchange Management Act 1999, the violation of which constituted only civil wrongs (Doshi, 2019). Similarly, the Imports and Exports (Control) Act, 1947, which contained penal provisions, was replaced by the Foreign Trade (Development and Regulation) Act, 1992, which only had civil wrongs (Doshi, 2019). However, recently, decriminalising corporate offences citing the rationale of boosting ease of doing business has become a trend. Forty-eight provisions of the Companies Act 2013 were decriminalised in two phases since 2019 (Doshi, 2019). Various penal provisions in the labour laws have been decriminalised in the new labour code to boost the ease of doing business (Sharma, 2022). Further, over the last decade, around 3400 legal provisions were decriminalised to boost the ease of doing

business (Paliwala, 2023). However, certain divergences from this trend exist, such as the Companies Act 2013, which brought in numerous penal provisions. This was mainly in response to certain corporate scandals that occurred in the first decade of this century and not because of the general mistrust of corporations (Varottil, 2016, p. 289). However, this divergence has gradually been reversed with the recent decriminalisation of the Companies Act, 2013.

In the Indian context, this 'trust-based governance' and the consequent decriminalisation of corporate offences meant a radical change from the earlier regime of extensive regulatory control over the private sector through criminalising corporate harms. *In other words, implementing the reforms meant a radical shift from 'mistrust-based criminalisation' to 'trust-based decriminalisation'.* Essentially, the overarching neoliberal logic, with its focus on protecting and promoting private capital and market interest, now defines what harms committed by corporate entities should constitute or remain criminalised. Decriminalising corporate offences aims to boost the ease of doing business and generate wealth, which will benefit all economic classes through a trickle-down effect.

Following this logic, the latest and significant addition to this radical shift occurring in the corporate penal policy sphere is the Jan Vishwas (Amendment of Provisions) Act, 2023, which proposes decriminalising 183 provisions across 42 acts to boost ease of doing business. The list of acts includes the Environment Protection Act (1986), the Water Act (1974), the Air Act (1981), the Public Liability Insurance Act (1991), the Legal Metrology Act (2009), The Food Safety and Standards Act (2006), etc. The preamble of the Jan Vishwas (Amendment of Provisions) Act, 2023 reads:

'An act to amend certain enactments for decriminalising and rationalising minor offences to further enhance trust-based governance for ease of living and doing business.'

This statement clearly indicates that the state's policy with regard to determining criminalisable harm related to corporate entities has undergone a radical transformation from mistrust-based criminalisation to trust-based decriminalisation.

Further, from a survey of laws mentioned in the previous section, although a few provisions decriminalised are only minor offences that can be dealt with as a civil wrong, in many provisions, there is a conflict between two interests – public and private**.** For instance, the Environment Protection Act 1986, which has a public interest element behind the criminalisation of offences, is now proposed to be decriminalised under the Jan Vishwas (Amendment of Provisions) Act 2023

(Sinha et al, 2023). Under the same act, the Public Liability Insurance Act 1991 enacted post 'Bhopal Gas Tragedy' to ensure immediate relief to the victims of accidents involving hazardous substances is proposed to be decriminalised (Das, 2022). In both these instances, corporate harms, such as pollution or industrial accidents and its compensation, criminalised to protect the public interest are now decriminalised, citing the rationale of ease of doing business, which I will argue in the next section as benefitting private interests. This conflict is present in other instances, such as decriminalising other environmental laws or provisions of the Companies Act, 2013, such as CSR norms, violation of Section 8 companies, provisions for default in complying with public offer requirements, and so on.

In all these instances, the rationale determining criminalisable corporate harm in the pre-reforms era (to protect the public interest) is now being replaced by neoliberal logic (to boost ease of doing business) in the post-reforms era and, thereby, leading to the decriminalisation of many such harms. For convenience, let us call the latter the 'Ease of Doing Business' rationale ('EoDB rationale'). The state, thus, 'stays away from the market' or 'rolls backwards' by decriminalising corporate harms and converting the same to civil wrongs, where the state does not play any significant role. As private enterprises are wary of criminal sanctions, the EoDB rationale relieves them of criminal liability, thereby incentivising their participation in the Indian economy. This participation would generate profits, which would trickle down to the least well-off, thereby benefitting all is essentially the justification for the EoDB rationale. Therefore, the decriminalisation of corporate harm, citing EoDB rationale, is consistent with the neoliberal framework of the reforms.

Thus, we see a paradigm shift of the Indian state in its corporate penal policy sphere from mistrust-based criminalisation in the pre-reforms era to trust-based decriminalisation in the post-reforms era. This paradigm shift simultaneously resulted in another radical transformation, that of the rationale determining criminalisable corporate harm from the protection of public interest to boosting ease of doing business.

7. THE EODB RATIONALE: UNVEILING INHERENT CONTRADICTIONS.

While the use of EoDB rationale in the decriminalisation process can be criticised from multiple standpoints, in this study, I intend to strike at the genesis of the rationale by highlighting certain inherent contradictions within it. The first contradiction lies in the stark contrast between the purpose, on paper, of the neoliberal framework in which the rationale is formulated and its actual

effects in practice. The EoDB rationale, being a product of the neoliberal framework of the reforms, inherently carries this contradiction, too. The second contradiction lies in the stark contrast between the purpose of such rationale and the fundamental purpose of criminal law. By dissecting the rationale and exposing its contradiction at its core, I argue that the use of EoDB rationale in determining criminalisable corporate harm is fundamentally flawed and has numerous adverse impacts on the public interest.

i. Indicators of Contradiction: The Economic Inequality Data Post-Reforms.

As mentioned above, the purpose of the neoliberal framework of the reforms was to boost economic activity in the country and thereby generate wealth, which would eventually trickle down to the least well-off and benefit all. The EoDB rationale, being a product of this neoliberal framework, was formulated as an essential tool to achieve this purpose, among many other measures the government took to achieve the same. However, the fundamental problem with using EoDB rationale in determining criminalisable corporate harm is precisely that it stems from a neoliberal framework. This is because, although, in *theory*, the neoliberal framework promises progress for all, in *practice,* it tends to function towards the benefit of a few privileged minorities. (Harvey, 2007, p. 79). In other words, the promise of the neoliberal framework on paper and its actual effect, in practice, are contradictory to each other. Consequently, various measures that stem from the neoliberal framework for achieving its objectives, such as the rationale, inherently carry this contradiction, too.

The fact that the neoliberal framework and, thereby, the EoDB rationale, *in practice*, tends to protect and promote the interest of a few is evident from data regarding the proliferation of inequalities in economies post-neoliberalisation. For instance, in the U.S., between 1979 and 2019 (40 years after neo-liberalisation), the earnings of the bottom 90 percent increased by only 46 percent, while the incomes of the top 1 percent increased by a frightening 229 percent (Horowitz et al, 2020). Regarding wealth inequality in the U.S.A., in the early 1980s, the wealth held by upper-income families was 3.4 times and 28 times that of middle-income and lower-income families, respectively (Horowitz et al, 2020). However, as of 2016, the wealth held by upper-income families shot up by 7.4 times and 75 times that of middle-income and lower-income families, respectively (Horowitz et al, 2020). According to Piketty and Goldhammer, after a brief decline in the income and wealth inequality levels in the post-war era, inequalities consistently rose since the neo-liberalisation of the economies across the globe, and as of now, the global

capital-income ratio has reached 500 percent (Piketty & Goldhammer, 2014, p. 245). According to his predictions, the same "*could approach 700 percent before the end of the twenty-first century, or approximately the level observed in Europe from the eighteenth century to the Belle Époque*." (Piketty & Goldhammer, 2014, p. 245)

In the Indian context, in 1991, when the reforms were introduced, the average share of national income of the bottom 50 percent, top 10 percent and top 1 percent were 19.08 percent, 38.75 percent and 13.26 percent respectively (Chancel et al, 2021, p. 197). However, in 2022, around 30 years of the reforms, the average share of income of the bottom 50 percent was reduced to 13.1 percent, while the income of the top 10 percent and the top 1 percent increased to 57.1 percent and 21.7 percent, respectively (Chancel et al, 2021, p. 197). It is crucial to note that the average share of national income of the top 10 percent in 2022 is higher than the group's share in the pre-independence period (around 53 percent), a period of extreme inequality (Chancel et al, 2021, p. 197). Chancel et al. (2021, p. 197) notes that the average national income of the Indian adult population is INR 204,200. While the bottom 50% earns INR 53,610, the top 10% earns more than 20 times more INR1,166,520, this study (Chancel et al, 2021, p. 197) observes that '*India stands out as a poor and very unequal country, with an affluent elite*'. Further, since the 1980s, the share of national income of the bottom 50 percent has reduced by 40 percent while the top 10 percent has risen by 80 percent and the share of the top 1 percent has risen by a staggering 180 percent (Ghatak et al, 2022).

Regarding wealth inequality in India, at the time of the reforms, the average wealth owned by the bottom 50 percent, top 10 percent and top 1 percent was around 9 percent, 54 percent and 22 percent, respectively (Chancel et al, 2021, p. 198). However, in 2022, the share of the bottom 50 percent in average wealth owned reduced to 6 percent, while the share of the top 10 percent and the top 1 percent increased to 65 percent and 33 percent (respectively (Chancel et al, 2021, p. 198). Further, private wealth grew in India from around 350 percent of national income in 1991 to 555 percent in 2020 (Chancel et al, 2021, p. 78).

The data mentioned above is taken from the World Inequality Report, 2022, published by the World Inequality Lab and prepared by renowned economists such as Lucas Chancel, Thomas Piketty, Emmanuel Saez, and Gabriel Zucman. The inequality data is collated by more than 100 researchers from around the globe in collaboration with universities, tax authorities, statistical institutions, and international organisations, with United Nations Development Programme as its

scientific partner (Chancel et al, 2021, p. 10). However, the inequality data regarding India, especially in recent years beginning in 2014, must be read carefully because of the lack of high-quality data. The data before 2014 relies on the data released by the Indian Income Tax Department, All India Debt and Investment Survey, and All-India Consumer Household Expenditure Survey (Chancel & Piketty, 2019). For the data post-2014, where the data is missing, they assume a 'neutral inequality growth rate between the years' (Ghatak et al, 2022).

However, a recently released report by the World Inequality Lab (Bharti et al, 2024) which extends their series (Chancel & Piketty, 2019) on economic inequality in India from 1922 – 2014 to 1922 – 2023 by incorporating new data for the period post-2014 suggests a similar trend in the widening economic inequality in India. As per the report (Bharti et al, 2024), both income and wealth inequality in India in the period between independence and reforms (1950 – 1991) declined while the post-reforms period (1991 – 2023) witnessed an unprecedented increase in income and wealth inequality reaching a record high in 2023. The report (Bharti et al, 2024, p. 3) suggests that India, as of 2023, is more unequal than pre-independent India, an era considered of extreme inequalities. While data from other sources (Anand & Thampi, 2016; Chauhan et al, 2015; Deaton and Dreze, 2002; Jayaraj & Subramanian, 2018; Oxfam, 2023; Radhakrishna, 2014; Sarkar & Mehta, 2010, Wani, 2023) may exhibit some variations from the World Inequality Report, there is a consensus across these sources that the economic inequality in India is indeed widening post-reforms.

Apart from economic inequality among the masses, there are other indicators of contradictions of the neoliberal framework as well. For instance, Marcellus (2020), in 1990, while the share of the 20 most profitable firms in total corporate profits was 14 percent, it was 30 percent in 2010 and grew rapidly to 70 percent in 2019. This study also observes that this staggering increase in profit share can largely be attributed to market power of certain firms rather than to the 'invisible hands' of the market. This data suggest a high degree of capital concentration in India. Regarding employment growth post-reforms, Bardhan (2022) indicates the deceleration of the same, specifically in the case of less-educated workers. He notes that (Bardhan, 2022, p. 180), 'India now has one of the lowest labour force participation rates in the world. All this has ominous implications for both the economy and the polity…'. With respect to the share of wages, Thakur (2022) notes that while the profit share in the 'net value added' has consistently increased and risen more than the pre-reforms rates, the share of wages has decreased. All these data indicates a

growing contradiction with the promise of the reforms and its actual adverse effects on the economy.

ii. EoDB Rationale and its Contradictory Roots.

From the data presented above, we can arrive at certain deductions. First, on paper, the promise of the reforms and its neoliberal framework that liberalising the Indian economy would lead to the generation of wealth, which would eventually trickle down to the least well-off, is in stark contrast with reality. Instead of the promised trickle-down effect, the data across sources suggests that the reforms have led to the concentration of wealth at the top of the class hierarchy. As per the World Inequality Report, 2022, '*Since the mid-1980s, deregulation and liberalisation policies (in India) have led to one of the most extreme increases in income and wealth inequality observed in the world*' (Chancel et al, 2021, p. 41). This is evident from the fact that the share of income and wealth of the top 10 percent and top 1 percent has consistently risen to alarming levels, while the share of the bottom 50 percent has consistently declined. Similarly, private wealth and profits have consistently soared while wages have consistently declined.

However, Harvey (2007, p. 79) has observed that there exists a fundamental contradiction between 'the declared promise of neoliberalism', which is the progress of all, and 'its actual consequences', which is progress of a few, leading to 'restoration of class power'. The data regarding the economic inequality in India post-reforms suggests the existence of a similar contradiction with the neoliberal framework of the reforms. The widening income inequality, the concentration of wealth, and no trickling down of the same indicates that the promise of the reforms and its effects are diametrically opposed to each other. In practice, led to the progress of a few while making the conditions of the least well-off worse.

Second, as discussed above, EoDB rationale was introduced as a measure, among many other measures, to fulfill the promise of the reforms – of the progress of all. However, as suggested above, the reforms' promises and effects contradict each other. Consequently, any measure that stems from the reforms to aid it in achieving this promise inherently carries this contradiction, too. *In other words, the fact that these measures stem from a parent framework whose promises and actual effects are contradictory to each other means these measures, including decriminalising corporate harm using the EoDB rationale, inherently carry this contradiction between its promise and its effect*. While using the exact promises and justifications as the reforms, the EoDB rationale, in practice, tends to reinforce the contradictions of the neoliberal framework of the reforms.

At this juncture, *it is strongly emphasised* that the present analysis does not suggest a causal relationship between the neoliberal framework of the reforms or the underlying EoDB rationale and the rise of inequalities in India. Instead, the argument is that the data discussed above strongly indicates that the reforms and, consequently, the rationale act as a powerful force that reinforces, exacerbates, and proliferates economic inequality. *As a consequence of this contradiction, the decriminalisation of corporate harms using the EoDB rationale, in practice, tends to become a dangerous tool to aid the neoliberal framework of the reforms to benefit the interest of a few than of all.*

iii. Merging the Opposites: EoDB Rationale and Criminal Law.

Further, since the EoDB rationale carries this effect of aiding the neoliberal framework of the reforms in profit and wealth accumulation, essentially, such rationale tends to focus on procuring profits rather than protecting the public interest. For instance, let us take the case of decriminalisation of the Public Liability Insurance Act of 1991. It was enacted after the infamous 'Bhopal gas tragedy' of 1984, where thousands of people died due to a gas leak from the Union Carbide's plant in Bhopal (Maheshwari, 2020). Its effects are continuing on the victims. Since only meagre compensation was ordered to be given by the courts to the victims after five years of the tragedy, the Public Liability Insurance Act was enacted to ensure immediate compensation to victims of industrial accidents involving hazardous substances even without proof of fault. Consequently, various non -compliances under the Act, such as taking insurance and renewing the same, were criminalised to ensure immediate relief (Maheshwari, 2020). Essentially, the provisions of the Act were criminalised to protect the public interest in case of hazardous accidents. However, as per the gazette notification, numbered G.S.R. 765 (E) released by the Ministry of Environment, Forest and Climate Change, Govt. of India on 18th October 2023 in pursuance of the Jan Vishwas (Amendment of Provisions) Act, 2023, these provisions are set to be decriminalised from 1st April 2024 to boost ease of doing business. Here, private interest (of profits benefitting only a few) is replacing public interest (of immediate adequate compensation) as the dominant rationale in case of hazardous industrial accidents. *In other words, using EoDB rationale in decriminalisation means that profits, and not public interest, tend to become the dominant rationale to determine whether a particular harm related to corporate entities should constitute a crime or stay criminalised*. The same analogy can be extended to decriminalising offences involving public interest in other laws, including environmental, labour, company laws, etc.

This leads us to another significant contradiction in the use of such rationale in the decriminalisation process. This arises when one shifts the focus from this inherent contradiction within the rationale to its contradiction outside of it – with the general purpose of criminal law. The fundamental purpose of the criminal justice system, including criminal laws, is to protect the interests of all. Instilling the tendency to attain profits regardless of its cost to public interest in the criminal justice system raises significant concerns due to its inconsistency with this fundamental purpose of the system itself. *Essentially, the process of decriminalising corporate harm using the EoDB rationale involves the merger of two antithetical ideas and purposes: one that of criminal law, whose purpose is to protect and promote the interest of all, and the other that of the neoliberal framework, which tends to, in practice, prioritise interest of a few. This merger essentially instrumentalises criminal law to further the good of the few private interests based on the principle of profits.* The argument here is not that profits or private interests must never be considered as a rationale in determining criminalisable corporate harm. Instead, the concern here is that - should the EoDB rationale, which tends to prioritise profits benefitting a few, be used as a criterion to determine criminalisable corporate harm? The need for criminal laws to be economically efficient must be an important consideration. However, attaining such efficiency must never override the need to protect the public interest.

8. CONCLUSION.

This study aimed to identify and analyse a crucial phenomenon occurring in the criminal justice system in India with respect to corporate harms – the radical transformation of the rationale determining criminalisable corporate harm post-reforms of 1991. In the pre-reform era, the socialistic tendencies of the state, its general mistrust of the capitalist class, and the socio-economic context of the country suggest that the rationale determining criminalisable corporate harm was the protection of public interest. However, the reforms and its neoliberal framework led to the radical transformation of the Indian state from socialistic in nature to a market-friendly one, which resulted in a paradigm shift in the method of regulating corporate crimes, among many other things. With its new mandate of creating a market-friendly economy based on the new-found trust in the capitalist class, the rationale underwent a significant transformation from the protection of public interest to boosting ease of doing business. The use of EoDB rationale was portrayed and justified as advancing public interest since decriminalisation of corporate harms would incentivise private participation in the economy leading to the creation of wealth that would trickle down to

the least well-off, thereby benefitting all. Essentially, the reforms and its neoliberal framework facilitated the radical transformation of the rational, and the current trend of decriminalisation of corporate harms can be situated in this context.

However, this transformation of the rationale determining criminalisable corporate harm, especially considering the fact that it is occurring within the criminal justice system, raises significant concerns. As Harvey (2007, p. 79) pointed out, an inherent contradiction exists with publicly declared promises of neoliberalism, the benefit of all, and its actual consequences, the benefit of a few. The data regarding the proliferation of economic inequality post-reforms discussed above strongly indicates the existence of such a contradiction in the reforms. The data suggest that the reforms, in practice, tend to work for the benefit of a few regardless of its cost on the interest of all. The EoDB rationale, stemming from the reforms and formulated as a crucial tool to achieve its publicly declared promise of the benefit of all, inherently carries this contradiction too. In this process, indirectly, the need to procure profits and protect private interests regardless of its cost to public interest tends to become the criteria to determine what corporate harms should constitute a crime or stay criminalised. Instilling the tendency to prioritise profits over the public interest in the working of criminal law through the EoDB rationale is alarming and contradictory. Criminal law, whose purpose is to protect the interests of all and not merely a few will, in practice, tends to become another tool to further the good of the few private interests based on the principle of profits. It is alarming to incorporate this tendency in the working of criminal law, specifically with respect to determining criminalisable corporate harm. Essentially, the neoliberal framework of the reforms, through the EoDB rationale, is resulting in a radical transformation of the purpose, methods, and province of criminal law in India with respect to the nature of criminalisable corporate harm.

Here, it is essential to discuss the case of General Electric (G.E.), a company incorporated in the U.S. and one of the world's most reputed and profitable companies. However, the company was fined more than 40 times between 1990-2001 for violating various laws, including environmental, commercial, and labour (Bakan, 2012, p. 75). The total fines paid by G.E. during that period went up to billions of dollars and, in one instance, 2 billion dollars (Bakan, 2012, p. 77). One may wonder why, despite being fined multiple times with exorbitant amounts, G.E. kept on violating the law. Moreover, the case of G.E. is one among numerous such violations of various laws. This is primarily because corporations make decisions based on 'cost-benefit analysis'. Corporations

would go ahead with doing 'A' if the benefit of doing 'A' outweighs its cost, even if it means a violation of law. Thus, as Bakan (2012) has argued, it is in the inherent institutional nature of corporations to relentlessly pursue profits. In such pursuit, the socio-economic-political impacts of the harms committed by it are depoliticised and become secondary and mere technical impediments to profits.

Further, the case of G.E. shows that, in a neoliberal framework, where the state is constantly implementing policies to create a market-friendly economy and boost ease of doing business, the tendency of the corporation to relentlessly pursue profits at the cost of public interest is intensified and incentivised. The neoliberal framework, in theory, requires the state to trust the corporations to not soullessly pursue profits at the cost of public interest. However, in practice, it mandates the state to assist the corporations in such pursuit regardless of its cost to the public interest. As a product of such a framework, the EoDB rationale carries this mandate, too. It seeks to decriminalise instances of corporate harm and to absolve corporations from accountability for such harms. By converting the prosecution of corporate harms into a civil dispute, where corporations are accountable to private parties rather than the public through the state, the rationale essentially eliminates the requirement of public accountability of corporations. Further, the consequence of committing harm would ensue only payment of fines which corporations consider to be a mere cost for the benefit derived from such harm. This lack of public accountability and the mere payment of fines further encourages corporations to commit harm. *Therefore, in a neoliberal framework, where the EoDB rationale and not the public interest rationale determines what constitutes criminalisable corporate harm, criminal law, directly or indirectly, facilitates and incentivises corporate harm*.

The argument in this study is not that boosting ease of doing business or profits must never be a consideration specifically to determine criminalisable corporate harm or generally for making laws and policies. Economic efficiency must be an essential consideration. Instead, the argument is that the need for laws to be economically efficient must never triumph over the need to protect the public interest. Especially considering the socio-economic context of India, where most of the population lacks social and economic capital, laws cannot afford to triumph profits that do not trickle down to the least well-off over the public interest. However, the policy of decriminalising corporate harms using the EoDB rationale tends to do precisely the same by focusing on 'Profit *over* People' instead of 'Profit *and* People' (Chomsky, 1999). The current trajectory of

decriminalising corporate harms in India, coupled with the government's proposal to draft Jan Vishwas Act 2.0 (Jayaswal, 2023) to further decriminalise numerous laws to boost the ease of doing business in the country, warrants the need to formulate innovative solutions to reconcile the conflict arising from the need to foster a profitable business environment over the protection of public interest.

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A CRITICAL ANALYSIS OF ANTI-DEFECTION LAW THROUGH AN ECONOMIC LENS

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ABSTRACT

Defection is not an unfamiliar term for parliamentary democracies like India. Though the evil practice was present since the pre-independence era, the advent of the multi-party system resulting in coalition governments increased floor crossing. The instabilities in the weak regimes followed by the political turmoil leading to the rise and fall of governments raised the demand for a law on regulating defection. Addressing popular demand, the 52nd Amendment Act of 1985 (India Const. amend. LII, 1985) was brought into the picture which added, the 10th schedule to the constitution (India Const. Sch. X). The law was drafted with due care and attention to retain political preferences and the public's choice. This legislation provided for the disqualification of members in case of defection except for a split or a merger. Subsequently, the law was judicially challenged and judgments were interpreted, where the deterrence effect of the law is highly doubtful. This paper makes an attempt to understand the development of anti-defection law, through judicial interpretations while pointing out the drawbacks of the legislation with the help of economic analysis. To determine the efficiency of the law, economic theories like game theory and public choice theory were applied.

Key Words: *Anti-Defection Law, Public Choice Theory and Game Theory.*

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1. INTRODUCTION

"*If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary. In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself*."

----James Madison, The Federalist Papers

Our Constitution's drafters used the Westminster model to create an independent India. In this system, the people choose the legislature and are responsible to them. Therefore, if a political party holds a majority in the legislature, it can establish and maintain an administration. This poses a problem to a political party in two ways. To create a government, it must first gain sufficient seats or form a coalition with other parties. Independents who won the election alone can also support the country's government. After creating the government, the challenge's second phase begins. The ruling party or coalition must unite its legislators to maintain its legislative majority.

The second challenge began the foul practice of political defection among the legislators for numerous considerations. According to the dictionary definition, "defection" appears to have been derived from the Latin word "*defectio*" which denotes abandoning a person or a cause to whom grounds of allegiance or duty, tie that person or to which he has fully committed himself. Similarly, it represents an individual or group's rebellion, diss ent, and revolt. Thus, "defection" refers to giving up on a cause, distancing oneself from it, or leaving a group, party, or program.

2. LITERATURE REVIEW

Floor crossing is not a new term in party politics. Ever since defection was defined, academicians have examined the practice with a political or legal approach. However, as the relevance of economics in politics widens rapidly, this study adopts an economic angle to suggest legal reforms for the current legal framework concerning defection in India. The handbook on game theory by Sylvain Sorin (Sorin, 1992) delves into the practical application of game theory in political domains, while Duncan Snidal (Snidal, 2016) stresses the significance of strategic behavior and rational decision-making in determining the course of international politics and illuminating the dynamics of power, conflict, and cooperation. Richard H. McAdams (McAdams, 2009) explores how strate gic interactions between people,

organisations, and institutions impact legal outcomes as he applies the ideas of game theory to legal contexts. In order to study coordination problems—in which players must coordinate their activities to obtain mutually advantageous outcomes—McAdams goes beyond the traditional Prisoner's Dilemma scenario. He highlights the intricacies of law and social behaviour by highlighting the role of incentives, norms, and institutions in encouraging coordination and collaboration through incisive analysis and case examples. Drawing inspiration from these renowned scholars, we link the game theory to event of defection through the prisoner's dilemma model. Additionally, the theory of public choice is a suitable concept for the study of politics. The work on Public Choice by Lionel Orchard and Hugh Stretton (Orchard & Stretton, 1997) examines the complex dynamics of group decision-making, focusing on how institutional structures, individual preferences, and incentives influence public policies. It deftly maneuvers through the intricacies of government, illuminating the factors that shape public opinion. This work on public choice helped us to analyse the decisions of defectors, presiding officers, and the public while witnessing the practice of defection.

Another source relied upon is the book "Anti-Defection Law in India and the Commonwealth" by G.C. Malhotra (Malhotra, 2005). The author examines the legal framework surrounding defection in Indian politics, focusing on the Anti-Defection Law. The goal of this rule is to stop elected officials from changing parties for political or personal benefit, and the book goes into great detail about the legislative aim, historical background, and practical applications of this statute. It compares India's defection policy with that of other Commonwealth countries. In general, the book thoroughly analyses the political and legal factors underlying defection in India and other countries. Further, the research gathered factual evidence regarding the regular practice of defection from landmark rulings of the apex court and reliable news articles by Indian Express and India Today. Lastly, in support of the recommendations provided, the reports of the parliamentary committees were observed to find suggested legal reforms to prevent defection. A few recommendations were borrowed from the Dinesh Goswami report on electoral reforms (Association for Democratic Reforms, 1990) and the 170th Law Commission report (Law Commission of India, 1999). Overall, the research paper aims to suggest legal and administrative reforms to the existing anti-defection statute through an economic analysis with the help of game theory and public choice theory. Also, different points of view and case studies were considered for a better understanding of the application of the

anti-defection legal framework.

3. HYPOTHESIS

Null Hypothesis: A critical analysis of Anti- Defection law with economic tools like Game Theory and Public-Choice Theory suggests that the law is effective in curbing un-parliamentary practices of "horse-trading", and the legislation deters politicians from engaging in this.

Alternative Hypothesis: An examination of Anti-Defection law with economic instruments like Game Theory and Public Choice Theory helps us to understand the lacuna in the anti-defection legislation and how politicians continue to engage and benefit from defection in spite of a legal mechanism in place to control it.

4. OVERVIEW OF THE ANTI-DEFECTION LAW

In democratic political systems worldwide, political defections among lawmakers have been a source of concern. This is especially true in parliamentary democracies where the stability of the government depends on the backing of the Legislature Party or a coalition of parties. Political instability is brought about by political defections, which violate people's will and the tenets of the party structure. Due to this, some nations have developed conventions or created laws and regulations to cope with political defections.

The threat of political defections has also regularly plagued Indian politics, leaving political instability at the Centre and in the States on several occasions. In light of this, the Constitution (Fifty-second Amendment) Act of 1985 was passed, enacting the anti-defection statute. The Act provided for the disqualification of the departing legislator to reduce individual defections in the legislatures while under certain exceptions permitting political party splits and mergers. The law provides for the punishment of disqualification of the defector. The offense of defection is committed when a member voluntarily gives up his or her membership of the political party or fails to comply with the directions of the whip officer in the house. An independent member is said to be a defector when he or she joins a party six months after the elections. The provisions of the law gave the final decision-making power to the presiding officer in the matters of disqualifying members for defection. The provisions with regard to disqualification on grounds of defection are as follows:

> *"**2. Disqualification on ground of defection** — (1) Subject to the provisions of 3 [paragraphs 4 and 5], a member of a House belonging to any political party shall be*

disqualified for being a member of the House—

(a) if he has voluntarily given up his membership of such political party; or

(b) *if he votes or abstains from voting in such House contrary to any direction issued by the political party to which he belongs or by any person or authority authorized by it in this behalf, without obtaining, in either case, the prior permission of such political party, person or authority and such voting or abstention has not been condoned by such political party, person or authority within fifteen days from the date of such voting or abstention."*

(India Const. Sch. X. ¶ 2)

Exceptions:

"4. Disqualification on ground of defection not to apply in case of merger— (1) A member of a House shall not be disqualified under subparagraph (1) of paragraph 2 where his original political party merges with another political party and he claims that he and any other members of his original political party—

(a) have become members of such other political party or, as the case may be, of a new political party formed by such merger; or

(b) have not accepted the merger and opted to function as a separate group,

(c) and from the time of such merger, such other political party or new political party or group, as the case may be, shall be deemed to be the political party to which he belongs for the purposes of sub-paragraph (1) of paragraph 2 and to be his original political party for the purposes of this sub-paragraph."

(2) *For the purposes of sub-paragraph (1) of this paragraph, the merger of the original political party of a member of a House shall be deemed to have taken place if, and only if, not less than two-thirds of the members of the legislature party concerned have agreed to such merger."*

(India Const. Sch. X. ¶ 4)

Following its enactment, many ambiguities in the law have come to light. As a result, numerous calls were made for the law to be reviewed. Addressing various aspects of the law several committees conducted a detailed study of the statute to report numerous problems. At the

Conferences of Presiding Officers of Legislative Bodies in India, the issues resulting from the decisions made by various Presiding Officers and the interpretation of the law by various courts were also covered. The then-Speaker of the Lok Sabha and Chairman of the Rajya Sabha formed a committee to revisit anti-defection law. The Constitutional 91st Amendment Act 2003 (India Const. amend. XCI, 2003) was passed in response to the committee recommendations headed by Y.B. Chavan, left out the splits provision from the Constitution's Tenth Schedule. The Act further provided that "A member of Parliament or of a State Legislature belonging to any political party who is disqualified under the provisions of the Tenth Schedule shall also be disqualified for being appointed as a Minister or for holding a remunerative political post for the duration of the period commencing from the date of his disqualification till the date on which the term of his office as such member would expire or where he contests any election to either House of Parliament before the expiry of such period, till the date on which he is declared elected, whichever is earlier". Even with these significant changes the 91st Amendment was not a complete success. The law had no real big impact on the practice of defection. Ever since, the anti-defection law remained a point of discussion among the political circles.

5. UNDERSTANDING THE LACUNA IN THE ANTI-DEFECTION LAW WITH THE HELP OF AN ECONOMIC ANALYSIS

i. Game Theory

Game theory operates on these fundamental assumptions that build the entire structure. Game theory is dependent on understanding the process of choice making based on expected utility model of decision making. It generates predictions by drawing a connection between choice making and the notion of equilibrium. The rules of the game which include the set of players in a game, the choices they avail, their choice and preferences and the information they possess while making their decisions remain exogenous factors and constant.

Two aspects of rationality are especially important for game-theoretic analyses. "The first, common to both nonstrategic and strategic conceptions, is the ability to forgo short-run advantages for longer-run considerations. The second, which is the distinguishing trait of strategic rationality, is that actors choose courses of action based on preferences and expectations of how others will behave" (Snidal, 2016).

a. The General Theory of Prisoner's Dilemma

"Two people commit a crime and are arrested for the same, both of them are interrogated in different rooms, the prosecution offers both of them a deal which states that if they confess to their crime they will get 5 years imprisonment, if one suspects keep quiet and the other confesses, the suspect who kept quiet will get 7 years imprisonment whereas the one that confessed will get only 6 months imprisonment and vice versa. Both of the suspects are also presented with a choice of not confessing where they will be serving a sentence of 1 year." (Sorin, 1992) In this scenario the optimal choice for both the suspects would be to confess and this is where the Nash Equilibrium rests. This is because both the suspects aren't sure about the course of action taken by their partners, so the safest bet for them would be to confess in order to face minimum punishment.

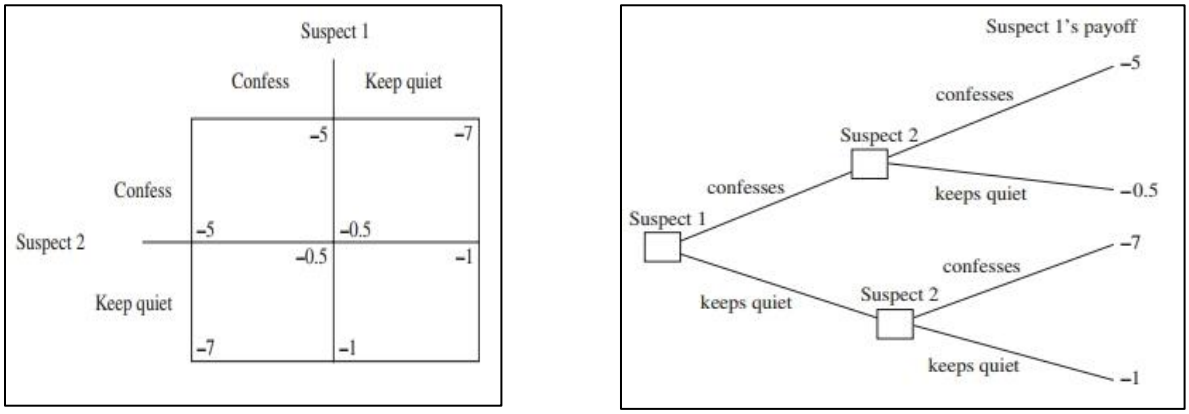

Figure 1: Game Theory Depicting the pay-offs for defection

Source: Author's Construction

b. Drawing a Parallel Between the Prisoner's Dilemma and the Event of Defection

The players in game theory with regard to defection: the defector, the opposition party and the ruling party.

Instance 1: The event of both suspects confessing and getting 5 years imprisonment is equated to the defector not engaging in the defection process. This is because the defector is unsure about the course of action that would be taken by his political party and believes that there is a high probability of him being disqualified from the legislative assembly.

Instance 2: The event of suspect 1 confessing and getting 6 months imprisonment and suspect 2 not confessing and getting 7 years imprisonment is equated to one person filing an anti-defection suit and the other person being disqualified from the parliament. Because in this

scenario, the defector is disqualified from the legislative assembly and is unable to reap the benefits of his "horse-trading", the probability that he will be re-elected after contesting in re-elections is also circumstantial. The probability of the person who files a defection suit may also face the same situation when he decides to defect to another party as a result of retributive politics.

Instance 3: When both the suspects don't confess, both of them get one-year imprisonment, this is equated to the defector not facing any consequences irrespective of the law in force. This option though seems to be the best choice is highly improbable.

In simple game theory, Nash equilibrium is attained when both the persons confess and get 5 years imprisonment after taking into account all the optimal choices available to them. Likewise, in the first instance of defection, there will be deterrence to all prospective defectors, thereby ultimately reducing the number of defectors on a whole. But in reality the event of defection takes place repeatedly leading to the repeated game theory. Repeated game theory is a situation where the same occurrence happens for an indefinite period of time. Defection as an event has continued to happen for decades in spite of a legal mechanism in place to control it. Irrespective of the parties and the person involved in the event of defection, there are only three probable events that could take place.

Using folk-theorem (McAdams, 2009), we are assuming that the defectors are well informed of all the past choices and consequences that took place in recent events. In the long run, we see many instances of defections going unnoticed or the speaker sits on the petitions for an indefinite period of time. Even though there is a probability of the defector being disqualified in a majority of the cases, he was subsequently re-elected within a few months. A party could also merge with another political party and not lose its seat in the legislative assembly provided that not less than two-thirds of the party members have agreed to such a merger. In this instance, we see that the equilibrium changes, and the optimal choice for the defector are to defect rather than to remain in his original party.

i. Lack of Defection Petitions Being Filed

"Recent cases of defection is a political stunt of Mukul Roy, who won the March-April Assembly polls on a BJP ticket but switched to the TMC in Kolkata. In the 16th Assembly alone, around 24 of the 44 congress and 8 of the 32 Left MLAs had crossed over to either the

TMC or the BJP. Although only 12 disqualification petitions were filed and even in that there was no action taken by the speaker in the disqualification petition" (PTI, 2021).

ii. *Defectors Being Re-Elected in By- Elections*

A real-life application of the same could be seen in the case of 2020 Madhya Pradesh Political Crisis. A resignation of 22 MLAs along with a senior leader, Jyotiraditya Scindia from the Indian National Congress led to the toppling of the Kamal Nath government following which Shivraj Singh Chouhan came to power. "On 20th March 2020, Kamal Nath resigned as CM prior to the floor test and on the next day, 22 rebel ex-congress MLAs joined the BJP, following which another three congress MLAs had also resigned to join the BJP. Out of the total 25 candidates who defected, 18 of them were re-elected as a BJP candidate. This clearly proves the assumption that defection on a majority takes place because of political gains and probable monetary compensations" (Rawat, 2020).

Party	Popular vote		Seats		
	Votes	%	Contested	Won	+/−
Bharatiya Janata Party	2,229,584	49.5	28	19	▲18
Indian National Congress	1,825,488	40.5	28	9	▼18
Bahujan Samaj Party	259,155	5.75	28	0	—
Communist Party of India		0.08		0	—
Shiv Sena		0.13		0	—
Samajwadi Party		0.25		0	—
All India Forward Bloc		0.00		0	—
Others (Not including NOTA)		2.95		0	—
None of the Above		0.88			
Total/Turnout	**4,512,231**	**70.86**			

Source:ECI[9][10]

Figure 2: Results of by-elections held on 3rd November 2020

Source: (Election Commission of India, 2020)

iii. *In the Case of a Merger*

In a recent Charade (July 2022) in Maharashtra politics, a Public Interest Litigation was filed in the Bombay high court challenging the defection of legislators on ground of merging with another political parties. Para 4 of the 10th constitution allows the defectors to continue in the legislature and hold constitutional posts until the issue of their disqualification is finally decided. "The PIL urges the SC to declare para 4 of the 19th schedule as ultra vires to the

constitution and the legislators defecting their original parties must not participate in house proceedings or hold constitutional posts until their disqualification petition is finally decided" (Express News Service, 2023). The issue arose after a section led by Ajit Pawar and Praful Patel broke ranks from their original party and joined hands with the BJP and the Shinde faction. Ajit Pawar was sworn in as the deputy chief minister and 8 other NCP MLAs took oath as Ministers in the Eknath Shinde government. The NCP retaliated by filing a disqualification petition against the 9 members. Ajit Pawar responded by claiming he represents the "real NCP" and Praful Patel had also subsequently announced that Ajit Pawar as the leader of the NCP legislative party in the assembly. The supreme court had recently criticized the speaker of the Maharashtra Legislative assembly for postponing the hearing of the disqualification petitions where a total of 56 MLAs, are facing disqualification under the 10th schedule. The speaker had kept the disqualification petitions pending since July 2022, following this the CJI, J. D.Y. Chandrachud had asked the Solicitor General of India Tushar Mehta to advise the speaker on how to proceed further, stating that it was a summary procedure and he must decide upon the 34 disqualification petitions pending before him.

iv. In the Case of Coalition Governments

After the Bihar elections in 2020, the JDU lead by Nitish Kumar emerged as the 3rd largest party with over 40 seats with no single party being able to attain the majority. Since then, Nitish Kumar have switched sides for political considerations. The recent political turmoil in the Bihar state assembly began when Nitesh Kumar was asked to prove his majority in floor test, he switched sides along with all his party MLAs to the NDA alliance from RJD and Congress coalition government. This move resulted in a walkout by opposition MLAs, allowing the Nitish Kumar government to win a 129-0 majority in the trust vote (Singh, 2024). Also, this phenomenon attracted 3 RJD MLAs defecting in support of NDA and JDU alliance with no fear of disqualification. This event depicts the significance of political power over public interest, where politicians de-stabilize the government for retaining power. This incident in the Indian democracy reveals the shortcomings of the anti-defection law while dealing with coalitions. The logic remains incomplete, as a coalition regime taking power and dissolving have the same impact on the overall state of democracy and function similar roles when it comes to toppling elected governments. The law needs to be addressed and corrected to de-incentivize defectors and to protect public will.

ii. Public Choice Theory

Public choice theory refers to an economic approach to the study of politics. "The theory is propounded by Vincent Ostrom, William Niskanen, and Gordon Tullock in the mid-20th century. American Nobel laureate James Buchanan, a prominent Virginia School of Political Economy member, characterized the public choice approach to politics as the study of "politics without romance" (Orchard & Stretton, 1997). The theory draws its roots from the new rights philosophy, which criticized the concept of the welfare state and elaborated on efficiency by concentration in the core. Public choice theory works to establish a link between economics and political science. It provides an economic angle for the bureaucrats in decision-making. The critical assumption of this theory is that man is a rational being who looks at the logic and facts for making choices. The theory assumes that individuals are utility maximisers who place their interests over the public good. This analysis applies to present-day politics, where politicians choose party jumping over general welfare, and the public ignores politics for personal priorities. Here the application of the public choice theory is two-fold considering the defector on one side and public perception on the other.

a. From the Perspective of the Defector

The anti-defection law successfully strives to place democratic and constitutional ideas and the interests of the citizenry at the center of the legislative process. The defection law was passed to promote political stability in the government, which is required to protect the citizens' democratic rights in the nation. After the Anti-Defection law was passed, the parliament and state assembly members were forced to follow party directives blindly and lost their ability to cast independent ballots.

As a result, the member is at last more responsible to the party than to the people for whose benefit he was elected. It was made challenging to distinguish between "dissent and defection", which weakens legislative deliberations on any law. Instead of a democracy based on debate and discussion, the law has produced a democracy of pure politics. This unintended result goes against public choice theory. Where the elected representatives are forced to vote for the prevailing hierarchies over the public interest, the limited scope for the representative to express the problems of his citizens will be defeated by political priorities. The creation of the anti-defection law for protecting democracy proves to be contrary to its original intentions.

One more critical reason for the rapid practice of anti-defection is the benefit derived from the same. The ambitious representatives supported by the masses chose to maximize power over the cost of defection. A rational representative's foremost aim is to gain and retain power, which is probable with the choice of defection rather than fulfilling their duties in the opposition party with minimal impact and diminishing political influence. Some other factors that lead to defections are the risks associated with their original political party, hence they join other parties which increases their chance of a prospective win in subsequent elections. Also, factors like negligence in the party, lack of significance in decision-making, ideological differences, etc., contribute to rational decisions.

b. From the Perspective of the Public

Another essential element that must be considered is the voters' dissatisfaction. The public representative deceiving his or her voters for personal gains will hurt their reputation which may affect the future poles. However, this needs to be addressed by the power-driven leaders. The public perception of an individual keeps changing depending on their utility. The focus of the citizens is shifted through providing high living standards and short-term monetary benefits. This increases the effectiveness of the leader's political influence, which overshadows the lost reputation. Similar to the politicians, the citizens are also assumed to be rational and can identify and maximize their utility. When their needs are satisfied and their wants are approachable, they forget about the politician's reputation and part allegiance. The citizens value the available economic benefits over their leaders' morals and loyalty to his or her voters. This reasoning must raise the question of whether the opposition party can always exercise the remedy to file a disqualification petition before the speaker. This is a very valid question which can be answered in various dimensions. Firstly, the repercussions of a disqualification petition can amount to additional complications like retributive politics. The fear of cases on disciplinary action and reopening of past litigation discourages the opposition members. Also, the high discretion of the speaker over these matters results in unintended consequences. The speaker may sit on the petitions or dismiss the petitions that are in favor of his or her party. These matters are again brought into court, which requires further time and effort.

iii. Speaker's Role

The anti-defection law brought the office of the speakers of legislatures into disrepute. The law makes the speakers the deciding authority in defection proceedings. This decision by the lawmakers ultimately defeated the purpose of the legislation. To look at this from an economic angle, the speaker is also a rational man striving to maximize utility, as the public choice theory states. He or she, being rational, shall always act according to their advantage. The speaker is not an independent authority, but a party member and will act in favor of the party's political will resulting in no significant sanctions other than ethical considerations. The speaker delays the disqualification process or disqualifies members on irrelevant grounds for an extended period. The speaker's choice to prefer loyalty over ethics gives him a prominent position in the party with probable monetary gains. To support the given argument, relevant examples are cited below.

For instance, in the All-India Anna Dravida Munnetra Kazhagam (AIADMK), the party in power, there was a struggle for leadership of the organization about two years after the anti-defection statute was passed. It happened after M.G. Ramachandran, the chief minister of Tamil Nadu, passed away in 1987. When there was a vote of confidence on the legislature floor, the speaker, who belonged to one party group, immediately disqualified 27 opposition MLAs. Similarly, the court acknowledged the growing pattern of speakers behaving contrary to their constitutional duty to be impartial in Shrimanth Baladaheb Patil v. Hon. Speaker (Shrimanth, 2020). Thus, this instance again emphasizes the necessity of reassessing the Speaker's duties under the Tenth schedule.

The speaker’s actions were also criticized when they had unreasonably prolonged defection proceedings. The speakers did not rule on defection processes in the previous Andhra Pradesh and Telangana legislative assemblies till the end of the legislature's tenure. In the case of Keisham Meghachandra Singh v. Hon' Speaker Manipur (Keisham, 2022), A Manipur MLA who was elected on a Congress ticket in 2017 was appointed to the BJP cabinet as a minister. The speaker postponed the defection procedures against the MLA for more than three years. The apex court's intervention resulted in the MLA's disqualification. “Over the years, their actions in defection proceedings have strengthened the belief that they act as party members rather than impartial adjudicators.”

iv. Changing Perspective of the Speaker's Role

In the Speaker Haryana Vidhan Sabha V. Kuldeep Bishnoi (Speaker, 2015) case, it was said that "The order of speaker's actions regarding defections would be subject to judicial review on the grounds of violating a constitutional obligation, having malicious intent, failing to follow natural justice's standards, and perversity." According to the ruling in Ms. Sundaram Finance Ltd. v. Regional Transport Officer (Ms. Sundaram, 1992) "the speaker cannot be the sole arbitrator as it would be a clear violation of the basic structure of the constitution as the speaker is someone who is appointed by the majority of the house and therefore the speaker cannot be considered as the sole arbitrator."

The Supreme Court ruled that the decision made by the speaker in the case of Rajendra Singh Rana v. Swamy Prasad Maurya (Rajendra, 2007) is unconstitutional because, among other things, it was not supported by any evidence and determined that certain assembly members are not disqualified on the basis of defection. As a result, under Schedule 10, the speaker of the house is given the authority of a sole arbitrator. However, because the speaker is chosen by the majority party, there have been instances in which the speaker has abrogated the representative democracy principle. "The court found that the Speaker of the Karnataka Legislative Assembly "acted in 'hot haste' and in violation of the principles of natural justice while disposing off the disqualification petition, even though there was no conceivable reason for the Speaker to have taken up the matter in such a hurry" in the B.S. Yeddyurappa Case (Balchandra, 2011).

In an analogous circumstance, the Madras High Court ruled in A.K. Bose, MLA v. Tamil Nadu Legislative Assembly (A.K. Bose, 2008) that "He should have been given an opportunity to state his case and no such opportunity has been given to him and instead, he has been thrown out of the House which is arbitrary, unreasonable, and in violation of Article 14." In the case of Kihoto Hollohan v. Zachillhu (Kihoto, 1992) it was held that Para 7 of schedule 10 violates constitutional provisions and attacks the root of the legislation. Para 7 essentially stated that "no court shall have jurisdiction with respect of any matter connected with the disqualification of a member of a house" and was subsequently struck down.

All this suggests that the court has taken precedence over the arbitrary power of the speaker and instances of his discriminatory behavior. The court's suggestion to impose a restriction on the time limit for the speaker to decide upon a disqualification petition and the stance taken by the Supreme Court to review the speaker's decision in certain instances suggests that the

judiciary is moving towards the right direction.

6. SUGGESTIONS

After examining the above-mentioned analysis, it can be rightly inferred that the law is more about arming the political party leadership with more power to deal with rebellious legislators than providing stability to governments. Despite these shortcomings, there are efforts to enhance rather than scrap the anti-defection statute. The following amendments can be made for better enforcement of the law.

1. With the underlying idea that a person elected on the ticket of a political party should remain with it during the life of the House or leave the House, the law must be amended to strengthen the effect of disqualification resulting from defection. One of the amendments in need of the hour is restricting the time on the speaker for the disposal of a disqualification petition. The time limit will help improve the effectiveness of the law where the disqualification is not delayed due to the speaker's arbitrary power, as shown above. Due to this amendment, the likelihood of disqualification rises, making politicians take a back in choosing defection for complexities involved in re-elections.

   Implementing this rule addresses two major problems; firstly, the speaker is highly pressed to make a choice in a stipulated time, which incapacitates the speaker to leave the disqualification petition unattended. Secondly, this restriction builds confidence in opposition leaders to trust the process. The opposition parties will be incentivized to file disqualification petitions before the speaker due to the increase in assurance regarding the response. Even when the speaker delivers a biased verdict, the petitioner will have sufficient time to approach the judiciary. As we proceed in the path of public choice theory, it is vital to develop a legal framework in which the parties are persuaded to make the right choices. Also, implementation of this suggestion goes a long way in curtailing the situation of repeated game theory, where the implementation of a time limit will help in dealing with the dismissal of the defected legislators. The main problem of defection law lies in its implementation, leading to a situation of repeated game theory where defectors are well aware of the lack of repercussions for their actions. Implementing this suggestion will help in changing that stance.

2. Here, we stand with the recommendations made by several committees, including the 170th Law Commission report. The commission report stated the transfer of discretionary power of the speaker to disqualify the members of the legislature to the President and Governor with the consultation of the election commission in central and state legislatures, respectively. This suggestion if implemented will de-centralize the arbitrary power vested with the administrators to an impartial constitutional body. This method allows the disposal of disqualification petitions to be improved with impartial choices as stated in the public choice theory. The influence of the government is comparatively reduced in deciding the petition.

   Dinesh Goswami Committee on Electoral Reforms and the National Commission to Review the Working of the Constitution recommend that "the power to decide on questions as to disqualification on ground of defection should vest in the Election Commission instead of in the Chairman or Speaker of the House concerned." The Election Commission and "Ethics in Governance" report of the Second Administrative Reforms Commission also both recommended that the issue of disqualification on grounds of defection should be decided by the President/Governor concerned under the advice of the Election Commission instead of relying on the objectivity of the decision from the Speaker. Through this transfer of power, a significant drop in bias could be observed as we include independent bodies such as the election commission to handle disqualification petitions of political defections. When independent parties with varied preferences gets involved, the strong affiliation to a political group is diluted. The election commission may not completely overtake the political will in decisions, but it helps the system to land at a better position.

3. A better mechanism to end the bureaucratic nature of the law is establishing an independent adjudicating authority. As noted by the court in the case of "Keisham Meghachandra Singh v. Hon' Speaker Manipur," there is a necessity for an impartial tribunal after identifying the Speaker's pattern of partisan acts. We believe that the tribunal should be led by a retired Supreme Court judge, along with two other retired Supreme Court or High Court judges. The judge's choices in dealing with the disqualification disputes are possibly the least biased, considering the independent nature of the judiciary. So, there is a higher probability

of public good from the rationality of a judge than a party member.The tribunal shall have the power of Suo-moto cognizance and shall take up the Prima Facie cases of anti-defection. We recommend the time period of 3 months for the disposal of a petition. If either party is dissatisfied with the judgment, they shall apply to the Supreme Court within 30 days of the order.

4. The appointment for the tribunal shall be done by the collegium system where the strength of the tribunal can be increased based on the number of cases with a simple majority vote in the center or state legislature. We don't see any different solution to diminish political partiality to the most possible extant other than handing over the issue to a tribunal. A judge is said to possess the least amount of bias in the Indian governance model, where the judiciary is independent from the other branches. This measure shall deter the politicians from practicing defection where a strengthened independent institution is in place with the power of Suo moto cognizance. Additionally, an independent adjudicating authority helps in Swift's handling of cases and better implementation of the law.

5. Another recommendation to tighten the anti-defection statute is to exclude the vote of a defecting legislator when determining whether a government will remain in power in case of a no-confidence motion. This recommendation is relevant because of the influence of votes in the democratic setup. Imposing restrictions on the voting rights of a defector deters the tendency to commit defection. Due to the fall in the incentives of defection, the opposition parties will not expect more members who are incapable of voting in no-confidence. This effect shall have a direct impact on the benefits of defection. So, a member will not choose to defect, and a political party will not offer as many opportunities for a defector.

7. THUS, WHEN A DEFECTOR NOTICES THE REDUCTION IN ADVANTAGES WITH PARTY JUMPING, HE/SHE SHALL NOT RISK HIS/HER POLITICAL CAREER SETTLING FOR LOW UTILITY AND DECIDE TO REFRAIN FROM SHIFTING PARTIES FOR A BETTER FUTURE IN POLITICS. THIS SIGNIFICANT CHANGE WILL HELP IN CURTAILING THE SITUATION OF REPEATED GAME THEORY ENSURING THAT THE DEFECTORS ARE NOT BEING BENEFITED BY THE SUBSEQUENT GOVERNMENT AND THAT THERE IS A CHECK TO THE ASPECT OF GOVERNMENT TOPPLING.WAY FORWARD

The unintended nature of the law in prioritizing party responsibilities over the public interest may be explored further to distinguish between dissent and defection. The grounds of defection under the law are possibly interpreted strictly to provide scope for the representative to express. Future research in the area could elaborate on the directions of the whip officer of the political party and the extent to which the binding nature of the party's decisions extends to representatives. Another aspect to be considered is the instance on merger. Acting as an exception under the law, the merger is a legal method of wholesale defection. The economic analysis of the instance of a merger may be carried out better to understand the real need and effect of the exception.

This paper provides several examples for highlighting the practice of defection but lacks a full-fledged data analysis. However, upcoming research may adopt a data-driven approach through an econometric analysis of defection. Theories like cost-benefit or SWAT analysis may be applied to the representatives when deciding to defect.

8. CONCLUSION

"The evil of political defections has been a national concern. If it is not combated, it is likely to undermine the very foundations of our democracy and the principles which sustain it." (Malhotra, 2005). Defection is a prominent political problem rather than a legal apprehension. Even though the search for legal and constitutional restrictions on political defections have merit, the long- lasting solution to the issue can only come from political parties adhering to a core political morality and upholding certain proprietaries of public's choice and preferences.

An analysis of the efficiency of anti- defection law with the help of economic tools helps us to understand the lacuna present in the current framework. Anti-defection law viewed through the lens of repeated-game theory lays down the reason for the surge in defection cases in spite of a

framework there to curb and prevent it. Public choice theory helps us to understand the perspective of the public and the legislator where each rational person maximizes his own benefit and as long as his wishes and needs are satisfied, they remain nonchalant in the instances of defection.

Legislators' failure to uphold party discipline in India is a matter of political contention between them and their political party. Political parties' leadership needs to put more effort into fostering internal party democracy, communication, and growth opportunities for its members if they wish to attract supporters who follow the party line.

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REGULATION OF GAMBLING IN INDIA: A WAY FORWARD IN THE DIRECTION OF RESPONSIBLE AND SUSTAINABLE GAMBLING

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ABSTRACT

This research paper explores the complex and multifaceted issue of gambling regulation in India. It begins by establishing the need and significance of gambling legislations, followed by a historical overview of gambling and its legislation during the periods of Ancient India, Mauryan Empire and British Rule. The paper then delves into the contemporary period, examining prohibitory, permissive, and regulatory legislations. A comprehensive cost-benefit analysis of the three types of legislations i.e. permissive legislation, regulatory legislation and prohibitory legislation is conducted to understand their implications.

The study further investigates the regulation of gambling through legislations, formal and informal education, and the introduction of concepts such as Gambling-worthiness and Gamble scoring. Gambling is seen with a taboo primarily because of two reasons, firstly it hampers the economic stability of the individual & subsequently its family and secondly it creates addiction. Both of these psychological & economic issues can be dealt by GIBIL and the concept of Gambling-worthiness and gamble scoring. It will help in identifying problem gamblers and pathological gamblers, curbing loan sharking and protecting vulnerable section of society. It also examines the economic repercussions of regulatory legislations on gambling. The paper concludes with an analysis of the current situation and offers policy suggestions for regulation at the production, consumption, and market levels. The implications of these policies are also discussed, providing a holistic view of the gambling landscape in India. This paper aims to contribute to the discourse on gambling

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regulation and provide insights for policymakers, educators, and stakeholders in the gambling industry.

Keywords*: gambling-worthiness, problem gamblers, gambling regulation, cost-benefit analysis, policy suggestion*

1. INTRODUCTION

"न चाकामः शकुनिना देविताहं न चेन्मां धृष्णुराह्वयिता सभायाम् ।
आहूतोऽहं न निवर्ते कदाचित्तदाहितं शाश्वतं वै व्रतं मे ॥ १६ ॥" (Mahabharata, Sabhaparva 58, 16)

"I am unwilling to gamble. I will not do it unless the wicked Shakuni does not challenge me in the Sabha. If, however he challenges me, I will never refuse. This is my settled and eternal vow." (Dutt, 2018)

'It is my *Vrata* that I shall not refuse to play with dice when I am called upon to do so.' These were the words of *Yudhishthira* when *Vidura* communicated the invitation of gambling to him. The concept of kingship in human society derived its roots from the concept of king of forest. In a 'pride' if any member challenges the king, then king has to accept the challenge for proving that he is the one who is suitable for the position of king not the challenger. This code of conduct of lions made the basis of the code of conduct of *Kshatriya's* chivalry and morality (Kane, 1946). Thus, a king should not be afraid to fight in a war or play with dice when someone challenges him. This notion explains the prevalence of gambling in the ruling class of society however in the subordinate class of society its prevalence relates to entertainment, employment, edacity and other socio-economic factors. To deal with this prevalence of gambling ancient Indian scriptures like *Smritis* and *Puranas* suggested regulation in place of prohibition (Jois, 2018). *Katyayan Smriti* and *Yagnyavalkya Smriti* provides a course of action for the regulation of practice of gambling by establishing the licensed gambling halls and appointing a gambling supervisor who were known as *Sabhika* and had a duty to collect tax, apprehend thieves and resolve disputes with the help of special judges. *Sabhika* also had right to protection from ruffians and to recovery of amount from loser (Jois, 2018). Therefore, in ancient India gambling was permissible for the ruling class of society based on the political pretexts and regulated for the subordinate class of society based on the socio-economic pretexts.

During the reign of *Chandragupta Maurya, Kautilya* wrote '*Arthshastra'* on the political economy of Magadha in which he discussed various aspects of social life that influence the politics and economy of state and which themselves get influenced from the politics and economy of state. In Section 74 of Chapter 20 of *Arthshsatra, Kautilya* defined gambling as, "*wagering with inanimate objects like dice*" and betting as, *"something that involved challenges of cock fights, animal races and similar contests"* (Rangrajan, 1992). He referred to the term challenges for the events involved only the 'game of chance' and not the 'game of skills' which is concerned either with learning or

with art (Kangle, 2014). In Section 75, rights and liabilities of master of gambling halls were defined along with the punishments for committing fraud, cheating, theft etc. Therefore, in the period of Mauryan empire also the practice of gambling was regulated through various forms of fines and penalties (Kangle, 2014).

During the British rule, public gambling and common gaming houses were penalized under Public Gambling Act, 1867. However, under Section 12 of the Act, exemption was provided to the games of mere skill. Thus, in the British period also gambling was regulated by prohibiting its game of chance and public practice (Public Gambling Act,1867) and permitting its game of skill (Public Gambling Act,1867) and private practice aspect. In the contemporary Indian society with the advent of digitalization, gambling has also shifted from offline to online mode that has amplified its presence multifold, which is adversely affecting people belonging to vulnerable section of society (Kulkarni, 2024;Basheer, 2024;Rajasekaran, 2023). However, government is currently focusing only on generating revenue by imposing taxes on it (ET, 2024). It is the duty of a state to protect its citizens and maintain social order (India Const. art. 38) but when to comes gambling, absence of comprehensive framework for regulation of gambling and problem gamblers, shows the negligence on part of state. Gambling ruins the life of loser in the short run and winner in the long run. It has negative social implications for society but positive economic implications for the state. Therefore, it is crucial to analyze socio-economic conditions through cost-benefit analysis in accordance with constitutional principles before formulating any legislative framework that governs gambling (Law Commission of India, Rep No. 276, 2018). Furthermore, for making this legislative framework responsible and sustainable, use of smart power which is the combination of both soft power in form of formal & informal education and hard power in form of legislation(s) & concept of gambling worthiness is the need of the hour.

2. OVERVIEW OF GAMBLING

According to the Constitution of India gambling comes under the Entry 34 of List II of Seventh Schedule on which states exercises the right to legislate. Therefore, there is no central legislation regarding gambling which governs the whole Indian territory. Some states have made their own legislations while some still follows Public Gambling Act, 1867. In Black's Law Dictionary, gambling is defined as "The act of risking something of value for a chance to win a prize" (Black's Law Dictionary, 2004) while according to Section 65-B (15) of Finance Act, 1994 gambling means "putting on stake something of value, particularly money, with consciousness of risk and hope of

gain on the outcome of a game or a contest, whose result may be determined by chance or accident, or on the likelihood of anything occurring or not occurring." In Financial Bill (2023), two amendments were proposed for taxing the income generated from gambling and its other types & forms which includes betting, casinos, gaming machines, keno, lottery, online gambling, wagering and minor gaming like bingo & housie. The forms and methods of gambling have evolved over the period of time but in India the legality of gambling is yet determined by the factor of 'game of skill' and 'game of chance' which is known as 'Skill Test' (State of Bombay v. R. M. D. Chamarbaugwala, 1957). The complexity in deciding whether an activity will come under the umbrella of gambling or not, is not only because of various types of gambling but also because of various types of gamblers which includes Problem gamblers, Pathological gamblers, Social gamblers, Professional gamblers etc. Problem gambler is an individual for whom gambling is become an addiction and he or she lost control over his or her gambling behavior (Calado & Griffiths, 2016). Pathological gambler is an individual for whom money is both the cause and solution of their problem (American Psychiatric Association, 1995). Social gambler is an individual who is involved in gambling with his or her friends occasionally while Professional gambler is an individual who disciplined himself or herself in gambling and takes calculated risks only (Drabsch, 2003). For the simplification of above-mentioned complexities of gambling many committees and commissions were setup from time to time like 'Justice Mudgal IPL Probe Committee' (Mudgal Committee, 2014), 'Report of the Supreme Court Committee on Reforms in Cricket' (Lodha Committee, 2015), National Indian Gaming Commission and the recent most 21st Law Commission of India's 'Legal Framework: Gambling and Sports Betting Including in Cricket in India' (Law Commission of India, Rep No. 276, 2018) for probing into matters of illegal activities and gauzing the status of gambling in society through taking responses of the respective stakeholders from society and conducting doctrinal & non-doctrinal research, along with giving their recommendations for policy making and bringing reforms in society.

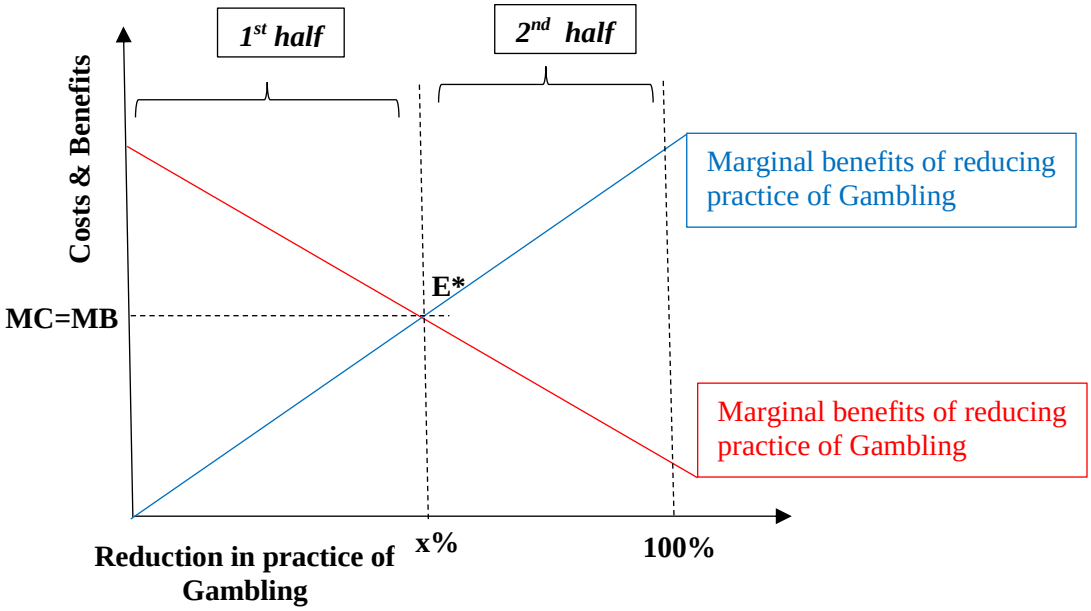
3. NEED AND SIGNIFICANCE OF EFFICIENT LEGISLATIONS OF GAMBLING

The practice of gambling can be considered as old as mankind (Law Commission of India, 2018), earlier it was just a medium of entertainment and pastime just like today's minor gaming Bingo & Housie but later when it became medium of livelihood and earning huge with little investment just like today's wagering, it got corrupted as a consequence of materialism. With the passage of time, due to advancement in technology and increased standard of living, evolution of practice of

gambling can be comprehended in its various types and forms. These types and forms of gambling led to numerous socio-economic repercussions like Loan Sharking, parallel economy of black money, increased number of organized crime and connecting crime etc. which can make a developing and flourishing nation socio-economically weak and will act as an impediment in the development of a state. Therefore, at the present time there is a pressing need for a mechanism which can curb the above-mentioned socio-economic repercussions of gambling by curbing the various existing forms & types of gambling and the practice of gambling itself. In the current political system, be it democracy or autocracy this can only be done through the law-making process which can make permissive legislation or regulatory legislation or prohibitory legislation in accordance with the socio-economic ambience and needs of a particular nation; because as shown in Graph 1, the marginal social cost will be less than marginal social benefit up to point E* but after this point marginal social cost will be more than marginal social benefit. Thus, there is a need to strike a balance between the 1st and 2nd half through cost-benefit analysis of all the three types of legislations.

Assumptions

a. The law of diminishing marginal utility is applicable to marginal social benefits.
b. When there is equilibrium in incremental change then there will be equilibrium in total.
c. Other factors like human nature, economy of a country etc. are taken as constant.



Graph 1: Socially optimal amount of gambling reduction effort
Source: Author's own construction also refer to (Cooter & Ulen, 6th ed., pp. 23)

4. RESEARCH METHODOLOGY

This analysis is based on qualitative reasoning, theoretical frameworks, and logical deductions. The study is primarily an outcome of doctrinal research and does not rely on first-hand empirical data. This study adopts the principles of cost-benefit analysis as an approach, focusing on identifying and evaluating the potential costs and benefits of prohibitory, permissive and regulative legislations for gambling. The analysis considers direct and indirect impacts within economic, social, and legal domains, grounded in qualitative reasoning and theoretical assumptions.

The analysis draws upon secondary sources, including peer-reviewed articles, policy documents, law commission reports. These sources provide a comprehensive understanding of prohibitory, permissive and regulative legislations, and their potential impacts, forming the basis for the conceptual evaluation. Furthermore, the study assumes that the identified costs and benefits are representative of the broader implications of prohibitory, permissive and regulative legislations. However, the absence of empirical data introduces limitations, such as the inability to quantify impacts precisely or validate theoretical assumptions through observed outcomes.

5. LEGISLATIONS OF GAMBLING IN THE CONTEMPORARY PERIOD

Legislations can be classified on the basis of their functions into three categories as permissive legislation, regulatory legislation and prohibitory legislation.

i. Prohibitory legislation(s)

Prohibitory legislation(s) are those legislation(s) whose primary aim is to prohibit the act, activities and conduct mentioned in the legislation and create a deterrence in the society so that there will be a complete blanket ban on that act or activity. As gambling is *malum in se,* various authorities in timeframes tried to shift the gambling from the category of *malum in se* to the category of *malum in prohibitum.* For example, when Britishers governed the colonial India they brought 'Public Gambling Act (1867)' in which they criminalize the act of public gambling and brought various provisions for the punishments but after the Government of India Act (1935) this law ceased to be a central legislation which is applicable on the whole country because after this act the law-making power was transferred to the states of India; likewise, when India got freedom, it included Article 302 and Article 304 in the Constitution of India to put restrictions on the trade, commerce and intercourse of any activity which goes against public interest through parliament and state legislature respectively; Also, Doctrine of *res extra commercium* (Harshit, 2022) introduced by

Supreme Court in the case of *State of Bombay v. R. M. D. Chamarbaugwala* (State of Bombay v. R. M. D. Chamarbaugwala, 1957) in India to exclude the practice of gambling from the purview of trade and profession from Article 301 and Article 19(1)(g); Similarly "Goa, Daman and Diu Public Gambling Act (1976)" also puts a complete ban on practice of gambling and betting based on chance in the Goa state and Union territory Daman & Diu; Also "Foreign Exchange Management Act (1999)" and "Foreign Exchange Management (current account transaction) Act (2000)" prohibits the remittance of income earned from any form of gambling. Above-mentioned prohibitory legislations were the steps taken by the authorities who were in the power to prohibit gambling through one way or the other way around.

ii. Permissive legislation(s)

Permissive legislation(s) are those legislation(s) whose primary aim is to permit the act, activities and conduct mentioned in the legislation and provide an incentive so that act or activity will be promoted in society for the welfare of country in one way or other way round. For example, "Section 115BB and Section 194B of Income Tax Act (1961)" imposes tax and TDS on revenue generated from the legalized gambling activities; likewise, "Section 2 (1)(sa) Prevention of Money Laundering (Amendment) Act (2013)" included games of chances and casinos in the definition of designated profession and business; Also, in the Finance Bill (2024) it was a proposed amendment in the Income Tax Act, 1961 to include online gambling for imposition of tax and TDS. All these acts and amendment do not make gambling directly legal in India, but they are permitted, and tax is imposed on them for revenue generation.

iii. Regulatory legislation(s)

Regulatory legislation(s) are those legislation(s) whose primary aim is to regulate the act, activities and conduct mentioned in the legislation and create a deterrence in the society so that the act or activity will occur in a balanced and controlled manner. For example, "Goa, Daman and Diu Public Gambling (Amendment) Act (1992)" which is an amendment in the "Goa, Daman and Diu Public Gambling Act (1976)" after which licensed casinos and game of chance got permitted in Goa and Daman & Diu; Also, in Section 30 of Indian Contract Act (1872) which reads as "Agreements by way of wager is void and unenforceable" but it is not prohibited by law hence it cannot be termed as illegal (Gherulal Parakh v. Mahadeodas Maiya & Ors., 1959); Furthermore, "Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations

(2017)" and Consolidated Foreign Direct Policy (2017) has regulated and prohibited the foreign investments and foreign technology in the acts and activities related to gambling through clause 5.1(a) and 5.1(b). (Law Commission of India, 2018).

6. COST-BENEFIT ANALYSIS

i. Prohibitory gambling legislations

Costs	Benefits
Loss of revenue and jobs	Reduced crime rate
Increased hidden gambling	Vulnerable section of society will be protected
Reduced GDP, monetary and fiscal benefits	Instances of loan sharking will decrease
Reduced welfare schemes	
Increased surveillance cost	
Expenditures of prohibitory authority	

Table 1: Costs and Benefits associated with Prohibitory Gambling Legislations

Analysis

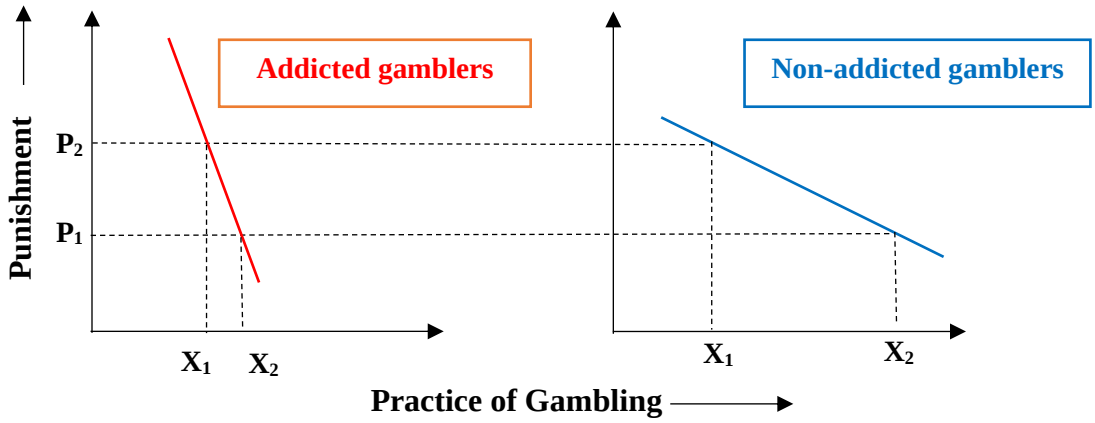
This type of legislation is not beneficial especially in case of online gambling (Law Commission of India, 2018) and addicts but it could be beneficial for the non-addicts because for addicts the demand of involvement in practice of gambling is inelastic just like the demand of an essential commodity and for non-addicts the demand of involvement in practice of gambling is elastic just like the demand of a luxury commodity (Cooter & Ulen, 2016). As shown in Graph 2 For addicts the difference of P_2 - P_1 will be greater than X_2 - X_1 while for non-addicts the difference of P_2 - P_1 will be smaller than X_2 - X_1. Thus, the deterrence created by prohibitory gambling legislation(s) would be efficient for non-addicted gamblers, but it will not be efficient for addicted gamblers.

Assumptions

a. This curve of Expected punishment v. practice of gambling will follow the 1st law of deterrence.

b. Non-addicted gamblers are rational, and they can be influenced by positive or Negative incentives.

c. Addicted gamblers are assumed to have a lesser rationality, and they cannot be influenced by positive or negative incentives.



Graph 2: Expected punishment versus practice of gambling curve

Source: Author's own construction also refer to (Cooter & Ulen, 6th ed., pp. 518)

ii. Permissive gambling legislation

Costs	Benefits
Crime rate will increase	Revenue & employment generation
Vulnerable section of society will not be protected	Reduced hidden gambling
Number of addicted gamblers will increase	Increased GDP
Parallel economy of black money will be enhanced	
Instances of loan sharking will increase	
Economic disparity in society will be created	

Table 2: Costs and Benefits associated with Permissive Gambling Legislations

Analysis

This type of legislation on the one hand might be helpful during economic recession (Wilkinson, 1996) for the purpose of revenue collection but on the other hand it will increase the probability of transmutation of non-addicted gamblers into addicted gamblers. As shown in Graph 3 & 4, the

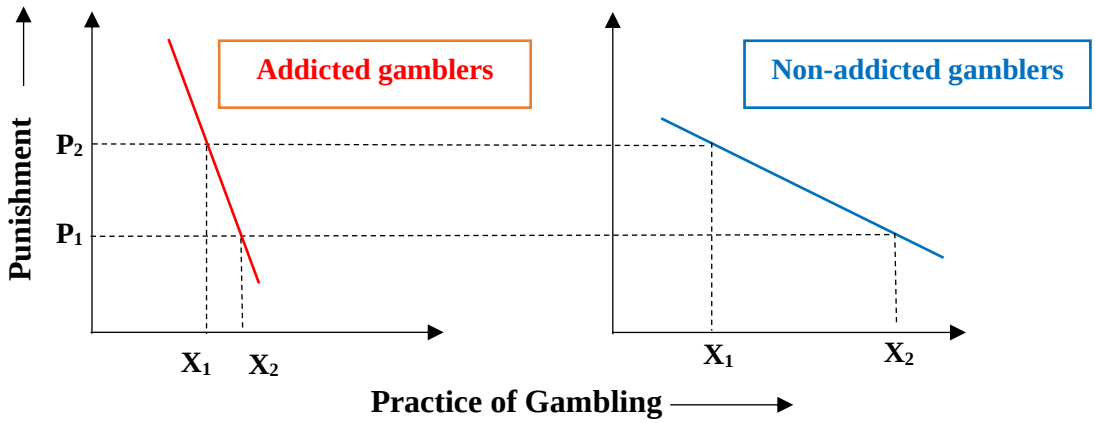
steepness of the curve of expected punishment versus practice of gambling for non-addicted gamblers increased because of the increased supply of offence which is the consequence of less or no punishment (Cooter & Ulen, 2016). Thus, the permissive gambling legislation(s) would be beneficial for short run but in long run it will give rise to the devastating aftermaths which will require huge amount of social cost to internalize the externalities it had created.

Assumptions

a. This curve of Expected punishment v. practice of gambling will follow the law of demand and 1st law of deterrence.

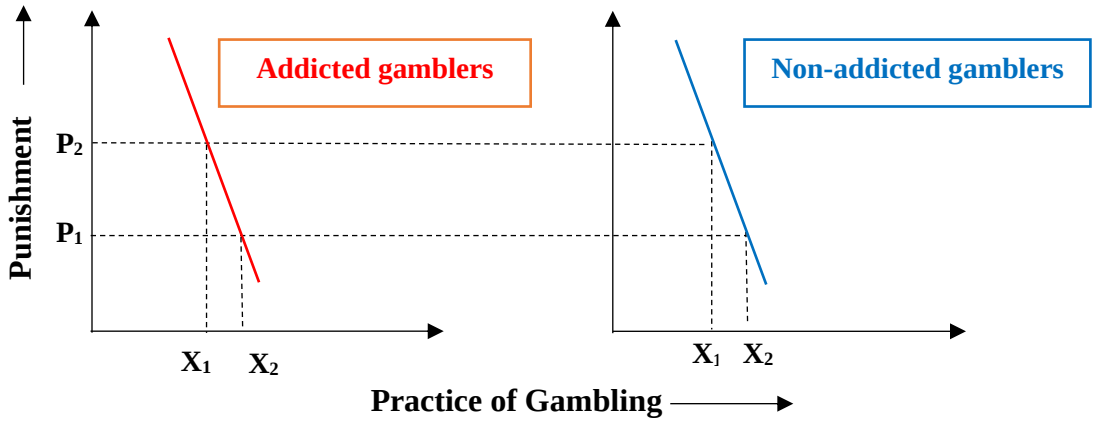
b. Non-addicted gamblers are rational, and they can be moved with Positive or negative incentives.

c. Addicted gamblers are irrational, and they cannot be moved with positive or negative incentives.



Graph 3: Before implementation of permissive gambling legislation(s)

Source: Author's own construction also refer to (Cooter & Ulen, 6th ed., pp. 518)



Graph 4: After implementation of permissive gambling legislation(s)

Source: Author's own construction also refer to (Cooter & Ulen, 6th ed., pp. 518)

iii. Regulatory gambling legislations

Costs	**Benefits**
Increased surveillance cost	Revenue generation
Need of more human resource	Employment & job creation
Expenditures of regulatory authority and technological advancements	Increase transparency in market & reduced hidden gambling
	Decreased per capita tax
	Increased GDP
	More welfare schemes
	Vulnerable section of society will be protected
	Source of pleasure
	Entertainment industry & tourism will flourish
	Instances of loan sharking will decrease
	Connecting and organized crimes will reduce along with reduced crime rate

	Curbed parallel economy of black money
	Surveillance of habitual offenders

Table 3: Costs and Benefits associated with Regulatory Gambling Legislations

a. Analysis

Prohibitory legislation(s) is not efficacious for addicted gamblers while permissive legislation(s) leads to devastating effects on non-addicted gamblers. Therefore, none of them is suitable for governing the practice of gambling neither socially nor economically. But, as shown in Table 1, 2 & 3 regulatory legislation(s) provides a middle path between prohibitory and permissive legislation(s) for the governance of practice of gambling by internalizing the cost factors of both prohibitory and permissive legislation(s) in its benefit factors. Thus, regulatory gambling legislation will be efficacious for both addicted and non-addicted gamblers, and is beneficial from the viewpoint of present and future socio-economic aspect.

7. REGULATION OF GAMBLING

i. Introduction of the concept of Gambling-worthiness and Gamble scoring

There is a concept called creditworthiness in banking finance which describes the credit-related activities of individuals and organizations. This concept is used by banks and other lenders to assess the ability of applicant to repay the credit (Broecker, 1990). In India, this creditworthiness of an applicant is rated by credit bureaus like TransUnion CIBIL (Credit Information Bureau India Limited), Experian, Equifex and CRIF (Centre for Research in International Finance) High Mark as per the Credit Information Company (Regulation) Act (2005). These credit bureaus use credit scoring to define the creditworthiness of the applicants on a scale. "Credit scoring is a statistical technology that quantifies the credit risk posed by a prospective or current borrower. Credit scores seek to rank order individuals by their credit risk so that those with poorer scores are expected to perform worse on their credit obligations than those with better scores." (Avery, Brevoort & Canner, 2009). The credit score is based on several factors like length of credit history, credit utilization, payment history, types of credit used and amounts owed etc. (Board of Governors of the Federal Reserve System, 2007). Currently, the concept of creditworthiness and credit scoring is used for various purpose like fraud detection, loan pricing, prescreening and account marketing,

estimating loss in event of default and estimating account profitability (Board of Governors of the Federal Reserve System, 2007).

Parallel to the concept of creditworthiness and credit scoring, a concept of Gambling-worthiness and gamble scoring can be innovated to regulate gambling and inculcating the culture of responsible gambling. The concept of Gambling-worthiness can be used to describe the gambling-related activities of individuals and organizations. This concept can be used by government agency to map out the gambling activeness of various gamblers and categorize them on the basis of their psychological and economic conditions. In India, this Gambling-worthiness of a gambler can be rated by establishing gambling regulating and monitoring bureaus like GIBIL (Gambling Information Bureau India Limited), through the Gambling Information Regulation Act which can be drafted by drawing parallels from Credit Information Company (Regulation) Act (2005) and its subsequent regulations. These gambling bureaus can use gamble scoring to define the Gambling-worthiness of the applicants on a scale. Gamble scoring will be a statistical technology that will quantify the psychological and economical risk posed by a prospective or current gambler. Gamble scores seek to classify individuals by their psychological and economical risk such that those with poorer scores are expected to perform worse on their psychological and economic conditions than those with better scores. The gamble scoring model can also be based on several factors like indebtedness, gambling history, loan sharking, income, credit utilization (Avery, Brevoort & Canner, 2009), credit score and age etc. The gamble score will be directly proportional to the factors like income, age, credit score and credit utilization because these will be the mitigating factors which enhances the capacity and capability of a person to involve in responsible gambling. The gambling score will be inversely proportional to factors like indebtedness, gambling history and instances of loan sharking because these will be the aggravating factors which reduce the capacity and capability of a person to engage in responsible gambling.

Gambling is seen with a taboo primarily because of two reasons, firstly it hampers the economic stability of the individual & subsequently its family and secondly it creates addiction. Both of these psychological & economic issues can be dealt by GIBIL and the concept of Gambling-worthiness and gamble scoring. It will help in identifying problem gamblers and pathological gamblers, curbing loan sharking and protecting vulnerable section of society.

ii. Legislations

It is one of the most important and precise driving forces for regulating an act or activity when everyone is living in a political state where there is a rule of law rather than the state of nature. In case of gambling focus on regulatory laws in place of prohibitory or permissive laws will be beneficial society at present because prohibitory laws will give upthrust to the gambling activities in dark and also after prohibition a source a revenue will drop resulting in an adverse on GDP, inturn leading to lesser investment by government in welfare schemes. The permissive laws on the contrary will give upthrust to the involvement of majority of population in which major chunk will be of vulnerable & poor people and minors, which will increase the crime rate and the number of cases of fraud, deceit and theft. Thus, in lieu of choosing any extreme path of prohibitory or permissive legislation a middle path of regulatory legislation will be socio-economically beneficial because through regulatory legislations the problem raised by the prohibitory legislation can be tackled by imposition of tax which is equal to the amount that can internalize the externalities created by a particular legalized gambling, also another problem of gambling activities in dark will be resolved up to an extent; also the problem raised by permissive legislation can be tackled by fixing the minimum age for gambling according to the "Indian Majority Act (1875)" along with fixing minimum income of gambler and fixing maximum limits of gambling. Furthermore, putting higher compulsory corporate social responsibilities on the companies and agencies involved in gambling for internalizing the externalities; establishment of a separate regulatory authority for licensing, reviewing, inspecting gambling will enhance the efficiency of regulatory legislations; a clear-cut clarification of penalties and punishments will enhance the efficiency of deterrence and adjudication procedure. Further, if all the gambling related transactions will be bound to happen digitally then it will help in the surveillance of various types of gamblers and criminals. Draft Bills like "Prevention of Sporting Fraud Bill (2013)" and bills like "The National Sports Ethics Commission Bill (2016)" and Finance Bill (2023) are the steps taken by the respective authorities in the direction of regulating acts and activities of gambling. Some state legislations which were enacted by various states of India includes, Bombay Prevention of Gambling Act (1887), Tamil Nadu Gambling Act (1930), Rajasthan Public Gambling Ordinance (1949), Meghalaya Prevention of Gambling Act (1970), Telangana Gaming Act (1974), Tamil Nadu Prize Schemes (Prohibition) Act (1979), Sikkim Online Gambling (Regulation) Act (2008), Nagaland Prohibition of Gambling and Promotion and Regulation of Online Games of Skill Act (2015), Sikkim Casinos (Control &

Tax) Act (2022), Tamil Nadu Prohibition of Online Gambling and Regulation of Online Games Act (2022).

iii. Formal & Informal Education

Formal education is the education that an individual gets from school by sitting in the class and attending the classes and lectures. It will act as a mode of communication which help in the transmission of the legislations and their legal provisions from Legislative, Executive and Judiciary to the public at large just like fundamental rights and duties are conveyed through books of political science etc. Along with this it will also help in conveying an analysis method which is known as Cost-benefit Analysis that can help an individual to quantify his or her decision in terms of pros and cons and then taking a decision regarding any policy or legislation of government about whether he or she should accept it or oppose it?

As it is commonly said that only legislation can't bring a quantum jump in society alone, a change from within the individual is required for bringing a change in society especially in the cases of activities like Gambling which also require a considerable amount of self-regulation. It can only be done with the help of informal education which an individual gets from his or her grandparents through stories. These long stories have very short morals which got imprinted in the memory of an individual in his or her childhood like "Honesty is the best policy", "Unity is strength" and many more. When it came to the application-based moral values, informal education will always have an upper edge over formal education because the latter can only help an individual in mugging up the sentences and their bookish meaning, but informal education helps an individual in learning the actual and real sense of moral values through experience. And once an individual learns something from his or her experience then he or she will never forget that thing even subconsciously. Thus, for bringing a radicle change in society regarding the perception of gambling whether it is good or bad? a spotlight focus will be needed on the Informal education along with the formal education.

8. IMPLICATIONS OF REGULATORY LEGISLATIONS OF GAMBLING ON ECONOMY

Law regulates the economic activities in a nation or society, and economy regulates the legal provisions of a nation or society. Thus, it can be inferred that law and economics share a common pool of symbiotic relationship according to which change in one will automatically bring changes in the other; and for bringing an artificial change in one there will be a need of bringing a change

in other likewise. Therefore, for bringing a change in the economy of a nation or society one should have characteristics of both '*homo economicus'* and *'leglis homo'*, so that the change will have concurrence among past, present and future socio-economic conditions of a nation or society. Regulatory legislation is one of the changes that balances the approach of both *'homo economicus' & 'leglis homo'*, and tries to hit the issue from both ends of law and economy. In the matter of gambling likewise, regulatory legislations will be more beneficial than prohibitory or permissive legislations from the point of view of economy because regulatory legislation will club & amplify the benefits and disband & condense the costs involved in the prohibitory or permissive legislation. For example, regulatory legislations will legalize gambling for the particular section of society which excludes minors, poor people getting subsidies from government under direct benefit transfer, people having per capita income less than a particular limit and other vulnerable people; generate revenue which will increase GDP and monetary & fiscal benefits for government so that government will use it for internalizing the externalities and investing in welfare schemes; enhanced surveillance will increase the demand of workforce which create job opportunities and reduce rate of unemployment, at the same time it will reduce the instances of loan sharking and curb the parallel economy of black money (Law Commission of India, 2018). Also, during the time of recession and relative prosperity it acts as a good source of revenue when revenue from business and other revenue generating activities decreases (Borg, Mason & Shapiro, 1990).

9. CONCLUSION

"As the society changes, the law cannot remain immutable" and that "the law exists to serve the needs of the society which is governed by it." (Central Inland Water Transport Corporation Limited & Anr. v. Brojo Nath Ganguly & Anr., 1986). Law and society are dynamic in nature and hence both change with time, economy serves as an interface between both law and society. Thus, change in either of them or both of them will have a major impact on the economy of the state. The practice of gambling is always seen with lens of moral negativity which acts as a barrier in the procedure of regulation of it so, by freeing the concept of gambling from unwelcome moral negativity, it becomes easier to regulate it as an activity. Hence, the regulatory framework for curbing the practice of gambling shall be in accordance with the constitutional morality which should be the actual touchstone for justifying state intervention along with the social morality (Law Commission of India, 2018).

At present, online access has made the practice of gambling much easier, faster, cheaper and at the same time more lethal for the public at large, especially for the vulnerable section of society. Prohibitory legislation(s) was neither efficacious in the ancient period nor efficient in the contemporary period because after prohibition, gambling activities started operating in black market which became a major source of influx of black money in the economy. As Niccolò Machiavelli said, "a prince should make himself feared in such a way that if he does not gain love, he at any cost avoids hatred." (Machiavelli, 1532/2003). Therefore, dealing with the practice of gambling with smart power which includes simultaneous use of regulatory legislations, gamble scoring with formal and informal education will be the smartest choice to avoid the backlashes of use of either soft or hard power alone.

10. POLICY SUGGESTIONS

i. Regulation at Production level

a. Make stringent and clarified provisions for mentioning the warnings of addiction and expenditure statements.

b. Imposing high Corporate Social Responsibility on the service providing firms for internalizing the externalities they have created.

c. A record of each player's activity should be kept and shared with regulatory bodies on a monthly or weekly basis (New South Wales, Gaming Machine Act (2001) sec. 3).

ii. Regulation at Consumption level

a. Identification of problem gamblers and pathological gamblers through the records shared by the service providing firms with the help of GIBIL index and then helping them with suitable treatment.

b. Motivating people to inculcate the habit of self-exclusion and pre-commitment of spending money and time on gambling along with motivating community services which promotes Informal and formal education about gambling and its legislation(s), 'to foster a responsible conduct in relation to gambling.' (New South Wales, Gaming Machine Act (2001)).

c. Surveillance of the gambler's account balance for curbing the instances of loan sharking and involvement in criminal activities.

iii. Regulation at Market level

This will be the biggest and most important factor in all the three regulatory stages because it will provide both positive and negative sanctions for the practice of gambling. Positive sanctions by increasing the flow of money in the market and negative sanctions by decreasing the flow of money in market through managing monetary and fiscal policies. So, the regulation of money flow can be done by:

a. Putting withdrawal limits from accounts for the purpose of gambling, along with linking the gambling account with the PAN card and KYC for curbing the loophole of duplication of accounts.
b. Putting a bar of a particular income level and age as the eligibility criteria for gambling.
c. Imposing heavy taxes on the practice of gambling both at production and consumption fronts.

iv. Policy Implications

a. Regulation of gambling through legislation(s) will generate revenue for the government which can be used for social welfare.
b. Legalization and regulation of gambling will reduce hidden gambling and hence reduce the influx of black money in the economy along with reducing the instances of loan sharking. (Law Commission of India, 2018).
c. Regulation of gambling followed by surveillance through GIBIL will keep an eye on individuals' earnings, borrowings and profits which will help in detecting thieves because gamblers generally hail from those who amass wealth by theft (Jois, 2021).
d. A proper regulatory framework will protect the vulnerable sections of society.
e. Increased surveillance and establishment of gambling firms will increase the need for more human resources hence will create more job opportunities.
f. Increase in the number of taxable populations will decrease the burden of tax on each taxpaying individual i.e., tax per person will decrease. (Law Commission of India, 2018).
g. The entertainment industry and tourism will flourish. (Law Commission of India, 2018).

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AN ECONOMIC PERSPECTIVE ON FEMALE CRIMINALITY IN THE 21ST CENTURY: TRENDS, PATTERNS AND SOCIETAL IMPLICATIONS

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ABSTRACT

The 21st century has witnessed a profound transformation in the landscape of female criminality, challenging traditional stereotypes and prompting a re-evaluation of our understanding of this complex issue. This paper explores the evolving patterns, trends, and factors influencing female involvement in criminal activities during this era of change. Firstly, we delve into the changing patterns and trends of female criminality in the 21st century, examining the types of crimes women are increasingly engaged in, from cyber crimes to violent offenses. Through this analysis, we aim to uncover the underlying dynamics and motivations driving these shifts. Secondly, we identify the root causes and risk factors contributing to female criminal behaviour in contemporary society. Factors such as socio-economic disparities, gender dynamics, cultural influences, and access to education and employment opportunities are scrutinized to better understand the driving forces behind female criminality. Lastly, this paper assesses the legal and social responses to female criminality, including the evolving role of the criminal justice system and societal attitudes towards female offenders. We also explore rehabilitation and reintegration programs tailored to the unique needs of female offenders, emphasizing gender-sensitive approaches and equitable outcomes.

Keywords: *Female Criminality, Traditional Stereotypes, Cultural influences, Fairness, Gender equity.*

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1. INTRODUCTION

The 21st century has brought about profound changes in the global economy, impacting every facet of society, including the nature and dynamics of criminal behavior. Female criminality, once largely overlooked or stereotypically understood, is now emerging as a significant area of concern, particularly from an economic perspective (Alston,2022). The increasing participation of women in various economic activities, driven by globalization, technological advancements, and shifting gender roles, has also led to a corresponding rise in female involvement in criminal activities. This introduction explores the intersection of economic factors with female criminality, highlighting how socio-economic disparities, unemployment, financial stress, and the pursuit of economic empowerment have contributed to the evolving patterns of female crime. As women navigate these economic challenges and opportunities, the motivations behind their engagement in both traditional and modern forms of crime, such as white-collar offenses and cyber crime, are increasingly influenced by the desire for financial security, social mobility, and economic independence (Richie,2012). Understanding these economic underpinnings is crucial for developing targeted interventions and policies that address the root causes of female criminality, ensuring both justice and the promotion of gender equity in the criminal justice system. It has witnessed significant transformations in various facets of society, from technological advancements to shifting cultural norms and evolving gender dynamics. One area that has not escaped this era of change is the realm of female criminality. The traditional narrative surrounding crime often portrayed women as less prone to engaging in criminal behaviour compared to their male counterparts. However, the past few decades have challenged and redefined this stereotype, revealing a complex and evolving landscape of female criminality that demands our attention and analysis. As we delve into the 21st century outlook for female criminality, it becomes evident that the factors influencing women's involvement in criminal activities are multifaceted and interconnected. Changes in social, economic, and cultural contexts have contributed to shifts in the patterns, motivations, and consequences of female criminal behaviour. This evolving landscape presents both challenges and opportunities for understanding and addressing the root causes of female criminality and developing effective strategies for prevention and intervention.

In this comprehensive exploration, we will delve into the key trends and factors shaping the contemporary landscape of female criminality. We will examine the various types of crimes women are increasingly involved in, the factors that drive their engagement in criminal activities, and the consequences they face within a justice system that has historically been

designed around male offenders. Additionally, we will consider the evolving roles of women in criminal justice professions, as well as the efforts being made to support and rehabilitate female offenders in ways that are more attuned to their unique needs and circumstances. As we embark on this journey through the 21st century outlook for female criminality, it is essential to recognize that this complex issue cannot be examined in isolation. Instead, it must be understood within the broader context of societal changes, gender dynamics, and criminal justice policies. By gaining a deeper understanding of the multifaceted nature of female criminality, we can work towards a more equitable and effective approach to addressing and reducing criminal behaviour among women in the 21st century. This study acknowledges the evolving nature of female criminality, which challenges traditional stereotypes that often portray women as less likely to engage in criminal activities. Recognizing this transformation is essential for a more accurate understanding of crime in contemporary society. By examining changing patterns and trends in female criminality, the study can inform policymakers and law enforcement agencies about the types of crimes that are on the rise among women. This information is crucial for developing effective crime prevention strategies and allocating resources appropriately. Identifying the root causes and risk factors contributing to female criminal behaviour provides valuable insights into the societal factors that may lead women to commit crimes. This knowledge can guide efforts to address these underlying issues, such as socio-economic disparities and gender dynamics, which can contribute to crime (Henry,2022)

2. STATEMENT OF THE PROBLEM

The 21st century has witnessed a notable evolution in the landscape of female criminality, marked by changing patterns, motivations, and consequences. This research aims to address the following critical problem statement as to what extent have shifting socio-economic factors, evolving gender dynamics, and emerging crime trends influenced the landscape of female criminality in the 21st century, and how can these insights inform more effective prevention, intervention, and rehabilitation strategies? This problem statement encapsulates the need to comprehensively understand the multifaceted nature of female criminality in the contemporary era and underscores the importance of utilizing this knowledge to develop targeted and equitable responses within the criminal justice system and society at large.

3. DISCUSSION/ FINDINGS & ANALYSIS

i. Conceptual Framework on Female Criminality Using Law and Economic Tools:

Female criminality can be analysed through the lens of law and economic tools, offering insights into the motivations and societal factors that drive women to commit crimes. Rational choice theory, a cornerstone of economic analysis, suggests that individuals weigh the costs and benefits of their actions. For women, socioeconomic vulnerabilities such as poverty, unemployment, and limited access to resources can tilt this cost-benefit balance, leading to crimes such as theft or fraud as a means of survival. Moreover, societal biases and perceived leniency towards female offenders might reduce the perceived risks, inadvertently influencing decisions to engage in criminal activity. Socioeconomic factors play a significant role in shaping female criminality. Gendered labour markets and wage disparities often leave women with fewer legitimate economic opportunities, pushing some toward illegal activities. The misuse of protective laws, driven by structural inequalities and moral hazard, also highlights how incentives and legal frameworks can be manipulated. Behavioural economics introduces the impact of emotional and psychological factors, such as domestic abuse or social stigma, which can frame criminal acts as justifiable responses to perceived injustice or desperation. Game theory provides another perspective, particularly in organized crime scenarios, where women may weigh loyalty against self-preservation when interacting with criminal networks or law enforcement. At the same time, feminist legal perspectives underline the structural inequalities that perpetuate female criminality, emphasizing the need for systemic reforms to address root causes. To mitigate female criminality, policy interventions must focus on economic empowerment through education, employment opportunities, and social support systems. Reforming laws to prevent misuse while maintaining protections is essential. Additionally, equitable enforcement of laws, along with tailored rehabilitation programs, can address the unique challenges faced by women offenders, fostering fairness and deterrence within the justice system. This integrated approach acknowledges the complexities of female criminality while promoting balanced legal and economic solutions (Belknap,2007).

The exploration of socio-economic disparities and cultural influences on female criminal behaviour is a complex and multifaceted subject that requires an in-depth analysis of various factors. Female criminal behaviour is influenced by a wide range of social, economic, and cultural factors, and understanding these influences is essential for the development of effective policies and interventions (Baxi, 2012). The examination of socio-economic disparities and cultural influences that contribute to female criminal behavior involves an in-depth analysis of the interconnected factors shaping the criminal conduct of women. This exploration delves into

the intricate web of social and economic conditions, as well as cultural forces, which collectively impact and potentially propel females towards engaging in criminal activities. The investigation seeks to unravel the underlying dynamics of how disparities in economic opportunities, societal structures, and cultural norms may influence and shape the pathways leading to criminal behavior among women. By scrutinizing these multifaceted influences, researchers aim to gain a comprehensive understanding of the complex interplay between socio-economic factors and cultural contexts that contribute to female involvement in criminal activities. The exploration of socio-economic disparities and cultural influences contributing to female criminal behavior involves a multifaceted analysis of interconnected factors. In dissecting socio-economic disparities, the availability of economic opportunities emerges as a pivotal factor, with limited access to education and employment potentially propelling some women toward criminal activities for survival. Societal structures, including gender roles, play a crucial role, as discrimination and unequal treatment may lead to criminal engagement as a form of resistance or coping. Additionally, institutional factors such as biases in the criminal justice system may exacerbate disparities, perpetuating a cycle of disadvantage. Turning to cultural influences, prevailing norms, and values regarding gender roles, family structures, and acceptable behavior impact criminality. Media representations and cultural stigma associated with female criminality also contribute, influencing self-esteem and alternative pathways to empowerment. Intersectionality, considering race, ethnicity, sexuality, and gender identity, further complicates the analysis, highlighting unique challenges faced by women from different backgrounds. In essence, this exploration seeks a comprehensive understanding of the intricate dynamics between socio-economic factors and cultural contexts, aiming to inform policies and interventions that address and prevent female criminal behaviour (Miller, 2006).

ii. Societal and Economic Implications

The increase in female criminality has profound implications for society and the economy. Economically, the criminal justice system incurs substantial costs related to the investigation, prosecution, and incarceration of female offenders. Furthermore, female criminality can lead to the destabilization of families, particularly when women who are primary caregivers are imprisoned. This disruption can have long-term economic consequences for children and dependents, potentially perpetuating cycles of poverty and crime. From a societal perspective, the rising rates of female criminality challenge traditional gender roles and stereotypes. Historically, women have been perceived as less likely to engage in criminal behavior, and their increasing involvement in crime may reflect broader social changes, including shifts in

gender norms and the evolving role of women in the economy. However, these changes also highlight systemic issues, such as inadequate access to education, employment, and social services, which may contribute to the economic marginalization of women and, subsequently, their involvement in criminal activities (Ghai, 2000).

i. Economic Impact on the Criminal Justice System

The growing number of female offenders places additional strain on an already burdened criminal justice system. This strain manifests in various ways, including the need for gender-specific facilities, programs, and services within prisons. Traditionally, the criminal justice system has been designed with male offenders in mind, leading to a lack of appropriate resources for women. For instance, prisons may not be equipped to address the specific health care needs of women, including reproductive health, mental health issues related to trauma and abuse, and substance addiction, which are more prevalent among female inmates. Moreover, the costs associated with the investigation, prosecution, and incarceration of female offenders are significant. These costs extend beyond the immediate expenses of maintaining prisons and court systems. There are also long-term economic consequences related to the loss of potential economic contributions from these women, many of whom are removed from the workforce and society for extended periods. The opportunity costs associated with incarcerating women—who might otherwise be productive members of society—are substantial and contribute to the broader economic impact (Miller, 2006).

ii. Disruption of Family and Social Structures

One of the most significant societal implications of female criminality is the impact on family structures. Women are often the primary caregivers in families, and their incarceration can lead to the fragmentation of family units. Children of incarcerated women are particularly vulnerable, as they may be placed in foster care or left in the care of relatives who may not have the resources or capacity to provide adequate support. The absence of a primary caregiver can lead to emotional and psychological trauma for children, which can have lasting effects on their development and future prospects (Daly, 2020). This disruption also has broader social implications. The destabilization of families can lead to an increase in poverty, as single-parent households or those headed by relatives may struggle to make ends meet. This economic instability can perpetuate cycles of crime, as children growing up in impoverished and unstable environments are at a higher risk of engaging in criminal behaviour themselves. The inter-

generational transmission of criminality thus becomes a significant concern, further entrenching social inequalities (Daly, 2020).

4. BRIEF ANALYSIS OF LEGAL PROVISIONS AFFECTING THE RATES OF FEMALE CRIMINALITY

The legal provisions related to female criminality encompass both protective and punitive measures, reflecting a wide-ranging perspective that aims to address women's roles as both victims and offenders. These provisions recognize the unique socio-cultural factors influencing women's involvement in crime while also addressing gender disparities in justice.

i. Protective Legal Provisions

a. Protection Against Domestic Violence The *Protection of Women from Domestic Violence Act, 2005* aims to safeguard women from physical, emotional, sexual, and financial abuse.

b. Anti-Dowry Laws: Section 498A of the Indian Penal Code (IPC) and the *Dowry Prohibition Act, 1961* criminalize dowry demands and harassment related to dowry.

c. Sexual Harassment and Assault Laws: The *Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013* and IPC provisions such as Sections 354, 376, and 509 protect women from sexual assault and harassment.

d. Trafficking and Exploitation: The *Immoral Traffic (Prevention) Act, 1956* and other related laws target trafficking and exploitation, with special provisions to protect women forced into criminal acts.

e. Protection of Reproductive Rights: Laws like the *Medical Termination of Pregnancy Act, 1971* and the *Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994* safeguard women's health and rights while addressing crimes related to forced abortions and female infanticide.

ii. Punitive Provisions Addressing Female Offenders

a. *Gender-Neutral Offenses*: Women involved in offenses like theft, fraud, and drug-related crimes are tried under general criminal laws such as the IPC and the *Narcotic Drugs and Psychotropic Substances Act, 1985*.

b. *Mitigating Factors for Female Offenders:* Laws like Section 360 of the *Code of Criminal Procedure (CrPC)* and the *Probation of Offenders Act, 1958* allow for leniency in sentencing, considering women's caregiving roles and socio-economic vulnerabilities.

c. *Laws Addressing Female-Specific Offenses*: Cases involving infanticide, abandonment, or exploitation by women are addressed under specific IPC provisions, reflecting the unique dynamics of female-perpetrated crimes.

iii. Gender-Sensitive Criminal Justice Reforms

a. *Gender-Responsive Policing:* Encouraging gender-sensitive investigation techniques to address both victimization and offending patterns among women.
b. *Rehabilitation and Re-entry Programs:* Legal frameworks support rehabilitation for women offenders through educational and vocational programs.
c. *Family-Centric Approaches*: Special considerations in sentencing for women with dependent children, promoting alternatives to incarceration.

5. GLOBAL PERSPECTIVE

Internationally, instruments such as the *Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)* influence domestic legal frameworks to address female criminality and victimization. The legal provisions addressing female criminality must balance punitive measures with protective safeguards to ensure justice, fairness, and gender equity in both preventing crimes and rehabilitating offenders. These frameworks are critical for addressing the broader socio-economic and cultural contexts that influence women's involvement in criminal activities.

6. THE ROLE OF SOCIAL SERVICES AND POLICY INTERVENTIONS

Addressing the societal and economic implications of female criminality requires a multifaceted approach that goes beyond punitive measures. There is a critical need for social services that address the root causes of female criminality, such as poverty, domestic violence, and lack of education. Policies that focus on prevention, rehabilitation, and reintegration are essential to breaking the cycle of crime and reducing recidivism rates among female offenders. Social services must be tailored to the unique needs of women, particularly those who are economically disadvantaged or victims of gender-based violence. Providing access to education, job training, and mental health services can empower women to make positive life choices and avoid criminal behaviour. Additionally, support systems for children of incarcerated women are crucial to preventing the long-term social and economic consequences of family disruption (Saxena, 2009). The discussion of female criminality also necessitates broader societal reforms. Efforts to reduce gender-based inequalities and provide equal opportunities for women in education and employment are critical to addressing the economic

and social pressures that lead to criminal behaviour. Legal reforms that ensure the criminal justice system is sensitive to the needs of women, including alternatives to incarceration such as community service and restorative justice programs, are also important. Furthermore, public awareness campaigns that challenge stereotypes and promote a more nuanced understanding of female criminality can help reduce the stigma associated with women who have been involved in the criminal justice system. Reducing this stigma is essential for the successful reintegration of female offenders into society and for ensuring that they have the support they need to rebuild their lives (Chesney, 2004).

7. SOCIETAL AND ECONOMIC IMPLICATION OF FEMALE CRIMINALITY IN THE 21ST CENTURY

The evolving patterns of female criminality in the 21st century carry significant societal implications, fostering a complex interplay of changing gender dynamics, legal considerations, and community impact. As women increasingly engage in various types of crimes, traditional gender roles face challenges, prompting a reassessment of societal perceptions. Legal and judicial systems must adapt to ensure fair treatment, while families and communities grapple with the potential breakdowns caused by female criminal involvement (Saxena, 2009). Economic consequences arise from financial losses due to crimes such as economic offenses and white-collar crimes, necessitating increased resources for addressing the aftermath. Public perception and stigma surrounding female offenders may contribute to their social isolation, underscoring the importance of challenging stereotypes for effective reintegration. Enhanced social services and rehabilitation programs tailored to women's unique needs become imperative, addressing mental health issues and socio-economic factors contributing to criminal behavior. Educational and preventive measures are crucial, promoting opportunities and support systems to mitigate the root causes of female criminality. As the landscape shifts, community safety concerns arise, demanding collaborative efforts from law enforcement and communities to ensure well-being while addressing underlying issues. Policymakers must adapt with gender-sensitive policies, and acknowledging intersectionality is key to understanding and addressing vulnerabilities within diverse groups of women. In navigating these implications, a holistic and inclusive approach is essential, prioritizing strategies for prevention, rehabilitation, and the equitable reintegration of women into society. The societal implications of female criminality in the 21st century extend beyond gender dynamics and legal considerations, encompassing broader social, economic, and cultural dimensions (Reilly, 2016). The evolving patterns of female criminality challenge not only traditional gender roles but also prompt a critical examination of the factors influencing the rise in women engaging in various

types of crimes. Within legal and judicial systems, the need for adaptation goes beyond fair treatment; it involves a reassessment of sentencing policies, rehabilitation efforts, and the development of gender-sensitive approaches to justice.

The impact on families and communities is substantial, as female criminal involvement can lead to potential breakdowns in social structures (James, 1993). Community trust may be eroded, and proactive measures are essential to prevent the perpetuation of cycles of criminality. Economic consequences stemming from crimes such as economic offenses and white-collar crimes contribute to financial losses, emphasizing the need for increased resources to address the aftermath and potential restitution to victims. Public perception and stigma surrounding female offenders contribute to their social isolation and hinder successful reintegration into society. Challenging stereotypes becomes paramount for fostering a more inclusive and supportive environment. Social services and rehabilitation programs tailored to women's unique needs become imperative, addressing mental health issues and socio-economic factors that may contribute to criminal behavior. Educational and preventive measures are crucial in mitigating the root causes of female criminality. Empowering women with opportunities and establishing robust support systems can contribute to breaking the cycle of criminal behavior. Community safety concerns, arising from evolving crime patterns, necessitate collaborative efforts between law enforcement and communities to ensure overall well-being while addressing underlying issues (James, 1993). The societal and economic implications of female criminality in the 21st century are multifaceted, reflecting broader social, economic, and cultural shifts. Traditionally, crime has been predominantly associated with men, but the increasing involvement of women in criminal activities necessitates a deeper examination of the underlying factors and the subsequent impacts on society and the economy. The rise in female criminality challenges long-standing gender norms and stereotypes. Historically, women have been viewed as the "gentler" sex, less likely to engage in violent or criminal behaviour. However, the growing rates of female involvement in crime suggest that these traditional gender roles are evolving. This shift may be indicative of broader societal changes, such as the increasing empowerment of women, changes in family structures, and the greater participation of women in the workforce. One significant societal implication is the impact on families. Women, often primary caregivers, play a crucial role in the family unit. When women are involved in criminal activities and subsequently incarcerated, the family structure can be destabilized. Children, in particular, are profoundly affected by the absence of their mothers, which can lead to emotional trauma, behavioural problems, and even an increased likelihood of engaging in criminal behaviour themselves. The ripple effect of female criminality can

perpetuate cycles of poverty, crime, and social disintegration. Moreover, the rising rates of female criminality highlight systemic issues within society, such as gender inequality, economic marginalization, and inadequate social services. Women who engage in criminal activities are often those who have been marginalized by society—economically disadvantaged, lacking in education, and without access to adequate healthcare or social support. This suggests that the rise in female criminality may be symptomatic of broader societal failures, where women are left with few options but to turn to crime (Brien, 2001).

8. ECONOMIC IMPLICATIONS

The economic implications of female criminality are substantial. The criminal justice system incurs significant costs associated with the investigation, prosecution, and incarceration of female offenders. These costs are not just financial but also extend to the broader economy, particularly in terms of lost productivity and the economic impact on families and communities(Brien P.,2001). When women, especially those who are primary caregivers, are incarcerated, the economic stability of their families is often jeopardized. This can lead to a cycle of poverty, where children are deprived of economic security, educational opportunities, and social stability. The long-term economic consequences of this can be severe, as children who grow up in such environments are more likely to experience poverty and engage in criminal activities themselves, thereby perpetuating the cycle. Additionally, the increasing criminalization of women reflects broader economic disparities. Women involved in criminal activities are often those who have been economically marginalized, lacking access to education, employment opportunities, and social services. This economic marginalization can push women toward criminal activities as a means of survival, further entrenching their disadvantaged position within society (James, 1993). From a broader economic perspective, female criminality also has implications for the labour market. Incarceration can lead to a loss of human capital, as women who are imprisoned may lose their jobs, skills, and employability. This loss is not only detrimental to the individual but also to the economy, as it reduces the overall productivity of the workforce (Spalek, 2007).

9. RECOMMENDATIONS:

Addressing female criminality requires a multifaceted approach that encompasses economic, educational, legal, and social interventions. Comprehensive economic support programs targeting poverty alleviation, job creation, and financial literacy are essential to reduce the economic pressures that often drive women toward crime. Educational and vocational training

tailored to women, including those formerly incarcerated, can enhance their employability and economic independence, offering sustainable alternatives to criminal behaviour. Gender-sensitive reforms in the criminal justice system are necessary to consider the unique circumstances of female offenders, such as caregiving responsibilities, ensuring fair and rehabilitative sentencing and incarceration policies. Mental health services and counselling should be expanded, especially for women who have experienced trauma or victimization, addressing underlying factors contributing to criminal behaviour. Family-centered interventions can provide critical support to the dependents of incarcerated women, breaking cycles of intergenerational poverty and criminality. For non-violent female offenders, community-based alternatives to incarceration, such as probation, restorative justice, or community service, can help maintain family and community ties while emphasizing rehabilitation. Investing in improved data collection and research on female criminality is crucial to identify effective intervention strategies and develop evidence-based policies. Public awareness campaigns aimed at challenging traditional gender norms and stereotypes can reduce the stigma associated with female criminality, fostering a more inclusive understanding of gender roles. Legal reforms addressing gender inequities in the criminal justice system, including equitable access to legal representation and protection against gender-based violence, are critical for justice and fairness. Strengthening partnerships with NGOs and community organizations working with at-risk women ensures that resources and support are directed effectively toward prevention and rehabilitation efforts. Together, these initiatives create a holistic framework to address the root causes and societal factors contributing to female criminality, emphasizing rehabilitation and integration over punitive measures.

10. SUGGESTIONS

Female criminality effectively requires a comprehensive approach that includes tailored rehabilitation programs specifically designed to address the unique psychological, social, and economic needs of women. These programs facilitate successful reintegration into society by focusing on individualized support. Empowerment initiatives, such as microfinance programs, entrepreneurship training, and leadership development, can economically and socially uplift women, reducing the likelihood of criminal involvement. Advocacy for policies that tackle the root causes of female criminality, such as poverty, systemic gender discrimination, and lack of education, is vital for long-term change. Cultural sensitivity training for law enforcement and judicial officers ensures a respectful understanding of the diverse cultural contexts influencing female criminal behaviour. For incarcerated mothers, childcare support programs are essential

to provide proper care and education for their children while preserving family bonds. Post-incarceration, long-term monitoring and support mechanisms can assist women in navigating re-entry challenges, thereby reducing recidivism. Preventive education programs in schools and communities play a critical role by teaching young women about the risks and consequences of criminal behaviour while offering alternatives and necessary support. Strengthening social safety nets, including welfare programs, housing assistance, and healthcare services, helps mitigate the economic vulnerabilities contributing to female criminality. Gender-responsive policing practices ensure the safety and dignity of women, particularly in addressing domestic violence, trafficking, and other gender-based crimes. Lastly, fostering public-private partnerships to create employment opportunities for women, especially those with criminal records, reduces economic barriers to reintegration and prevents repeat offenses. These comprehensive strategies collectively aim to address female criminality's root causes and provide sustainable solutions for prevention and rehabilitation.

11. ANALYSIS OF THE STUDY

Analysis of "An Economic Perspective on Female Criminality in the 21st Century" reveals that economic hardship and inequality are significant drivers of female criminality, with poverty and economic marginalization pushing many women into low-level crimes as a means of survival. Over time, there has been a noticeable shift in the types of crimes committed by women, moving from non-violent offenses to more organized and serious crimes, reflecting broader societal changes and the evolving role of women in the economy. Globalization and technological advancements have further contributed to these changing patterns, offering new avenues for crimes like cyber fraud and facilitating transnational crimes such as human trafficking. The societal implications of these trends are profound, challenging traditional gender norms and necessitating a more gender-sensitive approach within the criminal justice system. Additionally, the economic costs of female criminality are substantial, with the incarceration of women, particularly those who are primary caregivers, leading to the destabilization of families and long-term economic consequences for their dependents. The analysis underscores the need for policy reforms that address the root causes of female criminality, including poverty alleviation, improved access to education and social services, and the implementation of rehabilitative justice approaches. Moreover, it highlights the importance of considering intersectionality in understanding female criminality, as factors such as race and class intersect with gender to influence women's involvement in crime. Overall,

the analysis emphasizes the need for a comprehensive and multifaceted approach to addressing female criminality in the 21st century, taking into account both economic and societal factor

12. CONCLUSION

The economic perspective on female criminality in the 21st century reveals a complex interplay of factors that shape the experiences and decisions of women involved in criminal activities. As society continues to evolve, so too do the economic pressures and opportunities that influence female criminality. In understanding this phenomenon, it is essential to consider the broader socio-economic context in which these women operate. The increasing participation of women in the labor market, while a positive development in terms of gender equality, has also exposed many to new forms of economic stress and exploitation. Women who are marginalized due to low income, lack of education, or limited access to resources may find themselves resorting to criminal activities as a means of survival. This is particularly true in environments where legal employment opportunities are scarce, and where women are expected to fulfill traditional roles while also contributing economically to their households. Moreover, the globalization of the economy and the rise of transnational crime have created new avenues for female criminal involvement, from trafficking and drug smuggling to cybercrime. Women's participation in these activities is often driven by economic necessity, coercion, or a combination of both. The criminal justice system's response to female criminality, however, has often been inadequate, failing to address the underlying economic and social factors that contribute to women's involvement in crime. Furthermore, gendered disparities in the criminal justice system, including biases in sentencing and treatment of female offenders, exacerbate the challenges faced by women involved in crime. Economic disadvantage is frequently compounded by legal systems that are not attuned to the specific needs and circumstances of female offenders, leading to cycles of recidivism and marginalization. In conclusion, the economic perspective on female criminality underscores the need for a more nuanced and intersectional approach to crime prevention and criminal justice reform. Addressing female criminality in the 21st century requires not only a focus on economic empowerment and gender equality but also a re-evaluation of societal structures that perpetuate inequality and marginalization. By tackling the root causes of economic disadvantage and providing support systems that enable women to thrive without resorting to criminal activity, society can reduce the incidence of female criminality and promote a more just and equitable world. This holistic approach is essential for breaking the cycle of poverty,

crime, and punishment that many women find themselves trapped in, and for fostering a society where all individuals, regardless of gender, can achieve their full potential.

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