Carpe Quartam

A Quarterly Newsletter by RSRR

RGNUL STUDENT RESEARCH REVIEW

Issue 5, January 2024

rslr@rgnul.ac.in
www.rsrr.in

RGNUL STUDENT RESEARCH REVIEW

Carpe Quartam

A QUARTERLY NEWSLETTER BY RSRR

JANUARY 2024 || EDITION #5

TABLE OF CONTENTS

RGNUL STUDENT RESEARCH REVIEW

Carpe Quartam

A QUARTERLY NEWSLETTER BY RSRR

JANUARY 2024 || EDITION #5

PREFACE

Carpe Quartam, a quarterly newsletter published by RSRR, is committed to democratizing legal research, making it more accessible to students and professionals alike while putting a spotlight on the activities undertaken by the RSRR Board in furthering its mission.

RSRR released the Call for Papers of Volume 10 Issue 1 of its Journal, in collaboration with IndusLaw on the theme, "Evolving Corporate Frontiers: Law and Governance Perspectives". This volume seeks to explore the diverse and critical approaches to corporate governance, and how the law affects business operations and decision-making.

Kavya Mittal and Naren Maran, Assistant Editors at the RSRR, write an editorial column on menstruation and its allied legal considerations as they concern paid leaves. They explore the jurisprudence on this point and provide policy suggestions to create a favourable legal regime.

In other news, the Editorial Board of RSRR held an on-campus event with Project 39A, National Law University, Delhi, on the theme of "Decoding Forensics: Interplay of Law & Sciences". The event featured discussions on forensic sciences as well as career prospects by Ms Shreya Rastogi - Director (Forensics & Death Penalty Litigation at Project 39A), Ms Maria Divya Sahayaselvan - Associate (Research at Project 39A) Forensics and Ms Saloni Ambastha - Associate (Research at Project 39A) Forensics. This was followed by a Q/A session to allow prospective entrants into the field to gain a specific and practical understanding of the issues concerned.

Kanav N Sahgal, Project Manager at the Samvidhaan Fellowship and Communications Manager at Nyaaya writes for the Excerpts from Experts series on the Supreme Court of India's decision in the marriage equality case. Readers may wish to keep an eye out, for a Word Search based on the contents of this Issue awaits them at the end.

We hope this edition is an insightful read!

RSRR Editorial Board

ABOUT RSRR

The RGNUL Student Research Review (RSRR) Journal (formerly RGNUL Student Law Review) is a bi-annual, student-run, blind peer-reviewed journal based at Rajiv Gandhi National University of Law, Punjab. It is a flagship law journal of RGNUL managed by the students of the University. It was founded with the objective of facilitating novel ideas and a research conducive environment. RSRR regularly engages the student community, as well as legal practitioners, to contribute to the legal discourse on various topics. Additionally, RSRR also runs its Blog Series, which deals with specific contemporary issues of law. The RSRR Blog Series has been named amongst the top 25 Constitutional Law Blogs internationally by Feedspot, consecutively for three years.

The journal encompasses myriad fields of law and proliferates novel legal discourse through opinions, suggestions and extensive analysis of contemporary issues from numerous areas of law, covering widely discussed topics like tech law and antitrust law to more nascent areas like energy law, space law, Et al.

Initiatives of RSRR Law Journal

Each year, the RSRR Editorial Board selects a contemporary theme for its journal and invites research papers in the form of short articles, long articles, case comments and normative law articles, from academicians, industry stakeholders as well as law students. The Editorial Board also constitutes the Peer Review Board for the journal, comprising of distinguished experts and jurists in the field of the selected theme. The previous volumes of the RSRR Journal can be accessed here- **https://www.rsrr.in/**. The past Peer Review Boards and Guest Author roster can be viewed here and here respectively. No article submission or processing charge is required to be paid for the publication of any article in the journal.

Blogs

Rolling Blog Series - The RSRR's online blog accepts Rolling Submissions throughout the year. These deal with a variety of areas in the law and social sciences, and attempt to deal with the concerns that may arise in the practice of law and governance.

Themed Blog Series - The RSRR began running the 'RSRR Blog Series' in the year 2017. Periodically and typically for a month, RSRR releases a 'Call for Blogs' on contemporary and relevant themes. The Editorial Board also invites Guest Authors, who are distinguished experts in the selected field of law, to contribute to the Blog Series. Submissions are invited from academicians, scholars, as well as law students. A blog is typically 1500-2100 words, which are published on the RSRR website.

Editor's Column

This category constitutes blogs authored by the Editors of the RSRR Editorial Board. These blogs are written on current and relevant issues, which may be themed or open for the editors to choose.

Excerpts from Experts

Excerpts From Experts is a novel initiative by RSRR, started in 2020, initiated to bring forth discussion by experts on contemporary legal issues, belonging to their field of expertise. The aim is to provide our readers with well-researched and quality legal content written by the Guest Authors.

Research Assistantship Program

RSRR became the first Editorial Board at RGNUL, Punjab to offer Research Assistantship to its Editors and students of RGNUL. This is an opportunity to work with Guest Authors invited to contribute to RSRR's Journals and Blog Series. This initiative of RSRR is aimed at increasing hands-on knowledge and promoting a culture of academic research and writing at RGNUL. With various Guest Authors invited to write for RSRR's Journals and Blog Series, RSRR is providing students with an opportunity to learn from and work under the guidance of various academicians and lawyers, pioneers in their fields. A Research Assistant (RA) works under the guidance of the Guest Author to assist them in their research. An RA carries out supplementary research for them and assists in the overall research, in the instances required.

Notable Collaborations of RSRR

RSRR has occasionally collaborated with varied organisations for issues of the Journal or Blog Series. RSRR has had notable collaborations for projects with the following organisations:

- Collaboration with PRS Legislative Research for a Practicum Series on "Understanding the Functioning of Parliament, Law Making and the Career Avenues in Public Policy".
- Collaboration with Ikigai Law for the Blog Series on the theme: "Regulating E-Sports: Paving the Road Ahead" and "Emerging Technologies: Addressing Issues of Law and Policy".
- Collaboration with Arogya Legal and Medical Students Association of India for RSRR Journal Volume 6.1 on the theme: "Healthcare in India: Tracing the Contours of a Transitioning Regime".
- Collaboration with Nishith Desai Associates for the Blog Series on the theme: "Digital Healthcare in India".
- Collaboration with Mishi Choudhary and Associates for the Blog Series on the theme: "Addressing Legal Concerns of AI: A Clarion Call".
- Collaboration with Mishi Choudhary and Associates for a Webinar Series on Artificial Intelligence.
- Collaboration with Common Cause India for Panel Discussion on "Citizen-Police Interaction and Policing in the Pandemic".

FOURTH EDITION: RECAP

In the latest edition of Carpe Quartum, RSRR's quarterly newsletter, we commemorated a decade of our journey by unveiling our redesigned website and logo. At RSRR, we are dedicated to upholding excellence in legal scholarship and contributions. In pursuit of this mission, the Editorial Board hosted the RSRR Orientation for the Batch of 2028.

Editors Richa Maria and Shagnik Mukherjea delved into the realm of International Humanitarian Law, examining recent political shifts towards the militarization of space in their editorial column. However, our celestial discourse didn't end there; we also explored dissent in the Jammu and Kashmir region.

We are pleased to announce Ms. VM Aishwarya as the winner of the RSRR-CTIL Blog Series. Additionally, we received engaging entries from first-year students of RGNUL for the Cinejuris Competition, tackling intricate themes such as homosexuality, adoption, surrogacy, and drunk-driving depicted in cinema.

Furthermore, we had a stimulating conversation with Mr. Samraat Basu (Batch of 2017), an esteemed alumnus of RGNUL and former member of the Editorial Board. He shared insights into his career trajectory, contemporary legal developments, and offered advice on pursuing a career in technology and data privacy.

RELEASE OF VOLUME 9 ISSUE 1

We are thrilled to announce the release of Volume 9, Issue 1 of the RGNUL Student Research Review-Journal published by the Registrar, Rajiv Gandhi National University of Law, Punjab. Our latest issue delves into the evolving developments and addresses crucial legal considerations in the dynamic realm of energy law. The said Issue navigates the complexities and explore the path forward for a sustainable and regulated energy future. The Editorial Board extends its sincere gratitude to all contributors for their invaluable contributions that led to the successful release of Volume 9.1 of the Journal. Our heartfelt appreciation extends to all stakeholders involved in making this publication possible.

For the latest issue of the RSRR Journal-Volume 9.1, we had the privilege of having the following eminent personalities from the legal fraternity on our Peer Review Board:

1. Mr. Ramanuj Kumar - Partner at Cyril Amarchand Mangaldas (Projects & Project Finance)
2. Mr. Qais Jamal - Partner at AZB & Partners (Infrastructure & Energy)
3. Dr. Manish Yadav - Associate Professor at National Law Institute University, Bhopal
4. Dr. Gayathri D. Naik - Assistant Professor of Law at National Law School of India University, Bangalore
5. Mr. Sonal Verma - Partners & Global Leader (Market & Strategy) at Dhir & Dhir Associates
6. Mr. Srinivas B.R. - Partner at DSK Legal (Real Estate, Corporate Law, Infrastructure, Renewable Energy)

We also had the honour of having the following eminent personalities from the legal fraternity as our Guest Authors:

1. Mr. Badrinath Srinivasan, Senior Manager (Legal) at Directorate General of Hydrocarbons (DGH)
2. Dr. Madhubanti Sadhya, Assistant Professor of Law at National Law School of India University, Bengaluru
3. Ms. Lydia Powell, Distinguished Fellow at Observer Research Foundation
4. Dr. Divya Singh Rathore, Assistant Professor of Law, National Law University, Odisha

CALL FOR PAPERS: VOLUME 10 ISSUE 1

The Editorial Board of RGNUL Student Research Review (RSRR) in collaboration with IndusLaw, is pleased to announce its Call for Papers for Volume 10, Issue 1 of the Journal.

Recent years have witnessed incredible growth in the complexity of modern corporate laws. This is largely attributable to the changing market dynamics and the exponential growth in technological innovations, their advancements, and their infiltrations in different industries. Such growth and intersections have a huge implication on people's business and human right. On the international front, the UN Guiding Principles on Business and Human Rights emphasise on the importance of a State's duty to safeguard and promise a business culture that respects human rights both domestically and internationally.

The developing need to have an improved framework of corporate law with better governance is evident through the recent spotlighting of corporate scams that have gone unnoticed for years. To explore the impacts of these issues and devise solutions via legislative and policy intervention, RSRR, in collaboration with IndusLaw, seeks to delve into the theme, "Evolving Corporate Frontiers: Law and Governance Perspectives," to facilitate meaningful discourse on emerging trends in corporate law, ethics and governance.

RSRR invites submissions from students, academicians, lawyers and other professionals from the legal fraternity in the form of Articles, Short Notes, Case Comments, Legislative Comments, and Normative Law Articles.

The deadline for the abstract submission was 31st January, 2024. The date for the final submission was 2nd March, 2024. The board is currently in review of the manuscripts received.

The Marriage Dilemma: The Supreme Court's Questionable Interpretation of Autonomy and Dignity in the Marriage Equality Case

This article has been authored by Kanav N Sahgal, Project Manager at the Samvidhaan Fellowship and Communications Manager at Nyaaya. This blog is part of the RSRR's Excerpts from Experts series.

Judicial Paradox: Recognizing Exclusion but Denying Any Remedy

On October 17, 2023, a five-judge bench of the Supreme Court of India delivered its long-awaited verdict in the marriage equality case: Supriyo v. Union of India. The case centered on a set of petitions submitted by members of the queer community, seeking a substantive acknowledgment of their right to marry under the Special Marriage Act (SMA) of 1954- a law that currently governs marital relations in India under a secular legal code. The petitioners contended that the SMA's exclusion of queer couples was discriminatory, and constituted a violation of their fundamental rights.

In a unanimous decision, the court ruled against the petitioners, holding that the right to marry was not fundamental for anyone—queer and non-queer alike (See, opinion of Dr Dhananjaya Y Chandrachud, Paragraphs 117-185; Opinion of Sanjay Kishan Kaul, Paragraph 3; See opinions of S. Ravindra Bhat and Hima Kohli, Paragraphs 45-50; Opinion of Pamidighantam Sri Narasimha, Paragraphs 4-14). Consequently, the court held that the exclusion of queer couples from the ambit of the SMA, though regrettable, could only be remedied by the legislature and not the judiciary (See, opinion of Dr Dhananjaya Y Chandrachud, Paragraphs 204-208; Opinion of Sanjay Kishan Kaul, Paragraph 17; See opinions of S. Ravindra Bhat and Paragraphs 71-104; Opinion of Pamidighantam Sri Narasimha, Paragraph 12). However, the court was divided on the legality of adoption rights and civil unions. Two justices held that the current adoption regime was discriminatory insofar as it discriminated against unmarried couples and, by extension, queer couples (See, opinion of Dr Dhananjaya Y Chandrachud, Paragraphs 288-323; Opinion of Sanjay Kishan Kaul, Paragraph 3). The same two justices also held that while the constitution did not confer a right to marry upon anyone, it did confer upon the state the responsibility to legally recognize unions (See, opinion of Dr Dhananjaya Y Chandrachud, Paragraph 244; Opinion of Sanjay Kishan Kaul, Paragraph 11). Unfortunately, the majority bench of three justices disagreed, and so, the verdict came with no legal relief for the queer petitioners on all three fronts: marriage under the SMA, the legal recognition of civil unions, and adoption rights.

Why did the majority diverge from Justice DY Chandrachud and S. Ravindra Bhat's opinions? In their opinion, Justices Bhatt and Kohli jointly stated that "addressing all these aspects and concerns means considering a range of policy choices,

involving a multiplicity of legislative architecture governing the regulations, guided by diverse interests and concerns—many of them possibly coalescing." (In Paragraph 118 of their judgment). Therefore, they believed that the complexities surrounding the recognition of marriage and unions was beyond the court's purview as it was more of a legislative exercise, leading them to delegate this responsibility to Parliament. Additionally, the judgment did not specify a timeline for Parliament to enact a law for queer couples, nor did it state that Parliament must explicitly acknowledge their marital rights. The court's ruling, which merely suggests that Parliament deliberate on the matter without mandating any relief, functions more as an advisory than a binding directive.

In addition to this, serious flaws exist in the court's legal reasoning, some of which have already been highlighted in two review petitions challenging the verdict. A prominent issue among these flaws was the majority's acceptance of the discriminatory impact of excluding queer couples from the SMA, without providing a concomitant binding declaration to ensure that the state remedies this "complex" form of discrimination. To address the issue of complexity, the petitioners presented constitutionally compliant recommendations to the Bench throughout the hearings that, if adopted, would have allowed the state to recognize queer marriages with minimal tinkering of the SMA. This would have averted discrimination and upheld the petitioners' rights. Furthermore, the Supreme Court had the authority to mandate the state to do so under Article 32 of the Indian Constitution, which expressly states that the court has the power to not just recognize fundamental rights but also enforce them.

The other issue with the majority's reasoning was the non sequitur nature of their conclusion. While acknowledging the discriminatory impact of queer exclusion from the institution of marriage, the court oddly concluded that no enforceable remedy could be provided because the right to marry itself was not fundamental. This is odd because in paragraph 148 of their opinion, the majority expressly acknowledged that such discrimination was indeed a violation of Article 15 of the Constitution (which prohibits the state from discriminating against any citizen on the grounds of sexual orientation and gender identity); and yet, the majority refused to exercise its power under Article 32 to enjoin this discrimination.

This poses a significant problem for petitioners because Article 141 confers the Supreme Court with the authority to have the final say in remedying all fundamental rights violations. The court's refusal to offer any relief to the queer community raises concerns about the legitimacy of the court and the effectiveness of our legal system which is supposed to protect the rights of all marginalized communities.

Marriage as a Matter of Personal Choice

At the heart of the Court's reasoning in Supriyo was the observation that marriage was a matter of personal choice. The Court asserted that the fact that something is a matter of personal choice and desirable does not automatically warrant its elevation to the status of a fundamental right. "The importance of something to an individual does not per se justify considering it a fundamental right, even if that preference enjoys popular acceptance or support," said Justices Narasimha and Kohli in paragraph 49 of their opinion. However, the same top court's rulings in previous cases show a completely opposite reasoning. Key among them is the court's jurisprudence on abortion and privacy. The right to abortion is both a matter of healthcare necessity and reproductive choice —a choice that abortion rights proponents argue is essential for the mother to make to lead a dignified and autonomous life.

The same court has consistently held that a woman's right to an abortion is a facet of personal liberty and that this choice was protected from unreasonable state interference under Article 21 of the Constitution (which guarantees each person the right to life and the right to personal liberty). This principle was established in Suchita Srivastava v Chandigarh Administration (2009) and reaffirmed more than a decade later in X vs. Principal Secretary, Health and Family Welfare Department, Govt. of NCT of Delhi and Another (2022). It should be noted that even the queer people's right to marry under the

SMA. In this instance, however, the court diverged from precedent, holding that queer people's choice to marry was not protected by the Constitution.

Regarding privacy, a nine-judge bench of this Court unanimously recognized it as a fundamental right in Justice K.S. Puttaswamy (Retd.) & Anr. vs. Union of India & Ors. (2013). Writing for the majority, Justice DY Chandrachud held that "The concept of privacy is founded on the autonomy of the individual. The ability of an individual to make choices lies at the core of the human personality. The notion of privacy enables the individual to assert and control the human element, which is inseparable from the personality of the individual. The inviolable nature of the human personality is manifested in the ability to make decisions on matters intimate to human life." (In paragraph 168) Despite these progressive rulings on individual autonomy, dignity and personal choice, the court rejected the petitioners' constitutional claims on each of these fronts. The court went further and held that the state was not compelled to recognize such relationships, even though this non-recognition specifically and significantly impacted their ability to lead a dignified life (dignity, as the court held in Puttaswamy, is a facet of privacy) and constituted discrimination based on gender identity and sexual orientation—both of which are protected categories under Article 15 of the Constitution. This decision is both incoherent in its reasoning and invidious in its impact.

In contrast, while granting no right to marry, the court did acknowledge an amorphous "right to a relationship, asserting that all couples in India, regardless of sexual orientation and gender identity, had the right to enter a relationship if they wished. However, only heterosexual and cisgender couples could have these relationships officially recognized by the state. In the absence of mandating any deadline for the state to recognize queer relationships, the court went against its own precedent which previously upheld individual choice in the face of hostile state action. For those queer couples who want to choose to voluntarily opt into the institution of marriage, that choice would remain closed off to them as long as the state deemed fit. And since the court mandated no remedial action, this exclusion could potentially persist forever.

The essence of the Supriyo judgment is clear: state-sanctioned discrimination against queer couples is now legally acceptable in the realm of family law, and the Constitution does not view queer relationships as equal to their non-queer counterparts. Furthermore, until the state decides to act, this discriminatory treatment is acceptable under the law, even though the right to live a dignified and autonomous life, free from unreasonable state interreference, was upheld as a fundamental right in Puttaswamy.

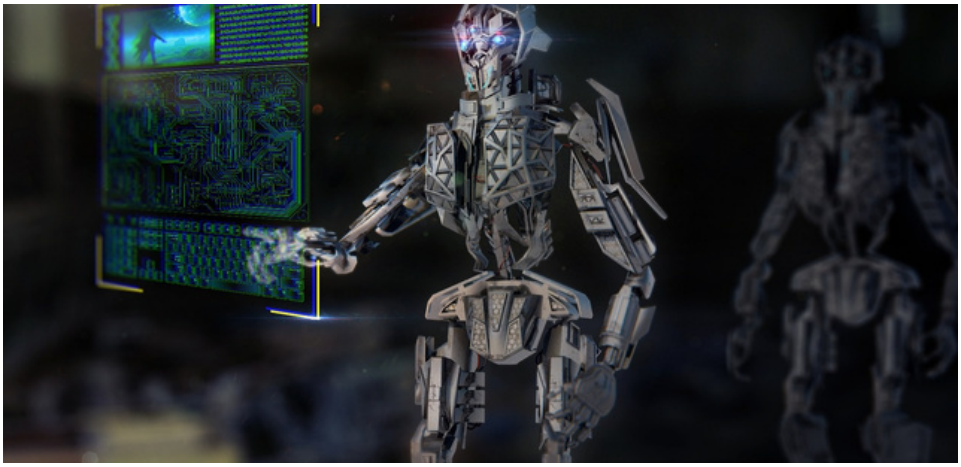
This carte blanche license to discriminate against queer people is repugnant because it keeps them as second-class citizens. It is well-established that marriage not only shapes the course of one's personal, emotional, and social journey but also plays a decisive role in determining the potential future of any children the couple may choose to bring into the world. It is, in many ways, one of the most significant choices a person makes in their lives. And yet, the court remained indifferent to the far-reaching consequences of this denial. Supriyo not only undermines principles of equal rights and nondiscrimination but also sends a troubling message about the perceived worth of queer relationships to the people—the very same people who elect lawmakers in whose power it is now to legalize queer marriages.

Supriyo's Impact

By offering no relief, Supriyo has left queer people exactly where they were even before the case began. It did not advance queer rights by an inch, making it a deeply disappointing decision. To compound the disappointment, the Court also declared that marriage was not a fundamental right for anyone, implying that any future state action barring any two persons from marrying may be held as constitutional. Consider a hypothetical scenario where the Indian state decides to ban or restrict heterosexual marriages between Indian and certain foreign nationals (such as Canadian, Chinese, and Pakistani nationals) under the SMA or the Foreign Marriage Act due to concerns of "national security". While such relationships are presently recognized under the law, following the passage of Supriyo, their status is now in jeopardy. The same uncertainty applies to the validity of the SMA itself, whose provisions could now be diluted if the state deems it appropriate. Supriyo's failure to advance queer rights, coupled with its explicit denial of marriage as a fundamental right, leaves queer people in a precarious position.

As they navigate a new legal landscape that questions the very essence of their relationships, it is imperative that they display greater resilience, unity, and an unyielding determination in the face of hostility. The journey ahead will demand a collective effort to challenge these new found constitutional protections to discrimination and require continued advocacy to change people's hearts and minds on this issue. Despite the setback, a commitment to equality remains paramount in reshaping a future where love triumphs over discrimination.

Critical Analysis of European Union's AI Draft Policy: A Step Towards Restricting Existential Threat



This article has been authored by Swarna Yati, a student at Dr. Ram Manohar Lohiya National Law University, Lucknow. It is a part of RSRR's Rolling Blog Series.

Artificial intelligence (A.I.) technology has emerged as one of the most promising technologies in recent years. It is a technology that can identify irregularities and offer affordable alternatives to outdated, expensive methods. It has brought with it new risks and imminent threats. The E.U. Artificial Intelligence Act is based on the interdependence and relationship between applications of A.I. and various spheres of society. The Act provides India with a model framework to prepare its own draft for regulating and restricting artificial intelligence technology. The government of India can employ a regulatory sandbox approach to consider using experimentation to provide a controlled environment in which AI-based business models can be tested and scaled up and quicken the process from development to deployment and commercialization.

The Government of India intends to control A.I. and big I.T. through a comprehensive digital act to establish international regulating guidelines. The proposed legislation, called the E. U. A.I. Act (A.I. Act), has been developed over the course of its protracted passage through the European institutions, which began in 2019 to become more explicit about the dangers that may arise from using A.I. in delicate situations and how to monitor and reduce those risks. The current archaic I.T. Act of 2020 proves to be ineffective in dealing with the robust A.I. Act. The present paper focuses on developing India's regulating laws and their implementation. The review and stakeholder feedback on the proposed Information Technology [Intermediaries Guidelines (Amendment) Rules] 2018, published by MEITY, have been solicited.

Introduction

In its recent attempt to revolutionize the digital space, the European Parliament approved its draft proposal of the A.I. Act. Rapid the dadvancement in A.I. technology has resulted in unprecedented risks and impending challenges.

This law was initially suggested by Ursula von der Leyen, the head of the European Commission, in the summer of 2019, soon before a pandemic, a war, and an energy crisis. Additionally, this was before ChatGPT sparked frequent discussions about an existential threat from A.I. among lawmakers and the media.

Unlike other traditional laws regulating any new technology, the proposed policy called the E.U. Artificial Intelligence Act (A.I. Act), is based on the interdependence and relationship between applications of A.I. and various spheres of society. This implies that the effects of artificial intelligence technology on numerous facets of our society, including the job market, the economy, and daily life, are profound and far-reaching. To guarantee a seamless transition and leverage A.I.'s advantages, it is crucial to foresee and prepare for these possible

disruptions. The application of A.I. in some societal regions, each with a unique set of potential issues, is what is being controlled, not A.I. itself. It tries to strike a delicate balance between upholding rights and ideals while fostering innovation and addressing both risks and fixes. Although far from ideal, it offers specific actions.

Concerns regarding uncontrolled A.I. have been mounting in recent years. Uncontrolled A.I. refers to developing and deploying A.I. systems without sufficient oversight, regulation, or control mechanisms, leading to potential risks and negative consequences.

Many aficionados, such as Geoffrey Hinton, Yoshua Bengio, Alan Turing, and Elon Musk, have expressed their concerns regarding uncontrolled A.I. According to Geoffrey Hinton, Deep Learning and A.I. are transforming the economic, digital and societal space. Although they have exponential power and space to grow, such uninterrupted growth poses a serious existential threat to the human species.

The AI Act

The technology has also demonstrated symptoms of sophisticated intellect and knowledge, raising concerns that "Artificial General Intelligence," or A.G.I., a sort of artificial intelligence that can perform on par with or better than par with humans in a wide range of tasks, may not be far off.

The legislation puts forward a'future-proof' definition of A.I. The legislation will go into force in two or three years, and any company doing business inside the E.U. must abide by it. Because we have yet to determine how A.I. will develop or how the world will appear in 2027, this lengthy timescale does raise some problems of its own. The Act's language, nevertheless, is sufficiently broad that it may continue to be applicable for some time. Beyond Europe, it may impact how corporations and researchers approach A.I.

Notably, this law is solely based on the idea of risk out of all the possible approaches to A.I. regulation. The four risk categories are unacceptable, high, limited, and low, each subject to a separate set of regulatory requirements.

Systems judged to represent a danger to fundamental rights or E.U. values will be classified as posing an 'Unacceptable Risk' and will be forbidden. Under the Act, real-time predictive policing, profiling, and unwarranted use of face recognition technology have been added to the 'Unacceptable Risk' category. Additionally, this has been added to the list of unacceptable risks, and such technology would only be permitted following the commission of a crime and with court approval.

The policy classifies 'High Risk' dangers, which will be subject to disclosure requirements and be required to register in a specific database. Various monitoring or auditing standards will also apply to them. It includes applications accessing data in essential sectors, including finance, healthcare education, and employment. Although the employment of A.I. in these fields is not viewed as degenerative, control is necessary because it might have a detrimental impact on safety or fundamental rights.

In the case of a 'Limited risk', there will be a lower need for transparency. In a similar vein, operators of generative A.I. systems, such as bots that generate text or graphics or deepfakes, will need to make it clear to users that they are engaging with a machine.

The legislation has evolved over the course of its protracted passage through the European institutions, which began in 2019, to become more explicit about the dangers that may arise with deploying artificial intelligence (A.I.) in sensitive situations and how to monitor and mitigate those risks. The concept is clear: we must be particular if we are to accomplish anything; nonetheless, much more effort remains.

The Act has provided immunity to military and defence-based A.I. applications. The Act also provides stringent penalty provisions for non-compliance with the legislation, with a maximum fine of 30 million euros or up to 6% of their entire annual worldwide revenue for the preceding financial year, whichever is higher.

What does this mean for India?

The development of the E.U. Artificial Intelligence Act provides India with a model framework to

prepare its own draft for regulating and restricting A.I. India has an exploding population beaming with technological possibilities. To establish a firm foot in this sphere, India must establish strong laws so that other nations can benefit from exchanging the technologies. With the advent of technology that can identify irregularities and offer affordable alternatives to outdated, expensive methods, India has experienced growth in both the fintech and health sectors.

The future of A.I. should be shaped by developing countries that would be affected more by the exploitation of A.I. since there are no proper privacy securities or laws. The rise of AGI would substantially affect India's employment and economic condition, which is a labor-booming market. One of the ways to combat the rise of AGI is an "AI Nanny" with superhuman intelligence that will stop an AGI/ASI from emerging too soon.

The current archaic IT Act of 2020 proves to be ineffectual in dealing with the robust A.I. With the lacunas present in the Digital Personal Data Protection Bill, 2022, bringing a strong A.I. Regulation Act will give the Indian government a chance to redeem itself.

The primary issue with these current acts is that it has still not recognized Artificial Intelligence as a different entity that poses complex ethical and moral considerations, with its autonomous decision-making and complex algorithms, and necessarily requires regulations. It has led to regulatory gaps and uncertainties in the operation of A.I.

The Ministry of Electronics and Information Technology (MEITY) recently established several committees and published a plan for introducing, applying, and integrating A.I. into society. Review and stakeholder feedback on the proposed Information Technology [Intermediaries Guidelines (Amendment) Rules] 2018, published by MEITY, have been solicited. Though a new approach has been taken, this Rule still contains some serious flaws, including data privacy issues.

Future Aspects

The government of India can employ a regulatory sandbox approach to consider using experimentation to provide a controlled environment in which A.I. systems can be tested and scaled up. The sandbox intends to make testing cutting-edge technologies like blockchain, A.I., and application programming interface services easier. The importance of experimentation is emphasized in OECD AI Principles. Experimentation creates controlled, open environments for testing A.I., enables the growth of AI-based business models that could support solutions to global challenges, and quickens the process from development to deployment and commercialization.

India plans to control A.I. and big IT through a comprehensive digital act, with the goal of establishing international A.I. regulating guidelines. The draft of the Digital India Bill is expected to be released in June, marking a significant overhaul of the laws governing the Internet since the Information Technology Act. The draft can take inspiration from the Artificial Intelligence Task Force report.

The Artificial Intelligence Task Force, in its 2018 report, provided valuable insights into India's A.I. framework and its potential impact on various sectors. The report also highlighted the potential of A.I. to address societal challenges and improve the quality of life for Indian citizens. The 2018 report provided a roadmap for India's A.I. framework. One of the key recommendations of the Task Force was to establish a National Artificial Intelligence Mission (NAIM) to drive the adoption and development of A.I. technologies in India. The NAIM would serve as a platform for collaboration between academia, industry, and government and facilitate the creation of AI-focused research and development centers.

Conclusion

While it is heartening to see global leaders take into account both A.I.'s economic and strategic benefits and possible concerns, we must keep in mind that not all risks are equal. The skyrocketing growth of A.I. presents different kinds of risks. These risks include Adversarial Attacks and Data Poisoning leading to incorrect decision-making, Data Privacy issues leading to potential misuse of sensitive information, and Bias and Discrimination leading to discriminatory outcomes. The hazards associated with every technology are undeniable, though, and organizations involved in academia and politics are working

to anticipate these risks rather than wait for them to materialize.

The G20 Sherpa, Amitabh Kant, stated that nations should approach artificial intelligence in a balanced manner and refrain from enacting legislation hindering innovation. However, the question is, at what costs will this development be allowed? The existential risks emancipating from the growth and development of A.I. cannot be overlooked. They must be dealt with with all seriousness and given as much importance as solving other significant global challenges, like pandemics and nuclear war.

It is crucial to develop a regulatory framework that promotes responsible A.I. development and deployment while safeguarding the interests of individuals and society as a whole. This may involve creating specific A.I. regulations, fostering international collaborations, enhancing technical expertise within regulatory bodies, and incorporating ethical considerations into the regulatory framework.

Paid Menstrual Leaves: A Legal Enigma

This article has been authored by Kavya Mittal and Naren Maran, Assistant Editors at RSRR. This blog is a part of the Board's Editorial Column

Introduction

On 14 December, 2023, Union Minister Ms. Smriti Irani while responding to a question concerning the issue of granting a fixed number of compulsory leaves to female employees, expressed her personal opinion that, "... menstrual cycle is not a handicap." Her statement has sparked a nationwide discussion on the reproductive rights and health benefits constitutionally granted to women. Ms. Irani shunned the notion on the grounds that it may lead to denial of equal opportunities for working women, which is against the spirit of fostering inclusivity of more women in the workforce of the nation. The issue has several socio-political dimensions; however this article aims to analyze the legal issues pertinent to the same.

Although the constitutional context of the issue is now well addressed, the issue remains deeply unexplored on other cardinal facets of law, the issue still sits deeply rooted. The authors through this article will underpin the current violation of women's fundamental rights and further delve into the realms of the pertinent labour law, provide a comparative analysis of the global scenario and the recent bill on menstrual leave policy, and lastly suggest policy recommendations for prospective legislation addressing the issue appropriately.

The Current Legal Framework

Fundamental Rights

The Fundamental Rights include among other rights, the right to equality, life and personal liberty, and to work and live with dignity. These have been enshrined in Articles 14, 15, and 21 of the Indian Constitution.

The concept of a paid menstrual leave policy finds its genesis in these Articles and acts as an affirmative step to ensure that women can enjoy these Fundamental Rights in a meaningful manner.

The spirit of Articles 14 and 15 of the Indian Constitution is encapsulated in the notion of Aristotle, "Equality consists of the same treatment of similar persons." This implies that equal treatment of unequal persons siphons down to discrimination. Similarly, in the landmark judgment of *Ram Krishna Dalmia v. Justice Tendolkar*, where the jurisprudence of equality before the law has been described by the Supreme Court, as allowing the state to make differential classifications of subjects based on a rational nexus, having an objective to be achieved by the differentia. In *Anjali Roy v. State of West Bengal,* the court further held that all differentiation would not amount to discrimination if it is made owing to natural differences in persons.

In a diverse country like India, ensuring that equal opportunity is granted to the people acquires great importance. This is to ensure the empowerment of every individual to fulfill their goals without any discrimination. The concept of 'Protective Discrimination' under Article 15 of the Indian Constitution helps achieve the goal of equal opportunity in the context of disadvantaged persons, to help them live a meaningful life. A great example of its effective implementation would be Article 15(5) where special provisions are made for citizens of socially and educationally backward classes to put them on an equal platform. Article 15(5) is an example of how special provisions are made for citizens of socially and educationally backward classes to place them on an equal platform with others.

Considering menstruation is a bodily phenomenon, that no one including the menstruating girl or women has any control over, it applies to a larger argument comprising Article 15(3) of the Indian Constitution which talks about special provisions for women and children.

The Right of Women to Menstrual Leave and Free Access to Menstrual Products Bill of 2022 (The Bill), fundamentally noted that menstrual leaves are an expansion of Article 21, through which it proposes to allow a maximum of three days of paid menstrual leaves for menstruating women. Right to Life' under Article 21 entails 'meaningful existence' as opposed to 'animal existence,' as stated by the Supreme Court in Kharak Singh v. State of Uttar Pradesh. The meaningful existence' here entails that right to life should not be restricted to a 'breathe and exist' schedule and appropriating a more reasonable and considerable approach to the meaning attributable to Article 21. In Unni Krishnan v. State of Andhra Pradesh, the Court further held that the 'Right to Health' would fall under the ambit of Article 21, thus, making health an inherent necessity for a dignified life.

Reading the existing constitutional provisions and The Bill together, one being a grundnorm, and the other being a proposition for a potential legislation, it can be inferred that paid menstrual leaves may be claimed by extending the Right to Health, as under the Right to Life.

Labour Law

The Equal Remuneration Act, of 1976 (The Act) provides that men and women have to be paid equally if they do 'equal work.' This applies when the work is being done under "similar working conditions" which has been provided under Section 2(h) of The Act. In the present case, the authors wish to establish that menstruating women are not working under "similar working conditions." The same can only be true when they're granted paid menstrual leaves on days when their capacity to work is being hindered by a bodily phenomenon that is not under their control, as has been stated above. Further, The Act was brought in to replace the Ordinance of 1975, and the objective of the Ordinance itself was to promote employment opportunities for women while ensuring that there was no discrimination against their recruitment. This objective of The Act is directly in contradiction with the apprehensions that the government has put forth regarding the implementation of the paid menstrual leave policy. In due cognizance of the same, "Work of a similar nature" must be construed in terms of the 'period of applicable work' and not merely the quantity of work, because the circumstances of the employee must be taken into account. Thus it is important to ensure that women are being given an equal opportunity to work based on their capacity to work, which would establish equity between the male and female employees and would ensure that the women's fundamental rights are not being violated.

Comparative Analysis with Other Nations

It is crucial to examine the menstrual leave policies around the world in order to understand where India stands and the possible takeaways from the policies in other nations. Japan, being the country of origin of the 'menstrual leave' notion, has a mandatory menstrual leave policy in play under Article 68 of Labor Standards Act if the female employee expresses difficulty in working during her menstrual period, but the question of 'paid' menstrual leave has been a concern in Japanese Workplaces. South Korea, by means of the 2001 domestic legislation, have permitted one day of 'unpaid' physiological leave per month to female workers, while employing a stringent leave-grant policy for employers to follow and approve these leaves.

The Philippines on the other hand by means of their 2019 arrangement, have discussed to allow two paid leaves per month for menstruating female employees. The Spanish authorities have been the first ones in Europe to approve 'paid menstrual leaves' although the period cap regarding the leave(s) remains unclear. Indonesia, being another country that provides its citizens with a curated menstrual leave policy, allows two days paid leave, which in practice is purely discretionary. It is crucial to understand that these policies are either specifically targeted towards 'female' employees and not 'menstruating bodies,' or offer unpaid menstrual leaves. They're discretionary in practice, which clearly show that India along with other nations is still in its natal stage. India has the opportunity to become a trendsetter and establish a model paid menstrual leave framework by implementing a policy which allows for paid menstrual leaves to women and covers the gaps as found in other foreign policies.

Way Forward

The Central government, though, at present has dismissed the idea of the implementation of a paid menstrual leave policy, but in the future if the legislative bodies table such a policy, they should take into account that it is in cognizance of the fundamental spirit of all the Constitution. The policy should not cater protection of a handful of rights, and must strive to achieve the Constitution which is the equitable advancement of all. Similarly, it should cater protection to all and thus, must be gender neutral in its approach. In the landmark case of the National Legal Service Authority [NALSA] v UOI, the Supreme Court observed that transgender persons have faced immense discrimination in all spheres of their lives and held that the Right to Equality under Article 14 was framed in gender-neutral terms and consequently would extend to the transgender persons also. Similarly, the prospective paid Menstrual Leave policy must not limit its scope to women but extend itself to other menstruating bodies as well, including trans-women, to keep in consonance with the objective of the Bill to ensure trans-women were not discriminated against.

Policy Suggestions

Since menstruation is a biological phenomenon that occurs periodically after the age of puberty, which is a time most often spent in school years, providing menstruating girls with menstrual leaves and related advantages would be better implemented in the schooling years itself. The authors suggest starting with the simplest implementation of the same, which can be through government-mandated menstrual leaves at the school level for menstruating girls which can be compensated with extra study sessions, and optional extra hours for understanding concepts taught on days when the leave provision was availed. This would allow the youth which is presently in their school years to understand and be accustomed to the idea of menstrual leaves in practice. This would further help in transitioning such a culture to the workplace in the form of paid menstrual leaves, albeit with some modifications in light of the interests of the employers.

The authors also suggest that the government make adequate safeguards for menstruating women in the unorganized sector, by for example, making provisions for paid menstrual leaves, wherein a menstruating female working in the unorganized sector, can avail three days of leave and she will be paid the average salary calculated for the profession she is involved in, with the only prerequisite for the claim being, that she has availed those three days of leave and doesn't work on those days. Protecting the rights of the women in the unorganized sector is crucial to ensure they're not exploited by their employers.

Conclusion

The biggest legal impediment to the implementation of a paid menstrual leave policy is the anticipated discrimination against menstruating women by employers. However, we must take into consideration that all the provisions of the law work in continuation and consonance with each other and not separately. When the lack of a paid menstrual leave policy is presently violating the fundamental rights of the women, the same cannot be triumphed by the apprehension of discrimination against female employees. The government while devising a comprehensive menstrual leave policy, must ensure that the principles enshrined in Articles 14, 15, and 21 of the Constitution of India and corresponding labour laws, are adhered to, together to give it the intended power and effect.

PROEJCT 39A LECTURE SERIES

The Editorial Board of RSRR organized a two-part lecture Series on "Decoding Forensics: The Interplay of Law and Science." For the event, the Editorial Board had the pleasure of hosting experts from Project 39A, National Law University Delhi.

The Guest Speakers for the session were Ms Shreya Rastogi - Director (Forensics & Death Penalty Litigation at Project 39A), Ms Maria Divya Sahayaselvan - Associate (Research at Project 39A) Forensics and Ms Saloni Ambastha - Associate (Research at Project 39A) Forensics.

The event offered attendees an opportunity to gain deeper insights into the world of forensic science and its intricate legal standards. The sessions shed light on expert testimony, the critical significance of the chain of custody, and the need for precise definitions in the realm of forensic science.

As the event progressed, participants were invited to critically analyse media portrayals of forensic science, challenging common myths and unraveling the realities of this fascinating field.

The first session, led by Ms. Shreya Rastogi taught attendees about the fundamentals of Forensic Science, unraveling the role of forensic evidence in the legal system and debunking a few of the commonly held perceptions about forensic science. This section included insightful discussions on error rates in forensic evidence, and fingerprinting, ballistics and bite mark analysis.

The second session focussed on the admissibility of forensic evidence in court. The first speaker of this session, Ms. Sahayaselvan, discussed in detail the role of experts in communicating scientific evidence to the courts, and the requirements for a valuable expert testimony. The second speaker for Session 2, Mr. Ambastha discussed the admissibility of scientific evidence through the lens of Section 293 CrPC.

The lecture series was well received by attendees who actively participated in the interactive sessions. We are extremely grateful for the opportunity to have collaborated with Project 39A for such a successful event.

WORD SEARCH: FEATURED BLOGS RECAP

I	L	E	H	O	P	L	A	N	C
K	G	S	C	G	D	I	N	A	O
D	F	A	O	K	I	G	W	I	L
A	U	L	N	M	S	J	B	M	O
J	N	E	E	D	C	V	E	N	N
F	N	I	E	S	I	G	N	G	J
O	T	A	N	Y	A	N	B	R	U
Y	O	X	T	A	K	J	R	N	A
U	M	S	U	P	R	I	Y	O	A
S	B	X	C	A	P	R	A	M	S

1. Name one of the key recommendations of the Artificial Intelligence Task Force, in its 2018 Report, to drive the adoption and development of A.I. technologies in India by serving as a platform for collaboration between academia, industry, and government.

2. What is the Investment arbitration institution established in 1966 for legal dispute resolution and conciliation between international investors and States?

3. Name the executive agency of the Union Government of India whose vision is the e-Development of India as the engine for transition into a developed nation and an empowered society.

4. Who was the lead petitioner in the landmark case of the Supreme Court of India pertaining to the right to marry of homosexual couples?

5. What is the name of the secular legislation dealing with matters of marriage in India?

6. Name a form of AI that possesses the ability to understand, learn and apply knowledge across a wide range of tasks and domains.

WORD SEARCH: FEATURED BLOGS RECAP SOLUTION

I	L	E	H	O	P	L	A	N	C
K	G	S	C	G	D	I	N	A	O
D	F	A	O	K	I	G	W	I	L
A	U	L	N	M	S	J	B	M	O
J	N	E	E	D	C	V	E	N	N
F	N	I	E	S	I	G	N	G	J
O	T	A	N	Y	A	N	B	R	U
Y	O	X	T	A	K	J	R	N	A
U	M	S	U	P	R	I	Y	O	A
S	B	X	C	A	P	R	A	M	S

1. NAIM - Name one of the key recommendations of the Artificial Intelligence Task Force, in its 2018 report, to drive the adoption and development of A.I. technologies in India by serving as a platform for collaboration between academia, industry, and government.

2. ICSID - What is the Investment arbitration institution established in 1966 for legal dispute resolution and conciliation between international investors and States?

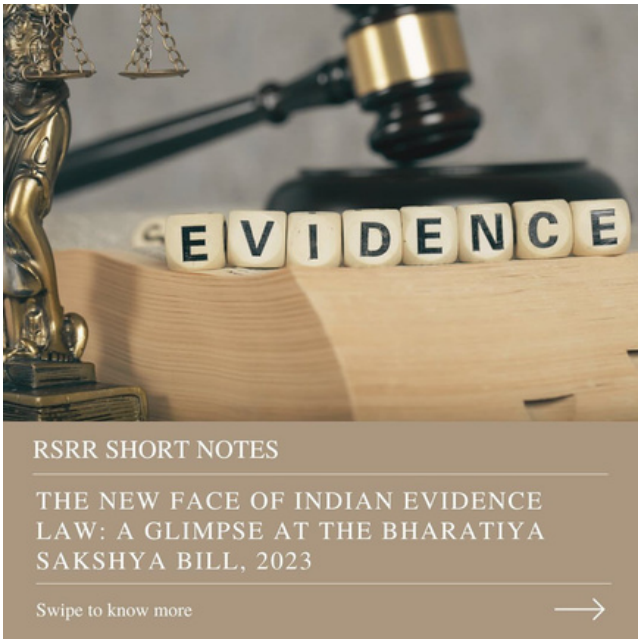
3. MEITY - Name the executive agency of the Union Government of India whose vision is the e-Development of India as the engine for transition into a developed nation and an empowered society.

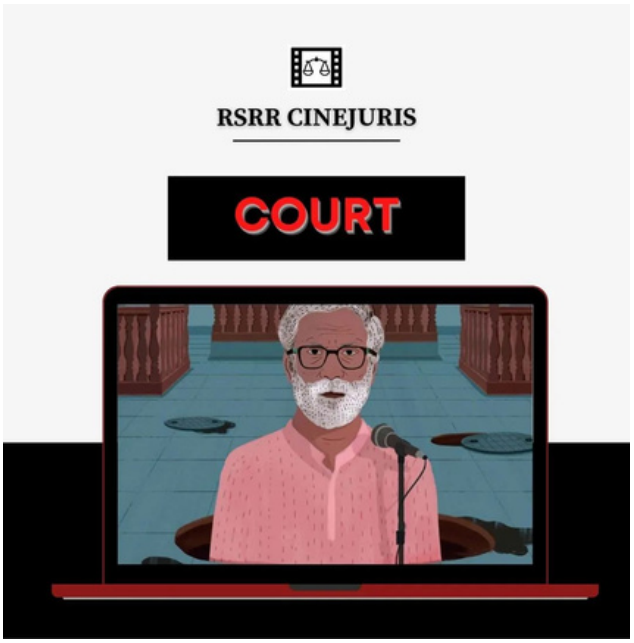
4. SUPRIYO - Who was the lead petitioner in the landmark case of the Supreme Court of India pertaining to the right to marry of homosexual couples?

5. SMA - What is the name of the secular legislation dealing with matters of marriage in India?

6. AGI - Name a form of AI that possesses the ability to understand, learn and apply knowledge across a wide range of tasks and domains.

QUARTER AT A GLANCE





Cinejuris

These are short write-ups discussing themes surrounding law and justice in popular media. Our editors analyse movies and shows through a legal lens and provide unique perspectives on the intersections of law and society

EDITORIAL BOARD

RGNUL STUDENT RESEARCH REVIEW

rslr@rgnul.ac.in || www.rsrr.in