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Casting Light on the Shadows of Corporate Governance: Unravelling Oppression and Mismanagement in India's Companies Act of 2013

By Manali Dabhade

A. INTRODUCTION

In India, the Companies Act of 2013¹ plays a vital role in regulating corporate affairs, emphasizing transparency, and ensuring the effective operation of business entities. This significant legislation is a manifestation of India's commitment to establishing a resilient and accountable corporate sector, crucial for economic progress in the ever-changing global business environment.

Within this legislative framework, Chapter XVI, which encompasses Sections 241 to 245², addresses grievances related to corporate oppression and mismanagement. However, intriguingly, this crucial chapter neither provides clear definitions nor clarifies what precisely constitutes "oppression" and "mismanagement." This notable omission has led to intricate legal discussions, judicial interpretations, and academic debates, necessitating a thorough exploration of these concepts.

This paper's objective is to unravel the complexities surrounding the interpretations of oppression and mismanagement as they pertain to the Companies Act of 2013. To accomplish this, we will embark on an in-depth journey through a maze of legal principles, landmark court rulings, and academic viewpoints. Our aim is to analyse how the Indian legal system and legal scholars have grappled with these ambiguities and, consequently, the practical implications of such conceptual vagueness within the corporate landscape.

By shedding light on this uncharted territory within the Companies Act of 2013, our paper seeks to address the following challenges:

B. STATEMENT OF PROBLEM

The Companies Act of 2013, a cornerstone of corporate governance in India, remarkably refrains from offering precise and unambiguous definitions of "oppression" and "mismanagement." This absence of clear definitions in the Act is of considerable

consequence, as it fosters a range of interpretations and raises concerns about the understanding and application of these terms in practice.

While the Act does prescribe remedies for addressing oppression and mismanagement, the absence of explicit definitions has given rise to intricate legal disputes and ambiguities. This paper aims to uncover the complexities surrounding these terms by examining legal precedents, academic viewpoints, and practical case studies. Its goal is to provide enhanced clarity and insight into the practical implications of these omissions.

C. LEGISLATIVE OVERVIEW

Chapter XVI - Prevention of Oppression and Mismanagement: An In-depth Look

Within the extensive Companies Act of 2013, Sections 241 to 246³ constitute a significant chapter dedicated to tackling issues of corporate oppression and mismanagement. In this legislative overview, we provide a condensed summary of the salient features of each of these sections:

Section 241 - Seeking Tribunal Relief for Allegations of Oppression or Mismanagement⁴

- A provision within the Act allows any member of a company to approach the Tribunal if they suspect that the company's activities are negatively affecting public interest, the interests of the company, its members, or if there has been a substantial change in its management likely to have adverse consequences.

Section 242 - Tribunal's Authority and Remedial Measures⁵

- Once a petition is filed under Section 241, the Tribunal possesses the authority to take various actions to resolve the matters in dispute. These actions may include regulating the future conduct of the company, facilitating the purchase of shares, reducing share capital, imposing constraints on share transfers, revising agreements, dismissing directors, recovering gains, and determining appropriate costs.

Section 243 - Ramifications of Altering or Abrogating Specific Agreements⁶

- This section delineates the consequences when the Tribunal terminates, sets aside, or modifies agreements mentioned in Section 242. It explicitly states that these actions

do not give rise to any claims against the company. Furthermore, it prohibits directors or managers affected by such actions from assuming similar roles without the Tribunal's consent for a specified period. Failure to comply with these provisions attracts penalties.

Section 244 - Entitlement to Lodge Applications under Section 241⁷

- Section 244 elucidates who possesses the right to file an application under Section 241. For companies with share capital, this includes a minimum of one hundred members or one-tenth of the total members, or members holding one-tenth of the issued share capital. In companies without share capital, the threshold is not less than one-fifth of the total members. The section also outlines circumstances under which the Tribunal may waive these requirements.

Section 245 - Class Action Provisions⁸

- Section 245 empowers members or depositors who perceive prejudicial conduct in a company's management to file applications on behalf of these groups. The applications may seek diverse orders, including restraining the company from unlawful acts, voiding resolutions, claiming damages, and more. This section defines the necessary number of members or depositors for such applications and establishes a structured procedural framework.

Section 246 - Extending Specific Provisions to Proceedings under Sections 241 and 245

- This section ensures that specific provisions (Sections 337 to 341) are applied with necessary modifications to proceedings under Sections 241 and 245, ensuring a consistent legal framework for these proceedings.

In summary, these statutory sections within the Companies Act of 2013 furnish a legal framework for addressing and redressing instances of oppression and mismanagement within companies. This chapter seeks to offer remedies and guidelines for seeking relief from the Tribunal, with a primary objective of protecting the interests of members, depositors, and the general public when confronted with corporate malpractice. However no where in the entire Act is the term "oppression" or "mismanagement" defined. We shall now dive into the various interpretations of the same term.

D. Judicial Interpretation of Oppression and Mismanagement: A Comprehensive Analysis

The Companies Act, 2013 in India does not explicitly define the term "oppression," but English Courts have provided valuable insights into its meaning and scope. Similarly, "mismanagement" lacks a clear definition within the Act but can be understood as conducting a company's affairs in a prejudicial, dishonest, or inept manner. This article delves into the judicial interpretations of these terms, drawing on landmark cases, such as *Tata Consultancy Services Limited v. Cyrus Investments Pvt. Ltd. & Ors*, to provide a comprehensive analysis.

1. Oppression: An Elusive Concept

Oppression, as elucidated through various court judgments, primarily involves conduct that departs from the standards of fair dealing and violates the conditions of fair play that shareholders should reasonably expect when entrusting their investments to a company. The seminal case of *Elder v. Elder & Watson Ltd.* provides insight, suggesting that oppression requires more than a mere loss of confidence or a deadlock; it necessitates a visible departure from fairness.

In *Elder v. Elder & Watson Ltd.*⁹, the court emphasized that oppressive conduct should encompass "a violation of the conditions of fair play," highlighting that mere disagreements or management disputes do not necessarily constitute oppression. To be considered oppressive, conduct must be burdensome, harsh, and wrongful, aligning with the dictionary definition of the term. This was reaffirmed in *Scottish Coop. Wholesale Society Ltd. v. Meyer*¹⁰, where the House of Lords emphasized the meaning of "burdensome, harsh, and wrongful" conduct.

The *Halsbury's Laws of England*, 4th Edition¹¹, further clarifies that oppression should involve a continuing course of oppressive conduct, specifically directed at the petitioner in their capacity as a member. It necessitates an element of lack of probity or fair dealing concerning the petitioner's proprietary rights as a shareholder. In essence, it should not merely entail inefficient or careless conduct.

In the *Needle Industries*¹² case, it was clarified that technically legal and correct conduct may still justify relief under the just and equitable jurisdiction. Conversely, conduct involving

illegality or contravention of the Act may not be sufficient for relief. It is crucial to establish a pattern of continued oppression rather than isolated acts to warrant legal intervention.

2. Mismanagement: A Question of Prudence and Integrity

While the Companies Act, 2013, does not explicitly define mismanagement, it can be characterized as the conduct of a company's affairs in a prejudicial, dishonest, or inept manner. Section 241 Sub Clause 1 of the Act provides a framework for addressing mismanagement, stating that it involves actions detrimental to the public interest, the shareholders, or the company itself.

In the context of mismanagement, the case of *Tata Consultancy Services Limited v. Cyrus Investments Pvt. Ltd. & Ors.* sheds light on the intricacies of the term. This case revolved around the removal of Mr. Cyrus Mistry from various directorships within the Tata Group by a resolution of the companies' Board of Directors and at shareholder meetings. Subsequently, Cyrus Investments Private Limited and Sterling Investment Corporation Private Limited filed a complaint under Sections 241, 242, and 243, alleging prejudice, oppression, and mismanagement.

3. Key Findings in *Tata Consultancy Services Limited v. Cyrus Investments Pvt. Ltd. & Ors*¹³.

The judgment in this landmark case highlighted several critical aspects of the judicial interpretation of oppression and mismanagement:

1. **Directorship Removal and Oppression:** The court emphasized that mere removal from a directorship position is insufficient to establish a case of oppression and mismanagement. The National Company Law Tribunal (NCLT) can dismiss such complaints. However, relief under Section 242 can be granted if the removal is part of a larger design to oppress or prejudice the interests of some members.
2. **Winding Up and Confidence:** The court clarified that winding up a company due to findings of oppression and mismanagement is only warranted when there is a justifiable lack of confidence in the conduct and management of the company's affairs. A mere lack of confidence between majority and minority shareholders is not sufficient to trigger such action.

3. **Limited Reinstatement Powers:** Sections 241 and 242 do not provide the Tribunal with the power of reinstatement. The court highlighted that its role is to examine past conduct or ongoing conduct but cannot address apprehensions of future misconduct based on the company's articles.

In the realm of corporate law, the judicial interpretation of the terms "oppression" and "mismanagement" in India is a nuanced and evolving process. The interpretation focuses on a departure from fair play, wrongful conduct, and a sustained pattern of oppression, while mismanagement revolves around prejudicial, dishonest, or inept conduct in company affairs. The Tata Consultancy Services Limited case, with its detailed analysis, clarified several crucial aspects of these terms, providing guidance to both legal practitioners and the business community.

Understanding these interpretations is vital for shareholders and stakeholders in companies, as it determines when they can seek legal remedies under the Companies Act, 2013. It also underscores the importance of distinguishing between genuine cases of oppression and mismanagement and mere disputes or disagreements within corporate entities, ensuring the efficient and equitable functioning of businesses in the corporate landscape.

Indian case law on oppression and mismanagement provides crucial insights into the interpretation of these terms within the corporate context. The judgments of various cases, such as *Shanti Prasad Jain v. Kalinga Tubes*, *Sangramsinh P. Gaekwad v. Shantadevi P. Gaekwad*, *Needle Industries (India) Ltd. v. Needle Industries Newey (India) Holding Ltd.*, *Cyrus Investments Pvt. Ltd. v. Tata Sons Ltd.*, *Mohanlal Ganpatram v. Shri Sayaji Jubilee Cotton and Jute Mills Co. Ltd.*, and *Power Finance Corpn. Ltd. v. Shree Maheshwar Hydel Power Corpn. Ltd.*, collectively shed light on the nuances of oppression and mismanagement within the corporate landscape.

1. Defining Oppression: A Departure from Fair Play

In *Shanti Prasad Jain v. Kalinga Tubes*¹⁴, the concept of oppression is elucidated. The judgment outlines that oppression involves conduct that, at the very least, signifies a visible departure from the standards of fair dealing. It underscores the violation of the conditions of fair play that every shareholder expects when investing in a company. This definition

emphasizes that mere disagreements or management disputes do not qualify as oppression. Rather, it necessitates conduct that is burdensome, harsh, and wrongful.

Similarly, in *Sangramsinh P. Gaekwad v. Shantadevi P. Gaekwad*¹⁵, the term "oppressive" is further clarified. It is described as conduct related to the manner in which a company's affairs are conducted. This conduct should oppress the minority shareholders, resulting in the majority obtaining predominant voting power or securing pecuniary advantages at the expense of the oppressed. Such acts of oppression may take the form of either seeking pecuniary gains to the detriment of minority shareholders or a wrongful usurpation of authority.

The case of *Needle Industries (India) Ltd. v. Needle Industries Newey (India) Holding Ltd*¹⁶. emphasizes that oppressive conduct should encompass actions that are burdensome, harsh, and wrongful. Section 397 of the Companies Act requires that a company's affairs be conducted fairly and in good faith. Not every illegality can be deemed oppressive, but when illegal acts form a part of a sequence designed to cause oppression, they fall under the purview of the law. It's important to note that isolated unlawful acts may not, by themselves, support the inference of oppression.

2. Mismanagement: The Unfair and Inept Conduct

Although the Companies Act, 2013 does not provide a clear definition of mismanagement, cases have delineated its characteristics. In the case of *Cyrus Investments Pvt. Ltd. v. Tata Sons Ltd*¹⁷., it was noted that the core concern in oppression and mismanagement cases is the unfairness and prejudice that could harm the interests of company members. Companies primarily aim to generate profits, and "interest" here refers to the economic interests of the members.

*Mohanlal Ganpatram v. Shri Sayaji Jubilee Cotton and Jute Mills Co. Ltd*¹⁸. further clarifies the preventive nature of remedies provided under Sections 397 and 398 of the Companies Act. The aim is to halt oppression and mismanagement by controlling shareholders, preventing their continuation to the detriment of the aggrieved shareholders or the company. These remedies do not empower aggrieved shareholders to undo actions already taken by controlling shareholders in managing the company.

3. Continuity in Oppression: A Vital Criterion

Sangramsinh P. Gaekwad v. Shantadevi P. Gaekwad¹⁹ underscores the need to establish a continuous act by the majority shareholders of the company, indicating that oppressive conduct persists until the petition is filed. The critical criterion is that the affairs of the company are being carried out in a manner oppressive to the shareholders.

4. Temporal Aspects: "Have Been" vs. "Are Being" Conducted

Power Finance Corpn. Ltd. v. Shree Maheshwar Hydel Power Corpn. Ltd.²⁰ touches upon the temporal aspects of oppression and mismanagement. Under Section 241 of the Companies Act, 2013, the expressions "have been" and "are being conducted" are used. "Have been" pertains to past acts that continue into the present. In contrast, "are being conducted" refers to ongoing conduct.

In conclusion, the Indian judiciary has provided significant clarity on the terms "oppression" and "mismanagement." Oppression is characterized by a departure from fair play, with conduct that is burdensome, harsh, and wrongful. Mismanagement pertains to unfair or inept conduct that harms the economic interests of company members. Continuity in oppressive conduct and temporal aspects play pivotal roles in establishing cases of oppression and mismanagement. These case judgments collectively provide a comprehensive understanding of these legal principles within the Indian corporate framework.

E. CONCLUSION

In the intricate landscape of corporate governance in India, the Companies Act of 2013 serves as a beacon of regulation, promoting transparency and accountability. Within this legislative framework, Chapter XVI, encompassing Sections 241 to 245, endeavors to address the pressing issues of corporate oppression and mismanagement. However, it notably refrains from providing explicit definitions of these pivotal terms, creating a realm of legal uncertainty and debate.

This paper has meticulously navigated the labyrinth of legal principles, landmark court decisions, and academic insights to shed light on the elusive concepts of oppression and mismanagement. These terms, despite their absence in the Act, carry significant weight in the corporate domain. The complexity arises from the fact that their interpretation lies at the

intersection of law, equity, and commerce. The journey through Indian jurisprudence has illuminated that oppression, as discerned by courts, entails more than mere disagreement; it involves a visible departure from the standards of fair dealing, signifying burdensome, harsh, and wrongful conduct. These judicial interpretations highlight the importance of a sustained pattern of oppressive behaviour, as opposed to isolated incidents, as a prerequisite for legal intervention. Similarly, while the Companies Act does not offer a precise definition of mismanagement, the courts have sketched its characteristics as the conduct of a company's affairs in a prejudicial, dishonest, or inept manner. This conduct ultimately jeopardizes the economic interests of stakeholders. The landmark case of *Tata Consultancy Services Limited v. Cyrus Investments Pvt. Ltd. & Ors.* unravelled critical aspects of the judicial interpretation of oppression and mismanagement. It emphasized that removal from directorship alone does not establish a case of oppression and mismanagement. Moreover, winding up a company due to findings of oppression and mismanagement necessitates a justifiable lack of confidence in the management of the company's affairs.

In conclusion, the ambiguity surrounding the definitions of oppression and mismanagement, while seemingly a legislative shortcoming, has prompted a dynamic evolution in Indian corporate law. The judiciary has meticulously carved out the contours of these concepts, emphasizing fairness, wrongful conduct, and a sustained pattern of oppression. These interpretations serve as a guiding light for shareholders and stakeholders, ensuring that remedies under the Companies Act are invoked judiciously and efficiently. Thus, in the absence of explicit definitions, the Indian legal system has not only adapted but also thrived, reinforcing the robustness of the nation's corporate governance framework.

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¹ Companies Act, No. 18 of 2013

² Companies Act, No. 18 of 2013, § 241 to 245

³ *ibid*

⁴ Companies Act, No. 18 of 2013, § 241

⁵ Companies Act, No. 18 of 2013, § 242

⁶ Companies Act, No. 18 of 2013, § 243

⁷ Companies Act, No. 18 of 2013, § 244

⁸ Companies Act, No. 18 of 2013, § 245

⁹ 1952 SC 29 (Scotland)

¹⁰ [1958] 3 All ER 66 ; [1959]

¹¹ Lord Hailsham,48, Halsbury's Laws of England, 4th ED (1997).

¹² MANU/SC/0050/1981

¹³ MANU/SC/0227/2021

¹⁴ **MANU/SC/0368/1965** : (1965) 2 SCR 720

¹⁵ **MANU/GJ/0531/1995** : (1996) 1 Comp.L.J. 72 (Guj)

¹⁶ *ibid*

¹⁷ *ibid*

¹⁸ MANU/GJ/0003/1964:(1964)0GLR804

¹⁹ *ibid*

²⁰ MANU/NL/0353/2018

The Impact of International Human Rights Treaties on Domestic Legal Systems

By Seemab Pathan

Abstract:

This legal research study explores the complex and dynamic relationship between international human rights treaties and domestic legal systems. International human rights treaties have increasingly played a crucial role in shaping the legal landscape of individual nations, influencing legislative, judicial, and administrative processes. This research delves into the multifaceted ways in which these treaties impact domestic legal systems from a legal research perspective.

The study begins by analyzing the various mechanisms through which international human rights treaties are incorporated into domestic law, including the process of treaty ratification, incorporation, and direct applicability. It investigates the role of national and international actors in facilitating the transference of human rights norms into domestic legislation and jurisprudence.

Furthermore, this research examines the challenges and tensions that arise when international human rights obligations clash with domestic legal and political interests. It scrutinizes the doctrinal issues related to conflicts between international human rights norms and national laws and explores the role of domestic courts in resolving such conflicts.

The study also considers the impact of international human rights treaties on the functioning of domestic legal systems, such as the role of the judiciary in upholding human rights standards and the influence of international treaty monitoring bodies. It addresses the effectiveness of various enforcement mechanisms and the degree to which states are held accountable for non-compliance.

Additionally, the research investigates the socio-legal aspects of this relationship, considering the impact of international human rights treaties on public awareness, social justice movements, and the advancement of human rights at the grassroots level.

Introduction

International human rights treaties serve as the bedrock for promoting and safeguarding fundamental human rights across the world. These treaties not only embody the principles of global cooperation but also play a pivotal role in shaping the legal landscape within individual nations. Their objectives extend beyond borders, aiming to establish a universal

standard of morality and justice that transcends national boundaries. As nations take the significant steps of ratifying and implementing these treaties, they are thrust into a complex web of challenges and opportunities. This article embarks on a comprehensive exploration of the profound impact of international human rights treaties on domestic legal systems, uncovering how these agreements exert their influence on the fabric of national laws, policies, and, most importantly, the protection of human rights within each nation's jurisdiction. International human rights treaties play a fundamental role in shaping the legal landscape within a country. Their influence can be observed through both direct and indirect impacts on domestic law. Direct impact occurs when treaty provisions are automatically incorporated into domestic law upon ratification, while indirect impact influences legal interpretation and the development of common law principles. In this article, we will explore the direct and indirect impacts of international human rights treaties on domestic legal systems.

The Role of International Human Rights Treaties

International human rights treaties, often referred to as international conventions or covenants, are legal instruments that countries adopt to commit themselves to uphold and protect a range of fundamental human rights and freedoms. These treaties serve as the framework for the global community to establish a common understanding of human rights, regardless of cultural, political, or geographical differences.

One of the most prominent international human rights documents is the Universal Declaration of Human Rights, adopted by the United Nations General Assembly in 1948. This landmark document sets out a comprehensive array of civil, political, economic, social, and cultural rights that all nations should respect and protect. While the Universal Declaration itself is not legally binding, it has served as a foundation for the development of legally binding treaties, such as the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social, and Cultural Rights.

Ratification and Implementation of Treaties

When a nation decides to become a party to an international human rights treaty, it undertakes the process of ratification. Ratification signifies a formal acceptance of the treaty's terms, indicating the country's willingness to be bound by its provisions. However, the mere act of ratification does not automatically integrate the treaty into the nation's legal system. For some countries, international human rights treaties are considered "self-executing,"

meaning that the provisions automatically become part of domestic law upon ratification. In other cases, implementing legislation may be required to translate the treaty's obligations into concrete legal norms.

The process of implementation involves aligning domestic laws, policies, and practices with the obligations set out in the ratified treaty. It necessitates a commitment from the nation to make changes and take measures to comply with the treaty's requirements, ensuring that human rights are protected and respected within the nation's jurisdiction.

Direct and Indirect Impact on Domestic Legal Systems

International human rights treaties can exert both direct and indirect influences on domestic legal systems. The direct impact occurs when the treaty's provisions are explicitly incorporated into domestic law without the need for additional legislative action. In self-executing systems, these provisions become immediately enforceable, providing individuals with legal rights they can invoke in domestic courts.

In other cases, the impact is indirect. International human rights treaties serve as persuasive authority, influencing the interpretation and application of domestic laws. Judges and legal practitioners may refer to these treaties in legal arguments, decisions, and case law, thereby shaping the development of common law principles and jurisprudence.

Direct Impact on Domestic Law

Direct impact refers to the integration of international human rights treaty provisions into domestic law. In some countries, these treaties are considered "self-executing," which means they automatically become part of domestic law upon ratification without the need for further legislative action. This direct impact has several significant implications:

1. **Supremacy of International Law:** In countries where international human rights treaties are considered self-executing, they hold a status equal to or even higher than domestic laws. This means that when there is a conflict between domestic law and a ratified treaty, the treaty prevails.
2. **Legal Obligation:** The provisions of the treaty become legally binding on the state, and the government is obligated to enforce and uphold these rights within its territory.
3. **Individual Rights:** Direct impact empowers individuals to rely on international human rights standards in domestic courts to protect their rights, ensuring that their legal claims are considered in accordance with international norms.

4. **Accountability:** Direct incorporation allows for international oversight and accountability, as treaty bodies and international courts can hold states accountable for treaty violations.

Indirect Impact on Domestic Law

Indirect impact occurs when international human rights treaties serve as persuasive authority and guidance for domestic courts, lawmakers, and legal practitioners. These treaties are often cited in legal arguments, influencing various aspects of the domestic legal system:

1. **Judicial Decisions:** Domestic courts may reference international human rights treaties to interpret vague or ambiguous provisions of domestic law. These treaties can influence court decisions, leading to more rights-conscious interpretations of the law.
2. **Common Law Development:** Over time, the indirect influence of treaties can contribute to the development of common law principles. Legal doctrines and principles are shaped by international human rights standards, even if not explicitly mentioned in domestic legislation.
3. **Policy Evaluation:** International human rights treaties are used as benchmarks to evaluate the legitimacy of domestic laws and policies. They serve as a measure for assessing the compatibility of domestic legal systems with international human rights norms.
4. **Legislative Reform:** In response to international pressure or evolving human rights standards, domestic lawmakers may amend or enact new laws to bring them in line with international treaty obligations.

Evolving Norms and Jurisprudence

International human rights treaties play a dynamic role in shaping evolving norms and jurisprudence related to human rights. As the international community's understanding of human rights advances, these treaties adapt to reflect contemporary values and standards. For example, the interpretation of treaties such as the International Covenant on Civil and Political Rights has evolved over time to encompass broader definitions of rights, increased protections, and a more inclusive approach to human rights. This evolution is mirrored in domestic legal systems as courts and lawmakers interpret and adapt their legal frameworks in line with these evolving norms.

Obligation to Protect and Respect Human Rights

One of the core features of international human rights treaties is the obligation they place on states to protect and respect human rights within their territories. This obligation encompasses the prohibition of discrimination, torture, arbitrary detention, and other human

rights violations, as well as the positive duty to take measures to ensure that human rights are upheld.

States are expected to create and maintain mechanisms to uphold these obligations. This may involve establishing institutions responsible for promoting and protecting human rights, enacting legislation to criminalize human rights abuses, and providing remedies and redress for individuals whose rights have been violated. The implementation of these obligations is essential for ensuring that human rights are not just theoretical concepts but tangible rights enjoyed by individuals within a nation's borders.

Legal Remedies and Access to Justice

International human rights treaties often create mechanisms for individuals to seek remedies and access justice when their rights are violated. These mechanisms include international and regional human rights courts, such as the European Court of Human Rights, the Inter-American Court of Human Rights, and the African Court on Human and Peoples' Rights. Individuals can submit complaints to these bodies when domestic remedies are exhausted or when national courts are unable or unwilling to provide redress.

Access to international justice enhances the protection of human rights by providing an additional avenue for individuals to seek redress. It acts as a safety net, ensuring that individuals are not left without recourse when their rights are violated within their own countries.

Conflict Between Domestic Laws and International Obligations

As nations navigate the path of implementing international human rights treaties, conflicts can arise between domestic laws and international obligations. These conflicts pose significant challenges for states, as they must reconcile competing demands. In some cases, this may lead to legal reforms aimed at bringing domestic laws into compliance with international standards. Reforms can encompass amending existing legislation, repealing unconstitutional laws, or adopting new policies that align with a nation's international commitments.

However, such reforms are not always straightforward, as they may face resistance from various stakeholders, including legislators, interest groups, and even segments of the population that oppose aligning domestic laws with international norms. Balancing these interests is a delicate task that requires political will and a commitment to human rights principles.

Strengthening Domestic Legal Frameworks

While challenges and conflicts are inevitable, international human rights treaties also serve as catalysts for strengthening domestic legal frameworks. They encourage countries to establish and maintain independent human rights institutions responsible for monitoring and advocating for human rights. These institutions play a vital role in raising awareness, conducting investigations, and recommending actions to address human rights violations.

Moreover, international human rights treaties contribute to educating legal professionals, including judges, lawyers, and law enforcement officers, about international standards and human rights principles. This education enhances the capacity of these professionals to apply and uphold human rights in their respective roles.

Conclusion

International human rights treaties have a profound and far-reaching impact on domestic legal systems. As nations commit to these treaties, they embrace the responsibility of protecting and respecting human rights within their jurisdictions. The influence of these treaties extends from the direct incorporation of their provisions into domestic law to the indirect shaping of legal principles and norms. The dynamic nature of human rights treaties ensures that they evolve in harmony with changing global standards, pushing domestic legal systems to adapt and develop. While conflicts between domestic laws and international obligations can pose challenges, they also provide opportunities for legal reforms and the alignment of national laws with human rights principles.

Ultimately, the true test of the impact of international human rights treaties on domestic legal systems lies in their ability to make human rights a reality for all individuals within a nation's borders. These treaties, backed by international mechanisms for remedies and justice, provide a framework for holding.

The direct and indirect impacts of international human rights treaties on domestic law are significant in ensuring the protection and promotion of human rights within a country. While direct impact establishes a clear legal framework for compliance, indirect impact influences the interpretation of domestic laws, legal decision-making, and the development of common law principles. This dual influence creates a synergistic relationship between the global human rights regime and domestic legal systems, promoting a culture of respect for human rights and accountability on both the national and international levels.

IS MULTI-LEVEL MARKETING (MLM) LEGAL IN INDIA?

- Rakesh Gehlot

INTRODUCTION:

¹MLM stands for multi-level advertising and selling. It is also referred to as a pyramid scheme, network advertising, and referral advertising. As of 2015, according to a FICCI file compiled by way of KPMG in 2015, direct promotion in India is worth INR 75 billion. Direct selling is a valid commercial enterprise with good-sized tax revenue and self-employment opportunities across u. s. Multi-stage marketing is a marketing strategy used basically by way of groups with a pyramid shape to sell products and services, in which employees act as sellers and shoppers. The multilevel marketing company's earnings are then derived from this unpaid group of workers. that is completed so that multi-level marketing organizations in India or the world keep a consistent wide variety of income, wherein the burden of getting to promote and distribute the product/services isn't positioned entirely on the personnel. a number of the fine MLM groups in India include Amway, Avon, MaryKay, all the time dwelling, and so on., which have launched inside the Indian market with a proposal to grow direct sales and offer task opportunities focused on housewives, retirees, and unemployed human beings. Multi-stage advertising in India is a large terminology given to marketing that takes place through a community of distributors together with a pyramid scheme or direct selling scheme in India. it's miles used by companies using direct promoting techniques underneath the 2016 Direct promoting suggestions to encourage their existing distributors to recruit new vendors with the aid of giving present distributors a commission on new distributor income.

What is MLM?²

Multi-level marketing is a business model where a company sells its products through a network of distributors. The distributors are responsible for selling the company's products to customers and recruiting new distributors to expand the network. The distributors earn commissions on their sales and the sales made by the distributors they have recruited .

Laws Regulating MLM in India:³

¹<https://www.myadvo.in/blog/is-multi-level-marketing-mlm-legal-in-india>

²https://r.search.yahoo.com/_ylt=AwrgNXQNgY1kVTEP1xQPxQt.;_ylu=Y29sbwNncTEEcG9zAzIEdnRpZAMEc2VjA3Ny/RV=2/RE=1680733070/RO=10/RU=https%3a%2f%2fwww.forbes.com%2fadvisor%2finvesting%2fmulti-level-marketing-mlm%2f/RK=2/RS=qFrILaWfdNBzZslfZkraTLHalZA

The Indian government has enacted laws that regulate MLM companies and prevent them from engaging in fraudulent activities. The most important laws regulating MLM in India are:

1. The Prize Chits and Money Circulation Schemes (Banning) Act, 1978: This act was enacted to prevent fraudulent activities related to prize chits and money circulation schemes. It defines a money circulation scheme as any scheme where the participants are required to make a payment to the company in exchange for the opportunity to receive compensation based on the recruitment of new members. The act prohibits the promotion and operation of money circulation schemes.
2. The Consumer Protection Act, 1986: This act was enacted to protect the interests of consumers and provide a mechanism for the redressal of their grievances. The act defines unfair trade practices and prohibits them. MLM companies are required to comply with the provisions of this act and ensure that they do not engage in unfair trade practices.
3. The Direct Selling Guidelines, 2016: These guidelines were issued by the Ministry of Consumer Affairs, Food and Public Distribution to regulate the operation of direct selling companies, including MLM companies.
4. The guidelines require MLM companies to register with the government and provide details of their business operations. They also require MLM companies to provide a cooling-off period for their distributors, during which they can cancel their membership and get a refund of their investment.

DIFFERENCE BETWEEN ILLEGAL AND LEGAL MLM⁴:

several multi-level advertising schemes are released each day. even though some multilevel marketing companies or attorneys with desirable intentions and honest businessmen, some intentionally deceive and cheat gullible humans and rob them of cash. although it isn't always easy to become aware of an actual multi-level marketing commercial enterprise from a fake one, there are certain methods that people can recognize if an instantaneous advertising business suggests that it's far unlawful. some features that can distinguish prison from illegal multilevel marketing companies are defined underneath:

³https://r.search.yahoo.com/_ylt=AwrO8veNgy1kdwgQ.OgPxQt.;_ylu=Y29sbwNncTEEcG9zAzIEdnRpZAMEc2VjA3Ny/RV=2/RE=1680733197/RO=10/RU=https%3a%2f%2flawrato.com%2findian-kanoon%2fcorporate-law%2fis-multi-level-marketing-legal-in-india-heres-all-you-need-to-know-2839/RK=2/RS=xusf__nHSOL0rx8XMXIG3.vIK3s-

⁴https://r.search.yahoo.com/_ylt=AwrjbpYzhC1kL04P8iMPxQt.;_ylu=Y29sbwNncTEEcG9zAzYEdnRpZAMEc2VjA3Ny/RV=2/RE=1680733364/RO=10/RU=https%3a%2f%2fnetworkmarketingpower.com%2fis-mlm-legal%2f/RK=2/RS=n6ow64qAJYE1rqVDpoDee8wJk3E-

1. illegal MLM programs usually promise extraordinarily high charges of return, while in reality there aren't any underlying goods or offerings which might be worth that ton. whereas a legitimate and true multilevel advertising enterprise is constructed via actual product income and not on false promises.

2. In an unlawful multi-level marketing commercial enterprise scheme, a fee is paid to an agent to simplest attract different investors or agents. even in the prison system, distributors may be paid commissions on the real and real income of products and items by sellers.

3. In unlawful multilevel marketing schemes, there may be commonly an unreasonably excessive rate of going back for which there's no reasonable rationalization. whilst a criminal multi-level marketing system includes supplying reimbursement to its representatives and distributors on an inexpensive foundation.

4. the principal purpose of an illegal marketing scheme is to make short and smooth cash without gifting away any precious services or products, while a criminal multi-level marketing scheme might not comply with that. some groups name themselves multi-stage advertising and marketing when they're walking pyramid schemes that violate Michigan's Pyramid promoting Act. even supposing a tiered plan does no longer violate Michigan's Pyramid promotion Act, the advertising of the plan may additionally violate Michigan's patron protection Act if the acts, techniques, or practices are unfair, unconscionable, or misleading.

Understandably, consumers frequently have trouble distinguishing between an unlawful pyramid scheme and a legitimate multi-level advertising opportunity. government regulators and industry keep discussing where the prison strains are drawn. Multi-degree advertising is a legal and legitimate commercial enterprise method that uses a network of independent representatives to promote consumer products. repayment must be based on the sale of services and products to the final customer. Pyramid schemes declare to be within the commercial enterprise of promoting products to consumers to appear like a multi-level advertising organization. however, very little effort is made to bring the product to market. as an alternative, cash is made in traditional pyramid style... using recruiting other human beings to marketplace this system. once in a while, new "distributors" are tricked into buying inventory or overpriced merchandise/offerings when signing up. Pyramid groups make honestly all of their profits from recruiting recruits and frequently try to cover access expenses like the amount charged for obligatory consumptions of education, computer offerings, or product stock. Pyramid schemes are legal; they waste your time and money. because pyramid schemes rely upon recruiting new contributors to bring in money, schemes

frequently disintegrate while the pool of ability recruits dries up (marketplace saturation). while the scheme collapses, mostly people, except for a few at the top of the pyramid, lose their cash.

LEGALITY OF MULTI-LEVEL MARKETING IN INDIA:⁵Multi-network marketing is a prison in India. Same are the multi-level marketing schemes, except for sure companies which might be classified as illegal multilevel marketing due to the fact they serve to lure harmless clients who finance in MLM schemes and there may be no real trading of products and offerings at once by way of the buyers. or promoters. rather, there may be handiest a promise that the returns might be earned by using the investor. however, such promises in no way materialize and motivate big losses to traders. due to this, the Indian authorities have identified several styles of fraudulent community advertising techniques as unlawful in India to shield clients. these network advertising schemes are not a felony in India underneath the Direct selling suggestions 2016 and the charge and money laundering Schemes (Prohibition) Act 1978.

FOLLOWING ARE THE MLM THAT ARE UNLAWFUL:⁶

PYRAMID SCHEMES : It is recreation in Indian regulation is described as a scheme where the manager shapes a pyramid construction that begins with one individual representing the tip of the pyramid. An individual accepts some other person who works underneath him. And this individual is needed to make investments in a positive quantity that's paid to the preliminary recruit, To recoup his funding, the new member should recruit extra traders who make investments in a set amount of money, growing a pyramid chain. recently, the Reserve bank of India (RBI) issued an announcement warning investor against scams in pyramid schemes that promise high returns and run on hefty membership subscription charges. The RBI stated MLM, chain advertising, and marketing, or pyramid structures promise clean or brief money after signing up participants. The RBI has recommended the general public no longer be lured with the aid of guarantees of high earnings offered by using multi-degree marketing organizations working community advertising, chain marketing, or pyramid systems in India.

⁵https://r.search.yahoo.com/_ylt=AwrjbpanhC1kJV0PXiEPxQt.;_ylu=Y29sbwNncTEEcG9zAzkEdnRpZAMEc2VjA3Ny/RV=2/RE=1680733479/RO=10/RU=https%3a%2f%2fblog.leadmlmsoftware.com%2flegality-of-multi-level-marketing-or-mlm%2f/RK=2/RS=fwSyZHncAilq5UUjgcol2nhSulc-

⁶https://r.search.yahoo.com/_ylt=AwrO8vdSiS1kOiiQUyAPxQt.;_ylu=Y29sbwNncTEEcG9zAzgEdnRpZAMEc2VjA3Ny/RV=2/RE=1680734674/RO=10/RU=https%3a%2f%2fawrato.com%2findian-kanoon%2fcorporate-law%2fis-multi-level-marketing-legal-in-india-heres-all-you-need-to-know-2839/RK=2/RS=IZZyxNp1nX2pxo1v46vXwbBjDFA-

CASH FLOW SCHEMES: A cash movement structure became described in segment 2(c) of the Banning and Banning Act, 1978, It states: "Any scheme that makes cash fast and effortlessly through a money chain or where someone needs money from any other to invest in a 'cash circulate machine' approach any gadget for creating wealth quick or effortlessly or for receiving any cash. or a component of price as attention for a promise to pay money, On any event relating to or applicable to the registration of members inside the scheme, whether such money or element is resultant from the access cash of the contributors of such scheme or journal subscription, cash move schemes or cash chain buying and selling is not a felony in India,

PONZI SCHEMES: It is a kind of multilevel marketing scam that guarantees a rush to go back to its traders. It is essentially a fraudulent funding scheme. antique investors are paid the proceeds of coin inflows obtained from new investors. So this scheme is based on a consistent go with the flow of latest investment from new traders and breaks down or falls apart when that go with the flow of funding from traders stops. it's far important to recognize the difference between a valid multilevel marketing scheme and a fraudulent Ponzi scheme. In a Ponzi scheme, one man or woman controls the budget, and money is transferred from one person to other without making any proper reserves. a person running a Ponzi scheme attempts to gain the belief of investors and those investors start investing cash and agree with the Ponzi scheme, such someone who commits fraud disappears with all of the investments. but, in a pyramid scheme, the person who begins this recreation will recruit traders, and the activity of those traders could be to recruit different traders.

CHIT FUNDING: The Chit Fund Act defines a discount fund as "a transaction, whether referred to as a discount, chit fund, chitty, Kuri or with the aid of another name or beneath which someone concurs with a precise variety of humans that each of them will subscribe a specific quantity. cash in the shape of normal installments for a positive length. each such subscriber to the chit fund will be entitled to the amount of the prize in return, as will be determined via lottery or public sale or soft or in such manner as may be furnished in the contract of the metropolis". a set of human beings contributes a positive secure amount of money to a pool, and then any fellow can draw a lump-sum amount via strategies including a lottery or perhaps an auction. each member can also be allowed to attract cash from the chit fund based totally on his needs.

CONCLUSION⁷: With that, it stands to cause that multilevel advertising is come what may prison and illegal in India as it varies completely upon the scheme, The regulations governing these schemes in India are a wall that ensures the rights of the layman, the not unusual citizen. network advertising or multi-degree advertising or a pyramid scheme is a felony as lengthy because it makes a specialty of achieving increasingly human beings to promote actual products or services. The day it prioritizes networking and calls for investment or charge to turn out to be a part of such a network, it has crossed the line and might emerge as part of the blacklisted multi-level marketing organizations.

⁷https://r.search.yahoo.com/_ylt=AwrjbpZKii1kpbcpRR8PxQt.;_ylu=Y29sbwNncTEEcG9zAzgEdnRpZAMEc2VjA3Ny/RV=2/RE=1680734922/RO=10/RU=https%3a%2f%2fblog.ipleaders.in%2fmulti-level-marketing-in-india%2f/RK=2/RS=i.5aMDIzqRbYppqA.5ELvoN4Yj6Y-