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EDITORIAL NOTE

- *Editors*

The present issue consists of three articles which cover different facets of law ranging from regulatory mechanism to constitutional and corporate law with a special insight on the developing 'Indian School of Thought' for law and economics which is in sync with the aim of the Journal. To solve some of the world's problems, is the outlook that all these articles echo, and they apply law & economics to these complex issues to present unique solutions.

In the paper titled **"Economics of Juvenile Delinquency in India: Examining The Contemporary Issues with the Juvenile Justice Act, 2015"** Pranay Agarwal addresses the issue of high juvenile delinquency in India adopting the law and economics approach. The passing of the Juvenile Justice (Care and Protection of Children) Act, 2015 led to a significant improvement in the addressing this issue. The author correlates the economic theories of crime and punishment to derive an understanding of juvenile delinquency, attempting to compare the expected and actual results of the 2015 Act. Using statistical trends and demand-supply curves, the author puts forward crucial recommendations, aiming to reduce juvenile crimes.

In the paper titled **"Mandatory Versus Voluntary Corporate Social Responsibility: A Comparative Analysis of CSR Regime in India and Singapore"**, Vidushi Puri presents a relevant analysis of the Corporate Social Responsibility (CSR) concept, through the lens of a trade-off between private profit and social benefit. The paper studies the growing importance of CSR in 21st century businesses, arguing that social responsibility and sustainable processes are compatible with long-term economic growth along with shareholder wealth maximisation. A pertinent comparison is made between the CSR regimes of India, which is mandatory, and that of Singapore, which prescribes only a voluntary provision. An interesting contrast is presented between the two countries, where the author highlights that Singaporean authorities have strived to function in sync with corporate thinking and social values, aiming to converge them for better social outcomes. On the other hand, the obligatory Indian CSR system has led to increasing philanthropic activities, without necessarily having a deeply social effect. The author recommends improving awareness among corporates regarding the profitable effects of sustainable social initiatives through CSR, along with advocating for a more robust system for sustainability reporting. This would lead to the adoption of CSR in its true spirit.

Shubhangi Roy in her paper titled **"Identifying the 'people' in 'What will people say': Incorporating social identity within Law and Norms Discourse"** lays down crucial

observations on the impact and influence of an individual's social identity on legal rules. Through an extensive literature review, the author clarifies that the function and intent of the law has been to convey a socially desirable process. This informational influence of the law seeks to harmonise with the normative influence of informal codes. A law and norms analysis also yields important results, with the examination of legal information and reputation through social influence. However, within both such influences, the social perception and identity of a person would affect their conduct. The author contends that social identity would impact both the informational and normative codes, using concepts of legitimate information and shame respectively. Concluding with a suggestion of a framework for accepting different social influences, the author presents a novel recommendation of applying it to legal system designs for better predictability and efficacy.

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MANDATORY VERSUS VOLUNTARY CORPORATE SOCIAL RESPONSIBILITY: A COMPARATIVE ANALYSIS OF CSR REGIME IN INDIA AND SINGAPORE

Vidushi Puri[1]

ABSTRACT

Corporate Social Responsibility is a form of business practice wherein a corporate regulates itself by being socially accountable to itself, the stakeholders, as well as the public at large. The concept of social responsibility by its bare meaning points towards a philosophy that seems to be voluntary in nature as the vigour to do social work should come from within and cannot be imposed. On one hand, a corporate needs to be socially responsible and do sustainable business but on the other hand, making expenditure on social causes mandatory poses an extra financial burden which may be undesirable for growing economies and mushrooming corporates.

At the same time, it becomes important to ensure that the profit-making zeal of the corporates does not surpass their requirement to be socially responsible and financially sustainable. India has been the forerunner in mandating CSR in the year 2013 and improvising an altogether new legal regime that needs to be complied with by the corporates. Singapore, on the other hand, has been a jurisdiction that motivates the corporates to invest in CSR rather than making it mandatory for them. This paper aims to compare and contrast the existing CSR regimes in both India and Singapore. In the end, certain suggestions will be made as to which model of CSR would be more beneficial for growing economies- Mandatory or Voluntary, given the analysis done in this paper.

[1] PhD Scholar, National Law University, Delhi

INTRODUCTION

"A good company offers excellent products and services. A great company also offers excellent products and services but also strives to make the world a better place."

- Philip Kotler.

Gone are the days when 'the social responsibility of a business was only to increase its profit.'[2] In the economic world today, the balance sheet of a company is no longer the only crucial document of the year. The principle of voluntarism predominated in early CSR literature, as the traditional concept of a business was based on the belief that the primary goal of a corporation is to maximize shareholder wealth. With the onset of globalization in the late 1980s and the growth of multinational corporations, however, this global consensus began to splinter. Governments could no longer rely on huge corporates' innate goodness to contribute back to society when their primary motivation for setting up operations in other nations was solely economic - cheap labour, access to raw resources, and lesser legal compliance.[3]

The societal transformation that has occurred has increased awareness towards the need for a better world, both environmentally as well as economically, prompting businesses to place a greater prominence on the presentation of a sustainability report, the true passport required to join today's corporate world. It is for the same reason that the concept of Corporate Social Responsibility [hereinafter referred to as "**CSR**"] has recently acquired traction. While the concept is not new in itself, its significance has surged in the new millennium.

It is no longer the era of the industrial revolution and exploitation, but rather that of knowing how to run an organisation while keeping in mind that the success of all players is determined by the overall welfare of the society. While profit is an important metric of a company's performance, an organisation has several other objectives such as the well-being of all its stakeholders including the environment. [4] The most important idea that has emerged is doing good and doing it well; 'making our life a product and making this product something

[2] Milton Friedman, *A Friedman doctrine: The Social Responsibility of Business Is to Increase Its Profits*, N.Y. TIMES (Sept. 13, 1970).
[3] Laura Colombo, *Corporate Social Responsibility is not only Ethical, but also a Modern Business Tool,* FORBES (September 12, 2021), https://www.forbes.com/sites/forbeshumanresourcescouncil/2021/04/05/corporate-social-responsibility-is-not-only-ethical-but-also-a-modern-business-tool/?sh=63f7a3cd1bfa.
[4] UN, DIGITAL ECONOMY REPORT, (2021), .

meaningful for the whole world.'[5] To put it another way, a new sustainable economy is represented by the ability to co-exist as a whole rather than a separate element, built on cultural creative capital and capable of recognising humanity as the ultimate commercial objective. Stakeholders will only be drawn to a company, in this environment, if the pursuit of business is equaled by the objective of contemporary society as well as when equity in diversity is a fundamental principle.

It is only with the advent of the Companies Act 2013, that CSR started being construed as a legal concept as before that it was merely understood as a management concept and as a part of a corporation's business strategy. As a landmark move, India became one of the foremost nations across the globe to have mandated CSR. Singapore, on the other hand, is also amongst the fast-growing economies of the world and even though it has gained its independence very recently, in the year 1965, it still emerges as a flagbearer of sustainability throughout the world. CSR has a long history in Singapore as a concept of a voluntary contribution to the betterment of society. Businesses appear to be intrinsically oriented toward long-term success and believe that economic growth and environmental protection are not inherently incompatible.[6] Hence, it becomes imperative to elucidate upon the CSR strategy of Singapore put it alongside that of India, so that India can enhance its policy and strategy concerning CSR and maximize the potential of its momentous legislation.

This paper aims to compare and contrast the existing CSR regimes of India and Singapore and to draw conclusions as to which model of CSR is more suitable for growing economies- mandatory or voluntary. It also seeks to highlight the lacunae in the Indian legislative framework and understand what still makes it lag behind nations like Singapore that don't have mandatory CSR framework but still outperform India on all sustainability indices. In doing the same, the author seeks to analyze the set of laws and regulations applicable in both jurisdictions with respect to CSR and Corporate Sustainability. The paper follows a doctrinal approach and has primarily utilized the primary sources of information, like statutes, legislations, and regulations, to ascertain and analyze the historical framework and the current scenario about legal issues surrounding CSR in India and Singapore. Secondly, it has gathered and analyzed secondary sources such as books, reports by the government, articles, and journal papers

[5] *Definition of 'Product',* ECONOMIC TIMES (September 12, 2021), https://economictimes.indiatimes.com/definition/product.

[6] ZABIHOLLAH REZAEE, JUDY TSUI, PETER CHENG & GAOGUANG ZHOU, BUSINESS SUSTAINABILITY IN ASIA: COMPLIANCE, PERFORMANCE, AND INTEGRATED REPORTING AND ASSURANCE 110-112 (2019).

prepared by eminent authorities in the field of CSR and Corporate Sustainability. Singapore has been chosen as a comparative jurisdiction as both the nations, India and Singapore are commonwealth nations and have gained their independence recently. Owing to this, their laws are similar. Though Singapore has no law which mandates CSR, it does have a mandatory CSR reporting framework, and its CSR model, yet, is considered to be one ofthe best in the world.

Part II of the paper gives a brief introduction to the concepts of CSR and Corporate Sustainability and also throws light upon their importance in the contemporary legal and economic scenario. Part III examines CSR from an Indian perspective and highlights all the legislative changes that led to CSR being mandated in the country. Part IV highlights the role of CSR in the Singaporean economy and various legislative frameworks in Singapore which are related to CSR and Corporate Sustainability. Part V elucidates upon the global trends with respect to the concepts of CSR and Corporate Sustainability and highlights the reasons why the concepts are the talk of the town and have gained enormous traction in the past few decades. Part VI finally lists down the findings which have been outlined in the course of the entire research paper. It also tries to present certain suggestions which can aid in making the CSR regime in India more robust and ensure effective implementation.

1. CSR AND CORPORATE SUSTAINABILITY

Sustainable and balanced development has emerged to present itself as a vital component of global expansion.[7] The existence of international standards and jurisdictions governing key social and environmental values has become crucial considering the needs of present generations as well as posterity. In light of the aforementioned argument, the role of various sectors of the economy such as businesses and industries in working towards a sustainable future has intensified. Being a critical part of society, it is in the business' interest to recognize and contribute towards the achievement of this goal. From a strategic viewpoint, businesses can thrive only when they operate within a healthy environment and ecosystem.[8]

[7] UNESCO, SUSTAINABLE DEVELOPMENT, https://en.unesco.org/themes/education-sustainable-development/what-is-esd/sd. (last visited September 12, 2021),

[8] Julian Birkinshaw, *Ecosystem Businesses Are Changing the Rules of Strategy,* HARV. BUS. REV. (Aug. 08, 2019), https://hbr.org/2019/08/ecosystem-businesses-are-changing-the-rules-of-strategy.

The concepts of Corporate Social Responsibility [hereinafter referred to as "**CSR**"] and Corporate Sustainability are frequently considered to be synonymous and are used interchangeably. Though both the terms aid the corporates in attaining the same end of Sustainable Development, the means and the approach taken by both of them is indeed different. Both the terms are extremely in vogue and no study of corporate governance is ever complete without placing reliance on these terms. None of them has a clear-cut definition and we may find multi-faceted definitions for both of them. In this paper, we shall take into account some of the most prominent and commonly used definitions of these terms.

UNIDO defines CSR as "a management concept whereby companies integrate social and environmental concerns in their business operations and interactions with their stakeholders."[9] CSR is commonly conceived as the process via which a company attains a balance of economic, environmental, and social objectives while fulfilling the expectations of all its stakeholders at the same time. The driving force to pursue CSR is generally to maintain a good reputation in the market and with time it has increasingly been seen as a way to primarily fulfill compliances. CSR as a concept is comprehended as having a short-term bent and has undertones of philanthropy as corporates have to expend a certain share of their profits to ensure compliance and also in a way give back to society. This philanthropic aspect of CSR makes it more often than not undesirable for growing economies and mushrooming corporates as they tend to look at it as an extra financial burden to spend their monies on social causes. The trends studied in various jurisdictions show that the zeal to provide for the betterment of society and in turn achieve or at least aim to achieve sustainability goes missing even though CSR as a concept is intended to be broader than mere philanthropy or social work.

On the other hand, Corporate Sustainability is not just a broader concept than CSR but also has a different way of attaining the goal of sustainable development. The United Nations Global Compact defines Corporate Sustainability as "imperative for business today –essential to long-term corporate success and for ensuring that markets deliver value across society. To be sustainable, companies must do five things: Foremost, they must operate responsibly in alignment with universal principles and take actions that support the society around them. Then, to push sustainability deep into the roots of the corporates, they must commit at the

[9] UNIDO, WHAT IS CSR?, , https://www.unido.org/our-focus/advancing-economic-competitiveness/competitive-trade-capacities-and-corporate-responsibility/corporate-social-responsibility-market-integration/what-csr#:~:text=Corporate%20Social%20Responsibility%20is%20a,and%20interactions%20with%20their%20stakeholders (last visited September 12, 2021).

highest level, report annually on their efforts, and engage locally where they have a presence."[10] This aids the company in attaining the objectives of the triple bottom line approach i.e., focus equally on people, planet, and profit.

Sustainability as a concept, voices for a long-term approach and something that the corporates are undertaking, not just as Good Samaritans, but as something which all corporates should undertake, to ensure advantages in the long term and to ensure that they can pursue their primary goal of shareholder wealth maximisation in the times to come. The ambits of sustainability are nowhere restricted to mere philanthropy but go way beyond that. A robust sustainability regime is not just focused on giving back to society but is also aimed at ensuring that the corporation flourishes along with the society they function in. The propagators of Corporate Sustainability strongly advocate that for a business to be able to prosper, the communities they operate should as well.[11]

2. CSR: INDIAN PERSPECTIVE

The concept of good governance is deep-rooted in the Indian society dating back to the times of Kautilya (3rd century BCE) who laid down the basic facets of governance in his much-lauded work, Arthashastra. Despite this, the concept of corporate governance, as such, has been comparatively new to India having evolved only in the early 1990s with the advent of economic liberalisation. Ever since then, India has been trying to grow in terms of governance aspects and CSR is one of them.

Some companies in India like the Tata group etc. have always adopted a voluntary CSR approach but largely a concept like CSR or sustainability reporting was never existent in our country before 2009, when the Ministry of Corporate Affairs introduced Voluntary Guidelines on CSR. Before this, the businesses in India always had a shareholder-based approach and this was for the first time that drift was seen towards the stakeholder-based approach. Under these guidelines, each company was suggested to formulate a CSR policy that would provide a blueprint of all the CSR activities planned to be undertaken by the company.[12] This policy was restructured in the year 2011 to give rise to the National Voluntary Guidelines on Social, Environmental, as well as Economic Responsibilities of Business [hereinafter referred to as

[10] UN GLOBAL COMPACT, GUIDE TO CORPORATE SUSTAINABILITY, (2015).
[11] Thusita De Silva, *CSR in Singapore, Singapore* SINGAPORE MAG. (Oct. 02, 2021), https://singaporemagazine.sif.org.sg/csr-in-singapore.
[12] MCA, GOVT. OF INDIA, CORPORATE SOCIAL RESPONSIBILITY VOLUNTARY GUIDELINES, (2009).

"**NVG**"]. This time the guidelines provided for 9 basic principles which were to be the backbone of NVG. This was the first measure directed towards Long Term Share Value [hereinafter referred to as "**LTSV**"] but was still voluntary in nature. Also, this measure had very little impact on any kind of CSR spending by the companies as there was almost no encouragement to that end.

Since these guidelines were proving to be toothless legislation and since there weren't a lot of companies adhering to these guidelines, in 2012, the Securities and Exchange Board of India [hereinafter referred to as "**SEBI**"] released a circular mandating Business Responsibility Reports [hereinafter referred to as "**BRR**"]. To give effect to the same, clause 55 of the Listing Agreement was amended. The mandate was only applicable to the top 100 listed companies based on their market capitalisation at the National Stock Exchange as well as the Bombay Stock Exchange as of March 31, 2012.[13] These reports had to be in line with the principles enshrined under the NVG. Eventually, SEBI came out with the Listing Obligations and Disclosure Requirements Regulations, 2015 [hereinafter referred to as "**LODR Regulations**"], Reg. 34(2)(f), which states that the annual report submitted by the companies should contain a business responsibility report that describes the initiatives taken by the listed companies from an environmental, social and governance perspective, in the format prescribed by the Board.[14] This mandate is currently for the top 1000 listed companies based on their market capitalisation as of 31st March each year. Even the remaining listed companies can furnish these reports voluntarily.[15] Presently, the LODR Regulations, primarily govern the aspect of sustainability reporting in India.

More recently, SEBI has agreed to adopt new ESG reporting standards on March 25, 2021, following a consultation using Xtensible Business Reporting Language [hereinafter referred to as **XBRL**] in 2020.[16] The country's top 1,000 listed companies (by market capitalization) will be required to file a Business Responsibility and Sustainability Report [hereinafter referred to as **BRSR**], which will be voluntary for the 2021-22 fiscal year and mandatory for the 2022-23 fiscal year onwards.[17] The move aims to increase openness and make it easier to identify ESG-related risks and opportunities. When it comes to ESG requirements, companies listed in India

[13] SEBI, BUSINESS RESPONSIBILITY REPORTS CIR/CFD/DIL/8/2012, (2012).
[14] SEBI, FORMAT FOR BUSINESS REPORT CIR/CFD/CMD/10/2015, (2015).
[15] SEBI, LISTING OBLIGATIONS AND DISCLOSURE REQUIREMENTS REGULATIONS, (2015).
[16] SEBI, XBRL PROJECTS IN SEBI.
[17] SEBI, BUSINESS RESPONSIBILITY AND SUSTAINABILITY REPORTING BY LISTED ENTITIES, (2021).

must compare themselves to worldwide best practices.[18] "The BRSR places substantial emphasis on measurable measures, which enables for simple assessment and comparability across firms, sectors, and periods," according to the SEBI Board. In addition, the disclosures on the environment and social concerns have been much improved and granularized." Essential and leading indicators are separated in the BRSR disclosures.[19]

Various studies claimed that the adoption of voluntary guidelines given in India was not up to the mark and therefore a need for a more stringed regime was felt. There were a lot of debates to have a law that mandates CSR expenditure by companies. Also, the talks to revamp the Companies Act, 1956 were ongoing. It was almost at the same time that the corporate governance regime in India was jolted by the Satyam scam. It was in the aftermath of this, that a lot of Companies Amendment Bills were placed before the parliament. Eventually, after a lot of debates and discussions, the Companies Act 2013 was enacted. In a landmark move, the Companies Act, 2013 mandated the undertaking of Corporate Social Responsibility for Indian based as well as foreign-based companies operating within the boundaries of the nation. The ratification of the Companies Act, 2013 made India a forerunner to obligate spending on CSR activities via a statutory provision. As stated earlier, while CSR has been taken up voluntarily by several corporate houses traditionally, the new provisions put formal and larger responsibility upon companies operating within the country to set out a more transparent framework to warrant a stricter acquiescence. Presently, what the Companies Act does is bring along additional organizations into the fold and exponentialize the total expenditure on CSR.

The law dictating the terms of CSR is mentioned within Section 135 of the Companies Act, 2013 which is to be conjointly read along with Schedule VII of the Act and the Companies (Corporate Social Responsibility Policy) Rules, 2014. Section 135 mandates the formation of a CSR committee and apparently, CSR expenditure for organizations crossing the benchmark as is mentioned in the same. The companies crossing the benchmark are under an obligation to spend 2% of their average net profits earned in the preceding three financial years towards CSR. Schedule VII of the Companies Act of 2013 lists down various activities that are considered to be CSR initiatives. Several activities such as engagement in education, poverty

[18] *Mandatory BRSR Reporting for Top 1,000 Listed Companies from FY2022-23,* KPMG ((June 08, 2021), https://home.kpmg/in/en/home/insights/2021/06/firstnotes-sebi-business-responsibility-sustainability-/reporting-listed-companies.html.

[19] ANN BROCKETT, ZABIHILLAH REZAEE, CORPORATE SUSTAINABILITY: INTEGRATING PERFORMANCE AND REPORTING 48-55 (2012).

alleviation, female empowerment, or contributions towards renowned funds such as the Prime Minister's National Relief Fund are covered as a part of CSR initiatives.[20]

One can make out a huge difference in the intention and implementation while giving the provision a thoughtful read. On an apparent reading of the section, one may feel that spending on CSR is mandatory but a careful reading would explain that the approach is way laxer than it seems. It is restricted more to being the "comply or explain" approach and it is the disclosures of CSR expenditures in the reports and the setting up of the CSR committee that is mandatory and attracts a penalty.[21] "Comply or explain" means the corporations must undertake the expenditure or elaborate on the failure to do so. Even though there is a spike in CSR expenditures ever since the enactment of the Companies Act 2013, India is still far from achieving its real vision and mission after implementing the provision. Since the provision is restricted to "comply or explain" mandate and the penalty imposed is arguably less, most companies are not taking it very seriously and have shown a very laid-back attitude in even disclosing or reporting the reasons for their inability to spend the stated amount. Enforcement of laws has always been a tricky issue in India. Hence, this provision merely boils down to just being legal compliance and is far from its primary objective of achieving sustainability.

More recently, section 135 was amended vide the Companies (Amendment) Act, 2019 inter-alia requiring the provisions to transform from "comply or explain " to "comply or suffer" by establishing a penal provision for non-compliance. The amendment further introduced a provision to park the unspent money for ongoing projects in a separate account and any other unspent amount to the Clean Ganga Fund or Prime Minister's National Relief Fund or like. Amidst the decriminalisation (of offenses under the Companies Act) spree of the Indian government, the introduction of imprisonment in CSR provisions has not been welcomed by organisations and has created a sense of panic amongst them. Though the provisions in the Companies (Amendment) Act, 2019 concerning CSR have been put on hold, the government is in the mode of amending CSR Rules 2014 to bring them in line with the said amendment in the Act and to ensure smooth implementation of the amendment in the Companies Act.

A high-level committee has been set up under the chairmanship of Mr. Injeti Srinivas which has also given its suggestions for making the CSR regime in the country more efficient and

[20] The Companies Act, No. 18 of 2013, Acts of Parliament, 2013 (India).
[21] Umakanth Varottil, *Analysing the CSR Spending Requirements under Indian Company Law, in* GLOBALISATION OF CORPORATE SOCIAL RESPONSIBILITY AND ITS IMPACT ON CORPORATE GOVERNANCE 231-53 (Jean J. du Plessis, Umakanth Varottil & Jeroen Veldman eds. 2018).

robust. Some of these suggestions are to make CSR expenditures tax-deductible, violation of CSR compliance to be made a civil offense, carry forward unspent CSR balance for three to five years, etc. The Committee stressed advocacy and sensitization to achieve the overall objective of CSR.[22]

Hence, one can make out that the past decade has seen a lot of changes being made in the CSR regime in India where we can see the drift from voluntary to pseudo-mandatory to mandatory to such an extent to make the defaulters pay hefty penalties as well as face imprisonment. It can be said without a doubt that the government is trying extremely hard to streamline the regime and ensure effective implementation. But, as of now, the CSR policy in India is mostly compliance-based rather than sustainability based. The focus on compliances has increased so much that we seldom see the word sustainability being used with CSR which in itself is the defeat of the concept. As discussed earlier also, the nature of CSR in India is such that this concept is almost understood the same as Corporate Philanthropy and thus, the real intent takes a back seat.

3. CSR: SINGAPOREAN PERSPECTIVE

Singapore is a unique nation because it has been relatively very recently that it has gained its independence and even in such a short period, it has developed its economy exponentially. Even though the economy is small at a global level, it is comparatively very rich, having one of the highest per capita income in Asia. The rapid financial growth that Singapore has seen also boasts of environmental-friendly and sustainable economic development. The Singaporean government has given paramount importance to sustainable practices all across the nation, ever since its inception. The country has always been well-known for its green city programs and the government has taken considerable efforts to embed sustainable practices throughout the majority of sectors in the nation. The policymakers in Singapore have seemingly attained success in enforcing a social contract between the stakeholders and the corporations.[23]

CSR as a concept of voluntary contribution towards the general upliftment of society has been deep-rooted in Singapore. The culture there is such that the corporates seem to be automatically

[22] MCA, REPORT OF THE HIGH LEVEL COMMITTEE (2015).
[23] Hu Yuen Ping, *Corporate Social Responsibility in Singapore: Institutions, Framework and Practice, Econ. Paper on Corp. Social Responsibility (2005)*, http://publications.apec.org/-/media/APEC/Publications/2005/12/Corporate-Social-Responsiblity-in-the-APEC-Region-Current-Status-and-Implications-December-2005/TOC/Singapore.pdf.

focused on sustainable growth and believe that economic development is not at odds with environmental protection.[24] There is no provision in Singapore for "mandatory CSR" as such even though they have a tradition and statutory requirements of Sustainability Reporting by the corporates. As a concept, CSR is not understood as standalone and is more often than not, referred to along with, Corporate Sustainability. Therefore, even though there is no formal statutory requirement for CSR, the corporates in Singapore have been undertaking CSR expenditures as their normal business method. The fundamentals of corporates in Singapore have always been transparency and ethics.

To formalise CSR issues, the National Tripartite Initiative on CSR was established in May 2004 which involved having a tripartite approach including representatives from government, industry, and unions.[25] The government at its behest has tried to address maximum issues about CSR even though they emphasise primarily voluntary action. On the legislative front, the basis for socially responsible behaviour in Singapore dates back to 2001 when the Corporate Governance Committee, laid down the Code of Corporate Governance for the first time. The most recent amendment to the said document was carried out in 2018 by the Monetary Authority of Singapore.[26] It lays down a certain set of principles and provisions and it is mandatory for all the listed companies to abide by them. The companies are under a 'comply or explain' obligation and all the requirements are to be met by the organisation and have to be stated in its annual reports. The listed companies are required to address issues of board independence and diversity of thought and background, division of responsibilities between the leadership of the board and the company management, assessment of the board's effectiveness, transparency of the appointment of directors, remuneration policies, risk management and internal controls, shareholder rights, audit, engagement with shareholders andinterests of other stakeholders.[27]

The Singapore Exchange [hereinafter referred to as "**SGX**"], is another pivotal body to ensure compliance with sustainability in Singapore. Alongside the global thrust in Sustainability Reporting and the advantages that Sustainability Reporting brings to both investors as well companies, SGX introduced Guide to Sustainability Reporting for listed companies in the year

[24] Mauraqz, *How Singapore became Asia's Greenest City* QUARTZ (Mar. 07, 2017), https://qz.com/921517/how-singapore-became-asias-greenest-city/.
[25] Thomas, Thomas, *CSR Singapore Style*, SOCIAL SPACE 54-55 (2009), https://ink.library.smu.edu.sg/cgi/viewcontent.cgi?article=1041&context=lien_research.
[26] Code of Corporate Governance, 2018 (Sing.).
[27] CFA INSTITUTE, ESG DISCLOSURES IN ASIA PACIFIC (2012).

2011 though this guide provided for voluntary reporting of sustainability practices by the listed companies.[28] To make the mechanism more robust, in 2016, SGX came up with a new listing rule which mandated the listed companies to issue annual sustainability reports on a 'comply or explain' basis. An option was given to issue standalone sustainability reports or the same could be incorporated well within the annual reports submitted by the companies. These requirements were further elaborated upon by SGX-ST Listing Rule 711B. This rule listed down the main components that should be there in sustainability reports. They are:[29]

- Material ESG factors (where ESG stands for Environmental, Social, and Governance)
- Sustainability reporting frameworks
- Policies, practices, and performance
- Board statement
- Targets

The Monetary Authority of Singapore and the SGX can be seen hand in hand in working towards making the sustainability regime in Singapore more and more effective.[30] Along with them being the flag bearers of the corporate sustainability regime in Singapore, there are various other authorities also in place to protect the environment and uplift the society like the Ministry of Sustainability and Environment- [hereinafter referred to as "**MSE**"], (erstwhile The Ministry of the Environment and Water Resources), National Environment Agency, Council for Corporate Disclosures and Governance [hereinafter referred to as "**CCDG**"], etc. The MSE is committed to providing Singaporeans with a clean and green environment, clean and safe water, and food. The CCDG, on the other hand, lays down accounting standards for companies in Singapore and reviews the corporate governance and disclosure practices regularly.[31] In furtherance of the largest corporate sustainability initiative in the world i.e. TheUnited Nations Global Compact, Singapore launched the Global Compact Network Singapore

[28] Lawrence Loh & Michael Tang, *Sustainability Reporting- Progress and Challenges*, SINGAPORE EXHANGE (2019), https://bschool.nus.edu.sg/cgio/wp-content/uploads/sites/7/2019/12/SGX-CGIO-Sustainability-Reporting-Progress-and-Challenges-Report-2019.pdf.

[29] *Id.*

30 PWC, SGX SUSTAINABILITY REPORTING GUIDE (2017).

31 MINISTRY OF FINANCE, PRESS RELEASE, AUG. 16 2002. (Sing.) (2002).

in 2005. Eventually, Singapore Compact for CSR was also launched and it primarily seeks to foster collaboration and dialogue amongst various CSR stakeholders.

4. GLOBAL TRENDS

Understanding the concept of CSR is incomplete without studying the famous paper published by Milton Friedman titled "The Social Responsibility of Business is to Increase its Profits". This paper portrayed a pure shareholder centric approach. Milton Friedman is often cited as the father of the shareholder theory of corporate governance which identifies the shareholders as the only group a company is responsible or accountable towards. He always stated that the sole and primary responsibility or purpose of business is to maximise the wealth of its shareholders. He also said that CSR is a "fundamentally subversive doctrine in a free society".[32] For most of the last century, we saw businesses being governed by this ideology. Even though we saw corporates flourishing, it was also seen that such an ideology gave rise to huge scams and frauds being committed in the companies. The profit-making zeal surpassed all ethical and sustainable vigour in the company. Companies were said to be burgeoning at the cost of the larger community. A lot of social and environmental challenges were being faced across the globe. That was the time when people started talking about the aspects of social responsibility and the sustainability of businesses.

The last decade across the globe has seen excessive importance being given to sustainability and social responsibility. A paradigm shift can be observed in Michael Porter and Mark Kramer's article titled "Creating Shared Value" which observes that businesses need to change their approach and methods of doing business and redefine their purpose. It states that businesses should aim to 'create shared value' and 'responsible profits.'[33] They further argued that a business should, while remaining competitive, also focus on the economic and social advancement of the society in which it operates.[34] Creating shared value should be the basic ethos of doing business and it is to be understood as a concept that will benefit the company itself in the longer run.

[32] Friedman, *supra* note 2.
[33] Michael E Porter & Mark R. Kramer, *Creating Shared Value,* HARV. BUS. REV. (February, 2011), https://sharedvalue.org.au/wp-content/uploads/2015/12/Harvard-Business-Review-Creating-Shared-Value.pdf.
[34] Janos Takacs, *CSR and Sustainability- from Milton Friedman to Michael Porter and beyond,* (Oct. 13, 2017), http://www.eoq.hu/iaq/wqf2/papers/c2-3_takacs.pdf.

Adding to this paradigm shift, the International Organisation for Standardisation, came up with ISO 26000 in the year 2010. It provides international standards and guidance on social responsibility. Its primary objective is to contribute to sustainable development across the globe by motivating businesses and other organisations to exercise social responsibility and curb their impacts on their natural environments, their workers, and the communities in which they function. It helps establish the concept of social responsibility, assists businesses and organizations translate principles into efficient actions, and shares ideal practices relating to social responsibility worldwide. Its scope is aimed at all types of organizations regardless of their size, location, or activity.[35]

In furtherance of the same, the United Nations also manifested the Sustainable Development Goals [hereinafter referred to as "**SDG**"], or the Global Goals in the year 2015. These goals that were adopted by all the respective member nations, focus on an "action to end poverty, protect the planet and ensure that all people enjoy peace and prosperity by 2030."[36] It lists down 17 goals that are all correlated to each other and aspire to balance economic, social, and environmental sustainability. Each goal has some targets allocated to them and in total, we have 169 targets. Even though these goals are not legally binding on nations, all the member states are determined in their pursuit of the same. There are a few scholars who claim that theSDGs are utopian but still most people believe that even trying to achieve them will enhance the quality of life for all and save the planet as well. Both India and Singapore are pursuing the SDGs.

Other than this, countries like the Nordic group of nations, the USA are leading the world in CSR initiatives and are emphasising more and more the importance of sustainability. Some of the biggest companies in the world with the best CSR and sustainability ratings are from these nations, for example, Lego, Microsoft, IKEA, Apple, Amazon, Novo Nordisk, etc. Apart from them, countries like Australia, New Zealand, Canada, etc. are treating CSR and Corporate Sustainability as a high priority issue and working hard to come up to the global standards of sustainability.

In the light of all these stated developments across the globe, various organisations came up with a global sustainability reporting standard and framework like the Global Reporting

35 ISO 26000, SOCIAL RESPONSIBILITY, https://www.iso.org/iso-26000-social-responsibility.html (last visited Nov. 7, 2021).
36 UNDP: WHAT ARE THE SUSTAINABLE DEVELOPMENTAL GOALS (2015).

Initiative [hereinafter referred to as "**GRI**"], Sustainability Accounting Standards Boards, etc. The most prominent of them all is the GRI which is largely being adopted by a lot of nations to fulfill their requirements of filing sustainable reports. GRI is an international independent standards organization that assists governments, businesses, and other organizationsunderstand and communicate their impacts on important issues such as climate change, humanrights, and corruption. The GRI Standards are the first global standards for sustainability reporting. They feature a modular, interrelated structure, and represent the best global practicefor reporting on a plethora of economic, environmental, and social impacts. Since most of thenations in the world do not prescribe a set format for sustainability reporting, this serves a hugepurpose of providing the basic format from the same which can be followed by all nations.

5. FINDINGS AND RECOMMENDATIONS

The Brundtland Commission report explicated sustainable development as "development which meets the needs of current generations without compromising the ability of future generations to meet their own needs".[37] This definition is the most acceptable of all definitions of sustainable development in the world. This in itself makes the agenda of sustainable development extremely clear. It makes it clear that our activities should not only be focused on a bright day today but we also have to ensure that we have brighter days in the times to come.

CSR and Corporate Sustainability, as we have understood in the course of the paper, are not the same concepts at all, though both of them are means to attain the end of sustainable development. Even though CSR aids in achieving the latter, the role of CSR is way more than that. A properly implemented CSR concept can bring along a variety of competitive advantages for the company, such as enhanced access to capital and markets, increased sales and profits, operational cost savings, improved productivity and quality, efficient human resource base, improved brand image and reputation, enhanced customer loyalty, better decision making, and risk management processes. Hence, the ultimate objective of CSR is not just to make the world a better place to live in but also to make the corporations sustainable and in a position to pursue their profit-making objectives for a longer period.

37 UNITED NATIONS, REPORT OF THE WORLD COMMISSION ON ENVIRONMENT AND DEVELOPMENT: OUT COMMONFUTURE https://sustainabledevelopment.un.org/content/documents/5987our-common-future.pdf (last visited Nov. 9, 2021),

To ensure that we have the best set of policies to implement and reach global standards, a comparative analysis is extremely important. It has been stated that to know just one nation is to know no nations or to know just one culture is to know no cultures. We understand best the culture in which we live when we make a comparison with other cultures. Keeping the same in mind, this paper tries to compare and contrast the regime in India and Singapore. Singapore consistently outperforms India as far as sustainability indices are concerned. In a sustainability-minded ranking, which is backed by jurists like Michael Porter, the Social Progress Index 2021, Singapore ranks 30 while India ranks 115. This index aims at measuring ‘‘the capacity of a society to meet the basic human needs of its citizens, establish the building blocks that allow citizens and communities to enhance and sustain the quality of their lives, and create the conditions for all individuals to reach their full potential”.[38] Also, in the Global Sustainable Competitiveness Index 2021, Singapore ranks 48 and India ranks 135. This index measures the "competitiveness of countries in an integrated way.”[39] Although none of these rankings should be individually relied upon, a cumulative understanding of them depicts that India can learn and grow a lot with its deeper understanding of sustainability concepts, practices, and measures in Singapore.

Primarily, the very basic difference that we can make out in the course of this paper is the difference in approach towards the concept of CSR in the two nations. While Singaporean corporates look at CSR more from a sustainability-oriented mindset, the approach in India is deeply philanthropic. The corporates in India have been mostly observed to have a very negative kind of approach upwards the concept of CSR and tend to mostly see it as a burden. A burden, which forces them to divulge a share of their profits, fruits of their labour, for the betterment of society. CSR expenditure is, most often than not, thought of as an added tax on the corporates. There are constant debates around the issue that CSR as a concept is inherently voluntary and nobody can be forced to do social service. The impetus of social work should always come from within and can never be forced. The aspect of sustainability tends to always take a back seat around such discussions.

Secondly, In India, excessive dependence is seen on just ensuring compliance. A lot of it is owed to the nature and language of our statute also. India is the only country across the globe

38 SOCIAL PROGRESS IMPERATIVE, GLOBAL INDEX, https://www.socialprogress.org/index/global/results , (last visited Nov. 9, 2021).
39 SOLABILITY, GLOBAL SUSTAINABLE COMPETITIVENESS INDEX, https://solability.com/the-global-sustainable-competitiveness-index/the-index (Nov. 9, 2021, 6:11 PM),

to direct its corporates on how much to spend, where to spend etc. Schedule VII of the Companies Act, 2013 sets boundaries for what can come under the purview of CSR expenditure. The burden of compliances has been made such that the aspect of sustainability again goes missing. A result of this is that most corporates are spending money just to avoid legal soups and are spending money, not on a need basis but just to fulfil the legal formalities. As a result, the quality of reporting in India is also not up to the mark and is very superficial with no detailing being done. Moreover, there are no such criteria to judge the appropriateness of the reports.[40]

Even though it is a stated fact, that the CSR expenditure in India has greatly increased after the enactment of Sec. 135,[41] it is still way behind what it should have achieved. Most problems are because India is still a developing economy and enforcement, as pointed out earlier, has always been a tricky issue for India. To overcome the issues, a lot of measures are being taken by the Government of India to strengthen its legal framework as much as possible. A lot of deliberations and discussions are done aimed at redressing the same but a lot more can be done to address the issue of sustainability.

If we look at the Singaporean regime, it does not have a legal mandate for undertaking CSR expenditures typically, though it has the mandatory sustainability reporting requirement. The corporates themselves set their ESG goals in the light of SDGs. The government empowers the corporates with the importance of sustainability and for the corporates based in Singapore, sustainability can be understood as a way of doing business. It forms a part of their basic business ethos and the corporates seem to have a ubiquitous culture of sustainability. The government also promotes the expenditures towards social causes by corporates by giving them tax breaks on such expenditures. Also, sustainability practices have grown manifold in the past two decades owing to such practices.[42] It is not that the Singaporean system is unblemished or flawless but with a positive mindset towards sustainability and confabulations aimed at creating a better society, they are firmly moving towards their goal.

[40] UN GLOBAL COMPACT, *supra* note 10 at 44.
[41] *India's CSR Reporting Survey*, KPMG (Feb. 18, 2020) https://assets.kpmg/content/dam/kpmg/in/pdf/2019/01/India_CSR_Reporting_Survey_2018.pdf.
[42] Diligent Boards, *Two Decade of Progress: Singapore's Good Governance Pays off*, CEO MAG. (Sept. 01, 2020), https://www.theceomagazine.com/business/sponsored-content/two-decades-of-progress-singapores-good-governance-pays-off/.

To make the CSR regime in India more efficient, the following recommendations are proposed:-

Firstly, Indian corporates need to be explained that sustainability initiatives will increasingly help companies in their operation, assist in saving costs, recruit and retain talent, drive innovation and open up new markets. By adopting an active stance on addressing sustainability issues, corporations will manage their risks better and stimulate long-term growth. The listed companies must understand that the process of implementing Sustainability Reporting includes more than just the Sustainability Report. The real importance of Sustainability Reporting lies in how businesses can successfully integrate sustainability within their business strategies, operations, and processes. Sustainability or CSR should not just be restricted to legal compliance but the deep-rooted intent behind the concept should be clearly understood. Therefore, they need to come to terms with the differences between the concept of CSR and social philanthropy. They should be promoted to make sustainability a way of doing business and their basic ethos of functioning in the market.

Secondly, a more robust and elaborate scheme of sustainability reporting should be introduced which is in line with the SDGs. Only then, it will be possible to reach out to the global levels of sustainable practices and disclosures. The disclosures should be comprehensive and as detailed as possible to demarcate which practice will be or has been undertaken and in what time frame. They should focus more on the reporting schemes given by organisations like GRI as it will help them to attain the ends of standardisation and make a global presence.

Thirdly, it is also pertinent to note that a clearer and more explanatory provision concerning CSR can also aid in a lot of perils. Nowhere in the legislative framework for CSR in India, is the term CSR defined in itself which is what leaves the scope for multiple and anomalous definitions and interpretations of CSR for the corporates. Having a better-defined provision, will make the legislative intent clearer for the corporates and leave lesser room for any discrepancies.

To conclude, simply by making a practice legally mandatory, it is very difficult to achieve the desired result. The key lies in the spirit and intent with which CSR is practiced. Looking at the reports laid down by KPMG, it is clear as a bell that we, as a nation, are growing in our pursuit to achieve sustainable development.[43] Even though a lot has already been done, a lot still needs

[43] MANDATORY BRSR REPORTING FOR TOP 1,000 LISTED COMPANIES FROM FY2022-23 *supra* note 18 at 9.

to be focused on to achieve the desired results. There is quite a hope that to keep itself up to the mark globally and to meet the standards of good governance, India will adopt sustainability, both in letter and in spirit.

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IDENTIFYING THE 'PEOPLE' IN 'WHAT WILL PEOPLE SAY': INCORPORATING SOCIAL IDENTITY WITHIN LAW AND NORMS DISCOURSE

Shubhangi Roy[1]

ABSTRACT

Others, with their attitude and behavior, profoundly impact how we perceive, understand, and interpret the law. Motivations for adhering to these social influences is roughly divided into two categories by legal scholars - informational reasons to agree and normative pressures to comply with the social influence. While alluding to how these motivations vary depending on the 'context/perception' of individual, the legal discourse so far has not tried to incorporate aspects of the individual's psychological context within the discussion. The article begins this, long overdue, process by incorporating individual's social identity within the discussion. Simply put, it tries to ask – who are these 'others' that influences us and why do they matter?

Incorporating social identity has an immediate and profound impact on how the two motivations for adhering to social influences operate in real world. First, individuals not only are likely to believe but 'need to' believe members from within their identity group are 'right' (and those outside to their group 'wrong') for self-esteem maintenance. Expressive powers of law, therefore, will vary considerably depending on how it portrays behaviors of those within my group. Second, whose positive opinion we crave for is deeply rooted in our social identity. This has direct consequence on how individual respond to a law when offenders are likely to be part of one's identity (such as men responding to the #metoo movement or white Americans responding to All Lives Matter). The discussion also helps identify the limits of reputational tools like shaming for enforcing laws.

Finally, the article highlights an important epistemological lacuna in the law and norms discourse by incorporating social identity within it. Individuals, when influenced by those they identify with, have both informational and normative reasons to adhere to these influences. The article argues that while either of the two motivations can ex-post rationalize the phenomenon, neither capture the true motivations underlying adherence through

[1] Doctoral student and research associate, University of Münster and Adam Smith Fellow, George Mason University, Email: rshubhangi93@gmail.com

identification. The motivational dichotomy is not as evident as the discourse presumes and there is a need to revisit the framework we use to understand social influences.

1. INTRODUCTION

It matters to us what others think. Legal scholarship recognizes how powerfully motivating this influence can be. In fact, many explanations on why law can successfully change behavior is dependent on the law channeling our concern about what others think. Expressive function of law, for example, depends on us caring about what is 'expected behavior' in different contexts. Public shame, though controversial, has long been considered as a tool to incentivize legal compliance. There has, however, always been very strong variance in how successful these interventions have been in changing behaviors and attitudes. Smoking related regulations, in the United States, were able to effectively channel the expressive powers of law while gun related regulations have shown to have an opposite influence on behavior and attitudes.[2] Shaming to improve compliance has also had mixed results. Some shaming strategies have resulted in backlash and increased deviance while, in other contexts, it has been an effective deterrent.[3] The article aims to understand these deviations and enrich the law and norms discourse by anchoring the discussion within the psychological concept of social identity. Simply put, it tries to ask – who are these 'others' and why do they matter to the individual?

When it comes to understanding what motivates behavioral adherence to different social influences, there are multiple explanations forwarded within the law and norms discipline. (The Law and Economics scholarly discussion was clubbed together into 'law and norms' literature.)[4] Much of that discussion can be summarized into two types of motivations – informational and normative. [5] When individuals use the behavior of others as proxy for missing information and choose to replicate the observed behavior, it is defined as informational influence.[6] When individuals confirm to certain informal codes of conduct for

[2] Janice Nadler, *Expressive Law, Social Norms, and Social Groups*, 42(1) L. & SOC. ENQUIRY, 60-75 (2017).
[3] Brian Netter, *Avoiding the Shameful Backlash: Social Repercussions for the Increased Use of Alternative Sanctions*, 96 J. CRIM. L. & CRIMINOLOGY 187 (2006).
[4] Robert C. Ellickson, *Law and Economics Discovers Social Norms*, 27 J. OF LEGAL STUDIES 537, 552 (1998)
[5] CASS SUNSTIEN, CONFORMITY: THE POWER OF SOCIAL INFLUENCE (2019) (hereinafter SUNSTIEN); Dan Kahan, *Social Influence, Social Meaning and Deterrence*, 83 VA. L. REV. 349, 395 (1997) (hereinafter Kahan); Robert B. Cialdini & Noah J. Goldstein, *Social Influence: Compliance and Conformity*, 55 ANN. REV. PSYCH. 591, 622 (2005).
[6] Dan Kahan, *Social Meaning and the Economic Analysis of Crime*, 27 J. OF LEGAL STUD. 609, 622 (1998).

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fear of reputational repercussions and in order to be liked by our peers, it will be considered as normative social influence.[7] Based on this typology, multiple legal design and policy suggestions have been recommended and adopted. Within the compliance literature, the broken window theory focuses on the informational influence of small crimes going unpunished.[8] Expressive function of law also depends on law conveying the 'socially desirable' course of action and then harnessing social influence (normative and informational) to ensure compliance with the law by playing an informational role in updating beliefs.[9] This dichotomous understanding of social influence is, therefore, presently an active part of both academic and legal policy discourse. A brief overview of the existing literature explaining why individuals adhere to social influences is provided in the part II.

Though all explanations recognize, implicitly or explicitly, the role that an individual's perceptions and past experiences have on how they receive different social influences none capture these perceptions within their explanations. Individuals receive all social influences through their existing social and psychological framework which they use to navigate in the world. Dan Kahan, in one of the earliest articles discussing the role of 'social influence' on legal compliance, rightly defined social influence as "*individuals' perceptions about each other values, beliefs and behaviors affect their own conduct."*[10] Other scholars recognize, at least implicitly, the role that pre-existing perceptions of individuals play.[11] Yet their analysis of the social interaction provides a static explanation without incorporating this perception within the framework of these explanation.

In Part III, the article incorporates one such aspect of our perceptions into the analysis of social influence – how our existing social identity impacts our response to different social

[7] Robert B. Cialdini & Noah J. Goldstein, *Social Influence: Compliance and Conformity*, 55 ANN. REV. PSYCH. 591, 622 (2005).
[8] GEORGE L. KELLING & CATHERINE M. COLES, FIXING BROKEN WINDOWS: RESTORING ORDER AND REDUCING CRIME IN OUR COMMUNITIES 151–56 (1996); Dan Kahan, *Social Influence, Social Meaning and Deterrence*, 83 VA. L. REV. 349, 395 (1997).
[9] RICHARD H. MCADAMS, 'LEGISLATION AS INFORMATION', THE EXPRESSIVE POWERS OF LAW: THEORIES AND LIMITS (2015) (explaining how the law creates compliance through its expressive power to coordinate behaviors and inform beliefs).
[10] Kahan, *supra* note 5.
[11] SUNSTIEN, *supra* note 6, at 27; ROBERT ELLICKSON, ORDER WITHOUT LAW: HOW NEIGHBORS SETTLE DISPUTES 123-137 (Harvard University Press, 1991); Richard McAdams *'assume(s) that – independent of and prior to any norm – individuals have some evaluative opinions about others'*. See: Ellickson, *infra* note 27; McAdams, *infra* note 28.

communications (Social identity is defined in psychology as the aspect of an individual's self-concept which is derived the individual's relationship with other individuals and memberships into groups.).[12] This paradigm enriches existing explanations in two ways. First, it forces us to expand our understanding of individual motivations from static, one-shot assessments to more closely resemble the psychological process through which individuals receive social communications. It expands the law and norms understanding of self-esteem to incorporate within it a positive social identity.[13] This has a profound impact on the nature of *informational* social influence – 'I' now need to believe 'we' are right and normatively superior. Therefore, what is a credible source of information, what is legitimate information and how we respond to different influences is impacted by our social identity including information communicated by and bout laws. Second, it forces us to re-consider reputational and other social sanctions within the context of social identity. The article uses the case of 'shame' to explain how social identity impacts its operation in influencing individuals depending on who shames, when, how and why. Social identity paradigm, therefore, impacts both informational and normative influences.

More importantly though, as the Article argues in Part IV by providing the characteristics of 'social influence through identification', the law and norms literature does not adequately capture influence through identification within any of the existing explanations. In fact, when an individual accepts an influence through identification, it exhibits characteristics of all three prevalent explanations within the law and norms literature. Individuals believe in the legitimacy of the source of information (informational reasons to agree) but also care about staying assimilated within their collective identity (pressures, both psychological and social). Meanwhile, acceptance of the influence through identification also resembles internalization, as described by Robert Cooter, but it is much more an internalization of the identity and the role rather than internalization of an obligation. This highlights an important epistemological lacuna in the approach to social influence within the law and norms discipline. The literature utilizes a static approach to rationalize an inherently living, dynamic, socio-psychological process which individuals utilize to comprehend the world. There are serious policy and legal

[12]Michael Hogg & Kipling Williams, *From I to we: Social identity and the collective self*, 4(1) GROUP DYNAMICS: THEORY, RESEARCH, & PRACTICE, 81–97 (2001).
[13] J.C. Turner and K.H. Reynolds, *The Social Identity Perspective in Intergroup Relations: Theories, Themes, and Controversies,* BLACKWELL HANDBOOK OF SOCIAL PSYCHOLOGY: INTERGROUP PROCESSES 133–152 (Brown, S. L.; Gaertner eds., 2001).

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design implications of incorporating influence through identification within our understanding of social influence which are discussed in the section.

The article concludes, in Part V, by highlighting the need to revisit the initial frameworks used for explaining social influence within the law and norms discourse. Source of influence (influencing agent), our relationship with them, the content of communication and our pre-existing value systems all impact the process through which individuals accept any influence. Once accepted, it could very well be rationalized into informational and normative influences. But the process of accepting a social influence and the factors that contribute to it are what aid in understanding the phenomenon of social influence. A unified framework centered around the processes through which individuals accept different social influences can also help root the discussion within the context of the individuals instead of using selected contexts merely as anecdotal evidence for the explanation in question. In the process, the framework will also improve predictability of any policy assertions emanating from applying such a framework for legal design and implementation. After all, given that the concept under study is 'social influence', mooring it within the socio-psychological context of the individual is clearly an exercise worth exploring. The Article concludes with some suggestions on how the socio-psychological framework of social influence might be the way forward.

2. SOCIAL INFLUENCE WITHIN LAW AND ECONOMICS: LAW AND NORMS DISCOURSE

Informal social rules, unlike their legal counterparts, are not easily discernable or clearly stated.[14] They can be observed in the uniformity of behavior around us, our expectations about the repercussions of behaving a certain way or actual repercussions about these results.[15] Social influences, for the purposes of this article, refers to how individuals' perceptions of each other's values, beliefs, and behavior affect their conduct including decisions about law such as compliance, reporting etc.[16] The definition is intentionally large to incorporate various

[14] Ellickson, *supra* note 4 (Ellickson termed it as 'terminological wrangling'); See: Mans Svensson, *Norms in Law and Society: Towards a Socio-Legal Concept of Norms*, SOCIAL & LEGAL NORMS (Matthias Baier ed., 2013).
[15] ROBERT ELLICKSON, ORDER WITHOUT LAW: HOW NEIGHBORS SETTLE DISPUTES 123-137 (Harvard University Press, 1991).
[16] Kahan, *supra* note 5; ROBERT CIALDINI, INFLUENCE: THEORY & PRACTISE (3rd ed., 2007); Robert Hass, *Sociology of Social Influence,* INTERNATIONAL ENCYCLOPEDIA OF THE SOCIAL AND BEHAVIORAL SCIENCES 348-354 (2015); SUNSTEIN, *supra* note 5, at 11-34.

concepts such as social norms, informal rules, codes of conduct within it. The scope of the discussion is focused on what motivates individuals to adhere to influences not backed by formal sanctions and the role that our identity plays in it rather than a structural analysis of these influences itself. The multiple explanations within law and norms that focus on why individuals may be motivated to follow rules (formal and informal) without active enforcement by the state are briefly discussed in this section.

Informational explanations argue that individuals utilize the behavior of those around as a proxy for missing information for different purposes – to identify a superior preference, for coordination, cooperation etc. A long queue outside a restaurant or many good reviews for it on a website can indicate good quality food.[17] A clean area can suggest that, perhaps, littering involves high costs (social or legal) and should be avoided.[18] Economists such as Kaushik Basu and legal academics like Richard McAdams have argued that law, in fact, can be and is used as informational proxy for what will others do. Richard McAdams presumes that seat-belt regulation for infants conveys to parents that others consider it to be a safer when kids are harnessed in moving vehicles as well as that it will be considered as 'bad parenting' and result in judgment from others if we fail to comply with it.[19] Dan Kahan used informational social influence to argue that run-down neighborhood can communicate to those living there that the cost of non-compliance is not too high.[20] Consider the role informational role of social influence to be 'what people do'.[21]

Others, such as Eric Posner and Engert, provide normative reasons why individuals may adhere to social influences.[22] Within these explanations, reputational sanctions are considered as motivations to adhere to social norms which may appear costly in the short run to signal to other individuals in the group that they are 'good-cooperators' and recover through long term

[17] Sushil Bikhchandani, David Hirshleifer & Ivo Welch, *Learning from the Behavior of Others: Conformity, Fads, and Informational Cascades*, 12 J. ECON. PERSP. 151 (1998).
[18] Yvonne A. W. de Kort, L. Teddy McCalley, Cees J. H. Midden, *Persuasive Trash Cans: Activation of Littering Norms Design,* 40(6) ENV'T. & BUS. 870 (2008); Robert Cialdini, R.R. Reno and C.A. Kallgren, *A focus theory of normative conduct: Recycling the concept of norms to reduce littering in public places*, 58(6) J. OF PERSONALITY & SOC. PSYCH. 1015, 1026 (1990); Jerry M. Burger & Martin Shelton, *Changing everyday health behaviors through descriptive norm manipulations*, 6(2) SOC. INFLUENCE 69, 77 (2011).
[19] McAdams, *supra* note 11, at 360
[20] Kahan, *supra* note 6.
[21] Robert Cialdini, *A Focus Theory of Normative Conduct: A Theoretical Refinement and Reevaluation of the Role of Norms in Human Behavior*, 24 ADV. IN EXPERIMENTAL SOC. PSYCH. 201-234 (Mark P. Zanna ed., 1991); CHRISTINA BICCHIERI, THE GRAMMAR OF SOCIETY 1-54 (Cambridge University Press, 2005).
[22] Andreas Engert, *Norms, Rationality, Communication: A Reputation Theory of Social Norms,* 92(2) ARCHIV FÜR RECHTS-UND SOZIALPHILOSOPHIE (2006).

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gains. Richard McAdams provides a psychological desire of earning 'esteem' and the ability of others to withhold/reward esteem to us as a normative explanation as to why individuals may adhere to social norms.[23] Legal scholars have frequently aimed to utilize the ability of others to 'shame' us to adhere to certain behaviors to improve enforcement to different laws.[24]

Robert Cooter, perhaps, had an explanation most grounded in psychology when he also incorporated the role of *internalization* in motivating adherence to informal rules.[25] He used the psychological cost of guilt when not complying with an internalized norm to explain the subjective cost of non-adherence. Additionally, he argued that internalization of norms manifested through 'self-righteousness' which ensured that the individual with an internalized norm shamed/censored other individuals who were not adhering to the social norms.[26] Self-restraint (to avoid guilt) and self-righteousness (restraining others) explain individual motivation to adhere to and ensure adherence to the social norms. Others who may not have internalized the norm may still continue to adhere for reasons of being shamed by these individuals. His framework of norms is one of the few that explicitly incorporates psychological cost to the collective identity. It recognizes that being denounced by group one is a member and excluded from it have costs for the individual. In fact, he also (although passingly) mentions how the fear of denouncement/exclusion cannot be an active deterrent for an individual not integrated within a group. Though he assumes rather than explores more deeply this social identity of the individual since he states – *'most people intrinsically value esteem and disdain, so a group can reward and punish its members by modulating esteem and disdain'.*[27]

Robert Ellickson incorporated each of the three explanations within a theory of, what he referred to as, social control.[28] He separated the types of '*social control*' on the basis of the person enforcing the norm.[29] First party control referred to individuals refraining themselves

[23] Richard McAdams, *The Origin, Development and Regulations of Norms*, 96(2) MICHIGAN L. REV. 338.
[24]Dan M. Kahan and Eric Posner (1999), *Shaming White-Collar criminals: A proposal for reform in federal sentencing guidelines,* 42 (S1) J. L. & ECON. 365-91 (1991); Robert Cooter and Ariel Porat, *Should Courts deduct non legal sanctions from damages*, 30 J. OF LEGAL STUD. 401-422 (2001); Harris N., *Shame in Criminological Theory*, ENCYC. OF CRIMINOLOGY & CRIM. JUST. (G. Bruinsma & D. Weisburd eds., Springer, 2014).
[25] Robert Cooter*, Normative Failure Theory of Law*, 82(5) CORNELL L. REV. 947, 956 (Cooter defines internalization of obligation as a game theoretic commitment).
[26] *Id.* at 962.
[27] Cooter, *supra* note 25, at 969.
[28] ELLICKSON, *supra* note 15, at 122-136.
[29] ELLICKSON, *supra* note 15, at 131.

based on their own personal ethics and, therefore, resembles more closely Cooter's individual following a rule to avoid feelings of guilt. Second party actors were those who are wronged and seek remedies. All of the remaining normative pressures as well as more formal sanctions he clubs into one segment referred to as third party sanctions. Within his framework, individuals adhere to social influences as a consequence of one or more of these three types of sanctions.

Even those not following the psychological explanation of *'internalization'* do recognize that influences do not operate within social vacuum. There is adequate reference to the fact that 'others' is not a monolithic concept and that the individual's perception about others and their own identities may have an impact on how we perceive different influences. As previously mentioned, Dan Kahan's definition of social influence itself incorporates '*individual's perceptions about others'*.[30] Richard McAdams *'assume(s) that – independent of and prior to any norm – individuals have some evaluative opinions about others'*.[31] Even within the signaling function of adhering to social influence, the authors recognize that there can be an *'intrinsic* value of status' as when a wealthy person wears clothes or jewelry that look ordinary but are in fact very expensive.[32] Robert Ellickson's Theory of Social Control was based on studying and understanding social interactions between members of *'close-knit, non-hierarchical group'*[33] and is, therefore, rests on the psychological and sociological ties of the individuals.[34]

Strong variances in the capacity of the law and norms literature to predict (and not only ex-post explain observed phenomenon) individual response to social influences has also pointed to the fact that individuals don't comprehend others as a cluster of individuals but within social clusters.[35] The expressive function of laws could, perhaps, explain to an extent why anti-smoking regulations were so successful in reducing smoking in the United States.[36] However,

[30] Kahan, *supra* note 6.
[31] McAdams, *supra* note 23, at 358.
[32] Gertrud M. Fremling & Richard A. Posner, *Status Signaling and the Law, With Particular Application to Sexual Harassment*, 147(5) UNIV. PENN. L. REV. 1069, 1075 (1999).
[33] ELLICKSON, *supra* note 15, at 167
[34] ELLICKSON, *supra* note 15, at 126.
[35] Janice Nadler, *Expressive Law, Social Norms, and Social Groups*, 42(1) L. & SOC. ENQUIRY, 60-75 (2017).
[36] Lawrence Lessig, *The Regulation of Social Meaning*, 62 UNIV. OF CHI. L. REV. 943 (1995).

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they do not capture why a similar response was not generated to a law on seat belt in Turkey.[37] Or in fact to anti-smoking regulations in other parts of the world. In fact, even within the United States, anti-gun legislations have the opposite impact on expression and increase sales in certain communities around the time new legislations curbing gun rights are passed.[38] Why are some laws able to utilize fully their expressive function, others only partially while some, in fact, communicate the opposite message to the individuals.

It is clear, therefore, that not all social influences are equal for an individual and most explanations so far do not focus adequately on how the individual's socio-psychological perceptions may have an impact on how they receive any social communication. They fail to capture adequately the individual's context and its impact on social influence. In the next section, the article incorporates a social identity paradigm to these existing explanations in order to address this lacuna. It allows us to more realistically understand how an individual with pre-existing social affiliations and evaluations about other individuals and groups navigates between different influences.

3. UNDERSTANDING WHAT MOTIVATES A 'SOCIAL-SELF': HOW A SOCIAL IDENTITY PARADIGM COULD ENRICH LAW AND NORMS LITERATURE

An individual's self-concept consists of two categories – the individual-self and the collective self. Collective self is the self-definition derived from membership to social groups and individuated self is derived through personal characteristics.[39] The concept of the collective self is further textured by addition of the concept of relational self.[40] An individual's relational self is shaped by their interpersonal relationship by those around them. [41] The relational and collective self together constitute an individual's social identity. It, therefore, consists of aspects of our self-concept which are dependent on and assimilated with others (interpersonal

[37] Özlem Şimşekoğlu & Timo Lajunen, *Social psychology of seat belt use: A comparison of theory of planned behavior and health belief model*, 11(3) TRANSP. RSCH. PART F: TRAFFIC PSYCH. & BEHAV. 181-191 (2008).
[38] Gregor Aisch and Josh Keller, *What drives gun sales: Terrorism, Politics and Calls for Restriction*, N.Y. TIMES, (Jun. 13, 2016).
[39] See: Sabine Trept & Laura S. Loy, *Social Identity Theory and Social Categorization Theory*, THE INTERNATIONAL ENCYCLOPEDIA OF MEDIA EFFECTS (Wiley Press, 2017). (It provides a concise review of literature on the concept.
[40] MA Hogg, D. Abrams & MB Brewer, *Social identity: The role of self in group processes and intergroup relations*, 20(5) GROUP PROCESSES & INTERGROUP RELATIONS 570-581 (2017).
[41] R.F. Baumeister & M.R. Leary (1995). The need to belong: Desire for interpersonal attachments as a fundamental human motivation, 117 PSYCH. BULLETIN 497–529 (1995).

relationships) and memberships to social groups (collective). [42] Social identity represents that aspect of our self-concept which is derived from our relationship with other individuals and membership to groups.[43]

Our concept of self-concept, as a result, comprises of different levels of inclusiveness. We are simultaneously distinct individuals, member of our family, our ethnic group, all the way up to human with each of these levels having an influence on our self-evaluation. There are two important impacts that social identity has on our motivations which are discussed in this section. First, our social identity incorporates collective group evaluation into our self-esteem evaluation. Therefore, individuals derive positive self-evaluation from an improved evaluation of their collective identity.[44] Second, positive self-evaluation is relative and dependent on social comparisons both at group level and individual level.[45] In this section, we consider how these two factors enrich existing law and norms explanations for social influence.

3.1. An esteem motivated explanation for why I need to believe we are in the right: Social identity and its impact on *informational* reasons to agree

There is an important effect of incorporating an identity or a group within our self-concept to our self-esteem. If self-concept is how we see ourselves then self-esteem is defined, in psychology, as the means by which we evaluate our self-concept.[46] By extension, if a social identity is part of our self-concept then the group's failures, successes and reputation has an impact on our individual self-evaluation.[47] This is defined as the self-esteem hypothesis of social identity. Individuals genuinely feel a sense of guilt, for example, for acts done by their

[42] M.B. Brewer, W. Gardner, *Who is this "we"? Levels of collective identity and self-representations*, 71 J. OF PERSON. & SOC. PSYCH. 83-93 (1996); C. Sedikides, M.B. Brewer, *Individual, relational, and collective self: partners, opponents, or strangers* in INDIVIDUAL SELF, RELATIONAL SELF, COLLECTIVE SELF 1-4 (Psychology Press, 2001).
[43]Russell Spears, *Social Influence and Group Identity*, 72 ANN. REV. PSYCHOL. 367–90 (2021).
[44] M.A. Hogg & D. Abrams, *Social motivation, self-esteem and social identity* in SOCIAL IDENTITY THEORY: CONSTRUCTIVE AND CRITICAL ADVANCES 28-47 (D. Abrams & M. A. Hogg eds., Harvester Wheatsheaf Press, 1990).
[45]Delphine Martinot & Sandrine Redersdoff, *The variable impact of upward and downward social comparisons on self-esteem: when the level of analysis matters,* SOCIAL COMPARISON & SOCIAL PSYCHOLOGY (Surge Gulmond ed., Cambridge University Press, 2006).
[46] ELIOT. R. SMITH, HEATHER CLAYPOOL & DIANE M. MACKIE, *THE SELF* IN SOCIAL PSYCHOLOGY 95 (4th ed., Psychology Press, 2007).
[47]Richard Y. Bourghis & André Gagnon, *Social Orientations in the Minimal Group Paradigm*, BLACKWELL HANDBOOK OF SOCIAL PSYCHOLOGY 89 (Rupert Brown and Sam Gaertner eds., 2003).

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country of citizenship or a sense of pride when their favored football team wins a match.[48] Since the relative status of the ingroup has an impact on our self-esteem, it results in self-esteem motivated in-group biases.[49] Individuals do so by perceiving information in a light that is more flattering to their identity.[50] We can maintain a positive social identity both by appreciating our own group or degrading other group through social comparison.[51]

Self-esteem when conceptualized in this collective sense can help more accurately describe the true nature of *informational* social influence. It has two direct consequences on how individuals are going to process different social communications. First, since we consider those we identify with as more credible, we are more easily going to be persuaded by them as our minds are going to consider them as legitimate *informational* sources. Second, we are more easily going to be influenced by information that views more positively my social identity as it has a direct and positive consequence on our self-esteem. Accepting that those we identify with had a wrong opinion/belief has a real psychological cost for us. Therefore, we are not only likely to believe that our reference group is right, but we need to believe it is right. Informational social influence when embedded within a social identity paradigm is discussed in this section.

3.1.1. Expressive function of law and its ability to signal the 'desirable behavior': Choosing between multiples sources of information

Information function of law to the extent that it rests on the ability of the law to communicate 'socially desirable behavior/social attitude' will be directly impacted by the social identity of the individual.[52] For law to fulfill this function, it should impact our belief on what is socially approved, appropriate behavior i.e., adherence to behavior will protect us from social judgment. However, if we are to embed this social communication within a social identity

[48]D.M. Mackie, L.A. Silver & E.R. Smith, *Intergroup Emotions: Emotion as an Intergroup Phenomenon,* STUDIES IN EMOTION & SOCIAL INTERACTION: THE SOCIAL LIFE OF EMOTIONS 227–245 (Cambridge University Press, 2004).
[49]S.E. Martiny & M. Rubin, *Towards a clearer understanding of social identity theory's self-esteem hypothesis* in UNDERSTANDING PEACE AND CONFLICT THROUGH SOCIAL IDENTITY THEORY: CONTEMPORARY GLOBAL PERSPECTIVES 19-32 (S. McKeown, R. Haji, & N. Ferguson eds., Springer, 2016).
[50] *Id.*
[51] N.R. Branscombe & D.L. Wann, *Collective self-esteem consequences of outgroup derogation when a valued social identity is on trial*, 24 EUR. J. OF SOC. PSYCH. 641-657 (1994).
[52]RICHARD MCADAMS, *Legislation as Information*, THE EXPRESSIVE POWERS OF LAW 136-168 (Harvard University Press, 2019).

paradigm, it requires us to ask a few more questions. The first question one needs to ask is - within the individual's perception, how representative is the law of their social identity.

There have been multiple studies highlighting conditional compliance with law which was directly related to our belief that others within our social group were following the laws as well. Corruption studies suggest a stronger co-relation in our expectations of what 'everyone' else is doing and likelihood of actually partaking in corrupt activity ourselves, independent of the law criminalizing corruption.[53] The 'everyone' was a subjective experience of peers around and the acceptance of corrupt activities within this group.[54] The contagion effect has also beenexplored in reference to crimes in New York city – people are more likely to commit crime when people around them commit crimes.[55] Tax compliance, as well, improves if we are informed of 'others' within our social network honestly declaring tax.[56] It is clear that the law,by its own virtue, does not provide information about the 'socially accepted behavior' but instead relies on the behaviors of those within our social groups for the same. Partially, this phenomenon can be explained by the *informational* social influence of non-compliance as provided by Dan Kahan. Individuals use behaviors of others as proxy for missing informationabout enforcement, cost (social and legal) of committing a crime etc.[57] However as later research and the present discussion on social identity highlights, whose behavior we use as informational proxy varies largely on the basis of who we identify with.[58]

Incorporating social identity without our understanding of individual motivation adds another explanation as to why we are more likely to interpret behavior of people we identify as the socially appropriate behavior and not the legally prescribed behavior, if the two are different. Viewing our group as morally superior and well-intentioned contributes to a positive self-evaluation.[59] So not only are we likely to only be informed about 'appropriate behaviors' by looking around us at those we identify with but are psychologically motivated to ignore

[53] Nils C. Köbis, Jan-Willem van Prooijen, Francesca Righetti & Paul A. M. Van Lange, *Who Doesn't? The Impact of Descriptive Norms on Corruption*, 10(6) PLOS ONE (2015).
[54] Bin Dong, Uwe Dulleck & Benno Torgler, *Conditional Corruption*, 33(3) J. OF ECON. PSYCH. 609-627.
[55] Edward L. Glaeser, Bruce Sacerdote & Jose A. Scheinkman, *Crime and social interactions*, 111(2) QUART. J. OF ECON. 507-548 (1996).
[56] B.S. Frey & B. Torgler, *Tax morale and Conditional Cooperation*, 35 J. OF COMPAR. ECON. 136-159 (2007).
[57] Kahan, *supra* note 6.
[58]Shubhangi Roy, *Theory of Social Proof and Legal Compliance: A Socio-Cognitive Explanation for Regulatory (Non) Compliance*, 22 GER. L. REV. 238-255.
[59] Martiny & Rubin, *supra* note 49.

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evidence that contradicts/condemn the behavior of those we identify with including contrary legal information. Robert Cialdini calls it '*basking in the reflected glory of the group*'.[60] Conceptually, it comes from the same space as picking a fight with another in defending our favorite football team. We need to believe that between two types of behaviors/influences, the one by those we identify with is the superior behavior. Therefore, the normative superiority of a legally prescribed behavior can emanate either from our collective identity which incorporates within it our relationship with the state and considers 'abiding by the law' as a collective identity (a concept discussed in greater detail in Part 4) or from witnessing those we identify with endorsing the legally prescribed behavior.[61]

3.1.2. When law and social movements make certain identities more salient: Identity threat and its impact on attitude towards law

The second question with regards to the informational social influence of law is – does the content of law necessarily impede our positive social identity and other members of our collective groups in anyway. If the law censors a behavior that implicates many within my in-group as law-breaking individuals, then my cognitive response is more likely to question the legitimacy of the law or creatively interpret the law rather than shame others within my group for not following the law. It is a psychological self-maintenance goal in times of threat.[62] We respond to any identity threat to reputation, status of our group with reactive ingroup affirmation. It is a psychological defense mechanism to protect one's self-esteem. The more our self-esteem is entrenched into our collective identity and greater the social status of the group, the stronger the defensiveness to any communication that undermines this status.[63]

[60] Robert Cialdini & Richard J. Borden, *Basking in Reflected Glory: Three (Football) fields of study*, 34(3) J. OF PERSONALITY & SOC. PSYCH. 366-375 (1976).
[61] MCADAMS, *supra* note 52, at 165-168.
[62] A. Lüders, E. Jonas E., Fritsche I. & Agroskin D, *Between the Lines of Us and Them: Identity Threat, Anxious Uncertainty, and Reactive In-Group Affirmation: How Can Antisocial Outcomes be Prevented?*, UNDERSTANDING PEACE AND CONFLICT THROUGH SOCIAL IDENTITY THEORY 33-53 (S. McKeown, R. Haji, N. Ferguson eds., Springer Publishing, 2016); Julie D. Smurda, Michele A. Wittig and Gokalp Gocke, *Effects of Threat to a Valued Social Identity on Implicit Self-Esteem and Discrimination*, 9(2) GROUP PROCESSES & INTERGROUP PROCESS 181-197 (2006).
[63] Daan Scheepers & Naomi Ellemers, *When the pressure is up: The assessment of social identity threat in low and high-status groups*, 41(2) J. OF EXPERIMENTAL SOC. PSYCH. 192-200 (2005).

Clearly then, we have a personal motivation for questioning the moral legitimacy of the law to maintain a positive self-evaluation. Janice Nadler drew a connection between the potency of expressive function of law and how legitimate individuals perceive interference by government is within that sphere of one's life.[64] However, incorporating social identity within our understanding may point to a slightly different explanation. We are much more likely to question legitimacy when a law negatively impedes an important collective identity. Backlashes to socio-legal movements, a well observed phenomenon, are often a result of the psychological need to be maintain a positive self-evaluation when one's social identity is being criticized/threatened. Within the American legal landscape, there has been an on-going discussion on the impact that a progressive abortion rights judgment like Roe v. Wade had in entrenching strong identity driven ideological disagreements that have probably done more harm than good to the choice movement.[65] Responses to any stricter regulations on guns by increased gun purchases is another example of the phenomenon where laws that threaten strong social identities entrench people more strongly within these identities.[66] It is so because accepting that our identified normative stance is flawed or wrong has a cost to our self-esteem and a sense of shame similar to the ones described within the law and economics explanations for failure of adherence to social norms. (However, positive social identity comes from not only considering one's group to be superior to the other but also being better (if not the best) member of our own group)[67] There is considerable research in psychology that connects individuals feeling of shame and pride to activities and opinions of in-group members.[68]

This is particularly the case when movements are aligned around identities creating salient group identities. Most individuals have multiple social identities. Individuals can be parents,

[64] Nadler, *supra* note 35.
[65] See: William N. Eskridge, Jr., *Channeling: Identity-Based Social Movements and Public Law*, 150 U. PA. L. REV. 419, 520 (2001); Cass R. Sunstein, *Three Civil Rights Fallacies*, 79 CAL L. REV. 751 (1991).
[66] Aisch & Keller, *supra* note 38.
[67]David De Cramer &Tom R. Tyler, *A Matter of Intragroup Status: The Importance of Respect for the Viability of Groups* in STATUS AND GROUP: VOLUME 7 1-21 (Melissa C. Thomas Hunt ed., Emarald Publishing, 2005); Bernd Simon and Stefan Stürmer, *Respect for Group Members: Intragroup Determinants of Collective Identification and Group-Serving Behavior*. 29 (2) PERSONALITY & SOC. PSYCH. BULLETIN 183-193 (2003).
[68] Rupert Brown, Roberto Gonzalez, Hanna Zagefka, Jorge Manzi & Sabina Cehajic, *Nuestra culpa: Collective guilt and shame as predictors of reparation for historical wrongdoing*, 92 J. OF PERSONALITY & SOC. PSYCH. 75–90 (2008); N.R. Branscombe, B. Doosje & C. McGarty, *Antecedents and consequences of collective guilt*, FROM PREJUDICE TO INTERGROUP EMOTIONS: DIFFERENTIATED REACTIONS TO SOCIAL GROUPS 49-66 (D.M. Mackie and E.R. Smith eds., Psychology Press, 2002); J.A. Allpress, F.K. Barlow, R. Brown, W.R. Louis, *Atoning for colonial injustices: Group-based shame and guilt motivate support for reparation*, 4 INT. J. OF CONFLICT & VIOLENCE 75–88 (2010); B. Lickel, T. Schmader, M. Curtis M. & M. ScarnieR, D.R. Ames, *Vicarious shame and guilt*, 8 GROUP PROCESSES AND INTERGROUP RELATIONS 145–157 (2005).

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professionals, members of our family, religious groups, community as well as citizens simultaneously. All of which constitute part of the individual's social self. The rules and roles associated with each identity are different and may, in fact, even be at conflict with one another. In case of conflict, there are two factors that impact which identity will take precedence – salience of identity for the given context and the prominence of the identity for the individual.[69] Identity salience refers to the probability that a given identity will be invoked in a social situation or a social situation would be defined in a way that there is opportunity to invoke the personality.[70] Salience is, therefore, linked to the context and framing of the social interaction. Identity prominence, on the other hand, is linked to the subjective value that the individual places on their role within an identity.[71] An abortion rights issue framed around the rights of women may have found more women supporting the issue but when framed as a religious issue then the Christian identity of many women gains more salience. Therefore, how the law is framed, and policy discussed can change the 'normative' beliefs of the individual based on which social identity they are viewing the issue from.[72]

Once a law, social movement, policy discussion (or rhetoric) manages to make an identity salient or if the identity is a prominent identity for the individual and create an identifiable out-group, it triggers social comparison with an objective of positive group appraisal. This has a few consequences on how we receive any information. First, we are more likely to perceive information in a way that heightens the differences between 'us' and 'them'. This implies that we tend to process information in a way that it increases differences between the in-group and the out-group.[73] After all, distinctiveness and exclusion is a precondition to an inclusive idea of identity. Second, we view those in our in-group more favorably that the out-group members.[74] In fact, our normative leanings are influenced by this categorization where we are more likely to see the behavior of those within our group as the more 'appropriate' behavior. Additionally, we also have better recall of unfavorable outgroup behavior rather that those from

[69] Sheldon Stryker, Richard T. Serpe, *Identity Salience and Psychological Centrality: Equivalent, Overlapping, or Complimentary Concepts?*, 57 SOC. PSYCH. QUART. 57:16–35 (1994).
[70] Laurie H. Ervin and Sheldon Stryker, *Theorizing the Relationship between Self-Esteem and Identity*, EXTENDING SELF-ESTEEM THEORY & RESEARCH: SOCIOLOGICAL & PSYCHOLOGICAL CURRENTS 29, 34-35 (T. Owens, S. Stryker and N. Goodman eds., Cambridge, 2001).
[71] *Id.* at 35.

[73] Peter Collero, *Social Identity Theory*, BLACKWELL ENCYCLOPEDIA OF SOCIOLOGY (John Wiley & Sons, 2015).
[74] Miles Hewstone, Mark Rubin & Hazel Willis, *Intergroup bias*, 53 ANN. REV. OF PSYCH. 575–604 (2002).

our in-group.[75] Together this culminates into a situation where we are more likely to remember what distinguishes us from those we do not identify with, information which create stronger links with those we identify with as well as interpret information in a way that it bolsters the image of our in-group individuals over the out-group individuals.

Political discourse in the recent times around the world makes a strong argument for the prominent role that our social identities play in informing our normative stance on different issues. There have been studies linking an American's 'national identity' to their stricter stance of immigration laws.[76] Similar studies have been carried out within conflict studies to the understand the role of social and cultural identities in conflict situations such as Israel-Palestine, ethnic groups in Rwanda etc.[77] If a situation makes an identity salient and then threatens it, individuals are more likely to double down – both behaviorally and in their attitudes. They are more likely to opt into behaviors that are more closely associate to the in-group prototype, even if in other circumstances they would not have observed these behaviors as rigorously. Similarly, they will try to exhibit stronger cohesion between their in-group opinions even if ordinarily we are much more comfortable with a diverse representation of in-group attitudes.

The above discussion highlights a few contributions that incorporating social identities can make to enrich our existing understanding of social influences. First, individuals that one identifies with prescribe the 'socially desirable' behavior for the individual and not the law. The law can aid the individual in identifying this behavior only if they are receiving informational evidence of compliance from the groups they identify with. Second, all information including information communicated by the law will be processed by the individual in a way that it leads to positive group evaluation and, therefore, positive self-evaluation. Therefore, our information on what people do (perception about the world) and what we should do (normative beliefs) are impacted by who we identify with. In the next section, the considers how social identity impacts normative pressures to comply with law.

[75] J.W. Howard, J. W. & M. Rothbart, *Social categorization and memory for ingroup and outgroup behavior*, 38 J. OF PERSONALITY & SOC. PSYCH. 301–310 (1980).
[76] Maurice Magnum & Ray Block Jr, *Social Identity Theory and Public Opinion towards Immigration*, 7(3) SOC. SCI. 41 (2018).
[77] Herbert Kelman, *Nationalism, patriotism, and national identity: Social-psychological dimensions,* PATRIOTISM: IN THE LIVES OF INDIVIDUALS & NATIONS 165–189 (D. Bar-Tal & E. Staub eds., Nelson-Hall Publishers, 1997).

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3.2. Understanding the nature of reputation, shame and social sanction for the social self: Social identity and its impact on normative *pressures to comply*

Law and Economics rightly recognizes that an individual cares about the judgment of others about themselves.[78] In fact, some have argued that it puts too much faith in the human desire for social status.[79] It is understandable though why legal scholars find the concept convenient to accommodate within legal understanding. Shame is equivalent to the 'punishment' for not adhering to a particular social norm and improved reputation a 'reward'. Some scholars like Eric Posner[80], Andreas Engert[81], Lisa Bernstein[82] have provided a functional explanation for why individuals care about reputation – it helps in the long term. Be it in trade, future social interactions etc. Others such as Robert Cooter[83] and Richard McAdams have considered positive self-evaluation as a goal in itself.[84] None deny that individuals are willing to incur relative costs for earning the 'reputation' and it matters to us what others think of us. However, in absence of anchoring this discussion within psychology of a social self, reputation driven explanations fail to understand the nature and potency of this motivational influence.

The last section considered how social comparisons with other groups and devaluing members of this group can have a positive effect on our self-evaluation. Social comparison is an inherent mechanism that we use for self-evaluation even within the group with other individuals.[85] Once we have identified with an in-group and come to believe in the superiority of the in-group beliefs, individual's do not stop comparing and evaluating. Positive social identity comes from not only considering one's group to be superior to the other but also being better (if not the best) member of our own group and enjoying an adequately satisfying social status with people

[78] Cooter and Porat, *supra* n. 21.; Uri Gneezy & Aldo Rustichini, *A Fine is a Price*, XXIX (2:2) J. OF LEGAL STUDIES 1-17 (2001).
[79] See: *Shame, Stigma, and Crime: Evaluating the Efficacy of Shaming Sanctions in Criminal Law*, 116(7) HARV. L. REV. 2186-207 (2003); Brian Netter, *Avoiding the Shameful Backlash: Social Repercussions for the Increased Useof Alternative Sanctions*, 96 J. CRIM. L. & CRIMINOLOGY 187 (2006).
[80] Eric Posner, *Symbols, Signals and Social Norms in Politics and the Law*, XXVII J. OF LEGAL STUD. 765-98 (1998).
[81] Engert, *supra* note 22.
[82] Lisa Bernstein, *Opting out of the Legal System: Extralegal Contractual Relations in the Diamond Industry*, XXI (1) J. OF LEGAL STUD. 115-57 (1992).
[83] Cooter, *supra* note 25, at 969.
[84] McAdams, *supra* note 23.
[85] Turner & Reynolds, *supra* note 13.

we identify with.[86] To this extent, much of the law and norms discussion on self-esteem, reputation and shame can find its place within groups and individuals we identify with. But this identification is an essential precondition to most of the discourse and its application. Social status and our desire for it is not independent of the context. We recognize what is 'socially desirable behavior' and aim to emanate the same based on what our perceived expectations are about the group characteristics and not necessarily a universal standard.[87]

Consider, for example, the potency of shame and the impact of social identity on it. One of the most frequent conclusions within the law and norms discussion has been that shame is a potent instrument in getting people to adhere to different rules and should be employed as such. Be it a recommendation to deal with white collar crimes[88], incorporating its cost in criminal sentences[89], re-thinking sentencing policies[90] etc. Advertising the list of defaulters and public apologies in local newspapers[91] are among the punishments prescribed to weaponize 'shame' for stronger legal compliance.[92] Psychologically, shame is the emotion felt when individuals believe that a particular act tarnishes their image in front of individuals whose opinion matters to their self-evaluation.[93] Shame is an emotion rooted in the individual's social identity and can be rooted in the individual's fear about condemnation of others.[94] But, as the discussion so far has illustrated, 'others' in social psychology as well as in real life do not translate to a sum of all individuals in a society. Therefore, being shamed by the parents and being shamed by one's social circle has very different impact on a teenager. Similarly, to be shamed by a judge (the

[86] Jin Wook Chang, Rosalind M. Chow & Anita W. Woolley, *Effects of inter-group status on the pursuit of intra-group status,* 139 ORGANIZATIONAL BEHAVIOR AND HUMAN DECISION PROCESSES 1-17 (2017); Bertjan Doosje, Naomi Ellemers & Russell Spears, *Perceived Intragroup Variability as a Function of Group Status and Identification*, 31(5) J. EXP. SOC. PSYCH. 410-36 (1995).
[87] Hee Young Kim and Batia M. Wiesenfeld, 'Who Represents Our Group? The Effects of Prototype Content on Perceived Status Dispersion and Social Undermining' 43(6) PERSONALITY AND SOCIAL PSYCHOLOGY BULLETIN 814-827 (2017).
[88] Dan Kahan & Eric A. Posner, *Shaming White-Collar Criminals: A Proposal for Reform of the Federal Sentencing Guidelines*, 42(S1) J. OF L. & ECON. 365-92 (1996).
[89] Cooter and Porat, *supra* note 78.
[90] Kahan and Posner, *supra* note 88.
[91] See, e.g., Jan Hoffman, Crime and Punishment: Shame Gains Popularity, N.Y. TIMES (I997)
[92] Dan Kahan, *What do alternative sanctions mean?*, 63(2) UNI. CHI. L. REV. 591 (1996).
[93] Ferguson T.J., *Mapping shame and its functions in relationships,* 10(4) CHILD MALTREATMENT, 377–386 (2005); Margaret E. Kemeny, Tara L. Gruenewald and Sally S. Dickerson, *Shame as the Emotional Response to Threat to the Social Self: Implications for Behavior, Physiology, and Health*, 15(2) PSYCHOLOGICAL INQUIRY, 153-160, https://www.jstor.org/stable/pdf/20447221.pdf?refreqid=excelsior%3A2625268201ede6f7018d4dbe1b95ec5a.
[94] Welten, S. C. M., Zeelenberg, M., & Breugelmans, S. M., *Vicarious shame*, 26 COGNITION AND EMOTION, 836–846. (2012); De Hooge, I. E., Zeelenberg, M., & Breugelmans, S. M, *A functionalist account of shame-induced behavior,* 25 COGNITION AND EMOTION, 939–946 (2011).

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law) and forced to publish an apology in a newspaper will have differing influence based on the prominent social identity of the individuals.

To channelize the social sanctions such as 'shame', it is important to ask who the individual cares to be not shamed by. A recent sociological survey of individuals convicted of honor killing in Germany concluded with the following summary – "*The benefits of restoring honor by means of the offence and thereby getting recognition from the social group had a higher value than the risk of being arrested and possibly being economically disadvantaged as a result."*[95] The offence being murder of a family member (often sister or daughter) and punishment being harsh prison sentences. The convicted individual's identity as member of their ethnic group is valued higher by them than their individualist concerns (like liberty) as well as their membership to German residency. Perceived fear of being shamed is a potent motivation in this case but its potency rests with the community which shames. Without identifying the right group to administer the shaming, shame cannot be weaponized to influence behavior. If an individual's social image and identity is not rooted strongly to that of a 'good, law-abiding citizen' then being shamed by a legal institution will be not have the same effect.(the discussion within law and social identity has been relatively uni-directional in trying to understand how law, in its constitutive function, helps define multiple social identities.)[96]

In fact, even when there is a potential of using shaming accurately where the social image of the individual can be tarnished in front of those who do matter to the individual it is important to understand how an individual responds to being shamed. Simply labelling a wrong-doer as deviant and rejecting isolates the individual from the legal and social system.[97] Being judged by others or having a negative social identity has two consequences for an individual psychologically. They feel a sense of rejection and inferiority. Both harm an individual's self-concept and motivate them to avoid feeling shame. To this extent, shaming could have a deterrent effect as people will avoid being shamed. However, once they are shamed and there

[95] Kizilhan JI, *The Impact of Culture and Belief in So-Called Honour Killings: A Comparative Study between Honour Murders and other Perpetrators of Violence in Germany'*, 7(1) JOURNAL OF FORENSIC INVESTIGATION, (2019)

[96]Eric J. Mitnick, *Law, Cognition, and Identity*, 67 LA. L. REV. (2007) (for some interactions between law and other sources of socialization).

[97] Nathan Harris & Shad Maruna, *Shame, shaming and restorative justice*, HANDBOOK OF RESTORATIVE JUSTICE (Dennis Sullivan and Larry Lift, eds.).

is a sense of rejection from this social group, the individuals will need to disassociate their self-concept form this identity to be able to protect their self-concept.[98] Labelling by those we identify with also has a self-fulfilling impact on an individual's self-concept. Consider how being labelled the 'trouble-maker' in school impacts a teenager.[99]

There is another impact that social identity may have on the efficacy of public shaming. Public shaming, by its very name, requires a level of publicity. If one is frequently hearing that those we identify with are indulging in certain activities, we are much more likely to believe that it is an acceptable behavior within our group. It brings back the discussion to the informational influence of others' behavior on an individual's perception about the behavior. Therefore, offences where members of distinct social group are more likely to be the violators, publicizing multiple offences can create a sense of solidarity with those violating the law rather than condemnation for them among member who share the same identity. This is so because when we feel an integral social identity is threatened, the psychological response is to become more entrenched within that identity and defend it more strongly as a mechanism for self-maintenance.[100] After all, the collective reputation of the group will have a direct impact on our own self-evaluation. Consider, for example, the immediate instincts of many men to criticize the #metoo movement or of white Americans to defend the police as a response to Black Lives Matter.[101] Similar explanations can provide, at least a partial explanation, to the rise of identity-based populism in many other countries.[102]

The above discussion clearly indicates that shame is not a purely individualist emotion and is impacted by the social identity of the individual. From a policy point of view, it provides a few

[98] G. MacDonald & M.R. Leary, *Why does social exclusion hurt? The relationship between social and physical pain*, 131 PSYCHOLOGICAL BULLETIN 202–223 (2005).
[99] John Braithwaite, *Restorative justice* in THE OXFORD HANDBOOK OF CRIME AND PUNISHMENT 323-344 (Michael Tonry ed., Oxford University Press, 1998).
[100] Nyla R. Branscombe & Daniel L. Wann, *Collective self-esteem consequences of outgroup derogation when a valued social identity is on trial*, 24(6) EUR. J. OF SOC. PSYCH. 641-657.
[101] J.T. Jost, J. Glaser, A.W. Kruglanski & F.J. Sulloway, *Political conservatism as motivated social cognition*, 129(3) PSYCH. BULLETIN 339-375 (2003); Samantha Klar, *Turn and face the strange Ch-Ch-Changes: How an evolving America activates identity politics*, 82(1) J. OF POL. e1-e6 (2020); Amy Drew, Scott Sleek and Anna Mikulak, *When the majority becomes the minority*, 29 OBSERVER (Association for Psychological Science, 2016) https://www.psychologicalscience.org/observer/when-the-majority-becomes-the-minority.
[102] Julian Aichholzer & Martina Zandonella, *Psychological bases of support for radical right parties,* 96 PERSONALITY AND INDIVIDUAL DIFFERENCES 185-190 (2016); Anna Maria Bluic, John Betts, Matteo Vergani, Muhammad Iqbal & Kevin Dunn, *Collective identity changes in Far-Right Online Communities: The Role of Offline Inter-group Conflict*, 21(8) NEW MEDIA & SOCIETY 1770-1786 (2019).

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important take-aways. First, in order to use shame as an effective deterrent instrument, the social identity of the individual should be considered when deciding who will shame the individual. Second, the frequency and nature of shaming needs to be adequately reconciliatory so as not to trigger an identity threat response in the individual. Though the section focuses purely on a negative social pressure to comply, similar connections can be drawn between one's social identity and desire to be well-respected among those who they identify with.

So far, the article has focused on how incorporating social identity informs the understanding social influence and why individuals adhere to them. The next part describes briefly how identities are created and how the ambiguity in identity definition itself creates

4. SOCIAL INFLUENCE THROUGH IDENTIFICATION: HOW SOCIAL IDENTITY PARADIGM CAN EXPAND THE LAW AND NORMS DISCOURSE

So far, the article has deliberately steered clear of defining what an identity implies. The last section discusses examples about right wing nationalism. But what does being an American mean? Who is a threat to the American identity? Are there a set of rules that define who can or can't be one? Does it come with a list of behavioral codes of conduct that can be referred to when in doubt? Most probably, the answer to these questions will widely vary depending on who we ask, which year in the history and where we ask these questions (in fact, researchers in political science have attempted to answer this question with surveys at different times and found that the answer, in fact, varies quite a lot.)[103] Many may not even have clear responses. Ask someone on the road if they would identify themselves as American and the answer will be much clearer. This section discusses what individuals understand of identity, the nature of identities and its impact on how they receive social influence. It brings together the discussion so far and highlights how the existing framework within law and norms literature may not be adequate to capture social influences through identification.

The socio-cognitive process through which individuals primarily categorize people into groups, identify with certain group, construe themselves and others as a group and manifest

[103]Deborah J. Schildkraut, *Boundaries of American Identity: Evolving Understandings of 'Us'*, 17 ANN. REV. POLIT. SCI. 441-60 (2014).

group behavior is called social categorization.[104] Categorization is an essential tool through which our mind comprehends different stimuli, both social and non-social stimuli.[105] Social categorization is, often, an automatic and cognitive response of the brain.[106] For example, in experiments individuals identified another person's gender[107] or race[108] within a second of being presented with the stimulus. This was true even if the discussion had nothing to do with the gender or race. The categorization was automatic.

Additionally, we do not hesitate in categorizing even with limited information. In the case of the categorization of people into genders in under a second, individuals cognitively arrived at the decision based largely on hairstyles and length of hair.[109] It was so even when other features were blurred reducing the number of cues available to categorize. To categorize is the defunct response of the brain when presented with a social stimuli, even when presented with limited information.[110] Categories in psychology are fuzzy sets and not checklists.[111] These fuzzy categories are compiled together into a 'prototype'.[112] This prototype may not be representative of an individual person while most members may reflect some/most aspects of this persona including ourselves.[113] Prototypes tend to maximize differences between inter-group members and minimize differences intra-group members (also called as "metacontrast").[114] As a result, a "prototype" may appear more polarized than the tendencies of an average group member. In the previous discussion with regards to identity threats and reactive in-group affirmation, group

[104] Marjorie Rhodes & Andrew Baron, *The Development of Social Categorization*, 1(1) ANN. REV. DEVELOP. PSYCH. 359-386 (2019).
[105] C.B. Mervis & E. Rosch, *Categorization of natural objects*, 32 ANN. REV. PSYCH. 89–115 (1981).
[106] C.N. Macrae & G.V. Bodenhausen, *Social cognition: Thinking categorically about others*, 51 ANN. REV. PSYCH. 93–120 (2000).
[107] D. Martin & C.N. Macrae, *A face with a cue: Exploring the inevitability of person categorization*, 37 EUR. J. OF SOC. PSYCH. 806–816 (2007).
[108] Richeson, J. A. & Trawalter, S, *On the categorization of admired and disliked exemplars of admired and disliked racial groups*, 89 JOURNAL OF PERSONALITY AND SOCIAL PSYCHOLOGY, 517–530 (2005).
[109] Ellickson, *supra* note 15.
[110] N.K. Reimer, K. Schmid, M. Hewstone & A. Al Ramiah, *Self-categorization and social identification: Making sense of us and them* in THEORIES IN SOCIAL PSYCHOLOGY (D. Chadee eds., 2nd ed., Wiley-Blackwell, 2020)
[111] J.C. TURNER, M.A. HOGG, P. OAKES, S. REICHER & M. WETHERELL, REDISCOVERING THE SOCIAL GROUP: A SELF-CATEGORIZATION THEORY (Blackwell Publishing, 1987).
[112] *Id.*
[113] W.F. Chaplin, O.P. John & L.R. Goldberg, *Conceptions of states and traits: Dimensional attributes with ideals as prototypes*, 54(4) J. OF PERSONALITY & SOC. PSYCH. 541–557 (1988).
[114]Hee Young Kim & Batia M. Wiesenfeld, *who represents our group? The effects of Prototype Content on Perceived Status Dispersion and Social Undermining,* 43(6) PERSONALITY & SOC. PSYCH. BULLETIN 814-827 (2017) https://journals.sagepub.com/doi/abs/10.1177/0146167217699581

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members become to converge towards this group prototype during times of identity threat.[115] Thereby, exhibiting more number of group prototype.

These prototypes are also determined by the context of the interaction. When in South Asia, Indian and Pakistani identities are strongly at odds with another. While in a diaspora population in another city like London, they often identify as sharing a similar cultural identity.[116] Contextual salience, therefore is important for triggering categorization. Around cricket tournaments, for example, the sports rivalry between the two countries brings their national identities back into salience and can result in civil disturbances post cricket matches.[117] Similarly, in a social context when certain identities are threatened, we are more likely to be align closer to our notion of the prototypical group member and align more closely with others who have similar identities.[118]

This is an interesting and important nuance that is ignored within non-psychology discussion on social influence. The categorization into different groups can and, often, does precede an understanding of what being 'part of the group' mean. There is an internalization of the group membership and our role within the group without absolute clarity of the rules of the group membership. Social influence through identification, therefore, operates not through internalization of the content of the norms but internalization of one's identity.[119]

A nuance recognized in law and norms literature to some extent without the theoretical foundation to explain it. Robert Ellickson, for example, described the fuzzy nature of informal rules by recognizing that *'a rule can exist even though the people influenced by the rule are unable to articulate it in an aspirational statement. Children can learn to speak a language correctly without being able to recite any rules of grammar. Adults who daily honour a complex set of norms that govern dress would be startled if asked to layout the main principles that constrain their choice of apparel.*'[120] However, he was confident that primarily observing

[115] M.A. Hogg & J. Adelman, *Uncertainty–Identity Theory: Extreme Groups, Radical Behavior, and Authoritarian Leadership*, 69 J. SOC. ISSUES 436-454 (2013).
[116] Laurent Gayer, *The Volatility of the Other: Identity Formation and Social Interaction in Diasporic Environment*, 1 SOUTH ASIA MULTIDISCIPLINARY ACAD. J. (2007) https://doi.org/10.4000/samaj.36.
[117] *Id.*
[118] Hogg & Adelman, *supra* note 115.
[119] Herbert C. Kelman, *Interests, Relationships, Identities: Three Central Issues for Individuals and Groups in Negotiating Their Social Environment*, 57(1) ANN. REV. PSYCH. 1-26 (2006).
[120] Ellickson, *supra* note 12, at p. 130.

secondary rules (which he defined as social control rules like issuing rewards/punishment) could enable us to identify what these social norms were.[121] Therefore, Robert Ellickson is recognising not only that we adhere to rules which aren't absolutely clear, even to ourselves. But what motivates adherence to these rules is not necessarily our obligation to the rule but the group which enforces the 'secondary' rules of social control. Richard McAdams, as well, acknowledges that individuals internalise vague obligations, rather than exact prescriptions of behaviours.[122] Incorporating the socio-psychological process of social influence can enable us to not only acknowledge this fuzziness of social rules but actually incorporate role and identity internalisation within our analysis.

This form of role internalization falls within the category of 'internalized obligations' as provided by Robert Cooter. It resembles a game theoretic commitment and results in two behavioral responses – self-restraint (adhere to group approved behaviors) and righteousness (to shame other group members who fail to adhere).[123] However, there isn't any precise 'obligation' code as such. It is an internalization of and commitment to the identity.

Our attitudes as members of that group (self-concept) and, even, the nature of the group (collective concept) evolve over time and context. It could be on the basis of the influence of the prototypical leaders. Prototypical leaders are those members of the group who have or publicly portray certain prototypical characteristics that allow the members of the group to turn to them as legitimate sources of information (for all the reasons discussed in the previous sections).[124] Every time politicians begin speeches bringing in their identities as "coming from a middle class family/as a Christian/woman/African American" among others, they are basically trying to highlight their 'prototypical characteristics' to sound more legitimate to the voters.[125]

Our self and collective concept of group may also evolve due to environmental factors. As previously stated, threats and uncertainty can make groups move closer to prototypical (which are inherently more entrenched in group) identities. There have been many studies linking

[121] *Id.*
[122] McAdams, *supra* note 23, at p.140
[123] Cooter, *supra* note 25.
[124] Michael A. Hogg, Dominic Abrams, and Marilynn B. Brewer, *Social identity: The role of self in group processes and intergroup relations*, 20(5) GROUP PROCESSES & INTERGROUP RELATIONS 570–581 (2017).
[125] Klar, *supra* note 71.

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societal extremism to identity threats as well as rapid changes and uncertainty.[126] As social contexts evolves, identities also re-define themselves to maintain their distinct identities and cohesion within their members.[127] Meanwhile individuals, as well, keep mediating between their identities (collective as well as self) to maintain 'optimum distinctiveness' which satisfies both their needs for assimilation/inclusion and their individual need for distinctiveness.[128] The identity stays internalized while the attitudes and beliefs evolve as the group identity and one's collective self-concept shifts.

A convincing prototypical leader can easily convince us that wanting a wall built at our borders is, in fact, what it means to be truly American or building a temple is what it means to be patriotic Indian. The behavioral response of one who identified with this prototypical leader will be the same as someone who internalized the norm. The identifying individual will reject any attempts at being informed about the strength of this argument (self-restraint in going against group belief) and shame those within their group who fail to agree with the opinion (righteousness). Yet, the process through which the individual accepted this influence was not internalization of the obligation itself but identification with the source of influence. If, in some years, a more convincing prototype of 'white American identity' comes along through one of the many ways presented above, abandoning the belief in the wall at the border will create no ethical quagmire for this individual. Similarly, were the 'White-American' identity to stop being relevant for them then shifting their belief about the wall would be relatively easy. There is a commitment to the 'identity' while the 'obligation' continues to evolve and be defined by the group through various means. The source of influence continues to identification with certain people/group and not internalization of specific rules.

This has certain direct and important consequences on the law and norms discourse, both in theory and its policy implications. In theory, it highlights an epistemological need to look beyond the information and normative dichotomy for an analytical framework of social influence. When an individual accepts a social influence through identification, they have both

[126] *supra* note 115.
[127] W.B. Wann & J.K. Bosson, *Identity negotiation: A theory of self and social interaction* in HANDBOOK OF PERSONALITY: THEORY AND RESEARCH 448–471 (O. P. John, R. W. Robins, & L. A. Pervin eds., Guilford Press, 2008) (for a brief overview of the many processes through which individuals negotiate their identity with themselves).
[128] G.J. Leonardelli, C.L. Pickett & M.B. Brewer, *Optimal Distinctiveness Theory: A framework for social identity, social cognition and intergroup context*, 43 ADVANCES IN EXPERIMENTAL SOCIAL PSYCHOLOGY 64-107 (2010)

reasons to agree (informational influence) and desire to protect their self-esteem as well as reputation (normative pressures to comply). Similar to internalized obligations, individuals also experience a psychological discomfort (which Cooter considered as 'guilt') for failing at their self-maintenance goals. Our self-concepts include within it the collective self-concepts, therefore, concepts like self-esteem, guilt and reputation as conceptualized within the existing literature cannot capture collective emotions for acts and behaviors done in the name of our identity. Many studies have shown individuals feel collective emotions of being wronged or feeling guilty for acts done in the name of the country/ethnic group.[129]

From the point of view of policy as well, recognizing influence through identification has strong implications. It can help explain the discrepancies in the expressive function of law witnessed in the real-world. The expressive function of law will vary depending on its interaction with one's identity. First, how integral is (law-abiding) citizenship to any of our identities. If it is integral, then we are both likely to be intrinsically motivated to adhere to the law (consider it an informational source of 'desirable behavior') and extrinsically motivated (because we are likely to be shamed by other members of our identified group for not adhering to the law). On the other hand, if 'law-abiding' isn't an essential prototypical characteristic of any of my social identities then the expressive function, in and of itself, has limited role in creating compliance. This easily explains why in the previously given example of the seat-belt law in Turkey, it was one's perception about the judgment of others on the issue was a stronger predictor of adherence to the law than the law itself. The law, for the individuals surveyed, was not itself a source of information about 'desirable behavior' for those they identify with.[130] It underlines the importance of legal socialization in creating entrenched legal identities for individuals rather than presuming it.[131] Alternatively, utilizing prototypical leaders and making relevant (and favorable) identities salient in the law or during the diffusion of the law can improve voluntary compliance. However, understanding and enquiring about the social

[129]M.A. Ferguson & N.R. Branscombe, *The social psychology of collective guilt* in COLLECTIVE EMOTIONS: PERSPECTIVES FROM PSYCHOLOGY, PHILOSOPHY AND SOCIOLOGY 251–265 (C. von Scheve, & M. Salmela eds., Oxford, UK: Oxford University Press, 2014); Michael J. Wohl, Nyla R. Branscombe & Yechiel Klar, *Collective guilt: Emotional reactions when one's group has done wrong or been wronged*, 17(1) EUR. REV. SOC. PSYCH. 1–37 (2006).

[130] *supra* note 37.

[131] Chantal Augven, *Legal Socialisation: From Compliance to Familiarization Through Permeation*, 1 EUR. J. LEGAL STUD. 265 (2007); Jeffrey Fagan & Tom R. Tyler, *Legal Socialization of Children and Adolescents*, 18 SOC. JUST. RES. 217–41 (2005); Christoph Engel, *Learning the Law*, 4 J. INST. ECON. 275–97 (2008); UNESCO, STRENGTHENING THE RULE OF LAW THROUGH EDUCATION: A GUIDE FOR POLICYMAKERS (2019).

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identities of individuals in question becomes an essential precondition. At the very least, it can help predict the potency of the expressive function of law more accurately in different contexts. When employed appropriately, it could also help improve it.

It also highlights identification as an additional route of social and attitude change which has not been captured within law and norms discourse so far. Surprisingly though as a policy strategy, it has already been applied considerably in international relations and conflict studies as well as organizational studies.[132] Identification, unlike internalized beliefs and value systems, is more malleable and therefore can help provide the foot in the door to initiate a dialogue that can ultimately lead to long term attitude change. In conflict theory, there have been various studies in the context of how opinions of individuals evolve in conflict areas such as Israel-Palestine, Bosnia, Northern Ireland which credit an identity evolution as the cornerstone of reconciliation.[133] These case studies and workshops provide relatively well-studied process through which long term behavioral and attitude change can be achieved. Incorporating social influence through identification within law and norms discourse can enable greater exploration of this route to social change within domestic social contexts, legal compliance etc.

5. TOWARDS A MORE CONTEXTUALLY ROOTED FRAMEWORK OF SOCIAL INFLUENCE

The discussion so far highlights an important epistemological aspect that any academic exercise aimed at studying social influence on individual's decisions, behaviors and attitude should possess – an ability to visualize multiple social and psychological factors within a singular framework. In absence of creating a comprehensive analytical framework which can

[132]SHELLEY MCKEOWN, REESHMA HAJI & NEIL FERGUSON, UNDERSTANDING PEACE AND CONFLICT THROUGH SOCIAL IDENTITY THEORY: CONTEMPORARY GLOBAL PERSPECTIVE (Springer, 2016) (for application of social identity to understanding political disturbances); H.C. Kelman, *Reconciliation as Identity Change* in FROM CONFLICT RESOLUTION TO RECONCILIATION 111-124 (Yacob Bar Simon Tav eds., Oxford University Press 2004) (for a brief overview of the process through which identification enables reconciliation); Herbert C. Kelman, *The Role of National Identity in Conflict Resolution* in SOCIAL IDENTITY, INTERGROUP CONFLICT, AND CONFLICT REDUCTION (Richard D. Ashmore, Lee Jussim and David Wilder eds., Oxford University Press, 2001) for examples of application to the Israel-Palestine conflict; S. A. HASLAM, D. VAN KNIPPENBERG, M. J. PLATOW, & N. ELLEMERS, SOCIAL IDENTITY AT WORK: DEVELOPING THEORY FOR ORGANIZATIONAL PRACTICE 3–26 (Psychology Press, 2003) (for an application of social identity to organizational psychology); Michael A. Hogg, Daan van Knippenberg & David E. Rast, *The social identity theory of leadership: Theoretical origins, research findings, and conceptual developments*, 23(1) EUR. REV. SOC. PSYCH. 258-304 (2012) (for a review of literature, theoretical and empirical, on social identity driven concept of leadership in organizational context)

[133]Kelman, s*upra* note 132.

incorporate many perspectives, we may rationalize an observed social phenomenon but are unlikely to truly comprehend it.

Consider the claim that this article argues for - social identity impacts an individual's response to different social communications. This claim, no matter how convincingly argued, cannot adequately capture the complexity of the concept without incorporating the social and psychological context within which an individual is presented with a social communication. One may be strongly entrenched within their ethnic community i.e., have a prominent identity which has certain means of greeting older individuals but that will, most likely, create little impact on an individual's decision to shake hands with their colleagues in the workplace. Similarly, surveys reveal that nationalist conservative Indians who identify strongly (by donating considerable money etc.) to conservative, right-wing parties in their home countries while also continue being un-influenced by the political ideology of Republicans in the United States.[134] These are examples where incorporating the individuals' collective self-concept without accounting for the social context in which the social communication is embedded would fail to capture the phenomenon observed. Social context, as the article illustrates, also includes who it is the source of social communication. An individual's relationship with the influencing agent and the characteristics of the agent also play an important role in determining the process through which an individual will accept/reject a social influence.

Similarly, as the article spends a considerable portion arguing, the discussion cannot ignore the psychological context of the individual and his past experiences. The perception that the individual has of the source of the social communication plays a crucial role in how we interpret what they say. As Tom Tyler and others who have worked on the procedural justice arguments for legal compliance have illustrated, our past experiences with police and judiciary inform our opinions on the legitimacy of laws in general.[135] As this article highlights, these experience and opinions need not purely be our own but can also be mediated through our social identities. The content of social communication and its impact on our existing value and identity frameworks will also contribute to how we will process different social communications.

[134](Reena Shah, *Who are the Modi Democrats?,* THE AMERICAN PROSPECT, (Oct. 27, 2020) https://prospect.org/politics/who-are-the-modi-democrats/

[135]TOM R. TYLER, WHY PEOPLE OBEY THE LAW (1990); Jason Sunshine & Tom R. Tyler, *The Role of Procedural Justice and Legitimacy in Shaping Public Support for Policing*, 37 L. & SOC'Y REV. 513, 513–48 (2003).

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At the end of the process, the outcome can be rationalized into the two classifications – *informative* and *normative* social influence. We do choose to agree with a social communication either because we agree with it or for extrinsic reasons of reward/sanction when we are adhering to a social influence. But the understanding of the phenomenon lies not in the final outcome of the adherence to a social influence but the socio-psychological process through which an individual receives and makes sense of a social communication. This article is a first step towards incorporating this process-oriented approach to social influence within the law and norm discourse.

ECONOMICS OF JUVENILE DELINQUENCY IN INDIA: EXAMINING THE CONTEMPORARY ISSUES WITH THE JUVENILE JUSTICE ACT 2015

Pranay Agarwal[1]

ABSTRACT

The problem of high Juvenile delinquency has been a problem in India for a long time. The problem consequently led to the development of various laws and justice mechanisms to deal with the problem. The aim was to prevent the rising delinquency across the country through the reformatory approach and the subsequent incorporation of the infrastructure. However, the laws were mostly seen from the eyes of either a sociologist or a child rights' activist, which led to sacrificing of economic efficiency of the laws. Instead of concentrating on providing economic efficiency to India's juvenile justice system, the Juvenile Justice Act of 2015 and its subsequent Amendment in 2021 delivered a big breakthrough by focusing on bringing economic efficiency to the juvenile justice system.

This essay attempts to analyze the problem of high juvenile delinquency in India through the Economic lens and has tried to provide reasons for such phenomenon. In furtherance of its objective, the essay also analyzes the economic efficiency of the Juvenile Justice Act, 2015 in controlling the delinquency and provides much useful insights and recommendations to achieve an optimal solution.

[1] Student, Email: pranay20bal068@gnlu.ac.in

1. INTRODUCTION

Children constitute the most important and vulnerable group of the society and are generally considered as the foundation of any nation on which its future is built. They are the future leaders of the country, creators of the nation's wealth and protectors of the community of the land to which they are rooted. This holds more relevance in a country like India where children are seen as the key to the future goals and development of the nation. Development of the children occurs at different rates with varied perspectives. As they develop their senses, they start yearning for independence from their parents and earn acceptance and esteem from their peers.[2] However, these changes within them lead to the delinquent behaviour from the juveniles who indulge in crime to gain access to their short term goals and ambitions through illegal means. The juvenile justice system in India has evolved through time to prevent and accommodate this irregular behaviour. In the past, the problem was first treated differently through colonial legislations like the Apprentices Act of 1850 and Section 83 of the Indian Penal Code (provisions of *Doli incapax*) which laid the foundations of the juvenile justice system in India.[3]

The juvenile justice infrastructure and its thinking have been exposed to revolutionary changes since the last few decades and are adjusted to reflect the contemporary ideals and needs of society. This was well espoused by the passing of the Juvenile Justice (Care and Protection of Children) Act, 2015 which has made a significant change by enlarging its reformatory approach to reform and rehabilitate the juvenile offenders in mainstream society. However, since its enactment, juvenile delinquency and its prevention have been a debatable point for social scientists. While debates regarding the handling of young offenders in the criminal justice system have traditionally been based on moral and legal principles, developmental differences between juveniles and adults and social causes[4] making it a sociological study, much less attention is given to the economic impacts. This essay tries to focus on the economic perspective of juvenile delinquency. The aim of this essay is to explain and analyze the high juvenile delinquency in

[2] Deepshikha Agarwal, *Juvenile Delinquency in India- Latest Trends and Entailing Amendments in Juvenile Justice Act*, 3(3) PEOPLE: INT. J SOC. SCI. 1365, 1366 (2018).
[3] Suman Kakar, *Juvenile Justice and Juvenile Delinquency in India*, THE HANDBOOK OF JUVENILE DELINQUENCY AND JUVENILE JUSTICE 49-51 (2015).
[4] DR. NILIMA MEHTA, CHILD PROTECTION AND JUVENILE JUSTICE SYSTEM FOR CHILDREN IN NEED OF CARE AND PROTECTION (I.A. Stephen et al. eds. Childline Foundation 2008).

India through the economic lens and measure the efficiency of the Juvenile Justice Act, 2015 and its contemporary issues with the use of economic tools and theories.

In the first section, the essay tries to build a conceptual framework to explain the high juvenile delinquency prevalent in India and present an optimal solution to the problem. For that purpose, the basic understanding has been implied from the rational choice theory and the economic laws of deterrence and the thesis has been built upon the previous understandings of the economic tools of Cost-Benefit Analysis and criminal market equilibrium. In the second section, the essay tries to correlate the economic theories of crime and punishment to the Juvenile Justice Act 2015 and its provisions and aims are studied from an economic lens to determine the interplay of the law with the economics of the criminal market.

It also tried to determine its efficiency through correlating the understanding from the previous section to the effects that may be caused by the law in the juvenile criminal market. The third section thereafter gives a microscopic view of the trends in the juvenile criminal market. For that purpose, the section makes use of the statistical analysis and the measurement world to prove the gap between the expected and the actual results of the Act and has also tried to explain the economic impact it may have on the juvenile criminal market and the efficiency of the law.

The essay then proceeds to analyze the contemporary developments in the juvenile justice system with the passing of the Juvenile Justice Amendment Act in 2021 and tries to determine if it is an optimal solution or not. In the final section, the essay concludes with some useful insightson the juvenile justice system in India and its efficiency. Also, some worthy recommendations have been suggested to reach the economically optimal solution to resolve the problem of delinquency and the development of the juvenile justice system in India.

2. ECONOMICS BEHIND HIGH JUVENILE DELINQUENCY IN INDIA

Before discussing the reasons behind high juvenile delinquency, it is important to clarify its meaning. Juvenile delinquency has been defined from various perspectives and therefore to understand it, various meanings have to be looked upon. From a general discussion, it might

seem that juvenile delinquency only included serious crimes.[5] While it also encompasses crimes, it covers many activities which are not crimes by themselves.[6] Where the crime is referred to as a deviation from the legal obedience and legally expected behaviour, delinquency is more of a social term that comprises all those activities which are socially unacceptable for a child to do. These acts are often recognized as status offences which hint at the person's condition at the timethe offence was committed.[7] However, the consideration of the status offences would make the situation more complex and therefore to achieve the objective of this essay, the focus would be on the criminal activities committed by juveniles.

Although the topic of juvenile delinquency has not been comprehensively analyzed by economists, prior economists have propounded some useful insights while dealing with the criminal market and preventing criminals to commit crimes by economically disincentivizing them.[8] The theories given for a general criminal market can also be used to analyze juvenile crimes also. Some studies while pointing out the difference between the two propound thefutility of the rational choice theory in the case of the juveniles which serves as the base to estimate criminals' economic behaviour. Juveniles' psychology and behaviour are much different from that of adult criminals.[9] According to the studies, juveniles are more vulnerable to external influences which may lead them to take decisions that might not be their own.[10] In this case, the rational choice theory fails to apply. However, before applying the theory it is importantto understand that the rational choice is made by the person aiming at maximizing his own utilityand welfare though the decision might not actually lead to. Although the juveniles may not make a good decision due to external influences, the decision was made aiming at maximizing his/her own utility and welfare which makes the theory relevant even in this case.

The economics behind the juvenile delinquency not only explains the high juvenile crimes in India but also offers some useful economic insights to deal with the problem. The economic

[5] L.J. SEIGEL ET AL., JUVENILE DELINQUENCY: THE CORE 5 (4th ed. Wadsworth Learning 2011).
[6] D. SHOEMAKER, JUVENILE DELINQUENCY 19 (Sarah Stanton et al. eds., 3rd ed. 2018) [hereinafter SHOEMAKER].
[7] LEE TEITALBAUM, STATUS OFFENSES AND STATUS OFFENDERS: IN A CENTURY OF JUVENILE JUSTICE, 158–75 (Margaret K. Rosenheim et al. eds., Chicago: University of Chicago Press 2002).
[8] John Roman et al., *The Economics of Juvenile Jurisdiction*, RESEARCH ROUNDTABLE ON ESTIMATING THE COSTS AND BENEFITS OF SEPARATE JUVENILE JUSTICE SYSTEM 1-5 (2004).
[9] C. BARTOLLAS ET AL., JUVENILE DELINQUENCY 36-56 (Andrew Gilfillan et al., 3rd ed. Pearson 2018).
[10] SHOEMAKER, *supra* note 5 at 60.

perspective of juvenile delinquency thus can be divided into its two main objectives – explaining the juvenile delinquency and determining ways to achieve the optimal solutions to the problem.

2.1 Motivation behind the juvenile crimes

There can be numerous factors that serve as catalysts to juvenile offences like family issues, mental abuse, poor financial condition and several others. However, these factors are more related to the sociological point of view. From an economic perspective, the motivation behind juvenile crimes is more or less the same as that done by an adult though with some changes in the mentality and ultimate goals. The factors can be broadly considered as (i) Higher utility from illegal activities and, (ii) Lower gains from legal activities. The individual has to face the dilemma of choosing the type of activity he/she will pursue to satisfy his needs and desires.[11] Therefore, according to the rational choice theory, the individual will always make a rational choice in choosing from the type of activity he/she will pursue and for that will make a Cost- Benefit Analysis (CBA) of both the legal and illegal activities.[12]

However, the studies suggest that an individual is rather in a dilemma of choosing the optimal combination of the legal and illegal activities which will maximize his utility and welfare and therefore devotes his scarce time according to that optimal bundle (ordinal utility analysis).[13] The rational decision in that case for an individual would thus not only be based on the comparison of costs (C_1 and C_2) and benefits (B_1 and B_2) of the two choices ($\mathbf{B_1\text{-}C_1}$; $\mathbf{B_2\text{-}C_2}$) but also the comparisons between the costs of the two choices ($\mathbf{C_1; C_2}$) and the benefits of the choices ($\mathbf{B_1; B_2}$). Moreover, the ordinal approach of utility, as proposed by the previous economists[14], could be said to determine the reasons for juvenile crimes. However, for an effective CBA or ordinal utility analysis, it is important to ascertain the returns which an individual might receive through each activity.

[11] Isaac Ehrlich, *Participation in Illegitimate Activities: A Theoretical and Empirical Investigation*, 81(3) J POL. ECON. 521, 523-524 (1973) [hereinafter EHRLICH].
[12] Gary S. Becker, *Crime and Punishment: An Economic Approach*, 76(2) J POL. ECON. 169, 177-181 (1968) [hereinafter BECKER].
[13] EHRLICH, *supra* note 10 at 523-525.
[14] EHRLICH, *supra* note 10 at 525-530; BECKER, *supra* note 11 at 180-182.

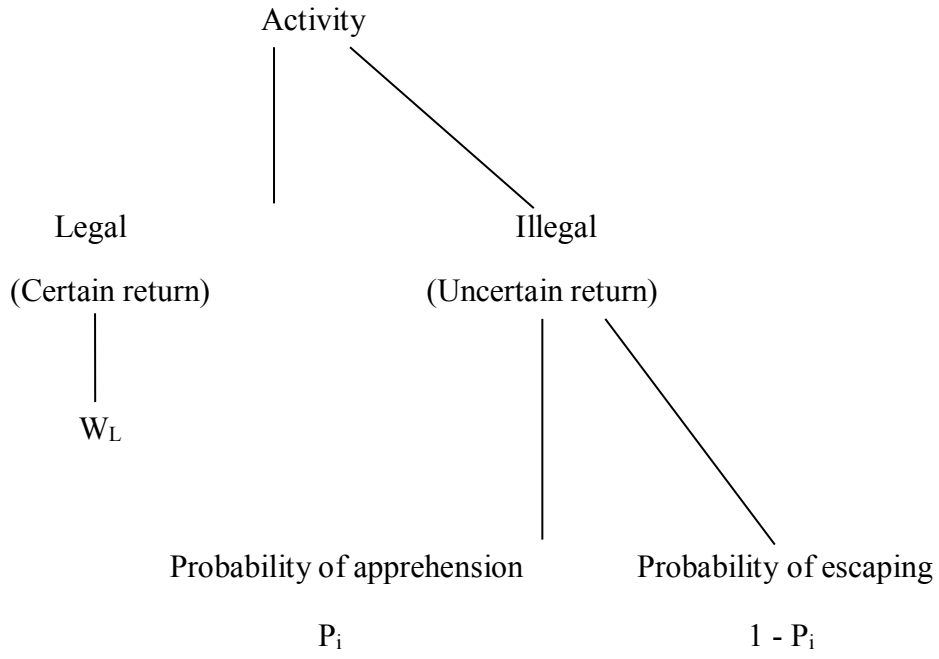


Fig. 1: Factors affecting the returns of the activities

As highlighted earlier in this section, the utility analysis of the activities requires a Cost-Benefit Analysis of both the activities and for that purpose it is important to ascertain the returns which an individual might receive through each activity. As pointed in Fig. 1, the returns from the legal activities (W_L) are usually certain and are predictable through pre-determined salary and wages, which makes them more secure and less risky than the illegal undertakings. But the returns from the illegal activities are uncertain and are largely dependent on two variables – probability of apprehension (P_i) and probability of escaping ($1-P_i$).[15] Therefore building on the theory of Ehrlich, separate returns can therefore be calculated for the two different scenarios.

$$X_C = W' - F_i\,(t_i)$$

is obtained with the probability of apprehension (P_i), or

[15] EHRLICH, *supra* note 10 at 524-525.

$$X_C = W' + W_i(t_i)$$

is obtained with the probability of escaping ($1-P_i$), where X_C denotes the current real returns of the individual, W' denotes the real value of the individual's assets and is assumed to be known with certainty, $F_i(t_i)$ denotes the value of punishment for the offences per unit of time and $W_i(t_i)$ denotes the value of the earnings (loot) earned by the juvenile offenders per unit of time.[16] It is also important to note that the value of the punishment (F_i) not only includes the criminal charges put on the offender or the monetary value of the deterrence caused by the punishment. The costs involved will also include the loss of reputation caused by the punishment, loss of the loot that could be earned through further crimes in that period and the opportunity costs of the legal activities (W_L).[17]

Through the above equations, it can be inferred that if successful, the offender gets the entire value of the output of illegal acts while bearing the costs of inputs and the opportunity costs ofthe returns from the legal activities. In contrast, if caught, he may end up losing his current real assets in the form of the value of the penalties and loss of the other loots. In the end, the individual, in furtherance of his goal of maximizing his utility, will want to acquire more wealth and earnings while decreasing his costs in achieving the purpose. And for that purpose, will devote time in proportion to that combination of the activities which fulfil these conditions.[18]

Though the ordinal utility model provides much help in explaining the phenomena of juvenile delinquency, it presupposes perfect mobility between the legal and illegal worlds. Due to this, the model bases its theory that the optimal utility can be achieved through a specified bundle of both activities. However, in actuality, this does not hold as juvenile criminals face various barriers while choosing the activity to achieve personal welfare. The barriers constructed by external pressures like social, financial and educational influence the choice of the juveniles greatly.

[16] EHRLICH, *supra* note 10 at 524-525.
[17] *See* BECKER, *supra* note 11 at 180-182.
[18] EHRLICH, *supra* note 10 at 524-525.

David Brandt[19] has extensively talked about the social and psychological factors responsible for delinquency in India. Along with the social factors, it has been noted that the social environment has a strong impact on the deviating tendencies of the juveniles. Therefore, the social structure and organization will play an important part in impacting the rational choice of juveniles.[20] In India, the high delinquency in sociological and psychological terms can be attributed to the risingpoverty, broken homes, family tensions, emotional abuse, rural-urban migration, breakdown of social values, atrocities and abuse by parents or guardians, faulty education system, the influenceof media and unhealthy social environment of the slums.[21] These social problems act as constructors of the financial, social and educational barriers, which make legal opportunities impossible to avail or too costly to be availed, leading to the pursuit of illegal activities.

Moreover, the mass migration of workers and poor villagers to urban centres adds fuel to the already rising problem of delinquency.[22] The migrant workers, especially juveniles, come to the urban centres with expectations of higher returns. However, the increased migrant population indirectly leads to bad neighbourhoods, poor housing and incomplete families, which has a deep negative influence on the children's minds.[23] The rising population, along with constant opportunities, also reduces the probability of receiving high returns to the juvenile migrants. These factors act as a deviation from the expectations of the juveniles, and thus, there arises agap between the actuality and expectations which the juveniles try to fill with the returns of the crime, which are much higher than the abysmal returns from the legal works.[24]

2.2 *Defining an optimal approach*

Juvenile delinquency has been a matter of most serious concern among sociologists and criminologists among all other crimes. Economists, though define the seriousness of the matter due to the existence of additional social costs incurred due to the juvenile crimes. The social

[19] DAVID BRANDT, DELINQUENCY, DEVELOPMENT, AND SOCIAL POLICY (London, Yale University Press 2006).
[20] Deekshitha Agarwal, *Juvenile Delinquency In India - Latest Trends And Entailing Amendments In Juvenile Justice Act*, 3(3) PEOPLE: INT. J SOC. SCI. 1365, 1367-1368 (2018).
[21] Dr. Mahendra Tiwari et al., *Analytical view on the concept of Juvenile Delinquency*, 5(9) INT. J RES. ECON. SOC. SCI. 147 (2015).
[22] As per the analysis of Census 2011, every fifth child in India is a migrant with 18.9 per cent of the child population as migrants. For more information on the subject, see YOUNG LIVES INDIA, UNDERSTANDING CHILD MIGRATION IN INDIA 2 (UNICEF, March 2020).
[23] G.S. BAJPAI, JUVENILE JUSTICE: IMPACT AND IMPLEMENTATION IN INDIA 11 (Bloomsblury Publishing 2019).
[24] *Id.* at 12.

costs can be defined as the total costs of punishments or criminal proceedings which consider both the costs of the offender and gain or costs to the others including the victim.[25] This is the same reason why fines are preferred by economists rather than imprisonment. Fines make the costs of the offender equal to that of the gain of others (in this case, state and the victim), thereby making the total social costs zero. Whereas the social costs of imprisonment are higher as the costs to offenders are large while enlarging the costs of the state also in maintaining prisons. The social costs will, however, be especially too large for juvenile delinquency as the costs will also include the maintenance costs of the juvenile homes and the loss of future human resources in the form of children,[26] which is a huge cost for the society.

Dealing with juvenile delinquency has been a hot topic for decades for both criminologists and economists and the methods adopted to prevent it are met with various changes from time to time. While looking at it from an economic perspective, the choice has to be made by the policymakers regarding the type of approach, i.e. deterrent or reformatory to be used for obtaining an optimal solution. For resolving the dilemma, the essay will be using the criminal market equilibrium[27] and the first law of deterrence.

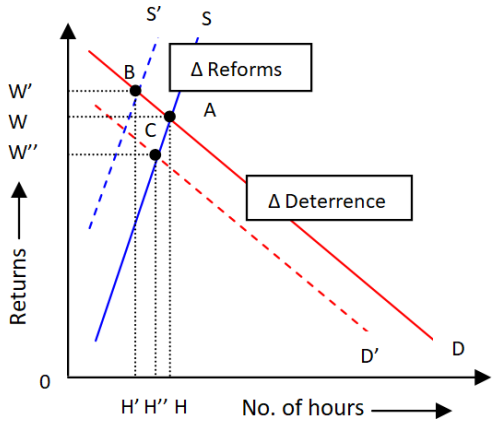


Fig. 2: Effects of policy on Juvenile Criminal Market Equilibrium

[25] BECKER, *supra* note 11 at 181-182.
[26] *The Costs of Confinement: Why Good Juvenile Justice Policies Make Good Fiscal Sense*, JUSTICE POLICY INST. 4-19 (2009).
[27] Isaac Ehrlich, *Crime, Punishment and the Market for Offences*, 10(1) J ECON. PER. 43, 44-48 (1996).

The first law of deterrence states that an increase in deterrence reduces the number of crimes.[28] Based on this, Fig. 2 illustrates the increase in deterrence through an increase in the expected punishments by deterrent laws. The increase in the deterrence reduces the expected returns from the criminal activities (P_i and F_i increases) to W'' and the demand curve of the crimes (which also represents the average revenue from the crimes) shifts left from D to D' and the equilibrium is established at C with hours spent on the criminal activities reduces to H''. The peculiar featureof the graph of the juvenile criminal market is that the Supply curve of the crimes is highly inelastic as compared to the adult criminal market graph. As the supply curve shows the number of hours the juveniles would spend on the criminal activities on the specific returns (which also meant the number of juveniles supplied on a given return), the inelasticity of the curve meansthat the juveniles would less increase their time devoted on crime on higher increment in returns. The reason for this abnormal attitude of the juveniles lies behind their psychological understanding. In contrast with the widely held belief that adolescents feel 'invincible', recent research indicates that young people do understand, and indeed sometimes overestimate, risks to them.[29] Therefore it appears that juveniles not only consider risks *cognitively* (by weighing its potential costs and benefits) but also *socially* and *emotionally* which makes them take less illegal undertakings as compared to the adults[30] even if returns from them increases rapidly.

The inelastic supply curve although does not prevent the decrease in the juvenile crime rates but it does reduce the efficiency of the policy by making reduction in crime rates (Benefits) much lesser than the costs incurred in maintaining deterrence (enforcement costs, punishment costs and social costs). Although the reforms came due to the pressure exerted by the child rights activists and sociologists, but if also seen from an economic perspective, the reformatory approach would be more efficient than the deterrent approach. Through the reforms the juveniles would be reformed into good persons giving up the wrong ways, which would bring down the supply curve to S' and the number of hours spent on criminal activities to H', which is a much higher reduction than by the deterrent approach.

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[28] ISAAC EHRLICH, ECONOMICS OF DETERRENCE (THEORY) 127 (Macmillan Pubs. Ltd. eds., Palgrave Macmillan: London 2018), https://doi.org/10.1057/978-1-349-95189-5_2618.

[29] Laurence Steinberg, *Cognitive and affective development in adolescence*, 9(2) TRENDS IN COGNITIVE SCIENCES 69, 69–74 (2005).

[30] Kelly Richards, *What makes juvenile offenders different from adult offenders?* 409 TRENDS & ISSUES IN CRIME AND CRIMINAL JUSTICE, AUS. INST. OF CRIM. (Feb. 18, 2011), https://www.aic.gov.au/publications/tandi/tandi409.

The reformatory approach now forms the base of the juvenile justice system of every nation.[31] In India also, the need for the good education and social environment had been realized through the Juvenile Justice Act of 1960 and the policymakers have followed this approach to intensify the reforms and bring down the supply curve which will reduce the juvenile crime rates while incurring lesser costs and reaping more benefits.[32]

3. EXAMINING THE EFFICIENCY OF THE JUVENILE JUSTICE ACT, 2015

Juvenile delinquency has not been new in India. India for a long time has been evolving its juvenile laws and infrastructure in accordance with the global changes in the perspectives and changing understanding behind the approaches from deterrent to reformative. Juvenile justice is currently governed by the Juvenile Justice (Care and Protection of Children) Act, 2015 which was brought by the government to address the rising juvenile delinquency through higher reforms in the juveniles. The Act addresses both children in conflict with the law and children in need of care and protection. While debating the Act in the Parliament, Mrs. Maneka Gandhi(then minister of women and child development) even remarked it as a 'comprehensive Act' which included issues regarding the adoption and foster care as well.[33]

Through this statement, it can be easily inferred that the aim of the government behind bringing this law is 'Reformation and Rehabilitation' of the Juvenile offenders. The Act follows a more reformatory process than its predecessor (Act of 2000) and introduces various concepts and institutions for juvenile reformation. The main feature of the Act is the provisions for the Adoptions and rehabilitation of the juveniles which are given due importance by separating it as a different chapter in the Act.[34] To improve the working of the institutions the existing Central Adoption Resource Authority (CARA) was given extensive enforcement powers.[35] Also, the

[31] As far as 194 countries have ratified the UN Convention on Rights of Child and Child Protection, 1992.
[32] More benefits would be reaped as by changing the ways from legal to illegal, the juveniles are brought back to mainstream society. This will ensure the real economic development of both the juveniles and the nation, thereby securing our country's future economic resource.
[33] Rajya Sabha Debates, Debate on Juvenile Justice Bill (Dec. 22, 2015), http://164.100.47.5/ new debate/237/22122015/Fullday.pdf.
[34] Juvenile Justice (Care and Protection of Children) Act, 2015, Ch. 7-8, No. 2, Acts of Parliament, 2016 (India) [hereinafter JJA 2015].
[35] *Id.* at § 70.

mandatory registration of the Child Care Institutions (CCIs)[36] and strengthening of Child Welfare Committees (CWCs)[37] highlights the reformatory motive of the act by giving a good social and educational environment to the juvenile offenders.

Though the Act seems to be a step forward in the direction of juvenile justice and child rights in India, the economic analysis becomes more important to determine its efficiency in controlling juvenile delinquency in India. For that purpose, those provisions of the Act will be taken into consideration, which have a significant impact on the reformation or deterrence to the juvenile offenders to conveniently study the impact of the reformation and deterrence of the Act on the juvenile criminal market.

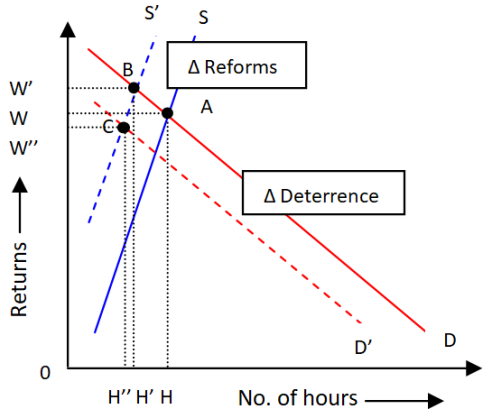


Fig. 3: Effects of the 2015 Act on Juvenile Criminal Market

Before analysing the Act, it is important to note that the Act apart from its aim of reformation and rehabilitation of the juvenile offenders, has also focused on redefining the offences and

[36] A Child Care Institution, commonly known as an orphanage, as defined under the Juvenile Justice Act, 2015, means a facility recognized under the Act for providing care and protection to children, who need such services. Children in conflict with the law are provided residential care and protection in Observation Homes, Special Homes, and Places of Safety. Also *see* JJA 2015, *supra* note 33 at § 41.

[37] For the Children in need and care of protection, State Government may, by notification in Official Gazette, constitute for every district or group of districts, specified in the notification, one or more Child Welfare Committees for exercising the powers in relation to child in need of care and protection under this Act. A child in need of care and protection is produced before CWC for being placed in safe. The Committee has the final authority to dispose ofcases for the care, protection, treatment, development and rehabilitation of the children as well as to provide for theirbasic needs and protection of human rights. See JJA 2015, *supra* note 33 at § 27. Also for more information about CWCs, *see Child Welfare Committee*, WOMEN AND CHILD DEVELOPMENT DEPARTMENT (last visited Sept. 9, 2021), https://wcdhry.gov.in/child-welfare-committee/.

punishments to punish the offenders worthy of it.[38] The Act not only provided for the implication of the Indian Penal Code (IPC) on the juvenile offenders of 16-18 years of age for heinous offences,[39] but also hinted at the segregation of the juvenile justice on the basis of the nature of the offence and culpability of the offender, thus creating deterrence among the juveniles who used to believe themselves safe under the law. Due to this, as shown in Fig. 3, the supply curve shifts to S' (reforms) and the demand curve shifts to D' (deterrence), thereby establishing thenew equilibrium at C. The point to be noted is that without deterrence the crime rates would havefallen much less than it has fallen due to some element of deterrence in the Act, therefore makingthe more effective than its predecessors. However, before reaching to conclusions, it is also important to analyze the impact of the limitations of the Act on the juvenile criminal market.

4. MICROSCOPIC VIEW OF THE JUVENILE DELINQUENCY AND THE JUVENILE JUSTICE ACT

Juvenile delinquency is not a new phenomenon in India and there had been a juvenile justice system and infrastructure for handling it. However, the Juvenile Justice Act, 2015 was a major breakthrough in the evolution of the juvenile laws in India and has brought forth various ideals and infrastructural mechanisms to prevent the incidence of juvenile crimes. But for an effective analysis, it is also important to look at the reality apart from the economical expectations and understand the indirect economic consequences of the law. The Act too suffered from various defects in terms of implementation and interpretation which gave rise to several hindrances in achieving its purpose. Delays in the adoptions and poor maintenance of the institutions are some of the consequences of the poor implementation of the Act which instead reduces the efficiency of the law in controlling the rising juvenile delinquency in India.

4.1 Delays in Adoption

[38] The incident of the Delhi Rape case of 2012 acted as a catalyst in revisiting not only the existing the criminal laws which led to addition of various new crimes through the Criminal Law (Amendment) Act, 2013 but also the juvenile justice laws which led to the separation of the heinous crimes from the serious crimes and redefining the age groups of the juveniles on the basis of their culpability. Rituparna Bhattacharya, *Understanding the Spatialities of Sexual Assault against Indian Women in India*, 22(9) J. GENDER, PLACE AND CULTURE 1340, 1340-1356, DOI: 10.1080/0966369X.2014.969684.

[39] JJA 2015, *supra* note 33 at § 15.

The Juvenile Justice Act, 2015[40] deals with the procedure to be followed in case of adoptions. As referred before adoptions act as the reformatory schemes to the juvenile offenders which help them get a good social environment, bridge family ties and educational support. However, the delays in the adoptions have been quite a problem since the enactment of the Act. Though the reason is not clear, it is empirically observed that the complicated procedures and placing the jurisdiction in the hands of the courts, thus overburdening them have contributed to the same.[41] As of 2018, there are 629 cases for adoptions pending in various courts across the country,[42] which shows the authenticity of the fact.

YEAR	IN-COUNTRY ADOPTION	INTERCOUNTRY ADOPTION
2013-2014	3924	430
2014-2015	3988	374
2015-2016	3011	666
2016-2017	3210	578
2017-2018	3276	651
2018-2019	3374	653
2019-2020	3351	394
2020-2021	3142	417

Table 1: Annual Adoption Statistics

Source: Central Adoption Resource Authority, MWCD, GoI

As shown in Table 1,[43] the in-country adoptions before the enactment of the 2015 Act (2013- 2015) were much higher and ranged between 3500-4000 adoptions. However, after 2015, the adoptions started declining to <3500 which can be shown by the huge drop during 2015-2016. This is in contradiction to the Inter-country adoptions which surged after the enactment of the Act due to the coming of the additional procedures to facilitate inter-country adoption. The stark reality of the dismal position of the adoptions in India can be further highlighted by the fact that

[40] JJA 2015, *supra* note 33 at § 59-60.
[41] Krishnadas Rajagopal, *Speeding up the adoption process*, THE HINDU-COMMENT, Aug. 31, 2018 at https://www.thehindu.com/opinion/op-ed/speeding-up-the-adoption-process/article24822478.ece.
[42] The Juvenile Justice (Care and Protection of Children) Amendment Bill, 2018 L.S. 137, Winter Sess. Statement of Objects and Reasons (2018).
[43] *Adoption Statistics*, CENTRAL ADOPTION RESOURCE AUTHORITY (Jun. 2021), http://cara.nic.in/resource/adoption_Stattistics.html.

as of June 2019, 6971 orphaned, abandoned or surrendered children were living in the Specialized Adoption Agencies across the country and further 1706 children are residing in CCIslinked with such agencies.[44] The already abysmal position of the adoptions in India further suffered a severe blow from the COVID-19 lockdown (2020-2021) when the adoptions declined sharply by 12% from 2018-19 due to further delays (Table 1).

4.2 Lack of Proper Institutions

The Juvenile Justice Act not only gives attention towards facilitating the adoptions but has also provided for the proper institutional framework to ensure efficiency. But the actuality is far beyond the expectations of the lawmakers. As reflected in Fig. 4,[45] not every state is proficient in maintaining the institutions required for efficient working of the Act and only 28 out of 35 States and UTs have Juvenile Justice Boards which are much essential to providing juvenile justice. The Child Welfare Committees which acts as the final authority to dispose of cases relating to child protection and rehabilitation and to ensure basic facilities has been provided by only 77% (28 states) and in only 20 states District Magistrate is carrying out a quarterly review of CWCs.[46]

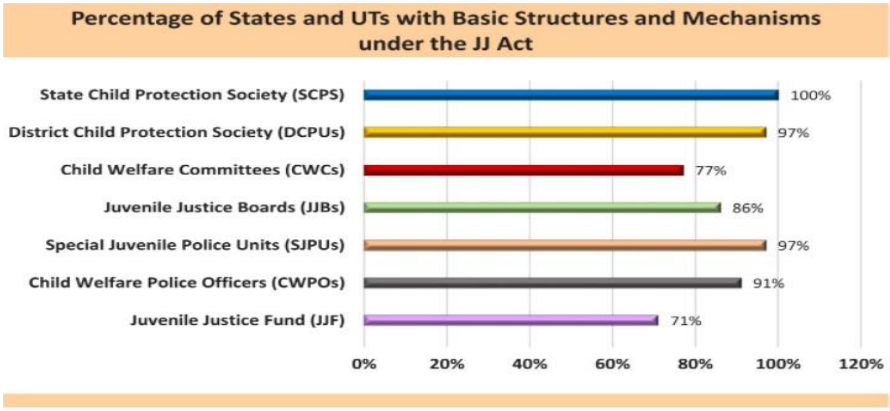


Fig 4: States having basic structure under the Act

Source: Status of Juvenile Justice System, NALSA 2019

[44] Unstarred Question No. 1225, Ministry of Women and Child Development (Jun. 28, 2019), http://164.100.24.220/loksabhaquestions/annex/171/AU1225.pdf.
[45] NATIONAL LEGAL SERVICES AUTHORITY, A QUICK OVERVIEW STATUS OF JUVENILE JUSTICE SYSTEM, STRUCTURE, MECHANISMS & PROCESSES 5 (2019), https://drive.google.com/file/d/1CktonWaSh5aGOrO4Oi14HuvpdqIECEaH/view [hereinafter NALSA].
[46] *Id.*

For the juvenile offenders the data is more horrifying with only 5 states having Observational homes in every district[47] and a mere 71% states having a Place of Safety for juvenile offenders.[48] The CCIs which even exist are not even registered and applied under the Act of 2015,[49] thus making their legal status vulnerable and juvenile offenders pushed back in the uncertain future. Furthermore, the Committee on review exercise of CCIs (2018) noted that many CCIs fail to provide even the basic services to the children including individual bedding, and proper nutrition and diet.[50]

4.3 Impact on Criminal Market and Incidence of Juvenile crimes

The delays caused in the adoption process and the lower level of institutional framework and facilities provided to the juvenile's act as hindrances to the Juvenile Justice Act, 2015 inachieving efficiency. The problems of delay and proper implementation however not only fail the laws to achieve the social goals but also prevent it attaining an efficient solution. The delays caused in adoptions and lack of institutions and facilities to the juveniles creates a rift betweenthe level of reformation expected by the Act and the level of reformation achieved in reality. This rift results in a lesser shift in the Supply curve (S') than was originally expected (S''). Maintaining the deterrence constant, the equilibrium will be established at E and not at C (expected equilibrium) and the reduction in the crime rates will therefore be far lower than what could be achieved through proper implementation of the laws and reduction in delays (Fig 5).

[47] NALSA, *supra* note 44 at 12.
[48] NALSA, *supra* note 44 at 14.
[49] As of 2020, 2162 CCIs are present across India out of which only 32.03% are registered. *See* MINISTRY OF WOMEN AND CHILD DEVELOPMENT, REPORT OF THE COMMITTEE FOR ANALYZING DATA OF MAPPING AND REVIEW EXERCISE OF CHILD CARE INSTITUTIONS UNDER THE JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT, 2015 AND OTHER HOMES 38 (2018), https://wcd.nic.in/sites/default/files/CIF%20Report%201_0_0.pdf.
[50] *Id.* at 111-173.

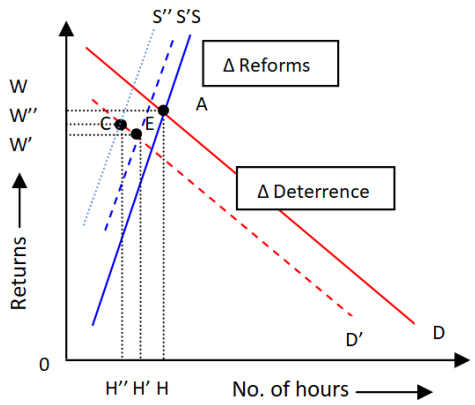


Fig 5: Impact of hindrances on Juvenile Criminal Market

Moreover, by keeping the deterrence constant would also amount in huge social costs. The court fees, maintenance of the courtrooms, juvenile homes, etc. requires much state expenditure. The infrastructure demanded an efficient juvenile justice system too requires much state expenditure on maintaining the adoption centres, JJBs, CCIs, CWCs and other protection institutes. With benefits (reduction in the number of hours devoted for criminal activities) reduced to what was expected to be achieved through the Act and the social costs increasing due to increased state expenditure and dilapidated conditions of the juveniles, the Costs exceeds the Benefits (CBA), thereby failing the purpose of the Act by again making crime more beneficial than surrendering.

As can be seen in Fig 6,[51] though the reduction in juvenile crimes has occurred, the reduction has been less than expected due to the delays and implementation discrepancies that made the law inefficient. Also, the crimes by age group of 16-18 have however increased which indicate the shifting of the supply curve even to right in their case due to their different psychological understanding of the current trends from the other juvenile age groups.

[51] *The Juvenile Justice (Care and Protection of Children) Amendment Bill, 2021*, PRS LEGISLATIVE RESEARCH (Jul. 2021) https://prsindia.org/billtrack/the-juvenile-justice-care-and-protection-of-children-amendment-bill-2021.

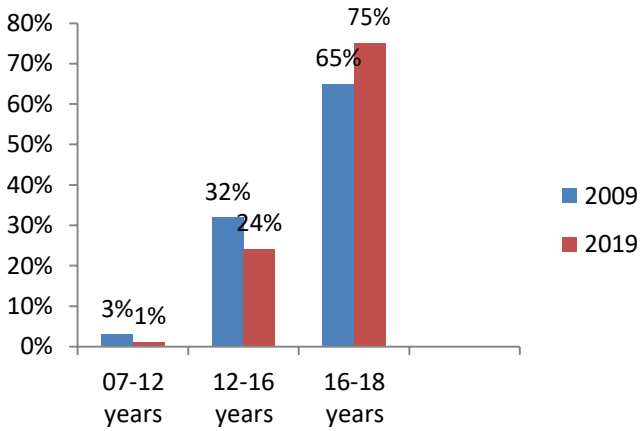


Fig 6: Juveniles arrested by Age groups

Source: Crime in India, 2009-2019, NCRB, PRS

The crimes committed by juveniles have been reduced to a limited extent by the Juvenile Justice Act, 2015 and juvenile delinquency is controlled to a larger extent than its predecessor Juvenile Justice Act, 2000 (Fig 7).[52] However, due to higher enforcement costs incurred as per the Act, the Act faces a harsh reality of being economically inefficient and has failed to provide an optimal solution to the problem of high juvenile delinquency in India.

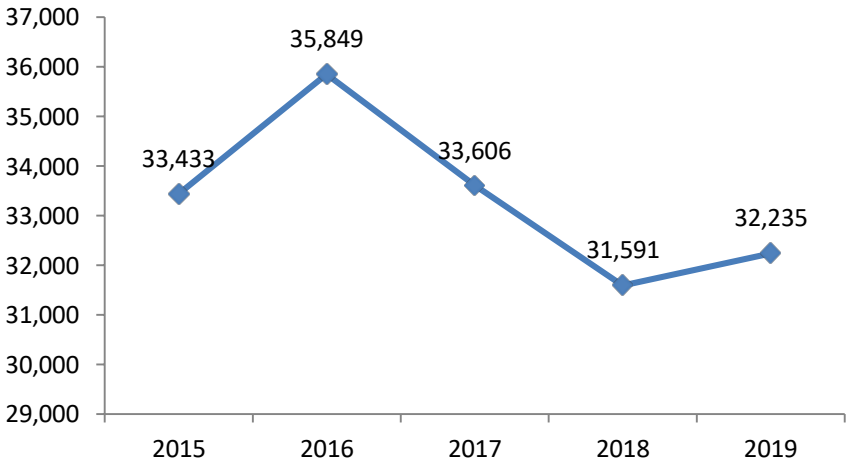


Fig 7: Crimes committed by Juveniles during 2015-2019

Source: Crime in India 2015-2019, NCRB

5. RESOLVING THE PROBLEMS WITH THE AMENDMENT OF 2021

[52] *Id.*

In order to resolve the problems faced under the Juvenile Justice Act, 2015 because of delays in adoptions and lack of proper enforcement, the Ministry for Women and Child Development introduced the Juvenile Justice (Care and Protection of Children) Amendment Bill, 2021 which seeks to amend the 2015 Act. The Bill has been recently passed in the Parliament and has been enacted through the Presidential Assent. Giving importance to the matter of delays in theadoption process, the Statement of Objects and Reasons of the 2021 Act states that as adoptions are non-adversarial in nature, they can be dealt with through a well laid out process.[53]

Through this object of the law, it can therefore be inferred that the bill seeks to prevent delays in the adoption process and ensure effective enforcement to bring efficiency in the original Act. For that purpose, the Bill proposes several reforms to prevent delay which includes the transferring of the power to apply for adoption from civil courts to the District Magistrate[54], extending the jurisdiction of the children's courts[55] and fastening the appellate process.[56] The Bill also ensures efficiency within the CWCs by adding certain eligibility criteria for the members.[57]

The reforms in the form of preventing delays in the adoptions and juvenile criminal cases provide much-needed boost to the efficiency in the juvenile laws in India. If explained in the economic terms the reforms introduced in the Bill will lead to the shifting of the supply curve to the further left, thus helping it to match the expected supply curve (S'') of the Act (Fig 5). This will lead to the establishment of equilibrium at the expected point C and the incidence of the crimes will drop at the expected rate through which the full efficiency of the law will be achieved.

6. CONCLUSION AND RECOMMENDATIONS

The juvenile justice system of Indian has been evolving for decades to reach the optimal solution to the problem. The traditional approach of custodial care in the institutions is being rapidly altered by the strong convictions in favour of the Right to Family as a basic right of children and

[53] The Juvenile Justice (Care and Protection of Children) Amendment Act, 2021, Statement of Objects and Reasons, No. 23, Acts of Parliament, 2021 (India) [hereinafter JJ ACT 2021].
[54] *Id.* at § 18-21.
[55] JJ ACT 2021, *supra* note 52 at § 26.
[56] JJ ACT 2021, *supra* note 52 at § 28.
[57] JJ ACT 2021, *supra* note 52 at § 9(1).

so is the juvenile justice system of India. However only the social and legal factors behind the change in the Juvenile Justice system were latent in the studies whereas the economic factors were largely ignored. Through this essay, the economic values hidden in this right and the reasons behind the high juvenile delinquency rate in India have been brought forth. In India, the enactment of the Juvenile Justice Act, 2015 was a major breakthrough in the evolution of the juvenile laws in India and had provided much-needed efficiency to control the rising juvenile crimes across the country. Though the Act failed to meet the expectations of the policymakers and proved a little efficient due to enforcement problems and delays in judicial mechanism, with the Amendment of 2021 the Act could serve as a revolutionary step in bringing an efficient solution to the problem.

However, it is highly doubtful that even then the Amendment would be efficient enough to control the high juvenile delinquency in India attributed to some inherent defects which could instead push back the juvenile justice system of the country. The Amendment proposes to enlarge the ambit of the serious offences while diminishing the extent of the heinous offences,[58] thereby reducing the deterrent factor from the original law. While providing no solutions to the problems faced by the juveniles in the adoption centres and specialized agencies because of poor facilities and infrastructure, there exists a huge probability of shifting of the demand (F_i reduced due to lack of deterrence) and supply curve (lack of incentives in education and legal opportunities due to poor facilities) to the right, thus alleviating the positive effects of the law. Also, the transferring of powers to the District Magistrate does not adequately ensure the prevention of delays in the adoption process.

As far as efficiency of the policies is concerned, the optimal solution can however be reached with even these faulty provisions. The proper maintenance of the juvenile justice infrastructure isa necessary thing to be done for proper implementation of the Act. Proper maintenance of the juvenile care centres, CCIs and adoption centres and providing good education and legal opportunities to the juvenile offenders will not only serve its social purpose but also bring efficiency in the laws by adequately reducing the supply of juvenile criminal activities. Also, the prevention of delays in juvenile cases and the adoption process will require revisiting the defects in the judicial machinery rather than transferring of the powers and proper enforcement is needed

[58] JJ ACT 2021, *supra* note 52 at § 2(7).

to control the same. Though it may be argued that it will further increase the social costs by raising the enforcement costs of the Act, thereby reducing its efficiency (CBA), the benefits reaped through effective enforcement would be much higher than the costs. Through these measures, the number of offenders will reduce thus, reducing the juvenile crime rates. Therefore,the enforcement costs can be incurred as long as effective enforcement is taking place.

Also, the law has to be reformed to raise the level of deterrence too for the highly culpable juveniles so that economic benefits can be assured while ensuring social benefits. In recent years,juveniles and their problems have been paid larger attention from both, the society and the government. But it has been seen the problem of juvenile delinquency is enormous and never- ending, thus resulting in a lack of everything that has been done till today.

Juveniles are the most important economic resource for the future of any country. This holds even more relevance in India where juveniles and children constitute almost 36% of the projected population in 2021.[59] If these problems are not curbed on time then the growth of the children and juveniles will be hampered leading to a dark future for the country. The Juvenile Justice Act, 2015 although provides a major breakthrough in the juvenile justice system of India, clearly still much can be done and much has to be done.

[59] CENTRAL STATISTICS OFFICE, YOUTH IN INDIA 2017 13 (Social Statistics Division, Ministry of Statistics and Programme Implementation, 2017).

7. ANNEXURE

TABLE 1

January 2019 – Structures and Mechanisms established under the Juvenile Justice Act.The data has been collected by the National Legal Services Authority through a questionnaire made in 2018 and has been used by the author for the research purpose.

S. No.	States/UTs	State Child Protection Society	District Child Protection Society	Child Welfare Committees	Juvenile Justice Boards	Special Juvenile Police Units	Child Welfare Police Officers	Juvenile Justice Fund
1.	ANDAMAN & NICOBAR ISLANDS	YES	YES	NO	NO	YES	YES	NO
2.	ANDHRA PRADESH	YES	YES	YES	YES	YES	YES	YES
3.	ARUNACHAL PRADESH	YES	YES	NO	YES	NO	NO	NO
4.	ASSAM	YES	YES	NO	NO	YES	YES	NO
5.	BIHAR	YES	YES	NO	YES	YES	YES	YES
6.	CHANDIGARH	YES	YES	YES	YES	YES	YES	YES
7.	CHHATTISGARH	YES	YES	YES	YES	YES	YES	YES
8.	DADRA AND NAGAR HAVELI	YES	YES	NO	YES	YES	YES	NO
9.	DAMAN AND DIU	YES	YES	YES	YES	YES	YES	NO
10.	DELHI	YES	YES	YES	NO	YES	YES	YES

11.	GOA	YES	YES	YES	YES	YES	YES	YES
12.	GUJARAT	YES	YES	YES	NO	YES	YES	YES
13.	HARYANA	YES	YES	NO	NO	YES	YES	YES
14.	HIMACHAL PRADESH	YES	YES	YES	YES	YES	YES	YES
15.	JHARKHAND	YES	YES	YES	YES	YES	YES	YES
16.	KARNATAKA	YES	YES	YES	YES	YES	YES	YES
17.	KERALA	YES	YES	YES	YES	YES	YES	YES
18.	LAKSHADWEEP	YES	NO	YES	YES	YES	YES	NO
19.	MADHYA PRADESH	YES	YES	YES	YES	YES	YES	NO
20.	MAHARASHTRA	YES	YES	YES	YES	YES	YES	YES
21.	MANIPUR	YES	YES	YES	YES	YES	YES	YES
22.	MEGHALAYA	YES	YES	YES	YES	YES	YES	YES
23.	MIZORAM	YES	YES	YES	YES	YES	NO	NO
24.	NAGALAND	YES	YES	YES	YES	YES	NO	YES
25.	ODISHA	YES	YES	YES	YES	YES	YES	YES
26.	PUDUCHERRY	YES	YES	NO	YES	YES	YES	YES
27.	PUNJAB	YES	YES	YES	YES	YES	YES	YES
28.	RAJASTHAN	YES	YES	YES	YES	YES	YES	YES
29.	SIKKIM	YES	YES	YES	YES	YES	YES	NO
30.	TAMIL NADU	YES	YES	YES	YES	YES	YES	YES
31.	TELANGANA	YES	YES	YES	YES	YES	YES	YES
32.	TRIPURA	YES	YES	YES	YES	YES	YES	NO
33.	UTTAR PRADESH	YES	YES	YES	YES	YES	YES	YES
34.	UTTARAKHAND	YES	YES	YES	YES	YES	YES	YES
35.	WEST BENGAL	YES	YES	NO	YES	YES	YES	YES

TABLE 2

December 2010 – Juveniles Apprehended Under IPC/SLL Crimes by Age Groups in 2009 (State/UT wise). The data has been collected by the National Crimes Records Bureau, Ministry of Home Affairs and has been used by the author for the research purpose.

S. No.	States/UTs	7-12 Years	12-16 Years	16-18 Years
1.	ANDAMAN & NICOBAR ISLANDS	2	10	14
2.	ANDHRA PRADESH	61	640	1285
3.	ARUNACHAL PRADESH	3	47	31
4.	ASSAM	11	153	221
5.	BIHAR	0	199	543
6.	CHANDIGARH	7	80	81
7.	CHHATTISGARH	53	1239	1064
8.	DADRA AND NAGAR HAVELI	0	6	13
9.	DAMAN AND DIU	0	0	10
10.	DELHI	20	282	325
11.	GOA	3	26	48
12.	GUJARAT	28	480	713
13.	HARYANA	4	184	719
14.	HIMACHAL PRADESH	4	61	154
15.	JAMMU AND KASHMIR	1	24	2
16.	JHARKHAND	1	37	64
17.	KARNATAKA	38	89	77
18.	KERALA	5	269	552

19.	LAKSHADWEEP	0	0	0
20.	MADHYA PRADESH	206	2016	4334
21.	MAHARASHTRA	173	1771	4344
22.	MANIPUR	0	0	0
23.	MEGHALAYA	10	72	36
24.	MIZORAM	7	32	77
25.	NAGALAND	2	12	39
26.	ODISHA	19	285	240
27.	PUDUCHERRY	0	9	40
28.	PUNJAB	32	80	134
29.	RAJASTHAN	51	795	1532
30.	SIKKIM	1	15	66
31.	TAMIL NADU	131	605	908
32.	TRIPURA	25	17	4
33.	UTTAR PRADESH	5	325	527
34.	UTTARAKHAND	4	69	81
35.	WEST BENGAL	27	94	206

TABLE 3

September 2020 – Juveniles Apprehended under IPC/SLL crimes during 2019 as categorised under different crime heads. The data has been collected by the National CrimeRecords Bureau, Ministry of Home Affairs and the data has been abridged by the author for the research purpose.

S. No.	Type of Crime	7-12 Years	12-16 Years	16-18 Years
1.	OFFENCES AGAINST THE HUMAN BODY	151	3148	10815
2.	OFFENCES AGAINST THE STATE	0	0	1496
3.	OFFENCES AGAINST THE PUBLIC TRANQUILITY	11	291	1496
4.	OFFENCES AGAINST THE PROPERTY	212	4009	10792
5.	OFFENCES RELATING TO DOCUMENTS AND PROPERTY MARKS	1	21	125
6.	MISCELLANEOUS IPC CRIMES	17	503	2088
7.	OTHER IPC CRIMES	36	416	1082
8.	CRIME AGAINST WOMEN	0	0	8
9.	CHILDREN RELATED- ACTS	34	495	1234
10.	SCs/STs – RELATED ACTS	2	4	5
11.	OFFENCES AGAINST STATE-RELATED ACTS	0	8	45

12.	ARMS/EXPLOSIVE-RELATED ACTS	0	35	215
13.	IT/IPR-RELATED ACTS	0	4	40
14.	FINANCE & ECONOMIC ACTS	0	3	53
15.	LIQUOR & NARCOTIC DRUGS-RELATED ACTS	3	118	688
16.	ENVIRONMENT & POLLUTION-RELATED ACTS	0	4	16
17.	FOREIGNER AND PASSPORT-RELATED ACTS	0	6	8
18.	RAILWAYS-RELATED ACTS	0	3	3
19.	TELEGRAPH/CINEMATOGRAPH ACTS	0	0	0
20.	FOOD, DRUGS AND ESSENTIAL COMMODITIES ACTS	0	0	3
21.	OTHER REGULATORY AND ENFORCEMENT ACTS	0	37	262
22.	OTHER SLL CRIMES	0	29	106

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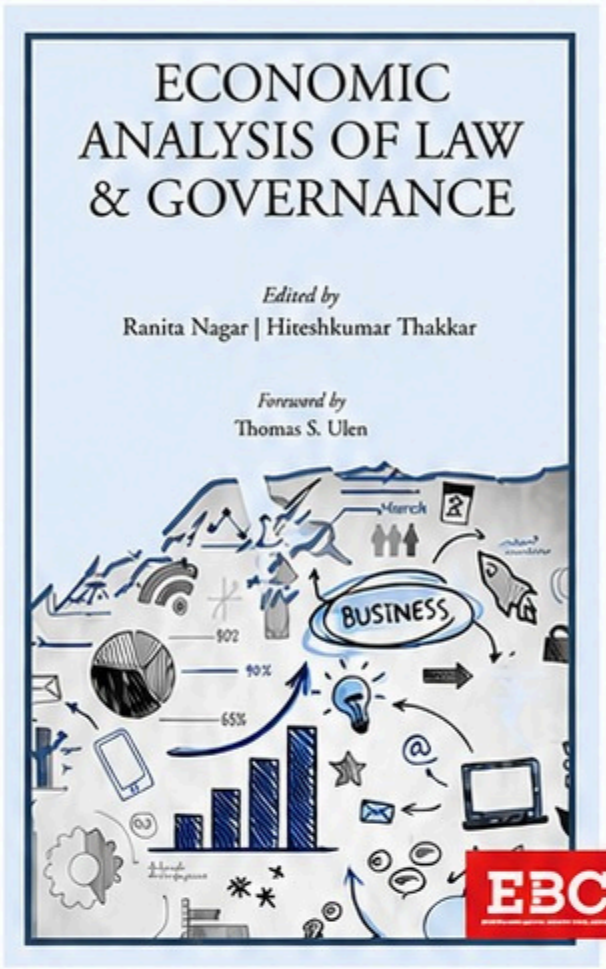
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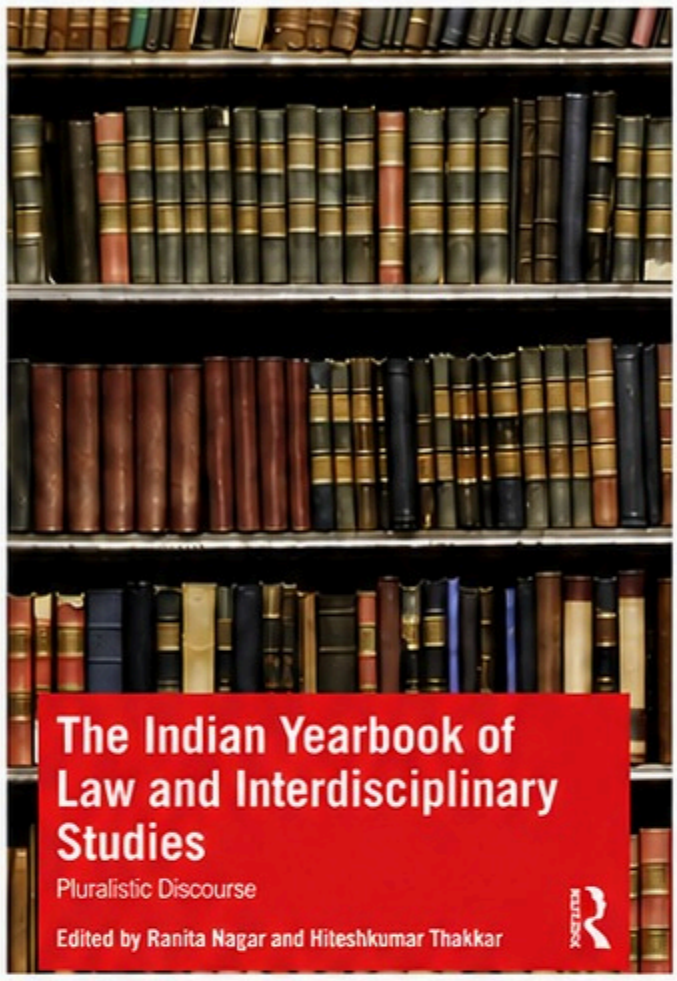
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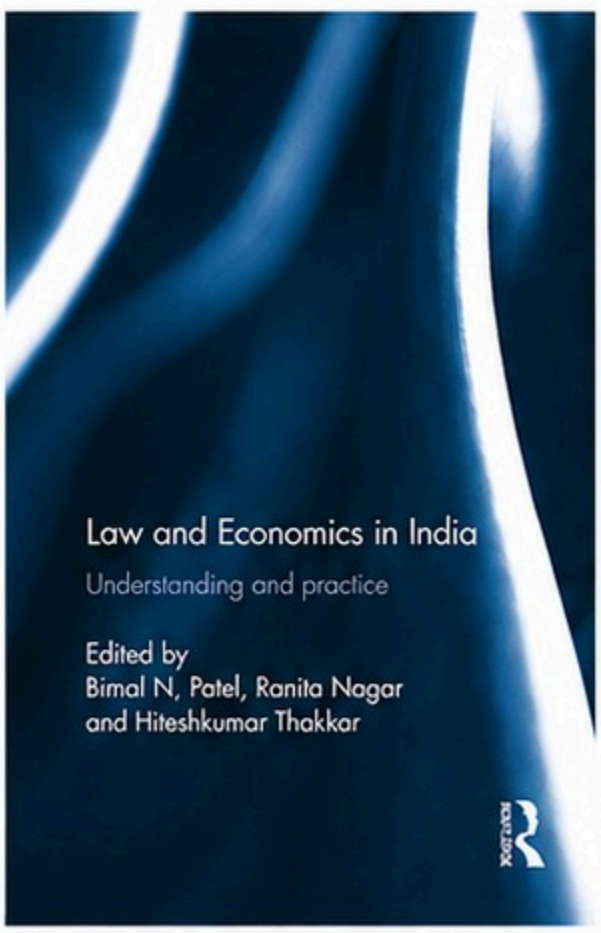
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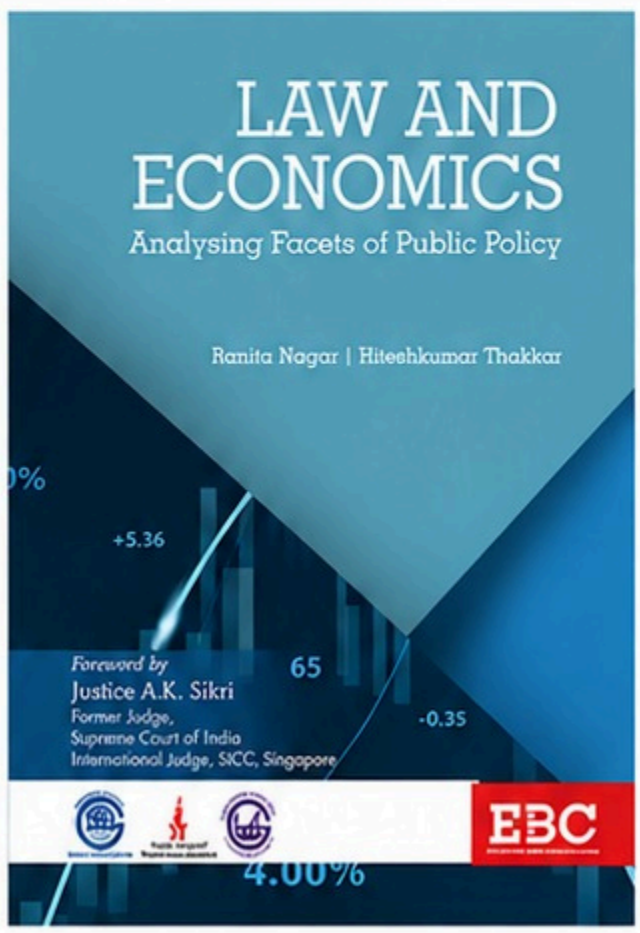
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