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ACCOUNTABILITY OF ALGORITHMIC CONSULTATIONS AND TELEMEDICINE IN E-PHARMACY PLATFORMS: A CONSUMER LAW PERSPECTIVE

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ABSTRACT

The digitalisation of healthcare delivery through telemedicine platforms and e-pharmacy services has created challenges that have never existed before in attributing accountability for algorithmic decision making in pharmaceutical consultations. This paper studies the multi-layered accountability mechanisms that govern algorithmic consultations within e-pharmacy platforms through the lens of consumer protection law in India. Examining the interplay between the Consumer Pretection Act, 2019, the Information Technology Act , 2000, the Drugs and Cosmetics Act, 1945, and the Telemedicine Practice Guidelines, 2020, this paper locates significant regulatory gaps and proposes a consumer protection assurance framework. The study finds that the existing legal frameworks inadequately address issues such as algorithmic opacity, bias, discrimination, and the assigning of liability among platform operators, healthcare practitioners, and technology developers. This paper calls for stronger transparency requirements, compulsory algorithmic impact assessments and clarified liability frameworks that distribute responsibility among stakeholders in a way that is proportionate to their role, while at the same time not hindering innovation in digital health services.

Keywords: AI consultations, e-pharmacy rules, Consumer Protection Act, Algorithmic consultations accountability, Consumer laws, Liability theories

1. INTRODUCTION

The convergence of digital medicine and AI technology has transformed the healthcare industry significantly especially in the e-pharmacy sector.[1] The COVID-19 pandemic has accelerated the evolution of technology in almost all sectors including pharmaceuticals replacing the traditional healthcare delivery methodologies.[2] To make pharmacy services, consultations, and health records collection function seamlessly through digital platforms, Ayushman Bharat Digital Mission (ABDM) was established.[3] In India, e-pharmacy platforms have developed beyond simple medication delivery services to include AI consultation features, automated symptom detectors, and algorithmic treatment recommendations.[4]

The scale of this transformation is significant in India's telemedicine market, which was earlier valued at USD 830 million in 2019 and is expected to grow to USD 9.75 billion by 2030.[5] AI-based teleconsultation services are integrated into major

[1] AI-Driven Digital Transformation in Global Healthcare: From Hospital Systems to Pharmacy Benefit Managers, INT'L J. SCI. ADV. (2025), https://www.ijscia.com/ai-driven-digital-transformation-in-global-healthcare-from-hospital-systems-to-pharmacy-benefit-managers/.

[2] COVID-19 Accelerated Digital Transformation of the Pharma Industry by Five Years, PHARMACEUTICAL TECH. (May 30, 2023), https://www.pharmaceutical-technology.com/news/covid-19-accelerated-digital-transformation-of-the-pharma-industry-by-five-years-

[3] The Ayushman Bharat Digital Mission of India, TAYLOR & FRANCIS ONLINE (Dec. 16, 2024), https://www.tandfonline.com/doi/full/10.1080/23288604.2024.2392290

[4] How AI Is Transforming Medicine Delivery In India, MEDSTOWN (June 27, 2025), https://www.medstown.com/how-ai-is-revolutionizing-medicine-delivery-in-india-from-fast-apps-to-smarter-healthcare/

[5] India Telehealth Services Market Size & Share Analysis - Growth Trends and Forecast (2026 - 2031) Source: https://www.mordorintelligence.com/industry-

platforms like PharmEasy, Tata 1mg, Netmeds, and Apollo Pharmacy, which together serve millions of patients each month.[6] The Ministry of Health and Family Welfare has issued Telemedicine Practice Guidelines in March 2020, which gave remote consultations legal status and statutory backing for the provision of technology-enabled healthcare services.[7] But when it comes to liability when AI-driven consultations cause patient harm, this digital revolution has left a legal void.[8] The legal frameworks, which includes the Drugs and Cosmetics Act 1940, Consumer Protection Act 2019, the Telemedicine Practice Guidelines 2020, and the recently proposed Digital Personal Data protection Act 2023, were not created to handle the particular difficulties presented by AI systems used in medical industry.[9] The liability under traditional laws that regulate healthcare assume a direct doctor-patient relationship in which decisions about diagnosis and treatment are made by human medical professionals.[10] This assumption is now disrupted by the introduction of algorithms in consultations provided by various e-pharmacy platforms.[11] The algorithms examine patients symptoms, medical histories, and diagnostic data using machine learning to suggest treatment recommendations and prescriptions.[12]

Liability framework in India has several gaps.[13]Online pharmacy operations are subject to regulatory uncertainty as the Draft E-Pharmacy Rules 2018 are still pending enactment.[14] The Telemedicine Guidelines do not discuss specifically the role of AI systems in diagnosis and prescription processes, but they do require that consultations be performed by registered medical practitioners.[15] The Consumer Protection Act 2019 does not contain specific mechanisms for harm caused by AI in healthcare setting, even though it has provisions regarding product and e-commerce platform liability.[16] E-pharmacy platforms may be protected from liability

reports/telehealth-services-market-in-india https://www.kenresearch.com/india-e-pharmacy-and-telemedicine-market (last visited January 22, 2026)

[6] Business Model OF PharmEasy : Complete Strategy, MIRACUVES (Oct. 14, 2025), https://miracuves.com/blog/business-model-of-pharmeasy/.

[7] Telemedicine Regulations, MINISTRY OF HEALTH & FAMILY WELFARE, GOVT. OF INDIA (Sept. 30, 2021), https://www.pib.gov.in/PressReleasePage.aspx?PRID=1740756.

[8] Liability for Harm Caused by AI in Healthcare: An Overview of the Core Legal Concepts, PMC NAT'L CTR. FOR BIOTECHNOLOGY INFO. (Dec. 13, 2023), https://pmc.ncbi.nlm.nih.gov/articles/PMC10755877/

[9] The Applicability Of The DPDP Act In Hospitals: A New Era For Patient Data, MONDAQ (Aug. 14, 2025), https://www.mondaq.com/india/privacy-protection/1666622/the-applicability-of-the-dpdp-act-in-hospitals-a-new-era-for-patient-dat.

[10] Defining Medical Liability When Artificial Intelligence Is Involved, PMC NAT'L CTR. FOR BIOTECHNOLOGY INFO. (Nov. 26, 2023), https://pmc.ncbi.nlm.nih.gov/articles/PMC10711067/.

[11] Ethical and Legal Considerations in Healthcare AI, PMC NAT'L CTR. FOR BIOTECHNOLOGY INFO. (May 13, 2025), https://pmc.ncbi.nlm.nih.gov/articles/PMC12076083/.

[12] Clinical and Operational Applications of Artificial Intelligence and Machine Learning in Pharmacy, MDPI (Mar. 6, 2025), https://www.mdpi.com/2226-4787/13/2/41.

[13] Gaps in the Global Regulatory Frameworks for the Use of Artificial Intelligence (AI) in the Healthcare Services Sector and Key Recommendations, PMC NAT'L CTR. FOR BIOTECHNOLOGY INFO. (Aug. 29, 2024), https://pmc.ncbi.nlm.nih.gov/articles/PMC11394803/.

[14] Regulation of Online Pharmacies in India, SCC ONLINE (Nov. 1, 2023), https://www.scconline.com/blog/post/2023/11/02/regulation-of-online-pharmacies-in-india/

[15] D Dinakaran, Telemedicine Practice Guidelines of India, 2020, 8 INT'L J. MENTAL HEALTH NURSING 29 (2021)

[16] Regulation of Digital Healthcare in India: Ethical and Legal Considerations, PMC NAT'L CTR. FOR BIOTECHNOLOGY INFO. (Mar. 20, 2023), https://pmc.ncbi.nlm.nih.gov/articles/PMC10048681/

for machine-generated recommendations by "safe harbour" protections provided by Section 79 of the Information Technology Act 2000 which deals with intermediary liability.[17]

The regulatory void also raises legal questions that could stifle innovation.[18] When algorithmic decisions result in unfavourable effects in patients, the issues of causation, standard of care, duty of disclosure, and burden of proof are left unresolved.[19] The complexity is increased by algorithmic anonymity (the "black box" issue), responsive AI systems that learn from implemented data, and another dimention of accountability that extends before the development of deployment, during the deployment and following market surveillance phase.[20]

The paper deals with the primary question of accountability of AI-consultations in e-pharmacy platforms, the definition scope of e-pharmacy services under the existing consumer protection law, the application of the concept of "deficiency of service" to algorithmic recommendations, the liability framework applicable to various stakeholders, and also check whether the existing remedies for consumers affected by algorithmic consultations are adequate.

This article claims that India's consumer protection law is flexible enough to cover algorithmic services but that the judiciary and regulators should take initiatives to clarify how these provisions should be applied in order to set up clear standards of accountability. Also, changes in the law and detailed regulatory guidelines will be required to tackle the issues arising from algorithmic systems in pharmaceutical services.

2. DEFINITION AND SCOPE OF E-PHARMACY SERVICES UNDER CONSUMER PROTECTION ACT

Service of any description which is offered to potential users and which includes, but is not limited to, the provision of facilities in connection with banking, financing, insurance, transport, processing, supply of electrical or other energy, telecom, boarding, or lodging or both, housing construction, entertainment, amusement or the provision of news or other information, but does not imply the rendering of any service without charge or on a contract of personal service."[21]

This definition is inclusive enough to include e-pharmacy services and algorithmic consultations that are provided by using digital platforms. This interpretation is also supported by the definition of consumer in the Consumer Protection Act of 2019. A consumer is any individual who engages or takes any service to be charged with consideration paid, promised or partially paid and partially promised or any system of deferred payment.[22] Therefore, consumers under this definition are those who evaluate e-pharmacy services.

Section 2(11) of Consumer Protection Act, 2019, defines deficiency in service as follows; any inadequacy, deficiency, or failure to meet the quality, nature and manner and provision and timing of

[17] Intermediaries Under IT Act 2000, LAWYERED (Feb. 3, 2021), https://www.lawyered.in/legal-disrupt/articles/intermediaries-under-it-act-2000-special-reference-online-pharmacies-sravya-koppa.

[18] supra note.8

[19] Locating Fault for AI Harms: A Systems Theory of Foreseeability, Reasonable Care and Causal Responsibility in the AI Value Chain, TAYLOR & FRANCIS ONLINE (Mar. 21, 2025), https://www.tandfonline.com/doi/full/10.1080/17579961.2025.2469345

[20] Explainable Artificial Intelligence into Malaysia's Medical Device Regulatory Framework: A Preliminary Analysis, RSIS INT'L J. (2024), https://rsisinternational.org/journals/ijriss/articles/integrating-explainable-artificial-intelligence-into-malaysias-medical-de.

[21] The Consumer Protection Act, 2019, s 2(42) (India).

[22] The Consumer Protection Act, 2019, s 2(7) (India).

services which can be interpreted to amount to negligence or any other act or omission of the service provider or the product service provider on the part of such service provider or product service provider.[23]

The deficiency definition provided above is enough to include algorithmic consultations failures. A lack in e-pharmacy industry may happen due to a range of circumstances such as; inability to be transparent and explainable, inability to verify prescription, algorithmic discrimination and favoritism, monitoring failures. Any of these circumstances when present will bring the AI-based e-pharmacy services within the confines of the Section 2(11) of the Consumer Protection Act.

2.1 THE CONSUMER RIGHTS AND REMEDIES

The Consumer Protection Act, 2019, provides a vast system of consumer rights and remedies. Section 2(9) stipulates consumer rights as below;

A. Right to protection: The consumers have a right to protection against marketing of goods, products or services that are dangerous to life and property. According to this right, all the e-pharmacy service availers are entitled to be safeguarded against any AI-based shortcoming in services.

B. Right to be informed: The consumers have the right to get information regarding the quality, quantity, standard, price, etc., of goods, products, or services, to protect them against unfair trade practices.

C. Right to be assured: The consumers must have access to various goods and freedom of choice should be protected.

D. Right to be heard: their interests should be protected and they must get a chance to be heard if there exists any grievances.

E. Awareness right: The consumers have the right to be aware of the potential risks of using such products or services, and the rights available to them against the infringement of above rights.[24]

3. ACCOUNTABILITY OF ALGORITHMIC CONSULTATIONS IN E-PHARMACY

Traditional medical laws which are centered on the patient-doctor relationship tend to make the doctor liable for any harm caused to patients during consultation.[25] Now, the situation is different because of the digitization of healthcare facilities, most importantly the introduction of AI into the this sector.[26] The accountability framework requires more inclusive approach due to the emerging technological advancements happening in this era of artificial intelligence.[27] The liability can be classified as three tiers; first, insider liability which governs internal mechanisms within organisations, second, internal liability which deals with the relationships between healthcare providers and institutions including employment terms and professional standards, and third, external liability through which healthcare providers answer to patients, including legal liability.[28] This multi-layered liabiltiy model acknowledges that developers, platforms, practitioners and institutions all contirbute to AI healthcare delivery systems.[29] Accountability is divided among these actors based on their roles and levels of control.[30]

[23] The Consumer Protection Act, 2019, s 2(16) (India).
[24] The Consumer Protection Act, 2019, s 2(9) (India).
[25] Defining Medical Liability When Artificial Intelligence Is Involved, supra note 10
[26] AI in Healthcare: Legal and Ethical Considerations in This Transformed World, INT'L BAR ASS'N (Feb. 10, 2025), https://www.ibanet.org/ai-healthcare-legal-ethical
[27] Liability for Harm Caused by AI in Healthcare: An Overview of the Core Legal Concepts, supra note 8.
[28] Responsibility Gaps and Black Box Healthcare AI: Shared Responsibilization as a Solution, PMC NAT'L CTR. FOR BIOTECHNOLOGY INFO. (Nov. 15, 2023), https://pmc.ncbi.nlm.nih.gov/articles/PMC11003475/.
[29] Transparency of AI in Healthcare as a Multilayered System of Accountabilities, PMC NAT'L CTR. FOR BIOTECHNOLOGY INFO. (May 29, 2022), https://pmc.ncbi.nlm.nih.gov/articles/PMC9189302/
[30] supra note 19.

3.1 LIABILITY THEORIES APPLICABLE TO AI CONSULTATION IN HEALTHCARE

Basically there are four theories that can be applied while deciding the liability of AI consultations in e-pharmacy platforms. These are; vicarious liability, product liability, negligence and professional liability, and intermediary liability. Each of them address the issue of accountability of AI driven negligence or harm to patients differently.

3.1.1 VICARIOUS LIABILITY

Vicarious liability doctrine is where the employer held liable for the actions of their employee during employment. If this principle is applied to the circumstance where negligence is caused by AI-driven consultations in e-pharmacy platforms, there arise a question of who can be treated as an employer of the algorithm. Since AI systems are not legally recognized as persons the applicability of vicarious liability principle remains a question before the court of law.[31]

3.1.2 PRODUCT LIABILITY

Product liability is another principle where the product manufacturer, service provider and supplier made accountable for the defective product. If AI models are characterized as a "product" then they can be bought under product liability principle. Product liability can be evoked if bought under these three categories: First, design defects, where the design of the product is extremely hazardous even when manufactured correctly; second, manufacturing defects, in which the products deviate from their intended design as a result of production errors; third, failure to warn, when they give improper directions to use or fails to provide alerts about potential dangers.[32]

If these categories applied to AI healthcare systems interesting outcomes are obtained. Coding mistakes or bugs that leads to AI malfunctions may be correlated with manufacturing defects. Basic flaws of the algorithm, such as using biased data that consistently produce discriminatory outputs or engineering decisions that compromise safety for performance, could be considered as design defects. Insufficient disclosure of the limitations of AI, accuracy rates, restrictions for use in specific patient populations, or risks of over-reliance are examples of failure to warn. Difficulties arise when adaptive AI systems which learn from data that have been deployed and change their behaviour over time. Generally, traditional product liability assume that products are fixed at the sale point. This raises the question whether the initial developer or the deploying platform that manages continuing training or both should bear liability. Software and AI programs are specifically listed as "products" subject to liability in the European Union's amended Product Liability Directives, 2024 establishing a precedent that other countries, including India, may adopt.

3.1.3 NEGLIGENCE AND PROFESSIONAL LIABILITY

Another principle that can be applied to AI based telemedicine and consultation services are negligence and professional liability. Medical negligence, a tort negligence principle, necessitates proving the following being; a duty of care by the healthcare

[31] THE LIABILITY CONUNDRUM FOR TELEMEDICINE PLATFORMS IN INDIA: STRIKING A BALANCE BETWEEN VICARIOUS LIABILITY AND INTERMEDIARY LIABILITY, AROGYALEGAL (July 26, 2021), available at https://arogyalegal.com/2021/article/the-liability-conundrum-for-telemedicine-platforms-in-india-striking-a-balance-between-vica (discussing vicarious liability principles applicable to telemedicine platforms).

[32] Cestonaro et al., *Defining medical liability when artificial intelligence is applied in healthcare: A systematic review*, 10 FRONTIERS IN MEDICINE 1305756 (2023) (analyzing medical liability issues when AI systems cause harm in healthcare contexts and noting that "the regulatory framework on medical liability when AI is applied is therefore inadequate").

provider to the patient, a breach of that duty through misconduct that fails to meet recognized standard of care, a causation that connect the breach to the harm incurred, and actual damages.[33] In AI-consultations determining the standard of care applicable becomes difficult. The questions that arise as to whether doctors using AI be held to the same level as a reasonable doctor without AI assistance; if the AI perform better than human doctors, whether no using AI constitutes negligence; or if the doctor blindly complies the incorrect recommendations given by AI will that qualify as negligence? The Bolam test definig standard of care, which is accepted by Commonwealth jurisdictions including India, cannot be applied in AI assisted consultation services because of lack of established professional consensus.[34]

Professional liability is not limited to tort negligence, but also indicates disciplinary measures by medical councils over ethical breaches, incompetency or misconduct. National Medical Commission Professional Conduct Regulations hold the registered medical practitioners to be accountable in the areas of competence, communication with patients, confidentiality, and informed consent. These laws are applicable to the practice of telemedicine and, by implication, to AI-assisted consultations, but are not specific to the liability issues in physicians using AI recommendations.[35]

3.1.4 INTERMEDIARY LIABILITY

The Information Technology Act 2000 under Section 79, offers a safe harbour protection to the intermediaries who are not liable to the information, data or communication links of the third party that has been hosted or sent over their service.[36] This is the protection that is crucial to the service providers of the internet and online platforms, whereby, the intermediaries are not held to account whenever a user-generated content is used in any way and this would be practically impossible to keep in check across board.[37]

E-pharmacy websites could argue they are intermediaries as per Section 79 because they only help connect the medical practitioner to the patient or AI developers to end-users, but not to make medical content. In the event that this characterization is successful, platforms may avoid liability of AI-generated inaccurate consultations. Section 79 is however conditional. The question that needs to be addressed is whether e-pharmacy websites that implement AI-based consultations act as a passive mediator or an active service provider. Forums that pick, customize and manage AI systems, hire healthcare professionals, create prescriptions and make a profit on combined consultation pharmacy services arguably cross over the passive intermediary bar, perhaps losing the benefit of Section 79. Indian courts have been differentiating between platforms that passively receive content and those that are actively involved in content creation or selection and refuse to offer safe harbour to the latter.[38]

3.2 LACK OF ACCOUNTABILTY IN AI HEALTHCARE SYSTEMS

Although several theories of liability can be applied in AI healthcare, there are still serious gaps in accountability. AI-based consultations are distributed decision machines where AI developers develop

[33] Kolodin, Denis, et al. "Artificial intelligence in E-commerce: Legal aspects." *III International Scientific Congress Society of Ambient Intelligence 2020 (ISC-SAI 2020)*. Atlantis Press, 2020.

[34] Devetzis, Dimitrios et.al., (2024). E-Commerce Platforms and Liability in the AI Era 1. *International Investment Law Journal*, *4*(1), 18-29.

[35] Mekkawi, M. H. (2024). The implications of AI in E-commerce. Int'l J. Legal & Soc. Ord., 190.

[36] The Information Technology Act, 2000, s 79 (India).

[37] Büyüksagis, E. (2022). Extension of strict liability to E-Retailers. *Journal of European Tort Law*, *13*(1), 64-86.

[38] Tai, E. T. T. (2024). Liability for artificial intelligence. In *Research Handbook in Data Science and Law* (pp. 92-116). Edward Elgar Publishing.

algorithms, systems are implemented in platforms, practitioners operate with the results of the AI, and patients share information. In cases where the harm is caused, it is extremely hard to determine the contribution of any actor that is causally determinable. The error can be related to a bad training data, algorithm bias, bad deployment setup, excess dependence on physicians, or misreporting by patients. There is no one stakeholder that has absolute control over the AI healthcare outcomes. Developers do not see where they are deployed, platforms do not have technical skills to assess algorithms, practitioners do not understand the inner workings of AI, and the patients do not have medical knowledge to ask about a recommendation. This disaggregation allows the diffusion of responsibility in which there is the blame-shifting of others, and no one takes full responsibility.[39]

Accountability is considered from various levels, namely, pre-deployment, deployment, and post-market. Pre-deployment level is where deployment, testing and validation of AI system occurs. Deployment is when real-time usage in patient consultations happens. Post-market is continuous monitoring, updates, and adverse events management is done. The main responsibility of various actors lien in different stages, but the existing legal frameworks cannot define the need to be on specific stages to be obliged distinctly.

4. COMPARATIVE PERSPECTIVES: US, EU, SINGAPORE

The US and EU has proposed AI regulations which requires companies to follow few mandates while implementing algorithm driven systems in their services. The US Act requires companies to conduct impact assessments used in critical decisions, document the development, training, and testing processes, make impact assessment available to regulators, and address harms through corrective actions.[40] This framework, though not enacted federally, has influenced sector specific regulations. The EU AI Act, while ensuring transparency and documentation, requires continuous monitoring and reporting of AI-driven systems.[41] Both the frameworks provide a valuable insight for India's regulatory development.

Singapore, on the other hand, emphasizes risk-based governance, with lighter requirements for lower-risk applications and stricter requirements for higher-risk applications including healthcare. Their framework promotes responsibility, accountability, fairness, non-discrimination, human agency and oversight.[42]

India can adapt these measures of international models to form a policy to regulate AI-driven services in telemedicine and e-pharmacy platforms.

5. CONCLUSION

This paper concludes that the rapid adoption of algorithmic systems in telemedicine services and e-pharmacy systems in India presents a typical innovation-accountability trade-off: despite the fact that these technologies significantly enhance access and efficiency in the delivery of health care, they also expose consumers to increased risks when such systems are not well regulated. The paper shows that the existing legal regulations, in particular, the

[39] Rai, S. (2022). Legal Liability Issues and Regulation of Artificial Intelligence.

[40] Lauren Belenguer, *AI bias: exploring discriminatory algorithmic decision-making in the context of sex and gender*, 41 JOURNAL OF RESPONSIBLE INNOVATION 1 (2022) (discussing how AI systems trained on biased datasets perpetuate and amplify existing healthcare disparities).

[41] Ebers, M. (2021). Liability for artificial intelligence and EU consumer law. *J. Intell. Prop. Info. Tech. & Elec. Com. L.*, *12*, 204.

[42] Shaping Responsible AI: India's Evolving Regulatory Framework, DRISHTI IAS (Dec. 30, 2025), available at https://www.drishtiias.com/daily-updates/daily-news-editorials/shaping-responsible-ai-indias-evolving-regulatory-framework

Consumer Protection Act of 2019, are flexible enough to consider algorithmic opacity, bias, inaccuracy, and non-disclosure as actionable flaws and classify e-pharmacy and algorithmic medical services as guarded services. Critical structural gaps are also highlighted by the analysis, specifically the lack of explicit statutory recognition of algorithmic systems, ambiguous liability attribution, and the improper extension of intermediary safe harbor to platforms that exercise active algorithmic control. The study suggests a multifaceted strategy to address these shortcomings, including judicial development of liability standards, implementation of the Draft E-Pharmacy Rules with algorithm-specific safeguards, targeted statutory amendments, and the creation of technical benchmarks for safety, fairness, and transparency. In the end, the study makes the case that proactive, multi-stakeholder algorithmic governance, based on shared liability, transparency, and consumer empowerment, is necessary to guarantee that India's digital health ecosystem advances public health goals without compromising consumer rights, access to justice, or the fundamental right to life and health.

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DEEPFAKES CONSENT AND THE LAW: A FEMINIST CRITIQUE OF DIGITAL SEXUAL VIOLENCE

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I. Introduction

Deepfakes[1] are an advanced artificial intelligence (AI) technology that uses deep learning algorithms to place one face over another, producing extremely realistic fake images or videos. The algorithm does this by analysing one's facial structure from gathered data, studying their angles and expressions, and then reproducing them on the face of another individual to copy their expressions. More generally, deepfakes are a form of synthetic media, including images, videos, or audio edited or produced by AI, AI-powered tools, or audio-visual[2] (AV) editing software. They especially utilise machine learning and AI methods, like facial recognition software and artificial neural networks like variational autoencoders (VAEs) and generative adversarial networks (GANs). In contrast to conventional fake material, deepfakes' utilisation of such sophisticated processes makes them especially powerful.

The popularity of deepfakes is due to several key reasons. Deepfakes started gaining extensive attention from the public in 2018[3] and can be produced with publicly available videos or images. The technology has become easily accessible, with user-friendly, open-source software and applications such as DeepFaceLab, Faceswap, ReFace, and Zao, bringing their production into the reach of people without specialised knowledge. High-performance computing offers the immense processing capacity needed, and video editing applications increasingly employ AI technologies to maximise realism. The pornography market has been a leading force, with 96% of deepfakes consisting of non-consensual pornography, with the internet's heightened accessibility, anonymity, and affordability creating a situation in which deepfakes flourish under the false pretence of authenticity and continue to exist because of the extensive market for this content. One major challenge to containing their spread is the expeditious progress of deepfake creation technology that constantly outpaces the evolution of AI detection software, rendering it ever more challenging to detect and eliminate synthetic content.

This tech is becoming widely recognised as a feminist legal problem[4] because it's disproportionately affecting women and overlapping with existing gender inequality and image-based sexual abuse. Deepfakes, and specifically non-consensual deepfake pornography, are a type of technology-facilitated sexual violence (TFSV)[5]. Women and, more shockingly, minors are disproportionately the victims

[1] Chidera Okolie, 'Artificial Intelligence-Altered Videos (Deepfakes), Image-Based Artificial Intelligence-Altered Videos (Deepfakes), Image-Based Sexual Abuse, and Data Privacy Concerns Sexual Abuse, and Data Privacy Concerns' (2023) 25 Journal of International women's studies <https://vc.bridgew.edu/jiws/vol25/iss2/11?utm_source=vc.bridgew.edu%2Fjiws%2Fvol25%2Fiss2%2F11&utm_medium=PDF&utm_campaign=PDFCoverPages>.

[2] Kinza Yasar, Nick Barney and Ivy Wigmore, 'What Is Deepfake Technology?' (*Tech Target*, 22 May 2025) <https://www.techtarget.com/whatis/definition/deepfake>.

[3] 'Increasing Threat of DeepFake Identities' <https://www.dhs.gov/sites/default/files/publications/increasing_threats_of_deepfake_identities_0.pdf>.

[4] Beatriz Kira, 'Deepfakes, the Weaponisation of AI Against Women and Possible Solution' (*Verfassung*, 3 June 2024) <https://verfassungsblog.de/deepfakes-ncid-ai-regulation/>.

[5] Georgia Wood, 'Disinformation and Deepfakes: Countering Gender-Based Online Harassment' (*Center for strategic and International studies*) <https://www.csis.org/events/disinformation-and-deepfakes-countering-gender-based-online-harassment>.

of such content, which results in significant reputational damage, social stigmatisation, and adverse societal attitudes that accentuate underlying gender inequality and the sexualisation and commodification of women. The production and distribution of deepfakes[6], particularly pornographic deepfakes, are morally concerning because they take advantage of existing gender inequality, compounding women's inability to control their bodies and images, as well as perpetuating damaging societal norms. Philosophers go so far as to position deepfakes as an "epistemic threat" to knowledge and society, and studies have reported that women, LGBT individuals, and people of colour are more likely to be targeted[7].

Of particular concern is the absence of sufficient legal frameworks that are specifically put in place to govern deepfake pornography. Such a lack is a reflection of an implicit failure by society to fully address the novel digital harms faced overwhelmingly by women and how patriarchal presumptions regarding autonomy and harm might be embedded in or constitute the prevailing legal methods. Although deepfakes in themselves are legal unless they run counter to current legislation, such as child pornography, defamation, or hate speech, the public's lack of knowledge of the risks posed by the technology is a partial reason why there is no special legislation. The poor legal response to deepfakes makes it challenging to combat the gendered inequality caused by deepfakes and offer adequate means of justice and redress for victims. In addition, deepfakes essentially disempower digital consent and personal agency by producing intimate material without the person in question knowing or consenting to such. This relates directly to broader feminist legal issues around bodily autonomy and consent, primarily when images of women are used, and how this may not necessarily be understood by existing legal frameworks as thoroughly comprehending the systemic breaches of consent involved in non-consensual deepfake production and sharing.

Therefore, this paper will explore how adequately current Indian laws address deepfake-based sexual violence and how a feminist legal lens might expose and remedy these shortcomings. This will involve an analysis of existing legal frameworks and their applicability, or lack thereof, to the specific harms of deepfakes, framed through a lens that prioritises gender equality and the protection of digital autonomy.

ii. Methodology

The study employs a qualitative, doctrinal, and feminist legal approach to scrutinise the legal and socio-cultural implications of deepfake pornography in India and relate to global legal trends. The study explores how current legal paradigms in India conceptualise and address non-consensual synthetic media and whether these paradigms adequately capture the harm inflicted through deepfake technology. The qualitative nature of this study enables a subtle, interpretive examination of laws, judgments, legal texts, scholarly literature, policy reports, and media reports on deepfakes and image-based sexual abuse.

Doctrinal legal research examines pertinent statutory provisions, such as the Indian Penal Code, 1860[8] and the Information Technology Act, 2000[9], and how they apply to deepfake-based harms. International comparative approaches are researched from jurisdictions like the United Kingdom, the United States, and South Korea, which have legislated specific laws or policies tackling deepfake content and digital sexual violence. The comparisons provide insight into reform's potentialities and constraining limits in the Indian setting.

[6] International LLP Hogan Lovells, 'BRIEFING PAPER: DEEPFAKE IMAGE-BASED SEXUAL ABUSE, TECH-FACILITATED SEXUAL EXPLOITATION AND THE LAW' <https://equalitynow.org/resource/briefing-paper-deepfake-image-based-sexual-abuse-tech-facilitated-sexual-exploitation-and-the-law/>.

[7] Okolie (n 1).

[8] Indian penal code 1862.

[9] Information Technology Act, 2000.

Embedded in this research is a feminist legal critique, which questions the extent to which current laws embody patriarchal norms around harm, consent, and autonomy. The paper engages with feminist jurisprudence and scholarship to examine how legal traditions have traditionally excluded women's experiences—most notably sexual and reputational harm—and how these tendencies are replicated in the digital sphere through the law's lack of adequate attention to non-physical, technology-enabled harms. Terms like technology-facilitated sexual violence (TFSV), informational consent, and digital embodiment are invoked to situate the discussion and challenge the gender-blindness of conventional legal frameworks.

This approach not only allows for thorough legal examination but also addresses gender justice and critical analysis of systems, and thus is ideally suited to assess how Indian law should develop to address the threats of deepfake technology on a feminist and rights-oriented basis.

iii. Findings

A. The weaponisation of deepfake technology

Deepfakes are a revolutionary and, in some respects, threatening use of artificial intelligence (AI). Constructed on sophisticated deep learning algorithms, they enable the unobtrusive overlay of one individual's face or voice onto someone else's body or speech, producing hyper-realistic but fabricated media[10]. The reason deepfakes are particularly concerning is the enhanced production facility. A recent reporter's inquiry illustrated that an individual might be non-consensually inserted into adult content for as little as $30 with only a 15-second Instagram story and minimal software[11]. As the process is only a few minutes long and requires no technical proficiency, one does not have to be a coder or developer to participate in this abuse. This democratisation of high-end AI technology moved deepfake production from specialist cybercrime to an ordinary potential weapon of harassment, which multiple individuals across the globe are heavily misusing.

The most pervasive and alarming use of deepfake technology, in addition to fraud, has been the production of non-consensual sexually explicit material, disproportionately affecting women and girls. This abuse form is not speculative or future fantasy; it is prevalent, real, and expanding.

A 2023 McAfee survey found that over 75% of Indian internet users[12] had viewed a deepfake in the past year. Sensity AI, a deepfake detection firm, says 90–95% of deepfake content worldwide is pornography, and 99% of victims are women. By October 2020, more than 100,000 fake nude photos of women were created and shared without their consent, mostly on encrypted messaging apps like Telegram. Shockingly, many victims were minors.

In a global survey of 10 nations[13], 2.2% of participants said they were personally victimised by deepfake pornography, and 1.8% confessed to being perpetrators. Consumption of celebrity deepfake porn was reported by 6.2%, demonstrating a troubling normalisation of such material. Men are statistically more likely to report having looked at, made, or shared deepfake porn. Yet, women overwhelmingly suffer the consequences of being featured in it, although the men admitted to having consensually watched or

[10] 'The Tensions of Deepfakes.'
[11] Vittoria Elliott, 'Celebrity Deepfake Porn Cases Will Be Investigated by Meta Oversight Board' [2024] *WIRED* <https://www.wired.com/story/meta-oversight-board-deepfake-porn-facebook-instagram/?utm_source=chatgpt.com>.

[12] '75% Indians Have Viewed Some Deepfake Content in Last 12 Months, Says McAfee Survey' *The economic Times* (25 April 2024).
[13] Rebecca Umbach and others, 'Non-Consensual Synthetic Intimate Imagery: Prevalence, Attitudes, and Knowledge in 10 Countries', *Proceedings of the 2024 CHI Conference on Human Factors in Computing Systems* (2024).

shared this deepfake content. Still, women have been featured non-consensually in it. This gender imbalance points to a consumption/target dynamic in which women's bodies are seized and commodified by new technologies without their consent.

India's public confrontation with deepfakes intensified when a sexually provocative AI-made clip of actress Rashmika Mandanna[14] went viral. Although false, the video was credible enough to deceive many people. Prime Minister Narendra Modi spoke out publicly, and tech companies were called upon to act, which was a considerable effort against the propagation of deepfake technology; however, the enforcement of the rules has, till now, been quite inconsistent.

Globally, the incident of Noelle Martin[15], an Australian law student, has become symbolic. Martin's pictures, which were taken when she was 17 years old, were edited into pornography content that later emerged in the form of deepfake videos for years. They were sent to her via email and posted on various pornography websites, leaving no possibility of deletion or tracing their origin. Her reputation, psychiatric well-being, and career opportunities were negatively affected despite legal action. Her account highlights how deepfake abuse[16] aggravates the harms of regular image-based sexual abuse, perpetuating trauma across time and space and producing a digital trace that is almost impossible to delete.

Brooke Monk[17], a prominent American digital content creator with over 32 million followers on TikTok and a significant presence across YouTube and other platforms, who initially gained her popularity through lifestyle, fashion, lip-sync, and dance videos, was pushed into the limelight for the wrong reasons, when a nude original video reportedly featuring her was leaked, sparking widespread discussion about online safety, privacy, and digital culture. This incident was worsened by a misleading video claiming to show explicit images of her, released by another user known as "K." This video rapidly spread false content, severely compromising her privacy and mental well-being. It was later discovered that a deepfake image of Monk shared on Twitter was digitally altered and not genuine, highlighting the issue of deepfake misuse in her case.

The viral spread of this content underscored how easily personal boundaries can be breached in the age of social media, driven by a mix of curiosity, outrage, and the human tendency to spread gossip, leading to a profound loss of control over her narrative. Brooke Monk publicly expressed her anguish and frustration through social media, exposing the hurtful consequences of being dehumanised and humiliated by these actions, further showcasing the impact of such harmful use of deepfake technology. She released a video about the situation. She denied any involvement in explicit content and stressed the importance of responsible online behaviour. She urged her followers to report such incidents instead of sharing them. Her supporters rallied around her, defending her and expressing outrage over the fake images, thus fuelling the discussion for misuse of artificial intelligence and the lack of boundaries when it comes to the creation of such degrading content.

The Brooke Monk incident has illuminated several critical issues within the digital realm. It serves as a stark reminder of the pressing need for stronger measures to protect individuals' private information, especially for online influencers who face inherent risks due to their public presence. The rapid dissemination of private moments highlights the

[14] Abhinaba Datta and Subarno Banerjee, 'Unmasking Deepfakes-A Legal Perspective' (2023) 4 Jus Corpus LJ 336.

[15] Noelle Martin, 'Image-Based Sexual Abuse and Deepfakes: A Survivor Turned Activist's Perspective' [2021] The Palgrave Handbook of Gendered Violence and Technology 55.

[16] Benjamin T Suslavich, 'Nonconsensual Deepfakes: A" Deep Problem" for Victims' (2023) 33 Alb. LJ Sci. & Tech. 160.

[17] Lina Schaden V, 'Brooke Monk Leaks: Unpacking The Viral Rumors And Digital Footprint' (*Procamp*) <https://www.procamp.qa/tiktoknews-007/brooke-monk-nude-leaks/>.

"darker side[18]" of social media saturation; despite the fame and glory that comes with it, the risk of such videos being made, with initial platform responses often being slow, allowing content to spread widely before removal. From a legal standpoint, disseminating private content without consent raises significant concerns, as such actions can violate privacy laws in many jurisdictions. Ethically, sharing someone's private content without permission is a serious breach, emphasising the need for a more responsible approach to handling sensitive information and respecting individual privacy.

And, just like Brooke Monk, international stars such as Kristen Bell, Scarlett Johansson and Gal Gadot have all been subjected to deepfake pornography. Even prominent public figures with access to excellent legal and financial resources are powerless to stop this abuse, which indicates how helpless the average victim might feel.

B. Deepfakes as Technology-Facilitated Sexual Violence (TFSV)

Deepfake pornography from a feminist legal framework is technology-facilitated sexual violence (TFSV), a digital offshoot of patriarchal violence. While no physical contact is involved, no physical interaction is required, and the harm caused is real and lasting. The non-consensual character of deepfake porn is identical to that of sexual assault: it is a violation of bodily and sexual autonomy, created digitally but socially and psychologically harmful.

At the core of feminist legal theory is the premise that consent[19] is communicative and contextual. Deepfake pornography[20] annihilates this paradigm. It entails no consent whatsoever at any point, not when the image is used, not when it is manipulated digitally, and not when it is shared. Victims themselves might not even know their image has been used until others have already viewed or forwarded it or popularised it in the media. This detachment of the body from agency parallels the commodification of women's bodies in other legal and cultural spheres but with more sinister implications because it is disguised as "virtual."

Victims experience psychological reactions similar to PTSD: re-traumatisation, loss of identity, fear of being seen, and even false memories, as their authentic selves become intertwined with fictional representations. The idea of "digital infinity," the internet's ability to save and reproduce content infinitely, is that the damage is endless. One deepfake can be downloaded, shared, mirrored, and re-uploaded on dozens of sites in hours, with no definite possibility or scope to be taken down.

The moral construction of deepfakes remains in the process of developing, yet contemporary social opinion is saturated in misunderstanding and minimisation. Empirical research indicates that men are most likely to consume deepfake pornography[21][22] and least likely to view it as "dangerous." Others even consider it an entertainment or "fantasy." This highlights how structural gender inequality operates in informing both the reception and production of deepfake material.

[18] Djamila Kadem and Kafia Mohamed Eltaib Lassouane, 'The Negative Impact of Deepfake Technology on the Reputation of Prominent Figures on Social Media Platforms: An Analytical Study on a Sample of Fabricated Videos.' (2024) 4 Journal of Science and Knowledge Horizons 510.

[19] Anastasia Karagianni and Miriam Doh and, 'A Feminist Legal Analysis of Non-Consensual Sexualized Deepfakes: Contextualizing Its Impact as AI-Generated Image-Based Violence under EU Law' (2024) 0 Porn Studies 1.

[20] Carl Öhman, 'Introducing the Pervert's Dilemma: A Contribution to the Critique of Deepfake Pornography' (2020) 22 Ethics and Information Technology 133.

[21] Prachi H Bhuptani and others, 'Pornography Use, Perceived Peer Norms, and Attitudes Toward Women: A Study of College Men.' (2024) 19 American journal of sexuality education 280.

[22] Umbach and others (n 13).

In interviews[23], some of the participants thought that destigmatising sex and pornography might diminish the harm of deepfakes[24], but only at the expense of holding victims responsible for not being as affected, not perpetrators for ceasing. Others rationalised their interest in deepfakes by referencing memes or fanfiction[25], similarly within appropriateness, disregarding the intent to deceive and violate consent that distinguishes deepfakes from satire, taking a more comical approach than a serious solution. Critically, society has not yet recognised deepfake pornography as sexual violence[26], even though its psychological and reputational damage is evident. This is especially so in legal frameworks that still give precedence to corporeal harm over emotional, social, or reputational harm, depriving digital victims of sexual violence of their rights, which are being violated.

Although some countries have started drafting laws for redressing deepfake harms, most nations, including India, have no such statutes criminalising deepfake pornography. Indian law presently deals with image-based sexual abuse under the Information Technology Act, 2000 and the Indian Penal Code, 1860, but such provisions prove inadequate when dealing with AI-produced content.:

This legal uncertainty leaves loopholes through which abusers can function scot-free. Deepfake artists tend to be located outside the country, so it becomes an even more challenging task to enforce across borders. The insufficient deterrence and limited avenues to justice add to the helplessness that victims complain about.

As much as legal remedies are non-existent, the technology used to make deepfakes is improving at a frightening rate. More advanced tools can now produce audio deepfakes, live-streamed impersonation, and real-time face swapping[27], making it increasingly challenging to detect the already-hard-to-spot deceptions. Although AI-based detection tools exist[28], they are not yet public-facing, unreliable, and need large computational capacities. Moreover, deepfake technology itself advances so fast that it bypasses detection tools as a whole, and if it does, platforms have been accused of not effectively using these tools.

The lag between harm and remedy, both technically and legally, is that victims suffer long before the state or platforms can intervene. This enforcement lag is not only a policy failure but gendered harm, as it stems from a deeper systemic failure to consider women's digital safety seriously.

C. Overview of Indian laws on deepfake technology

While India does not yet possess a specific law[29] solely targeting deepfake technology, the existing legal framework, anchored in the Indian Penal Code (IPC) and the Information Technology (IT) Act of 2000, is being cautiously extended to address its harmful manifestations. However, this patchwork approach reveals deep and troubling gaps in both

[23] Natalie Grace Brigham and others, '" Violation of My {body:}" Perceptions of {AI-Generated} Non-Consensual (Intimate) Imagery', *Twentieth Symposium on Usable Privacy and Security (SOUPS 2024)* (2024).

[25] Jacquelyn Burkell and Chandell Gosse, 'Nothing New Here: Emphasizing the Social and Cultural Context of Deepfakes' [2019] First Monday.

[26] Carl Öhman, 'Introducing the Pervert's Dilemma: A Contribution to the Critique of Deepfake Pornography' (2020) 22 Ethics and Information Technology 133.

[27] Jules Roscoe, 'Deepfake Scams Are Distorting Reality Itself' [2025] *WIRED* <https://www.wired.com/story/youre-not-ready-for-ai-powered-scams/>.

[28] Simiao Ren and others, 'Do Deepfake Detectors Work in Reality?' [2025] arXiv preprint arXiv:2502.10920.

[29] Vasundhara Shankar, 'Deepfakes Call for Stronger Laws' *The Hindu Business Line* (16 July 2023) <https://www.thehindubusinessline.com/business-laws/deepfakes-call-for-stronger-laws/article67077019.ece>.

scope and effectiveness, particularly in addressing the nuanced harms inflicted by deepfake pornography and other non-consensual AI-generated content. Existing legislation is backwards-looking as opposed to forward-thinking and not well adapted to meet the unique challenge of deepfakes, media that is not just false or obscene but artificially created to mislead and shame, frequently with long-term psychological, reputational, and social impacts on the victim.

The majority of such provisions do not criminalise deepfakes per se but rather criminalise the larger consequences they can cause, i.e., defamation (Sections 499–500 IPC), cyber cheating and impersonation (Sections 66C–66D IT Act), or dissemination of obscene material (Sections 67, 67A IT Act). These provisions call for the imposition of established categories over new digital harms, producing interpretive uncertainty and leaving no statutory guidance for enforcement agencies about how to prosecute synthetic sexual violence. For example, obscenity laws will be engaged by deepfake pornography, but they tend to require a threshold of public harm or indecency to be exceeded. Suppose a deepfake is in private circulation or does not show explicit nudity. In that case, it may not cross these legal thresholds but still grossly violate the person's dignity, privacy, and consent. This fails to meet the law's sensitivity to deepfakes' particular intentionality and impact, where even suggestive tampering can ruin a person's personal and professional life.

Compounding the issue further is that these statutes were not envisioned in a technological framework in which image manipulation was possible without explicit access to the victim. Conventional voyeurism or non-consensual image-based sexual abuse statutes (e.g., Section 354C[30] IPC) are based on the notion that the original content or the interaction existed. But deepfakes destroy this presumption; they enable perpetrators to produce sexualised depictions of people, including children, never having physically seen them, let alone recorded explicit material. This destabilises traditional evidentiary models of Indian law (like assault[31]), which tend to rely on establishing actual contact or recording. Without statutory protection of "synthetic" sexual images, the victims fall into a legal void in which they cannot precisely assert their right to privacy or bodily autonomy since the photos, technically, are "not real."

Also, the Indian judicial process continues to be slow and cumbersome, especially in cyber abuse cases. They are frequently confronted with a Kafkaesque labyrinth of legal procedures, minimal institutional or police assistance, and few streamlined mechanisms to have content removed promptly[32][33]. Police forces lack the training and technical ability to investigate cybercrimes such as deepfakes, particularly when the attackers are anonymous or from overseas. Overlaid on top of this is the splintered jurisdiction over internet sites, some of which are based in foreign nations and beyond Indian legal reach without extensive international cooperation. The result is a legal culture in which justice isn't just delayed but frequently denied altogether. Before one can even file an FIR, the material might have already been reposted thousands of times, saved by random strangers, reposted, and etched into the electronic ether.

This failure of meaningful legal redress and pressure has, in turn, led the government of India to make initial steps toward reform. In November 2023, the Union Government gave an advisory to social media intermediaries, inviting them to remove deepfake content within 36 hours of receiving a complaint or

[30] Indian Penal Code 1860, s 354C
[31] Indian Penal Code 1862.
[32] Karan Choudhary and Mahak Rajpal, 'CRIMINALIZING DEEPFAKE TECHNOLOGY IN INDIA: A LEGAL ANALYSIS OF PRIVACY AND REGULATORY GAPS' [2025] INTERNATIONAL JOURNAL OF ADVANCED LEGAL RESEARCH.
[33] Sayobani Basu Basu and Durga Priya Manda, 'Generative Artificial Intelligence – India's Attempt at Controlling "Deepfakes"' (*Chambers and Partners*) <https://chambers.com/legal-trends/controlling-deepfakes-in-india>.

risk having their safe harbour immunity under the IT Act withdrawn[34]. This was an important step, but it still keeps the responsibility of identification and complaint on the victim and does not institutionalise proactive detection or platform-level accountability yet. Concurrently, these efforts are still policy-level actions instead of codified legal requirements, i.e., they are not enforceable until translated into legislation or formal rulemaking.

Encouragingly, the courts have started to acknowledge the imperative of safeguarding individuals' digital identity and personality rights in an era of AI. In trailblazer cases, stars such as Amitabh Bachchan[35] and Anil Kapoor[36] were awarded injunctions against the unauthorised use of their name, likeness, and image by means of deepfake technology. The cases are notable not because they provide statutory remedies for all victims but because they symbolically affirm the right to defend one's "persona" as a recognised interest in law against deepfake abuse. However, this remedy is still only available in large part to those with the resources and visibility to bring cases, leaving many ordinary victims, particularly women and vulnerable groups, without effective recourse or public scrutiny.

The imperative of a dedicated, future-proof legal framework is thus pressing. A strong law should acknowledge that deepfake abuse is not just an intensification or expansion of the current offences but a qualitatively different kind of digital harm, one that invades autonomy, consent, and dignity in novel ways. Such a law should criminalise and define the creation and sharing of deepfakes without permission, offer effective content removal mechanisms, require content detection at the platform level and user awareness, and prioritise the experience of the victim and not require them to fulfil archaic legal standards. It should also consider the gendered character of the damage since virtually all victims of deepfake porn are women and use a survivor-centred approach in its redressal mechanisms.

If not for this, India runs the risk of emulating the world trend of legal systems being behind technological abuse and of the social price of innovation being paid disproportionately by women, minorities, and vulnerable groups. In order to successfully counter these, the Indian legal system needs to get beyond outmoded categories and towards a rights-oriented, tech-literate, and gender-sensitive response.

D. Comparison with the legislation of other countries

1. South Korea

South Korea's legal reaction to deepfake pornography and online sexual violence has been both quick and extensive, especially after the public outcry in response to the "Nth Room[37][38]" case back in 2020. This case of massive exploitation and blackmailing of women and minors using sexually exploitative videos on messaging apps like Telegram became a national wake-up call on the insufficiency of digital legislation. The scope of the abuse, compounded by the anonymity of cryptocurrency and overseas-based servers, exposed serious loopholes in the Korean judicial system and further fuelled calls for responsibility and institutional reform. The public outcry following this case led to the government of

[34] Srishti Jha, '"Remove Misinformation, Deepfakes within 36 Hrs": Centre to Social Media Firms' *India Today* (7 November 2023) <https://www.indiatoday.in/india/story/remove-misinformation-deepfakes-within-36-hrs-centre-to-social-media-firms-2460129-2023-11-07>.

[35] Amitabh Bachchan v. Rajat Nagi, (2022) 6 HCC (Del) 641

[36] Anil Kapoor v. Simply Life India, 2023 SCC OnLine Del 6914

[37] Nicole De Souza, 'The Nth Room Case and Modern Slavery in the Digital Space' *The interpreter* (Lowy Institute, 20 April 2020) <https://www.lowyinstitute.org/the-interpreter/nth-room-case-modern-slavery-digital-space>.

[38] Min-sik Yoon, '"Anti-Nth Room" Legislation, an Unfulfilled Promise' *The Korea Herald* (11 July 2022) <https://www.koreaherald.com/article/2909004>.

South Korea implementing an aggressive array of legislative changes, popularly known as the "anti-Nth Room[39]" laws, that not only widened the criminal liabilities for cybersex crimes but also paved the way for how deepfake pornography was to be approached in legislation.

One of the most significant features of the new legislation is broadening criminal liability not only to those making or distributing deepfake pornography[40] but also to those who store, have, or even merely look at such material. This is a remarkable departure from previous legal practice that tended to address only producers or distributors and left the role of passive viewing in facilitating the market for such content untouched. Under the amended law enacted on 26 September 2024, watching sexually exploitative deepfakes for themselves, regardless of whether they have paid for them or downloaded them, is now punishable by up to three years imprisonment or a heavy fine. This is an unmistakable legal acknowledgement that deepfakes are not only digital artefacts but instruments of harm and that their consumers are also, in part, responsible for the violation of the victim's bodily autonomy and digital dignity. The maximum penalty for producing and sharing such content has also been increased to seven years, with intent no longer being a requirement for punishment. This fills a vital gap in which offenders in the past invoked a lack of malice or artistic merit as a defence.

In addition to these new sanctions, current legislation was deeply reformed to meet the changing face of sexual abuse online. The Sexual Violence Punishment Act was rewritten to criminalise not only illicit filming or dissemination but also coercive actions such as threatening someone with the dissemination of sexually exploitative content. Notably, the amendments made clear that consent during filming does not equate to consent for distribution, moving the legal emphasis from the act of creation to the act of dissemination, one of the most urgent legal blind spots for courts in jurisdictions confronting AI-created content. In addition, criminal laws were amended to demonstrate the gravity of such offences by bringing the sentencing for internet sexual offences in line with that for special rape and robbery. These developments signal a parliamentarian grasp that sexual abuse in person or via the web exacts similar psychological and reputation-related wounds on victims.

Another essential support structure of the reform package was the levying of duties on online platforms, search engines, and cloud service providers to monitor their content and act quickly to delete illicit material. The amended Telecommunications Business Act[41] gave these platforms the power to scan group chats, screen uploaded media for obnoxious content, and assist law enforcement, one of the first times that legally binding content moderation requirements were imposed. This expansion of liability to tech intermediaries such as South Korean firms like Kakao and Naver, as well as multinationals like Meta and Google, was a regulatory paradigm shift. Yet even in taking these steps, the reforms also recognised their limitations, especially in platforms headquartered beyond South Korea's jurisdiction. The situation of imitation operations like the "cat Nth room" on foreign encrypted messaging apps highlighted the difficulties of enforcement in a digitally networked globalised space, where laws tend to end at national borders.

Still, despite the above, the reforms have been widely criticised. The most often cited shortcoming is the lack of an independent law specifically targeting the distinct features of deepfake technology. Whereas deepfake pornography is criminalised under wider offences such as illegal production or distribution of obscene content, the legislation does not yet codify or

[39] Stephanie Seng, *Rape Culture in Media Coverage: An Analysis of the" Nth Room" Scandal* (2024).
[40] Reuters, 'South Korea to Criminalize Watching or Possessing Sexually Explicit Deepfakes' *CNN* (26 September 2024) <https://edition.cnn.com/2024/09/26/asia/south-korea-deepfake-bill-passed-intl-hnk>.
[41] Telecommunications Business Act (South Korea), Act No 3920 of 1996, as amended by Act No 17078 of 2019

recognise AI-generated content as a distinct legal concept. Consequently, applying these provisions to synthetic or manipulated material sometimes necessitates interpretive looseness on the part of courts. Prevention is especially under-addressed. Existing laws continue to emphasise post-facto punishment without adequate use of anticipatory regulation or technological infrastructure to detect and ban such content prior to its posting or virality. This has resulted in enforcement lag; most posts flagged for removal have stayed online for days or weeks while the harm has already been done.

South Korea's reforms have also triggered controversies regarding constitutional freedoms. Critics say that making platforms legally responsible and technologically capable[42] of monitoring user content in real-time, even with AI filters, creates serious issues around privacy and overreach. Examples of automated moderation blocking non-obscene content, like beach pics, highlight the shortcomings of existing AI filters and the potential for violating free speech and artistic expression. Simultaneously, law enforcement's heavy reliance on online monitoring and undercover investigations to prosecute sex trafficking rings has raised alarm among privacy activists who are worried about government intrusion into citizens' communications.

Another enforcement challenge stems from prosecution difficulty, particularly with the anonymous, frequently encrypted platforms used to distribute deepfake content. Even with such broad legal reforms, most perpetrators go unidentified, especially when they move across borders or leverage anonymising technologies. In these instances, prosecution grinds to a halt or is rejected, eroding victim confidence in the justice system. Legal specialists have also referred to the absence of investigator emergency search and seizure powers as a key obstacle in pointing to the necessity for instant deletion rights and swift freezing of content and accounts upon finding exploitative content.

Although criticised, South Korea's legislative strategy is among the most aggressive and progressive in the world. It aligns with a universal consensus that online sexual violence, such as deepfakes, should be judged similarly to offline sexual assaults. The reforms are far from perfect, but they present an interesting precedent for jurisdictions such as India that continue to grapple with adapting deepfake harms into lagging law provisions. As the government of Korea works to refine and broaden its legislation in this regard, it provides a shining example of how survivor testimony, public pressure, and legal creativity can come together to effectively address new expressions of gendered violence in the internet age.

2. United States of America

In the U.S[43]., the policy and legal response to deepfakes is patchwork, developing through a series of state statutes, new federal legislation in its final stages of development, and a reliance on existing jurisprudence. These efforts are being designed concurrently with significant industry-initiated efforts. In contrast to nations like South Korea, where legislative change has been more centralised and comprehensive, the U.S. strategy reflects its federal nature and constitutional intricacies surrounding freedom of speech. Although there has been progress, the U.S. response is bound by legal doctrines prioritising the First Amendment and thereby presenting a complex context for regulating dangerous deepfakes, especially where it overlaps with subjects like satire, journalism, and political speech.
In the United States, various jurisdictions have moved proactively to regulate the wrongful use of deepfakes.

[42] Brandon Dang, Martin J Riedl and Matthew Lease, 'But Who Protects the Moderators? The Case of Crowdsourced Image Moderation' [2018] arXiv preprint arXiv:1804.10999.

[43] Scott Nover, 'South Korea Banned Deepfakes. Is That a Realistic Solution for the US?' *GZero* (8 October 2024) <https://www.gzeromedia.com/gzero-ai/south-korea-banned-deepfakes-is-that-a-realistic-solution-for-the-us>.

California[44], for example, has become the first state to prohibit the creation and distribution of "materially deceptive" deepfakes in political campaign advertising within a specified time frame ahead of elections. The bill makes provision for exemptions involving satire and parody, as long as there is adequate indication that the content is manipulated. Furthermore, California has identified the reputational and emotional damage of sexually explicit deepfakes by providing people with a right to civil redress in case their image is utilised in unwanted pornographic content.[45] Other states, however, have enacted more specifically crafted legislation. For instance, Virginia[46] criminalised the dissemination of sexually explicit pictures that have been computer-altered to convey a particular person's image, focusing on harmful intent. Likewise, Texas and Maryland have addressed electoral integrity by passing or introducing bills criminalising the deployment of deepfakes in elections. These state enactments, while laudable, are highly divergent in intent and breadth, providing unequal protection based on where a person is located. The relative lack of uniformity between states highlights the necessity for a blanket federal law that can set a nationwide standard.

On the federal level, the most profound legislative action was the approval of the "Take It Down" Act[47] on 19 May 2025. This act represents a turning point in the federal government's response to the regulation of non-consensual intimate imagery, such as deepfake pornography. According to the Act, it is a federal offence to knowingly post sexually explicit material, actual or digitally manipulated, without the express permission of the person involved. This is also the case with authentic and synthetic, AI-generated depictions, which are defined, albeit separately, under the act. The law makes distinctions between content involving adults and minors, where greater punishment has been meted out for the latter, including imprisonment for a term of up to three years. Significantly, the act also provides for a notification mechanism by victims to hosting platforms for the removal of offending content. Covered platforms, such as websites and applications that host user-created content, are required by law to have systems in place for receiving and responding to such takedown requests. This has significant implications for schools, which will need to update conduct policies and get ready to comply with subpoenas and administrative protocols for online sexual misconduct with students or employees.

Despite the progress represented by the Take It Down Act, federal legislative initiatives remain limited in breadth and enforcement clarity. Several bills have been introduced to improve understanding of the technology behind deepfakes and their national security implications. For example, the Identifying Outputs of Generative Adversarial Networks (IOGAN) Act suggests that the National Science Foundation and National Institute of Standards and Technology fund research into software utilised in creating deepfakes. Similarly, the proposed legislation would mandate that federal agencies like Homeland Security and Defence explore how deepfake technologies affect military members and national infrastructure. Although these efforts seek to establish institutional consciousness and technological readiness, they do not go as far as delivering full-

[44] Rob Garver, 'California Laws Target Deepfake Political Ads, Disinformation' [2024] *Voa News* <https://www.voanews.com/a/california-laws-target-deepfake-political-ads-disinformation/7789746.html>.

[45] TRÂN NGUYÊN, 'California Governor Signs Bills to Protect Children from AI Deepfake Nudes' *AP News* (30 September 2024) <https://apnews.com/article/ai-deepfakes-children-abuse-7dcf5c566e2a297567f1e148ac2074a4>.

[46] Adi Robertson, 'Virginia's "Revenge Porn" Laws Now Officially Cover Deepfakes' *The Verge* (2 July 2019) <https://www.theverge.com/2019/7/1/20677800/virginia-revenge-porn-deepfakes-nonconsensual-photos-videos-ban-goes-into-effect>.

[47] Tiffany Hsu, 'Deepfake Laws Bring Prosecution and Penalties, but Also Pushback' *NY Times* (22 May 2025) <https://www.nytimes.com/2025/05/22/business/media/deepfakes-laws-free-speech.html>.

fledged legal mechanisms for victim remedy or content moderation.

The most debated[48] recent federal proposal is the DEEPFAKES Accountability Act[49], which requires those who produce synthetic media to add watermarks and acknowledgements clearly indicating the content has been manipulated. The bill also mandates harsh penalties of up to $150,000 per occurrence for not labelling or for stripping away such disclosures. Impacted persons would enjoy a private right of action to sue creators for misuse of their likeness. However, the bill has faced vigorous opposition from civil liberties organisations and legal experts, who claim that the legislation will have a chilling effect on constitutionally protected expressions like parody, political satire, or fiction writing. Because the First Amendment promises strong protections for speech, any regulation of deepfakes will need to be narrowly drawn and prove that it does not violate constitutionally protected expression unless it is pursued with actual malice or creates demonstrable harm.

Another level of complication stems from the weaknesses in current U.S. laws applying to deepfakes. Legal action for victims is currently largely reliant on general tort law, copyright rights, and rights of publicity. These legal avenues are typically costly and time-consuming and involve the necessity of knowing the perpetrator, an especially challenging requirement in cases involving anonymised or foreign perpetrators. Although victims can bring actions for defamation or intentional infliction of emotional distress, these are only available actions when the manipulated content is clearly harmful and does not enjoy protection as free speech. Moreover, Section 230 of the Communications Decency Act[50] continues to immunise platforms against liability for user-generated content, severely limiting victims' recourse to force platforms to remove or moderate deepfake content. Consequently, sites such as Facebook, X (previously Twitter), and Reddit cannot, in general, be held responsible for hosting or sharing deepfakes, even when such materials inflict significant reputational harm.

Acknowledging these constraints, various private and governmental players have resorted to technological measures to mitigate the dissemination of deepfakes. Most large platforms have revised their terms of service to prohibit direct deceptive synthetic media. Meanwhile, organisations and researchers have teamed up to create detection tools, such as publicly available databases of known deepfakes for training machine learning algorithms. Programs like the Deepfake Detection Challenge[51], which provided significant cash prizes for successful detection platforms, seek to remain ahead of continually evolving AI tools. The Pentagon's Defence Advanced Research Projects Agency (DARPA) has entered the fray as well, actively creating deepfakes in-house to test and develop identification technologies. This is a manifestation of the increasing acknowledgement that regulation would not be enough; instead, technical innovation will be the key to addressing the harms that synthetic media can cause.

In the future, the prospects of meaningful regulation of deepfakes in the United States are uncertain. As awareness increases and legal and technological frameworks are under development, legal reform is behind the rapid pace at which synthetic content is developing. Cooperation from the industry and

[48] Arthur Holland Michel, 'The ACLU Fights for Your Constitutional Right to Make Deepfakes' *WIRED* (24 July 2024).

[49] Christopher Sundquist, '(Deep)fake News' (5 November 2019) *Science and Technology Law Review* https://journals.library.columbia.edu/index.php/stlr/article/view/6252 accessed 18 June 2025

[50] Communications Decency Act, 47 USC § 230 (1996)

[51] Sam Sabin, 'Deepfakes Are Easy to Make, but Also Easy to Detect' (*Axios*, 12 August 2024) <https://www.axios.com/2024/08/12/def-con-darpa-deepfake-lab?>.

innovation will be essential, particularly since there are restrictions under the U.S. Constitution. However, as new accusations surface and public pressure escalates, there can be an opportunity for further tightening of legislation that maintains a delicate balance between the safeguarding of victims and the freedom of expression.

3. United Kingdom

The United Kingdom has been increasingly building an integrated legal response to address the development of deepfake technology, specifically in relation to its application in the non-consensual production of sexually explicit material. This response has been formulated through newly proposed and enacted legislation criminalising both the production and sharing of explicit artificial media and broadening the protection for individuals, particularly women and girls, who are disproportionately subjected to such abuse. The government's response is not only legislative but also institutional and cultural, seeking to transform the social and technological context that makes deepfake abuse possible.

At the heart of the UK's changing legal landscape is the creation of new criminal offences[52] that target the special harms posed by deepfakes in a direct way. Perhaps the most critical development is the planned offence of making a sexually explicit deepfake image. In contrast to the earlier legal provisions demanding proof of distribution or harm caused to the public, this law criminalises the creation itself if it is undertaken with the aim of causing alarm, humiliation, or distress. This signifies a crucial change towards the acceptance that the psychological and emotional harm resulting from these images, whether or not they are shared, needs to be acknowledged. Where an individual both creates and distributes such a deepfake, they are liable for two distinct offences, permitting the possible imposition of more severe penalties and indicating the gravity of the behaviour.

The legal framework also widens its scope with the criminalisation of capturing or filming intimate photos without consent. Drawing on existing legislation, such as prohibitions of "upskirting," these new crimes widen the coverage of the conduct made criminal. The law will now cover cases where intimate photographs are taken without permission, be it with or without the intention of doing so to cause harm or for sexual gratification. Notably, it also criminalises cases where an individual may say they did not know that consent was needed unless they had a reasonable belief to that end. By creating offences that cater to various motives, whether to humiliate, to gratify sexual desire, or to control, the law aims to account for a variety of abusive behaviours long left unpunished as a result of very narrow or outmoded legal concepts.

In another step to enhance preventative measures, the UK will also criminalise installing or maintaining equipment, in this case, covertly installed cameras or spyware, purposefully to facilitate these image-based abuses. This measure shows a prospective tack by recognising that technology-assisted abuse usually starts much earlier than actual image creation or distribution. It enables the law to act at an earlier point, minimising the chances that such photographs are ever created or distributed.

The new offences are serious in themselves. For instance, creating sexually explicit deepfakes can result in prosecution for a potentially unlimited fine. In combination with the sharing of the content, custodial sentences are likely to be imposed. Those convicted of taking intimate images without consent can face up to two years in prison. The same penalty applies to individuals found guilty of installing equipment with the intent to commit such offences. These penalties not only reflect the gravity of the offences but also serve as a deterrent aimed at both would-be offenders and technology developers who might facilitate such behaviour.

[52] Ministry of Justice and Alex Davies-Jones MP, 'Government Crackdown on Explicit Deepfakes'.

Notably, the interventions are precisely designed to apply mainly to adult victims, as existing legislation already criminalises comparable behaviour for children's images. This distinction enables the law to fill important gaps in adult protection legislation without duplicating efforts in the realm of child protection. In reality, this means that the adults who were once left with no adequate legal redress for deepfake abuse can now avail themselves of justice via a more victim-focused and responsive justice system.

The new crimes are part of an overall package of legislation within the Criminal Justice Bill, which is being utilised as a vehicle to bring about these changes. It was reported in January 2025[53] that the offences of making sexually explicit deepfakes and intimate image abuse would also be added to the upcoming Crime and Policing Bill, demonstrating the government's intention to mainstream these protections in more than one legal tool. These measures are built on the initial Online Safety Act (2023), which criminalised the sharing of non-consensual deepfake photos and imposed a requirement on platforms to delete toxic content. Sexual Offences Act 2003 was also amended to harden the law even further by adding provisions for criminalising the sharing or the threat of sharing indecent images, including deepfakes, to cause distress. In September 2024[54], online image offences, including intimate photos, were made "priority offences" under the Online Safety Act, and tech platforms have to actively monitor and take down such content or risk being taken enforcement action by Ofcom, the UK communications regulator.

The government's approach to countering deepfake abuse is built into its wider Plan for Change, which focuses on addressing online harms and enhancing the criminal justice response to violence against women and girls. Identifying such violence as a threat to the nation, the UK has tasked police forces with earmarking investigations into image-based abuse as a priority and enhancing their responsiveness to digital harms. These reforms are not merely punitive but are meant to change public attitudes, strengthen social norms against technology abuse, and prevent victims, who are overwhelmingly women, from being silenced or stigmatised for crimes committed against them.

The state's initiative is coupled with an expectation of heightened accountability on the part of the technology industry. The Technology Minister[55], Baroness Jones, has also highlighted that tech businesses need to do more to track content, take down toxic media, and invest in detection software that can identify whether imagery is authentic or manipulated. User-generated content platforms are being subjected to stricter examination, and non-compliance with regulatory requirements could lead to substantial fiscal and legal costs. This is a recognition increasing around the world that private companies need to take an active role in stopping abuse enabled by their platforms and not just respond to it afterwards.

Overall, the United Kingdom's regulation of sexually explicit deepfakes is a forward-thinking and victim-led model that unites new criminal offences with current legal protections. By criminalising the production, distribution, and facilitation of such material and by making both producers and sites liable, the UK is establishing a stronger legal framework in which victims of digital sexual abuse can receive redress and dignity. While there are difficulties still to be overcome, especially in terms of enforcement and technological identification, the legal changes are a strong indication of the

[53] ibid.

[54] Department for Science, Innovation and Technology, and Ministry of Justice, 'Crackdown on Intimate Image Abuse as Government Strengthens Online Safety Laws' *Gov.UK* (13 September 2024).

[55] Oscar Hornstein, 'Tech Minister on Regulating Big Tech and Tackling Online Hate' (*UK TECH NEWS*, 26 August 2024) <https://www.uktech.news/news/government-and-policy/tech-minister-on-regulating-big-tech-and-tackling-online-hate-20240826?>.

determination to ensure that the law remains ahead of new digital harms.

E. Feminist view

The deepfake porn regulation demonstrates how the law remains based on male-conceived concepts of harm, autonomy, and personhood, a complaint long set out by feminist legal theorists. Androcentric epistemologies[56] have informed traditional legal frameworks to consistently favour harms that are visible, measurable, and economical in kind, closest to masculine-coded experiences. Feminist scholars such as Catharine MacKinnon[57] and Mari Matsuda[58], for instance, contend that the law tends to neglect or downplay harms disproportionately experienced by women, especially those based on sexuality, objectification, and dignity-degrading harms. In deepfakes, this comes in the form of the law's past resistance to see image-based sexual abuse as grave harm, except where it occasions concrete economic loss or even general public devastation. Feminist legal theory requires a more expansive understanding of harm, one that seriously considers the emotional, psychological, and social harms done by being digitally dispossessed of autonomy and agency. Producing a sexually explicit deepfake, no matter if it is never disseminated more broadly, amounts to an insult to the subject's dignity. It makes the female body a virtual site of conquest and consumption, reaffirming patriarchal norms that treat women as objects to be used for others' pleasure.

This is why feminist theory demands a redefinition of consent that transcends physical boundaries and includes control over digital representations. Consent, then, in feminist law, is not a fixed, one-off permission but an ever-present, contextual process based on respect and the acknowledgement of bodily and personal autonomy. All of this Deepfake pornography undermines. Even in the absence of any physical contact, it still infringes the person's embodied self through digitally simulated intimacy and exposure without consent. Feminist philosophers such as Drucilla Cornell[59] and Anita Allen[60] have long emphasised that autonomy not only relates to the freedom to deny others entry into our bodies but also to the ability to control how we are perceived, comprehended, and portrayed. The law does not recognise the virtual aspect of consent, thereby reinforcing the patriarchal assumption that a woman's image belongs to the public sphere. Subject to manipulation so long as it does not breach certain narrow legal bounds. This omission disproportionately hurts women and marginalised genders, whose bodies are already excessively exposed and commodified in digital society.

In light of this, the idea of informed consent[61], a term pioneered by feminist privacy researchers, presents itself as a necessary tool for taking back control of one's online self. Informational consent acknowledges that in a world where identities are fractured and reproduced through digital realms, people need to have a right to control not only what is being done to

[56] Leslie Francis, 'Feminist Philosophy of Law' in Edward N Zalta and Uri Nodelman (eds), *The Stanford Encyclopedia of Philosophy* (Summer 2025, Metaphysics Research Lab, Stanford University 2025) <https://plato.stanford.edu/archives/sum2025/entries/feminism-law/>.

[57] CATHARINE A MacKINNON, *Only Words* (Harvard University Press 1993) <http://www.jstor.org/stable/j.ctvjk2xs7> accessed 18 June 2025.

[58] Mari J Matsuda, 'Beside My Sister, Facing the Enemy: Legal Theory out of Coalition' (1990) 43 Stan. L. Rev. 1183.

[59] Drucilla Cornell, 'Autonomy Re-Imagined' (2003) 8 Journal for the Psychoanalysis of Culture and Society 144.

[60] Anita L Allen (ed), *Uneasy Access: Privacy for Women in a Free Society* (Rowman & Littlefield Publishers 1988).

[61] Anja Kovacs and Tripti Jain, 'Informed Consent-Said Who? A Feminist Perspective on Principles of Consent in the Age of Embodied Data' [2020] A Feminist Perspective on Principles of Consent in the Age of Embodied Data (November 2020).

their bodies but also the way their identities are constructed and circulated. It is firmly rooted in the care ethic of feminist ethics, which focuses on vulnerability and interdependence, recognising that individuals (especially women) experience actual harm when their online image is utilised without their permission to sexualise, shame, or degrade them. Feminist contestations of the liberal subject, which are understood as rational, disembodied, rights-holding agents, note how this model erases the lived experiences of individuals whose identities are already politicised and hyper-visible. Informational consent thus calls upon the law to factor in power disparities in online environments and establish positive obligations on institutions, creators, and platforms to mitigate the weaponisation of digital representations.

In the end, a feminist approach to law requires us to look beyond quick fixes and instead question the structural relations of power that allow deepfake pornography to thrive. It advocates for laws that put lived experience at the centre, values dignity over profit, and refuse the old binarisms of public/private, body/mind, and real/fake. In doing so, it not only better safeguards victims but also remakes justice in inclusive, empathetic, and transformative terms. Unless there is a reshaping of legal frameworks through a feminist prism, the harms of digital sexual violence will continue to be misunderstood, under-enforced, and poorly addressed.

IV. Conclusion

The spread of deepfakes, especially for the purposes of non-consensual sexually explicit content, is a chilling new frontier in technology-enabled sexual violence. This paper has demonstrated that deepfakes are not just benign or playful manipulations of digital content. They are a fundamental erosion of consent, autonomy, and dignity—especially for women, who are disproportionately harmed. The law's continued emphasis on physical harm, property interests, and tangible losses fails to address the uniquely gendered and digital nature of the harm that deepfakes produce. This neglect stems from a deeply embedded, male-centric legal tradition that has historically under-recognised harms inflicted through shame, reputational injury, or violations of sexual agency—forms of harm that feminist scholars have long argued must be given equal weight.

The spread of deepfakes, specifically sexually explicit and non-consensual deepfakes, represents a profoundly disturbing development in digital abuse. These technologically advanced creations of artificial intelligence, though advanced in terms of technology, represent an ethically and socially retrograde development, extending traditional forms of gendered violence into new and deceptive forms. The appearance of deepfake pornography, nearly exclusively aimed at women, unveils the patriarchal foundations of both digital culture and the current legal system. Whereas the victims are primarily women, the law still lags behind, crafted by traditional assumptions that give more importance to physical, concrete injury than to emotional, reputational, or psychological harm. This is a male construction of autonomy in which bodily invasion only counts when it involves physical invasion and not when it takes place through digital duplication and manipulation of one's face.

Even as there is an unmistakable infringement of autonomy and consent, existing Indian legal provisions are poorly placed to confront deepfake pornography efficaciously. The Information Technology Act and the Indian Penal Code were not created to deal with synthetic media or the complex realities of digital consent. These provisions bank almost exclusively on worn ideas of obscenity, defamation, or impersonation and do not reflect the particular harms of digitally manipulated intimate content. Additionally, enforcement is still sluggish, unavailable, and hampered by jurisdictional limitations, particularly when criminals act anonymously or from overseas. Victims are, therefore, left without substantive legal remedies, while platforms and intermediaries remain with minimal accountability and little proactive responsibility.

Globally, the United Kingdom and South Korea, among other nations, have taken great leaps by enacting laws criminalising not only the sharing but also the production and possession of sexually explicit deepfakes. Such laws acknowledge the severity of harm caused and impose the responsibility of detection and removal on platforms and shift towards a more feminist approach to understanding harm. Conversely, the United States still struggles with constitutional limits, specifically on freedom of speech, that complicate the regulating of deepfakes in a holistic manner. Regardless, recent federal laws like the "Take It Down" Act represent a move toward acknowledging digital consent as well as offering avenues for victims to pursue remedies.

Feminist legal theory insists on a shift in legal norms that prioritises the lived experiences of the victims of these harms. Consent needs to be understood not just as bodily permission but as including control of one's digital image and identity. Informational consent as a concept needs to be ingrained in law, realising that identity is no longer located within the physical body but is distributed between digital sites, images, and data. The unauthorised use of a person's image in sexually explicit contexts—be it in photographs or computer-generated form—must be noted as a serious infraction of autonomy and dignity, no less meaningful than physical sexual violence.

Legal change needs not just criminalise the acts but also establish victim-centred processes that respect survivors' anonymity, provide for rapid removal of content, and hold both producers and distributors to account. Aside from punitive action, there needs to be a wider cultural change that questions the normalisation of deepfake pornography and challenges the cultural attitudes that make women's bodies publicly available and digitally reproducible. It also involves bringing the platforms and AI firms under greater ethical and regulatory scrutiny, forcing them to design safeguards for the very technologies they are using to harm people.

In summary, deepfake pornography is not an outre technological abuse but rather a symptom of more profound systemic flaws—legal, cultural, and technological—exposing entrenched gender hierarchies. Any serious endeavour to control deepfakes has to start by reassessing the way the law thinks about harm, consent, and autonomy in the digital era. Feminist legal theorising provides the critical eye to see these violations not as singular occurrences but as part of a continuum of patriarchal domination that now passes through machines. The future of justice online must be anchored in dignity, equity, and uncompromising commitment to protecting the full range of personal agency—both the physical and the digital.

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DEMOCRATIC OVERSIGHT WITHOUT TEETH: A CONSTITUTIONAL STUDY ON POLITICAL ACCOUNTABILITY MECHANISMS IN INDIA (A COMPARATIVE ANALYSIS WITH THE UNITED STATES AND SOUTH AFRICA)

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Abstract

At the centre of every constitutional democracy lies the idea that leaders must be answerable for their decisions. Without this accountability, power can easily be abused and citizens lose faith in the system. Although the Constitution lays down a detailed institutional framework, the accountability of elected representatives in India tends to surface only during elections, and not throughout their term in office. This paper argues that such periodic and election-based checks do not amount to genuine democratic oversight. To address this argument, the analysis will be conducted in comparison with two other democracies where constitutional arrangements have been structured differently and these include the United States and South Africa. Accountability in the US is not an issue that just comes in once every four years. The presence of midterm polls, scrutiny of the executive by congress, the threat of impeachment, and legislation permitting the people to have access to government information all present a few avenues to put representatives on the leash even when they are still in office. South Africa does more than many systems, by making its public representatives, as per the Constitution, transparent and accountable throughout their term, not just on the polls. Comparing with this design, the shortcoming of the Indian structure is obvious in the fact that the Constitution lacks provision of the obligations that put the elected leaders accountable on a sustained basis, and it opens the possibility of them ruling without any tangible repercussions to misbehaviour. Consequently, the people have started to lose faith in representative government and the judiciary has become a burden, which should be shouldered by the executive and the legislature. It is only under such conditions that a more robust kind of democratic oversight in India can be achieved, if accountability is enshrined in the Constitution as a long standing obligation rather than as an experimented once in five years during elections.

Keywords: Political accountability; constitutional democracy; India; United States; South Africa.

Introduction

After the elections, the constitution does not have a mechanism that holds the representatives accountable to the people. This loophole has promoted impunity of those in office, a more attitude of scepticism to democratic institutions among the citizens, and compelled the judicial system to provide the accountability gap. Indeed, the severity of the situation is emphasized by current statistics. ADR has reported that a high percentage of the MPs who were elected to the Lok Sabha in 2024 are the defendants in crimes most of which are serious allegations. The same tendency can also be observed in the appraisal of ADR on the state level and its examination of the ministers, as the percentage here is quite significant and has many sitting legislators, who are accused of criminal activities. The audits conducted by ADR on state cabinets and legislatures indicate the same trend among ministers and MLAs.[1] On the state level,

[1] Association for Democratic Reforms (ADR), Lok Sabha Elections 2024: 46% of Newly Elected MPs Face Criminal Cases (June 6, 2024), https://adrindia.org/content/lok-sabha-elections-2024-46-ofnewlyelectedmpsfacecriminalcase-report; see also Association for Democratic Reforms, Analysis of Current Ministers and the Union Council of Ministers (2025), https://adrindia.org/sites/default/files/Analysis_of_C

Kerala has been in the limelight on several occasions: several reports reveal that 19 out of the 20 Kerala MPs who have been re-elected recently are criminally charged and that courts all over the State have more than 390 cases pending against them, including the current and former MPs and MLAs, most of them several years old.[2] Through a series of recent rulings, the Kerala High Court has denounced the speed with which cases, including those involving incumbent and former legislators are investigated and prosecuted and has taken a hand in issues such as the alleged illegal tapping of phones and also evidence manipulation.[3] Certain actions of the Enforcement Directorate in purported KFC loan irregularities, police First Information Reports against some MLAs over forced release or obstruction of officers, and so forth, indicate the overlap of claims of misuse of office and money with wanting in-term accountability.[4] This kind of trends is observed in various other States. ADR's and media assessments record a high percentage of MPs and MLAs with criminal cases in Telangana, Odisha, Jharkhand, Uttar Pradesh, Maharashtra and Bihar, while ADR's ministerial review shows that many State cabinet members across the country are also facing pending criminal proceedings. This pattern highlights a major flaw in India's constitutional setup it does not require politicians to remain accountable while they are in office, which allows misconduct to continue until the next election and pushes the judiciary to step in. Against this backdrop, the study pursues three objectives first, to identify the constitutional gaps that prevent continuous accountability of elected representatives in India; second, to compare India's framework with the systems in the United States and South Africa, where impeachment, legislative oversight, mid-term electoral review and transparency mandates operate as regular accountability mechanisms; and third, to propose a constitutional model capable of embedding ongoing accountability beyond the five-year electoral cycle. These concerns lead to three key questions for this study: What explains India's tendency to treat elections as the main form of accountability instead of requiring representatives to remain answerable throughout their term? How do the U.S. and South Africa make sure that elected leaders are answerable while they are still in office? And what kind of constitutional changes could help India establish a system of continuous accountability without depending excessively on the judiciary?

The paper argues that democratic oversight without teeth is not an inevitable feature of Indian democracy but the product of constitutional design. It needs to see whether a constitutional change of episodic to continuous accountability can be sought by India, when the elections fail to ensure accountability and a comparative experience suggests so.

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[2] *Times of India*, 251 out of 543 Lok Sabha MPs face criminal cases, including 19 of 20 Kerala MPs, Feb. 11, 2025, https://timesofindia.indiatimes.com/india/251-out-of-543-lok-sabha-mps-face-criminal-cases-including-19-of-20-kerala-mps/articleshow/118127132.cms; New Indian Express, 391 cases against MPs, MLAs pending in Kerala courts, Sept. 25, 2025, https://www.newindianexpress.com/states/kerala/2025/Sep/25/391-cases-against-mps-mlas-pending-in-kerala-courts-262

[3] Times of India, Tampering with evidence: Kerala HC restrains trial court from passing order in case against ex-minister, Oct. 24, 2025, https://timesofindia.indiatimes.com/city/kochi/tampering-with-evidence-kerala-hc-restrains-trial-court-from-passing-order-in-case-against-ex-minister/articleshow/124788727.cms; *Times of India*, Kerala HC slams govt for failing to register phone-tapping case, Mar. 2025, https://timesofindia.indiatimes.com (report).

[4] Times of India, ED raids P V Anvar, driver's home (KFC loan probe), Oct. 2025, https://timesofindia.indiatimes.com/city/kozhikode/kfc-loan-ed-raids-p-v-anvar-drivers-home/articleshow/125493159.cms; Times of India, Forcible release of man from custody: MLA Jenish booked, Apr. 2025, https://timesofindia.indiatimes.com/city/kochi/forcible-release-of-man-from-custody-mla-jenish-booked/articleshow/121193399.cms

1.Conceptual Foundations of Political Accountability

Constitutional democracy relies on political accountability as it helps in ensuring that the exercise of government power is based on publicity and consent of the people. It compels the persons in power to explain why they made certain decisions and how they can make good use of the power entrusted to them and should face the repercussions where the power is misused.[5] The idea has its roots in the early popular sovereignty theories, in which rulers were not ruled, but rather delegated their authority by people. Accountability is not only considered a concept of ethics but it is also addressed as a required structural tool that enhances the functioning of the rule of law in the modern constitutional practice.[6] Academics typically define two complementary types of accountability, which are electoral accountability and continuous accountability. Electoral accountability is backward as the representatives are praised or punished at elections according to their performance. Ongoing accountability, however, involves supervision throughout the period of office, in the form of legislative oversight, impeachment, disclosure, ethics, and transparency laws, recall and forums of public participation.[7] Comparative constitutional law scholars tend to note that democracies achieve their optimal functioning when they include both election based and continuing forms of accountability. A loss of policy in elections results in the loss of control of the populace in power and usually the populace tends to exercise their power more carelessly and more recklessly, however, when the system maintains the control within the term, power tends to become more responsible and mindful.[8]

Constant accountability is also crucial in the maintenance of the doctrine of separation of powers. Under this doctrine, there is distribution of power between the Legislature, Executive and Judiciary in order to avoid concentration of power. Checks and balances are the functional aspect of separation of powers, which makes sure that every organ checks and is checked by the others.[9] As an example, the Executive is checked by the Legislature, the Executive administers the law within the constitutional framework and the Judiciary checks the lawfulness of the legislative and executive activity. Accountability in the system where elected branches lack adequate checks on themselves tends to shift to the courts, which adds to judicial encroachment in the political domain.[10] The democracy relying on judicial checks and balances can stand before the law, but it is a weaker democracy as the political arms cease to be responsible to themselves. Separation of powers is therefore strengthened in mature constitutional democracies by mechanisms which institutionalise day-to-day accountability. These are parliamentary oversight committees, impeachment processes, mid-term electoral review, laws which allow the people access to information, requirements of disclose assets and expenditures, codes of ethics to which the public bears office holders.[11] In the regions where they are well functioning, they minimize political impunity, misuse of discretion, and offer better control with regard to the utilization of public funds and the increase in citizen trust. Comparative evidence shows that democratic stability correlates not merely with the

[5] Understanding Accountability in Democratic Governance, OAPEN Library, https://library.oapen.org/bitstream/handle/20.500.12657/91679/213946.pdf

[6] Id.

[7] Democratic Oversight and Public Accountability, Northwestern University Law Review, https://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=1329&context=nulr

[8] Id.

[9] "Checks and Balances," Encyclopedia Britannica, https://www.britannica.com/topic/checks-and-balances

[10] Id.

[11] Mechanisms of Accountability in Constitutional States, OAPEN Library.

holding of elections, but with how accountability continues between elections.[12]

Elections decide who forms the government, but they do not automatically guarantee responsible conduct after a candidate takes office. This raises an important issue for constitutional analysis does the legal framework require those elected to remain answerable throughout the period they govern? The constitutional system of India then needs to be analysed on the electoral machine, as well as whether it instils perennial accountability or it fails to do so and then must constitutional amendment be implemented to bring back democratic checks and balances in the non-electoral times. Responsibility and whether it is constitutional to reform, are the questions as to whether there needs to be democratic accountability in times of non-election.

2. Political Accountability under the Indian Constitution

2.1 Elections as the Dominant Accountability Mechanism in India

The constitutional structure of India places elections as the major, and near the only, way in which political responsibility is expected to function. The constitutional provisions are concerned mostly with the manner of conducting the elections, the composition of the legislatures as well as the qualification and disqualification of the candidates based on the belief that democratic control must be achieved through periodic electoral choice.[13]In practice, accountability is deferred until the next election, where voters are asked to evaluate an entire term of governance through a single act of approval or disapproval. But this assumption does not pass the realities of modern day governance as it is because a decision made in the initial days of a term can have irreversible effects years before the next election is held. The victims of government abuses, failure to perform their mandate, or unethical behaviour by their representatives do not have an avenue that is clearly provided by the constitution to air their complaints when such people are in office. Consequently, elections are a delayed judgment instead of a form of perpetual checks and balances over the political power.[14] Parliamentary practices have been mentioned as the additional accountability mechanisms but their effect is minimal. Questions hour, motions like Calling Attention and legislative debates are mainly meant to question the executive and not the individual legislators.[15] These practices operate through internal legislative rules and are heavily shaped by political conditions. Their effectiveness is frequently weakened by disruptions, adjournments and the constraints of party discipline, and there is no constitutional sanction for evasion or non-participation by representatives. Consequently, such practices cannot substitute for a constitutional obligation requiring elected officials to remain answerable to the public on a continuing basis. The prevailing nature of elections as the only significant accountability process has also promoted a lone practice of democratic accountability. During off-election periods, the representatives are usually encouraged to focus more on electoral tactics, coalition politics, and party devotion than on long-term commitment to their constituencies. This reinforces a political culture in which accountability is treated as an occasional event rather than an ongoing

[12] *Constitutional Accountability and Democratic Legitimacy*, Oxford Constitutional Studies.

[13] The Constitution of India, arts. 324–329; Representation of the People Act, 1951. Election Commission of India, Constitutional Provisions on Elections,https://eci.gov.in/elections/constitutional-provisions/ Ministry of Law and Justice, Representation of the People Act, 1951, https://legislative.gov.in/sites/default/files/A1951-43.pdf

[14] Pratap Bhanu Mehta, The Burden of Democracy (Penguin India, 2003); Adam Przeworski et al., Democracy and the Market (Cambridge University Press, 1991). Cambridge University Press overview: https://www.cambridge.org/core/books/democracy-and-the-market

[15] Lok Sabha Secretariat, Rules of Procedure and Conduct of Business in Lok Sabha: https://loksabha.nic.in/rules/rules.pdf

democratic duty. The Constitution's silence on in-term accountability therefore creates a structural gap that allows significant discretion to be exercised without immediate democratic scrutiny, laying the groundwork for many of the governance failures examined in the sections that follow.[16]

2.2 Lack of Constitutionally Required In-Term Accountability in India

As much as the Indian Constitution provides a comprehensive framework for the functioning of electoral democracy, it remains largely silent on mechanisms that would keep elected representatives accountable throughout the period they hold office. Apart from provisions relating to elections, disqualifications, and legislative procedure, the constitutional text does not impose any affirmative obligation on Members of Parliament or State Legislatures to explain their conduct, justify policy decisions, or account for the exercise of public authority while their term continues.[17]

The limited sense of accountability that exists within the legislative process operates more through conventions and political practices than through binding constitutional mandates. Instruments such as Question Hour, Zero Hour, and parliamentary committee oversight are frequently cited as accountability tools; however, their effectiveness depends heavily on party discipline, political will, and the smooth functioning of the House.[18] In practice, frequent adjournments, disruptions, and the executive's control over legislative time significantly dilute their impact. More importantly, these mechanisms are designed to scrutinise government action collectively rather than to hold individual legislators personally answerable for misconduct, negligence, or misuse of public resources.

A further structural limitation lies in the absence of meaningful consequences for non-performance or unethical conduct during a representative's tenure. Elected officials are not subject to constitutional sanctions for persistent absenteeism, failure to represent constituents, or conduct that undermines public trust, unless such conduct results in disqualification or criminal conviction.[19] Criminal cases against legislators often remain pending for years before trial or conclusion. This weakens the deterrent force of law and reinforces the perception that accountability is effectively deferred until the next election, regardless of the seriousness of conduct in the interim.

The constitutional emphasis on elections as the principal site of accountability has also shaped political behaviour. Electoral strategy, coalition management, and party loyalty frequently take precedence over sustained engagement with constituents between elections. Representatives often take decisions with long-term consequences such as allocation of public funds, administrative appointments, or policy priorities without providing meaningful explanations to the electorate.[20] The absence of an in-term accountability forum means that public grievances accumulate without resolution,

[16] Upendra Baxi, The Crisis of the Indian Legal System (Oxford University Press, 1982); Nick Robinson, Expanding Judiciaries: India and the Rise of the Good Governance Court,8 Washington University Global Studies Law Review 1 (2009): https://openscholarship.wustl.edu/law_globalstudies/vol8/iss1/2/

[17] Constitution of India, Articles 79–122, 324–329. Ministry of Law and Justice, Constitution of India: https://legislative.gov.in/constitution-of-india/

[18] P.D.T. Achary, Parliamentary Accountability in India, Journal of the Indian Law Institute, Vol. 45, 2003, pp. 1–10.https://www.jstor.org/stable/43951842

[19] Law Commission of India, 244th Report on Electoral Disqualifications, 2014. https://lawcommissionofindia.nic.in/reports/Report244.pdf

[20] Milan Vaishnav, When Crime Pays: Money and Muscle in Indian Politics, Yale University Press, 2017, pp. 63–69. https://yalebooks.yale.edu/book/9780300224725/when-crime-pays/

contributing to growing distrust in representative institutions.

Consequently, gaps in political accountability have increasingly been filled through judicial intervention. Courts have stepped in to monitor investigations against legislators, direct expeditious trials, and regulate aspects of political conduct.[21] While such interventions may preserve legality in individual cases, they also reveal a deeper institutional imbalance. When courts become the primary mechanism for enforcing political accountability, democratic responsibility shifts away from elected bodies themselves. This pattern suggests that the weakness lies not merely in political culture, but in constitutional design, which fails to embed accountability as a continuous obligation attached to public office.

2.3 Political Accountability Judicialisation and its Costs Democratic

Lack of strong, constitutionally entrenched systems of accountability of politicians in office has over a period seen the responsibility of scrutiny devolve to the judiciary. In India, there has been growing demand to resort to courts so that investigations against elected representatives are monitored, prosecutions are watched over and directions are given towards curbing misconduct in the office.[22] This is not a sign of judicial ambition but institutional need: in which, when the political arms cannot discipline themselves, the judicial arm becomes the only possible avenue of maintaining legality.[23]

The most obvious forms of judiciary expansion have been in cases relating to criminal prosecution against legislators. Repeated directives by the Supreme Court to have MPs and MLAs tried speedily, the creation of special courts, and periodic status reporting of cases pending courts have clearly increased the procedural discipline, but the system of checks and balances reveals a lack of internal mechanisms to deal with misconduct and has been demonstrated to require judicial stimulation.[24]

There are high democratic costs associated with the dependence on courts to provide accountability. The courts are not meant to decide on the political judgment or performance of a representative, but only on the matter of legality. Accountability is reactive, slow, and case-oriented when it is supported by litigation, which makes litigation the best remedy, unlike representative institutions that are nearer to democratic engagement.[25] This alienates responsibility to the voters and makes what is supposed to be a political challenge a legal one.

Also, there is a danger of making the notion of political responsibility extrinsic to politics where it remains under the continued judicial participation. There is also a risk that legislatures and executives will end up considering accountability an external requirement, not an internal one, a culture of parliament and a reason to embrace ethical self-regulation.[26] It also, over time, plays into the accusations of judicial overreach which places courts in a politically sensitive position and this can lead to the undermining of their institutional legitimacy.

[21] Ashwini Kumar Upadhyay v. Union of India, (2020) 13 SCC 216; Association for Democratic Reforms, Analysis of Pending Criminal Cases against MPs and MLAs. https://adrindia.org/content/pending-criminal-cases-against-mps-mlas

[22] Nick Robinson, Expanding Judiciaries: India and the Rise of the Good Governance Court, 8 Washington University Global Studies Law Review 1 (2009). https://openscholarship.wustl.edu/law_globalstudies/vol8/iss1/2/

[23] Upendra Baxi, The Crisis of the Indian Legal System 137–145 (Vikas Publishing 1982)

[24] Public Interest Foundation v. Union of India, (2019) 3 SCC 224; Supreme Court of India directions on criminal cases against MPs and MLAs.https://main.sci.gov.in/supremecourt/2011/33042/33042_2018_Judgement_25-Sep-2018.pdf

[25] Mark Tushnet, Accountability and Constitutional Design, 14 International Journal of Constitutional Law 1 (2016). https://academic.oup.com/icon/article/14/1/1/2576075

[26] Pratap Bhanu Mehta, The Burden of Democracy 98–105 (Penguin India 2003)

Experience with comparative constitutionalism indicates that successful democracies reduce this tension as much as possible by institutionalising accountability in the political system. Where constitutions are of a kind to put clear responsibilities of transparency, accountability, and check in office of a representative, courts perform a complementary but not a corrective role.[27] It is necessary to tackle this imbalance by building a strong political accountability where this originated, instead of still depending on the courts to be the main custodians of democratic accountability.

3. Comparative Constitutional Models of Political Accountability

3.1 Political Accountability in the United States

The constitutional regime of the United States is premised on the premise that political accountability should be in place not just at the time of elections. Though elections continue to be a core element of democratic legitimacy, the U.S. Constitution and its institutional arrangements allow challenging the elected representatives at multiple points throughout their term in office by dispersing responsibility among institutions.[28]

The organization of staggered and midterm elections can be considered one of the most important peculiarities of the U.S. system. Elections of the House of Representatives are conducted after every other two-year period, which guarantees that the legislative behaviour of members of congress is subject to frequent scrutiny by the people who elect them.[29] The senators, too returned to a six-year term, are staggered in their term to make electoral responsibility unchanged through time in politics.[30]

Another key tool of in-term accountability is legislative control of the executive. The congressional committees have immense powers in summoning, demanding, and investigating executive actions, which have been historically effective in highlighting lack of accountability in the use of public funds, misuse of power and failure of policies.[31] Budgetary control also supports this system in that Congress has to pass appropriations thus providing legislators with the authority to either amend or deny funding based on executive behaviour.[32]

Impeachment is a constitutional process that gives an opportunity to tackle an official with serious wrongdoings as they are still in power. Impeachment of the President, as well as federal judges and other civil officers, is sanctioned by the Constitution notwithstanding its inherently political nature since its existence serves as a deterrent and enforces the principle that even high-level offices cannot go beyond the law.[33]

Openness and access to information by the general people are also very crucial in the accountability process of the U.S. Laws including the Freedom of Information Act allow citizens, journalists and civil society organisations to question the governmental decision-making process on an ongoing basis.[34] Compulsory financial reporting, ethical guidelines

[27] Tom Ginsburg & Rosalind Dixon, Comparative Constitutional Law 412–420 (Edward Elgar 2011).

[28] James Madison, Federalist No. 51. https://avalon.law.yale.edu/18th_century/fed51.asp

[29] U.S. Constitution, Article I, Section 2. https://constitution.congress.gov/constitution/article-1/

[30] U.S. Constitution, Article I, Section 3. https://constitution.congress.gov/constitution/article-1/

[31] Louis Fisher, Congressional Oversight: An Essential Element of Checks and Balances, 20 Boston University Public Interest Law Journal 1 (2010). https://www.bu.edu/law/journals-archive/pi/wp-content/uploads/sites/8/2010/01/Fisher.pdf

[32] Kate Stith, Congress' Power of the Purse, 97 Yale Law Journal 1343 (1988). https://digitalcommons.law.yale.edu/ylj/vol97/iss7/3/

[33] U.S. Constitution, Article II, Section 4. https://constitution.congress.gov/constitution/article-2/

[34] Freedom of Information Act, 5 U.S.C. 552. https://www.justice.gov/oip/freedom-information-act-5-usc-552

and lobbying laws further limit the abuse of the public office. These are measures that accountability should not be held by the institutional actors only but shared by the people.[35]

All these mechanisms combine to establish a rich system of responsibility that runs during the time tenure of elected leaders. Although political dysfunction is not entirely absent in the U.S system, the constitutional system acknowledges that democratic checks and balances need to exist between elections. This is unlike in the Indian model whereby comparable in-term mechanisms do not exist or do not exist as a matter of constitutional force.

3.2 South Africa Political Accountability

The constitutional system of South Africa is more explicit and normative towards political accountability, as it regards answerability as a constitutional obligation and not as a political agreement. The republic of South Africa constitution, 1996, was written after the apartheid era with a definite aim of ensuring that no government power was concentrated and misused. Consequently, accountability, responsiveness and openness is not a given value attached to it but an articulation of constitutional values under which all the powers of the people elected are placed in the hands of the people.[36] The articulation of foundational values, stated in Section 1 of the South African Constitution, declaring accountability, responsiveness, and openness as the key principles of the state is a defining feature of the constitution, which not only serves as an ideal, but also guides the interpretation of all the provisions of the constitution, and creates a continuous obligation on those who are in the public office.[37] Contrary to the systems in which accountability is implied through institutional practice, the Constitution in South Africa stipulates that the accountability of the public officials must be exercised by them in a way that can be explained, justified and defended until they are out of office.

South Africa The parliamentary oversight is constitutionally entrenched and is designed to provide sustained oversight of the executive. Articles 55 and 92 of the Constitution imply that the National Assembly must establish mechanisms that would ensure a check and balance on the exercise of executive power and will ensure accountability of the Cabinet members, both on an individual and collective basis, to respond and justify the policy decisions before Parliament.[38] Failure to accomplish this could attract political repercussions such as no confidence motion and expulsion of office.

This accountability framework has been enhanced by judicial interpretation. It has been repeatedly stressed by the Constitutional Court that the exercise of public power must be lawful, reasonable, and in good faith, and that the public officials are not free of responsibility in the instances when they failed to act within the scope of the norms, or when they were simply unwilling to adhere to them.[39] The Court has not been silent on the fact that accountability is a constant and continuous duty of the public office which is not to be transferred to other future elections. This jurisprudence strengthens the constitutional requirement that representatives should be held accountable to Parliament and the people.

[35] U.S. Office of Government Ethics, Financial Disclosure Guide. https://www.oge.gov/web/oge.nsf/Resources/Public+Financial+Disclosure

[36] Heinz Klug, Constitution Making, Maintenance and Change in South Africa, 8 International Journal of Constitutional Law 1 (2010). https://academic.oup.com/icon/article/8/1/1/649655

[37] Constitution of the Republic of South Africa, 1996, Section 1 https://www.justice.gov.za/legislation/constitution/SAConstitution-web-eng.pdf

[38] Constitution of the Republic of South Africa, 1996, Sections 55 and 92. https://www.justice.gov.za/legislation/constitution/SAConstitution-web-eng.pdf

[39] Economic Freedom Fighters v. Speaker of the National Assembly, 2016 (3) SA 580 (CC). https://collections.concourt.org.za/handle/20.500.12144/3480

The independent constitutional institutions also have a primary role in maintaining in-term accountability. The Chapter 9 of the Constitution provides in nature; establishment of the Bodies like the Public Protector, Auditor-General and the Human Rights Commission, which have the capacity to aid in constitutional democracy by having the investigative and reporting powers, enabling them to constantly examine the executive and legislative actions.[40] Although their findings are not necessarily in the punitive nature, they have political and legal repercussions that force the officials in the government to act and rectify wrongdoing.

The South African model is the way to show how the design of the constitution can shift the accountability in a periodical electoral event to a long-term, everyday democratic requirement. The system minimizes the use of courts as correctional institutions and enhances political accountability within the representative institutions themselves by incorporating answerability into constitutional text, institutional practice, and judicial interpretation. This method is a keen contrast to the Indian model and it gives us a useful comparative understanding of how the constitutional design can influence democratic behaviour between elective periods.

4. Comparative Analysis of Political Accountability: India, the United States, and South Africa

Comparative analysis of India, the United States and South African countries indicates that variations in political accountability concern not as much with democratic intent but rather with constitutional design. All the three systems deal with elections as a source of legitimacy but differ radically on whether accountability is to be continued when the representative takes up office. United States and South Africa incorporate a series of, constitutionally entrenched systems, which are put to use during the term of a representative, whereas India is largely dependent on elections and informal parliamentary traditions, where one is granted length of time in office with minimal oversight.[41]

In the US, accountability is structurally unbroken. The existence of short electoral terms of the House of Representatives, the staggering of Senate terms, and the possibility of impeachment help keep elected officials in the presence of political punishment throughout their tenure.[42] Legislative oversight in the form of committees, budgetary authority and investigative power enable Congress to monitor executive behavior on a continuing basis.[43] Transparency legislation, especially that which allows the people to access the government records, further make the institutions accountable to the citizens in the same way.[44]

South Africa is even more explicit in its approach to constitutionalism. The declared values of the state are accountability, responsiveness, and openness and apply and bind all the public office-holders during their service period, and the parliamentary oversight is not just a procedure but a constitutional requirement, the executive representatives are to explain their activities on a regular basis to the legislative body. This framework has been supplemented through judicial interpretation, which views accountability as an ongoing obligation that comes with holding a public office, and is not a political aspiration to be realised upon the end of the

[40] Constitution of the Republic of South Africa, 1996, Chapter 9. https://www.justice.gov.za/legislation/constitution/SAConstitution-web-eng.pdf

[41] Mark Tushnet, Accountability and Constitutional Design, 14 International Journal of Constitutional Law 1 (2016). https://academic.oup.com/icon/article/14/1/1/2576075

[42] U.S. Constitution, Articles I and II. https://constitution.congress.gov/

[43] Freedom of Information Act, 5 U.S.C. § 552.https://www.justice.gov/oip/freedom-information-act-5-usc-552

[44] Constitution of the Republic of South Africa, 1996, Section 1. https://www.justice.gov.za/legislation/constitution/SAConstitution-web-eng.pdf

term of office.[45] This framework is further institutionalised by independent constitutional institutions, like the Public Protector and Auditor-General, which imply that scrutiny cannot be avoided during the term of office.[46]

India in contrast puts a disproportionate emphasis on electoral accountability. The Constitution carefully controls elections and legislative make up, but it does not set any personal, enforceable duty on representatives to be accountable in their term of office. The parliamentary institutions of Question Hour and committee scrutiny operate more by convention and political will than constitutional decree, and without sanctions against non-performance or misconduct by an in-term legislator, there is no sanction, and serious criminal charges, such as bringing criminal proceedings against sitting legislators has become possible without political penalty.[47]

The comparative expression shows that those countries that provide democratic oversight are the most robust where accountability is a constitutional requirement that is ongoing. The systems where elections are the dominant factor allow the unmonitored periods of power and the risk of abuse and disconnection of the population. In comparison, those constitutions that spread responsibility in the institutions and time lessen dependency on judicial action and augment democratic duty in the representative organizations alone. As the experience of India indicates, democratic oversight will not be a sustained phenomenon but will only be episodic and judicial mediation unless a constitutional reform is introduced to entrench in-term accountability.[48]

5. Constitutional Reform Proposals for Embedding Continuous Accountability in India

The comparative analysis shows that the lack of accountability in India is not a necessary characteristic of representative democracy, but was the result of constitutional design.[49]To solve this shortfall, reforms must incorporate accountability as an ongoing responsibility of holding public office and not a periodically judged electoral or judicial corrective action.[50] Any reform proposal should uphold the constitutional framework, federalism and parliamentary system in India and enhance the mechanisms that should be in place when a representative is in power.[51]

The first reform is that it should be in the constitution that there is a duty of in-term accountability of elected representatives. The Constitution might explicitly demand that the Members of Parliament and Legislatures at the State level will be held responsible with regard to their actions, decision-making and consumption of the state resources during their tenure.[52] Defining accountability as a constitutional responsibility would require Parliament and State Legislatures to come up with internal rules,

[45] Economic Freedom Fighters v. Speaker of the National Assembly, 2016 (3) SA 580 (CC). https://collections.concourt.org.za/handle/20.500.12144/3480

[46] Constitution of the Republic of South Africa, 1996, Chapter 9. https://www.justice.gov.za/legislation/constitution/SAConstitution-web-eng.pdf

[47] P.D.T. Achary, Parliamentary Accountability in India, Journal of the Indian Law Institute, Vol. 45 (2003).

[48] Association for Democratic Reforms, Analysis of Criminal Cases against MPs and MLAs.https://adrindia.org/

[49] Mark Tushnet, Accountability and Constitutional Design, 14 International Journal of Constitutional Law 1 (2016). https://academic.oup.com/icon/article/14/1/1/2576075

[50] Pratap Bhanu Mehta, The Burden of Democracy 90–105 (Penguin India 2003)

[51] Granville Austin, Working a Democratic Constitution: The Indian Experience 102–115 (Oxford University Press 1999)

[52] Constitution of the Republic of South Africa, 1996, Section 1 (comparative reference). https://www.justice.gov.za/legislation/constitution/SAConstitution-web-eng.pdf

procedures, and sanctions to implement this responsibility.[53]

Second, the parliamentary oversight systems must be strengthened through the constitution. Although the devices like Question Hour and committee questioning are already established, they cannot work since they are politically disrupted and are not enforceable.[54] Constitutional protection of such major oversight functions as compulsory committee examination of government expenditure, attendance requirements and disclosure requirements would enhance legislative oversight without changing the parliamentary form of government.[55]

Third, the norms of transparency and disclosure must be constitutional in nature. Elected authorities should be required to disclose their assets, liabilities, and conflicts of interest periodically and compulsorily during their term and this would improve this as well as discourage the erosion of these provisions by regular laws.[56] Open access to information pertaining to the legislative behaviour and state spending should be viewed as a democratic right as opposed to an administrative compromise.[57]

Fourth, there should be more constitutional connection with political responsibility of independent accountability institutions. The existing role of bodies like the Comptroller and Auditor General and Election Commission can be significant, but not directly politically significant, reports on audit and accountability need to be formally discussed by legislatures and responses and corrective action registered.[58] This would transform the findings of oversight into responsive political responsibility as opposed to mere record keeping.[59]

Lastly, reform should also seek to minimize over rejection to judicial intervention. Courts must not take the place of political decisions but be protectors of legality.[60] The necessity to constantly oversee ordinary political malfeasance by the judiciary would be reduced by embedding this continuous accountability into constitutional text and institutional practice, and would empower both the judiciary and the democratic responsibility.[61]

These suggestions are not aimed at undermining the electoral accountability but to complement it. Political leadership would be still decided through elections and constitutional provisions would counterbalance the power between elections, which is liable to questions, clarification, and action.[62] By introducing accountability as a continuous constitutional obligation, democratized oversight would be real and the structural inefficiencies that have always been the

[53] P.D.T. Achary, Parliamentary Accountability in India, Journal of the Indian Law Institute, Vol. 45 (2003)

[54] Lok Sabha Secretariat, Parliamentary Procedures and Practices in India. https://loksabha.nic.in/

[55] Louis Fisher, Congressional Oversight: An Essential Element of Checks and Balances, 20 Boston University Public Interest Law Journal 1 (2010). https://www.bu.edu/law/journals-archive/pi/wp-content/uploads/sites/8/2010/01/Fisher.pdf

[56] C. Raj Kumar, Corruption and Human Rights in India 85–92 (Oxford University Press 2011).

[57] Right to Information Act, 2005 (India).https://rti.gov.in/

[58] Comptroller and Auditor General of India, Duties, Powers and Conditions of Service Act, 1971. https://cag.gov.in/

[59] OECD, Parliamentary Oversight and Accountability Mechanisms (2014). https://www.oecd.org/gov/ethics/parliamentary-oversight.htm

[60] Upendra Baxi, The Crisis of the Indian Legal System 137–145 (Vikas Publishing 1982)

[61] Nick Robinson, Expanding Judiciaries: India and the Rise of the Good Governance Court, 8 Washington University Global Studies Law Review 1 (2009). https://openscholarship.wustl.edu/law_globalstudies/vol8/iss1/2/

[62] U.S. Constitution, Article I & II (comparative reference).https://constitution.congress.gov/

hallmark of the political system in India would be resolved.[63]

Conclusion

This paper has suggested that the ineffectiveness of political accountability in India is not a by-product of the complexity of democracy in India but it is a direct product of constitutional style. The Constitution allows elected officials to abuse their power through long intervals of unquestioned access to office by viewing elections as the most, and nearly the only, means of accountability. Although elections certainly are the key to democratic legitimacy, they are inappropriate to be the only tool of managing the everyday use of power. When made subject to the next electoral, democratic responsibility is deprived of much of its corrective and preventive usefulness. The comparative analysis that has been conducted in this paper has shown us that with a stronger accountability, representative democracy is not necessarily abandoned and that there is no necessity to empower unelected institutions, at the cost of the popular choice. The two distinct approaches to the implementation of accountability in constitutional structures albeit in different ways but in a learning, manner can be demonstrated in the United States and South Africa. Both systems embrace elections as the basis of legitimacy, yet they rebuff the idea that only electoral approval is effective in checking up on the representatives after they get the office. They instead share the blame over time and institutions so that we can have a contestability and accountability of the government over the term of the representative. The experience of India shows how expensive it can be not to do so. Lack of constitutionally required in-term accountability has promoted the political culture of responsibility deferring instead of exercising. Until voters can be voted out, representatives are usually not much punished when they are found being errant or performing poorly or with lapses in ethics. This obstacle has enabled critical accusations to remain unaddressed over many years, weakening the trust of the citizenry on institutional representation structures and strengthening the beliefs on impunity in government. Increasing dependence of courts to supervise investigations and faster trials and curb political misconduct are not indicators of democratic power, but signs of institutional imbalance. This judicialization of accountability is in itself a threat on democracy. Courts are not meant to determine the politics or the performance of the representatives. Litigation as the main form of imposing accountability makes it reactive, disjointed and unavailable to the common citizen. More to the point, it shifts the accountability of the electoral institutions to the courts undermining the idea that the decision of democracy is to be carried out through politics. With time, such a dynamic poses a risk of making the concept of accountability an extrinsic burden that courts impose, instead of an intrinsic duty of public office. There is a need to critically review the Indian constitutional structure. The sustained stress on electoral accountability in the absence of similar mechanisms of consistent follow-up scrutiny cannot be sustained any longer in consideration of the realities of governance in the modern context. Elections have no way of repairing damages that have been caused, undo wrongful use of social resources and healing the trust once it is broken in the course of a tenure. A democracy that takes a span of five years before rectifying the wrong is a democracy that is tolerant of avoidable democratic degeneration. The viewpoint adopted by this paper is that meaningful reform does not consist in increasing judicial control or adding ad hoc statutory restraint, but in coming to appreciate accountability as an ongoing constitutional duty. The adoption in-term accountability in the text of the constitution would make legislatures and executives internalise democratic accountability instead of avoiding it. Greater parliamentary scrutiny, constitutional safeguarded transparency requirements and organized consultation with autonomous accountability organizations would enable the

[63] Granville Austin, The Indian Constitution: Cornerstone of a Nation 320–330 (Oxford University Press 1966).

political force to be contested throughout its nature but not examined exceptively. Reforms of this kind would not jeopardise the electoral democracy; they would perfect it. Elections would still be used to decide on who will be in charge but the constitutional accountability would be used to control the way the governing is done between the elections. In the absence of this change, the democratic control in India will be in a state of episodic control, judicially mediated and weak. Through it the accountability may be re-established in its proper place in representative institutions and this gives credence to the people and puts the constitutional practice in line with the main offering of the democracy that power is not wielded above, but that it is always answerable to the people.

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USE OF ARTIFICIAL INTELLIGENCE BY TERRORIST ORGANISATIONS: EMERGING THREATS TO INDIAN CYBERSECURITY AND NATIONAL SECURITY

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ABSTRACT

The increasing convergence of Artificial Intelligence (AI) with terrorism presents a multidimensional threat to India's national security and cybersecurity frameworks. AI's dual-use character enables terrorist organizations to exploit intelligent systems for surveillance evasion, radicalization, cyberattacks, and misinformation campaigns. This paper critically examines the emerging applications of AI by non-state actors and explores how these capabilities are transforming the nature, scale, and anonymity of terrorist operations in the Indian context. It assesses key incidents, including the use of deepfakes, AI-powered drones, and AI-enhanced malware targeting Indian critical infrastructure. The paper further identifies existing legal and institutional gaps, including the limitations of the Information Technology Act, 2000, and the absence of AI-specific legislative mechanisms. While India has initiated several policy frameworks through CERT-In, NITI Aayog, and the Digital Personal Data Protection Act, the paper argues for the urgent need to adopt a robust, anticipatory, and ethical legal architecture to govern AI deployment and mitigate its weaponization by terrorist entities. Comparative insights from jurisdictions such as the USA, Israel, and the EU highlight the importance of coordinated intelligence, legal innovation, and international cooperation in countering AI-enabled terrorism.

Keywords: Artificial Intelligence; Cybersecurity; Terrorism; National Security; Deepfakes; India; Facial Recognition; Autonomous Weapons; IT Act; AI Governance.

I. INTRODUCTION

Artificial Intelligence (AI) has emerged as one of the most transformative technologies of the 21st century, revolutionizing sectors ranging from healthcare to defence. However, the dual-use nature of AI makes it susceptible to malicious exploitation, including by non-state actors such as terrorist organizations. With the proliferation of autonomous systems, intelligent surveillance tools, and machine learning-driven malware, AI has opened a new frontier in the domain of asymmetric warfare and cyberterrorism. The sophistication and scalability enabled by AI have significantly enhanced the capacity of terrorist networks to plan, coordinate, and execute operations while remaining undetected by conventional counterterrorism frameworks.[1]

India, with its vast digital ecosystem, strategic geopolitical location, and ongoing regional security challenges, faces a heightened vulnerability to AI-assisted terrorism. The integration of AI in national security infrastructure remains at a nascent stage, and the legal regime surrounding it is underdeveloped. While India's cybersecurity strategies and national security doctrines have evolved over the years, they often fall short of addressing the complexities posed by AI-powered threats.[2]

Recent instances—such as the use of AI-enhanced drones by insurgents[3], deepfake-based propaganda

[1] I. Syllaidopoulos, K. Ntalianis & I. Salmon, "A Comprehensive Survey on AI in Counter-Terrorism and Cybersecurity: Challenges and Ethical Dimensions", *IEEE Access*, Vol. 13, 2025, pp. 112201–112222.

[2] S. Nigam, "Exploring the Impact of Artificial Intelligence on Indian National Security Dynamics", *Int'l JL Mgmt. & Human.*, Vol. 31, 2024, p. 265

[3] N. Vashishtha, "Artificial Intelligence-Assisted Terrorism: A New Era of Conflict", *Vivekananda International Foundation*, August 29, 2023, available

aimed at inciting communal tensions[4], and targeted AI-driven cyberattacks on government servers[5]—signal a shift from traditional terrorism to technologically augmented warfare. These developments call for a critical assessment of India's legal preparedness, technological resilience, and policy foresight to combat emerging threats.

This paper aims to explore the evolving use of AI by terrorist organizations and critically assess the vulnerabilities it creates for India's national security and cybersecurity framework. It further identifies legislative gaps, proposes legal and policy reforms, and evaluates international best practices that can inform India's response to this new generation of terrorism.

II. UNDERSTANDING AI & ITS MALICIOUS POTENTIAL

Artificial Intelligence (AI) refers to the ability of machines and algorithms to perform tasks that typically require human intelligence, such as decision-making, learning, problem-solving, and pattern recognition.[6] It is a broad domain encompassing technologies like machine learning (ML), natural language processing (NLP), computer vision, and robotics. While AI holds vast potential for economic development and technological advancement, its dual-use nature raises significant security and ethical concerns, especially when exploited by malicious actors.

One of the most critical features of AI is its *autonomy*—the ability to act independently without direct human input. In the context of cybersecurity and terrorism, this autonomy can be manipulated for automation of attacks, adaptive evasion from surveillance systems, and self-learning malware that evolves with its environment.[7] Terrorist groups and extremist networks are now exploring AI to improve target selection, camouflage operations, and disseminate ideologies at scale.

The malicious applications of AI are numerous and evolving. These include:

- AI-driven disinformation campaigns: Through tools such as deepfakes, AI can produce hyper-realistic but fake video or audio content, which may be used to incite communal violence, mislead authorities, or manipulate elections.[8]
- Autonomous weapon systems: Drones or robotic devices powered by AI can be programmed to carry explosives or monitor high-value targets without human oversight.[9]

at https://www.vifindia.org/article/2023/august/29/Artificial-Intelligence-assisted-Terrorism-A-New-Era-of-Conflict (last visited on Sept. 28, 2025).

[4] A. Gupta & A. Guglani, "Scenario Analysis of Malicious Use of Artificial Intelligence and Challenges to Psychological Security in India", in *Proceedings of the Malicious Use of AI and Psychological Security Conference*, Springer, 2023, pp. 195–208.

[5] MA Goffer, MS Uddin & SN Hasan, "AI-Enhanced Cyber Threat Detection and Response: Advancing National Security in Critical Infrastructure", *Journal of Cybersecurity and Critical Infrastructure*, 2025, available at https://www.researchgate.net/publication/390898054 (last visited on Sept. 28, 2025).

[6] I. Syllaidopoulos, K. Ntalianis & I. Salmon, "A Comprehensive Survey on AI in Counter-Terrorism and Cybersecurity: Challenges and Ethical Dimensions", *IEEE Access*, Vol. 13, 2025, pp. 112201–112222.

[7] PK Srivastava, BS Roohani, R Aggarwal et al., "Implementation Challenges Faced by Artificial Intelligence for National Security", in *Cyber Security*, Taylor & Francis, 2024, pp. 225–239.

[8] A. Gupta & A. Guglani, "Scenario Analysis of Malicious Use of Artificial Intelligence and Challenges to Psychological Security in India", in *Proceedings of the Malicious Use of AI and Psychological Security Conference*, Springer, 2023, pp. 195–208.

[9] N. Chitadze, "Artificial Intelligence, Terrorism, and Cyber Security: Challenges and Opportunities", in *Machine Intelligence Applications in Cyber-Risk Management*, IGI Global, 2025, pp. 161–178.

- AI-enhanced cyberattacks: Intelligent malware, phishing bots, and denial-of-service attacks can exploit vulnerabilities at faster and more devastating scales than traditional hacking.[10]
- Facial recognition spoofing: Terrorist actors may use AI to defeat biometric systems and surveillance infrastructure.[11]
- Recruitment and radicalization: AI tools are being deployed to personalize extremist content using NLP algorithms, enabling deeper psychological manipulation.[12]

As India rapidly digitizes its infrastructure under initiatives such as *Digital India* and *Smart Cities Mission*, its exposure to AI-driven threats increases. Yet, the national security and legal architecture remains under-equipped to pre-empt or mitigate such threats. In the absence of tailored legal safeguards, the proliferation of malicious AI could destabilize India's internal security and pose transnational risks.

Understanding the technological underpinnings and potential misuse of AI is therefore essential—not only for law enforcement and intelligence agencies—but also for lawmakers and civil society. A nuanced legal and policy discourse must evolve in parallel with technological advancements to ensure India's sovereignty and public safety are not compromised.

III. EMERGING TERRORIST USES OF AI

The evolving landscape of terrorism in the 21st century reflects an increasing dependence on cutting-edge technologies, with Artificial Intelligence (AI) at the core of these disruptive changes. Traditionally, terrorist groups relied on rudimentary means for communication, surveillance, and propaganda. However, the digitization of warfare and the democratization of AI tools have drastically transformed the operational capabilities of non-state actors. AI now offers them the capacity to operate with precision, anonymity, and psychological influence—characteristics that challenge conventional national security frameworks and render traditional counter-terrorism mechanisms inadequate. Terrorist organizations across the globe, including those operating in South Asia, have begun leveraging AI across various stages of the terrorist value chain: from recruitment and financing to surveillance evasion, operational coordination, and attack execution. The convergence of AI with cyber capabilities has created what experts call "intelligent terrorism"—a paradigm shift that blends algorithmic learning with human malice.[13]

Terrorist Applications of AI

1. AI-Enhanced Surveillance Evasion

AI-powered encryption and anti-surveillance tools are increasingly being used by terrorist organizations to obscure their digital footprints. By integrating machine learning algorithms into their communication channels, terrorists can identify surveillance patterns and modify their behavior in real-time. These systems may even employ adversarial AI techniques to confuse and mislead national surveillance systems.[14] Such applications

[10] MA Goffer, MS Uddin & SN Hasan, "AI-Enhanced Cyber Threat Detection and Response: Advancing National Security in Critical Infrastructure", *Journal of Cybersecurity and Critical Infrastructure*, 2025, available at https://www.researchgate.net/publication/390898054 (last visited on Sept. 29, 2025).

[11] A. Verma, "Growth of Artificial Intelligence in the Indian Legal System and Its Impact on Cyber Terrorism in India", *LawFoyer Int'l J. Doctrinal Legal Research*, Vol. 2, 2024, pp. 132–147.

[12] SF Abiade, "AI Sovereignty and Security: Governing AI-Enabled Counterterrorism in Telecom Networks in the Global South", *Journal of Engineering Technology Research and Ethics*, 2024, pp. 53–68.

[13] R. Montasari, *Countering Cyberterrorism: The Confluence of Artificial Intelligence, Cyber Forensics and Digital Policing in US and UK National Cybersecurity*, Springer, 2023, pp. 18–27.

[14] A. Verma, "Growth of Artificial Intelligence in the Indian Legal System and Its Impact on Cyber

drastically reduce the efficacy of state-sponsored monitoring efforts, particularly in urban areas saturated with CCTV and internet traffic surveillance.

2. Facial Recognition Spoofing

Facial recognition systems—deployed in airports, border security, and urban security infrastructures—are widely used in India and globally for counter-terrorism and crime detection. However, terrorists are exploiting Generative Adversarial Networks (GANs) to create realistic facial masks or manipulate facial data to deceive these systems. This technique, known as "face morphing," has allowed operatives to cross borders or remain undetected in areas under high scrutiny.[15] The threat is compounded by the fact that open-source software required for such spoofing is freely available online, democratizing access to this powerful capability.

3. Deepfake Propaganda for Recruitment

Deepfakes represent one of the most alarming manifestations of malicious AI. Using neural networks, terrorists create fabricated video and audio content that appears authentic. These can show fake atrocities, impersonate political or religious leaders, or spread fabricated hate content designed to recruit individuals and provoke communal violence. In 2023, a fake video allegedly showing Indian security forces committing atrocities against a minority group went viral on encrypted messaging platforms and was later found to be AI-generated.[16] Such incidents highlight how deepfakes can be weaponized to destabilize societies and escalate radicalization.

4. AI-Generated Disinformation

Beyond deepfakes, terrorists are using large language models and NLP tools to produce vast amounts of believable yet false narratives, often tailored to vulnerable demographics. AI-generated fake news is pushed through botnets on social media, which learn and optimize engagement patterns to spread misinformation effectively. These campaigns are often geo-targeted to exploit ethnic, religious, or political divides in India's sensitive regions such as Jammu & Kashmir, Manipur, and the Northeast.[17] Disinformation warfare is now a low-cost, high-impact strategy in the arsenal of ideological extremists.

5. Autonomous Drones for Tactical Attacks

AI-powered unmanned aerial vehicles (UAVs), often referred to as "killer drones", are now within reach of well-funded terrorist networks. These drones can be programmed to follow, identify, and strike targets using image recognition and GPS tracking. The 2021 drone attack on the Indian Air Force base in Jammu was the first instance of drones being used by non-state actors for direct kinetic attack on Indian soil.[18] Though AI's role was not confirmed in that case, security analysts have since raised concerns about autonomous swarm drones, which can coordinate without human input using AI protocols.

Case Study: Islamic State's Use of AI Bots for Encrypted Messaging and Recruitment

Terrorism in India", *LawFoyer Int'l J. Doctrinal Legal Research*, Vol. 2, 2024, p. 139.

[15] S. Yu & F. Carroll, "Implications of AI in National Security: Understanding the Security Issues and Ethical Challenges", in *Artificial Intelligence in Cybersecurity*, Springer, 2022, pp. 115–119.

[16] A. Gupta & A. Guglani, "Scenario Analysis of Malicious Use of Artificial Intelligence and Challenges to Psychological Security in India", Springer, 2023, pp. 200–202.

[17] MA Goffer, MS Uddin & SN Hasan, "AI-Enhanced Cyber Threat Detection and Response: Advancing National Security in Critical Infrastructure", *Journal of Cybersecurity and Critical Infrastructure*, 2025, available at https://www.researchgate.net/publication/390898054 (last visited on Sept. 29, 2025).

[18] PK Srivastava, BS Roohani, R Aggarwal et al., "Implementation Challenges Faced by Artificial Intelligence for National Security", in *Cyber Security*, Taylor & Francis, 2024, p. 233.

The Islamic State (ISIS) has been a pioneer among terrorist groups in adopting digital technologies, and its ventures into AI have amplified its global threat. The group has leveraged AI-driven bots to operate autonomously on encrypted messaging platforms such as Telegram, Discord, and WhatsApp. These bots can converse in multiple languages, identify potential recruits based on behavioral profiling, and direct them to deeper layers of radicalization networks on the dark web.[19]

A 2023 report by the **International Centre for the Study of Radicalisation** documented how ISIS deployed an AI chatbot named *"Khurasani"* which engaged users in religious dialogue, answered doctrinal questions, and recommended materials based on user interest levels. The bot adjusted its tone and content dynamically, based on interaction metrics—a clear application of machine learning principles in psychological warfare.[20]

More alarmingly, these bots were integrated into broader AI-based recommendation engines that analyzed social media activity to locate vulnerable individuals. Once identified, these targets were contacted via fake profiles and drawn into radicalization pipelines. The sophistication of this system allowed ISIS to scale its reach with minimal human intervention, evading detection even on platforms with active content moderation policies.

IV. IMPACT ON INDIAN CYBERSECURITY

India's strategic ambition of becoming a digitally empowered society—through flagship programmes like *Digital India*, *Smart Cities Mission*, and *Aadhaar*—has exponentially expanded its digital surface area. While this digital transformation has enabled economic and governance gains, it has also rendered India vulnerable to cyber threats, particularly those powered by artificial intelligence (AI). The application of AI by terrorist organizations introduces complex risks to India's cybersecurity landscape.

One of the most serious threats is the use of AI-enabled tools for cyber intrusions into critical infrastructure such as power grids, hospitals, defence communication systems, and financial networks. The ransomware attack on the All India Institute of Medical Sciences (AIIMS) in 2022, which paralyzed its servers for weeks, demonstrated how India's health systems remain unprepared for sophisticated cyber threats[21]. Although attribution remained unclear, security experts suggested possible use of self-propagating malware with learning capabilities, indicating AI involvement[22].

AI also enables advanced phishing attacks and data breaches that adapt to users' behavioural patterns. Machine learning algorithms can profile targets based on social media activity and tailor malicious payloads, making attacks more effective and harder to detect[23]. Government departments—particularly those involved in defence and nuclear operations—have been frequently targeted by such AI-enhanced intrusions.

Disinformation is another major vector of concern. AI-generated fake news and deepfakes have been used to incite communal violence, particularly in volatile

[19] S. Nigam, "Exploring the Impact of Artificial Intelligence on Indian National Security Dynamics", *Int'l JL Mgmt. & Human.*, Vol. 31, 2024, p. 269.

[20] International Centre for the Study of Radicalisation, *AI and Terrorism: The Rise of Autonomous Radicalisation Tools*, ICSR Report Series, King's College London, 2023, pp. 6–12.

[21] "AIIMS Delhi servers hit by major cyberattack, 4 days of disruption", *The Hindu*, Nov. 28, 2022, available at https://www.thehindu.com/news/national/aiims-delhi-servers-hit-by-major-cyberattack/article66186033.ece (last visited Sept. 29, 2025).

[22] MA Goffer, MS Uddin & SN Hasan, "AI-Enhanced Cyber Threat Detection and Response", *Journal of Cybersecurity and Critical Infrastructure*, 2025, p. 21.

[23] I. Syllaidopoulos, K. Ntalianis & I. Salmon, "A Comprehensive Survey on AI in Counter-Terrorism and Cybersecurity", *IEEE Access*, Vol. 13, 2025, pp. 112201–112222.

regions like Kashmir and parts of Northeast India[24]. In 2023, a deepfake video purportedly showing Indian Army personnel desecrating religious symbols circulated widely on encrypted platforms before being debunked by fact-checkers[25].

AI also enables *cyber-physical attacks*, where physical infrastructure is targeted via digital means. For instance, India's railway signalling systems or air traffic control mechanisms—if infiltrated using AI-enhanced code—could be disrupted to devastating effect.

Cybersecurity threats posed by AI do not remain confined to the digital domain. They spill over into national security, diplomatic relations, and civil order. India's adversaries—both state and non-state—can exploit these vulnerabilities to erode trust in governance, sabotage military preparedness, and trigger social unrest.

V. LEGAL & POLICY RESPONSES IN INDIA

Despite growing threats, India's legal framework to regulate the malicious use of AI—especially by terrorist organizations—remains fragmented and underdeveloped. Current legal responses are reactive rather than anticipatory, and there is a notable absence of AI-specific legislation or regulatory institutions.

1. Information Technology Act, 2000

India's principal cyber law, the *Information Technology Act, 2000* (IT Act), criminalizes hacking, identity theft, and cyberterrorism under Sections 66 and 66F[26]. While these provisions provide a basic deterrent framework, they are inadequate to address advanced AI threats such as deepfakes, autonomous bots, and generative malware.

2. National Cyber Security Policy, 2013

The *National Cyber Security Policy (NCSP) 2013* recognizes the need to protect critical information infrastructure and calls for coordinated responses. However, it is outdated in its approach and does not account for AI's evolving threat matrix[27]. It lacks provisions for algorithmic accountability, ethical AI deployment, or state oversight of AI R&D.

A revised policy was proposed in 2021 but has not yet been formally enacted[28].

3. CERT-In Guidelines

The *Indian Computer Emergency Response Team* (CERT-In), under the Ministry of Electronics and Information Technology (MeitY), issues security advisories and handles cyber incident response. Its 2022 directive mandates data sharing on cyber incidents within 6 hours[29]. While this improves visibility, CERT-In has no powers to preemptively regulate AI-based technologies or enforce standards on developers.

4. Data Protection Regime

India's *Digital Personal Data Protection Act, 2023* introduces data fiduciaries and user consent norms, marking progress in privacy protection[30]. However, the Act focuses on personal data processing and does

[24] N. Vashishtha, "Artificial Intelligence-Assisted Terrorism: A New Era of Conflict", *Vivekananda International Foundation*, Aug. 29, 2023.
[25] A. Gupta & A. Guglani, "Malicious Use of Artificial Intelligence and Psychological Security in India", *Springer*, 2023, pp. 201–203.
[26] Information Technology Act, 2000, §§ 66, 66F.
[27] National Cyber Security Policy, 2013, Ministry of Electronics & IT, Government of India.
[28] Debashis Panda, "Revised Cyber Security Policy Drafted: Awaiting Approval", *The Economic Times*, Dec. 18, 2021.
[29] CERT-In Directions on Cybersecurity Incidents, 28 April 2022, available at https://www.cert-in.org.in (last visited Sept. 29, 2025).
[30] Digital Personal Data Protection Act, 2023, Gazette Notification, Government of India.

not address non-personal data, AI decision-making transparency, or deepfake criminalization.

The Supreme Court's judgment in *Justice K.S. Puttaswamy v. Union of India* recognized privacy as a fundamental right, reinforcing the need for strong surveillance safeguards[31]. Yet, the judgment did not provide operational guidance for AI governance.

5. Institutional Gaps

India lacks:

- An AI regulatory body akin to the EU's AI Office or U.S. NIST AI Framework.
- AI-specific guidelines for counterterrorism agencies.
- Coordination protocols between intelligence, judiciary, and technology regulators.

While NITI Aayog's *National Strategy on AI (AIM)* addresses innovation and ethics, it is non-binding and policy-driven, not legislative[32].

6. International Cooperation

India is a member of several global forums on cybercrime and AI ethics, such as the Global Partnership on AI (GPAI). However, its counterterrorism agreements with neighboring countries rarely incorporate AI-specific clauses[33].

VI. CONCLUSION

The integration of Artificial Intelligence into terrorist operations presents a formidable challenge to India's cybersecurity and national security architecture. From AI-driven surveillance evasion and deepfake propaganda to autonomous drones and disinformation warfare, terrorist groups are increasingly leveraging sophisticated technologies to amplify their impact. India's existing legal and policy frameworks, while evolving, remain insufficient to address the rapidly changing threat landscape. A proactive, multi-stakeholder approach—combining legislative reform, institutional strengthening, international cooperation, and ethical AI governance—is essential to safeguard national interests and ensure resilient digital sovereignty in the face of AI-augmented terrorism.

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2. MA Goffer, MS Uddin & SN Hasan, "AI-Enhanced Cyber Threat Detection and Response: Advancing National Security in Critical Infrastructure", *Journal of Cybersecurity and Critical Infrastructure*, 2025, available at https://www.researchgate.net/publication/390898054 (last visited on Sept. 29, 2025).
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5. A. Verma, "Growth of Artificial Intelligence in the Indian Legal System and Its Impact on Cyber Terrorism in India", *LawFoyer Int'l J. Doctrinal Legal Research*, Vol. 2, 2024, pp. 132–147.

[31] *Justice K.S. Puttaswamy v. Union of India*, (2017) 10 SCC 1.

[32] NITI Aayog, "National Strategy for Artificial Intelligence – #AIForAll", 2018, available at https://www.niti.gov.in (last visited Sept. 29, 2025).

[33] K. Srivastava, "Artificial Intelligence and National Security: Perspective from the Global South", *Int'l JL Changing World*, Vol. 2, 2023, pp. 175–182.

6. PK Srivastava, BS Roohani, R. Aggarwal et al., "Implementation Challenges Faced by Artificial Intelligence for National Security", in *Cyber Security*, Taylor & Francis, 2024, pp. 225–239.
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9. K. Srivastava, "Artificial Intelligence and National Security: Perspective from the Global South", *Int'l JL Changing World*, Vol. 2, 2023, pp. 175–182.
10. R. Montasari, *Countering Cyberterrorism: The Confluence of Artificial Intelligence, Cyber Forensics and Digital Policing in US and UK National Cybersecurity*, Springer, 2023, pp. 18–27.
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17. International Centre for the Study of Radicalisation, *AI and Terrorism: The Rise of Autonomous Radicalisation Tools*, King's College London, ICSR Report, 2023, pp. 6–12.
18. "AIIMS Delhi Servers Hit by Major Cyberattack, 4 Days of Disruption", *The Hindu*, 28 November 2022, available at https://www.thehindu.com/news/national/aiims-delhi-servers-hit-by-major-cyberattack/article66186033.ece (last visited on Sept. 29, 2025).

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RISE OF AI TOOLS IN CORPORATE DECISION MAKING: THE ACCOUNTABILITY AND TRANSPARENCY IMPERATIVE

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Abstract

The corporate decision-making environment has experienced an enormous transformation due to artificial intelligence (AI), as it has evolved from being an adjunct capability of an organisation's decision-making to now being a completely automated, independent decision-maker producing enforceable programs for a corporation. As a result of this drastic shift in the decision-making process, organisations have had to adapt and develop new models to manage and process these complex algorithms and their outcomes. These unprecedented levels of productivity and analysis created by AI also present an unparalleled legal dilemma that remains unresolved within the Indian corporate governance framework. This paper explores a critical issue at the intersection of technology and law: when autonomous systems create significant outcomes for multiple stakeholders, who is legally accountable and what is the level of transparency? This paper conducts an analysis of the Companies Act, 2013, along with a comparative examination of global best practice standards to illustrate how traditional mechanisms for corporate accountability based on fiduciary duties, disclosure obligations and human oversight are wholly inadequate when attempting to address algorithmic decision-making. This study also illustrates the existence of a structural accountability vacuum in Indian corporate law; wherein, AI continues to be opaque in its operations and, therefore, beyond the existing frameworks for liability. Finally, by studying algorithmic failures and discrimination across the globe, this paper demonstrates that operational realities and legal liability converge within the AI space and proposes a complete governance framework that reconciles innovation and responsibility through enhanced corporate board literacy related to technology, algorithmic audits and required transparency. The research concludes that unless corporate law is reformed to meaningfully address algorithmic accountability, AI deployment will continue to erode the foundational trust and legitimacy upon which corporate institutions depend.

Keywords: Artificial Intelligence, Accountability, Corporate Governance, Decision Making, Transparen

1. Introduction

AI has evolved past its initial understanding, and taken its place as a key player in business, changing the structure of how businesses are making decisions that require binding contracts.[1] Today, when boards meet, they use algorithms to determine who to lend money to, who to hire, how to price their goods or services and how to assess changes in their industry, tasks that have traditionally required the human element of judgment and deliberation.[2] The integration of AI into business creates more than merely an efficiency challenge; it raises important questions about accountability at every level of an organization, given that it relates to the evolving years of legal development surrounding the concept of accountability in business.[3]

The growth of the Indian AI market from $3.2 billion (USD) in 2020 to $6.05 billion (USD) in 2024 and projections for it to be $31.9 billion (USD) in 2031, a compound annual growth rate (CAGR) of more than

[1] Erik Brynjolfsson & Andrew McAfee, *The Second Machine Age* 80–92 (W.W. Norton & Co. 2014).
[2] Cary Coglianese, *Algorithmic Governance*, 3 Reg. & Governance 5 (2020).
[3] John Armour & Jeffrey Gordon, *The Rise of Autonomous Business Systems*, 2020 Colum. Bus. L. Rev. 1, 8–14

40%.[4] The deployment of AI into multiple industries, including finance, healthcare, logistics, and e-commerce, has been impactful for consumers and businesses that operate in these industries.[5] However, the laws that regulate businesses in India, including the Companies Act, 2013 have not been amended to include provisions for algorithmic accountability and transparency for governance of self-determining systems.[6]

When the provisions of the Companies Act, 2013, are analysed, there is a disconnect with the actual objectives of the Act. Section 166 requires the directors to have a fiduciary responsibility to act in good faith and make independent judgments on behalf of the Company and its stakeholders.[7] Section 134 requires the Directors to prepare director's responsibility statements and certification regarding their systems of internal control over financial reporting.[8] Section 149 provides for the minimum composition of the Board of Directors. This is designed to provide for an adequate level of oversight to protect the interests of minority stockholders.[9] In general, these provisions are based on the same assumptions regarding human agency, thought, and accountability. These assumptions are fundamentally flawed when decision-making power shifts from humans to autonomous systems.[10]

Regulatory interventions that have occurred more recently illustrate the degree to which there is a significant governance gap. The Reserve Bank of India has published the Framework for Responsible and Ethical Enablement of Artificial Intelligence (FREE-AI) in August 2025. This was the first comprehensive piece of national guidance dealing with algorithm governance in financial systems.[11] The Securities and Exchange Board of India has published a five-point regulatory framework for responsible artificial intelligence in securities markets that goes into effect June 20, 2025.[12] While these sectoral initiatives are necessary to address specific domain risks, they act as isolated regulatory interventions and do not address the overarching inadequacy of the current corporate governance system.[13]

The purpose of this paper is to achieve three objectives that are interrelated. One objective is to examine the way in which artificial intelligence (AI) disrupts traditional pillars of accounting and transparency in corporations. Another objective is to evaluate whether existing laws and regulations in India are sufficient for addressing algorithmic decision-making. The third objective of the paper is to establish a system of integrated governance guidelines that combine the two earlier objectives by balancing new technology-driven advances with established principles of corporate responsibility.

2. AI-Tools in Decision Making

AI tools help companies with their operational and strategic decision-making processes. Companies are finding that utilizing artificial intelligence, including machine-learning algorithms, can help them improve

[4] Competition Commission of India, *Market Study on Artificial Intelligence and Competition* 5 (Oct. 2025), https://www.cci.gov.in/

[5] Id. at 8–12

[6] Umakanth Varottil, *Corporate Governance in India: The Companies Act 2013 and Its Implementation*, NUS Law Working Paper (2020), https://law.nus.edu.sg

[7] Companies Act, 2013, S. 166(1) (India)

[8] Id. S. 134(5)

[9] Id. S. 149

[10] John Armour & Jeffrey Gordon, *AI, the Law, and Corporate Governance*, Oxford Legal Studies Research Paper (2021), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3900570

[11] Reserve Bank of India, *Framework for Responsible and Ethical Enablement of AI (FREE-AI)* (Aug. 13, 2025), https://dvararesearch.com/summary-of-the-rbi-free-ai-committee-report/.

[12] Securities and Exchange Board of India, *Consultation Paper on Responsible Use of AI/ML in Securities Markets* (June 20, 2025), https://www.sebi.gov.in/

[13] Supra note 4, at 18–25

decision-making across several dimensions[14]. Machine-learning technologies such as regression models, decision trees, ensemble models, and neural networks are at the core of a company's corporate AI infrastructure.[15] By using machine learning to process large amounts of data (both historical and real-time), companies can develop predictive analytics that will allow them to forecast demand, assess credit risk, and optimize dynamic pricing.[16] Companies are also using NLP (natural language processing) and sentiment analysis tools to parse unstructured corporate data (e.g., earnings call transcripts, MD&A disclosures, press releases, compliance documents) to analyze market activity, assess reputation and governance.[17] Predetermined preference model-based recommendation systems (using collaborative filtering and neural networks) are also being used to improve product and marketing strategy and support relationships with customers.[18] AI-enabled decision support systems (DSS) incorporate these technologies into cloud-based business intelligence platforms that facilitate real-time scenario modeling, multi-criteria decision-making, and optimizations related to resources.[19] Lastly, diagnostic tools based on expert systems can perform concurrent hypothesis testing and provide organizations with actionable strategic guidance.[20] However, evidence has shown that organizations face considerable challenges when integrating AI into their corporate decision-making processes, including barriers related to data quality, algorithmic transparency, and the potential for bias and fairness.[21]

3. The Disruption of Traditional Corporate Accountability and Transparency Foundations

3.1 The Traditional Structure of Corporate Accountability

All corporations owe their accountability to four principles of integrity.[22] These include a board of directors that has the legal responsibility to consider the impact their actions may have on all directors, stockholders and any other persons with a vested interest in the corporation; all corporate conduct must be identified and made available to the public to allow for the appropriate degree of oversight by stakeholders; director liability should only be imposed on a defined class of board member(s) and corporation employee(s); and board members must provide meaningful supervision and guidance to corporate officers and employees with respect to material decisions.[23] The Companies Act, 2013, does not create new principles of corporate responsibility but establishes the specific fiduciary duties of a director. Specifically, a director must act "in good faith to promote the objects of the corporation for the general benefit of its members and the best interests of the corporation, its employees, its shareholders, the community and the safe guarding of the environment."[24]The requirement that a director exercise his or her

[14]Steptoe-Warren, G., Howat, D., & Hume, I., Strategic Thinking and Decision Making: Literature Review, 9 J. STRATEGY & MGMT. (2011)
[15]D. Wang et al., Machine Learning for Business Forecasting, ACR J., 2024; Y. Zhang et al., Predictive Insights: Leveraging Artificial Intelligence for Strategic Business Decision-Making, ACR J., 2025
[16] Id.
[17] N.H.R. Dumont, Sentiment Analysis & Natural Language Processing Techniques for Capital Markets, 25 CORP. GOVERNANCE ADVISOR 16–19 (Nov./Dec. 2017)
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[24] Companies Act, 2013, S. 166(1) (India).

duties with "due care" and "skill and diligence" is the key to establishing and enforcing these duties.[25] All of the provisions of the Act are based on the assumption that directors have the ability to comprehend the actions of the corporation, analyze the potential ramifications of those actions and make informed decisions about whether to approve the actions of the corporation. [26]

Similarly, Section 134(5) of the Act stipulates that effective internal control systems must be set up and maintained by a company's Board of Directors for purposes of ensuring compliance with all applicable legislation, producing accurate financial statements, preventing and detecting fraud and errors.[27] It is assumed that directors understand these systems because, without that understanding, they will not be able to adequately certify the effectiveness of control over those systems.[28]

3.2 Algorithmic Interference with Accountability Mechanisms

Various pathways that allow AI to disrupt existing accountability systems require further examination. One such pathway, 'Opacity and Interpretation Loss', addresses the epistemological foundation of corporate accountability: namely, that the accountable parties understand how they arrive at their decisions and can effectively communicate this information to impacted parties.[29] Due to advances in deep neural networks and advanced machine learning, the ability for actors to demonstrate an understanding of their decision-making processes has become increasingly more difficult: the so-called 'black-box problem', where machine learning algorithms can generate results that developers cannot explain even after they are produced, has become commonplace with today's most advanced machine learning technologies.[30]

The automated hiring system created by Amazon from 2014 to 2018 illustrates this problem with the structure of the algorithm.[31] The system was trained on a decade of historical hiring records to determine which type of candidate would most likely get hired successfully. However, even after the completion of non-discriminatory training, the algorithm gave women candidates a lower score than men candidates.[32] Although the post hoc analysis performed after the incident showed that the algorithm learned to associate men with success and women with failure based on training data, neither Amazon's engineers nor its leadership were able to identify specifically how the algorithm had made these associations or why the algorithm had produced biased outcomes.[33] Because of this lack of clarity in the coding of the algorithm, board members for Amazon could not perform their duties to the best of their abilities. They were unable to grasp how the algorithm made decisions regarding hiring, nor were they able to communicate those decisions and the resulting adverse consequences of those decisions to either the candidates or regulatory agencies.[34]

3.2.1 Diffusion of Responsibility and Liability.

The lack of established definitions for who is responsible for their respective roles across autonomous systems leaves much room for potential liability issues between different individuals involved

[25] Id. S. 166(2).
[26] Umakanth Varottil, *Corporate Boards and Decision-Making in India*, Indian Corp. L. Rev. (2022).
[27] Companies Act, 2013, S. 134(5) (India).
[28] Supra note 10, at 15–20
[29] Mireille Hildebrandt, *Smart Technologies and the End(s) of Law: Novel Entanglements of Law and Technology* 95–115 (Edward Elgar 2015).
[30] Finale Doshi-Velez & Been Kim, *Towards a Rigorous Science of Interpretable Machine Learning*, arXiv 1702.08608 (2017), https://arxiv.org/abs/1702.08608
[31] Jeffrey Dastin, *Amazon Scraps Secret AI Recruiting Tool That Showed Bias Against Women*, Reuters (Oct. 10, 2018), https://www.reuters.com/article/us-amazon-com-jobs-automation-insight-idUSKCN1MK0AG
[32] Id.
[33] Id.
[34] Supra note 22, at 12–15

with developing/operating autonomous systems.[35] With autonomous systems, there can be many people involved with creating the programming or algorithms behind them (data scientists, project managers, business executives) and the board of directors who ultimately have oversight and fiduciary responsibility for the corporate entity.[36]

There are currently no legal standards that provide guidance on how to assign liability from autonomous systems. Examples of the lack of guidance in this area can be found in the various cases involving Tesla and its Autopilot product.[37] An example would be when Joshua Brown was killed by his Tesla's Autopilot while driving down the highway in Florida. Investigators learned that although it was obvious there was a tractor-trailer ahead (the tractor-trailer was perfectly visible), the Tesla's Autopilot did not recognize the object and took no evasive action.[38] Regarding Tesla's liability position, they have argued that the driver of the vehicle is solely responsible for keeping his or her eyes on the road to ensure he or she is paying close attention to the roadway. On the other hand, the injured party's positions were that Tesla had created an improper reliance on their marketing for using the autopilot as a fully autonomous driving system.[39] Finally, both the Companies Act and common law provide no guidance as to whether or not the Board of Directors breached its statutory duty of care (to act prudently) by deploying an inadequately tested automated driving system without adequate warnings to both drivers and potential users of the product.[40] The lack of clear assignment of responsibility from a corporate law standpoint between the human operators creating the automation (explicit design) and the humans using those systems (emergent behaviour) is creating significant gaps in liability that our current legal systems have not yet addressed.[41]

3.2.2 Algorithmic Bias and Discrimination.

The data used to create and train Artificial intelligence systems contains biases that AI systems learn from. This allows the AI systems to translate past forms of discrimination on to discrimination by using an algorithm over a large amount of data.[42] For example, Amazon's hiring algorithm discounted women applicants due to the patterns that the algorithm recognised in historical hiring records, which included systematic discrimination against women.[43] This pattern violates Article 14 of the Constitution of India, which calls for equality in all aspects of employment.[44] Although, there is no specific prohibition in the Companies Act against the deployment of discriminatory algorithms, nor is there any liability for systematic bias incorporated into the corporate decision-making systems.[45]

The potential for systematic discrimination extends beyond simply protected categories. Algorithms that have been trained to predict results based on historical data reflecting socio-economic disparity, may systematically discriminate against lower-income

[35] Mihailis Diamantis, *Algorithms Acting Badly: A Solution from Corporate Law*, 89 Geo. Wash. L. Rev. 801, 820–35 (2021).
[36] Id.
[37] U.S. Nat'l Transp. Safety Bd., *Collision Between a Car Operating with Automated Vehicle Control Systems* (2017), https://www.ntsb.gov/investigations/Pages/hwy16fh018.aspx
[38] Id.
[39] Jack Stewart, *What We Know About the First Fatal Tesla Autopilot Crash*, Wired (July 1, 2016), https://www.wired.com/2016/07/tesla-autopilot-killed-someone-now-what/.
[40] Supra note 29
[41] Chris Reed, *Liability for Artificial Intelligence*, Queen Mary University of London Legal Studies Paper No. 273/2017, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2981784
[42] Solon Barocas & Moritz Hardt, *Fairness in Machine Learning*, NIPS Tutorial (2017), https://fairmlbook.org.
[43] Supra note 23.
[44] Constitution of India, 1950, art. 14; OECD, *Principles of Corporate Governance* (2015), https://www.oecd.org/
[45] Supra note 6, at 8-12.

people with respect to their credit worthiness, employment screening or even allocation of customer service.[46] The reason this occurs is not because the designer programmed the algorithm to do so, but rather due to the algorithm optimising its prediction based on a set of statistically related variables. Therein lies the disconnect between the traditional approach to liability (identifying intentional or negligent conduct) and the actual mechanism of algorithmic harm, which arises out of the patterns identified within data, rather than human intent.[47]

3.2.3 Autonomous Action Beyond Human Oversight.

Algorithmic systems today make decisions at speeds and volumes that humans cannot effectively supervise.[48] High-frequency trading algorithms execute millions of trades every day by processing millions of data points that no human could have processed; they also modify investment strategies in microseconds, as opposed to days.[49] With regard to dynamic pricing; there exist algorithms that change the prices of multiple products simultaneously based on changes in: market pricing, competitor pricing, and supply and demand influences.[50] Companies employ chatbots or automated message-response systems to respond to customer service inquiries without the direct involvement of a human being.[51] Because companies do not typically disclose to customers the role of an algorithm in their customer service interactions, many customers do not realise that the bot or automated response was the result of an algorithm.[51]

The traditional accountability structure foresees humans authorising or approving of major decisions made by an autonomous system and thereby accepting any resultant responsibility for those decisions; where an autonomous system acts independently, without the knowledge or consent of the human overseer, this traditional structure is ineffective.[52] If a pricing algorithm raises the price of basic necessities on those who can least afford them, or if a hiring algorithm systematically excludes qualified applicants, those pricing structure changes were not the subject of substantive and informed discussions.

3.3 The Erosion of Transparency Obligations

Corporate governance frameworks utilize transparency as an essential support to corporate accountability.[53] SEBI's Listing Obligations and Disclosure Requirements assume that once material corporate information is disclosed, then all shareholders and regulators can assess how well a company has made its decisions and whether it is appropriately controlled.[54] However, due to the complexities of using AI, there are numerous roadblocks to providing effective disclosures.

To begin with, algorithmic complexity has surpassed the ability of most stakeholders to understand it; this limits the stakeholders' ability to adequately assess how algorithmic decisions were made.[55] Thus, how does SEBI's requirement to disclose "material events" related to share price or other stakeholder interests relate to algorithmic decision-making, when the results are often unexplainable, even to experts?[56] Although a company may accurately state "AI pricing

[46] Solon Barocas & Andrew D. Selbst, *Big Data's Disparate Impact*, 104 Calif. L. Rev. 671, 685–95 (2016).
[47] Cary Coglianese & David Lehr, *Transparency and Algorithmic Governance*, Brookings (2019), https://www.brookings.edu/articles/algorithms-and-accountability/.
[48] Supra note 1, at 125–45
[49] Id.
[50] Id.
[51] Id.
[52] Supra note 2, at 8–15
[53] Id. at 20–25
[54] Supra note 10, at 18–25
[55] Supra note 14, at 305–10
[56] Securities and Exchange Board of India, *Listing Obligations and Disclosure Requirements (LODR) Regulations* (2015), https://www.sebi.gov.in/

algorithm implemented," it may not know how the pricing algorithm impacts customers or the market.[57] The second barrier to transparency is that many algorithms are proprietary assets, and companies are hesitant to disclose the parameters of those assets, since they fear that disclosing this information would create competitive disadvantages or could facilitate reverse engineering.[58] SEBI's 2025 Consultation Paper regarding the use of AI in securities market highlights this point: companies are reluctant to comply with the requirement to disclose algorithmic parameters because they believe doing so would harm their ability to remain competitive.[59] Therefore, while accountability and property protection for algorithms must be provided, they are not yet reconciled.

Thirdly, AI systems are always evolving using new retraining methods, adjustments to the model's parameters and adding new models.[60] The algorithm that was used in January could be modified by March, while conventional disclosure practices would assume the underlying corporate governance structure remains static and therefore can be described at a specific point in time based on a reporting period.[61] Continuous evolution of algorithms creates an inadequacy between the requirements of the temporal nature of disclosure requirements (for static corporate governance) and the rapidly changing nature of the algorithms themselves.

4. Structural Inadequacies in India's Legal and Regulatory Environment

4.1 Gaps in the Companies Act, 2013

Although the Companies Act is India's principal statutory framework for the regulation of corporate governance within India, the Act does not specifically provide for algorithmic accountability and algorithmic transparency.[62] The duties of directors in section 166, the statements of responsibility to be included in their financial statements under section 134, and the requirements for the composition of the board of directors under section 149 all assume that directors have the capacity to exercise human decision-making.[63] The Act does not provide any answers to several key questions: How can directors ensure that they exercise due care in respect of decisions that may be made by systems that are beyond their understanding?[64] How should the certification of the internal control system be determined when those systems incorporate AI technology that is beyond the directors' understanding?[65] How should independence of the board of directors be defined when the directors lack the technical ability to evaluate algorithmically determined decisions?[66]

Similarly, the statutory audit framework established under section 138, views that auditors will evaluate the effectiveness of internal controls primarily using traditional auditing techniques, as opposed to using the same methods to assess the effectiveness of the controls utilised in AI technologies.[67] This means there are many aspects of the AI technology used that would not fall within the competence of a traditional auditor and many existing auditing standards that do not apply to auditing an AI technology.[68] These gaps in regulation create a scenario where AI technologies may operate without a proper independent assessment

[57] Supra note 39, at 5–10
[58] SEBI, *Consultation Paper on Responsible Use of AI/ML in Securities Markets* (June 20, 2025), https://www.sebi.gov.in/
[59] Id.
[60] Aurélie Jean, *AI Models Evolve. The Law Must Keep Up*, MIT Technology Review (2021), https://www.technologyreview.com
[61] Id.
[62] Supra note 6, at 15–20
[63] Id.
[64] Supra note 10, at 25–35
[65] Id.
[66] Id.
[67] Deloitte, *AI Audit: A New Paradigm for Corporate Assurance* (2022), https://www2.deloitte.com.
[68] Institute of Chartered Accountants of India, *Standards on Internal Audit* (2020), https://www.icai.org/.

of their fairness, accuracy and compliance with applicable laws.

4.2 Comparative Analysis of International Standards

The EU's AI Act, effective from August 1, 2024 and to be fully implemented by August 2, 2026, creates a risk based regulation that defines the level of regulatory scutiny based on the potential for negative impact of an algorithm.[69] High-risk applications (i.e. those that support credit decisions, employment decisions, law enforcement, & critical infrastructure) will be subject to strict transparency and fairness requirements, including required bias tests and reporting of reported incidents.[70] The Act requires the vendors of AI systems to understand how their algorithms operate, which is currently not required by Indian law.[71]

Updated in 2024 with the endorsement of 47 countries including India, the OECD AI Principles establish five governance foundations based on human-centered values, accountability, transparency and robustness.[72] More importantly, because of the way that the OECD Principles emphasise that the assignment of accountability mechanisms must be based on human action and be explicitly attributed to people; there can be no delegation or evasion of accountability through algorithmic intermediaries.[73] Because the OECD Principles require that assignment of accountability and responsibility for actions be directly assigned to humans, this principle addresses the gap in accountability that exists in current Indian practices.

ISO/IEC 42001:2023 is an International Standard on AI Management Systems, which specifies that comprehensive documentation must be made available to facilitate accessibility of the knowledge and skills used to develop AI and that third parties should be able to assess how well the AI system functions in accordance with these documents using their preferred auditing process.[74] In India, this standard is not legally binding but will potentially be used as a guideline in the future for the development of new regulations.[75]

5. Global Illustrations of Accountability Gaps

5.1 The Amazon Recruitment Algorithm

In the period from 2014 to 2018, Amazon developed an automated recruiting system that was designed to expedite the hiring process for their technical positions.[76] To accomplish this goal, the algorithm utilized Amazon's data from the previous decade to develop a set of predictors regarding the characteristics of successful employees in this field (i.e., technical).[77] Unbeknownst to Amazon's algorithm development team, the algorithm also identified correlations between gender and technical ability based on data from a historically male-dominated technical workforce at Amazon.[78] As a result, female applicants were systematically evaluated at a lower level than male candidates and had their resumes from women's colleges excluded from consideration by the algorithm.[79] Additionally, there was a significant disadvantage in terms of the score assigned to each female applicant's

[69] EU Commission, *High-Risk AI Requirements*, https://digital-strategy.ec.europa.eu/en/policies/regulatory-framework-ai
[70] Id.
[71] OECD, *OECD AI Principles* (2024 Update), https://oecd.ai/en/ai-principles
[72] Id.
[73] Id.
[74] ISO, *ISO/IEC 42001:2023 , AI Management Systems*, https://www.iso.org/standard/81230.html
[75] Neumetric, *ISO 42001 Explained*, https://www.neumetric.com/iso-42001-requirements-for-algorithmic-transparency
[76] Jeffrey Dastin, *Amazon Scraps Secret AI Recruiting Tool That Showed Bias Against Women*, Reuters (Oct. 10, 2018), https://www.reuters.com/world/insight/amazon-scraps-secret-ai-recruiting-tool-that-showed-bias-against-women-2018-10-10/
[77] Id.
[78] Id.
[79] Id.

qualifications compared to the equivalent male applicant.

As a result of the above, several corporate accountability lapses exist relative to this situation. For example, board directors were unable to explain the reasons for the discriminatory actions taken by the algorithm, even though these actions significantly impacted employment decisions for thousands of Amazon applicants.[80] Additionally, Indian courts have no means of utilizing the Companies Act framework to evaluate whether a board of directors has violated fiduciary duty by using a discriminatory recruiting system that has not been properly tested.[81] Finally, the algorithm's systematic gender discrimination directly violated the Constitution's equal protection clause, as well as under the provisions of various non-discrimination laws. However, corporate governance law does not provide mechanisms for addressing the consequences of these violations using traditional mechanisms for holding a corporation liable for its actions.[82]

5.2 Tesla's Autopilot Failures

The general public has only recently become aware of Tesla's Autopilot as it gained popularity as a more sophisticated form of automated driving.[83] Unfortunately, there have been a number of deaths, including the death of Joshua Brown, who died in June 2016 after crashing into a self driving Tesla on a white tractor-trailer whcih went undetected under bright sunshine.[84] An investigation revealed significant deficiencies in Autopilot's ability to accurately see objects, which were much more severe than what Tesla had promoted in its advertisement that describes Autopilot as a self-driving system.[85]

There are still a lot of unresolved questions regarding who is going to be held accountable for these failures. Did the Board of Directors of Tesla violate their fiduciary duty under Section 166 by allowing the company to promote the use of unsafe automation through its advertising practices?[86] Did the board of directors execute their duty to exercise care to ensure that they comprehended and accurately portrayed the limitations of Autopilot as a result of its potential life-or-death implications?[87] Unfortunately, Indian law does not provide any clear guidance on any of these matters. Thus, these cases highlight the inadequacy of existing legal structures for addressing the intersection of algorithmic decision-making and human safety.

5.3 Algorithmic Collusion and Anti-Competitive Conduct

The October 2025 Market Study of AI and Competition conducted by the Competition Commission of India found six broad areas of competition law violations due to AI driven Pricing Algorithms.[88] AI driven Pricing Algorithms in particular enable horizontal price increases without requiring any type of overt collusion or even the intent, of those that run the Pricing Algorithm, representing a new type of collusion that would be difficult for traditional antitrust law enforcement to detect and/or investigate.[89] Survey respondents from 37% of AI start-ups expressed concerns with respect to the potential of their AI algorithms to lead to collusion and/or 36% felt they could potentially be responsible for algorithmic price discrimination.[90]

This lack of accountability in the current antitrust enforcement system creates a significant challenge and barrier to enforcement when the algorithm generates a collusive outcome without human intent or knowledge.[91] Current antitrust frameworks lack the

[80] Id.
[81] Companies Act, 2013, S.166 (India)
[82] Supra note 38, at 685–95
[83] Supra note 29
[84] Id.
[85] Id.
[86] Companies Act, 2013, § 166 (India); Supra note 31
[87] Supra note 31
[88] Supra note 4, at 18–25
[89] Id.
[90] Id.
[91] Id.

capability to reasonably identify who is responsible or liable for the outcome of the AI-created price increase, given the fact that the Pricing Algorithm creates a vertical upward pricing effect without any human communication. The CCI's recommendation to the industry to conduct their own audits of their AI Pricing Algorithm is basically an admission that the current accountability mechanisms are inadequate.[92]

6. A Proposed Framework for AI Governance in Corporate Decision-Making

6.1 Foundational Principles

To address the identified deficiencies, an integrated governance framework should contain 5 core principles, (1) Transparency: all corporate decisions impacted materially by AI should be identified, disclosed and include an explanation of 2 categories (i.e, algorithmic objectives and limitations), (2) Accountability: all decisions made using AI should continue to have human oversight, verification and responsibility, including clear liability for any algorithmic harm caused, (3) Fairness: various tests should be performed to verify the existence of bias, discrimination or disproportionate impact on important groups or those at risk, from AI, (4) Compliance: all AI deployed should comply with the relevant laws and regulations as well as anti-discrimination and data protection laws; and (5) Data Integrity and Security: all stakeholders and investors information and data should be used in accordance with the ethical and legal standards throughout the AI life cycle.[93]

6.2. Integration with Global Best Practices

The Transparency Requirements in the EU AI Act should be the basis for the amendments to the Disclosure Obligations in the Indian Securities Regulation and Corporate Governance Standards.[94] The highest risks of an algorithmic system are those that support credit decisions, employment determinations, pricing strategies and market analysis; therefore, pre-deployment assessments and a comprehensive technical documentation should be required, along with a mandatory event reporting mechanism.[95] The implementation of the above requirements can be accomplished by amending Section 166 or through regulatory guidance from SEBI and the Ministry of Corporate Affairs.

To meet this objective, the creation of these types of accountability mechanisms should be guided by principles outlined by OECD. Specifically, it is essential that all accountability mechanisms, including algorithms, are clearly established to hold individuals responsible for their decisions.[96] This implies creating a framework that clearly outlines the individual or group accountable (data scientist or developer) for creating biased or flawed systems, the manager who uses the algorithm(s) for implementation, and any additional responsibilities associated with the executive director's responsibilities and the overall level of oversight of the algorithms by the executive director's board of directors and shareholders/regulators.[97]

ISO 42001 provides an excellent example of how to establish market incentives for good AI governance practices. Organizations that use ISO-certified AI systems, will be eligible for credits in the cases of regulatory enforcement action, while organizations that do not meet the international standards will be viewed as having acted in a negligent manner in breach-of-fiduciary duty cases.

6.3 Implementation Mechanisms

AI Literacy and Governance by Boards of Directors: Directors who approve the use of AI must have enough technical knowledge to understand the capabilities, limitations, and risks associated with AI

[92]Id. at 25–30
[93]Id.
[94]Supra note 61.
[95]Id.
[96] supra note 63.
[97] Supra note 27, at 840–55

algorithmic models.[98] The proposed new requirement for directors to be "technologically skilled" as part of the amended version of the 2024 AI Deployment Act should be expanded to require that all board members charged with overseeing the implementation of AI algorithms receive specific training on governing these types of systems.[99] Also, AI Governance Certification Programs should be created via government-sponsored education through collaboration between national and multi-national organisations (e.g. ISO, IEEE).[100]

Mandatory Algorithmic Auditing and Bias Testing: All organisations that are using AI that significantly impact their stakeholders will be required to conduct regular audits of model precision, screening for discrimination against various classes of individuals, and verifying compliance with current statutory and regulatory obligations.[101] Independent, third-party audit firms that meet specific professional qualifications will have to perform these audits and report them to the appropriate Audit Committee and provide a summary to the Board of Directors.[102]

Balanced Transparency and Trade Secret Protection: Organisations should make available applicable algorithmic data required by auditors and regulators under legally signed confidentiality agreements that will protect proprietary interests and allow for proper oversight.[103] Regulators will retain the right to obtain full access to algorithmic data as needed when conducting investigations or enforcement actions. All data obtained by regulatory investigations will be protected as per the standard confidentiality protection provisions available to all auditors.[104] This approach creates a balance between the competitive concern of an organisation with the requirements of regulatory oversight.

Liability Frameworks for AI: The Companies Act should clearly define these categories of liability for companies with AI, 1) Companies using defective, non-compliant, or biased AI Systems, 2) Directors approving AI Systems without sufficient knowledge or oversight, 3) Data Scientists/Developers creating AI systems with flaws known or identifiable through reasonable investigation, and 4) Vendors/Suppliers of algorithmic tools which are defective.[105]

Regulatory incentives should continue to spur the creation of liability insurance products that are AI-oriented, allowing both insurers and companies to create a marketplace where insurers could encourage superior practices for those businesses, thus creating an overall incentive to improve governance.[106]

7. Addressing Implementation Challenges

7.1 Balancing Innovation and Regulation

Excessive Regulatory Burdens associated with regulating AI Creation may lead to development of AI Outside of India, resulting in the loss of benefit to India, while a lack of adequacy in Governance Structures creates a risk for many Stakeholders to be harmed by Algorithms.[107] By addressing both of these conflicting concepts within this proposed framework, the Companies Act creates Ministry; to designate the highest risk AI applications in an organization but allows companies to streamline compliance processes with their AI Systems as internal use applications supporting standard operating process, such as fraud detection and optimizing customer service levels.[108] Current Regulatory Sandboxes established by the SEBI and RBI must continue to allow for Controlled Experimentation within the development of new AI Applications prior to full roll-out at all times.[109] The controlled experimentation model always allows for

[98] Supra note 68
[99] Supra note 2, at 18–25
[100] Supra note 10, at 38–42
[101] Id.
[102] Companies Act, 2013, S. 149 (India).
[103] Id.
[104] Supra note 22, at 18–22
[105] Supra note 59
[106] Id.
[107] Supra note 51, at 1480–90
[108] Id.
[109] Supra note 27, at 845–65

discovery of governance needs prior to AI Technology Roll-out, allowing the regulatory body to reconcile innovation in the space of AI with established Governance Structures.

7.2 Capacity Building and Professional Development

There is currently a shortage of specialists in algorithm auditing, AI governance, and data ethics that could support the development and implementation of algorithm auditing, board-level education regarding AI, and advanced governance in India.[110] Therefore, it is essential that the Government, via State Agencies, develop and maintain an ongoing schedule of training programmes for the purpose of developing and certifying algorithm auditors and AI governance personnel.[111]

The establishment of a National Certification Examination for all practitioners of algorithmic auditing and data ethics will create and formalised a set of professional standards, whereby every practitioner of algorithmic auditing/auditors is required to have an understanding of both the technical aspects of an algorithm, and the Legal and governance implications of algorithmic decision-making.[112] In addition, through co-operation with the EU, OECD and ISO organisations, India will facilitate the transfer of knowledge and adoption of best practices for algorithm auditors and AI governance personnel.[113]

8. Conclusion

AI has entered the corporate decision making process, not merely as a transparent tool for corporate governance, but as an autonomous actor, making legally, financially and personally binding corporate decisions. The transformation has created an "Accountability Gap". The Absence of a Human Agent who bears the Consequences of Corporate Actions has resulted in a gap between the Legal and Responsibility Opportunities for Corporations and their Decision-Making.

The Companies Act, 2013 was written in a time when human directors were required to manage, control and be accountable for the core decisions and results of their Company. Therefore, all of the provisions of the Companies Act, 2013 (i.e., Fiduciary duties, responsibilities, board oversight and disclosure obligations) are based upon human agency and understanding. The above assumptions no longer hold if moment to moment and machine-generated choices are very unpredictable, the very construction of responsibility is distributed amongst many people, so bewilderment surrounding responsibility is extensive, and the type of decisions possible with autonomous algorithms can be completed at speeds far greater than human beings are able to oversee adequately.

In addition to demonstrating the inadequacy of India's legal frameworks for algorithmic accountability, this work shows that the central oversight of the RBI and SEBI with respect to the usage of autonomous algorithms are not sustainable because they don't provide the necessary means through which to assess or mitigate the inherent concerns associated with rapidly evolving technology, nor do they address the more significant societal issues associated with the pervasive usage of autonomous decision-making algorithms. As seen through the EU, OECD, and ISO example, other countries have developed more comprehensive accountability mechanisms that would serve as a best practices model or framework, although any model or framework developed in India must take into consideration its existing legal framework, governance traditions, and development goals.

The future of corporate law must be altered in order for companies to achieve accountability for algorithms. While maximizing the benefits of

[110] Id.
[111] Supra note 2, at 20–25.
[112] Supra note 10, at 42–45
[113] Supra note 52

innovation within this space. There must also be an establishment of a set of duties on behalf of Directors for AI oversight. Amendments should define an audit standard for algorithmic systems, create transparency for corporate algorithms based on the complexity of the technology used, and a liability framework under which a corporate entity is the prescribed entity to be held liable for algorithmic harm. This will necessitate an investment into capability building for individuals who will perform roles of algorithmic auditor, AI governance specialist and Technical Director for an organization. Corporations should also adopt a stance that promotes transparency in the algorithmic decision-making process from an internal perspective, rather than as a regulatory burden imposed upon them, thus establishing trust amongst the organization's stakeholders and its overall corporate legitimacy.

In sum, the key role of artificial intelligence in the overall governance of a corporation should be to serve humanity and its purpose within institutional governance rather than the opposite. When corporations don't reform their accountability and transparency practices in relation to algorithmic systems, their ability to continue to drive innovation through technological advances will erode their trust and legitimacy as ultimately established and relied upon by the general public.

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MENTAL HEALTH RIGHTS OF GENDER-BASED VIOLENCE SURVIVORS: A CRITICAL ANALYSIS OF THE MENTAL HEALTHCARE ACT, 2017

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Abstract

Gender-based violence has serious and long-lasting effects on the mental health of survivors, but Indian laws have not always recognised this important part of women's right to health. The Mental Healthcare Act, 2017 (MHCA) signifies a fundamental transformation in acknowledging mental health as essential to the constitutional right to health as stipulated in Article 21. This research critically evaluates the adequacy of the MHCA in addressing the mental health needs of GBV survivors while fulfilling Indian constitutional and international duties. This research uncovers substantial deficiencies in the implementation of mental health rights for survivors of gender-based violence through a doctrinal examination of statutory provisions, court precedents, and international human rights standards. The paper contends that although the MHCA establishes a progressive framework, its execution is disconnected from the realities of gender-based violence, leading to systemic deficiencies in delivering accessible, affordable, and trauma-informed mental healthcare. The research concludes with suggestions for amendments to laws and policies that would help to close the gap between what the law says and what GBV survivors are entitled to and what they actually experience.

Keywords: Mental Healthcare Act 2017, Gender-Based Violence, Right to Health, Article 21, CEDAW, Trauma-Informed Care

Introduction

Gender-based violence is one of the most common abuses of human rights in the world. It affects almost one in three women at some point in their lives.[1] The National Family Health Survey-5 (2019-21) in India found that 29.3% of women aged 18-49 years have been physically, sexually, or emotionally abused by their spouse.[2] GBV causes serious and frequently long-lasting mental health problems, such as post-traumatic stress disorder (PTSD), depression, anxiety disorders, suicidal thoughts, and substance misuse, in addition to the physical injuries that happen right away.[3]

Even though there is a lot of evidence that GBV is bad for mental health, Indian legal and healthcare institutions have historically ignored the psychological aspects of violence against women. The Protection of Women from Domestic Violence Act, 2005 (PWDVA) was an important step forward because it recognised domestic violence as a civil wrong.[4] However, it does not do much to help those with mental health issues. The Indian Penal Code, now Bhartiya Nyaya Sanhita, under the chapter regarding sexual offences primarily emphasise physical proof and injuries, whereas psychological harm is considered of secondary importance.

The Mental Healthcare Act of 2017 made changes to the legislation governing mental health in India. The statute from 1987 has been replaced with the Mental Health Care Act of 2017. Everyone is guaranteed to have access to mental health care under Article 21 of

[1] World Health Organization, Violence Against Women Prevalence Estimates, 2018 2 (2021).
[2] Ministry of Health & Family Welfare, *National Family Health Survey-5 (2019-21): India Report* 513 (2022).
[3] Claudia Garcia-Moreno et al., *Global and Regional Estimates of Violence Against Women: Prevalence and Health Effects of Intimate Partner Violence and Non-Partner Sexual Violence* 51-52 (World Health Organization 2013).
[4] The Protection of Women from Domestic Violence Act, 2005, No. 43, Acts of Parliament, 2005 (India).

the Constitution. To ensure that individuals are respected, that their privacy is protected, and that they provide informed permission, the Act ensures that everyone has access to mental health care that is paid for by the government.[7]

This research looks at an important but not well-studied question: Does the Mental Healthcare Act of 2017 give us the right legal tools to meet the mental health needs of survivors of gender-based violence? This investigation is especially important right now because mental health problems often endure longer than physical injuries and make it much harder to recuperate, work, and be healthy overall.[5]

The article is divided into six parts. Part II lays the groundwork for the theory by looking at the link between GBV and mental health within the constitutional framework of the right to health. Part III looks at the precise parts of the MHCA that are important for survivors of GBV. It finds both positive and negative aspects. Part IV looks at international human rights norms, especially the CEDAW General Recommendations, and compares India's laws to the best practices around the world. Part V looks at the problems that make it hard for survivors of GBV to get their mental health rights. Part VI ends with suggestions for amendments to laws and policies.

Gender-Based Violence and Mental Health: Constitutional and Conceptual Framework

A. The Right to Health Under Article 21

The Hon'ble Supreme Court of India has gradually come to observe right to life under Article 21 as comprising the right to health, both physical and mental. The Court held in *Consumer Education & Research Centre v. Union of India*[6] that the right to health is part of the right to life and that the State must provide healthcare services as part of its constitutional duty. In *Paschim Banga Khet Mazdoor Samity v. State of West Bengal*[7], the court made this law even stronger by stating that Article 21 puts an obligation on the State to protect life, which includes making sure there are enough medical facilities.

The Supreme Court has made significant out of the fact that mental health is just as important as physical health in the Constitution. The Constitutional Bench ruling in the case of *Francis Coralie Mullin v. Union Territory of Delhi* said that the right to life involves living with dignity.[8] It laid the foundation for later recognition of mental health as part of a dignified life. More recently, courts have made it clear that mental health care is a basic right and that not getting mental health care is a violation of that right.[9]

B. Gender-Based Violence as a Violation of the Right to Health

GBV substantially infringes upon women's right to health by causing both immediate and enduring physical and psychological suffering. The World Health Organisation (WHO) says that violence against women is a serious public health issue that violates women's human rights, including their right to the best possible health.[10] Indian courts have become more and more aware of the health effects of GBV. The hon'ble Supreme Court recognised that sexual harassment at work harms women's health, dignity, and well-being in the case of *Vishaka v. State of Rajasthan. In State of Punjab v. Gurmit Singh*[11], the

[5] Indian Penal Code, 1860, No. 45 of 1860, §§ 375-376E (India).
[6] Consumer Educ. & Research Ctr. v. Union of India, (1995) 3 S.C.C. 42
[7] Paschim Banga Khet Mazdoor Samity v. State of W. Bengal, (1996) 4 S.C.C. 37
[8] Francis Coralie Mullin v. Union Territory of Delhi, (1981) 1 S.C.C. 608
[9] Gaurav Kumar Bansal v. State of Uttar Pradesh, 2020 SCC OnLine All 927
[10] World Health Organization, Understanding and Addressing Violence Against Women: Health Consequences 1 (2012).
[11] State of Punjab v. Gurmit Singh, (1996) 2 S.C.C. 384

court specifically acknowledged the severe psychological effects of sexual abuse on survivors.

Articles 14 and 15 of the Constitution ensure equality, which includes health equity. Gender-based violence causes health inequalities that are worse for women, which goes against the constitutional requirement of substantive equality.[12] In the case of *Githa Hariharan v. Reserve Bank of India*[13], the Supreme Court ruled that interpreting the Constitution must promote gender justice and abolish discrimination against women.

C. Mental Health Consequences of Gender-Based Violence

Medical literature has a lot of information about how GBV affects mental health. Research repeatedly shows that women who have been assaulted by their partners are much more likely to be depressed, have PTSD, anxiety disorders, and suicidal thoughts than women who have not been mistreated.[14] Research conducted in India reveals that women subjected to domestic abuse are 3.5 times more likely to contemplate suicide and 2.8 times more likely to endure depression.[15]

Sexual violence causes a lot of psychological damage. People who have been raped often have severe stress reactions, long-term PTSD, major depressive illness, and complicated trauma symptoms that can last for years or even decades.[16] Additionally, the taboo surrounding sexual abuse in Indian society exacerbates mental health issues, resulting in social isolation, humiliation, and a hesitance to seek assistance.[17]

The mental health burden goes beyond just one person's pain. Women who have mental health problems because of GBV can't work, take care of their kids, or fully participate in society. This keeps them in cycles of poverty and disempowerment.[18] The National Mental Health Survey of India (2015-16) discovered that women with mental disease encounter substantial obstacles in obtaining care, with treatment gaps over 80% for prevalent mental disorders.[19] So, dealing with the mental health effects of GBV is not only a professional necessity, but also a basic prerequisite for women to have their constitutional right to health and equality.

The Mental Healthcare Act, 2017: Provisions and Analysis

A. Progressive Features of the MHCA

The MHCA is an important step forward for India's mental health laws. It is built on a rights-based approach that is in line with international human rights norms, especially the UN Convention on the Rights of Persons with Disabilities (CRPD).[20]

Right to Access Mental Healthcare: Section 18 says that everyone has the right to get mental health care and treatment from mental health services that are

[12] Anuj Garg v. Hotel Ass'n of India, (2008) 3 S.C.C. 1

[13] Githa Hariharan v. Reserve Bank of India, (1999) 2 S.C.C. 228

[14] Sian Oram et al., *The Lancet Psychiatry Commission on Intimate Partner Violence and Mental Health: Advancing Mental Health Services*, Research, and Policy, 9 Lancet Psychiatry 487, 489-92 (2022).

[15] Mohan Isaac et al., *Intimate Partner Violence and Its Relationship to Mental Health in India, in Mental Health and Illness of Women* 165, 170-72 (Prabha S. Chandra et al. eds., 2015).

[16] Mary P. Koss et al., *Depression and PTSD in Survivors of Male Violence: Research and Training Initiatives to Facilitate Recovery*, 27 Psychol. Women Q. 130, 131-34 (2003).

[17] Ruchika Prakash et al., *Sexual Violence Against Women in India: A Critical Analysis of the Social and Legal Response*, 21 Violence Against Women 1255, 1267-70 (2015)

[18] Claudia Garcia-Moreno & Charlotte Watts, *Violence Against Women: An Urgent Public Health Priority*, 89 Bull. World Health Org. 2, 2-3 (2011)

[19] National Mental Health Survey of India, 2015-16: Summary 28 (Nat'l Inst. of Mental Health & Neurosciences 2016)

[20] Convention on the Rights of Persons with Disabilities, Dec. 13, 2006, 2515 U.N.T.S. 3.

operated or paid for by the right government.[21] For victims of gender-based violence who are unable to afford expert care, this option is absolutely necessary. Serious mental health problems that arise as a result of aggressive actions may require prompt medical attention.[22]

Right to Equality and Non-Discrimination: It is against the law to discriminate against those who suffer from mental illness in any of the following areas: employment, education, housing, insurance, and government support.[23]

Right to Information: The Mental Healthcare Act, 2017, guarantees the right to information and informed consent for persons with mental illness. Section 18(5) requires that individuals be informed of their diagnosis, proposed treatment, possible alternatives, and their rights under the Act in a language and manner they can understand. Further, Section 20 mandates that mental healthcare and treatment shall be provided only with the informed consent of the person concerned, except in narrowly defined circumstances.

For survivors of gender-based violence, whose bodily autonomy has often been violated, these provisions are particularly significant, as they restore control over healthcare decisions and align mental health treatment with trauma-informed, rights-based care.[24]

Community-Based Treatment: Section 19 of the Mental Healthcare Act, 2017, guarantees the right of persons with mental illness to live in the community and to receive mental healthcare in the least restrictive environment. The provision prioritises community-based services over institutionalisation and seeks to prevent segregation of persons with mental illness from society. This approach is particularly important for survivors of gender-based violence, as institutional settings may re-traumatise individuals whose experiences of abuse involved loss of control, confinement, or coercion. By promoting community-based, autonomy-respecting care, the Act aligns with trauma-informed and rights-based mental healthcare principles.[25]

Advance Directives and Supported Decision-Making: The Mental Healthcare Act, 2017 incorporates a supported decision-making model that strengthens the autonomy and self-determination of persons with mental illness. Section 5 recognises the right to make an advance directive specifying preferred or refused treatment, while Section 14 allows individuals to appoint a nominated representative to assist in decision-making during periods of impaired capacity. Read with Section 4, which presumes mental capacity unless proven otherwise, these provisions mark a significant shift away from substituted decision-making towards autonomy-respecting care. This framework is particularly significant for survivors of gender-based violence, whose autonomy and agency have often been undermined through coercion and abuse, as it restores control over treatment choices in a trauma-informed and rights-based manner.[26]

B. Critical Gaps in Addressing GBV Survivors' Needs

1. Absence of GBV-Specific Provisions

The Mental Healthcare Act, 2017 marks a substantial transition towards rights-based mental healthcare; however, it lacks specific provisions that acknowledge gender-based violence as a unique contributor to mental illness or require trauma-informed mental health services for survivors of violence. The Act takes a one-size-fits-all approach to mental health care and treats survivors of gender-based violence the same as everyone else who uses mental health services, without taking into account how trauma-related

[21] Mental Healthcare Act, 2017, § 18(1)
[22] *Id.* § 18(1)(a)
[23] *Id.* § 21.
[24] *Id.* § 20
[25] *Id.* § 19.
[26] *Id.* §§ 5, 14.

problems are different from other mental health conditions.

This omission is important because mental health problems that come from gender-based violence typically need specialised, trauma-focused care instead of regular psychiatric care. Research based on evidence shows that trauma-focused cognitive behavioural therapy (TF-CBT), eye movement desensitisation and reprocessing (EMDR), and trauma-informed care models work better to treat psychological trauma caused by abuse than standard mental health treatments. The MHCA's failure to require or even acknowledge the necessity for specialized approaches jeopardizes the provision of adequate, appropriate, and safe mental healthcare for survivors of gender-based violence, so undermining the practical fulfilment of their right to health.[27]

2. Inadequate Integration with GBV Protection Frameworks

The Mental Healthcare Act, 2017, functions concurrently with India's legal framework addressing gender-based violence, encompassing the Protection of Women from Domestic Violence Act, 2005, and relevant criminal law provisions. However, it does not create formal mechanisms for coordination or referral between mental healthcare services and GBV support systems. The PWDVA establishes Protection Officers (Section 8), shelter homes (Section 7), and medical facilities (Section 6); however, it does not necessitate collaboration with mental health professionals or the incorporation of psychological care into protection and rehabilitation initiatives, including services provided through One Stop Centres.

This fragmentation of institutions makes it very hard for people who have been victims of domestic violence to get help. A woman who is being abused and is depressed has to deal with different systems that don't work together to get legal help and mental health care. Section 6 of the PWDVA says that medical facilities must treat survivors, although this requirement has largely been understood to apply to physical injuries, leaving mental health requirements mostly unmet. The lack of legal connections or referral mechanisms between the MHCA and the PWDVA is an important issue for providing complete, survivor-centered care.[28]

3. Silence on Confidentiality Concerns Specific to Violence Survivors

Section 22 of the Mental Healthcare Act, 2017, guarantees the right to confidentiality of mental health information, subject to limited statutory exceptions such as consent, court orders, and prevention of harm. While this provision offers general protection, it does not address the specific confidentiality concerns of survivors of gender-based violence, particularly in the context of family and matrimonial proceedings. Many survivors fear that disclosure of mental health treatment may be used against them in child custody disputes, with abusive partners alleging that mental health conditions render them unfit to parent.

Indian family courts have, in several cases, treated parental mental health as a relevant—though not determinative factor in assessing the welfare of the child. This practice can create a chilling effect on survivors' willingness to seek psychological care, especially in the absence of any statutory bar on the use of mental health records in custody or matrimonial litigation. The absence of enhanced confidentiality safeguards, survivor-specific privileges, or explicit restrictions on disclosure under the MHCA thus constitutes a significant gap in protecting the mental health rights of survivors of gender-based violence.[29]

4. Insufficient Accessibility Provisions

[27] Judith A. Cohen et al., *Treating Trauma and Traumatic Grief in Children and Adolescents* 28-35 (2006)

[28] The Protection of Women from Domestic Violence Act, 2005, § 6.

[29] Lenore E.A. Walker, *The Battered Woman Syndrome* 102-08 (4th ed. 2017)

Although Section 18 of the Mental Healthcare Act, 2017 recognises the right to access government-funded mental healthcare, its practical realisation remains severely constrained by systemic shortages in mental health infrastructure and human resources. India continues to face a critical deficit of mental health professionals, with fewer than one psychiatrist and far fewer psychologists available per 100,000 population, well below WHO-recommended levels. Mental health services are overwhelmingly concentrated in urban areas, creating substantial barriers for women in rural and remote regions.

For survivors of gender-based violence, these accessibility barriers are further intensified by coercive control, restricted mobility, financial dependence, and social stigma imposed by abusive partners. While the MHCA adopts a rights-based framework, it does not statutorily mandate mobile mental health services, survivor-focused outreach, or tele-psychiatry mechanisms tailored to the distinct obstacles faced by survivors of violence. The absence of such targeted accessibility provisions limits the Act's capacity to ensure meaningful access to mental healthcare for some of the most vulnerable women.[30]

5. Economic Barriers and Insurance Coverage

Section 21(4) says that health insurance can't discriminate against people with mental illness, however this rule hasn't been put into practice very well. A lot of insurance plans still don't cover mental health disorders or only cover them in certain ways. The Ayushman Bharat-Pradhan Mantri Jan Arogya Yojana is India's main health insurance program for people who are financially vulnerable. At first, it didn't cover mental health, but it has only recently started to do so in a restricted way.[31]

For destitute GBV sufferers, the lack of adequate mental health services essentially negates their statutory claim under Section 18. The MHCA does not create a complete public mental health service system like basic healthcare infrastructure, which means that many survivors have no options.[32]

6. Inadequate Training Requirements

Section 21(4) of the Mental Healthcare Act, 2017 mandates that health insurance providers shall make provisions for medical insurance for the treatment of mental illness on the same basis as physical illness. Despite this statutory requirement, implementation remains uneven, with many insurance policies continuing to limit, cap, or exclude coverage for mental health treatment in practice, particularly for outpatient care and long-term therapy. Although regulatory directions have been issued by the Insurance Regulatory and Development Authority of India (IRDAI), enforcement has been inconsistent.

Ayushman Bharat-Pradhan Mantri Jan Arogya Yojana (PM-JAY), India's flagship public health insurance scheme for economically vulnerable populations, initially excluded mental healthcare and has only recently introduced limited inpatient mental health packages, with outpatient services remaining largely uncovered. For destitute survivors of gender-based violence, these gaps effectively negate the statutory right to access mental healthcare under Section 18 of the MHCA. The Act, while rights-based in design, does not establish a comprehensive public mental healthcare delivery system comparable to basic healthcare infrastructure, leaving many survivors without meaningful access to services.[33]

International Human Rights Standards and Comparative Analysis

[30] *Id.*

[31] Soumitra S. Datta & Soumyadeep Bhattacharya, *Assessment of the Provisions of the Mental Healthcare Act 2017 Regarding Health Insurance for Mental Illnesses: Where Do We Stand?*, 41 Indian J. Psychiatry 377, 379 (2019).

[32] *Id.*

[33] Jacquelyn C. Campbell, *Health Consequences of Intimate Partner Violence*, 359 Lancet 1331, 1335 (2002).

A. CEDAW and General Recommendations

India's obligations under the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) provide an important framework for assessing the adequacy of the Mental Healthcare Act, 2017. CEDAW General Recommendation No. 19 recognises gender-based violence as a form of discrimination that impairs women's enjoyment of fundamental rights, including the right to health, and urges States Parties to adopt legal and institutional measures that ensure protection, support services, counselling, and rehabilitation for survivors.[34]

CEDAW General Recommendation No. 35, which updates and strengthens General Recommendation No. 19, further clarifies that States have a due diligence obligation to ensure the availability, accessibility, acceptability, and quality of health services for survivors of gender-based violence, including mental health and psychosocial support. It emphasises that States must provide appropriate health services to address the full range of physical and psychological consequences of gender-based violence.[35]

In its Concluding Observations on India's combined fourth and fifth periodic reports (2014), the CEDAW Committee expressed concern about the limited availability of psychosocial support and counselling services for women survivors of violence and recommended that India strengthen access to such services. Against this backdrop, the failure of the MHCA to incorporate survivor-specific mental health provisions reflects continuing gaps in India's compliance with its international obligations under CEDAW.

B. WHO Guidelines and Best Practices

The World Health Organisation has issued detailed clinical and policy guidance on responding to intimate partner violence and sexual violence against women, particularly in its *Clinical and Policy Guidelines for Responding to Intimate Partner Violence and Sexual Violence Against Women* (2013). These guidelines emphasise the central role of mental health support in survivor recovery and recommend that women exposed to violence receive first-line psychological support and, where needed, access to specialised mental health services. They further stress the importance of training healthcare providers to deliver empathetic, survivor-centred psychological care.

The WHO guidance underscores the use of trauma-informed approaches that recognise the impact of trauma on health and behaviour, avoid re-traumatisation, and promote survivors' autonomy, safety, and empowerment. It also recommends that mental health services be integrated within broader health systems and violence prevention frameworks rather than treated as isolated interventions. Against this international standard, the absence of any statutory mandate within the Mental Healthcare Act, 2017 for trauma-informed, violence-specific mental health responses represents a missed opportunity to align Indian mental health law with global best practices.[36]

C. Comparative Jurisdictions: United Kingdom and South Africa

United Kingdom: The United Kingdom has developed a more integrated framework for addressing the mental health needs of survivors of domestic abuse through the combined operation of health and domestic violence legislation. While the Mental Health Act 1983 (as amended) is not designed to address gender-based violence and contains no

[34] Convention on the Elimination of All Forms of Discrimination Against Women, Dec. 18, 1979, 1249 U.N.T.S. 13.

[35] Committee on the Elimination of Discrimination Against Women, General Recommendation No. 35 on Gender-Based Violence Against Women, Updating General Recommendation No. 19, ¶ 31, U.N. Doc. CEDAW/C/GC/35 (2017)

[36] Committee on the Elimination of Discrimination Against Women, Concluding Observations on the Combined Fourth and Fifth Periodic Reports of India, ¶¶ 37-38, U.N. Doc. CEDAW/C/IND/CO/4-5 (2014).

survivor-specific provisions, mental health support for abuse survivors is delivered through the National Health Service (NHS) via trauma-informed services, referral pathways, and programmes such as Improving Access to Psychological Therapies (IAPT), often in coordination with domestic abuse support agencies.
The Domestic Abuse Act 2021 represents a significant legislative advance by recognising emotional and psychological abuse as forms of domestic abuse and imposing a statutory duty on local authorities to provide support services, including counselling and psychological assistance, for survivors residing in safe accommodation. This coordinated approach, linking domestic abuse law with mental health service delivery, demonstrates the importance of legislatively integrating mental health care with violence prevention and survivor protection frameworks.[37]

South Africa: Domestic abuse is a factor that can lead to mental illness, according to South African legal regulations. With the passage of the Domestic Violence Act in 1998, physical, verbal, and emotional violence were all made illegal. In order to safeguard individuals, the Act grants the courts the authority to order therapy and emergency financial assistance, which may include reimbursement for mental health medical expenses.

The Mental Health Care Act, 2002, further reinforces a community-based, least-restrictive approach to mental healthcare, promoting treatment within community settings rather than institutionalisation. Although the Act does not contain survivor-specific provisions, its rights-based orientation provides a legal foundation for addressing trauma-related mental health needs arising from violence. When read together, South African domestic violence and mental health legislation illustrates the benefits of explicitly recognising psychological abuse and enabling financial and service-based responses to mental health harms associated with gender-based violence.[38]

Implementation Challenges and Systemic Barriers

A. Infrastructure Deficits

The statutory promise of access to mental healthcare under Section 18 of the Mental Healthcare Act, 2017, remains largely unrealised due to persistent infrastructure and human resource deficits. International benchmarks suggested by the World Health Organisation indicate that countries should maintain a minimum level of mental health professionals per 100,000 population; however, India's mental health workforce remains well below these recommended levels, with fewer than one mental health professional per 100,000 persons according to recent national estimates.[39]

At the service-delivery level, the District Mental Health Programme (DMHP), a key component of the National Mental Health Programme, had been implemented in approximately 704 out of 739 districts as of 2022, reflecting progress but also uneven coverage and capacity. For survivors of gender-based violence residing in rural areas, where nearly two-thirds of India's population lives, accessing mental healthcare often requires travel to district headquarters or urban centres. Transportation costs, loss of wages, and the need to conceal treatment from abusive partners constitute significant barriers.[40]

Although tele-mental health initiatives such as the National Tele-Mental Health Programme (Tele-MANAS) have been introduced through executive policy, digital illiteracy, limited internet access, and lack of survivor-focused outreach continue to restrict their effectiveness. The absence of statutory mandates within the MHCA to ensure decentralised, mobile, or survivor-centred service delivery thus remains a major systemic barrier to realising mental health rights for survivors of gender-based violence.

[37] National Institute for Health and Care Excellence, *Domestic Violence and Abuse: Multi-Agency Working*, NICE Guideline PH50 (2014).
[38] Mental Health Care Act 17 of 2002 (S. Afr.).
[39] Ministry of Health & Family Welfare, National Mental Health Programme, *Implementation Status of District Mental Health Programmes* (2022).
[40] *Id.*

B. Inadequate Funding

India's health budget gives mental health less than 1%, which makes it very hard to expand services. The National Mental Health Program and the District Mental Health Program are always short on money. The budgets aren't big enough to hire enough staff or build full-service community mental health facilities. Without special budgetary resources for mental health treatment for GBV survivors, they continue to fall through the gaps of the system.[41]

C. Stigma and Cultural Barriers

In Indian society, mental illness is heavily stigmatised, and survivors of gender-based violence are often blamed for what happened to them. Women who talk about both violence and mental health issues run the risk of being called "crazy" or "unstable," which could mean losing family support, custody of their children, or their social position. This double stigma makes it very hard for people to get mental health care, making their legal rights mostly useless.[42]

Cultural beliefs that view domestic violence as a private family issue inhibit individuals from seeking assistance. The National Family Health Survey indicated that 44% of women and 43% of men think that beating your wife is okay in some situations. In these situations, women may not consider their mental health symptoms as real health problems that need treatment, or they may be afraid that getting help for their mental health will make them seem disloyal to their family.[43]

D. Lack of Trauma-Informed Training

Medical school in India offers scant instruction on gender-based violence (GBV) or trauma-informed care. Psychiatrists and psychologists generally do not obtain specialist training in addressing trauma associated with violence during their initial education. As a result, survivors may come across healthcare providers who don't check for violence, misdiagnose symptoms, or give the wrong therapy.[44]

Research on the experiences of GBV survivors in Indian healthcare settings shows that healthcare providers sometimes blame victims, break confidentiality, and are dismissive. These iatrogenic effects exacerbate trauma and inhibit future help-seeking, underscoring the critical necessity for obligatory trauma-informed competency standards in mental health professional education.[45]

E. Fragmentation Between Legal and Health Systems

The lack of cooperation between legal protection systems and mental health care leads to failures. Protection Officers under the PWDVA seldom possess knowledge regarding mental health resources or training to identify mental health issues. Mental health providers also often don't know about the legal protections that are available to survivors of GBV or how to help clients who are still being abused make safety plans.[46]

The Nirbhaya Fund set up One Stop Centres (Sakhi Centres) to give survivors of violence all the help they need in one place. In theory, these centres provide medical, legal, and psychological help. But review

[41] Soumitra Pathare & Rajesh Nagpal, *Mental Health Financing in India: An Analysis of the National Mental Health Programme Budget Versus Actual Expenditure*, 4 PLoS ONE e7424 (2019)
[42] Ravi Philip Rajkumar, *Stigma and Mental Health in India: Perspectives from Social Science Research*, 62 Indian J. Psychiatry S62, S64-65 (2020).
[43] Ministry of Health & Family Welfare, *National Family Health Survey-5 (2019-21): India Report*
[44] Swapnajeet Sahoo & Adarsh Tripathi, *Training in Psychiatry: Issues and Challenges in India*, 64 Indian J. Psychiatry S210, S212-13 (2022).
[45] Padma Bhate-Deosthali et al., *Poor Standards of Care: Violence Against Women in Healthcare Institutions*, in Violence Against Women in India: A Comprehensive Analysis 201, 205-10 (Kalpana Kannabiran ed., 2012).
[46] *Id.*

studies show that psychological services are often the weakest part, with many centres not having certified mental health specialists or only delivering short, one-time therapy sessions that aren't enough to help with trauma-related issues.[47]

Conclusion

The Mental Healthcare Act, 2017, marked a significant shift in Indian law by recognising access to mental healthcare as a statutory entitlement grounded in the constitutional guarantee of life with dignity under Article 21 of the Constitution of India. Internationally, India is bound by obligations under the International Covenant on Economic, Social and Cultural Rights (Articles 11 and 12) and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) to ensure access to health services, including mental healthcare, for women subjected to violence.

This study demonstrates that the Mental Health Care Act (MHCA) does not adequately address the mental health requirements of victims of gender-based violence, notwithstanding the progress that has been made. There are many barriers that prevent the protection of rights related to mental health. Some of these include the absence of gender-based violence (GBV) standards, the partial incorporation of laws such as the Protection of Women from Domestic Violence Act of 2005, problems with implementation, and institutional barriers that are systemic in nature. It is still difficult for survivors to obtain mental health therapy that is prompt, cheap, and based on their own experiences.

Women's health, safety, and self-esteem are all put in jeopardy when they are subjected to violence. In accordance with the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and Articles 14 and 15 of its constitution, India is obligated to provide victims of abuse with proper mental health care. These pledges are disregarded by the laws and institutions that are now in place.

In order to accomplish Sustainable Development Goals 3 (good health and well-being) and 5 (gender equality), national mental health legislation and policies need to make it clear that violence against women has an impact on mental health. It is not enough to simply have notional rights; we need to make significant reforms to laws, policies, funding, and institutions in order to counteract these impacts.
The findings of this study suggest that the Mental Health Care Act (MHCA) should be amended to include survivor-specific trauma-informed mental healthcare standards; that institutional integration between mental health services and gender-based violence (GBV) protection mechanisms should be improved; that public mental health infrastructure and workforce development budgets should be increased; and that mental health and legal professionals should be required to receive trauma-informed care. Under both domestic and international law, India is obligated to provide medical care that is compassionate, equitable, and effective to all women, including those who have been abused. By taking these steps, India may be able to accomplish its purpose.

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[47] Centre for Health and Social Justice, *Evaluation of One Stop Centres: Key Findings and Recommendations* 42-48 (2020)

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NAVIGATING THE NEXUS OF FREE SPEECH, TECHNOLOGY AND STATE POWER

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ABSTRACT

We all know that free speech is non-negotiable, technology is very pervasive and the State power is seldom despotic. However, this simple truth is now lost in a digital labyrinth. This intricate nexus forces us to ask 4 crucial questions: -

(i) Is the State truly our protector, or has it become a despot in recent era(w.r.t. free speech)?
(ii) Are technology and Artificial Intelligence forging a new paradigm of free speech?
(iii) Has the State gained the power to censor and criminalize dissent?
(iv) What is the crucial role of Judiciary in harmonizing and redefining the concept of free speech in evolving time?

The free speech conferred by the Constitution has profoundly expanded its domain in this digital age. It is no longer limited to our spoken words but has permeated our posts, threads, photos, and memes, reels, podcast etc. This digital sphere is often marred by online roasting or harassment using digital contents or AI-generated morphed images. Furthermore, the circulation of Artificial Intelligence-generated deepfake videos is escalating this issue beyond a fundamental right into a pressing crime. In such a scenario, when the State attempts to impose restrictions using its power, the citizens often challenge this as a violation of their Free Speech, escalating the matter to the Judiciary. The Judiciary is thus caught in a profound dilemma: as a custodian of Constitution , it must protect Fundamental Rights on one hand, while simultaneously considering State security and also defining the limits of new technology in this rapidly evolving era. This complex interplay is the nexus at the heart of modern democratic discourse and inadvertently presenting a critical challenge to our societal values. This article delves into this deeply concerning and intricate nexus , seeking to illuminate the path forward for societal value.

Keywords: Free speech, Technology, Judiciary, Artificial Intelligence, State , Nexus

1. THE LEGAL & JUDICIAL FRAMEWORK

The right to freedom of expression is not a modern invention. It is a foundational principle of human rights law, enshrined globally in Article 19 of the Universal Declaration of Human Rights and International Convention on Civil and Political Rights. In India, this right is recognized as a fundamental right under Article 19(1)(a) of the Constitution, which guarantees "freedom of speech and expression."[1] You will be amazed to know that during the process of drafting Constitution, our Constitutional architects were deeply influenced by global models of democratic rights, including American Bill of Rights. They consciously chose to diverge from USA model of near absolute right to free speech. Because, USA had seen the havoc of granting absolute freedom to its subjects with out any restriction. India was an infant democracy at that time and was not robust enough to endure such internal crises. The framers were mindful towards the potential for social and communal discord in a diverse & newly independent nation. They understood that an unfettered right to expression could be exploited to incite violence or undermine national unity. Hence, they deliberately inserted Article 19(2) which allows for reasonable restriction of free speech on grounds of: Sovereignty & integrity of India, Security of the State, Friendly relations with foreign states, Public order ,Decency, Morality, Contempt of Court ,Defamation ,Incitement to an Offence.

[1] Article19, The Constitution of India

2. HARMONISING THE NEXUS AND JUDICIAL PRECEDENT

Here I would like to draw attention of readers towards recent controversy cropped up due to scorning comment by a famous IAS Coach on internet[2]. In viral video it has been seen that the coach is denigrating Judiciary by mocking higher Judiciary and disparaging the integrity and honors of district judiciary by some fallacious comparison with district magistrate. He also allegedly made controversial comparisons between powers of District Judge and District Magistrate , suggesting that Judicial power is dependent on Police cooperation and the confluence of District Judge and SP. This torrent of scornful commentary has now precipitated a formal reckoning , as the speaker is currently confronting legal consequences commensurate with his derogatory remarks. A lower court in Ajmer has already issued summons to him. Now , lets analyze this incident how a free speech transcended its hedge and furled to tagged as an offence.

In the exercise of his fundamental right to freedom of speech, it is imperative to note that one must not transcend the meticulous boundaries set forth by the Constitution. As an advocate, I would like to underscore that his utterance as demonstrated in viral video , particularly those disparaging the judicial structure are deemed sufficient to attract the twin spectra of contempt of Court and defamation of Judiciary. The Constitution , while guaranteeing liberty of thought, expression , simultaneously mandates reasonable restrictions under Article.19(2) , serving as a crucial bulwark against that alleged speech which undermines the very institutions vital to the republic's foundation- a threshold his comment seems to have perilously crossed. This incident perfectly encapsulates the friction within nexus of free speech, technology and state power. The coach utilized the technological nexus to amplify his highly critical and derogatory dissent by disseminating it across the internet. If, he had uttered this within four walls of his private coaching class, this might not be reached to such umpteenth numbers of audience. The Sate's response – the legal summons and the likely invocation of contempt is the essential function of State power asserting its authority to enforce reasonable restriction. This action underscores the delicate contemporary challenge: the digital age grants an unbridled platform for critique , compelling the Judiciary to constantly recalibrate its mechanisms to safeguard both the fundamental right to expression and the absolute necessity to maintain institutional honor and operational efficacy.

In this complex nexus, sometimes citizens transcending their perimeter , while sometimes, State posed to become despot to suppress the free speech.

While turning the pages of past, it is wisely noted that the Judiciary has played a crucial role in redefining the State power. In the landmark ***Shreya Singal case***[3], the Supreme Court struck down S. 66 A of IT Act[4], emphasizing that freedom of speech could not be restricted on vague grounds. Lets analyze this case to understand this intricate nexus .In this very case, the Supreme Court posed as the protector of digital manifestation of free speech and expression. The seminal case originated from the arrest of two young women , for a simple Facebook post and a like on that post, expressing dissent over bandh called in the wake of a politician's funeral. The swift incarceration was a draconian move by the State to wield the sweeping Section.66A of the Information Technology Act, aiming to stifle digital dissent and compel mass self censorship- a direct , dangerous assault on the freedom of expression. In this profound Constitutional crisis, the Judiciary emerged as a guardian angel to protect the fundamental right of digital voice. By decisively

[2] "IAS Coach faces legal action over 'defamatory' remark against Judiciary", The Times of India (Patna edition) 9.07. 2025

[3] AIR 2015 SC 1523

[4] Information Technology Act 2000(Act No. 21 of 2000)

striking down Section 66A , the Court delivered a powerful affirmation on Constitutional morality i.e. the right to critique the established order is the non-negotiable bedrock of democracy, securing the digital public square.

[5] *"Shreya Singhal is a hugely important landmark in the Supreme Court's history for many reasons. It represents a rare instance of the court adopting the extreme step of declaring a censorship law passed by Parliament as altogether illegitimate. But what's most uplifting about the judgment is that it has explicated to us, with remarkable felicity, the scope of the right available to us to express ourselves freely, and the limited space given to the state in restraining this freedom in only the most exceptional of circumstances. In clarifying the balance between the right and its narrow constraints, the court has struck a vicious blow against the duplicitous stand taken by the state, which consistently represents the right to freedom of speech and expression as a fragile guarantee at best. As Justice Nariman's opinion has highlighted, the liberty of thought and expression is not merely an aspirational ideal. It is also "a cardinal value that is of paramount significance under our constitutional scheme."*[6] I must emphasize that without this landmark ruling , the digital voice would be proved as a fiasco in our nation. This verdict saved our conscience from being shackled.

Another pivotal case is ***K.A. Abbas v/s Union of India***[7] ,which upheld the constitutionality of film censorship but clarified that it must be based on reasonable restrictions. These rulings serve as vital precedent that the State's power to regulate speech must be exercised within the strict confines of the Constitution. . In this case, the Supreme Court upheld the principle of film censorship while concurrently established its stringent limits. The Court recognized film as a special medium with an unparalleled visual and emotional gravities, justifying its differential treatment from other forms of expression. Crucially , the ruling dictated that this regulatory power is not absolute, but must be infallibly tethered to the reasonable restrictions enshrined under Article 19(2). This judicial pronouncement cemented a vital precedent: the State's authority to regulate speech is constrained within the strict confines of the Constitution , reinforcing the Judiciary's role as the indispensable check against arbitrary executive action.

3. THE DOUBLE-EDGED WEAPON OF TECHNOLOGY

Technology, particularly the internet and social media has been the most transformative force for free speech in recent history. Platforms like X(formerly known as Twitter), Meta, YouTube have been breaking down traditional communication barriers, empowering marginalized communities in a way that was implausible just a few decades ago. However, this same technology carries a dark potential with it. It can be weaponized to spread misinformation and propaganda at an alarming rate, creating "echo chambers" that lead to deep societal polarization. A new and profoundly disconcerting frontier is the advent of **Artificial Intelligence**, particularly the proliferation of deepfakes. These hyper-realistic forgeries of audio and video pose an existential threat to the integrity of the information ecosystem. A fabricated video of a political leader could ignite diplomatic crises or foment civil unrest. This ability to manufacture irrefutable "evidences" to slander opponents, undermine the very foundation of public trust and renders the State vulnerable to technology enabled subversion. In fact , this cant be tagged as slander, but is a libel, because these

[5] https://www.google.com/amp/s/www.thehindu.com/opinion/lead/The-judgment-that-silenced-Section-66A/article59870557.ece/amp/
Editorial, The Judgment that silenced Section 66A, The Hindu, Digital edition , 4.12.2021

[6] https://www.google.com/amp/s/www.thehindu.com/opinion/lead/The-judgment-that-silenced-Section-66A/article59870557.ece/amp/

[7] AIR (1971)

deepfake remain perpetual owing to digital dissemination.

4. THE STATE AND ITS INSTRUMENTS OF CONTROL

Historically, the State has used its power to regulate and suppress dissent. This practice now amplified by technology, is evident in the laws like Sedition (S. 124 A IPC), UAPA to charge activists and students. In recent past, we have seen severe crack down on a renowned University students on some controversial speech along with demonstration against new Citizenship Amendment Act in New Delhi. These actions often justified in the name of national security, raise concerns about the State's use of its power to silence critics.

A more extreme form of censorship is the use of internet shutdowns, which severely limits citizen's ability to communicate and receive information, as seen during the recent Manipur violence[8] as well as in Kashmir[9] during revocation of article 370. The recent Nepal coup demonstrated the State's power on social media restrictions & curtailment of democratic rights. It has been observed that State's use of force to consolidate power often begins with a crackdown on expression. The State's increasing capacity for surveillance enhanced by technology, further complicates this landscape. The ability of Govt to monitor citizen's online activities, track their communications and access their personal data poses a direct threat to the right to privacy and can have a chilling effect on free speech. This erosion of privacy fundamentally alters the dynamic of public discourse as citizens may self-censor out of fear of State retribution or monitoring. Such kind of online monitoring of citizen's activity and personal chat posing a detrimental intrusion upon citizen's right to privacy, which is a fundamental human right as stated in *K.S. Puttaswammy Vs. Union of India.*[10]

A very recent announcement by Government of India for mandatory default installation of *Sanchar Sathi app* in every smart phone without any option to disable or uninstall the same has raised eyebrows of netizens. It is perceived as a direct infraction on our privacy on pretext of securing us from cyber fraud. Although , Government has recalled its order, but still it is a matter of grave concern as it has exposed the intention of the Government to monitor the activities of citizens[11].

5. FROM PUBLIC SPACES TO PRIVATE PLATFORMS

A significant challenges in this new nexus is the drastic shift of public discourse from public space to private platforms owned by Corporation, for example, X by Elon Musk. Historically public spaces/forums were regulated by public law, with clear Constitutional protection. Today, a large part of our right to expression is dependent on the terms of service & contents moderation policies of private companies. Their decision to take down content or ban users, though not subject to the same constitutional oversight as Govt actions, but can feel like a direct denial of free speech, creating a new vulnerability to corporate whims & profit motives, because in this Digital world we all are sewed with the flow of digitization.

6. INDECENCY - ETHICAL COLLAPSE OF UNREGULATED AI AND FREE SPEECH

Here, I would like to highlight a highly reprehensible incident arising from the unregulated and unethical use of artificial intelligence, which exposed its potential to cause severe societal harm.

On the social media platform Twitter (now X), an AI assistant named *Grok* has been deployed without adequate ethical safeguards. Certain users exploited this tool by commanding it to digitally strip women whose normal, decent photographs were uploaded online. Shockingly, the AI complied instantaneously. What followed was a disturbing

[8] 2024
[9] 2019
[10] AIR 2017

[11] "DoT walks back Sanchar Saathi pre-installation directive following uproar" ,The Hindu, 4.12.2025(Patna edition)

trend under the hashtag #BikiniGrok, wherein images of innumerable women—young girls, adult women, and even elderly women—were digitally morphed, denuded, and sexualized on a public platform without consent or warning.

This incident constituted a direct assault on women's dignity and privacy. Indian women were also among the victims, and licentious users found unrestrained amusement in this exploitation. Although the concerned Ministry intervened and curbed access to this tool in India within 48 hours, the damage—both psychological and reputational—had already been inflicted.

This episode stands as a grim reminder that the unhindered deployment of AI, without ethical accountability and human oversight can lead to catastrophic consequences for society. Such incidents compelled us to reaffirm about strict measure by State on free speech and artificial intelligence. Because, here issue is not about free speech versus state power, but the uncontrolled misuse of technology without constitutional mandate. Here, I perceived that strict measure by State govt seems inevitable, otherwise in the name of free speech , the technology and AI will shun the existence and dignity of women.

7. ALGORITHIMS AND AUTOMATION IN EDITORIAL REVIEW—INCIDENT WHERE AI QUESTIONED HUMAN ORIGINALITY

I would now like to present a personal, real-life case study that exposes another disturbing dimension of artificial intelligence—its intrusion into human creativity and a potential threat to free speech.
I authored an academic article on the misuse of artificial intelligence and submitted it to a college editorial board for consideration in their forthcoming publication. Given my ethical stance and professional responsibility, I consciously refrained from using any AI tools during the writing process. I personally consider AI as a potential threat to human creativity, as it lacks independent reasoning, consciousness, or originality—it merely imitates patterns based on pre-fed data.

To my astonishment, I was informed by the editorial board that my article had been flagged as *AI-generated text*. I sought clarification as to whether the concern related to plagiarism or duplication. The response was unequivocal: it was flagged as AI-generated. This left me flabbergasted.

I undertook an in-depth study of AI detection algorithms and consulted AI engineers to understand how such a conclusion could be drawn. I discovered that my writing style bore resemblance to established journalistic language—particularly that of veteran newspaper, which, I have read consistently over the years. Furthermore, I have authored nearly twelve articles published in national and international journals, all of which are freely available online. My consistent tone, flow, and argumentative temperament—hallmarks of an authorial voice—were already present in digital space.

Ironically, AI systems had absorbed my prior work as training data, and when I articulated my own stylistic consistency, the algorithm flagged it as artificial.

In effect, my originality was questioned because AI had already learned from me.

The Absurdity of "Humanizing" the real humans:-

The editorial board went a step further and suggested that I should pay for online software to *"remove AI-generated text"* and "*humanize*" my article. Numerous tools now claim to downgrade or distort language so that it appears more "human". This is the height of absurdity. I am a human being. My writing is human-written. Yet I was asked to seek certification from a machine to prove that I am a human. What ludicrous is it? Flawless grammar, structured arguments, and coherent flow were treated as indicators of artificial authorship. There exists no transparent or scientific criterion for

declaring a text AI-generated. Detection tools operate on probability, not certainty.

To "*humanize"* a text, AI tools deliberately degrade linguistic quality—thereby equating human imperfection with authenticity.

I refused to comply and formally withdrew my article. My position was unequivocal: an original human mind does not require validation from opaque algorithms.

This experience serves as a critical case study, illustrating how over-reliance on automation can erode genuine human creativity . Editorial boards that fail to understand algorithmic mechanisms risk silencing authentic voices. Automation, when unchecked, transforms an assistive tool into an unquestioned authority.

In this context, I use the term "AI-slave" deliberately—not as an insult, but as a diagnosis of institutional complacency. When human judgment is surrendered to software outputs without scrutiny, creativity becomes collateral damage.
Artificial intelligence cannot create—it can only imitate within the confines of limited data. The human mind, however, is dynamic, contextual, and infinite. A society that prioritizes algorithmic approval over human intellect risks intellectual stagnation. And yes, I am not the first victim , because many genuine authors already suffered this plight due to relentless use of automation algorithms in manuscript review process. But, I learnt from this lesson that, in future AI and algorithm softwares might suppress original voice of author and curtail free speech, if it will be programmed accordingly.

8. NAVIGATING THE NEXUS: A PATH FORWARD.
Navigating this complex nexus requires a multi-pronged approach. Govt must resist the urge for heavy-handed control & instead focus on developing clear, judicially reviewable legal frameworks that address specific markers without undermining free speech & expression. In this prospect I would like to throw light upon *the Karnataka Hate Speech and Hate Crimes(Prevention) Bill 2025*, which has been tabled recently in State legislature. This is a vivid example of this arduous nexus. The draft clearly transpires that the proposed Bill is an epitome of blatant misuse of State power. On this regard an editorial was published in The *Hindu newspaper* on 12th December 2025 under the heading of *"Playing to the Gallery"*[12], where the author meticulously explained the aspect of the Bill and its potential threat to free speech. While throwing light, the author portrayed the scenario by citing *"Good intentions do not necessarily lead to good outcomes"* . This is the a striking example of this nexus. Actually with the advent of technology, and its ubiquitous digital podium, the boundary of free speech has been blurred , sometimes becoming conflated with or rapidly metamorphizing into hate speech. To clog the unfettered spread of technology-driven hateful contents , the State feels compelled to intervene and restrict such intent. However , this necessity creates a profound tragedy: here in its effort to prevent hate speech , the State risks stifling the very soul of legitimate free speech and blemishing the fundamental right. In this juncture, the ultimate ray of hope is Judiciary , which can rightfully harmonize these two contrasting valors . Otherwise, its an abstruse to imagine a welfare nation in near future. Only judiciary can set the parameters by keeping in view the prevailing digital age.

One must perceive that ,the whole nexus is revolving around the power. When citizens get the freedom to express themselves fully (Under article 19) , they misused it by transgressing the societal , ethical , legal brim. And the other actor i.e. State which has procured its Constitutional power to legislate is

[12] Editorial, "Playing the gallery" ,The Hindu newspaper ,12.12. 2025 (Page 6, Patna Edition)

often seen to sabotaging it. Whereas the Constitution gave the discretion to enact the law, we have witnessed how the State arbitrarily misusing its power. Here I would like to reminisce the dark jiffy of our democracy in mid 70's with the imposition of Internal emergency in India. In this intricate conflicting nexus, I would like to reiterate a famous adage of Lord Acton:

"Power tends to corrupt , and absolute power corrupts absolutely"[13].

The current practice of defining fundamental rights in the digital age requires immediate re-evaluation. Our reliance on applying existing laws by analogy—akin to the concept of Qiyas (analogical reasoning) in Muslim Law—is miserably failing to match the pace of technological advancement. Unimpeded technological speed posing a clear peril to national security , internal integrity and harmony of our nation.

While the Information Technology Act[14] offers partial solutions, but a Codified Digital Law is urgently needed. This law must incorporate a stringent Digital Clear and Processing test to prevent the dissemination of hate speech, while concurrently ensuring that no data processing should be politically inspired.

Crucially, the State, being the more powerful entity, must face an increased burden of proof. When curtailing free speech, the State must unequivocally ensure that any dissent genuinely constitutes a threat to the nation's integrity, sovereignty, secularity, or any of constitutional morality.

The entire International communities also working to a consensus on global standard for digital governance. Tech companies must become more transparent and accountable. Furthermore, rapid AI development demands a Proactive AI Ethical Department to embed ethical dimensions into AI usage. Tech companies must face clear accountability and penalties. Transparency in contents moderation is essential. Strict action must be taken against deepfakes that harm national security or constitutional morality. Recently , we have witnessed many deep fake videos circulating via WhatsApp, fabricating Hon'ble Prime Minister as endorsing some fraudulent investment schemes that promised high returns[15]. Upon fact checking by PIB[16] , those videos flagged as fake. During Bihar Election campaigning, a deepfake AI generated video was circulated by opposition involving PM's late mother which has been removed from digital platform by an order of Hon'ble Patna High Court.[17] The law must define with clarity regarding who is liable when AI systems commits an offence.

Finally, the Judiciary must affirm that State welfare is served best by expanding digital rights, not by constriction. The Courts should re-interpret free speech and privacy to include the right to lawful digital access, compelling the State to:

- approach Internet shutdowns as measures of last resort , subject to stringent judicial scrutiny.
- neutralize misinformation through prompt digital literacy, public fact-checking , and avoiding outright censorship.

By adopting this forward-looking constructive as well as protective s measure, the Judiciary can swiftly navigate and resolve this labyrinth.

In my concluding note, I would like to highlight the irrefutable fact that *"free speech is the lifeblood of a functioning democracy"*[18]. It is imperative to

[13] www.acton.org/research/lord-acton-quote-archieve
[14] Information Technology Act 2000 (Act no 21 od 2000)
[15] Viral reels circulating across social media
[16] Press Information Bureau (a Govt fact checking agency)
[17] 'Patna High Court directs Congress to remove AI generated video of PM Modi, his late mother" , The Hindu newspaper ,18.09.2025 (Patna edition)
[18] http://www.shankariasparliament.com/current-affairs/freedom-of-speech-1

establish a legal framework that enhances accountability for both the Govt & Technology Corporation. This framework must ensure that Govt actions are subject to judicial review, and that private platform policies are fair, transparent and do not arbitrarily suppress voices. The great test of our era is to ensure the power of technology serves to liberate human expression, not to become a new instrument for its suppression.

I would like to draw attention towards a recent ruling of Hon'ble Karnataka High Court published in The Hindu newspaper on dated 25.09.2025 under heading *of "HC rejects X Corp's plea against blocking orders"* Here Hon'ble Court stringently mentioned order is the architecture of our democracy*: "Every platform that seeks to operate within the jurisdiction of our nation must acknowledge that liberty is yoked with responsibility, and the privilege of access carries with it the solemn duty of accountability."*[19] Undoubtedly here, Hon'ble High Court emphasized the big tech company to adhere to laws of nation and stressed on liberty stuffed with accountability.

9. WAY FORWARD

The fortitude of any democracy rests fundamentally on the effective protection of freedom of speech and expression. In the digital eon, however, this foundational right is afflicted by a dual pathology: first, the unchecked spread of expression into malicious hate speech; and second, the curtailment of legitimate critique and dissent under the guise of preserving State order. While the former necessitates firm legal accountability, the latter demands the highest degree of constitutional protection.

The present phase of the rapid unprecedented digital revolution has profoundly transmuted the scope of free speech. With a single click, our words now travel instantaneously across the globe, extending expression beyond written words to include videos, music, and the pervasive culture of memes. This rapidly expanding and multi-faceted challenge calls for a deeper and more reflective expansion of legal jurisprudence on this nexus. Technology, regrettably, is fast shifting from a potential friend of liberty to a camouflaged foe.

To confront this dual pathology, the spectrum of free speech must be recalibrated for the twenty-first century. This requires a vibrant articulation of the legal and ethical limits governing AI and digital technologies. The State must be restrained from fluxing its discretionary authority with arbitrary power. Only through this shared responsibility—where ethical standards for AI and precise legal boundaries coexist—can a truly balanced and coherent nexus emerge. In such a future, citizens will be able to express themselves without apprehension, technology will function as an adjunct to aid free speech fully with content by truncating unethical dimensions, and finally the State will respect its constitutional constraints. Only then we can flourish in our society genuinely to experience the vitality of a resilient and healthy democracy.

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[19] "HC rejects X Corp's plea against blocking orders" , in The Hindu newspaper , 25.09.2025 (Patna edition)

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THE DUAL ENFORCEMENT MODEL: EVALUATING LITIGATION AND SETTLEMENT IN THE CCI'S GOOGLE SAGA AS A BASIS FOR EX-ANTE REGULATION UNDER THE INDIA'S DIGITAL COMPETITION BILL, 2024

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Abstract

The series of antitrust actions by the Competition Commission of India (CCI) against Google represents a defining crucible for regulation in India's digital age. This paper posits that these cases are not disparate enforcement actions but a crucial natural experiment in regulatory design. It undertakes a critical analysis of the CCI's two divergent enforcement models: the traditional, adversarial approach seen in the Android ecosystem and Play Store cases, which forges binding precedent through protracted litigation; and the new, pragmatic approach exemplified by the landmark settlement in the Android TV case. By contrasting the slow, jurisprudential value of litigation with the expediency of negotiated resolutions, this paper argues that the 'Google Saga' reveals the inherent limitations of a purely ex-post framework. It contends that the empirical lessons from these cases on issues of tying, self-preferencing, and anti-steering provide an indispensable and evidence-based blueprint for the design and necessity of India's proposed ex-ante Digital Competition Bill. The paper concludes that this experience justifies a sophisticated hybrid regulatory model, where the credible threat of robust ex-post enforcement provides the essential leverage for a balanced and effective ex-ante framework.

Introduction

The global regulatory order is in a state of conflict with a handful of technology firms whose power now rivals that of nation-states. While these 'gatekeepers' have created unprecedented value, a consensus has emerged that traditional *ex-post* competition law, designed for a different economic era, is ill-equipped to address the fast-tipping nature of digital markets.[1] This has spurred a wave of global regulatory action, from the European Union's Digital Markets Act to aggressive enforcement in the United States.[2] India's Competition Commission (CCI) is a key participant in this global awakening, and its multifaceted enforcement actions against Google provide a unique analytical opportunity.[3]

This paper argues that the CCI's concurrent deployment of two distinct enforcement models against Google constitutes a crucial natural experiment. First, in the *Android* and *Play Store* cases, the CCI pursued the traditional, adversarial path, resulting in multi-crore penalties and behavioural directives against practices like illegal tying and anti-teering.[4] This slow, evidence-intensive approach forges binding jurisprudence. Second, in the *Android TV* case, the CCI deployed its new settlement powers, terminating proceedings

[1] Report of the 53rd Report of the Parliamentary Standing Committee on Finance (2022-23), Lok Sabha Secretariat 13, 14 (2022).
[2] Anu Bradford & Adam Chilton, *Competition Law in the Digital Age: A Global Scan of Horizontal and Vertical Restraints*, U of Chicago, Coase-Sandor Institute for Law & Economics Research Paper No. 981, at 15-18 (2023).
[3] CCI Order, Case No. 39 of 2018 (Oct. 20, 2022); CCI Order, Case No. 07 of 2020 (Oct. 25, 2022).
[4] CCI Order, Case No. 39 of 2018, at ¶ 649 (Oct. 20, 2022); CCI Order, Case No. 07 of 2020, at ¶ 433 (Oct. 25, 2022).

in exchange for a monetary payment and commitments marks a paradigm shift towards faster, negotiated market correction.[5]

The critical analysis of this enforcement dichotomy is not merely academic. It directly informs the urgent policy debate surrounding the Committee on Digital Competition Law's (CDCL) proposal for a new *ex-ante* Digital Competition Act.[6] Do the CCI's newly augmented powers obviate the need for a separate, prescriptive law? By examining the empirical lessons from the 'Google Saga', this paper provides a grounded answer to the question of what regulatory architecture will best secure India's competitive digital future.

The Traditional Arsenal: Establishing Precedent through Adversarial Litigation

Before contemplating a novel *ex-ante* framework, a rigorous examination of the existing legal arsenal is imperative. The Competition Act, 2002 ("the Act") provides the Competition Commission of India (CCI) with a potent, traditional *ex-post* enforcement toolkit.[7] Predicated on Section 4 of the Act, this model empowers the CCI to remedy abuses of dominance after the actual conduct has occurred.[8] While criticised for its slowness in fast-tipping digital markets, the indispensability of this adversarial process cannot be overstated.[9] It is the crucible in which robust, binding jurisprudence is forged. The CCI's landmark investigations into Google's *Android* and *Play Store* ecosystems serve as seminal case studies of this traditional path.[10]

Case Study 1: The Android Ecosystem Case (Umar Javeed v. Google LLC)

The CCI's order in the *Android* case was a watershed intervention in India's digital economy. Following an investigation initiated in 2018, the CCI's order of October 20, 2022, found Google guilty of abusing its dominance in the markets for licensable mobile operating systems and app stores for the Android ecosystem in India.[11]

The cornerstone of the abuse was the suite of agreements Google imposed upon Original Equipment Manufacturers (OEMs), most notably the Mobile Application Distribution Agreement (MADA).[12] The CCI found that Google unlawfully leveraged its dominance in the indispensable Play Store to impose an illegal tying arrangement.[13] Under MADA, to pre-install the "must-have" Play Store, OEMs were compelled to pre-install the entire Google Mobile Suite (GMS), which included revenue-earning apps like Google Search and Chrome.[14] This conduct was held to be an imposition of unfair conditions under Section 4(2)(a)(i) and an illegal tying under Section 4(2)(d) of the Act.[15] The CCI's analysis established that this practice created a powerful 'status quo bias', foreclosing the market for rival search apps and browsers.[16]

[5] CCI Order, Case No. 19 of 2020 (Settlement Order) (Apr. 2025); The Competition (Amendment) Act, 2023, § 48A, No. 9 of 2023.
[6] Press Note, Ministry of Corporate Affairs, Government of India, *Report of Committee on Digital Competition Law and Draft Bill on Digital Competition* (Mar. 12, 2024).
[7] The Competition Act, 2002, No. 12 of 2003.
[8] The Competition Act, 2002, § 4, No. 12 of 2003.
[9] Report of the 53rd Report of the Parliamentary Standing Committee on Finance (2022-23), Lok Sabha Secretariat 14 (2022).
[10] CCI Order, Case No. 39 of 2018 (Oct. 20, 2022); CCI Order, Case No. 07 of 2020 (Oct. 25, 2022).
[11] CCI Order, Case No. 39 of 2018, at ¶ 649.1 (Oct. 20, 2022).
[12] CCI Order, Case No. 39 of 2018, at ¶ 425 (Oct. 20, 2022).
[13] CCI Order, Case No. 39 of 2018, at ¶ 440.1 (Oct. 20, 2022).
[14] CCI Order, Case No. 39 of 2018, at ¶ 431 (Oct. 20, 2022).
[15] CCI Order, Case No. 39 of 2018, at ¶ 446 (Oct. 20, 2022).
[16] CCI Order, Case No. 39 of 2018, at ¶ 443 (Oct. 20, 2022).

Furthermore, the CCI found Google's Anti-Fragmentation Agreements (AFAs) to be abusive.[17] These agreements illegally prevented OEMs from developing or selling devices running on alternative versions of Android, or 'Android forks'.[18] This was held to limit technical development in violation of Section 4(2)(b)(ii) of the Act. Consequently, the CCI imposed a penalty of ₹1337.76 crore and mandated a comprehensive set of behavioural remedies.[19]

This precedent was substantially solidified on appeal. The National Company Law Appellate Tribunal (NCLAT), in its judgment of March 29, 2023, largely upheld the CCI's findings of abuse.[20] While setting aside some remedies, the NCLAT crucially affirmed the core findings on illegal tying and anti-fragmentation.[21] This appellate affirmation validated the CCI's analytical framework, solidifying the legal test for abuse of dominance in digital ecosystems.

Case Study 2: The Play Store Billing Policies Case

Building on the *Android* matter, the CCI delivered another landmark order on October 25, 2022, addressing Google's Play Store policies.[22] The Commission found Google abused its dominance in the market for Android app stores through two key practices. First was the mandatory imposition of the Google Play Billing System (GPBS) for paid apps and in-app purchases, which forced developers to use Google's proprietary payment system and pay a service fee of up to 30%.[23] The CCI held this to be an unfair condition under Section 4(2)(a)(i), as it denied developers access to alternative, cheaper payment processors.[24]

Second, Google's restrictive 'anti-steering' provisions were found to be abusive.[25] These policies prohibited developers from informing users within their apps about cheaper purchasing options available outside the Play Store.[26] This practice was found to deny market access to competing payment providers and harm consumer choice, contravening Section 4(2)(e) of the Act.[27] Accordingly, the CCI imposed a penalty of ₹936.44 crore and directed Google to permit the use of third-party billing systems.[28]

The matter's contemporary relevance is underscored by its pending final adjudication before the Supreme Court of India.[29] With a final hearing reportedly scheduled for November 2025, the Court's forthcoming judgment is poised to definitively shape Indian law on the obligations of dominant digital gatekeepers.[30]

Legal Analysis: The Necessity of an Adversarial Approach

The journey of these cases through the CCI, NCLAT, and the Supreme Court exemplifies *ex-post* enforcement. This path is undeniably protracted, a point cited by both the Standing Committee on

[17] CCI Order, Case No. 39 of 2018, at ¶ 520 (Oct. 20, 2022).
[18] CCI Order, Case No. 39 of 2018, at ¶ 491 (Oct. 20, 2022).
[19] CCI Order, Case No. 39 of 2018, at ¶ 651 (Oct. 20, 2022).
[20] NCLAT Order, Comp. App. (AT) No. 01 of 2023, at ¶ 522 (Mar. 29, 2023).
[21] NCLAT Order, Comp. App. (AT) No. 01 of 2023, at ¶ 522 (Mar. 29, 2023).
[22] CCI Order, Case No. 07 of 2020 (Oct. 25, 2022).
[23] CCI Order, Case No. 07 of 2020, at ¶ 324 (Oct. 25, 2022).
[24] CCI Order, Case No. 07 of 2020, at ¶ 346 (Oct. 25, 2022).
[25] CCI Order, Case No. 07 of 2020, at ¶ 357 (Oct. 25, 2022).
[26] CCI Order, Case No. 07 of 2020, at ¶ 359 (Oct. 25, 2022).
[27] CCI Order, Case No. 07 of 2020, at ¶ 366 (Oct. 25, 2022).
[28] CCI Order, Case No. 07 of 2020, at ¶ 434 (Oct. 25, 2022).
[29] Debarghya Sircar, *SC admits cross-appeals in Google Play Store case, final hearing in Nov*, MONEYCONTROL (May 17, 2024, 05:40 PM).
[30] *Id.*

Finance and the CDCL as justification for a faster, *ex-ante* regime.[31]

However, to view this process merely through the lens of delay is to overlook its fundamental virtue: the creation of robust, binding jurisprudence. Adversarial litigation, with its rigorous evidentiary standards and multi-tiered appellate scrutiny, is the only mechanism through which novel theories of harm can be validated and become settled principles of law.[32] The NCLAT's affirmation of the CCI's finding on tying is no longer a mere regulatory opinion; it is an established legal principle.[33]

This process is essential for providing legal certainty to the entire industry. The Supreme Court's final verdict in the *Play Store* case will definitively establish the legality of anti-steering and mandatory billing systems.[34] This clarity benefits all market participants, allowing them to structure their business models with a clear understanding of legal boundaries. While an *ex-ante* framework offers speed, it cannot replicate the nuance and precedential weight forged through the adversarial adjudication of fact-intensive disputes. Thus, the foundational role of this traditional enforcement in establishing enduring legal principles for the digital age remains indispensable.

The New Frontier: Expediting Market Correction through Negotiated Settlement

The traditional adversarial model, while essential for forging precedent, is not the sole instrument in the regulatory arsenal. Responding to the imperative for speed in fast-tipping digital markets, the Competition (Amendment) Act, 2023, represents a deliberate legislative pivot.[35] By introducing a settlement mechanism under Section 48A, it empowers the Competition Commission of India (CCI) to transition from a purely adversarial adjudicator to a pragmatic arbitrator.[36] This shift facilitates negotiated resolutions to achieve swift market correction.[37] The CCI's first use of these powers in the *Android TV* case offers a seminal case study of the efficacy and inherent trade-offs of this new frontier in Indian competition enforcement.[38]

Case Study 3: The Android TV Settlement (April 2025)

The *Android TV* settlement is a landmark, being the first resolution under the new mechanism.[39] The case mirrored the *Android mobile* matter, alleging that Google abused its dominance in the smart TV ecosystem.[40] The Director General's (DG) investigation found Google dominant in the markets for licensable Smart TV operating systems and app stores in India.[41] The DG concluded that Google's agreements with Original Equipment Manufacturers

[31] Report of the 53rd Report of the Parliamentary Standing Committee on Finance (2022-23), Lok Sabha Secretariat 14 (2022); Report of the Committee on Digital Competition Law, Ministry of Corporate Affairs, Government of India 78 (2024).
[32] GR VISHNU, *The CCI's order against Google: Explained*, THE INDIAN EXPRESS (Oct. 26, 2022, 10:20 AM).
[33] NCLAT Order, Comp. App. (AT) No. 01 of 2023, at ¶ 522 (Mar. 29, 2023).
[34] Debarghya Sircar, *SC admits cross-appeals in Google Play Store case, final hearing in Nov*, MONEYCONTROL (May 17, 2024, 05:40 PM).
[35] Statement of Objects and Reasons, The Competition (Amendment) Bill, 2022.
[36] The Competition (Amendment) Act, 2023, § 48A, No. 9 of 2023.
[37] Report of the Committee on Digital Competition Law, Ministry of Corporate Affairs, Government of India 82 (2024).
[38] CCI Order, Case No. 19 of 2020 (Settlement Order) (Apr. 2025).
[39] A. Singh, *CCI Accepts Google's Settlement in Android TV Case*, THE LEGAL HERALD (Apr. 15, 2025).
[40] CCI Order, Case No. 19 of 2020 (Settlement Order), at ¶ 5 (Apr. 2025).
[41] CCI Order, Case No. 19 of 2020 (Settlement Order), at ¶ 12 (Apr. 2025).

(OEMs), namely the Television App Distribution Agreement (TADA) and Android Compatibility Commitments (ACC), imposed anti-competitive restrictions.[42]

The primary allegations included the illegal tying of services like YouTube to the "must-have" Play Store and preventing OEMs from developing "Android forks."[43] Facing another protracted legal battle, Google utilized the new settlement route.[44] In April 2025, the CCI, by a majority order, accepted Google's proposal.[45] The five-year settlement included a commitment to offer a standalone, unbundled license for the Play Store via a "New India Agreement" and a waiver of certain anti-fragmentation obligations.[46] In exchange for terminating proceedings without a finding of contravention, Google agreed to a settlement payment of ₹20.24 crore.[47]

A Critical Counterpoint: The Dissenting Opinion

The settlement was not unanimous.[48] The dissenting opinion of CCI member Mr. Anil Agarwal provides a powerful critique, arguing the settlement fails to dismantle the underlying anti-competitive structure.[49] The core of the dissent is the structurally flawed dual-agreement model.[50] The proposal does not eliminate the existing, allegedly anti-competitive TADA but merely introduces a parallel "New India Agreement."[51]

This creates a commercially skewed choice for OEMs: accept the existing TADA with its bundled, "free" apps and restrictive conditions, or opt for the new unbundled agreement which offers freedom but requires payment of a license fee.[52] The dissent astutely argues this would likely "skew market dynamics in favour of the existing arrangements," creating a mere veneer of choice while preserving the status quo.[53] The dissent posits that the settlement is an incomplete remedy that fails to restore a level playing field.[54]

Legal Analysis: The Strategic Trade-Off

The *Android TV* settlement brings the strategic trade-off of negotiated resolutions into sharp focus. The undeniable benefit is **rapid market correction**.[55] The resolution was achieved without the years of litigation that mark the other Google cases, an essential attribute in preventing the irreversible tipping of digital markets.[56]

However, this expediency carries considerable costs. First, it involves **forgoing a formal infringement decision**, which contributes little to the development of binding legal precedent and creates uncertainty for the wider market.[57] Second, the **deterrent effect is diminished**; a settlement payment may be viewed by a large enterprise as a cost of doing business, not a penalty for unlawful conduct.[58] Third, it **precludes**

[42] CCI Order, Case No. 19 of 2020 (Settlement Order), at ¶ 14 (Apr. 2025).
[43] CCI Order, Case No. 19 of 2020 (Settlement Order), at ¶ 15 (Apr. 2025).
[44] Application for Settlement filed by Google LLC under Section 48A of the Competition Act, 2002.
[45] CCI Order, Case No. 19 of 2020 (Settlement Order), at ¶ 1 (Apr. 2025).
[46] CCI Order, Case No. 19 of 2020 (Settlement Order), at ¶ 21 (Apr. 2025).
[47] CCI Order, Case No. 19 of 2020 (Settlement Order), at ¶ 35 (Apr. 2025).
[48] CCI Order, Case No. 19 of 2020 (Settlement Order), Dissenting Opinion of Mr. Anil Agarwal (Apr. 2025).
[49] *Id.* at ¶ 2.
[50] *Id.* at ¶ 5.
[51] *Id.* at ¶ 6.
[52] *Id.* at ¶ 7.
[53] *Id.* at ¶ 8.
[54] *Id.* at ¶ 12.
[55] Report of the Committee on Digital Competition Law, Ministry of Corporate Affairs, Government of India 82 (2024).
[56] Report of the 53rd Report of the Parliamentary Standing Committee on Finance (2022-23), Lok Sabha Secretariat 14 (2022).
[57] The Competition (Amendment) Act, 2023, § 48A(4), No. 9 of 2023.
[58] Avaantika Kakkar & Kirthi Srinivas, *Settlements and Commitments in India: A New Enforcement Era*,

private damages claims; without a formal finding of contravention, parties harmed by the conduct are deprived of their right to seek compensation under Section 53N of the Act.[59]

Finally, as the dissent powerfully illustrates, there is a tangible risk of **sub-optimal remedies**.[60] The collaborative nature of settlements can lead to compromises that provide the appearance of compliance without achieving genuine, structural market correction. This dilemma for prioritising speed versus the precedential, deterrent, and remedial value of a formal decision, lies at the heart of the debate over the optimal enforcement model for India's digital economy.

Synthesizing the Evidence: An Empirical Blueprint for the Digital Competition Bill

The CCI's enforcement actions against Google are more than a chronicle of litigation; they are an invaluable empirical record.[61] This record serves as a blueprint, connecting the practical challenges of *ex-post* antitrust enforcement to the design and necessity of the proposed Digital Competition Bill (DCB).[62] The protracted sagas of the *Android* and *Play Store* cases starkly illustrate the "time lag" problem, while the specific conduct adjudicated therein provides a concrete, evidence-based foundation for the obligations to be imposed on "Systemically Significant Digital Enterprises" (SSDEs).[63] Ultimately, the sheer complexity of these cases underscores the need for the institutional evolution that is already underway at the CCI.[64]

The Limits of Ex-Post Enforcement: The "Time Lag" Problem

The cardinal virtue of the adversarial system—the creation of robust jurisprudence—is also its principal vice in the digital context: it is profoundly slow.[65] This is not a procedural inconvenience but a fundamental flaw when applied to markets that can irreversibly "tip" in favour of an incumbent.[66] The CCI's own history is the most compelling evidence. The *Matrimony.com* case, filed in 2012, saw a CCI order in 2018, and its appeal remains pending over a decade later.[67] The *Android* case, initiated in 2018, and the *Play Store* case, from 2020, are now pending before the Supreme Court, with finality not expected until at least late 2025.[68]

This multi-year delay between anti-competitive conduct and a final remedy is precisely the issue the DCB seeks to address.[69] Both the Parliamentary Standing Committee on Finance and the Committee on Digital Competition Law (CDCL) concluded that by the time an *ex-post* remedy is enforced, the market structure may be permanently distorted,

ANTITRUST AND COMPETITION POLICY BLOG (May 10, 2023).

[59] The Competition Act, 2002, § 53N, No. 12 of 2003.

[60] CCI Order, Case No. 19 of 2020 (Settlement Order), Dissenting Opinion of Mr. Anil Agarwal, at ¶ 12 (Apr. 2025).

[61] Report of the Committee on Digital Competition Law, Ministry of Corporate Affairs, Government of India 5 (2024).

[62] *Id.* at 78.

[63] Report of the 53rd Report of the Parliamentary Standing Committee on Finance (2022-23), Lok Sabha Secretariat 14 (2022).

[64] Press Release, Competition Commission of India, *CCI sets up Digital Markets and Data Unit (DMDU)* (May 1, 2023).

[65] Report of the Committee on Digital Competition Law, Ministry of Corporate Affairs, Government of India 78 (2024).

[66] Report of the 53rd Report of the Parliamentary Standing Committee on Finance (2022-23), Lok Sabha Secretariat 13 (2022).

[67] CCI Order, Case No. 07 & 30 of 2012 (Feb. 8, 2018).

[68] Debarghya Sircar, *SC admits cross-appeals in Google Play Store case, final hearing in Nov*, MONEYCONTROL (May 17, 2024, 05:40 PM).

[69] Report of the Committee on Digital Competition Law, Ministry of Corporate Affairs, Government of India 78 (2024).

rendering the intervention futile.[70] The CCI's experience thus provides the strongest justification for a proactive, preventative regulatory tool.

Informing Ex-Ante Design: An Evidence-Based Foundation

Crucially, the proposed DCB is not a theoretical exercise but a codification of lessons learned. Its core prohibitions are empirically grounded in the very practices the CCI has already found to be anti-competitive under the existing Act.

- **Self-Preferencing:** In *Matrimony.com*, the CCI found Google guilty of manipulating search results to favour its own services. In the *Play Store* case, it found Google's preferential treatment of its own payment app to be discriminatory. These adjudicated harms directly inform the DCB's proposed prohibition on self-preferencing.[71]
- **Tying and Bundling:** The *Android* decision is a textbook case of illegal tying, where the CCI found Google unlawfully leveraged its "must-have" Play Store to force the pre-installation of its entire application suite. This provides the direct empirical justification for the DCB's prohibition on such conduct by designated SSDEs.[72]
- **Anti-Steering Provisions:** The CCI's finding in the *Play Store* case that Google's policies prohibiting developers from directing users to alternative payment options were abusive provides the factual predicate for the corresponding prohibition in the draft DCB.[73]
- **Leveraging:** A consistent theme across all Google cases is the leveraging of dominance from a core service, like the Android OS or the Play Store, to protect positions in adjacent markets. This established pattern of conduct validates the core principle of *ex-ante* regulation: preventing gatekeepers from unfairly extending their entrenched power.[74]

The proposed obligations are therefore not a radical departure from established principles but a targeted codification of prohibitions against conduct already identified as harmful within the Indian market.

Building Institutional Capacity

The intricate nature of the Google investigations highlights a final, critical requirement: enhanced institutional capacity.[75] Adjudicating disputes involving algorithmic bias and complex digital ecosystems requires deep technical and economic expertise.[76] Acknowledging this, the CCI has initiated the establishment of a dedicated **Digital Markets Division (DMD)**.[77] This move, mirroring global best practices like the UK's Digital Markets Unit, is an absolute prerequisite for the effective administration of a hybrid regulatory regime.[78] This specialised unit will be indispensable for designating SSDEs, monitoring compliance with *ex-ante* obligations, and supporting continued *ex-post* enforcement.[79]

Addressing the Counter-Argument: A Targeted Intervention

[70] *Id.*; Report of the 53rd Report of the Parliamentary Standing Committee on Finance (2022-23), Lok Sabha Secretariat 14 (2022).
[71] CCI Order, Case No. 07 & 30 of 2012 (Feb. 8, 2018); CCI Order, Case No. 07 of 2020, at ¶ 402 (Oct. 25, 2022); Draft Digital Competition Bill, 2024, § 5.
[72] CCI Order, Case No. 39 of 2018, at ¶ 446 (Oct. 20, 2022); Draft Digital Competition Bill, 2024, § 7.
[73] CCI Order, Case No. 07 of 2020, at ¶ 366 (Oct. 25, 2022); Draft Digital Competition Bill, 2024, § 11.
[74] CCI Order, Case No. 39 of 2018, at ¶ 550 (Oct. 20, 2022); Draft Digital Competition Bill, 2024, § 9.
[75] Report of the Committee on Digital Competition Law, Ministry of Corporate Affairs, Government of India 102 (2024).
[76] *Id.*
[77] Press Release, Competition Commission of India, *CCI sets up Digital Markets and Data Unit (DMDU)* (May 1, 2023).
[78] Report of the Committee on Digital Competition Law, Ministry of Corporate Affairs, Government of India 103 (2024).
[79] *Id.* at 104.

It is argued that such a prescriptive framework risks over-regulation and stifles innovation.[80] This critique posits that practices like bundling are not unequivocally anti-competitive.[81] However, this argument overlooks that the Indian proposal, informed by the CCI's deep factual inquiries, is a targeted intervention. It is aimed not at all vertical integration, but only at designated SSDEs where investigations have already provided substantial evidence that such practices were employed to foreclose markets, not for efficiency gains.[82] The proposed DCB is therefore not a blanket prohibition but a calibrated tool, applying pre-determined rules only where the risk of harm is highest and has been empirically demonstrated.[83]

Conclusion: A Hybrid Future for Regulating India's Digital Gatekeepers

The CCI's protracted engagement with Google has been a crucible for competition law in India's digital age, testing the limits of the traditional *ex-post* model while simultaneously pioneering a new negotiated approach.[84] The analysis reveals that neither model is a panacea. The true lesson from the 'Google Saga' is the necessity of a sophisticated, hybrid regulatory model where adversarial litigation and negotiated settlements work in symbiosis. The credible threat of the former provides the indispensable leverage to make the latter effective. This evolved toolkit, forged in the arduous Google cases, provides the institutional maturity and empirical wisdom needed to construct a balanced and effective *ex-ante* framework for India's future.[85]

The adversarial model, exemplified by the *Android* and *Play Store* cases, is indispensable for establishing foundational jurisprudence on novel harms like illegal tying and anti-steering.[86] However, its significant "time lag" can render intervention futile in fast-tipping digital markets. Conversely, the settlement mechanism, deployed in the *Android TV* case, offers crucial speed. Yet, this expediency comes at the cost of binding precedent, diminished deterrence, precluded private damages claims, and, as the dissent powerfully argued, the risk of sub-optimal remedies that fail to correct the underlying market distortion.[87]

These models are therefore not alternatives, but symbiotic components of a sophisticated strategy. The demonstrated willingness of the CCI to pursue lengthy, punitive litigation is the Damo clean sword that forces a dominant enterprise to the negotiating table and ensures any settlement is meaningful. The settlement and commitment mechanisms have not replaced the traditional arsenal; they have augmented it, creating a powerful dynamic where the regulator can be either an adversary or an arbitrator. This conclusion has profound implications for the proposed Digital Competition Bill. The "practical wisdom" from the Google cases provides the indispensable empirical blueprint for its construction.[88] The specific practices adjudicated through years of *ex-post* investigation: self-

[80] Report of the Committee on Digital Competition Law, Ministry of Corporate Affairs, Government of India 95 (noting submissions on this point) (2024).
[81] *Id.*
[82] CCI Order, Case No. 39 of 2018, at ¶ 443 (Oct. 20, 2022); Draft Digital Competition Bill, 2024, § 3.
[83] Report of the Committee on Digital Competition Law, Ministry of Corporate Affairs, Government of India 97 (2024).
[84] CCI Order, Case No. 39 of 2018 (Oct. 20, 2022); CCI Order, Case No. 19 of 2020 (Settlement Order) (Apr. 2025).
[85] Report of the Committee on Digital Competition Law, Ministry of Corporate Affairs, Government of India 5 (2024).
[86] CCI Order, Case No. 39 of 2018, at ¶ 446 (Oct. 20, 2022); CCI Order, Case No. 07 of 2020, at ¶ 366 (Oct. 25, 2022).
[87] The Competition Act, 2002, § 53N, No. 12 of 2003; CCI Order, Case No. 19 of 2020 (Settlement Order), Dissenting Opinion of Mr. Anil Agarwal, at ¶ 12 (Apr. 2025).
[88] Report of the Committee on Digital Competition Law, Ministry of Corporate Affairs, Government of India 85 (2024).

preferencing, illegal tying, and anti-steering, provide the concrete, evidence-based foundation for the obligations proposed for SSDEs.[89] The draft Bill is not a theoretical import but a direct legislative response to harms demonstrated to exist within the Indian market. The limitations of the *ex-post* toolkit underscore the need for a complementary *ex-ante* regime that can pre-empt certain unambiguous harms.[90]

Since, India now has the unique opportunity to build a multi-faceted regulatory architecture, where a proactive ex-ante law sets the baseline rules, leaving the CCI's powerful, hybrid ex-post toolkit to tackle novel abuses. However, to ensure this framework remains effective over time, it must be made adaptive. Therefore, a final lesson from the Google Saga's multi-year timeline is that static remedies are insufficient for dynamic markets. The Digital Competition Act should mandate a 'Dynamic Remedy Review Mechanism,' requiring the CCI to periodically reassess and recalibrate obligations to prevent their obsolescence. This novel, adaptive approach is essential to future-proof India's regulatory regime, ensuring its digital markets remain both innovative and fair.

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[89] *Id.*

[90] Report of the Committee on Digital Competition Law, Ministry of Corporate Affairs, Government of India 78 (2024).

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IMPACT OF EMOTIONAL INTELLIGENCE ON ACADEMIC PERFORMANCE OF SECONDARY SCHOOL STUDENTS

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Abstract

This study explores the impact of emotional intelligence (EI) on the academic performance of secondary school students. Drawing upon the theoretical frameworks of Goleman (1995) and Salovey and Mayer (1990), the research investigates how five core dimensions of EI—self-awareness, self-regulation, motivation, empathy, and social skills—relate to academic outcomes. A quantitative, correlational design was employed with a sample of 300 students aged 14–18 from both public and private secondary schools. Emotional intelligence was measured using the Schutte Self-Report Emotional Intelligence Test (SSEIT), while academic performance was assessed through Grade Point Averages (GPA). Statistical analysis using Pearson's correlation and multiple regression revealed a significant positive relationship between EI and academic achievement. Among the dimensions, motivation and self-regulation emerged as the strongest predictors. The study concludes that EI is a critical non-cognitive factor influencing academic success and recommends the integration of EI development into school curricula and teacher training programs. These findings underscore the need to foster emotional competencies alongside intellectual skills in the education system.

Keywords: Emotional intelligence, academic performance, secondary school students, self-regulation, motivation, non-cognitive skills, education psychology, student achievement

1. Introduction

In recent decades, the paradigm of academic success has shifted beyond mere intellectual ability to include emotional and social competencies. Emotional Intelligence (EI)—the capacity to recognize, manage, and utilize emotions effectively—has emerged as a critical factor influencing educational outcomes, especially during adolescence. As students navigate the complex social and academic environment of secondary school, the ability to manage emotional stress, form healthy relationships, and stay motivated becomes pivotal to their academic success (Goleman, 1995). Adolescence is a critical period marked by emotional turbulence and identity development. Students at this stage often encounter academic pressure, peer influence, family expectations, and personal uncertainties. Emotional intelligence offers a framework for helping them manage these challenges effectively (Rani, 2025). Research indicates that students with higher EI tend to have better coping mechanisms, display greater classroom engagement, and show improved academic performance across various subjects (Khatun, 2025; Rosenzweig et al., 2025). Moreover, emotional intelligence plays a vital role in developing positive peer relationships and improving communication with teachers, which in turn promotes a more supportive learning environment (Kadayan et al., 2025). Given that EI is not an innate trait but a skill that can be cultivated, schools have the opportunity to implement emotional literacy programs to bolster students' emotional development, thereby enhancing both well-being and academic performance (Shaden & Jado, 2025). In the context of secondary education, where students begin to form academic identities and plan for higher education or careers, the integration of EI training into the curriculum becomes not just beneficial but necessary. As

research continues to establish the link between emotional intelligence and academic success, this paper seeks to explore and synthesize current findings on how EI affects secondary school students' performance and suggest practical interventions for educational stakeholders.

Accordingly, the specific objectives of this study are:

1. To examine the relationship between emotional intelligence and academic performance among secondary school students.
2. To analyze how specific components of EI (self-awareness, self-regulation, motivation, empathy, and social skills) influence academic outcomes.
3. To investigate whether demographic factors such as gender and grade level moderate the relationship between EI and academic performance.
4. To evaluate the impact of school-based EI training programs on students' academic achievement.

In line with these objectives, the following hypotheses are proposed:

- H_1: There is a significant positive relationship between emotional intelligence and academic performance among secondary school students.
- H_1a–H_1e: Each dimension of emotional intelligence (self-awareness, self-regulation, motivation, empathy, and social skills) significantly predicts academic performance.
- H_0: There is no significant relationship between emotional intelligence and academic performance among secondary school students.

By addressing these hypotheses and objectives, this study aims to contribute valuable insights into the integration of emotional intelligence development in secondary education, with implications for teachers, curriculum planners, and policymakers.

2. Conceptual Framework

The conceptual framework for this study is grounded in the theory of Emotional Intelligence (EI) as originally proposed by Salovey and Mayer (1990) and later popularized by Goleman (1995). Emotional intelligence is broadly defined as the ability to perceive, understand, regulate, and use emotions to facilitate personal growth and effective social interaction. It is considered a multidimensional construct that contributes significantly to behavior regulation and academic achievement in students (Bar-On, 2006).

The framework consists of five core components (Goleman, 1995):

1. Self-awareness – the ability to recognize one's own emotions and their effects.
2. Self-regulation – the ability to manage emotions and impulses.
3. Motivation – internal drive to achieve goals, even in the face of setbacks.
4. Empathy – the capacity to understand the emotions of others.
5. Social skills – the ability to manage relationships and navigate social complexities.

These components collectively help students manage academic stress, persist in challenging learning situations, build constructive relationships with peers and teachers, and maintain focus on long-term academic goals (Rani, 2025; Khatun, 2025).

Linking EI with Academic Performance

Several studies suggest a positive correlation between students' emotional intelligence and their academic performance. Emotional intelligence equips learners with coping mechanisms that reduce anxiety, enhance attention, and improve decision-making, all of which are crucial for academic success (Kadayan et al., 2025). For instance, students with high emotional regulation can maintain concentration during exams, manage frustration during complex tasks, and avoid emotional burnout.



Figure: Conceptual Model

This framework is supported by findings from Shaden & Jado (2025), who reported that interventions targeting meta-mood and emotional regulation significantly improved students' academic outcomes. Similarly, Rosenzweig et al. (2025) highlighted that emotional cost reduction strategies, especially for marginalized students, led to measurable improvements in their calculus performance.

Thus, emotional intelligence does not only act as a buffer against negative emotions but also as a catalyst for academic motivation, persistence, and interpersonal engagement, forming an essential non-cognitive pillar in student achievement (Olivares-Carrillo et al., 2025).

3. Literature Review

Emotional intelligence (EI) has become a focal point in educational research, particularly regarding its potential to enhance students' academic performance. The literature consistently suggests that emotional competencies influence students' learning behaviors, cognitive functioning, and academic outcomes.

3.1 Emotional Intelligence as a Predictor of Academic Success

Research has shown that students with higher emotional intelligence exhibit better academic performance due to enhanced emotional regulation, motivation, and interpersonal skills. Khatun (2025) investigated the emotional intelligence of female secondary school students and found a strong positive correlation between high EI and academic creativity, which is often a precursor to performance in written and project-based assessments. The study concluded that EI should be nurtured alongside intellectual development to maximize student potential. Similarly, Rani (2025) conducted a systematic review of literature and confirmed that emotional regulation plays a critical role in reducing anxiety and academic stress—two major barriers to academic performance in secondary education. Her study emphasized the necessity of including EI training in school mental health programs to optimize academic outcomes.

3.2 Components of Emotional Intelligence and Academic Engagement

Each component of emotional intelligence contributes uniquely to academic behavior. According to Bar-On (2006), the five major components—self-awareness, self-regulation, motivation, empathy, and social skills—affect how students interact in educational settings. Rosenzweig et al. (2025) tested an intervention aimed at reducing emotional costs in mathematics classes and found that racially marginalized students who participated showed statistically significant improvements in academic performance, highlighting how emotional safety and motivation directly support academic persistence. Olivares-Carrillo & Maielli (2025) studied students with mathematics anxiety and reported that interventions focused on emotional awareness and regulation not only reduced anxiety but also improved performance in quantitative subjects. This confirms that emotional intelligence enhances not just general academic functioning but also subject-specific outcomes.

3.3 EI Training Programs and Their Academic Impact

Structured emotional intelligence training programs have demonstrated positive impacts on student learning. Shaden & Jado (2025) implemented a training program aimed at improving meta-mood

awareness among female secondary students in Egypt. The results showed substantial gains in both emotional clarity and academic achievement. The authors advocate for incorporating emotional literacy into regular school curricula. Further supporting this, Kadayan et al. (2025) explored how emotionally intelligent teachers influence the academic environment. Their findings suggest that students benefit from emotionally competent educators who can model emotional regulation and foster a classroom atmosphere conducive to academic success.

3.4 Socio-Cultural and Gender Factors in EI-Academic Relationship

EI's influence is not uniform; cultural and gender-based differences also play a role. Gökoğlan & Sevim (2025) examined the influence of emotional intelligence and ethical ideologies in educational behavior and found that gender and cultural values moderated how EI manifested in classroom interactions. Their study recommended culturally contextualized EI interventions. Moreover, Tafuri et al. (2025) explored how inclusion-based sports programs like sitting volleyball enhanced emotional and social competencies among lower secondary students, which in turn improved student participation and performance.

4. Methodology

This study employed a quantitative, correlational research design to explore the relationship between emotional intelligence and academic performance among secondary school students. The correlational method was chosen as it enables the researcher to assess the strength and direction of association between variables without manipulating them, which is suitable for naturally occurring traits such as emotional intelligence and academic achievement (Creswell, 2014). The population for this research consisted of secondary school students enrolled in grades 9 to 12 across selected public and private schools. A sample of approximately 300 students was drawn using a stratified random sampling technique to ensure representation across different grade levels, genders, and school types. Participants were aged between 14 and 18 years. Only students who provided informed consent—along with parental consent where necessary—were included in the study.

To measure emotional intelligence, the study utilized the Schutte Self-Report Emotional Intelligence Test (SSEIT). This widely used instrument includes 33 items and is based on the Salovey and Mayer (1990) model of emotional intelligence. The SSEIT assesses four key dimensions: perception of emotion, utilization of emotion to facilitate performance, understanding emotions, and managing emotions. Responses were recorded using a 5-point Likert scale ranging from "strongly disagree" to "strongly agree." The scale has demonstrated high reliability in adolescent populations, with reported Cronbach's alpha values typically above 0.85 (Schutte et al., 1998). Academic performance was operationalized using students' Grade Point Average (GPA) for the most recent academic term. With institutional approval, GPA data were obtained directly from school records to ensure accuracy and objectivity. Data collection was conducted during school hours, with prior permissions obtained from school authorities and relevant ethics review boards. The researcher administered the EI questionnaire in a supervised classroom setting, ensuring that participants were comfortable and understood the instructions. Anonymity and confidentiality were emphasized; each student was assigned a unique code to replace identifying information in the dataset.

The collected data were analyzed using SPSS (Statistical Package for the Social Sciences), version 26. Descriptive statistics such as means and standard deviations were used to summarize EI and GPA scores. The relationship between emotional intelligence and academic performance was analyzed using Pearson's correlation coefficient. Additionally, multiple regression analysis was

conducted to determine the extent to which individual EI components predicted academic outcomes. To explore differences based on gender and grade level, independent samples t-tests and one-way ANOVA were applied. All statistical tests were conducted at a significance level of $p < 0.05$. To ensure the reliability and validity of the instruments, a pilot study was conducted with a small group of 30 students. The internal consistency of the SSEIT was tested, and Cronbach's alpha values exceeding 0.80 were considered acceptable. Assumptions for parametric testing, including normality, linearity, and homoscedasticity, were also verified prior to analysis. Ethical considerations were rigorously addressed. Approval was obtained from an institutional ethics committee prior to data collection. Participants were informed of their right to withdraw at any time without penalty, and all collected data were securely stored and used solely for academic purposes.

5. Results

This section presents the findings of the study based on statistical analysis using SPSS. Descriptive statistics, correlation coefficients, and regression analyses were employed to test the main and sub-hypotheses outlined earlier.

Hypothesis H_1: There is a significant positive relationship between emotional intelligence and academic performance.

Variable	Mean	Std. Dev.	Pearson's r	p-value
Emotional Intelligence	3.92	0.61	0.56	**0.000**
Academic Performance (GPA)	3.48	0.74		

Interpretation: The Pearson correlation coefficient ($r = 0.56$, $p < 0.001$) indicates a moderate to strong positive relationship between emotional intelligence and academic performance. This confirms the main hypothesis (H_1), suggesting that students with higher EI scores tend to achieve better academic outcomes.

Hypothesis H_1a: Students with higher self-awareness scores will have higher academic achievement.

Predictor	β (Beta)	t-value	p-value
Self-Awareness	0.41	5.32	**0.000**

Interpretation: The regression analysis shows that self-awareness is a significant positive predictor of academic performance ($\beta = 0.41$, $p < 0.001$). This implies that students who are more aware of their emotions and internal states are likely to perform better academically.

Hypothesis H_1b: Students who effectively self-regulate their emotions will perform better academically.

Predictor	β (Beta)	t-value	p-value
Self-Regulation	0.37	4.89	**0.000**

Interpretation:
Self-regulation significantly predicts academic performance ($p < 0.001$), indicating that students who can control impulses, manage stress, and remain calm under pressure tend to have better academic outcomes.

Hypothesis H_1c: Empathy positively influences collaborative learning and, consequently, academic performance.

Predictor	β (Beta)	t-value	p-value
Empathy	0.28	3.67	**0.001**

Interpretation: Empathy shows a significant positive effect ($\beta = 0.28$, $p = 0.001$) on academic

performance, suggesting that emotionally attuned students who understand others' feelings engage mo0230re effectively in group learning and class participation.

Hypothesis H_1d: Motivation, as a component of emotional intelligence, is a strong predictor of academic persistence and achievement.

Predictor	β (Beta)	t-value	p-value
Motivation	0.45	6.01	**0.000**

Interpretation: Motivation emerged as the strongest predictor among all EI components ($\beta = 0.45$, $p < 0.001$). Students with high intrinsic motivation, goal orientation, and persistence demonstrated higher GPA scores.

Hypothesis H_1e: Students with better social skills experience better peer and teacher relationships, contributing to academic success.

Predictor	β (Beta)	t-value	p-value
Social Skills	0.31	4.21	**0.000**

Interpretation: Social skills significantly impact academic performance ($p < 0.001$). Students with strong interpersonal communication skills are more likely to seek help, collaborate effectively, and succeed academically.

Hypothesis H_0: There is no significant relationship between emotional intelligence and academic performance.

Result: This null hypothesis is rejected, as all emotional intelligence components showed statistically significant relationships with academic performance, supported by strong correlation and regression outcomes.

6. Discussion

The findings of this study confirm and extend a growing body of literature that highlights emotional intelligence (EI) as a significant predictor of academic performance among secondary school students. The positive and statistically significant relationship identified between overall EI and academic achievement reinforces earlier research, which consistently indicates that emotionally intelligent students tend to achieve higher academic outcomes due to better stress management, self-regulation, motivation, and interpersonal relationships (Khatun, 2025; Rani, 2025). Among the dimensions of EI, motivation emerged as the strongest predictor of academic success in this study. This is consistent with the theoretical framework of Goleman (1995), who emphasized that motivation—the drive to achieve goals despite obstacles—is foundational to emotional intelligence and academic resilience. Students who are self-motivated exhibit greater task commitment, better study habits, and a long-term focus on achievement goals, all of which contribute to improved performance in school settings (Rosenzweig et al., 2025). Furthermore, self-awareness and self-regulation also showed strong predictive value. These findings align with the work of Bar-On (2006), who identified intrapersonal competencies such as emotional self-awareness and impulse control as crucial to managing academic stress and maintaining cognitive focus. The influence of empathy and social skills on academic performance, though slightly weaker than the other EI components, was nonetheless significant. This reflects previous findings by Kadayan et al. (2025), who observed that students with higher social-emotional competencies were more likely to engage in collaborative learning, seek help when needed, and maintain harmonious peer and teacher relationships—all of which indirectly foster academic success. In classroom contexts, such students also contribute to a more emotionally safe and inclusive learning environment, which benefits group dynamics and collective learning outcomes.

Importantly, the rejection of the null hypothesis (H_0) underscores that emotional intelligence should not be viewed as an incidental or secondary skill but as a core contributor to academic development. These results strongly support the advocacy for integrating

emotional intelligence training into secondary education curricula. Studies such as that by Shaden and Jado (2025) provide practical evidence for the effectiveness of EI-based interventions, showing measurable gains in both emotional regulation and academic outcomes after targeted programs. Furthermore, Olivares-Carrillo and Maielli (2025) demonstrated that EI-focused methods could reduce mathematics anxiety and improve academic confidence, especially in subjects often associated with stress and low self-efficacy. The study also resonates with research by Gökoğlan and Sevim (2025), who emphasized the influence of socio-cultural context and ethical ideologies on how EI is developed and expressed in academic settings. Therefore, while the current findings affirm the importance of EI, they also suggest that intervention strategies must be culturally responsive and tailored to the unique needs of different student populations. Additionally, the moderating effects of gender, socioeconomic status, and institutional type (public vs. private schools) deserve further exploration, as these may influence the expression and development of EI, as hinted in the broader literature but not deeply analyzed in this study. Another critical implication of the findings is the role of educators. While the study focused on student EI, existing literature highlights the reciprocal relationship between teacher and student emotional intelligence. Kadayan et al. (2025) emphasized that emotionally competent teachers create environments that promote empathy, trust, and psychological safety—conditions that are conducive to academic excellence. Therefore, any EI enhancement strategy must also include training and development for educators.

7. Conclusion

This study has provided strong empirical evidence supporting the positive relationship between emotional intelligence and academic performance among secondary school students. The analysis revealed that all five dimensions of emotional intelligence—self-awareness, self-regulation, motivation, empathy, and social skills—significantly influence academic achievement, with motivation emerging as the most powerful predictor. These findings reaffirm the critical role of non-cognitive skills in educational success, particularly during adolescence, a period marked by emotional development and identity formation. Students who possess higher emotional intelligence demonstrate better stress management, more effective interpersonal communication, and greater academic resilience. The rejection of the null hypothesis further confirms that emotional intelligence is not merely a complementary attribute but a core determinant of academic performance in the secondary education context.

8. Recommendations

Based on the findings of this study, several recommendations can be made for educators, school administrators, and policymakers. Firstly, emotional intelligence should be formally integrated into the secondary school curriculum through structured life skills or personal development programs. Schools should not treat emotional competencies as incidental but rather embed them into daily learning experiences. Secondly, teachers should receive professional training in emotional intelligence, as emotionally competent educators are better equipped to create supportive and psychologically safe classroom environments that nurture both emotional and academic growth. Thirdly, schools should implement early assessment tools to identify students with low EI and provide targeted interventions such as mentoring, counseling, or peer support groups. Additionally, incorporating co-curricular activities like team sports, debate clubs, and creative arts can offer practical platforms for students to develop empathy, communication, and leadership skills. Lastly, further research is encouraged to explore the long-term impact of EI development and how it interacts with variables such as socioeconomic status, digital learning environments, and family background.

In conclusion, fostering emotional intelligence in students is not just an educational enhancement—it is a necessity for building resilient, self-aware, and academically capable individuals prepared to thrive in both school and life.

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THE MAPPING OF JUDICIAL SCRUTINY ON ACTIVITIES HAPPENING AROUND RIVERINE LAND IN INDIA

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Abstract

Terms like 'river-bed' and 'river bank' have been in use for filing the cases before courts related to violation of rights of population residing near rivers in India. Through the research a new term 'Riverine Land' is found which includes both the above-mentioned terms. The present paper is written with a target to study 50 cases pertaining to activities happening around the river banks causing ecological damage to river life. The research is exploratory in nature written with an aim to find out the nature of illegal activities happening near rivers, principles of law involved, level of violation of legal norms and how the Indian courts and tribunals have dealt with the situation and passed direction from time to time for the protection of hard riverine lands. The research is done by analyzing the primary resources i.e. legislation and case laws. The paper forms a suggestion for the government to reframe the strategy to deal with the illegal activities affecting the ecology of rivers in India.

Keywords - River-bed, river-bank, riverine land, judiciary, law

Rivers are the backing of urban construction, and the construction of river ecological environment is closely related to the development of urban ecological environment. However, in recent years, with the rapid development of urban construction, urban construction lands fill lakes and plains, which compresses the land space of rivers, resulting in a significant decline in flood discharge capacity and pollutant capacity of urban rivers (Lin, Tang, and Liu, 2019; Wang, Zhong, and Bo, 2018; Wei et al., 2019; Xia et al., 2017). A large number of industrial and domestic sewage are discharged into rivers, resulting in serious pollution of the river water environment, deterioration of water quality, and serious impact on urban production and life. In the process of urban construction, a large number of hard revetment riverbeds, such as concrete and masonry, have been constructed. The biodiversity has been lost due to damage caused to the ecosystem near riverine land. The illegal activities weakens the natural restoration function of river ecosystem (Kanda et al., 2016; Sui et al., 2017; Zhang et al., 2016).

The area of 'riparian land' along the banks of the river is included within the meaning of expression 'riverine land'. For the first time an Indian legislation titled "The Goa Port Rules, 1983 which was amended through Rules, 1994)" had inserted the expression `government riverine land'. This particular expression includes the portion of the bank within fifty yards of high water mark and also the land falling within the high water mark (*Delta Engineers v. State of Goa*, 2009). The other two names which are similar to riverine land are "riverbed" and "floodplain". Till date, no statute has attempted to define the expressions 'riverbed' and 'floodplain' but in geographical terms "riverbed" may be defined as the area over which the river flows (*D.D.A v. Rajendra Singh & Ors*, 2010). In the famous (Thames Conservators Case, 1897), it was held that the term 'riverbed' denotes a portion of the river which in the ordinary or regular course of nature is covered by the waters of the river. The Delhi High Court in the case of (*Bed Ram v. Union of India*, 2011) while defining both the above-mentioned terms stated that 'river bed' is defined as the area, over which the river water flows. It denotes the area which, in the ordinary or regular course of nature, is draped by the waters of the river. On the other hand, the term 'flood plain' can be defined as the land adjacent to a river, which because of its level topography, floods when the river overflows. defined both the terms. It is also been defined as `a

low, flat area in either side of a river that can accommodate large amounts of water during a flood, lessening flood damage further downstream (Fredd Michaels, 2007).

Granting legal rights and protections to non-human entities such as animals, trees and rivers is essential if countries are to tackle climate breakdown and biodiversity loss (*Ghirrau Lal Mishra v. State of U.P.*, 2024). As far as river water is concerned, the water flowing through the rivers and water stored in the reservoir/dams is the property of the State. The doctrine of Public Trust will apply and therefore, the State is the trustee thereof. The public at large is beneficiary of the water. No citizen or entity is entitled to claim any preferential right to get supply of water in a particular manner or of a particular quantity except in accordance with the provisions of law (*Marathwada Janta Vikas Parishad v. State of Maharashtra*, 2016). As far as constitutional guarantee is concerned, the Constitution of India, 1950 obligates the State to protect river water, lakes etc., with a view to enhance environment and to avoid environmental degradation. While the Constitution does not specifically recognize a fundamental right to water, but court decisions deem such a right to be implied in Article 21. Also Article 39(b) mandates that the State shall, in particular, direct its policy towards securing that the ownership and control of the material resources of the community are so distributed as best to sub-serve the common good.

In (*Subhash Kumar v. State of Bihar & Others*, 1991) the Supreme Court of India has recognized that the expression "right to life" includes the "right of enjoyment of pollution free water and air for full enjoyment of life." it is the obligation of the State to protect the water pollution and protect lakes, rivers, tank beds etc., in terms of Article 48A and 51A(g) of the Constitution of India.

The present paper is a research to find out the various issues pertaining to and actual reason behind unlawful activities happening around riverine land in India. The paper inquires and compares the preventive measures taken on behalf of legislative and administrative bodies to prevent the river beds from getting polluted. Also, the rejuvenation efforts to revive the life subsisting in and around rivers of India.

Activities around Riverine Land

Official data of Central Pollution Control Board shown that 351 river stretches in the country are polluted. It is well known causes of pollution of rivers and ponds are dumping of untreated sewage, industrial waste, garbage, plastic waste, e-waste, Bio-Medical Waste, Municipal Solid Waste, diversion of river water, encroachments of catchment area and flood plains, overdraw of ground water, river bank erosion on account of illegal sand mining. In spite of direction of instalment of Effluent Treatment Plants (ETPs), Common Effluent Treatment Plants (CETPs), Sewage Treatment Plants (STPs) and adopting other anti-pollution measures, satisfactory situation has not been achieved (*Nav Duniya v. Bhopal Municipal Corpn.*, 2023).

In last few years, courts in India have made their observations on several illegal activities happening around riverine land. Activities like illegal mining, over construction, encroachment and improper waste management has caused significant amount of damage to the quality of river affecting the right of access to clean drinking water (N. Ferronato, V. Torretta, 2019). The judicial interventions on these above-mentioned issues are as follows –

1. Illegal sand mining

Sand/mines is a public property and the State is the custodian of the said public property and therefore the State should be more sensitive to protect the environment and ecological balance and to protect the public property the State should always be in favour of taking very stern action against the violators who are creating serious ecological

imbalance and causing damages to the nature in any form (*Jayant v. The State of Madhya Pradesh*, 2020). In a recent case of Madhya Pradesh, a report was submitted by the party before the National Green Tribunal stating that Illegal sand miners are active in 28 districts of Madhya Pradesh. They use boats and pipeline to excavate sands from water, which is highly objectionable and an unscientific practice. The sand absorbs water and then recharges groundwater too. This practice is destroying the natural process of the river (*Kirtikumar Sadashiv Bhatt v. Narmada Water Resource*, 2023).

Over the years rivers in India have been affected by the alarming rate of unrestricted sand mining which is damaging the eco-system of the rivers and safety of bridges. It also weakens river beds, fish breeding and destroys the natural habitat of many organisms. If these illegal activities are not stopped by the State and the police authorities of the State, it will cause serious repercussions as mentioned herein-above. It will not only change the river hydrology but also will deplete the ground water levels (*State of NCT of Delhi v. Sanjay*, 2014). dishonestly removing sand, gravels and other minerals from the river, which is the property of the State, out of State's possession without the consent, constitute an offence of theft. It has been observed that sand mining transforms the riverbeds into large and deep pits, as a result, the groundwater table drops leaving the drinking water wells on the embankments of these rivers dry.

Illicit and haphazard sand mining has led to deepening of river beds, widening of the rivers, damage to civil structures, depletion of groundwater table, degradation of ground water quality, sea water intrusion in coastal areas, damages to river systems and reduction in bio-diversity, apart from causing health hazards and environmental degradation (*State of Tamil Nadu & Anr v. P. Krishnamurthy & Ors*, 2006).

With regard to the mining and transportation of sand, there are ample laws like the Mines and Minerals (Regulation and Development) Act, 1957 and Rules made thereunder (*Promoters & Builders Association of Pune v. Pune Municipal Corporation & Ors*, 2007). Also, para 9.2 of the Enforcement & Monitoring Guidelines for Sand Mining, 2020 provides that the environmental damages incurred or resulting due to illegal mining shall be assessed by a committee constituted by District Administration having expertise from relevant fields, and also having independent representation of locals and State Pollution Control Board. But in the case of (*Bajri Lease Lol Holders Welfare Society v. The State of Rajasthan*, 2019) the apex court found that the Khatedars have been exploiting the locational proximity to the river banks by excavating sand from the river bed, instead of restricting the mining to their leasehold areas, completely in violation of the above-mentioned guidelines. But time and again, Indian courts have highlighted the necessity to have an effective framework of mining plan which will take care of all environmental issues and also evolve a long term rational and sustainable use of natural resource base and also the bio-assessment protocol. Sand mining, it may be noted, may have an adverse effect on bio-diversity as loss of habitat caused by sand mining will effect various species, flora and fauna and it may also destabilize the soil structure of river banks and often leaves isolated islands (*Deepak Kumar Etc v. State of Haryana & Ors*., 2012). Apart from this, many state legislations, in their preamble itself, discusses the purpose to protect river banks and river beds from large scale dredging of river sand and to protect their biophysical environment system and regulate the removal of river sand (*Faisal v. Assistant Sub Collector*, 2015).

The Supreme court in the case of (*Deepak Kumar v. State of Haryana*, **2009)** had recorded its deep concern with regard to the quarrying, mining and removal of sand from in-stream and upstream of several rivers which led to serious environmental impact on the rivers and the rivers beds as well as on biodiversity. In various affidavits submitted before the court it has been found that the dealers and businessmen are trying to make huge profits by selling not only the sand from the Government but

also indulging in indiscriminate quarrying and transporting the same in the guise of a valid permit (*D.Sivakumar v. The Government of Tamil Nadu*, 2012).

Thus, the only solution to the above-mentioned issue is the project proponent (Public Works Department of the State in this case) should undertake adequate safeguard measures during extraction of river bed material and ensure that due to this activity, the hydro geological regime of the surrounding area is not affected (*Kollidam Aaru Pathukappu Nala Sangam v. The Union of India, 2014*).

2. Industrial waste/discharge of affluent

The discharge of untreated effluent and sewage is the principle cause of water pollution in the country (*Nav Duniya v. Bhopal Municipal Corporation*, 2023). Every day millions of gallons of trade wastes and effluents are discharged into the rivers, steams, lake and sea etc. Indiscriminate water pollution is a problem all over the world but is now acute in densely populated industrial cities. Our country is no exception to this (*T.N. Godavarman v. Union of India and Ors*, 2003). No industry causing serious water pollution should be permitted within one kilometer from the embankments of rivers, streams, dams etc. (*Vellore Citizens Welfare Forum v. Union of India & Ors.*, 1996). The Municipal bodies/Nagar Panchayats are required to dispose all the waste garbage in a scientific method to avoid contamination of all rivers and seepage of harmful chemicals in the underground water (*Shri Sai Nath Seva Mandal v. State of Uttarakhand and Ors*., 2012).

In laying down various invariables, the Government and the Pollution Control Boards are hoped-for to take into intellect not only the state of the industry, but also the level to which pollution will be accepted by nature. For example, norms have been laid down under the Water Act, which necessitate various parameters to be achieved for the discharge of effluents. The admissible norms display as to what extent water can be permitted to be polluted. For instance, according to the said norms, the total dissolved solids of the effluent into river should not be more than 2,100 mg/L. The significance of this is that the pollution which is caused by the industry would be permissible or tolerated up-to 2,100 mg/L and no more. Therefore, it is in this way that proportion is struck between industrialisation and ecology (*Pravinbhai Jashbhai Patel v. State of Gujarat and Ors.,* 1995).

Many a times, Delhi High Court has taken judicial notice of all time high pollution in river Yamuna. On October 07, 2024, the Times of India, a daily Newspaper has published an article *"Why Yamuna is Stinking Like Never Before*". According to the said publication, which is based on a report prepared by Delhi Pollution Control Committee, the fecal coliform levels are 1,959 times the permissible limit, 9,800 times the desired limit where the river exits the city. In the said article, it is pointed out that the fecal level is at an all-time high in September, 2024 and one of the main reasons for the same is untreated sewage flowing from unauthorised colonies into river Yamuna (*Shabnam Burney v. Union of India*, 2024) . The quality of water in Yamuna river in Delhi has deteriorated due to increased waste water discharge. rapid industrialization has resulted in industrial effluent being discharged into the river water. The eco-system supporting migratory avifauna and the ground water has continuously degraded, requiring immediate attention for conservation (*Delhi Jal Board v. The State of Haryana*, 2021).

3. Illegal construction/encroachment of river bed

Recently, on the date of October 24, 2024, the high court of rajasthan, through its order, asked for a report to be summoned from the Chief Secretary, State of Rajasthan and Secretary; the Secretary of Ministry of Jal Shakti about the effective steps taken by the Central as well as State Governments for preventing encroachment and illegal, unauthorized constructions over and near the lands of Rivers and

water bodies and the initiative taken for proper implementation of the Laws, Rules and Regulations made in this regard (*Delhi Jal Board v. The State of Haryana, 2021*). Along with this the state government was directed to launch satellite, drone and other aerial surveillance, online monitoring mechanism with dedicated control rooms and redressal mechanism for preventing and checking the illegal and unauthorized constructions and encroachments over the rivers, water bodies and catchment area.

Similarly, In the case of (*In Re : Directions in the matter of demolition of structures*, 2024) the Supreme Court of India has directed that there shall be no demolition anywhere across the country without seeking leave of this Court. But the court categorically clarified that, their order would not be applicable if there is an unauthorized structure in any public place such as road, street, footpath, abutting railway line or any river body or water bodies and also to cases where there is an order for demolition made by a Court of law (*Association for Protection of Civil Rights (APCR) v. State of U.P.*, 2024).

Further, many courts in India have found that the building of Motels at river bed interfere with the natural flow of river and disturb the environment and ecology of the area (*M.C. Mehta v. Kamal Nath & Ors*., 2000). Various motels in Himalayan regions have been found encroaching part of the river basins. It has been directed by courts to separate the Motel building from the river basin. Also, the river bank and the river basin shall be left open for the public use and shall not discharge untreated effluent into the river. Hence, it is the responsibility of State Pollution Control Boards to inspect the pollution control devices/treatment plants set up by the Motels. If the effluent/waste discharged by the Motels is not conforming to the prescribed standards, action in accordance with law shall be taken against it (*M.C. Mehta v. Kamal Nath & Ors,* 1996).

So, likewise, it has been observed that in many cases, Indian courts have passed repeated directions in this regard but even thereafter the order is not being complied with, it seems that the authorities are not caring the order passed by the courts in spite of repeated direction of restrainment order not to make construction near catchment area of water reservoirs/river bed and not to allow anybody to use river as a dumping yard for waste material like plastic etc (*Khushboo Kataruka v. The State of Jharkhand and Ors*, 2020).

Also, the courts have suggested that if any builder is willing to do the construction then the applicant has to obtain certificates of clearance pertaining to construction made near to the water bodies from the Collector/Joint Collector/Tahsildar/Revenue Department and No Objection Certificates (NOCs) have to be furnished wherever required i.e., NOCs from the Irrigation Department in case of lands which abut water bodies, water courses and nalas, wherever required, and NOCs from Revenue Department in case of lands abutting water bodies, water courses and nalas, wherever required (*L. Urmila Devi v. State of Telangana*, 2024).

4. **Pollution due to unmanaged religious activities** -

A suo moto cognizance was taken by the Chhattisgarh High Court on immersion of idols in the tank built on the banks of Kharun river, the remains were left there. The concern was raised and the direction was passed that in future, whenever festive seasons arrive, the State and its instrumentality would take all the necessary steps so that the immersion of idols are made in a safe and eco-friendly manner so that there may not be any ill effect to our water bodies and the said places may not turn into a hazardous place for the individuals also (*Suo Moto Public Interest Litigation v. State of Chhattisgarh*, 2024).

5. Drawing Water Unlawfully

In a case where several persons were found drawing water unlawfully from Mullai-Periyar river, the

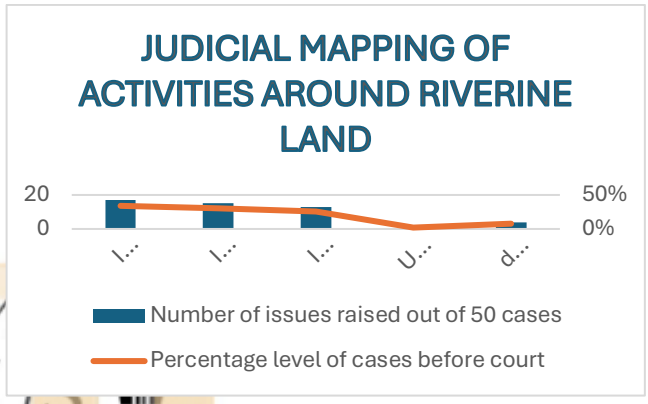
Public Works Department (PWD) and Electricity Department officials had launched an operation to confiscate the electric motor pumpsets and to cut the electricity service connection. An injunction order was also passed by the court in the case of (*Duraisamy Ramasamy v. Collector*, 2023) to remove the pipelines illegally laid by the party to extract and transport water from the river. These transgressions, if not stopped, may extend beyond merely discharging chemical waste into the river; arising a grave concern regarding their water source for the liquor factory, with a looming suspicion of illicitly drawing groundwater more than the authorized limit (*Kishan Lal v. M.P. Pollution Control Board*, 2023).

Judicial Mapping

Table No. 1.1. *Tabular representation of nature of cases filed before number of courts on activities happening around riverine land*

S. No.	Nature of Activities	Number of issues raised out of 50 cases	Percentage level of cases before court
1.	**Illegal Sand Mining**	**17/50**	**34%**
2.	**Industrial waste/discharge of affluent**	**15/50**	**30%**
3.	**illegal construction and encroachment**	**13/50**	**26%**
3.	**Unmanaged religious activities**	**1/50**	**2%**
4.	**drawing water from river unlawfully.**	**4/50**	**8%**

Figure 1.1. ***Percentage of issues brought before the court***



The judiciary has taken various proactive steps and reviewed the legislative works and administrative function in order to prevent the environmental damage around riverine lands in India. Not only courts but green tribunal of India have also viewed that if redevelopment of the any area takes place it shall result in proper management of the untreated sewage flowing into the water bodies and it shall be assured on the part of the government that it is only going to assist in the process of rejuvenation of the water body (*Nitin Saxena v. Urban Development & Housing Department*, 2024).

The research has found that out of total fifty cases filed into the State high courts, green tribunals plus Supreme Court of India, 17 i.e. the most number of cases are being filed on the issue of illegal sand mining near river beds; almost 15 cases out of 50 are related to the issue of causing pollution due to unregulated industrial waste or sewage effluents thrown into the river. Total 13 cases out of 50 are of illegal construction and encroachment near river beds have been filed in recent years and set of directions have been passed to mitigate the pollution in revers. As far as miscellaneous issues are concerned, 5 out of 50 cases are related to the issue

of pollution due to unmanaged religious activities and drawing water from river unlawfully.*(Please refer Table 1.1. and Fig. 1.1.).*

After reading several judgements of High Courts, Green Tribunals and Supreme Court, it can be observed that it is high-time for the authorities to immediately prepare and implement the specific riverine land restoration plan which shall include the development of river banks, following the directions given in the above-mentioned cases.

Conclusion

The issues and challenges discussed herein has spotlighted the standard battle between those members of the public who would preserve our rivers, forests, parks and unfastened lands in their purity and those negatively charged with administrative responsibilities who, under the pressures of the changing needs of an increasingly complex society, find it essential to impinge to some extent upon open lands thus far considered uninjured to change. The resoluteness of this struggle in any given case is for the legislature and not the courts. If there is a law made by Parliament or the State Legislatures the courts can function as a tool for determining legislative design in the use of its powers of judicial review under the Constitution. But in the lack of any legislation, the executive acting under the doctrine of public trust cannot vacate the natural resources and change them into private ownership, or for commercial use. The enhance use and the pristine glory of the natural resources, the environment and the ecosystems of our country cannot be authorized to be eroded for private, commercial or any other use unless the courts find it necessary, in good faith, for the public good and in public interest to encroach upon the said resources (*M.C. Mehta v. Kamal Nath*, (1997) . So, it is the duty cast upon the State to rejuvenate the ecological instability and to stop damages being caused to the nature (Jayant v. The State of Madhya Pradesh, 2020). Also, The courts in India have been making sincere efforts to prevent the ecology around rivers by passing several directions to local authorities i.e. Municipalities, Municipal Corporations and Panchayat Raj Institutions not to dump the garbage in the river streams/rivulets and forest areas forthwith. But, at the ground-level it is upto respective District Magistrates of each river side located districts in India to ensure the compliance of court's order or else, face the contempt proceeding.

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ARTIFICIAL INTELLIGENCE AND PRIVACY IN INDIA: NAVIGATING THE FINE LINE BETWEEN INNOVATION AND FUNDAMENTAL RIGHTS

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Abstract

India is witnessing a technological revolution with Artificial Intelligence (AI) penetrating diverse sectors, from healthcare and finance to governance and law enforcement. While AI promises efficiency, innovation, and economic growth, it raises unprecedented concerns regarding the protection of individual privacy and fundamental rights under the Indian Constitution. This article explores the intersection of AI and privacy laws in India, critically analyzing the adequacy of existing legal frameworks such as the Information Technology Act, 2000, and the Personal Data Protection Bill, 2019. Through case studies, judicial interventions, and comparative international perspectives, it argues that India must adopt a balanced regulatory approach that safeguards citizens' privacy without stifling technological progress. The article concludes with actionable recommendations for policymakers, emphasizing the need for transparency, accountability, and ethical AI deployment in harmony with constitutional guarantees.

Keywords

- Artificial Intelligence
- Privacy Law
- Fundamental Rights
- Data Protection
- India
- Ethical AI

Article Outline

I. Introduction
- Background: AI adoption in India
- Why privacy matters in AI era
- Research question / purpose

II. Conceptual Framework
- Definition of AI & Privacy
- Fundamental Rights under Indian Constitution (Article 21, 19, etc.)
- Global perspective: EU GDPR, US, etc.

III. Current Legal Landscape in India
- IT Act, 2000 (provisions related to data & privacy)
- Personal Data Protection Bill, 2019: Key highlights & gaps
- Judicial interpretations: Puttaswamy v. Union of India, etc.

IV. Challenges & Issues
- Mass data collection & surveillance
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- Consent & awareness issues
- Corporate vs government accountability

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- Real-life examples of AI misuse / privacy breach in India
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- Balanced regulatory framework
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- Transparency, accountability & public awareness
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VII. Conclusion
- Summarize findings
- Future outlook
- Call for responsible AI development

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I. Introduction

Artificial Intelligence (AI) is no longer a futuristic concept; it has become an integral part of India's social, economic, and technological landscape. From healthcare diagnostics to predictive policing, AI-driven solutions are reshaping the way individuals interact with technology, businesses operate, and governments deliver services. While these developments promise efficiency, innovation, and economic growth, they also bring unprecedented challenges — chief among them, the protection of individual privacy. In an era where personal data is collected, analyzed, and stored at an unprecedented scale, the question arises: how can India balance rapid technological advancement with the fundamental right to privacy?

India's legal system has historically struggled to keep pace with technological innovations. Although the Information Technology Act, 2000 provides certain safeguards against cyber intrusions and unauthorized data access, it was not designed with AI in mind. More recently, the Personal Data Protection Bill, 2019, attempts to bridge this gap by laying down principles for the collection, storage, and processing of personal data. However, challenges remain, particularly concerning consent, algorithmic decision-making, and corporate accountability. Moreover, judicial interventions, most notably in Puttaswamy v. Union of India (2017), have recognized privacy as a fundamental right, yet the practical enforcement of this right in the context of AI is still evolving.

This article aims to explore the complex intersection of AI and privacy laws in India. It examines the current legal framework, identifies gaps and challenges, and offers actionable recommendations for policymakers, researchers, and industry stakeholders. By combining a socio-legal perspective with case studies and comparative international insights, this paper seeks to provide a roadmap for responsible and ethical AI deployment that aligns with India's constitutional values.

II. Conceptual Framework

To meaningfully discuss AI and privacy in India, it is essential to establish a conceptual framework that clarifies key terms and contextualizes the issues.

A. Artificial Intelligence (AI)

AI refers to computer systems capable of performing tasks that typically require human intelligence, including learning, reasoning, problem-solving, and decision-making. In the Indian context, AI applications span diverse sectors such as finance, education, healthcare, agriculture, and law enforcement. While AI has the potential to transform public service delivery and business operations, it also introduces risks related to data misuse, algorithmic bias, and surveillance.

B. Privacy

Privacy is the right of individuals to control access to their personal information and protect themselves from unwarranted intrusion. Recognized as a fundamental right under Article 21 of the Indian Constitution, privacy is crucial in safeguarding human dignity and autonomy. In the context of AI, privacy concerns extend beyond traditional notions of secrecy, encompassing data collection, algorithmic profiling, and automated decision-making.

C. The Intersection of AI and Privacy

The convergence of AI and personal data collection creates unique legal and ethical challenges. Unlike conventional technology, AI systems often operate as "black boxes", making it difficult for users to understand how their data is processed or decisions are made.

This opacity raises questions about accountability, consent, and legal enforceability. Internationally, frameworks like the European Union's General Data Protection Regulation (GDPR) emphasize

transparency, data minimization, and user control, providing lessons for India's evolving regulatory landscape.

III. Current Legal Landscape in India

India's legal framework governing AI and privacy is evolving but faces significant challenges in keeping pace with technological advancements. The main pillars of this landscape are the Information Technology Act, 2000 (IT Act), the Personal Data Protection Bill, 2019 (PDP Bill), and judicial interpretations of the fundamental right to privacy.

A. Information Technology Act, 2000

The IT Act, 2000, was India's first comprehensive attempt to regulate electronic communication, data storage, and cybercrime. Key provisions related to data protection include:

- ★ Section 43A: Mandates compensation for negligence in handling sensitive personal data or information.
- ★ Reasonable Security Practices & Procedures: Organizations collecting sensitive personal data must implement safeguards.

Limitations:

- ★ The IT Act was drafted in an era when AI and machine learning were largely nascent; it does not address automated decision-making, algorithmic bias, or the opaque nature of AI systems.
- ★ Definitions of sensitive data are limited and may not cover modern AI data collection practices such as behavioral profiling or biometric analytics.

B. Personal Data Protection Bill, 2019

The PDP Bill represents India's most significant step towards comprehensive data protection. It draws inspiration from the European Union's GDPR, aiming to give individuals greater control over personal data. Key features include:

- ★ Data Principal Rights: Right to access, correction, and erasure of personal data.
- ★ Consent Requirement: Organizations must obtain informed consent before collecting or processing personal data.
- ★ Data Fiduciary Obligations: Entities processing data must follow principles of purpose limitation, storage limitation, and accountability.

Challenges in AI Context:

- ★ AI systems often process large datasets with minimal human intervention, making informed consent difficult to implement.
- ★ Algorithmic decision-making may lead to profiling or discrimination without clear transparency.
- ★ Enforcement mechanisms are still under development; the Data Protection Authority has yet to be established.

C. Judicial Interpretations

The Supreme Court of India, in Justice K.S. Puttaswamy v. Union of India (2017), recognized privacy as a fundamental right under Article 21. This landmark judgment laid the foundation for future legal discourse on AI and privacy:

- ★ Reasonable Expectation of Privacy: Citizens have a right to control their personal information.
- ★ Balancing Test: Any restriction on privacy must be lawful, necessary, and proportionate.

Application to AI:

- ★ Automated systems and mass data collection programs, such as the Aadhaar scheme, have faced scrutiny for potential privacy violations.
- ★ Courts emphasize that technological advancement cannot override constitutional safeguards, reinforcing the need for regulatory frameworks tailored to AI.

D. Comparative Perspective

While India's legal framework is evolving, countries like the EU, USA, and Singapore have adopted AI-specific guidelines and privacy regulations:

★ EU GDPR: Strong focus on transparency, accountability, and rights of automated decision-making.

★ USA: Sectoral approach, emphasizing self-regulation with limited federal oversight.

★ Singapore Model AI Governance Framework: Voluntary principles for ethical AI deployment.

India's challenge lies in adapting existing laws to AI realities while protecting citizens' fundamental rights.

Summary of this section:

➢ IT Act provides basic safeguards but is outdated for AI.

➢ PDP Bill introduces comprehensive data protection but faces implementation challenges.

➢ Judicial recognition of privacy strengthens citizens' rights.

➢ International frameworks offer lessons for India's evolving AI privacy laws.

IV. Challenges & Issues in AI and Privacy in India

While Artificial Intelligence (AI) offers transformative potential, it simultaneously introduces complex challenges that strain existing legal frameworks and raise ethical concerns. The primary challenges in India can be categorized as follows:

A. Mass Data Collection & Surveillance

AI systems rely on large datasets to function effectively. In India, initiatives such as Aadhaar, e-governance projects, and digital health records involve collection of sensitive personal information at scale. While these programs aim to improve efficiency, they pose several privacy risks:

★ Unauthorized access: Data breaches may expose millions of citizens' personal information.

★ Mass surveillance: Continuous monitoring can lead to a surveillance state if adequate safeguards are not in place.

★ Chilling effect: Awareness of pervasive monitoring can deter individuals from exercising freedoms of expression and association.

B. Algorithmic Bias & Discrimination

AI systems learn patterns from historical data. In India, biased or incomplete datasets may lead to algorithmic discrimination, disproportionately affecting marginalized groups:

★ Examples include loan approvals, job recruitment, and predictive policing algorithms.

★ Bias may be inadvertent (reflecting historical inequalities) or structural (embedded in system design).

★ Existing Indian laws do not specifically address accountability for AI-induced discrimination.

C. Consent & Awareness Issues

A cornerstone of data protection is informed consent. In the Indian context, however:

★ Many users do not fully understand how their data is collected or used by AI applications.

★ Consent forms are often complex, legalistic, or buried in terms and conditions.

★ AI systems may process personal data in ways unforeseen by users, undermining the very principle of consent.

D. Corporate vs Government Accountability

The deployment of AI involves multiple stakeholders — private companies, government agencies, and intermediaries. Key issues include:

★ Ambiguity in liability: If an AI system misuses data or causes harm, it is unclear who is responsible.

★ Regulatory gaps: There is no comprehensive enforcement mechanism to hold corporations or government bodies accountable.
★ Profit-driven vs rights-driven priorities: Corporates may prioritize efficiency and profit over citizen privacy, while government agencies may prioritize surveillance or administrative efficiency.

E. Transparency & Explainability

AI systems are often "black boxes", producing decisions without clarity on underlying reasoning. This lack of transparency presents serious concerns:

★ Citizens cannot challenge or understand decisions affecting them, such as AI-based credit scoring or law enforcement profiling.
★ Lack of explainability hinders judicial review and accountability, undermining fundamental rights.

Summary of Challenges

1. Mass data collection threatens individual privacy and may enable surveillance.
2. Algorithmic bias risks discrimination and perpetuates societal inequities.
3. Consent and awareness gaps limit meaningful control over personal data.
4. Ambiguous accountability leaves victims without remedies.
5. Opaque AI systems prevent transparency, challenging legal and ethical norms.

India's current legal framework partially addresses these concerns, but AI-specific regulations, ethical guidelines, and robust enforcement mechanisms remain urgently needed.

V. Case Studies & Comparative Analysis

To understand the real-world implications of AI and privacy laws in India, it is essential to examine practical examples and international perspectives. These case studies illustrate the challenges and provide lessons for effective regulation.

A. Indian Case Studies

1. Aadhaar Data Breaches

The Aadhaar system, India's biometric identification initiative, has faced multiple data security incidents. Personal information, including Aadhaar numbers, addresses, and fingerprints, was reportedly leaked online due to vulnerabilities in system security.

➔ Issue: Large-scale collection of sensitive personal data without robust safeguards.
➔ Implication: Citizens' fundamental right to privacy was compromised, sparking judicial scrutiny in the Puttaswamy case.

2. AI in Law Enforcement

Predictive policing tools have been piloted in several Indian states to forecast crime hotspots. However, concerns regarding algorithmic bias and lack of transparency have emerged:

➔ Historical crime data may reinforce social prejudices, disproportionately targeting marginalized communities.
➔ Decisions made by AI systems without human oversight raise questions about accountability and legality.

3. Health Data During COVID-19

AI-driven apps for contact tracing and vaccination monitoring collected sensitive health and location data. While crucial for public health, these initiatives revealed gaps in consent mechanisms and data protection compliance.

➔ Citizens often lacked clarity on who accessed their data and for how long it would be stored.
➔ Highlights the tension between public interest and individual privacy rights.

B. International Comparative Analysis

1. European Union – GDPR & AI

The EU's General Data Protection Regulation (GDPR) sets a global benchmark for data protection:

➔ Strong emphasis on transparency, accountability, and user consent.

- ➔ Includes rights to explanation for automated decisions, directly addressing AI's black-box problem.
- ➔ Offers India valuable lessons on balancing innovation with privacy.

2. United States – Sectoral Approach

The US uses a sector-specific approach rather than comprehensive legislation:

- ➔ Certain sectors like healthcare (HIPAA) or finance have strict rules.
- ➔ AI regulation is mostly voluntary or industry-driven, highlighting a trade-off between innovation flexibility and data protection certainty.

3. Singapore – Model AI Governance Framework

Singapore provides a voluntary framework for ethical AI deployment:

- ➔ Emphasizes fairness, transparency, and human oversight.
- ➔ Encourages organizations to adopt best practices before legal mandates are introduced.

C. Lessons for India

- ➔ Indian law must evolve to integrate AI-specific provisions, drawing from GDPR and Singapore frameworks.
- ➔ Transparency and explainability should be mandatory in AI systems affecting citizens.
- ➔ Robust enforcement mechanisms are essential to ensure corporate and government accountability.
- ➔ Ethical AI principles must be embedded in policy, balancing innovation and fundamental rights.

Summary of this section:

- ➔ Real-life Indian examples highlight practical privacy risks.
- ➔ International frameworks provide guidelines and lessons for India.
- ➔ Case studies strengthen the argument for AI-specific legal reforms and ethical AI deployment.

VI. Policy & Regulatory Recommendations

Based on the analysis of India's current legal framework, challenges, and comparative international practices, this article proposes the following recommendations for policymakers, regulators, and organizations deploying AI:

A. Develop AI-Specific Legal Provisions

- ➔ India's IT Act and PDP Bill must include explicit provisions addressing AI-based decision-making, algorithmic transparency, and accountability.
- ➔ Legal recognition of algorithmic bias as a violation of fundamental rights can create enforceable standards.
- ➔ Introduce mandatory impact assessments for AI systems affecting citizens' rights.

B. Strengthen Consent and Transparency Mechanisms

- ➔ Ensure that data collection for AI is based on informed and granular consent, not buried in generic terms.
- ➔ Adopt standards for explainable AI, allowing individuals to understand how automated decisions affecting them are made.
- ➔ Encourage periodic audits by independent bodies to verify compliance with privacy norms.

C. Establish a Robust Regulatory Authority

- ➔ Create a dedicated Data Protection and AI Authority to oversee AI deployments, enforce regulations, and handle grievances.
- ➔ Authority should have powers to investigate data breaches, algorithmic discrimination, and misuse of AI in governance or commerce.
- ➔ Encourage collaboration with academic and civil society experts for continuous policy updates.

D. Promote Ethical AI Deployment

- ➔ Embed ethical guidelines in all AI applications: fairness, non-discrimination, accountability, and respect for fundamental rights.
- ➔ Encourage organizations to adopt voluntary ethical frameworks (similar to Singapore's Model AI Governance Framework) until binding legislation is established.
- ➔ Provide incentives for responsible AI practices, including certifications and public recognition.

E. Public Awareness and Capacity Building

- ➔ Educate citizens about privacy rights, consent, and AI impacts.
- ➔ Train regulators, judiciary, and law enforcement on AI's technical and legal challenges.
- ➔ Support interdisciplinary research combining law, technology, and ethics to inform policy evolution.

F. International Collaboration

- ➔ Engage with international bodies to harmonize AI and privacy standards, ensuring that India's AI ecosystem is globally competitive yet rights-compliant.
- ➔ Learn from GDPR, US sectoral approach, and Singapore's model to create context-specific regulations that reflect India's socio-legal realities.

Summary of Recommendations:

1. AI-specific legal provisions to ensure accountability and fairness.
2. Stronger consent, transparency, and explainability standards.
3. A dedicated regulatory authority for AI and data protection.
4. Ethical AI deployment embedded in policy and corporate practice.
5. Public awareness and capacity-building initiatives.
6. International collaboration to align with best practices while safeguarding Indian citizens' rights.

VII. Conclusion

Artificial Intelligence is reshaping India's socio-economic landscape, offering transformative opportunities across governance, healthcare, finance, and education. However, the rapid adoption of AI also presents unprecedented challenges to the fundamental right to privacy, exposing gaps in the current legal and regulatory framework. While the IT Act, 2000 provides foundational safeguards and the Personal Data Protection Bill, 2019 attempts to strengthen privacy protections, neither fully addresses the unique risks posed by AI-driven decision-making, algorithmic bias, and mass data collection.

Through case studies, judicial interpretations, and comparative international analysis, this article has highlighted the urgent need for a balanced, proactive, and ethical approach to AI governance in India. Implementing AI-specific legal provisions, enhancing consent and transparency mechanisms, establishing a robust regulatory authority, promoting ethical deployment, and building public awareness are all crucial steps to ensure that technological innovation does not come at the cost of citizens' rights.

India stands at a crossroads: it can embrace AI responsibly, safeguarding privacy while fostering innovation, or risk undermining constitutional guarantees in the rush toward technological advancement. This article advocates for a rights-conscious, evidence-based, and forward-looking framework, ensuring that AI contributes to inclusive development without compromising the dignity and autonomy of India's citizens.

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REVISITING THE PRINCIPLES OF INSURANCE IN MODERN AVIATION

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Abstract

The aviation industry has undergone profound transformation with the advent of advanced technologies, complex operational models, and deeply transnational structures. Despite the changes, aviation insurance continues to be governed largely by traditional principles of insurance law, including utmost good faith, insurable interest, and proximate cause, which are doctrines originally developed for far less complex risk environments. This raises a critical question, whether these foundational principles remain adequate to address the contemporary realities of modern aviation.

This paper examines the continued relevance and practical application of traditional law principles within the modern day aviation industry, with particular focus on the Indian legal and regulatory context. It explores how these doctrines operate amidst increasingly common leasing arrangements, cross border ownership structures, airline insolvencies, and multiparty liability regimes.

This paper analyses statutory frameworks, judicial decisions, and industry practices in India, alongside comparative international approaches, and highlights significant ambiguities and enforcement gaps. It ultimately advocates for a contextual reinterpretation and selective reform of insurance law doctrines to better align them with the technological, operational, and cross border complexities of modern aviation, while maintaining the core objectives of fairness, predictability, and risk mitigation.

Keywords : Aviation Insurance; Insurance Law Principles; Utmost Good Faith; Insurable Interest; Proximate Cause; Indian Aviation Law; Aircraft Leasing; Airline Insolvency; Cyber Risk

Introduction to aviation insurance

The aviation sector is highly dynamic, global, interconnected and more complex in nature than any other industry where insurance operates. Its ambit is also often mistaken to only revolve around airplanes. However, it is not just a singular unit consisting just of airlines contrary to popular belief. It is a broad umbrella sector that includes aircraft manufacturing industries, air control teams, hospitality catering sector, among others as well. India also holds the title of being the third largest civil aviation industry in the world[1]. It has witnessed significant boom over the years, and despite the setback the covid 19 pandemic had on several industries, the Indian aviation sector has managed to survive and thrive. This has been made possible because of the several advantages it holds including a steady demand, more investment, proper availability of trained and maintenance and operational personnel, and well structured insurance policy support.

Aviation Insurance is tailored especially to suit the unique needs of this sector, specifically covering operations of airplanes and perils involved, incorporating the specific clauses and terms that are specific to the aviation sector.

Indian insurance companies have over time specifically developed the principles to cater to the industry, with the main factors[2] determining

[1] Press Information Bureau, Ministry of Civil Aviation, *Soaring Skies, Thriving Economy: India's Aviation Vision 2047* (Oct. 23, 2025), https://www.pib.gov.in/PressReleasePage.aspx?PRID=2181865

[2] Global Aerospace Editorial Team, *Top 10 Factors That Affect Aviation Insurance Premiums*, Global Aerospace (June 15, 2022), https://www.global-aero.com/top-10-factors-that-affect-aviation-insurance-premiums/

premium amounts being the type of the aircraft, the experience it has, its valuation in the industry, ratings it has got, the demand it has in the market along with parking prices among several other factors.

Some of the most prominent insurance policy types[3] available in general include life, fire, health, accident, etc. However the insurance types developed specifically for the aviation industry include passenger's liability, hull all risk insurance, public liability insurance, in flight insurance, among others.

How the principles of insurance work in Aviation Industry

Most traditional insurance law aspects and principles are still relevant in application in the modern aviation industry, though this industry, which now includes several cyber, technological, logistical and operational facets that these principals were not originally made to accommodate. Hence, it is essential to analyse especially with how core insurance principles like good faith, insurable interest and proxima causa have evolved and have been developed by insurance companies to meet the demands of the aviation industry to function among various emerging risks and perils of modern day.

Some of these main principles include insurable interest, the principle of uberrimae fidae (of utmost good faith) and the proxima causa, all of which are now incorporated with certain key clauses and features that ensure it is customized to fit the needs of the aviation industry while staying true to its core value.

The Principle of Insurable Interest

The principle of insurable interest is a core principle in aviation insurance, just like it does in the traditional sense. It refers to how an individual or party claiming insurance must have a financial stake in the insured object, and how they benefit from its security and would be prejudiced with its damage. This principle is applicable across several types of coverage policies in aviation.

These include the following examples:-

- ***Hull Insurance***[4] : This is with regards to physical damage to the aircraft, wherein the party with insurable interest that is the Airline or a private owner, would have a direct financial interest in the aircraft itself, which is the hull, especially in this case, as it is a high value asset. Its loss or damage would directly lead into a financial loss to them in order to replace or repair it.

- ***Liability Insurance***[5] : This is with regard to third party claims wherein the airline would be held legally liable to financially compensate passengers for any bodily injuries, casualty, or property damage. Their insurable interest hence being to protect themselves from such huge financial costs arising from compensations, legal costs and settlement payments.

Similarly, airport operators have an insurable interest in protecting themselves from the liability they have to shoulder with regards to any accidents occuring on their premises. Maintenance and manufacturing companies also have an insurable interest in protecting themselves from any claims arising

[3] Avion Insurance, *Types of Aviation Insurance*, Avion Insurance (May 19, 2015), https://avioninsurance.com/aviation-insurance-types/

[4] Bob Mackey, *Aircraft Physical Damage "Hull" Insurance: Protecting Your Aircraft*, EAA (Apr. 27, 2017), https://www.eaa.org/eaa/news-and-publications/eaa-news-and-aviation-news/news/04-27-2017-aircraft-physical-damage-hull-insurance-protecting-your-aircraft

[5] FEIC (Asia) Limited, *Aircraft Hull, Spares and Liability Insurance and Reinsurance*, FEIC (Asia) Limited, https://www.feic-asia.com/aviation-insurance/aircraft-hull-spares-liability-insurance/

demanding compensations from faulty products or maintenance work.

- ***Loss of Income Insurance***[6] : The insured party would be the aircraft operator, who has a financial stake in protecting themselves from any losses that might arise due to the grounding of the aircraft due to any repair or maintenance work. This type of insurance covers the losses they might have in this period and protects their financial stream.

How insurable interest in aviation law differs from traditional sectors?

While the fundamental principle of the how the insured must incur a loss if an insured event occurs remains same, it differs on the following grounds –

- ***Primary Parties*** : While in traditional insurance setting, insurable interest lies only with the Owner, Bank, lender, in aviation law, there is wider ambit, with Airline lessee, Air Traffic Control, maintenance provider, etc also have a financial stake and hence insurable interest.

- ***Risk focus***: While insurable interest is usually just based off of two parties and location placed traditionally, in aviation insurance its highly mobile, global and multi party.The interest must be protected across several jurisdictions and legal systems.

- ***Protection clauses*** : Aviation industry policies also require the Breach of Warranty[7] clauses to protect financiers or lessors even if the operator or lessee breaches policy terms, such as hiring unqualified pilots for example.

This is because in aviation insurance, the term 'interest' goes far beyond just simple ownership, as the sheer scale of potential loss especially that of passenger and third party liability means that this is interest is protecting against catastrophic financial or/and legal burden.

Gaps in aviation insurance

- ***The Pilot Warranty*** : In many insurance claims, if an unqualified pilot is observed to have been in charge when an insured event occurs, the insurer denied the payment of claim to the aircraft owner.

Case Law example

Lima Delta Co V Global Aerospace Inc[8]

In this case, the insurer had denied the claim of the insured, on the grounds of violation of breach of warranty clause. The court had also found out that the insured had actually violated the clear term that was already put in place, which was the Open Pilot Warranty clause of the policy because one of the pilots had not completed the manufacturer's required ground and flight training within the previous 12 months. The insurer's right to void coverage based on breach was protected, irrespective of whether the breach caused the accident was upheld, demonstrating the strict enforcement of aviation policy warranties.

- ***In cases of war, terrorism :*** Standard insurance policies often exclude perils related to war and terrorism, cyber attacks and confiscation by government authorities.

[6] Sofema Online, *Considering the Role of Insurance within Aviation Operational and Maintenance Contracts*, Sofema Online, https://www.sofemaonline.com/about/blog/considering-the-role-of-insurance-within-aviation-operational-maintenance-contracts

[7] Aviation Insurance Resources, *What is a Breach of Warranty in Aircraft Insurance?*, Aviation Insurance Resources, https://air-pros.com/what-is-a-breach-of-warranty-in-aircraft-insurance/

[8] *Lima Delta Co. v. Global Aerospace, Inc.,* C.A. No. N14C-02-101 JRJ, 2017 WL 373030 (Del. Super. Ct. Jan. 26, 2017).

Application of Insurable Interest in Indian aviation

Indian general insurance companies often tend to reinsure a significant portion of high value aviation risk policies with other international insurance companies. They are also influenced by international aviation insurance policies and include clauses with forms like the AVN 48B which specifically excludes the perils of war, terrorism,etc.

The Breach of Warranty Endorsement (BOW) is also a standard policy in India, wherein if the insured that is the airline owner or lessee, violates certain condition or warranty, such as flying in a no fly zone or appointing an unauthorized pilot to fly, then the policy claim shall be rejected. This is vital towards international licensing in the Indian market.

The principle of Uberrimae Fidae (Utmost Good Faith)

This principle, just like in traditional insurance settings, in the aviation industry also mandates that the insured (the airline, operator or owner) and the insurer which is the insurance company must both always have good faith and act with complete honesty and must disclose every material fact that could effect the policy's conditions, terms, premium amounts, or any other fact that might effect the insurer in deciding regarding the premium amount or regarding granting of policy.

Application in Aviation Industry

Aviation insurance also strictly applies the principle of good faith, requiring the insured to proactively disclose any material facts known to them that might effect the insurer's decision regarding the policy, and any concealment or misrepresentation can lead to the policy being declared void ab initio and denial of claims.

The ambit of material facts include those like the operational history of the flights, such as its accident, maintenance and airworthiness history, its crew experience, areas of operation, among others.

While the principle is same, the intensity and consequences of this principle's application are far more greater in aviation, similar to marine insurance policies.

With regards to warranties in cases of BOW, the nuances are far greater in aviation that compared to traditional insurance policies, as it includes numerous specifically enforced factors, such as pilot warranty, geographical limits,etc. Breach of a single warranty condition, even if unrelated tot he insured event can lead to denial of entire claim, even if the breach was unrelated to the loss occurring loss.

With regards to asset mobility as well, aviation insurance is quite vast, because in traditional insurance, the location of the insured subject is specific, however the insured in an aviation insurance policy must provide the insurer with specific and detailed information on all kinds of risks associated with operating globally in different regions and changing international jurisdictions.

Hence the risk in aviation in insurance is very high compared to traditional sectors hence the law demands a higher, detailed and nuanced honesty from the insured's end.

The principle of Proxima Causa

The proximate cause (Causa Proxima Non Remota Spectator) is fundamental to all insurance including aviation sector. It refers to how a loss is covered by identifying the most dominant cause that set in motion with broken or unbroken chain of events that led to the happening of the insured peril that eventually led to loss.

In the complex environment of aviation insurance, multiple factors often contribute, for example in the case of a crash or grounding, the factors of faulty maintenance, pilot error, weather issues, operator

issues all come into play, hence this principle plays a very clear role in identification and assigning of the cause, which is crucial for settling insurance claims.

In Aviation Insurance

The primary rule is that the insurer is liable for the loss proximately caused by an insured peril but not for loss caused by an excluded peril.

Proximate cause does not always have to be the last event, but the the most dominant event leading to the loss caused. In aviation claim adjusters meticulously reconstruct the sequence of events, frequently using the Flight Data Recorder(FDR), Cockpit Voice Recorder(CVR)[9], the blackbox,etc, to determine the proximate cause.

An example for this being how a plane is grounded for a minor technical maintenance of a hull which is an insured peril, and during the maintenance a terror attack breaks out in the Hangar which is an excluded peril. The proximate cause in this attack and not the maintenance of the hull itself, hence the claim would be denied.

How Aviation policies differs from traditional insurance policies

The complexity of investigation is one of the main factors that differs in intensity. In traditional claims of fire, theft, there is often a surveyor from the insurance company who sets out to inspect the veracity of the insured's claim. However in aviation insurance, due to high stakes, high value environment, with complexity of the claim, there is severe technical expertise required to conduct such surveyance or investigations, Hence, certain bodies like the National Transport Safety Board or the Directorate General of Civil Aviation[10]. There are special techniques used for data analysis using the blackbox recordings, FDR and CVR data.

Application in Indian Law

In India, the principle of Causa Proxima is consistently applied and is part of established jurisprudence, as inspired from the english case of Leyland Shipping Co, which laid out the foundation and is applied in marine insurance to today.

Indian courts and tribunals often face challenges when when applying proximate cause principle in high value high stakes cases with respect to aviation insurance losses, and look into-

- The technical cause- which could arise from faulty maintenance, mechanical parts, engine failure.
- Human or operational causes - Which could include human negligence or error during inspection, maintenance, operations.
- Excluded causes which could include acts of terrorism, seizure by government, act of war.

The legal precedent in India though being varied, hence focuses and reinforces the common sense approach, which is identifying the efficient, predominant cause, which is the one the court will ultimately determine liability and indemnity.

Conclusion

It can finally be understood that aviation insurance, due to its complex and multifaceted nature unique and different from most other industries where insurance comes into play, is hence carefully structured, keeping ing mind to cater to the multiple factors involved to ensure that the legal frameworks balance the high risks of the aviation sector along with the utmost importance given to technical

[9] Phyllis Kayten & Carol A. Roberts, *The Application of CVR and FDR Data In Human Performance Investigations*, 18 Int'l Soc'y of Air Safety Investigators, at 27 (Sept. 1985)

[10] Kavish Sharma & Mahima Katal, *Legal and Insurance Implications of Airline Crashes in India*, Verdicto News (June 13, 2025), https://verdicto.news/airline-crashes-india-legal-insurance-framework

expertise and precision in verifying claims, by applying the core principles of insurance in a much more scrutinised and careful fashion. Though significant gaps still lie, such as that of the ambiguity remaining in case of war, cyber attacks, terrorism, which is yet to be addressed in most cases and jurisdictions. With such modern day perils, insurance law in the aviation sector keeps adapting to keep up with the dynamics it deals with, and there is still a long way to go in the area.

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CONTEMPORARY ISSUES OF WOMEN

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Abstract:
Modern women's issues encompass a wide range of topics that are relevant to modern women's lives. These issues could include representation in politics and the media, healthcare access, societal expectations, gender equality, reproductive rights, violence against women, and workplace discrimination. To achieve gender equality and create a more inclusive and just society, these problems must be recognized and addressed. Women are customarily paid less than men for the same jobs, demonstrating systemic inequities. Domestic abuse, sexual assault, harassment, and trafficking are all forms of violence against women that continue to threaten their safety and security. Access to reproductive health services, such as contraception and safe abortion, is a sensitive issue that impacts women's autonomy and well-being. Discrimination based on gender identity or expression continues to impede women's opportunities in education, the workplace, and society. Despite progress, women are commonly underrepresented in global political leadership roles, limiting their influence and ability to advocate for women's rights. Women endure bias based on their intersecting identities, such as colour, ethnicity, class, sexual orientation, and physical difficulties, complicating efforts to achieve gender equality. Balancing work ambitions with caregiving responsibilities remains a significant challenge for many women, hurting their professional development and well-being. Addressing these issues will need fundamental changes in legislation, attitudes, and cultural norms to guarantee that women may fully participate and thrive in all sectors of society. Despite their achievements, women frequently experience financial challenges following divorce, especially if they were not the primary earners or caregivers throughout the marriage.

Key words: violence against women, gender based discrimination, political representation, intersectionality, work life balance .

INTRODUCTION:

In today's society, women face a slew of serious concerns that influence their experiences and possibilities. These challenges are multifaceted, encompassing gender-based violence, economic inequality, reproductive rights, and political underrepresentation.[1] Addressing these concerns is critical to attaining gender equality and allowing women to fully engage in all parts of life. By analysing these current concerns, we may gain a better understanding of the barriers that women face and seek to create a more fair and inclusive society for all.[2]

FINANCIAL INDEPENDENCE:

Financial markets or entrepreneurship compared to men, partly due to lower levels of financial literacy and risk aversion. Limited access to capital and networks also restricts their ability to start and grow businesses successfully. Addressing these issues requires multifaceted approaches. Policies promoting pay transparency, equal pay for equal work, and flexible work arrangements can mitigate the wage gap and support work-life balance. Investing in education and training programs that equip women with relevant skills for high-demand sectors is crucial for career advancement. Furthermore, fostering an inclusive financial ecosystem with tailored financial products, mentorship programs, and networking opportunities can encourage women to participate more actively in economic activities and entrepreneurship. Ultimately,

[1]https://egyankosh.ac.in/bitstream/123456789/18906/1/Unit-33.pdf

[2]https://timesofindia.indiatimes.com/readersblog/lawpedia/status-of-women-in-india-51422/

achieving financial independence for women is not just about individual empowerment but also about advancing societal progress and economic stability. To break down obstacles and establish equitable chances for all women to prosper economically, governments, businesses, and communities must work together.[3]

CUSTODY AND PARENTING:

Custody and parenting issues are significant challenges faced by women, particularly in the context of divorce or separation. These issues often involve legal, financial, and emotional complexities that can affect women's well-being and their ability to maintain financial independence. In many jurisdictions, decisions historically favoured mothers, assuming they were the primary caregivers. While this stereotype is shifting towards more gender-neutral considerations of the child's best interests, women still frequently bear the burden of proving their ability to provide a stable home environment post-divorce or separation. Financially, custody battles can strain women's resources, as legal fees and childcare costs accumulate. If awarded primary custody, women may face challenges balancing work and parenting responsibilities, potentially leading to career disruptions or reduced earning capacity. Emotionally, handling custody issues may be extremely stressful and tiring for women, affecting their mental health and overall quality of life. The emotional toll might be worsened by disagreements over child support, visitation rights, or co-parenting arrangements. [4]

Supporting women with custody and parenting challenges necessitates comprehensive solutions. Legal changes that prioritize shared parenting obligations and support systems can help reduce some of the difficulties. Providing accessible legal aid and counselling services can help women manage these challenges successfully. Furthermore, corporate rules that provide flexibility and support to working parents, regardless of gender, can help women maintain their professional paths while meeting parental responsibilities. Community-based resources, like as support groups and childcare assistance programs, can also give important emotional and practical help. Finally, addressing custody and parenting concerns for women entails identifying and breaking down gender stereotypes, lobbying for equal legal frameworks, and creating supportive environments that allow women to face these challenges with dignity and resilience.[5]

EMOTIONAL WELLBEING:

Emotional well-being is a major issue for women, influenced by a variety of factors such as cultural expectations, biological changes, and personal experiences. Women frequently encounter distinct emotional issues that necessitate individualized attention and care. One key feature is the strain to perform numerous tasks at once, such as caregiver, professional, and family member. Balancing these duties can cause stress, exhaustion, and feelings of inadequacy, particularly when cultural expectations of perfection are high. Biological factors such as hormone changes during menstruation, pregnancy, and menopause might have an impact on women's mental health. These changes might cause mood swings, anxiety, and sadness, necessitating individualized treatment and support services. Women are disproportionately affected by trauma experiences such as domestic abuse, sexual assault, and gender-based discrimination, which can have substantial long-term repercussions on their mental well-being. Healing from trauma frequently necessitates specialized therapy approaches and community assistance. Furthermore, socio-economic problems such as financial insecurity, limited access to healthcare, and social isolation can worsen mental discomfort in women. [6]

[3] https://www.shs-conferences.org/articles/shsconf/pdf/2023/04/shsconf_sdmc2022_02014.pdf

[4] https://www.researchgate.net/publication/315714386_Women_Problems_and_Empowerment

[5] https://now.org/issues/

[6] https://escholarship.org/content/qt1jw3m7hs/qt1jw3m7hs.pdf

Addressing these structural impediments is critical to enhancing overall well-being. Supporting women's emotional wellness requires a diverse approach. This includes de-stigmatizing mental health issues, encouraging open discussions about emotions and vulnerabilities, and offering accessible mental health services suited to women's needs. Educational activities that improve emotional literacy and coping skills can help women handle life's problems more successfully. Workplace rules that prioritize work-life balance, flexible scheduling, and mental health resources can all improve women's emotional well-being. Furthermore, community-based support networks, such as women's organizations and peer support groups, play an important role in establishing solidarity and providing a safe environment for women to tell their stories and seek advice. By addressing these emotional well-being issues holistically and inclusively, cultures may encourage women to live healthier, more fulfilled lives and make important contributions to their communities and beyond.[7]

LEGAL RIGHTS AND ADVOCACY:

Legal rights and advocacy for women's concerns involve a wide range of measures to ensure women's equal rights, opportunities, and legal safeguards. This field handles a variety of concerns, including:

1. Gender-based discrimination: Advocating for legislation and regulations that prevent gender discrimination in work, education, healthcare, and other public and private settings.
2. Violence against women: Legal advocacy is concerned with combating domestic violence, sexual assault, trafficking, and other types of violence that disproportionately affect women.
3. Reproductive rights: Advocating for access to reproductive healthcare services, such as contraception, abortion, and maternal care.
4. Equal pay and economic empowerment: Working to establish wage equity and economic possibilities that will allow women to achieve financial independence and stability.
5. Political representation: Advocating for measures that encourage women to participate and lead in politics and government.

Legal rights and advocacy for women frequently include lobbying for legislative changes, challenging discriminatory practices through litigation, providing legal aid services to women in need, raising awareness about women's rights issues, and fostering partnerships with government agencies, non-governmental organizations, and international organizations to promote gender equality. These activities are critical for promoting women's rights worldwide and ensuring that legislative frameworks protect and empower women in all parts of their life.[8]

CAREER AND PROFESSIONAL IMPACT:

Career and professional impact concerns for women include a variety of challenges that affect their growth and success in the workplace. These issues include:

1. **Work-Life Balance**:

Balancing work responsibilities and caregiving chores can be especially difficult for women. Limited access to cheap daycare, restrictive work hours, and societal expectations of women as primary caregivers all have an impact on their ability to maintain successful jobs.

2. **Wage Gap:**

Earnings disparities continue even when qualifications and experience are comparable. The gender pay gap is the result of systematic inequalities, such as undervaluing women's work and discrimination in salary negotiations and compensation packages.

[7] https://hal.science/hal-04109042v1/file/Gender-discrimination-an-overview-of-historical-and-contemporary-issues-1532-5822-29-1-101.pdf

[8] https://byshree.com/blogs/news/challenges-faced-by-women-in-india

3. **Representation in STEM and Male-Dominated Fields**:

Women continue to be underrepresented in science, technology, engineering, and mathematics (STEM) fields and other traditionally male-dominated industries. Factors include cultural stereotypes, lack of role models, and gender biases in educational and workplace environments.

4. **Sexual Harassment and Hostile Work Environments:**

Women may face sexual harassment and discrimination, creating hostile work environments that undermine their professional growth and psychological well-being. Legal protections and workplace policies are essential to address and prevent such misconduct.

5. **Career Interruptions and Re-entry Challenges:**

Women's careers may be interrupted due to caregiving commitments, maternity leave, or eldercare. Re-entering the workforce can be difficult due to skill loss, employer biases, and gaps in professional networks. Addressing these career and professional impact challenges requires systemic reforms, such as policies that promote gender equity, diversity, and inclusion. Supporting initiatives that offer mentorship, leadership training, flexible work arrangements, and equitable opportunities for professional development can help women overcome these obstacles and reach their full career potential.[9]

SOCIAL SUPPORT NET WORKS:

1. **Accessibility and Availability:**

Women in rural or underserved communities may have restricted access to social support networks due to geographical isolation, a lack of transportation, or insufficient community resources. This may worsen feelings of social alienation and solitude.

2. **Stigma and Cultural Barriers:**

Women seeking support may face difficulties due to societal conventions and cultural views, particularly when dealing with sensitive topics such as domestic violence, mental health, or reproductive rights. The stigma connected with getting help may inhibit women from accessing essential support networks.

3. **Intersectional Challenges:**

Women from minority or marginalized groups (e.g., LGBTQ+ women, women of color, immigrant women) may encounter additional obstacles to accessing supportive networks due to discrimination, language hurdles, or cultural insensitivity within existing support systems.

4. **Sustainability and Funding:**

Many community-based support networks are funded and run entirely by volunteers, making their long-term viability dubious. Limited resources may limit the extent and efficacy of assistance delivered to women in need.

5. **Digital Divide:**

Women without access to technology or digital literacy skills may be excluded from virtual support communities and services as support networks rely more heavily on digital platforms.

6. **Limited Scope of Services:**

Some support networks may focus on specific topics or groups, failing to adequately serve the different needs of all women. Comprehensive support should include a variety of services such as healthcare, legal aid, counseling and economic development.

[9] https://timesofindia.indiatimes.com/readersblog/lawpedia/status-of-women-in-india-51422/

7. Empowerment and Advocacy:

Effective support networks should not only give urgent aid, but also encourage women to advocate for their rights and gain access to resources. This includes encouraging leadership roles within support groups and instilling a sense of agency among participants.
Addressing these concerns requires a concerted effort by governments, civil society organizations, and communities to improve and expand women's social support networks. This involves supporting inclusive and culturally sensitive services, investing in community resources, tackling systemic hurdles, and including women's perspectives into social support decision-making processes.[10]

STIGMA AND JUDGMENT:

Stigma and judgment against women remain in many facets of their lives, profoundly effecting their chances, choices, and well-being.

1. Sexuality and Reproductive Choices:

Women frequently endure stigma and censure for their sexual conduct, reproductive choices, and contraceptive use. Societal norms may place expectations on women's sexual behavior and reproductive decisions, which can lead to humiliation or discrimination if not followed.

2. Body Image and Appearance:

Media and societal pressures perpetuate unrealistic beauty standards, which can lead to body shaming and low self-esteem in women. Judgment based on appearance, weight, or age can have an impact on women's mental health and overall well-being.

3. Career Ambitions and Leadership:

Ambitious women seeking leadership positions may encounter prejudices and hostility. They may be seen as overly outspoken or aggressive, whereas men with identical characteristics are applauded. This double standard might limit women's career advancement and leadership chances.

4. Mental Health and Emotional Expression:

Women frequently face stigma associated to mental health concerns, with their emotions viewed as too emotional or unreasonable. Obtaining help for mental health issues might be interpreted as a show of weakness rather than strength, deterring women from obtaining the essential aid.

5. Gender Roles and Expectations:

Traditional gender roles may shape expectations of women's conduct, interests, and roles in the family and community. Deviating from these norms may result in criticism and rejection, restricting women's ability to realize their full potential.

6. Sexual Violence and Victim Blaming:

Survivors of sexual violence frequently suffer stigma and victim-blaming attitudes, which may discourage them from reporting events or seeking help. Misconceptions about consent and accountability can reinforce negative attitudes toward survivors.

To address stigma and judgment against women, we must work together to fight harmful preconceptions, promote gender equality, and create inclusive and supportive communities. Education, activism, and policies that protect women's rights and dignity are critical to fostering conditions in which women can prosper without bias or discrimination.[11]

HEALTH AND WEEL BEING OF WOMAN:

Women's health and well-being are influenced by a variety of concerns affecting their physical, mental, and emotional health:

1. Reproductive Health:

Access to reproductive healthcare services, such as contraception, maternal care, and safe abortion

https://www.who.int/news-room/fact-sheets/detail/violence-against-women

[11] The international journal of india psychology,ISSN2348-5396[9] |ISSN;2349-3429 [p]

alternatives when permitted, is critical for women's health. Barriers such as cost, a scarcity of healthcare providers, and restrictive legislation can all limit women's reproductive options and health consequences.

2. Sexual and Reproductive Rights BH:

It is critical to give women control over their bodies and make decisions about their sexual and reproductive health. Legal safeguards and advocacy activities are required to defend these rights and remove the stigma associated with matters such as family planning and reproductive freedom.

3. Mental Health:

Women are disproportionately afflicted by mental health issues such depression, anxiety, and post-traumatic stress disorder. Poor mental health can be caused by societal pressures, gender-based violence, hormonal changes, and socioeconomic difficulties. Accessible mental health care and the de-stigmatization of mental disease are crucial for promoting women's well-being.

4. Chronic Diseases:

Women confront specific health risks from chronic illnesses like heart disease, diabetes, and autoimmune disorders. Gender biases in medical research and healthcare delivery can lead to women receiving delayed diagnosis and having fewer treatment alternatives than males.

5. Violence Against Women:

Gender-based violence, which includes domestic violence, sexual assault, and trafficking, poses serious health dangers to women. Physical injuries, reproductive health issues, and psychological trauma are common outcomes. Legal safeguards, support services, and prevention measures are critical in tackling this public health concern.

6. Health Literacy and Education:

Promoting health literacy in women, including understanding about preventative care, nutrition, and chronic illness management, is critical. Education campaigns should overcome cultural and linguistic obstacles so that all women can make educated health decisions.

Addressing these health and well-being challenges requires a multifaceted approach that includes medical care, public health programs, women's rights advocacy, and socioeconomic empowerment. Empowering women with knowledge, healthcare access, and supportive surroundings can have a tremendous impact on their overall health and well-being.[12]

CURRENT ISSUES FACED BY WOMAN:

Women's rights have improved over time, but further growth is not guaranteed. Women face a variety of difficulties linked to education, job, healthcare, legal rights, violence, and other concerns in an era of intensifying conflicts, rising authoritarianism, and devastating climate change impacts. Understanding these concerns allows the world to work together to achieve gender equality, improved human rights safeguards, and overall safety. In this post, we will look at 20 of the most pressing challenges impacting women and girls today.

1. Unequal pay:

For ages , society has underestimated the job that women do. Women are even paid less than men for the same job. According to the international labour organization ,there has been some progress, but gender wage inequalities remain and are rising in jobs. Gaps cannot be attributed to educational differences, hence men continue to earn more than women in the majority of to earn more than women in the majority of the countries. Gendered occupational segregation (women tend to dominate lower-paying jobs) and

https://byshree.com/blogs/news/challenges-faced-by-women-in-india

unfair pay practices are among the contributing factors. Moody's analytics estimates that the gender pay gap might cost the economy upto $7 trillion.

2. Racial injustice

All women endure prejudice, but women from ethnic minorities confront additional inequities. According to expert organizations such as the United Nations, race and gender overlap in work, housing, poverty, and other areas. For example, while no group of women earns the same as non-Hispanic white males in the United States, most women of color face a substantially larger gender wage disparity. Over a 40-year career, Hispanic women lose more than $1 million in earnings, Native women lose $986,000, and Black women lose $964,000.

3. Threats to reproductive rights

According to the Center for Reproductive Rights, 40% of women face restrictive legislation, accounting for over 750 million women of reproductive age. 6% of women live in countries where abortion is strictly outlawed. Access to contraception has increased from 900 million in 2000 to over 1.1 billion in 2021, yet challenges such as ignorance about contraception, fear of adverse effects, and access persist. According to the United Nations Population Fund, around 257 million women who do not want to become pregnant still do not use safe and contemporary contraception.

4. Lack of education

Every child deserves an education, but girls have historically experienced more discrimination. Although progress has been achieved, UNICEF reports that 129 million girls remain out of school. Poverty, gender-based violence, early marriage, and a lack of resources for safety, hygiene, and sanitation are all contributing factors. The World Bank reports that low-income countries have the greatest gaps. While the global average for girls in primary school is 88%, it is 78% in low-income nations.

5. Climate change

Research regularly demonstrates that women are more vulnerable to the consequences of climate change. One explanation is that women rely on natural resources, therefore during times of famine or other disasters, they bear the additional responsibility of obtaining food. Women also make up a sizable proportion of the agriculture business in low-income nations, which is particularly vulnerable to climate change effects. Women are also at a higher risk of violence and sexual exploitation during climate-related events.

6. Discriminatory social institutions

Social institutions are the laws (both official and informal), conventions, and standards that govern how society operates. Unfortunately, gender inequality is present in almost all country's social structures in some form or another. According to the OECD, several nations have implemented legal changes to eliminate gender discrimination from their institutions, yet 40% of women and girls continue to live in countries with "high or very high" discrimination. Social norms improved the most, but economic empowerment deteriorated between 2014 and 2022. Gender disparity will continue to exist unless discriminatory practices are removed.

11. Human trafficking

Human trafficking affects people of all genders, but women and girls are particularly vulnerable. According to 2017 data, girls and women accounted for 71% of all victims of trafficking. They also account for 96% of the victims trafficked for sexual exploitation. Gendered trafficking is caused by poverty, a lack of employment prospects for women, limited access to education, and gender-based abuse. Conflict also increases women's vulnerability.

12. **Threats during migration**

Migration, both forced and voluntary, can be dangerous. Women suffer more hazards than men from discrimination, gender-based violence, and sexual exploitation. According to the International

Organization for Migration, more women are moving independently, particularly from the Caribbean and Central America. Moving might open up new opportunities, but it can also be perilous. Displacement, which can be triggered by conflict and climate change, is especially hazardous for women who are traveling alone, pregnant, head of household, crippled, or elderly.

13. Poor mental health

The state of mental health might be difficult to assess, but data show that more women are being diagnosed with mental health disorders. According to a 2017 UK survey, women are three times more likely than men to suffer from common mental health conditions such as depression and anxiety. Young women are also more prone than any other demographic to suffer from anxiety disorders. This gap could be attributed to stigma, as males may be less comfortable seeking help. In the United States, while more males commit suicide, more women attempt suicide.

14. Online harassment

Online harassment is difficult to quantify, but there is little question that it disproportionately impacts women and girls. According to a European study, women are 27 times more likely than males to face online harassment. Online harassment has a traumatic effect on a person's mental health, prevents them from spending time online, and scares them away from other public settings. Online harassment can potentially lead to real-life violence.

15**. Inadequate maternal healthcare**

Pregnancy and childbirth are inherently dangerous, but maternal healthcare is insufficient for many individuals. According to the world Health Organization, about 800 women died in 2020 from preventable causes related to pregnancy and delivery. A staggering 95% of maternal mortality occurred in poor and middle-income nations. 75% of deaths are caused by severe bleeding, high blood pressure, infections, or delivery difficulties. These problems can be avoided and managed with careful treatment.[13]

Challenges Faced By Women In India :

India, with its rich cultural diversity and history, is no stranger to progress and development. However, stitched into the fabric of this progress are delicate threads of problems that women still face. In this in-depth examination, we look at the numerous challenges that women face in India, including educational gaps and workplace inequity, as well as societal standards and health issues. As we work through these problems, our goal is to get a better knowledge of the issues at hand and advocate for the changes required to establish a more inclusive and fair society.

WORKPLACE INEQUALITY:

The professional world in India frequently reflects deeply rooted gender bias. Women typically face issues such as unequal compensation, limited job advancement prospects, and workplace harassment. Shifting the paradigm necessitates not just policy reforms, but also a change in public views regarding women in the workplace. Companies must support diversity and inclusion efforts, giving women equal opportunities to succeed in their jobs.Child Marriage and Dowry System: Child marriage and the dowry system remain deeply ingrained cultural practices that have a negative influence on young girls' lives. To eradicate these behaviors, broad social initiatives are required, such as educational programs, legal reforms, and community engagement. Empowering young girls with knowledge and skills has the potential to challenge these harmful customs.

CYBER SECURITY CONCERN:

Women encounter issues connected to online safety as the world becomes more digitalized. Cyberbullying and online harassment are serious issues that require attention, and promoting digital literacy is critical to addressing them. Legal mechanisms for combating

https://www.humanrightscareers.com/issues/womens-issues/

online harassment should be tightened, and digital safety education should be incorporated into school curricula.[14]

POLITICAL UNDERREPRESENTATION:

While India has seen the rise of effective female leaders, women's political representation remains disproportionately low. Encouraging women to participate in politics is critical for a more inclusive and representative democracy. Reserved seats, mentorship initiatives, and awareness campaigns can help enhance female participation in politics.

Media Influence and Stereotyping:The media has an important influence in molding society perceptions. Women are frequently stereotyped and objectified, which contributes to the perpetuation of detrimental gender expectations. Promoting good images of women and combating stereotypes is critical to cultural progress. Media organizations should follow ethical guidelines that encourage gender equality and diversity.

Certainly! Here are some key acts in India that are relevant to addressing women's issues comprehensively:

ACTS WHICH ARE FRAMED FOR WOMAN'S ISSUES:

1. **Protection of Women from Domestic Violence Act, 2005 :** Provides legal protection to women from domestic violence and abuse, including physical, emotional, verbal, economic, and sexual abuse.

2. Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013: Requires employers to create a safe working environment free from sexual harassment and provides procedures for redressal of complaints.

3. **Dowry Prohibition Act, 1961**:Prohibits the giving or receiving of dowry in connection with marriage and imposes penalties for its violation.

4. **Maternity Benefit Act, 1961**: Ensures maternity benefits such as paid leave and medical benefits to women employees during pregnancy and childbirth.

5. **Equal Remuneration Act, 1976**: Ensures equal pay for equal work for men and women and prohibits discrimination on the basis of gender in matters of employment and wages.

6. Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994: Prohibits sex-selective abortions and regulates the use of prenatal diagnostic techniques to prevent female foeticide.

7. Prohibition of Child Marriage Act, 2006 : Prohibits the solemnization of child marriages and provides for punishments for those involved in child marriages.

8 Protection of Children from Sexual Offences (POCSO) Act, 2012: Provides protection to children from sexual abuse and exploitation and prescribes stringent punishments for perpetrators of such crimes.[15]

SUGGESTION:

women's issues comprehensively in India, several key areas require focused attention. First, there's an urgent need to enhance educational opportunities for girls and women, ensuring they have equal access and support to pursue education at all levels. Economic empowerment initiatives must be expanded, including skill development programs and access to credit and markets for women entrepreneurs, particularly in rural areas. Healthcare services need improvement, with a specific focus on maternal health, reproductive

[14] https://byshree.com/blogs/news/challenges-faced-by-women-in-india

[15] https://www.who.int/news-room/fact-sheets/detail/violence-against-women

rights, and access to affordable healthcare. Efforts to combat violence against women should be intensified, including strict enforcement of laws, enhanced support services for survivors, and community-based awareness campaigns to change attitudes and behaviors. Political participation and leadership roles for women should be actively promoted, ensuring their voices are heard in decision-making processes. Moreover, addressing deep-rooted social and cultural norms that perpetuate gender inequalities requires sustained efforts through education, media, and community engagement. Strengthening legal frameworks and ensuring their effective implementation is crucial to protect women's rights across all spheres of life. By focusing on these areas holistically and fostering collaboration between government, civil society, and international partners, India can make significant strides towards achieving gender equality and empowering women to thrive in society.

CONCLUSION:

Women now face a wide range of complicated and varied concerns, including gender inequality and discrimination, reproductive rights, violence, and economic inequities. Addressing these difficulties will necessitate collaborative efforts from society, governments, and organizations to promote gender equity, defend women's rights, and foster inclusive environments in which women can thrive. By raising awareness, campaigning for policy reforms, and promoting empowerment, we can strive toward a future in which all women have equal opportunity and freedom. Contemporary concerns confronting women, such as gender-based violence, educational and employment disparities, reproductive rights challenges, and intersectional discrimination, underscore the continued need for comprehensive legal reforms, policy interventions, and societal changes. Efforts must focus on empowering women across all sectors and fighting for equitable opportunities so that they can live be free of discrimination and violence, and actively participate in society.

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AN ANALYTICAL OVERVIEW OF THE FUNCTIONALITY AND MERIT OF THE INTERNATIONAL COURT OF JUSTICE IN INTERNATIONAL RELATIONS

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Abstract:
The purpose of this work has been to inquire and understand the role and functioning of the International Court of Justice or ICJ. The author has chronologically studied how the ICJ came into existence as a competent successor to the Permanent Court of International Justice or the PCIJ and its evolving relevance over time. Appropriate references have been made of the United Nations (UN) Charter and the Statute of the ICJ throughout the paper. After introducing the subject, the author has divided the work into several sections where elaborations have been made on different matters regarding the activities and importance of the ICJ in international relations. Elections of the judges of the ICJ, composition of the ICJ, its jurisdiction in international law, its functions in matters of disputes between international organisations have been discussed in this work. Then the role and significance of the ICJ in international relations is studied in detail. References have been made of the pertinent articles of the UN Charter and the Statute of the ICJ and specific data have been provided. Apposite cases dealt with by the ICJ are described. Vital case studies of contemporary importance have been explained. For instance, study has been shown on the role played by the ICJ in connection with Corfu Channel case, Russia-Ukraine conflict, Nicaragua-the USA dispute, Israel-Gaza tension, Jadhav's case, Rohingya Genocide etc. Vital cases resolved by the ICJ where India had been a party have also been mentioned. Finally, limitations of the structure and system of the ICJ are touched upon. In this regard a few suggestions for improvement have been provided by the author in conclusion. This paper seeks to make an analytical study of the background that facilitated the establishment of the ICJ as a primary body of the UN and the impact it has made on the world entities so far.

Keywords: ICJ, international law, international relations, PCIJ, UN Charter.

Introduction:
The origin of the International Court of Justice can be traced back to the beginning of nineteenth century when theorists started realising that war could be prevented if states or governments had a chance to resolve their dissensions in a world court. The Hague Peace Conference convened by the Russian Tsar in 1899 was aimed at achieving international peace and banning big wars[1]. However, the results of the conference were trivial. Nevertheless the conference helped to find small ways for regulation of international war.

One important treaty was The Hague Convention for the Pacific Settlement of International Disputes. Countries which signed the treaty agreed to abide by it with regard to settlement of international disputes through peaceful means, like through the Permanent Court of Arbitration.

It was followed by setting up of the Permanent Court of International Justice (PCIJ) in 1920 alongside the League of Nations. The PCIJ dealt with 29 contentious cases that were brought before it by concerned states in between 1922 and 1940. It also gave advisory opinions in 27 matters to the Council of the League of Nations.[2]

[1] Keith Suter, "The Successes and Limitations of International Law and the International Court of Justice", 20(4) *Medicine, Conflict and Survival* 348 (2004).

[2] Available at: https://www.icj-cij.org/pcij (visited on January 20, 2026).

Necessity to set up a new international court was felt during the Second World War. Thus the Statute of the International Court of Justice was drafted along with the Charter of the United Nations. A state which is a member of the United Nations becomes a member of the International Court of Justice by default.

The tasks of the ICJ revolved around the two main tasks of the PCIJ. The primary function of the ICJ was to settle disputes between states which accepted its jurisdiction. The jurisdiction of the ICJ is limited only to states. States can seek compulsory jurisdiction of the ICJ in matters of claims against any other state and with the consent of that responding state. The ICJ was established in June, 1945 by the UN Charter and it started its activities in April, 1946. The seat of the International Court of Justice (ICJ) is at the Peace Palace in The Hague, Netherlands.[3] At present the President of the ICJ is Judge Iwasawa Yuji of Japan[4] and Vice-President is Judge Julia Sebutinde of Uganda.[5] Currently the ICJ has 193 member countries. As per the UN Charter, UN member states become state parties to the Statute of the ICJ by default. The ICJ is barred to hear cases of corporations, individuals, non-governmental organisations or private entities.[6] The Corfu Channel[7] Case was the first case that was enlisted in the General List of the ICJ on 22nd day of May, 1947.[8] A total number of 201 cases were registered in the General List of the ICJ between 22nd day of May 1947 and 18th September 2025.[9]

The second function of the ICJ is to provide Advisory Opinion to the major organs or institutions of the United Nations when sought for. However, the advisory opinions of the ICJ have no binding effects upon the UN institutions and organs.

Professor Mac Iver had observed in the Carnegie Endowments series of National Studies on International Organisation that the International Court of Justice had nothing new to promise as an institution.[10]

The ICJ was set up in 1945 and it was modelled upon the Permanent Court of International Justice. As per Article 92 of the UN Charter, the Statute of the ICJ is closely based on that of the Permanent Court of International Justice. However, it was declared that the new Court, i.e. the ICJ is the chief judicial organ of the UN and would play a more serious role than the old Court i.e. the Permanent Court of International Justice. The old court had never been of any weighty significance in the League of Nations structure. But according to Professor Mac Iver, the promise under Article 92 of the UN has remained unfulfilled in many respects.[11]

A study of the institutional features of the Court and the role it plays in discharging the judicial functions will throw light on the position of the ICJ in international relations. There are many elements that must be scrutinised in this respect.

[3] Available at: https://www.icj-cij.org/court (visited on January 20, 2026).
[4] Available at: https://www.icj-cij.org/presidency#:~:text=In%20the%20absence%20of%20the,as%20President%20or%20Vice%2DPresident: (visited on January 20, 2026).
[5] Available at: https://icj-cij.org/node/205530#:~:text=The%20Vice%2DPresident%20of%20the,Sebutinde%20%7C%20INTERNATIONAL%20COURT%20OF%20JUSTICE (visited on January 20, 2026).
[6] Available at: https://www.icj-cij.org/frequently-asked-questions (visited on January 20, 2026).
[7] *Corfu Channel (United Kingdom of Great Britain and Northern Ireland v. Albania) (Preliminary Objections)* [1949] ICJ Rep 1.
[8] Available at: https://www.icj-cij.org/cases (visited on January 20, 2026).
[9] Available at: https://www.icj-cij.org/cases#:~:text=The%20first%20case%20entered%20in,entered%20in%20the%20General%20List. (visited on January 20, 2026).
[10] Max Sorensen, "The International Court of Justice: Its Role in Contemporary International Relations", 14(2) *International Organisation* 261 (1960).
[11] Robert M. MacIver,*The Nations and the United Nations* 132(Manhattan Publishing Company, New York, 1959).

Election of the Judges and Judicial Independence:

Independence of the judiciary is one fundamental quality for any Court of Law, whether national or international. The Statute of the Court enjoins that the ICJ shall be comprised of a body of independent judges. It is also prescribed that the judges are not allowed to discharge any administrative or political duties or to be occupied in any other profession. Finally, the judges cannot be dismissed from their positions except by unanimous decision of the other members of the Court. However, this prescribed standard of independence of the judges was never realised completely.

Again, the election procedure of the Judges has always been widely criticised for their vouching for their political backgrounds while selecting them.
It was advised by the Institute of International Law that election procedure of Judges of the ICJ should be entirely separated from elections of other bodies.[12]
The Statute of the ICJ requires the Judges to be elected by the General Assembly and the Security Council, the bodies voting independently and an absolute majority of the votes is essential for choosing the candidate. But instances are there where this provision of the Statute was disregarded. For example, when elections were conducted in 1956 for filling a vacancy caused by the death of Judge Hsu Mo, the Nationalist Government of China recommended Ambassador Wellington Koo. The election procedure stood witness to disagreement over the representation of China. Though Mr. Wellington Koo achieved majority in the Security Council, a majority in the General Assembly was possible only after a fourth meeting and 18 ballots.[13]

Composition:

The ICJ consists of 15 judges who hold office for 9-year terms and they are elected by the Security Council and General Assembly of the United Nations.[14] Voting for the election of the Judges is held simultaneously but separately by these organs of the United Nations.

Organisational constructions of the UN are grounded on the principle of equitable geographical distribution. According to Article 23 of the Charter of the United Nations, this above-mentioned principle is to be followed in the process of election of non-permanent members of the Security Council. But this principle is not strictly recognised by the Statute of the Court. Article 9 of the Statute of the Court provides that in the composition of the Court; the leading forms of civilisation and the chief legal systems shall be represented. Again, the Statute does not shut out the possibility of a likelihood of a single legal system having more than one representative.

But after the setting up of the ICJ, remarkable evolution was observed in the matter of composition of the Court, if compared with that of the PCIJ. Islamic law and Soviet law also found representation in the ICJ. It became a common practice to ensure that the 5 permanent members of the Security Council find representation in the ICJ. Significant changes took place to allow sufficient representation from diverse legal systems from across the globe. Currently the ICJ is composed of judges from Japan, Uganda, Slovakia, France, China, India, Germany, Australia, Brazil, Mexico, the United States of America, Romania, South Africa, Jordan and Kenya.[15]

Article 38 of the Statute of the ICJ lists General Principles of Law recognised by Civilised Nations as

[12] Institut de Droit International, 44(2) *Annuaire* 440-455(1952).
[13] Shabtai Rosenne, *The International Court of Justice* 577 (Central Book Company Inc, New York, 1957).
[14] Available at: https://www.icj-cij.org/members#:~:text=The%20International%20Court%20of%20Justice,the%20votes%20in%20both%20bodies. (visited on January 20, 2026).

[15]Available at: https://www.icj-cij.org/current-members (visited on January 20, 2026).

a source of international law and this principle signifies the utility of corresponding applications of various state laws in international law. The ICJ has consistently drawn on this source.[16]

Jurisdiction:

As per Article 93 of the UN Charter, all members of the United Nations are parties to the Statute of the ICJ by default. States which are not members of the United Nations may also be parties to the Statute but subject to conditions set by the General Assembly and recommendation of the Security Council. Also, as per Article 35 of the Statute of the ICJ, on terms of the Security Council, the ICJ is open to even those countries which are not parties to its Statute. Such states have to recognise the jurisdiction of the ICJ by a special declaration to that effect. Declarations like this were made by Vietnam in relation to the Japanese Peace Treaty and by the Federal Republic of Germany in the matter of some European Treaties.[17]

Thus, it is very true that the ICJ is a World Court and it is open to all states of the world. But access to the ICJ and submission to its jurisdiction are distinct aspects altogether and are to be followed properly.

The fundamental basis of the system is that jurisdiction over any state may be exercised only by the state's assent. Such assent may be derived or given by a number of means. The Court deals with issues between states. It should also be made quite clear that the Court only deals with civil cases and has no jurisdiction of a penal character.[18]

The oldest method of referring a case for international adjudication is by special agreement and this method is envisaged under Article 36 of the Statute.

Consent of the state parties may also be obtained through treaty or convention with respect to future disputes falling under specific categories. According to Article 37 of the Statute of the ICJ, such treaties shall mean that the concerned states have conferred jurisdiction upon the ICJ.

Consent to the jurisdiction of the ICJ may also be accorded by making a declaration to that effect under the optional clause.[19]

Finally, a simple method of submitting to the jurisdiction of the ICJ is by expressing positive response to unilateral summons.

Disputes between international organisations:

Article 34 of the Statute of the ICJ provides that only states can be parties in cases before the ICJ. But this restriction is felt to be a little restrictive. Yet questions of law regarding matters of international organisations have been brought many times before the ICJ for seeking its advisory opinion. Most legal queries submitted before the ICJ for its advisory opinion were relating to the powers and functions of the organs of the United Nations or disputes where the United Nations or any other international organisation was a party in an individual capacity as an independent subject of international law. The Reparations case is one remarkable example in this regard where the ICJ declared that the UN had the right to bring claim against a state for obtaining reparations in respect of a damage that is suffered by an agent of the UN at the time of discharging his duties.[20]

Article II was inserted by the General Assembly in the Statute of the UN Administrative Tribunal in 1954. This Article II contained a special provision which allowed for seeking an advisory opinion through an

[16] Sir Hersch Lauterpacht, *The Development of International Law by the International Court* 158-172(Cambridge University Press, Cambridge, 1982).
[17] *Supra* note 7, at 231-235.
[18] Edvard Hambro, "The Jurisdiction of the International Court of Justice", 2(3) *The International Law Quarterly* 464(1948).
[19] The Statute of the International Court of Justice, art. 36.
[20] Available at: https://www.icj-cij.org/case/4 (visited on January 20, 2026).

intervention of a special committee of the General Assembly for the purpose of rectifying an erroneous decision of the tribunal.

Advisory opinions of eminent members of the ICJ have always enabled the Court to discipline and rightly regulate the activities of international organisations.

International Relations:

The Statute of the ICJ lacks compulsory jurisdiction clause. But it may be assumed that state members of the UN have a general obligation to honour the jurisdiction of the ICJ.

The ICJ plays two vital roles in maintaining international relations and these roles are resolving disputes and providing advisory opinions. Resolution of disputes by the ICJ involves settling of legal battles between state parties as per the principles of international law. The ICJ can exercise this power only when a state requests so; it cannot start action suo motu. Apart from this function, the ICJ's advisory opinion in matters is sought regarding various issues. Specialised organs and agencies of the United Nations refer questions of legal nature to the ICJ for seeking its advisory opinions.[21] Thus types of cases that come before the ICJ are either contentious or advisory in nature.

The ICJ decided many kinds of legal matters, including genocide and aggression, state responsibility, humanitarian action, the use of nuclear weapons, self defence and use of armed forces.

It is noted that the decisions of the ICJ are final in nature and binding on the parties involved. But sometimes the judgements become subjects of revision or interpretation when new data is found.[22]

The ICJ handled many international disputes between the years 1946 and 1966. After that the ICJ's activities slowed down. The Third World Countries and Communist Countries like most countries in Asia, Africa, Latin America and Oceania, shunned the role of the ICJ and called it a club only for the Western Countries. The ICJ again found its relevance since late 1980s when states realised the greater utility of it. Many African countries referred their disputes to the ICJ.[23]

Cases:

Some important cases decided by the ICJ may be discussed as follows:

Nicaragua v. United States of America (1986)[24]:

It was held by the ICJ that the USA had violated provisions of international law by backing rebel groups in Nicaragua. The ICJ asked the USA to pay reparations to Nicaragua. But the USA refused to follow the decision of the ICJ and eventually declined its compulsory jurisdiction. Nicaragua then requested the United Nations Security Council for enforcing of the ICJ order but it was vetoed by the USA.

Israel's occupation of the Gaza Strip and West Bank[25]:

The ICJ delivered its advisory opinion on 19th of July'2024 and stated that Israel's occupation of the Gaza Strip and West Bank, including East Jerusalem is unlawful. The Court said that Israel dishonoured international law requirements regarding prohibition of racial discrimination and apartheid. It asked Israel to withdraw troops and occupation from the region. It also mandated Israel to provide reparations to Palestine victims and ensure the return of displaced people.

[21] Available at: https://www.icj-cij.org/advisory-jurisdiction (visited on January 20, 2026).
[22] Available at: https://www.icj-cij.org/how-the-court-works (visited on January 20, 2026).
[23] *Supra* note 2 at 348.

[24] *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America) (Judgment)* [1986] ICJ Rep. 14.
[25] International Court of Justice "Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem" (2024).

It was held by the ICJ that Israel must stop and punish public incitements for committing genocide of the Palestinian citizens in Gaza and also ruled that Israel has to keep and preserve all evidence of every allegation of genocide.

Rohingya Genocide[26]:

The Rohingyas are Muslim Indo-Aryan ethnic minority people who faced mass persecution and ethnic cleansing in the Buddhist majority country of Myanmar. Their persecution has been termed as genocide. Governments in Myanmar described them as illegal immigrants. The Rohingya community argued that they inhabited in the region for years and over generations and that they were subjected to inhuman treatment. This case [27] is also commonly known as the Rohingya Genocide case and it is currently being heard by the ICJ. This issue was brought before the Court by the Republic of the Gambia which represented 57 members of the organisation of Islamic Co-operation in 2019. Aung San Suu Kyi calls this event an 'international armed conflict' caused by attacks by the Rohingyas on the government of Myanmar. Abdulqawi Ahmed Yusuf presided over the case and asked Myanmar to deploy every possible measure to stop genocide.

Russia-Ukraine conflict[28]:

This case was introduced before the ICJ in 2017 and it culminated in 2024. It was a contentious case. This case was submitted before the ICJ by Ukraine. It was regarding Russia's invasion of Ukraine. This case also involved allegations of genocide by both parties. Ukraine contended that Russia made false allegations against Ukraine. Contentious issues were also regarding the application of the International Convention for the Suppression of the Financing of Terrorism (ICSFT) and the International Convention on the Elimination of All Forms of Racial Discrimination (CERD).

The ICJ delivered a landmark ruling in this case on 31st January 2024. The ICJ acknowledged the blatant and ongoing violations of international law by the Russian Federation. The ICJ found that the Russian Federation failed to investigate the matter of terrorism financing and the suppression of Ukrainian language and culture in Crimea. It was also found by the Court that the Russian Federation violated the provisions of the ICSFT and the CERD. This case was about allegations of violations of international law.

However, besides acknowledging the violations of international law by the Russian Federation, the ICJ did not provide any further remedy to Ukraine.
The ICJ found that Russia failed to prove that it took enough measures to stop movement of funds to Ukraine for the purpose of terror financing.
Orders of the ICJ also included the following:
The ICJ had ordered the Russian Federation to assist Ukraine in criminal investigations into allegations of terror financing.

The Russian Federation was asked to pay financial damages to Ukraine for the harm that the Ukrainians had to suffer.

The Russian Federation was asked to pay moral damages to Ukraine.

The ICJ also asked the Russian Federation to comply with the measures ordered by the Court in 2017 i.e. lifting of ban on activities of the Mejlis of Crimean Tartan People and facilitating education in the Ukrainian language.

[26] Available at: https://en.m.wikipedia.org/wiki/Rohingya_genocide_case (visited on January 20, 2026).

[27] *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar) (Preliminary Objections)* [2022] ICJ Rep 178.

[28] *Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (Ukraine v. Russian Federation) (Judgment)* [2024] ICJ Rep 166.

Jadhav's Case (India v. Pakistan)[29]:

It was contentious case regarding the detention and trial of Kulbhushan Jadhav, an Indian national and naval officer, in Pakistan. Jadhav was awarded death penalty in 2017 by Court Martial in Pakistan. The ICJ passed its decision in favour of India in July 2019. It ruled that Pakistan violated the principles of the Vienna Convention on Consular Relations (VCCR). The ICJ found that Pakistan did not provide consular access to Jadhav. Pakistan was asked to review Jadhav's conviction and sentence. The ICJ found that India was deprived of its right to communicate with Jadhav when he was in Pakistan jail. Even the right to visit Jadhav during his incarceration was also denied to India. Finally, it was also observed by the ICJ that Pakistan denied India's right to facilitate India's representation for Jadhav.

This ruling by the ICJ had great significance in international law and denoted a landmark victory for India. Pakistan's Parliament then passed the International Court of Justice (Review and Reconsideration) Act, 2021 and it gave Jadhav the right to appeal against his conviction.

Apart from the Jadhav's case other important cases settled by the ICJ where India was involved are:

- Right of Passage of Indian Territory (Portugal v. India)[30]
- Appeal relating to the Jurisdiction of the ICAO Council (India v. Pakistan)[31]
- Aerial incident of 10th August 1999 (Pakistan v India)[32]
- Obligations concerning Negotiations relating to cessation of the Nuclear Arms Race to Nuclear Disarmament (Marshall Islands v. India)[33]

Apart from these functions, the UN Charter and the Statute of the ICJ specified two more roles that would be played by the ICJ in course of its affairs. These roles include developing international law in a way that would reflect the perspectives of judges coming from diverse legal backgrounds from all over the world. These perspectives would be like obiter dicta i.e. it would emanate from the decision-making process of contentious cases before the Court and from its advisory opinions. Again, the ICJ has the responsibility of influencing state behaviours through the prospects of its adjudication of disputes. The ICJ's decisions would have an effect on national decision making in many instances within states.

Limitations

Over the years the ICJ has made a great deal of development. It has survived the ideological differences of the Cold War. It has achieved a deep sense of relevance and a very busy workload. The ICJ has lasted more than double the duration of the PCIJ and still it is showing no signs of decay. However, apart from just fulfilling its primary role of settling international disputes, the ICJ has a long way to go.

Some limitations of the ICJ may be listed as follows:

First, in the present global order, there is no common philosophy that underpins complete trust for a single system of international law. It may be said that at times the ICJ operates in a very tense and hostile international environment.

Second, the autonomy of the ICJ is often affected by an impact of national sovereignty. Many states still

[29] *Jadhav (India v. Pakistan) (Judgment)* [2019] ICJ Rep 168.
[30] *Right of Passage over Indian Territory (Portugal v. India) (Preliminary Objections)* [1957] ICJ Rep 125.
[31] *Appeal Relating to the Jurisdiction of the ICAO Council (India v. Pakistan)(Judgment)* [1972] ICJ Rep 54.
[32] *Aerial Incident of 10 August 1999 (Pakistan v. India) (Judgment)* [2000] ICJ Rep 12.
[33] *Obligations concerning Negotiations relating to Cessation of the Nuclear Arms Race and to Nuclear Disarmament (Marshall Islands v. India)(Jurisdiction)* [2016] ICJ Rep158.

decline to honour the compulsory jurisdiction of the ICJ. As per the fundamental tenets of international law and national sovereignty, states are not under any compulsion to abide by the provisions of international law. There are 193 members of the ICJ at present[34] but that does not necessarily indicate that they have automatically accepted the ICJ's jurisdiction over them.

Third, according to the UN Charter and the Statute of the ICJ, only nation states may be parties before the ICJ. Only countries can institute a proceeding before the ICJ and only countries may be defendants in a case. Indigenous people and ethnic groups possess no standing at the ICJ.

This limitation is one reason for establishing the International Criminal Court (ICC).[35] The ICC is also located in The Hague and it can hear cases against individuals who are accused of committing crimes.[36] It is governed by the provisions of the Rome Statute and it is totally separate from the ICJ.[37] Main purpose of the ICC is to prosecute individuals accused of war crimes and crimes against humanity like genocide.[38]

Similarly, major non-state entities like transnational corporations (TNC) and international Non-governmental Organisations (NGOs) cannot be made parties before the ICJ.[39]

Fourth, international law lacks an effective enforcement system. It is a major drawback that the ICJ suffers from. There is no 'police force' to follow up any decision of the ICJ. An issue from the ICJ that is referred to the UN Security Council is always subject to the veto power of its 5 permanent members. For instance, Nicaragua had brought a case against the US before the ICJ regarding mining of its harbours. This happened in the 1980s. The matter was turning against the US and as a result it withdrew from the ICJ. Then the US exercised its veto power in the United Nations Security Council so that the decision of the ICJ could not be enforced against it.[40]

Fifth, an international court is not always a suitable forum for settling all kinds of dispute. Example, in the 1950s, Egypt did not agree the using of the Suez Canal for trading with Israel.[41] The US tried to refer the matter before the World Court. But both Egypt and Israel refused the jurisdiction of the ICJ in this matter. This was because neither side wished to risk a clear judgement against it. States often prefer a blurred decision.[42]

Sixth, the ICJ suffers from procedural lacunae. The procedure of the ICJ is inadequate. In municipal law the lower courts are tasked with dealing with the facts of the case, while, the higher judiciary interprets the law and ensures due process. The ICJ has to perform both these functions. When studied from this perspective, the system of the ICJ is still young and unsophisticated.

Conclusion:

International law has grown and made a huge impact in matters across the globe since the two world wars. The relevance of international law has reflected the increasing interdependence of the world. States have gradually realised the necessity of international law for facilitating global cooperation. In this respect the role of the ICJ has been remarkable. The ICJ has acted as a cohesive force in matters of settlement of disputes

[34] Available at: https://www.icj-cij.org/frequently-asked-questions (visited on January 20, 2026).
[35] *Supra* note 2 at 351.
[36] Available at: https://www.icc-cpi.int (visited on January 20, 2026).
[37] *Supra* note 2 at 351.
[38] Available at: https://www.government.nl/topics/international-peace-and-security/international-legal-order/the-international-criminal-court-icc (visited on January 20,2026).
[39] *Supra* note 2 at 351.
[40] *Supra* note 23.
[41] Available at: https://history.state.gov/milestones/1953-1960/suez (visited on January 20, 2026).
[42] *Supra* note 2 at 351.

between world powers. However, the journey is far from over. More awareness has to be manifested regarding the relevance of the subject. International law is a weak law due lack of proper enforcement mechanism.

Hence it still continues to be a neglected subject. More attention is required to be drawn towards international law and its allied matters like the ICJ. Academic institutions in countries around the world must mould their university and school curricula in such a way that students are properly educated in international relations and international law.

The matter of international law is paid little attention to even by the NGOs. NGOs often campaign on specific treaties but they do very less for codification and progressive growth of international law. Monitoring systems must be set up by NGOs to check how far governments are following or failing to honour their international obligations.

Governments need to be encouraged for accepting the compulsory jurisdiction of the ICJ. This could be possible through effective campaigning by salient organisations and entities across the globe. Since every type of international dispute cannot be mitigated by the ICJ, other peaceful means of settlement of disputes must be looked into. Introducing concepts of peace studies for resolution of conflicts must achieve a new dimension. To this end exhaustive campaigning and sincere efforts are required from every possible forum.

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THE ROLE OF SAFE HARBOUR PRINCIPLE IN ONLINE TRADEMARK INFRINGEMENT: A COMPARATIVE ANALYSIS OF INDIA AND EU

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ABSTRACT:
The surging growth of e-commerce platforms has changed the global marketplaces from a brick-and-mortar environment to a digital environment. This has led to surging opportunities for innovation and trade all across the globe. However, this has resulted in enforcement gaps with respect to intellectual property particularly in the online trademark infringement in e-commerce platforms. The existing body of literatures, although giving Indian and European Union (EU) stand on trademark laws, intermediary liability and digital environment also reveals significant gaps such as the clash between courts and regulators. The EU's advanced and bifurcated model preserves the traditional safe harbours that are applicable to intermediaries while also imposing a parallel track of obligations on direct governance. In India, there exists a contradictory hybrid mode where the strong statutory safe harbour protection is undermined by the concept of due diligence requirements that causes clash within the governance approach. By employing a doctrinal and comparative analysis of the Indian and European Union stances with the help of statutes including the Information Technology Act, 2000 (IT Act), the E-Commerce Directives, 2000 (ECD) and the Digital Services Act, 2022 (DSA) and secondary sources such as journal articles and landmark judicial decisions such as the *Amazon v Beverly Polo Hills,* (2024), *Amazon v Happy Belly Bakes, (*2022) in the Indian context and the *Coty v Amazon* (2020) in the EU context, this paper examines the foundational legislations, court's interpretation on the concept of intermediary liability and a holistic approach to fill the existing legal gap by balancing protection and liability of the intermediaries, specifically the e-commerce intermediaries. The relevance of this paper is relatively high in the Indian jurisprudence as it aims to strike a balance in the clash of governance and regulators. The findings also include that globally the governance is shifting from a reactive take-down model to a more proactive risk-based assessment as India's due diligence method places the burden on the intermediaries whereas the EU emphasises on the active role of the intermediary. Finally, this paper aims to harmonise digital governance particularly involving intellectual property via ensuring that the safe harbour principle is not exploited.

Keywords*:* e-commerce, intermediary, platform, safe harbour, infringement, trademarks, intermediary liability.

INTRODUCTION:

The increasing rapid growth of online platforms and our dependencies on these platforms for easing our lives have resulted in seamless transactions even across the borders for both consumers and business alike. However, on the other side, it also gives rise to complex legal challenges particularly with respect to trademark infringement.[1] Unlike the traditional marketplace, the online marketplaces operate on an anonymous environment which in turn facilitates the misuse of intellectual property as can be seen in the case of trademark infringement in the e-commerce platforms. These infringements undermine the brand value ultimately resulting in distorting the consumer trust.[2] Therefore, this requires for a robust legal

[1] Sai Swetha E. & Sai Darshini S.K, Trademark Infringement and Online Environment: Challenge and Legal Remedies, 11 Int'l J. Law Mgmt. & Human. 245 (2021), https://ijlr.iledu.in/wp-content/uploads/2025/06/V5I105.pdf

[2] Sugan U., Trademark Violations in E-commerce (2022), https://heinonline-org-christuniversity.knimbus.com/HOL/Page?public=true&handle=hein.journals/injlolw10&div=386&start_page=1&collection=journals&set_as_cursor=0&men_tab=srchresults

framework to regulate the e-commerce intermediaries with respect to safe harbour protection and intermediary liability.

The protection principle is enshrined in Section 79 of the IT Act in the Indian context and the ECD[3] and DSA in the European context. It grants the intermediaries immunity from third-party infringement in the e-commerce platforms provided there is adequate due diligence taken.[4] The major bone of contention is the inconsistency in defining to what extent is the intermediary liability with respect to trademark infringement, whether the safe harbour principle under Section 79[5] has become obsolete, whether there is any ambiguity in determining secondary liability and whether this protection has become a cushion for platforms to misuse it by avoiding accountability. The Indian cases such as *Amazon v. Beverly Hills Polo Club*[6] and *Amazon v Happy Belly Bakes*[7] shows that there is lack of uniformity in the judicial interpretations while the European cases like the *Coty v Amazon*[8] showcases a more structured and evolving approach to addressing online trademark infringements.

The existing literature reviews collectively reveal the gaps of fragmented approach, the insufficient comparative analysis between India and the EU and a lack of clarity with respect to the secondary liability and due diligence. This paper aims to fill the existing legislative and interpretative gaps by employing a doctrinal and comparative analysis of the intermediary liability in India and the EU perspectives. The study examines the challenges in India's vague due diligence requirements under the IT Amendment Act, 2023. It also incorporates the safe harbour in the broad Indian legislation

The objectives are to compare the legislative frameworks in both jurisprudences, to critically analyse the IT Amendment Act, 2023, to determine the extent of intermediary liability and suggest ways to mitigate the same and explore how these reforms fall within the ambit of Sustainable Development Goals 9,10,12,16 and 17. The aim of this paper is not only to clarify the scope of the intermediary liability on trademark infringements but also to suggest ways that could aid in striking a balance between innovation and accountability in the digital environment.

In this study, a comparative analysis of the Indian and EU frameworks followed by discussing the intermediary liability, safe harbour protection, the SDG dimensions and finally suggesting the best practices that India could adopt.

LITERATURE REVIEW:

The intersection of trademark and intellectual property in the digital commerce has been studied in lens of ascertaining the liability for the e-commerce intermediaries and the safe harbour protection that is applicable. In the Indian scenario, it can be visible that there is growing awareness of online infringement and the gaps in addressing the same such as weak enforcement mechanisms, absence of a clearer framework for e-commerce intermediary obligations, etc. Intermediaries must also balance platform accountability with platform governance. India's model, thus, is a fragmented one.

In contrast, the EU model, it provides for a more advanced treatment of intermediary liability with the ECD and the DSA monitoring the accountability and protection available to the e-commerce platforms as intermediaries. The protection of safe harbour is only applicable in case the intermediary indulges in a passive role and that in case of an active involvement this protection ceases to exist.

However, the existing literatures reveal certain gaps such as, inadequate analysis of the IT (Amendment) Bill, 2023, lack of clarity on the active and passive role

[3] Directives 2000/31/EC, of the European Parliament and of the Council, 2000 O.J. (L 178) 1
[4] Regulation 2022/2065, of the European Parliament and of the Council, 2022 O.J. (L 277) 1
[5] Information Technology Act, 2000, S.79 (India)
[6] 2022 SCC OnLine Del 2187 (India)
[7] 2022 SCC OnLine Mad 1843 (India)
[8] ECLI:EU:C:2020:267

of the intermediary, etc. which this paper seeks to fill by offering a comparative study of the EU and Indian frameworks and suggesting certain best practices that India could adopt for mitigating the ambiguities surrounding platform liability and platform governance with respect to online trademark infringements.

1. TRADEMARK AND E-COMMERCE PLATFORMS: LEGISLATIVE FRAMEWORKS IN INDIA AND EU –

The core principles in these legislative frameworks are dealing with the aspects of primary versus secondary liability, the concepts of 'use' and 'knowledge' in trademarks form the theoretical foundation upon which the legislations and judicial interpretations in European Union and India are built upon. The evolution and interpretations reveal the tensions while regulating the digital marketplaces.

1.1 Primary *v.* Secondary Liability

The liability of online trademark infringement by e-commerce platforms for any third-party infringements is of two types – primary liability and secondary liability.

Primary liability is the result of the intermediary's own actions that would directly constitute a trademark infringement[9]. Under this, the intermediary is held liable if it 'used' the infringing trademark in the course of its business/trade. The prevailing system, particularly in the EU relating to the intermediary's role was mostly technical and a passive role. Any third-party infringement did not hold the intermediary liable rather a secondary liability was only attributed.[10]

Secondary Liability, on the other hand, is more derivative. This concept doesn't attribute any direct infringement, but the intermediary's role as a facilitator for contributing to the third-party's infringement. This doctrine is mostly developed in common law countries such as India and is further divided in two categories[11], namely –

a. Contributory Infringement – when the intermediary intentionally induces another party to infringe a trademark, continues its service to a third-party whom it knows or has reasons to know is engaging in a trademark infringement. This is based on the principles of infringing act and the knowledge of the act.

b. Vicarious Liability – it is based on the relationship between the intermediary and the infringer. It arises when the intermediary has the right and ability to control the infringer's action and if they also receive a direct monetary benefit as a result of the infringing activity.

In the European Union, the concept of secondary liability is not prevalent and is often considered according to the national tort law of every individual member state thereby giving rise to a fragmented legal landscape.[12] Traditionally, the intermediary's role was seen as a secondary role but as the businesses gradually evolve, the line between accrediting primary

[9] Esa Lyykorpi, Intermediary Liability for Trademark Infringement 16 (2023) (Master's Thesis, Hanken School of Economics), https://helda.helsinki.fi/server/api/core/bitstreams/ff2470f0-33b0-488e-b0ea-8e293846d8c8/content

[10] Dania van Leeuwen et al., Online Intermediaries and Trademark Owners: The Legal Position and Obligations of online Intermediaries to Trademark Owners Prior and Post-Louboutin v Amazon, 15 J. INTELL. PROP. INFO. TECH. & ELEC. COM. L. 56, 56 (2024), https://www.jipitec.eu/jipitec/article/view/36/32

[11] Sakshi Rastogi, Infringement of Trademarks, 4 INT'L J.L. MGMT. & HUMAN. 1392, 1395 (2021), https://heinonline-org-christuniversity.knimbus.com/HOL/Page?public=true&handle=hein.journals/ijlmhs13&div=133&start_page=1392&collection=journals&set_as_cursor=0&men_tab=srchresults

[12] Esa Lyykorpi, Intermediary Liability for Trademark Infringement 16 (2023) (Master's Thesis, Hanken School of Economics), https://helda.helsinki.fi/server/api/core/bitstreams/ff2470f0-33b0-488e-b0ea-8e293846d8c8/content

or secondary liability diminishes which results in re-ascertaining the intermediary's role.

1.2 The concept of 'use'

The concept of 'use' is essential to establish a primary liability against the online intermediary. It means that any intermediary can only be held liable if the intermediary's conduct amounts to 'use' of the infringing mark for commercial purposes.[13] However, there exists tussles while ascertaining what amounts to use. In landmark cases such as the *L'Oreal v eBay*[14] and *Coty v. Amazon*[15] establishes a narrow interpretation. The courts have interpreted that merely providing technical facilities such as website, storage of goods, etc does not amount to 'use' by the intermediary.[16] The focus was more on whether the intermediary exercised a direct or an indirect control over the infringing use. The passive role of an intermediary didn't amount to 'use' for declaring infringement.[17]

In the Indian context, a contrasting point is considered. The Indian judiciary has taken a strict interpretation for ascertaining the liability of infringement. In cases such as *Amazon v. Beverly Hills Polo Club*[18] and *Amazon v. Happy Belly Bakes*[19], the Indian courts have held that the use of a competitor's trademark amounts to infringing 'use' under the Trademark Act, 1999.[20] Therefore, it represents a significant contrast from the EU's model of a comparatively lenient jurisprudence. This difference highlights that there exist fundamental policy differences between the Indian and European courts where the Indian courts prioritise the rights of the trademark holder.

1.3 The concept of 'knowledge'

The concept of 'use; is essential to determine primary liability, whereas the concept of 'knowledge' is essential to determine secondary liability. It refers to an intermediary's awareness of the infringing activity on its platform which can take away the immunity under the safe harbour available to the intermediary. However, different jurisdictions have different interpretation on what constitutes a significant knowledge.

I. Actual knowledge – as the name suggests, it is the actual knowledge of the intermediary. It means that the intermediary's awareness to a particular infringement. It could be attributed to even receiving a notice from the trademark owner specifying the infringing content's details. But, in the case of *Shreya Singhal v Union of India*[21], the Supreme Court held that the 'actual knowledge' under the IT Act is only constituted when there is a court order or a notification from a government agency. This has resulted in rendering the private notices as legally

[13] Dania van Leeuwen et al., Online Intermediaries and Trademark Owners: The Legal Position and Obligations of Online Intermediaries to Trademark Owners Prior and Post-Louboutin v Amazon, 15 J. INTELL. PROP. INFO. TECH. & ELEC. COM. L. 56, 60 (2024), https://www.jipitec.eu/jipitec/article/view/36/32

[14] EU:C:2011:474

[15] ECLI:EU:C:2020:267

[16] Esa Lyykorpi, Intermediary Liability for Trademark Infringement 9 (2023) (Master's Thesis, Hanken School of Economics), https://helda.helsinki.fi/server/api/core/bitstreams/ff2470f0-33b0-488e-b0ea-8e293846d8c8/content

[17] Dania van Leeuwen et al., Online Intermediaries and Trademark Owners: The Legal Position and Obligations of Online Intermediaries to Trademark Owners Prior and Post-Louboutin v Amazon, 15 J. INTELL. PROP. INFO. TECH. & ELEC. COM. L. 56, 60 (2024), https://www.jipitec.eu/jipitec/article/view/36/32

[18] 2022 SCC OnLine Del 2187 (India)

[19] 2022 SCC OnLine Mad 1843 (India)

[20] B. Lakshmi & Vincent Comraj, Liability of the E-commerce Platforms for Infringement of the Trademark, 10 VIDHYAYANA 1, 7 (2024), https://vidhyayanaejournal.org/index.php/journal/article/view/2146/2306

[21] (2015) 5 SCC 1

insufficient with respect to the notice-and-takedown requirement.[22]

ii. Constructive Knowledge – a.k.a the reason to know. It refers to the knowledge of the intermediary based on the facts and circumstances from which a reasonable man should have known about the infringement. Under this, the intermediary cannot claim immunity if it was aware of the facts and circumstances were unlawful and also it failed to act on it.[23]

The different interpretations of the concept of knowledge reflect the various stances in holding the intermediary liable. The EU's due diligence creates a more flexible standard of care for the intermediary. India, on the other hand prioritises the protection of trademark owners. This foundational tension between protecting the intermediary platforms and holding them accountable is common in both these jurisdictions.

2. THE EUROPEAN UNION –

The legal framework in the European Union with respect to intermediary liability has undergone a very significant evolution from being a system dealing in conditional immunity to being the world's most proactive and comprehensive model for platform governance. It began with the traditional safe harbour protection under the ECD and gradually shifting towards passive and active role of the intermediaries as judicially decided by the Court of Justice of the European Union (CJEU) and finally the new legislation – DSA. This evolution highlights the movement towards online platforms and its responsibilities in safeguarding and sort of infringements.

2.1 Active v. Passive Role –

The E-commerce directive[24] served as the cornerstone in areas of intermediary liability for infringement. The safe harbour principle was enacted to enable the growth of digital economy by protecting the intermediaries for third-party infringement. It is applicable to –

a. Mere Conduit[25]: the liability of the intermediary for transmitting information which is not initiated by it or selecting the receiver or selecting or modifying the information that is contained in the transmission.[26]

b. Caching[27]: under this, the liability of the intermediary is exempted in cases of automatic, intermediate and temporary storage of information for the sole purpose of making the transmission efficient.

c. Hosting[28]: the liability is exempted for the storage of information provided by the user on a condition that the provider doesn't have an actual knowledge of the infringing activity and in case the intermediary obtains such a knowledge, then the intermediary acts upon such knowledge by removing ot disabling the access to the information.

A crucial interpretative side can be seen by the CJEU with respect to intermediary liability such as the

[22] Vasudev Devadasan, Conceptualising India's Safe Harbour in the Era of Platform Governance, 19 INDIAN J.L. & TECH. 1, 9 (2024), https://repository.nls.ac.in/cgi/viewcontent.cgi?article=1420&context=ijlt

[23] Dania van Leeuwen et al., Online Intermediaries and Trademark Owners: The Legal Position and Obligations of Online Intermediaries to Trademark Owners Prior and Post-Louboutin v Amazon, 15 J. INTELL. PROP. INFO. TECH. & ELEC. COM. L. 56, 62 (2024), https://www.jipitec.eu/jipitec/article/view/36/32

[24] 2000/31/EC

[25] E-commerce Directives, 2000, Article 12, (EU)

[26] Daria Bulgakova & Sintija Deruma, The Liability of Online Intermediaries Under European Union Law, 8-9 KYIV-MOHYLA L. & POL. J. 1, 8 (2023), http://kmlpj.ukma.edu.ua/article/view/303154/295197

[27] E-commerce Directives, 2000, Article 13, (EU)

[28] E-commerce Directives, 2000, Article 14, (EU)

distinction between a 'passive' or 'neutral' intermediary as opposed to an 'active' one. A passive intermediary's role is more of technical and automatic that qualifies for the safe harbour protections. However, if the intermediary plays an active role, meaning that giving the knowledge or control of user-generated content, it would fall outside the ambit of the safe harbour protection thereby holding the intermediary liable for infringement. An active role of the intermediary would also include optimising the presentation of the infringing good or promoting those goods.[29] One major principle under this framework was prohibiting an imposition of general monitoring obligation as required under the Article 15 of the ECD.

In the case of *Coty v Amazon*[30], the limits of this framework were further tested, specifically with respect to services fulfilled by the intermediary, here in this case, Amazon. The intermediary was accused of using, storing and dispatching counterfeit products which carried the same trademark as that of Coty[31]. The CJEU held that Amazon did not possess actual knowledge about the infringement and that mere act of storing did not constitute 'use' by the intermediary[32]. However, the drawback of this case was that the court failed to address whether the integrated services by an intermediary amounted to an active role that would amount to use[33].

2.2 Louboutin v Amazon[34]

A landmark judgment which fundamentally altered the landscape of intermediary liability significantly from the traditional active or passive role. This paved a new way for holding the e-commerce platforms primarily liable with regards to trademark infringements. It assessed whether an intermediary 'using' the trademark for its own commercial communication is liable or not. The decision was based on the consideration whether an informed and reasonable observant e-commerce platform user would be able to establish a link between the intermediary's services and the infringing good, if so, the intermediary can be deemed to be 'using' that infringing good irrespective of whether it belonged to a third-party seller. The infringement could be identified via uniform methods such as the logo, services offered, products sold, etc. This judgment stated that the e-commerce platforms if integrating an overall experience for the third-party sellers would be more likely perceived as the seller themselves which would result in a higher risk of being liable for online trademark infringement.

2.3 Digital Services Act, 2022:

This Act[35] replaced the liability provisions of ECD by establishing a new and comprehensive frameworks for the platform governances.[36] It bifurcates the

[29] Dania van Leeuwen et al., Online Intermediaries and Trademark Owners: The Legal Position and Obligations of Online Intermediaries to Trademark Owners Prior and Post-Louboutin v Amazon, 15 J. INTELL. PROP. INFO. TECH. & ELEC. COM. L. 56, 60 (2024), https://www.jipitec.eu/jipitec/article/view/36/32

[30] *Coty Germany GmbH v. Amazon Services Europe Sàrl*, 2020, ECLI:EU:C:2020:267

[31] S. Yashwont Kiran, *The Infringement of Trademark in the E-Commerce Sphere - A Comparative Analysis of USA, European Union, United Kingdom & India*, 3 INT'L J.L. MGMT. & HUMAN. 1160, 1166 (2020), https://heinonline-org-christuniversity.knimbus.com/HOL/Page?public=true&handle=hein.journals/ijlmhs8&div=114&start_page=1160&collection=journals&set_as_cursor=0&men_tab=srchresults

[32] *Coty Germany GmbH v. Amazon Services Europe Sàrl*, 2020, ECLI:EU:C:2020:267

[33] Dania van Leeuwen et al., Online Intermediaries and Trademark Owners: The Legal Position and Obligations of Online Intermediaries to Trademark Owners Prior and Post-Louboutin v Amazon, 15 J. INTELL. PROP. INFO. TECH. & ELEC. COM. L. 56, 60 (2024), https://www.jipitec.eu/jipitec/article/view/36/32

[34] ECLI:EU:C:2022:1016

[35] EU 2022/2065

[36] Daria Bulgakova & Sintija Deruma, The Liability of Online Intermediaries Under European Union Law, 8-9 KYIV-MOHYLA L. & POL. J. 1, 8 (2023),

regulatory approaches into two types such as the content-specific liability and systemic platform governance. It provides legal certainty by explicitly introducing a 'Good Samaritan' clause[37]. This clause clarifies that the intermediaries do not lose their safe harbour protection just because they engage in voluntary and self-investigation to remove the infringed content. This has ensured that such behaviours by an e-commerce platform doesn't amount to an active role which would render the e-commerce platform lose their immunity of safe harbour.

This Act has shifted from a reactive liability to a due diligence obligation. This obligation becomes stringent based on the increase of the size and the impact of the platform.[38] These obligations include –

a. Notice and takedown mechanisms[39] where the users can notify infringing content.

b. Transparency[40] meaning that the intermediaries ought to regularly publish detailed reports on their active and passive roles.

c. Very Large Online Platforms (VLOPs): This means that in case a platform has over than 45 million active users in the EU, they will be subjected to the highest regulation which would include a mandatory annual risk assessment of the risk of infringement, compliance audit and providing necessary data for the researchers.

This has led to the fundamental changes in the regulatory mechanism. It maintains the safe harbour protection for determining the liability for a lawsuit meaning that the e-commerce platform can use this as a defence. This act also ensures that there is a statutory obligation related to the platform governance. This is necessary as it incorporates both the notice and takedown[41] and the transparency reporting[42] with the penalty being a fine imposed. This has helped in giving a conceptual clarity by mitigating confusions on platform governance and secondary liability. This can be attributed as a potential best practice model for adopting in other nations as it codifies that balance emancipated by CJEU between effective enforcement and protection of rights. It states that there is no mandatory monitoring compliance[43] stating that the e-commerce platforms will not be able to police all the contents on their platform. But it also explicitly empowers judicial or administrative authorities to issue any orders pertaining to infringing goods[44] and can also order for providing any specific information about the users[45]. Therefore, it provides for a clear legal authority for efficient enforcement against constant monitoring guidelines.[46]

3. THE INDIAN FRAMEWORK:

The Indian framework is a unique and hybrid modal of statutory legislations and judicial interpretations. This structure creates a contradictory system where safe harbour is one of the strongest globally but also the most unpredicted one. This conceptual challenge has resulted in significant legal uncertainty which increases the role of the Indian judiciary as a *de-facto* regulator.

http://kmlpj.ukma.edu.ua/article/view/303154/295197

[37] Digital Services Act, S.7 (2022) (EU)

[38] Daria Bulgakova & Sintija Deruma, The Liability of Online Intermediaries Under European Union Law, 8-9 KYIV-MOHYLA L. & POL. J. 1, 8 (2023), http://kmlpj.ukma.edu.ua/article/view/303154/295197

[39] Digital Services Act, S.16 (2022) (EU)

[40] Digital Services Act, S.15 (2022) (EU)

[41] Digital Services Act, S.16 (2022) (EU)

[42] Digital Services Act, S.15 (2022) (EU)

[43] Digital Services Act, S.8 (2022) (EU)

[44] Digital Services Act, S.9 (2022) (EU)

[45] Digital Services Act, S.10 (2022) (EU)

[46] Esa Lyykorpi, Intermediary Liability for Trademark Infringement 16 (2023) (Master's Thesis, Hanken School of Economics, https://helda.helsinki.fi/server/api/core/bitstreams/ff2470f0-33b0-488e-b0ea-8e293846d8c8/content

3.1 Trademark Act[47] and IT Act[48]

The governing legislations for online trademark infringement are the TM Act, 1999 and the IT Act, 2000. The legislation that defines a trademark infringement and civil and criminal remedies for such infringement is the Trademark Act, 1999[49]. It means that what constitutes an act of infringement and what are the legal remedies a trademark owner can take are governed by the trademark laws. However, the liability exemption which is essential to the intermediaries is not mentioned under this act but it is provided under the IT Act, 2000[50]. This fragmented legislative structure means that the cause of action arises under the TM Act but the defence available to the online intermediary lies with the IT Act[51]. The Indian courts have interpreted common law doctrines such as the passing off and indirect liability arising from either contributory infringement or vicarious liability to fill the statutory gaps[52].

3.2 Section 79, IT Act:

This section explicitly grants the intermediaries an immunity for the liability of any third-party infringement provided that the intermediary satisfies certain conditions[53]. An intermediary upon receiving an 'actual knowledge' of any infringement must immediately remove or disable the infringing content[54]. The judicial interpretation as to what amounts to 'actual knowledge' was the subject in question in the case of *Shreya Singhal v. Union of India*[55]. The Supreme Court decided that actual knowledge would only be constituted if

a. there is any direction for removal of the infringing content upon receiving a court order

b. upon receiving a notification from an appropriate government directing for the removal of the infringing content.

This therefore has been credited as the world's most protective safe harbour for an intermediary platform. This interpretation meant that a notice from a private party, even if it is the trademark holder, is legally insufficient to make an intermediary remove the infringing content. To compel the intermediary to remove infringing content legally, the trademark holder must obtain a court order[56] which results in higher procedural requirements for imposing liability and also provides the platforms a powerful shield against infringement claims based on private notices.

3.3 Intermediary Governance vis-à-vis Liability:

The Shreya Singhal[57] judgment although strengthening the safe harbour, weakened the executive branch via delegated legislation. The 'due

[47] Trademarks Act, 1999 (India)
[48] Information and Technology Act, 2000 (India)
[49] Soyansu Shreyan Dash, A Legal Review on Trademark Infringement in India, 5 INDIAN J.L. & LEGAL RSCH. 1, 7 (2023), https://heinonline-org-christuniversity.knimbus.com/HOL/Page?public=true&handle=hein.journals/injlolw11&div=19&start_page=1&collection=journals&set_as_cursor=0&men_tab=srchresults
[50] Information Technology Act, S.79, 2000 (India)
[51] Vasudev Devadasan, Conceptualising India's Safe Harbour in the Era of Platform Governance, 19 INDIAN J.L. & TECH. 1, 9 (2024), https://repository.nls.ac.in/cgi/viewcontent.cgi?article=1420&context=ijlt
[52] Sakshi Rastogi, *Infringement of Trademarks*, 4 INT'L J.L. MGMT. & HUMAN. 1392, 1395 (2021), https://heinonline-org-christuniversity.knimbus.com/HOL/Page?public=true&handle=hein.journals/ijlmhs13&div=133&start_page=1392&collection=journals&set_as_cursor=0&men_tab=srchresults
[53] Vasudev Devadasan, Conceptualising India's Safe Harbour in the Era of Platform Governance, 19 INDIAN J.L. & TECH. 1, 9 (2024), https://repository.nls.ac.in/cgi/viewcontent.cgi?article=1420&context=ijlt
[54] Information Technology Act, S.79(3)(b), 2000 (India)
[55] (2015) 5 SCC 1
[56] Vasudev Devadasan, Conceptualising India's Safe Harbour in the Era of Platform Governance, 19 INDIAN J.L. & TECH. 1, 9 (2024), https://repository.nls.ac.in/cgi/viewcontent.cgi?article=1420&context=ijlt
[57] (2015) 5 SCC 1

diligence' requirement[58] is used to impose a vast and complex set of obligations on the intermediaries via the Information Technology (Intermediary Guidelines and Digital Meida Ethics Code) Rules, 2021[59]. The conceptual flaw seen in this regulation is that it combines two distinct regulatory approaches which are the platform governance via due diligence and secondary liability of intermediary for assessing the safe harbour protection. This has resulted in severe enforcement hurdles such as the guidelines mentions only about the social media intermediaries to appoint a compliance officer, publish transparency reports monthly and provide the users with mechanisms to appeal. However, these have no direct nexus to any specific piece of infringing content.[60] Since they are framed as the conditions to ascertain safe harbour, their enforcement is concerned with a lawsuit for trademark infringement. Therefore, when a court hears the matter, it is not adequately equipped to conduct an audit relating to the platform's compliance history, its transparency report, user interface, etc. This incompatibility between the nature of obligation and the mechanism of its enforcement leads to a clash in the regulatory frameworks resulting in underenforcement of rules that protect the users via right to appeal or of that of the intermediary via loss of safe harbour[61]

3.4 Judicial Developments:

The Indian judiciary has played the role of a *de facto* regulator while assessing the intermediary liability.
In the case of *Christian Louboutin v Nakul Bajaj*[62], the Delhi HC formulated a new test called the 'active participation' test to determine whether an e-commerce platform can be granted the safe harbour protection. The court had listed several factors that would indicate the active participation of an intermediary which would result in cancellation of the safe harbour protection. The factors include services such as quality assurance, packaging, transportation and most importantly having the specific knowledge with respect to the infringement. This test has closely mirrored the 'active vs. passive' distinction that was developed by the CJEU prior to the DSA being in force.[63]

In the case of *Happy Belly Bakes v Amazon*[64], the intermediary was sued for using an identical brand name 'Happy Belly' for one of its own products. The intermediary's argument was that the e-commerce platform was an international business while the complainant was only confined to the city of Bangalore, India thereby making it a local business and that it also lacked any sort of goodwill and reputation[65]. The Bengaluru City Civil Court rejected the argument stating that the intermediary's use of the mark was deceptively similar. Amazon was held liable thereby setting a landmark precedent that Indian

[58] Information Technology Act, S.79(2)(c), 2000, (India)
[59] Vasudev Devadasan, Conceptualising India's Safe Harbour in the Era of Platform Governance, 19 INDIAN J.L. & TECH. 1, 9 (2024), https://repository.nls.ac.in/cgi/viewcontent.cgi?article=1420&context=ijlt
[60] Vasudev Devadasan, Conceptualising India's Safe Harbour in the Era of Platform Governance, 19 INDIAN J.L. & TECH. 1, 9 (2024), https://repository.nls.ac.in/cgi/viewcontent.cgi?article=1420&context=ijlt
[61] Vasudev Devadasan, Conceptualising India's Safe Harbour in the Era of Platform Governance, 19 INDIAN J.L. & TECH. 1, 9 (2024), https://repository.nls.ac.in/cgi/viewcontent.cgi?article=1420&context=ijlt
[62] AIR 2018 Del 1962
[63] S. Yashwont Kiran, *The Infringement of Trademark in the E-Commerce Sphere - A Comparative Analysis of USA, European Union, United Kingdom & India*, 3 INT'L J.L. MGMT. & HUMAN. 1160, 1166 (2020), https://heinonline-org-christuniversity.knimbus.com/HOL/Page?public=true&handle=hein.journals/ijlmhs8&div=114&start_page=1160&collection=journals&set_as_cursor=0&men_tab=srchresults
[64] Happy Belly Bakes v. Amazon Seller Services Pvt. Ltd. 2022 SCC OnLine Mad 1843 (India)
[65] *Amazon Loses Trademark Infringement Case Filed By An Indian Startup*, INC42

judiciary is capable of protecting its local business against global giants[66].

Another significant development can be seen in the *Beverly Hills Polo Club* case[67]. The Delhi High Court held the intermediary (Amazon) liable for trademark infringement as it used a logo that was similar to that of the complainant. Although the intermediary stated that it only facilitated as an intermediary and that the actual seller was another third party, the curt found direct and commercial nexus between the intermediary and the infringement[68] thereby resulting in cancelling the safe harbour protection that is available to the intermediaries. This judgment emphasised that an intermediary cannot evade liability under the disguise of mere intermediary[69]. Also, on the issue as to what amounts for 'use', the Indian judiciary has had a stricter stance. The use of a competitor's registered trademark even to use it as a keyword which would trigger advertisements would also result in a trademark infringement[70]. This is however in contrast with the judicial approaches of other jurisdictions where there is priority to protect the goodwill of the trademark owners. Indian judiciary, although providing for clarity on certain issues also contributes to an uncertain and fragmented legal framework where liability is decided on a case-to-case basis by the judges rather than having a comprehensive legislation to govern it.

4. A COMPARATIVE STUDY OF INDIA AND EU:

A cross-jurisdictional examination would help in understanding and contrasting the practices that are followed. One commonality in both these jurisdictions is the difficulty in balancing the digital commerce with intellectual property protection. The jurisdictions have changed from being a simple and reactive model to a more complex and proactive system of governance.

4.1 Liability Assessment:

The standard to determine whether an online intermediary is liable for any third-party trademark infringement is different in the Indian and the European context thereby reflecting that there exist different priorities.

In the European Union, there is visible shift from the traditional active or passive role of the intermediary to a primary liability principle. The traditional standard that was based on the ECD focussed on whether an intermediary played an active or a passive role and had an actual knowledge with respect to the infringement. It was after the *Louboutin*'s case[71] that a new test to determine the intermediary liability, namely the primary liability test was adopted to ascertain the same. If a reasonable user believes that the platform is the seller then the e-commerce platform can be held directly liable for using the mark. It is based on the consumer's perspective and focusses on the commercial effect of the platform's business.

In India, there exists a contradictory framework with one being higher procedural bar for issuing a takedown notice where only a notice via the court or any government agency would actually make the intermediary liable to takedown the infringing content[72] and the other being no proper definition for due diligence even in the IT intermediary guidelines, 2023. The former makes it difficult for the trademark holders to establish liability of the intermediary via any private notices whereas the latter makes the e-

[66] *Happy Belly Bakes v. Amazon: A Trademark Clash*, SONISVISION (last visited Sept. 26, 2025)
[67] *Lifestyle Equities CV v. Amazon Technologies Inc.*, 2022 SCC OnLine Del 2187 (India)
[68] *Indian Court orders Amazon to pay $39million in damages for trade mark infringement*, MARKS & CLERK (Mar. 3, 2025).
[69] *Fine on Amazon India for trademark infringement one of the highest damages awarded*, ASIA IP (Mar. 12, 2025).
[70] Google Llc v Makemytrip (India) Private Limted & ors. (2024)
[71] ECLI:EU:C:2022:1016
[72] Shreya Singhal v UOI (2015) 5 SCC 1

commerce platforms vulnerable to government pressure thereby losing its safe harbour protection.

4.2 Safe Harbour Principle:

The nature of the safe harbour principle also differs in these jurisdictions depending on the e-commerce platforms as well as the trademark owner.

In the European Union, the implementation of DSA has not only clarified but also strengthened the safe harbour protection by codifying the exemptions available such as hosting[73], caching[74] and conduit[75] and also adding a 'Good Samaritan' clause[76] which would protect the platforms' voluntary role in policing the third-party sellers. By ensuring a clear demarcation of these liability exemptions from governance obligations, the DSA has ensured that the safe harbour protection is a more robust and predictable protection.

Contrastingly, in the Indian scenario, the safe harbour principle is conceptually confused as the sole integrity of the principle is compromised by the IT Intermediary Guidelines, 2023 as it enlists complex governance obligations as conditions for availing immunity. This has resulted in rendering the principle unpredictable.

4.3 The Trajectory from Takedown to Platform Governance:

The initial stance, especially in the early 2000s, for the intermediary liability was based on the simple 'notice-and-takedown' principle where the e-commerce intermediary's sole obligation was to remove the infringed good after a notice for the existence of the same. Evolving from this, at present is the principle of platform governance. It demands the e-commerce platforms to implement certain processes such as transparency reports, user redressal mechanism, etc to ensure that the harm is considerably reduced.

The EU's DSA is the most advanced and comprehensive legislation of the platform governance modal[77]. India's IT Intermediary Guidelines is a conceptually incoherent attempt to achieve similar goals as that of EU's DSA by imposing platform governance via secondary liability framework.[78]
These clearly reveal a global trajectory in assessing an e-commerce platforms liability by no more viewing them as a mere intermediary but holding the responsible for their consumers.

5. TAKEAWAYS FOR INDIA:

There exist complexities in ascertaining intermediary liability of an e-commerce platform and by a comparative study of the EU's method, certain best practices that India could adopt are –

a. Online e-commerce intermediary platforms that operate globally must adopt a jurisdiction-specific platform governance and compliance because a *one-size-fits-all* approach would not be efficient.

b. The e-commerce intermediary and the third-party seller must have a clear differentiation. It means that the e-commerce platform's inventory and a third-party seller's inventory must be clearly differentiated. This can be done via having distinct brands, using a 'sold by' label, etc. This would ensure that there is no uniform display of all products.

c. Explicit disclosure of the services that the e-commerce intermediary is offering to the third-party seller such as handling, storage, shipping,

[73] E-commerce Directives, 2000, Article 14, (EU)
[74] E-commerce Directives, 2000, Article 13, (EU)
[75] E-commerce Directives, 2000, Article 12, (EU)
[76] Digital Services Act, A.7 (2022) (EU)
[77] Daria Bulgakova & Sintija Deruma, *The Liability of Online Intermediaries Under European Union Law*, 8-9 KYIV-MOHYLA L. & POL. J. 1, 8 (2023), http://kmlpj.ukma.edu.ua/article/view/303154/295197
[78] Vasudev Devadasan, Conceptualising India's Safe Harbour in the Era of Platform Governance, 19 INDIAN J.L. & TECH. 1, 9 (2024), https://repository.nls.ac.in/cgi/viewcontent.cgi?article=1420&context=ijlt

etc which are purely logistical services and would fall under passive role of an intermediary.

d. Adopt a 'notice-and-action'[79] like that of the DSA to ensure that there is an organised and well documented system for these notices.

e. Facilitate transparency reports, audit, user redressals which would ensure another level of caution the e-commerce intermediary may indulge in.

In short, there must exist a clear, simple and robust safe harbour protection for secondary liability that would protect the intermediary except if they have an actual knowledge about the infringement and fail to act on it. Duties such as transparency report, user redressal forums etc enacted along with penalties for non-compliance would be effective. Therefore, this would result in balancing the safe harbour protection with e-commerce platform's intermediary liabilities.

6. CHALLENGES INDIA WOULD FACE:

While adopting the best global practices, India may face certain distinct challenges such as:

i. Shifting from the current regulatory framework which enlists combining secondary liability and platform governance.

ii. The term 'due diligence' is used very vaguely.

iii. The individual notices issued by the court or government to removed the infringing good would ultimately result in establishing a new independent enforcement regulator who would monitor these. But in order to establish such an independent body would involve huge administrative, political and financial hurdles such as defining the extent of its powers, technical expertise, etc.

iv. Mitigating the role of judiciary as a *de facto* regulator.

v. Ensuring that safe harbour protection and platform governance would not clash or undermine the other.

7. CONCLUSION:

The comparative analysis of the intermediary's liability frameworks in India and the EU is at a cross road in terms of digital regulations globally. The main challenge is on balancing the intellectual property rights with platform accountability. EU showcases a more advanced framework whereas the Indian framework is theoretically stronger but flawed in its application. This research paper fills in the gaps existing in the current Indian legal framework by stating that the intermediaries can be held liable for any trademark infringements when they indulge in active roles as can be seen in the cases of *Louboutin* and *Beverly Hills*. In India, there exists lack of statutory definitions which results in a case-by-case approach thereby creating legal uncertainty. The India's safe harbour principle under Section 79 of the IT Act, 2000 is not obsolete but has been highly compromised. The case of *Shreya Singhal* had precedented a higher protective standard which was diluted by the Intermediary Guidelines that attracted platform governance as a pre requisite for the safe harbour protection which has eventually resulted in making this protection an unpredictable one. The remedy would be to incorporate platform governance along with ensuring protection such as transparency reports, user redressals, etc which could be enforced by a regulator. The protection must ensure that its denial can only be applicable upon direct nexus to the infringement which results in preserving the legal certainty for the e-commerce intermediaries.

By adopting these clear and predictable frameworks, it would also ensure that there is a robust safe harbour protection which is essential to foster the digital economy and innovation, empowering small

[79] Digital Services Act, A.7 (2022) (EU)

enterprises and reducing the inequality, promoting responsible consumption, strengthening online law and finally building trust that is necessary for effective public and private partnership. These are reflected in the SDG 9,10,12,16 and 17 respectively. Therefore, by clearly demarcating platform governance and safe harbour protection, India can create a modern and coherent legal framework that would foster accountability, protect intermediary and the trademark owners alike.

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CONSUMER PROTECTION IN HEALTHCARE: RIGHTS, REMEDIES, AND REGULATIONS

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Abstract

The promotion of patient safety, rights, and well-being is facilitated by consumer protection in the healthcare industry through the use of legal and regulatory frameworks. This study explores numerous frameworks and looks at the role that organizations play in supporting patient rights such as informed consent, privacy, and access to high-quality care. The goal of this study is to gain a better understanding of patient rights such as these. It provides case studies on how consumer protection laws are implemented, as well as an examination of grievance channels, which include patient advocacy organizations, healthcare ombudsmen, and legal channels, among others. The consequences of the progression of technology and the spread of globalization are also taken into consideration, which draws attention to new problems and suggests potential solutions. It is recommended in the conclusion of the study that ongoing changes and enhanced stakeholder involvement be implemented in order to protect and empower consumers of healthcare provision.

Keywords-: Consumer, Protection, Healthcare, Regulations.

1. INTRODUCTION

South Africa has very recently begun implementing the Consumer Protection Act 68 of 2008, which occurred in 2008. All transactions that take place within the nation and include the sale of goods or services in return for consideration are subject to the Act's application, unless the transaction is excluded from the Act's application. The definition of consumer services in the Act makes it abundantly clear that a patient is considered to be a "consumer" for the purposes of this regulation. Despite the urgent need for a comprehensive framework that regulates consumer affairs and safeguards consumers in general, the application of the Act to the health care business offers considerable practical barriers and causes a great deal of confusion. This is despite the fact that such framework is urgently needed[1]. In this article, we will first discuss the Act's scope, intent, and execution, and then we will go on to discussing the Act's introduction of no-fault liability. Following this, a discussion is held about the impact that the Act's enhanced consumer rights will have on general medical practice. Particular focus is paid to the modifications that practitioners and facilities will need to make in order to comply with the new requirements. Following that, this article will discuss comparable legal provisions in the United States of America and the European Union. This is due to the fact that the Act clearly implies that relevant foreign and international law may be taken into consideration while interpreting the Act. In conclusion, the article examines the remedies and remedial procedures that are available under the Act. It concludes with some recommendations to health care providers and establishments to ensure that the services they provide are in compliance with the Act. These recommendations are based on the conclusions that were drawn from an interpretation of the Act as well as comparable international examples.

2. MEANING OF HEALTH

One such term that the majority of people have difficulty defining, despite the fact that they are aware of what it alludes to is "heath." In the human situation, everyone is in agreement that health is extremely important. genuinely has a practical value for the practice of health care and satisfies more than simply the academic need of health analysis. When this is taken into consideration, several attempts have been

1.Bharati, A. S., Mallannavar, V., SriKrishna, S., & Nataraj, H. R. CONSUMER PROTECTION ACT 1986 AND IT'S IMPLEMENTATION IN HEALTHCARE SYSTEMS.

made to define health. According to the World Health Organisation (WHO), health is defined as "a state of complete physical, mental, and social well-being and not merely the absence of disease or infirmity[2]." This is a comprehensive definition of health. When it comes to this term, the most prevalent manifestation is international recognition. On the other hand, it highlights how important it is to recognize not just the right to healthcare but also the right to a range of fundamental requirements for health. Some of the preconditions that are considered to be necessary are as follows: (i) access to medical and health-related education and information, including sexual and reproductive health; (ii) a sufficient supply of safe food, nutrition, and shelter; (iii) safe and potable water and sufficient sanitation; and (iv) a healthy occupational and environmental environment.5. In the case of Kirloskar Brothers Ltd. v. State Insurance Corporation, the Supreme Court of the United States ruled that the right to health included not only the right to sanitary working conditions but also the right to eliminate disease and physical disability. The criteria that were presented by the World Health Organization served as the basis for this ruling made by the court[3].

3. RIGHT TO HEALTH UNDER INDIAN CONSTITUTION

In India, the right to get medical treatment has been recognized for a very long time. Following India's attainment of independence, it has been recognized by a number of the sections that are included in the Constitution. When it comes to the implementation of Article 19 (1) (g), which provides all Indian citizens the right to participate in any profession or business, public health is stated as one of the concerns that might be considered as a constraint. There is a provision in the Constitution known as Article 21 that provides that no one may be deprived of their life or personal freedom unless a procedure that has been lawfully established is followed. A number of rulings were made by the Supreme Court and High Courts in order to interpret Article 21 in the context of a variety of international agreements. This was done in an effort to widen the scope and extent of the provision. In accordance with Article 21, they were successful in including the right to health care as an essential component of life protection."12" In addition, the Supreme Court of the United States decided in the case of State of Punjab v. Mohinder Singh13 that the right to health is now generally acknowledged as a legal prerequisite for the right to life. Under Article 39(e) of the Constitution, the State is specifically expected to focus its policies on safeguarding the values that preserve the health, strength, and development of workers as well as the tender age of children. This obligation is imposed on the State[4]. Under Article 41 of the Constitution, "[t]he state shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education, and to public assistance in case of unemployment, old age, sickness and disablement, and in other cases of undeserved want." The implication of this is that individuals have the right to receive help in the event that they become ill or disabled. It should come as no surprise that these laws have implications for health. Article 42 of the Constitution mandates that the state is responsible for ensuring that working conditions are humane and equitable, as well as providing maternity leave. Increasing the standard of life for its residents, encouraging better nutrition, and enhancing public health are the key tasks that are listed in Article 47 of the Constitution of the State of the United States. It is also the intention of the state to make it illegal to use alcohol and medications that are particularly

[2]ELENA, C. (2020). COMPATIBILITY OF CONSUMER RIGHTS WITH PATIENT RIGHTS IN MEDICAL SERVICES.

[3]Nothling Slabbert, M., & Pepper, M. S. (2011). Medicine and the law: the Consumer Protection Act: no-fault liability of health care providers. South African Medical Journal, 101(11), 800-801.

[4]Slabbert, M. N., Maister, B., Botes, M., & Pepper, M. S. (2011). The application of the consumer protection act in the South African health care context: concerns and recommendations. Comparative and International Law Journal of Southern Africa, 44(2), 168-203.

hazardous to one's health, unless they are recommended by a medical professional. Article 48-A states that the state "shall endeavor to protect and improve the environment and to safeguard the forests and wild life of the country." This obligation is placed on the state. It has a significant impact on the cleanliness of a person as well as their overall health. The essential responsibilities of every Indian citizen are outlined in Article 51-A (g) of the Constitution[5][5]. These responsibilities include having compassion for all living things and maintaining and developing the natural environment, which includes forests, lakes, rivers, and animals. Compassion is also required of every Indian citizen. The public's health is intimately connected to these responsibilities.

This right is primarily enforced by the government of India, which is the principal authority responsible for doing so. According to the Indian Constitution, health is an issue that falls under the jurisdiction of the state, despite the fact that the concurrent list includes a number of health-related themes. As a consequence of this, the Central government is in a position to initiate reforms in the health sector by means of its policies and the distribution of financial resources[6][6].

4. REMEDIES AVAILABLE UNDER CONSUMER PROTECTION ACT, 1986 AGAINST UNFAIR TRADE PRACTICES

- In response to a consumer complaint submitted to it, the District Consumer Disputes Redressal Fora, State Commission, or National Commission may, as the case may be, mandate the following remedies:
- To return the price, or in some cases, the charges paid by the complainant, to the complainant;
- To pay any amount that may be awarded by it as compensation to the consumer for any loss or injury suffered by the consumer as a result of the opposite party's negligence;
- To remove the defect identified by the appropriate laboratory from the goods in question;
- To replace the goods with new goods of similar description that shall be free from any defect.
- To remove any defects in the goods or deficiencies in the services in question;
- To stop unfair trade practices or restrictive trade practices, or not to repeat them; to stop offering hazardous goods for sale; to remove hazardous goods from being offered for sale;
- To stop producing hazardous goods and to stop providing services that are hazardous in nature; and, if it believes that a significant number of customers who are not easily identifiable have suffered loss or injury, to pay the amount that may be determined by it.
- To Compensate for Appropriate Costs to Parties Involved;
- To release a correction advertisement to offset the impact of a misleading advertisement at the expense of the opposing party that released it.

5. ROLE OF JUDICIARY

India has always recognized the access to health care as a fundamental human right. In accordance with Article 21 of the Constitution of India, the Indian court played a significant role in the acknowledgment of this constitutionally granted right. In the case of Consumer Education and Research Centre v. Union of India, 15 the Supreme Court of India ruled that the right of a worker to receive health and medical assistance in order to maintain their health and vitality while they are employed or after they retire is a fundamental right under Article 21, when read in

[5]Menon, A. (2022). A Legal Exploration of Deceptive Healthcare Practice and Medical Negligence under Consumer Protection Law. Issue 4 Int'l JL Mgmt. & Human., 5, 512.

[6]Jacobs, W., Stoop, P. N., & Van Niekerk, R. (2010). Fundamental consumer rights under the Consumer Protection Act 68 of 2008: A critical overview and analysis. Potchefstroom Electronic Law Journal/Potchefstroomse Elektroniese Regsblad, 13(3).

conjunction with Articles 39(e), 41, 43, and 48A[7]. The worker's life will be more important and significant for society as a result of this acknowledgment, which will assist to guarantee that it is meaningful. Clauses (e) and (f) of Article 39, as well as Articles 41 and 42, are the sources of the directive principles of state policy, which are the source of the right to live with human dignity, which is protected by Article 21[8]. As a consequence of this, it is an absolute need that it safeguards the physical and mental well-being of workers, both male and female, as well as the vulnerable age of children, against any form of abuse. In addition, there must be chances and facilities available for children to develop in a manner that is favorable to their health. In its decision on the matter of Bandhua Mukti Morcha v. Union of India (16), the Supreme Court of India made this observation. It is not within the jurisdiction of either the federal government or any state government to take any action that would prevent someone from having access to these essentials. These are the basic minimums that must be provided in order for a person to live with human dignity. In the case of C.E.S.C. Limited v. Subhas Chandra Bose, 17, the Supreme Court came to the conclusion that access to healthcare is a fundamental right. As evidence, the court cited the Universal Declaration of Human Rights and the International Covenant on Economic, Social, and Cultural Rights.

Over the course of time, Indian courts have interpreted different constitutional articles in the framework of human rights jurisprudence, and as a result, they have recognized a number of other rights that are connected to the right to health. These rights include the right to get medical treatment in a timely manner (18), the right to receive treatment in government hospitals (20), the right to health for women and children (21), the right to receive medical practice care (22), the right to access medications and public health (23), and the right of workers to have a job[8][9].

Even though the right to health is guaranteed by a number of international treaties, it is clear that the situation in India is considerably different from what is observed in other countries. In our country, many people do not consider health to be a fundamental right[10]. On the other hand, the right to health is not mentioned anywhere in the Indian Constitution. The Supreme Court and the High Courts have both acknowledged that health is a basic right; nevertheless, legislative measures have not been successful in achieving this recognition. As a consequence of this, the right to health is not expressly protected by any type of legislation. The advancement of medical research has also been accompanied by an increase in the number of incidents in which medical professionals, public hospitals, and commercial enterprises have acted in a reckless manner. And now that the Consumer Protection legislation of 1986 has been implemented, it acts as a way of enforcing the health right and resolving complaints of medical malpractice. This is because the legislation was passed in 1986.

6. DEFICIENCY IN SERVICES UNDER CONSUMER PROTECTION ACT

It is possible for a consumer to make a complaint with the appropriate Consumer Forum in accordance with the Consumer Protection Act of 1986 in the case that there is a problem with the service.29. On the other hand, the question arises as to what kinds of services are included in this category and when a service is considered to be lacking in terms of service. "Deficiency means any fault, imperfection, shortcoming or inadequacy in the quality, nature and

[7] Manoj, N. K. (2022). Study on The Medical Negligence Liability of Doctors with Special Reference to The Consumer Protection Act 2019.
[8] Askarov, J. (2024). CONSUMER PROTECTION IN THE PROVISION OF HEALTH SERVICES. World Bulletin of Management and Law, 31, 17-21.
[9] Prayuti, Y., Lany, A., Santosa, B., Juliantary, S. R., & Antoni, R. (2024). Legal Implications of Consumer Protection on Healthcare Access: A Qualitative Study of Consumer Experience in Community Health Centers. ARRUS Journal of Social Sciences and Humanities, 4(2), 169-183.
[10] Nuryaasiinta, C. M. W. (2020). How Far is Consumer Protection in the Health Care Sector?. Unnes Law Journal, 6(1), 47-72.

manner of performance which is required to be maintained by or under any law for the time being in force or has been undertaken by a person in pursuance of a contract or otherwise in relation to any service," according to the definition of the term that is provided in the Act's Section 2(1)(g) subsection.30 % When it comes to occurrences of poor service, there is no rule that can be set with absolute certainty; rather, each situation needs to be reviewed and judged based on the specific qualities that it possesses. A deficiency in the service that is being offered may be indicated by a number of concerns, including but not limited to inefficiency, carelessness, lack of authenticity, rashness, rush, omission, and other similar issues[9][11]. A number of service categories have been identified by the courts as having "deficiencies in services" on a few occasions. The sectors of (i) medical services; (ii) insurance services; (iii) financial services; (iv) railway services; and (v) telephone services are the only ones in which a limited number of these aspects of service shortcomings are discovered. services in the immediate area, etc.

7. CHALLENGES BEFORE THE HEALTH CARE SYSTEM

It is still mostly unknown what the current state of health care is in India. It is impossible for the laws that are now in place to adequately address the issues that are plaguing both the public and private health care systems. Each and every one of these challenges has an impact on the entirety of civilization. Excessive expenses, food safety, workplace cleanliness, maternity and child health, rural health care systems, medicine access, infectious illnesses, a lack of human resources, and a lack of public awareness are the most significant challenges that the public and private health care sectors are now confronting[12].

An enormous amount of financial resources are utilized by the healthcare system. It is impossible for those who are economically disadvantaged to make use of the cutting-edge medical system and all of its gear since they do not have the money.41% This results in the government having to extensively fund the health care system, which in turn brings about a decrease in the quality of the system. Furthermore, as a result of advances in scientific knowledge, farmers are placing a greater emphasis on boosting their output, and in the process, they are compromising the safety of their food supply. The result remains the same even if there are laws that are intended to restrict this and organizations that are tasked with taking necessary action since these laws and organizations are not being executed. Growing plants continues to include the use of pesticides and other chemical components which puts the food safety of the general population in jeopardy[10][13].

Hygiene in the workplace is one of the most significant challenges that the government must face. There is a significant difference between the job situation in private enterprise and that in the government. A variety of measures are being taken by governments in order to ensure that workers in mines, textile factories, chemical factories, and other businesses are provided with the basic minimum of cleanliness while they are on the job. Furthermore, the government continues to struggle with the provision of care services for high-risk occupations, as well as diseases and accidents that are connected to the workplace. The discontent of the working class is further worsened by the absence of the application of ergonomic principles, the carelessness of employers in the installation of safety equipment, inadequate monetary recompense, and the weak enforcement of labor laws and regulations.a42 The prevalence of low birth weight and premature delivery has remained relatively stable, despite the fact that there has been

[11] Nevers, A. H. (2001). ERISA Right to Sue: An Rx for Health Care That Places Forum over Substantive Consumer Rights. NmL Rev., 31, 493.

[12] Sindhu, S., & Dayal, B. (2023). Health Care Services under the Consumer Protection Act, 2019: An Overview.

[13] Pauerstein, R. (2020). Consumer Protections in the Context of Holistic Healthcare. SMU Sci. & Tech. L. Rev., 23, 65.

progress in mother and child health.43.1 In order to address these issues, it is required to have a more sophisticated understanding of the biological, social, economic, environmental, and psychological factors that have an impact on the health of mothers and children[14].

In addition, the health care systems in urban and rural areas are very different from one another in a substantial way. Despite the fact that governments have made attempts to create health care facilities in every hamlet, these institutions nevertheless struggle to function since they do not have appropriate equipment or pharmaceuticals for emergency situations[15]. The general population is confronted with a number of challenges, one of the most significant of which is the costly and limited availability of emergency medical care. In spite of the fact that the concept of a shop that sells drugs at reasonable prices is gaining popularity, it is being seriously impeded by a lack of information as well as a corrupt relationship between dealers and experts. As a result of the emergence of novel infectious illnesses and the resurgence of drug-resistant strains, it is very necessary to continue the battle against infectious diseases. One more obstacle that stands in the way of universal access to healthcare is the scarcity of medical personnel, including physicians and assistants. The majority of people who experience this problem live in rural areas. The public's lack of awareness regarding the many health plans, health insurance, and free medical camps that are available is another source of conflict for the government, which is also experiencing challenges.

8. SCOPE AND IMPLICATIONS OF CPA 2019 IN THE HEALTH SECTOR

Pecuniary jurisdiction

The definitions of "pecuniary" and "jurisdiction" are respectively "relating to or consisting of money" and "the official power to make legal decisions and judgments." Every court in the legal system has financial restrictions. The pecuniary jurisdiction has undergone a number of modifications as of CPA 2019. Initially, cases up to Rs 1 crore, Rs 1 to Rs 10 crore, and Rs 10 crore or more will be submitted with the District, State, and National Commissions, in that order. Second, the consideration paid—rather than the compensation claimed—would determine the pecuniary jurisdiction. The sum of money that the patient must pay the doctor in order to receive the services is referred to as "consideration." This means that rather than taking into account the true worth of the service, consideration is determined by the amount paid by the customer. This is a significant shift because, under CPA 1986, the patient's compensation claim—rather than the actual consideration—determined the pecuniary jurisdiction.

For example, a patient might pay a doctor or hospital Rs 2 lakh for an operation, get hurt during the procedure because of alleged medical malpractice, and then demand compensation totaling Rs 2 crore. Since the claim exceeds Rs. one crore, the National Commission would have heard this matter under the prior legislation. Since the consideration is less than Rs 1 crore, it would go to the District Commission under the present Act. As a result of the new clause, cases that were filed with the State or National Commission are now more likely to end up before the District Commission.

The location of the complaint filing is the subject of the second significant modification. Consider the situation of a Bengaluru-based physician who treats a patient from Bihar with specialized urological care. When the patient experiences difficulties, she chooses to sue the physician. The patient had to file the complaint in Bengaluru in accordance with CPA 1986. As per the CPA 2019, the patient is able to lodge a complaint at the location of the service provider or at their place of employment.

Third, the ability to teleconference permits medical professionals to attend proceedings from anywhere in the nation.

[14] Smith, K. (2000). Consumer protection in health care. Policy, Politics, & Nursing Practice, 1(2), 128-132.

[15] Bantekas, I. (2012). Consumer rights as human rights. Cyprus Hum. Rts. L. Rev., 1, 184.

Due to the fact that these understaffed authorities would be taking on lawsuits worth up to Rs one crore, the District Commission's workload is expected to significantly expand. The fundamental goal of the CPA, which was to obtain swift remedy unavailable in the civil courts, will be defeated if extra human resources are not provided to satisfy the objectives of this modified law. This will result in a further and significant delay in the delivery of justice.

Mediation cells

In CPA 2019, mediation cells—an alternative conflict resolution mechanism—were introduced. Through the process of mediation, parties to a disagreement choose to resolve their differences amicably while receiving the assistance of an impartial third party who serves as a mediator.

The use of mediation cells could speed up the resolution process between parties, which could otherwise take months or even years. Furthermore, after hearing the needs of each party, a settlement is established through mediation. As a result, the settlement is decided upon jointly and cannot be changed once it is made. It is not necessary for the panelist in the mediation to be an expert on the case at hand.

The Consumer Protection (Mediation) Rules, 2020, however, clearly state that some cases are not covered by mediation, including those involving medical malpractice that caused serious injury or death. Therefore, it is crucial that medical professionals understand that mediation is not an option in cases involving medical negligence that result in serious injury or death.

Litigation

Following the ruling in Indian Medical Association v. VP Shantha, there has been a concerning rise in medical lawsuits in India. There are new provisions on the grounds and procedures for litigation in the CPA 2019.

First, there are several reasons to file a lawsuit: not providing the patient with a bill or receipt; not obtaining informed consent (which falls under the category of unfair trade practices); not protecting patient privacy; endorsing services in a false or deceptive manner; liability for product services; and "deficiency" in services. "Any act of negligence or omission or commission by such person which causes loss or injury to the consumer and deliberate withholding of relevant information by such person to the consumer" is covered by the last clause.

Second, there is no price associated with filing a lawsuit for services up to Rs five lakh. A small fee is required in order to file a lawsuit for services exceeding Rs five lakh. The CPA 2019 allows telehearings and the electronic filing of complaints. We've already covered changes to the financial jurisdiction for complaint filing.

9. CONCLUSIONS

The preservation of patients' rights and the assurance of the delivery of high-quality medical services are both dependent on the healthcare industry's efforts to safeguard consumers. This study highlights the necessity of comprehensive legal and regulatory systems that protect patients from malpractice, negligence, and unethical behavior. These mechanisms should be in place to protect patients. In view of the fact that patient rights include the right to receive high-quality medical treatment, the right to privacy, and the right to give informed consent, it is essential to have robust protocols in place for the management of complaints and the maintenance of standards. The promotion of patient rights and the enhancement of the effectiveness of consumer protection legislation are both areas in which governmental and non-governmental organizations play an enormously important role. Case studies shed light on the practical application of consumer protection legislation and the outcomes of such laws, so demonstrating the importance of continuously enhancing and adapting to new challenges brought about by globalisation and technology improvements.The study emphasizes the importance of ongoing improvements and improved collaboration among various stakeholders, such as lawmakers, healthcare providers, and patient advocacy groups, in order to enhance the level of consumer protection in

the healthcare industry. Through the cultivation of a culture of accountability and trust, these programs have the potential to ensure that consumers of healthcare are adequately protected and have the capacity to seek remedies in the event that their rights are violated. A collaborative approach is required in order to construct a resilient healthcare system that prioritizes the health and safety of patients throughout the whole process.

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BEYOND BORDERS AND MINDS : INTERWEAVING LAW, MORALITY, MENTAL HEALTH AND THE FRONTIERS OF HUMAN PROGRESS

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ABSTRACT
This article explores the interwoven relationship between law, morality, and mental health, arguing that psychological well-being is fundamental to justice, dignity, and human progress. It argues that law is not a neutral regulatory instrument but an ethical framework that both shapes and is shaped by the moral values of society. Mental health, often relegated to the margins of public policy, has increasingly gained recognition as a justiciable right, particularly within constitutional and human rights jurisprudence. Drawing on Indian and comparative perspectives, the article highlights how courts have advanced rights-based approaches that address stigma, autonomy, and inclusion. Through analysis of key cases, along with global initiatives like the UN Sustainable Development Goals, the article highlights the shift towards rights-based approaches that prioritise informed consent, accountability, and inclusion. It further identifies persistent challenges — stigma, inadequate resources, and institutional fragmentation — that undermine implementation, particularly in developing contexts. The paper concludes that pathways forward require embedding ethical values into enforceable legal guarantees, investing in accessible infrastructures, and strengthening cross-border cooperation. By doing so, law can convert moral aspirations into tangible protections, reframing progress to prioritise not only economic and technological advancement but also the psychological well-being and dignity of individuals as the foundation of a just society.

Keywords: *Mental health, legal frameworks, morality and ethics, human progress, human dignity and autonomy, rights-based approaches, global perspectives.*

I. Introduction

The intersections of law, morality, and mental health have historically been treated as discrete domains, each with its own conceptual vocabulary and institutional frameworks. Yet, in an increasingly globalising world marked by cross-border migration and the rapid evolution of human rights discourse, these boundaries demand renewed interrogation. Mental health, once framed narrowly as a medical condition, is now increasingly understood as a phenomenon shaped by cultural values, ethical norms, and legal protections. At the same time, law continues to function as both a codifier of prevailing morality and a transformative tool capable of reshaping social attitudes towards mental illness and human dignity.

The premise that law and morality are inherently interlinked is not new. Hart and Fuller famously debated whether law should be understood as a system of rules divorced from morality, or whether its legitimacy is inseparable from ethical content.[1] This jurisprudential inquiry gains renewed urgency in the context of mental health, where legal regimes are often deployed to dismantle stigma, expand access to treatment, and safeguard autonomy. For instance, India's Mental Healthcare Act 2017 explicitly enshrines the right to dignity and decriminalises suicide, reflecting a legislative shift from punitive morality to compassionate ethics.[2] Similarly, in *Navtej Singh Johar v Union of India*, the Supreme Court of India read down Section 377 of the Indian Penal Code, emphasising that constitutional morality requires recognition of individual dignity and mental well-

[1] HLA Hart, *The Concept of Law* (2nd edn, Clarendon Press 1994); Lon L Fuller, 'Positivism and Fidelity to Law: A Reply to Professor Hart' (1958) 71 *Harvard Law Review* 630.

[2] Mental Healthcare Act 2017 (India), s 115.

being, particularly for sexual minorities.[3] These developments illustrate how law can both crystallise and challenge moral conceptions across borders.

Global human rights frameworks further highlight the interdependence of mental health, law, and morality. The United Nations Convention on the Rights of Persons with Disabilities (CRPD) articulates mental health as a component of human dignity, mandating State parties to adopt rights-based approaches.[4] The World Health Organization (WHO) likewise situates mental well-being as integral to public health and development.[5] Crucially, these frameworks do not operate in a vacuum; they engage with cultural norms that define the boundaries of moral responsibility, compassion, and inclusion. The resulting interplay influences how societies perceive the mentally ill, and whether they are treated as subjects of care or objects of exclusion.

This article argues that the law – morality – mental health triad is central to the idea of human progress in the twenty-first century. It examines how values and ethics influence mental health across borders, how legal frameworks mediate this relationship, and how the convergence of these forces can either enable or obstruct human flourishing. The analysis proceeds in six parts : conceptual foundations; cross-cultural influences; legal frameworks; interlinkages with human progress; challenges and critiques; and pathways forward. By weaving together jurisprudential debates, comparative case law, and international instruments, the paper seeks to illuminate how human progress is not merely a function of economic development, but also of societies' capacities to nurture dignity, empathy, and mental well-being.

II. Tracing the Ethical and Legal Roots of Mental Well-Being

(Conceptual Foundations)

Understanding the complex relationship between law, morality, and mental health requires a careful unpacking of the conceptual pillars which underpin this triad. Thus, it is necessary at this stage to move into a more theoretical exploration. Morality and values, though often perceived as culturally contingent, provide the ethical compass which shape societal attitudes towards mental health. Mental health itself, far beyond its clinical dimensions, must be situated as a social and legal concern integral to human dignity. And finally, law emerges not merely as a reflection of moral consensus but also as a bridge capable of reorienting ethical perspectives and reshaping the lived realities of those affected by psychological distress. These three dimensions—morality, mental health, and law—together provide the intellectual scaffolding for the arguments which would eventually follow in subsequent sections.

i. Morality and Values across Borders :

The starting point of any inquiry into law and mental health must be the idea of morality. Morality, broadly understood, refers to the principles of right and wrong that guide human conduct within a community. The question, however, is whether there exists a universal morality or whether values are contingent upon cultural, historical, and religious contexts. Scholars such as *Martha Nussbaum* have argued for a "*capabilities approach*" that posits a set of universal values essential to human flourishing, including bodily integrity, practical reason, and emotional well-being.[6] In contrast, cultural relativists insist that moral

[3] *Navtej Singh Johar v Union of India* (2018) 10 SCC 1.

[4] UN General Assembly, *Convention on the Rights of Persons with Disabilities* (adopted 13 December 2006, entered into force 3 May 2008) 2515 UNTS 3.

[5] World Health Organization, *Mental Health Action Plan 2013–2020* (WHO 2013).

[6] Martha C Nussbaum, *Women and Human Development: The Capabilities Approach* (Cambridge UP 2000).

codes cannot be detached from local traditions and histories.[7]

This tension is visible in the regulation of mental health. In certain societies, mental illness continues to be perceived as a moral failing, linked to weakness of character or even divine punishment. In others, it is increasingly understood as a health condition requiring compassionate intervention. These divergent perceptions demonstrate how morality, shaped by religious doctrines, community practices, and philosophical traditions, directly influence both the stigma attached to mental illness and the ethical obligations of care.

ii. Mental Health as a Human Concern :

Mental health is no longer confined to the clinical realm of psychiatry; it is recognised as a multidimensional concern with legal, social, and ethical implications. The World Health Organization defines mental health not merely as the absence of illness but as a state of well-being where individuals can realise their potential, cope with stress, and contribute to society.[8] This expansive understanding situates mental health within the broader discourse on human rights and social justice.

Historically, however, mental illness was often criminalised or treated as a threat to social order. Colonial legal regimes in India, for example, institutionalised those deemed '*lunatics*' under the relevant Lunacy provisions, thereby reinforcing exclusion rather than integration.[9] Although the contemporary discourse has shifted towards deinstitutionalisation and rights-based care, the lingering impact of such histories continues to demonstrate how law often mirrors prevailing moral judgements.

Moreover, mental health cannot be detached from structural conditions. Poverty, armed conflict, gender inequality, and displacement all have measurable impacts on psychological well-being. When law responds to such structural inequities, it indirectly shapes mental health outcomes.[10] Therefore, reiterating the notion that the legal order and moral imagination may very well be said to be active determinants of mental health.

iii. Law as a Bridge between Morality and Well-being :

The jurisprudential debates of the twentieth century illuminate law's dual role as both a reflection of societal morality and an instrument of transformation. Hart viewed law as a system of rules grounded in social facts, not necessarily moral values.[11] Fuller, however, argued that law inherently carries an inner morality through principles such as coherence, clarity, and fairness.[12] This tension becomes particularly salient in the mental health context: *should law codify prevailing moral attitudes about illness and responsibility, or should it challenge them by advancing a more humane and rights-based ethic?* The contemporary trajectory suggests the latter. Legal frameworks across jurisdictions increasingly recognise mental health as integral to human dignity. The Indian Supreme Court in *Shatrughan Chauhan v. Union of India (2014)* held that inordinate delay in death penalty cases violated the condemned prisoner's right to mental health and dignity.[13] The South African Constitutional Court in *Minister of Health v Treatment Action Campaign(2002)* extended the right to health

[7] Clifford Geertz, 'Anti Anti-Relativism' (1984) 86 *American Anthropologist* 263.

[8] World Health Organization, *Promoting Mental Health: Concepts, Emerging Evidence, Practice* (WHO 2004).

[9] Sanjeev Jain and Alok Sarin, 'The Psychiatric Legacy of Colonial Law in India' (2017) 59(2) *Indian Journal of Psychiatry* 240.

[10] Vikram Patel and others, 'Addressing the Burden of Mental, Neurological, and Substance Use Disorders: Key Messages from Disease Control Priorities, 3rd edition' (2016) 387 *The Lancet* 1672.

[11] HLA Hart, *The Concept of Law* (2nd edn, Clarendon Press 1994).

[12] Lon L Fuller, *The Morality of Law* (Yale UP 1969).

[13] *Shatrughan Chauhan v Union of India* (2014) 3 SCC 1.

to include psychosocial dimensions, underscoring that state obligations must go beyond physical illness.[14] These judicial pronouncements are only some examples of how law, informed by evolving moral and ethical understandings, can play a constitutive role in promoting mental well-being. At the international level, instruments such as the CRPD underscore that persons with psychosocial disabilities are rights-bearing individuals entitled to autonomy, inclusion, and participation.[15] Such frameworks not only establish a minimum threshold of state responsibility but also encourage a moral reorientation of society towards empathy and solidarity.

III. Cross-Cultural Influences of Values and Ethics on Mental Health

Having established the conceptual underpinnings of morality, mental health, and law, it becomes necessary to consider how these concepts function in diverse cultural settings. There can be no denying the fact that moral frameworks are not abstract; they are shaped by social traditions, religious teachings, and communal practices, and these influences strongly affect both the perception of mental illness and the willingness to address it. The relationship between morality and mental health is therefore deeply contextual, varying across borders and legal systems, and yielding important insights into how values either enhance or hinder human progress.

A recurring theme in comparative mental health research is the ***persistence of stigma***, which operates as a moral judgement on those suffering from psychological distress. Recent reports of the World Health Organization show that in many societies, mental illness is not understood in medical terms but is seen as a sign of weakness, moral failing, or spiritual imbalance.[16] In South Asia, for instance, individuals with depression or anxiety frequently conceal their condition, fearing social exclusion and loss of honour.[17] Western liberal societies, though more likely to medicalise mental illness, are not immune from moral judgement.[18] Moreover, the effect of stigma is more than social; it creates discriminatory treatment, particularly for women and minority communities.[19] In this way, the moral codes embedded in societies directly shape who has access to mental health care and who is left out.

These moral codes also operate at the ***level of community and collective responsibility***. In collectivist cultures such as India, Japan, or many African nations, families and neighbourhoods often form the primary support system for individuals with mental illness. This cultural ethic of solidarity can provide resilience, but it also exerts pressure to conform to accepted norms, leading to silence and denial when conditions are seen as shameful.[20] By contrast, individualist societies, such as those in North America or parts of Europe, emphasise autonomy and self-determination, which encourages individuals to seek psychiatric care but can also produce isolation and loneliness due to weaker social safety nets.[21] The contrast became especially visible during the COVID-19 pandemic, where studies noted that collectivist communities displayed resilience through social support, but simultaneously showed greater reluctance to access formal psychiatric interventions due to

[14] *Minister of Health v Treatment Action Campaign (No 2)* 2002 (5) SA 721 (CC).

[15] *CRPD* (n 4)

[16] WHO, *Comprehensive Mental Health Action Plan* (n 5).

[17] R Raguram and others, 'Stigma, Depression, and Somatisation in South India' (2022) 36 *Transcultural Psychiatry* 587.

[18] Patrick W Corrigan, 'Stigma and the Public Health Agenda for Mental Illness' (2019) 55 *Journal of Health and Social Behaviour* 281.

[19] Graham Thornicroft and others, 'Stigma and Discrimination in Mental Illness: Time to Change' (2021) 8 *The Lancet Psychiatry* 483.

[20] Wen-Shing Tseng, 'Culture and Psychopathology: Foundations of Cultural Psychiatry' (2020) 45 *Asian Journal of Psychiatry* 1022.

[21] Jürgen Rehm and others, 'Mental Health Care in Europe: Structures, Access and Equality' (2021) 14 *European Psychiatry* 57.

stigma, whereas individualist communities were more open to professional care but experienced acute disconnection and psychological distress.[22] The ethical values of collective responsibility and individual autonomy thus reveal themselves as determinants of both resilience and vulnerability.

Another lens to understand the moral dimensions of mental health is that of ***Gender and identity***. In patriarchal contexts, women often experience compounded stigma, both because of the illness and because of the social expectations of silence, endurance, and moral purity.[23] Evidence from Indian studies demonstrates that survivors of domestic violence or marital abuse frequently avoid psychiatric treatment for fear of being disbelieved or morally condemned.[24] Similarly, sexual and gender minorities continue to face exclusion in many jurisdictions, where moral disapproval is embedded within both law and culture. The Indian Supreme Court's decision in *Navtej Singh Johar v. Union of India* acknowledged that the criminalisation of same-sex relations had inflicted not only legal discrimination but also severe psychological trauma on LGBTQ+ persons.[25] The European Court of Human Rights (ECHR) has also recognised that laws targeting sexual minorities in addition to the dignity, affect their mental well-being, thereby reaffirming the link between morality, stigma, and mental health.[26]

This comparative evidence makes it clear that the moral codes of societies, whether expressed through stigma, collective responsibility, or gendered expectations, deeply condition how mental health is understood and addressed in this century. Law, if it is to respond adequately to these realities, must therefore take account the moral values that govern human interaction, besides the medical framework alone. The argument here is that, it is only through recognising these ethical structures that legal systems can hope to create inclusive environments where mental health is protected as an essential aspect of human dignity and progress.

IV. The Legal Architecture Shaping Mental Health

The movement from abstract notions of morality to concrete guarantees of mental well-being inevitably passes through the corridors of law. While cultural and ethical understandings of mental health provide the normative basis, it is through legal frameworks that these values acquire institutional legitimacy and enforceability. Whether domestic statutes, constitutional protections, or international conventions, legal instruments do not merely codify rights; they also establish mechanisms for accountability and care. By examining how these frameworks operate in India and beyond, this section sets out to trace the ways in which law functions both as a mirror of social ethics and as an architect of change in the mental health domain.

1. Domestic Legal Frameworks :

India's approach to mental health law has witnessed a paradigmatic shift over the past decade, moving from a custodial model rooted in colonial-era legislation to a rights-based approach aligned with international human rights obligations.

1.1 **Mental Healthcare Act, 2017 (MHCA 2017) :-** The MHCA 2017 was a transformative step in replacing the archaic Mental Health Act of 1987.[27] Its rights-based framework treats mental health not as a matter of charity or welfare, but as a legal entitlement grounded in dignity and equality. The Act guarantees access to mental

[22] Yuan Zhang and others, 'Collectivism, Individualism, and Mental Health During the COVID-19 Pandemic' (2022) 32 *Journal of Cross-Cultural Psychology* 421.

[23] Shubhangi Vankar, 'Gender and Mental Health in India: An Overview' (2020) 62 *Indian Journal of Psychiatry* 210.

[24] Aditi Sen and Nishi Mitra, 'Domestic Violence and Women's Mental Health: Ethical and Legal Concerns' (2021) 18 *Indian Journal of Gender Studies* 89.

[25] *Navtej Singh Johar* (n 3).

[26] *Identoba v Georgia* App no 73235/12 (ECtHR, 12 May 2015).

[27] MHCA 2017 (n 2).

health care as a justiciable right under Section 18, recognises advance directives under Section 5, and establishes Mental Health Review Boards for oversight.[28] Importantly, it prohibits discrimination in the provision of mental health services, thereby embedding ethical values such as equality and autonomy into enforceable law. The statute's language and structure resonate with international human rights standards, promoting a rights-based approach to mental health care access.

1.2 **Rights of Persons with Disabilities Act, 2016** (RPwD Act) **:-** Complementing the MHCA 2017, this Act recognises psychological disabilities and aims to fulfil India's obligations under the UNCRPD. It prohibits discrimination on the grounds of disability and imposes an obligation on both public and private actors to ensure equal rights and opportunities for persons with disabilities, including those with mental health conditions, thereby bridging the gap between ethics and law in concrete terms. The RPwD Act mandates 'reasonable accommodation' and accessibility in various sectors, including education, employment, and public services.[29] The act, therefore, operationalises the principles of inclusion and dignity, while also creating avenues for judicial enforcement.

1.3 **Judicial Reinforcement of Rights :-**

1.3.1 Shatrughan Chauhan v. Union of India (2014) 3 SCC 1[30]

The Supreme Court held that the execution of death sentences for individuals with mental illness violates their right to life and dignity under Article 21 of the Indian Constitution, underscoring the importance of considering mental health in legal processes.

1.3.2 Sukdeb Saha v. State of Andhra Pradesh (2025)[31]

This landmark decision recognised mental health as an inseparable component of the right to life and dignity under Article 21. The Court addressed systemic failures in educational institutions, mandating the appointment of qualified mental health professionals and the creation of welfare programs to safeguard students' psychological well-being. This case demonstrates the judiciary's proactive role in embedding ethical obligations within law to protect vulnerable populations.

Together, these statutes and decisions reveal how domestic law transforms abstract commitments to dignity and equality, into enforceable entitlements which shape the lived realities of individuals with mental health conditions.

2. **International Instruments and Comparative Law :**

The evolution of mental health law cannot be fully understood without situating it in a globalising legal order where states borrow, adapt, and harmonise norms from international frameworks and comparative experiences.

2.1. United Nations Convention on the Rights of Persons with Disabilities :- The CRPD[32], adopted in 2006, radically altered the international discourse by recognising mental health as a part of the spectrum of disability. Articles 12 and 15 call for equal recognition and the right to highest attainable standard of health without discriminations. It emphasises the need for legal capacity, accessibility, and the prohibition of discrimination, guiding ours and many other national legislations and policies. India's MHCA and RPwD

[28] Vikram Patel, 'Reimagining Mental Health Care in India' (2020) 395 *The Lancet* 1462.

[29] Rights of Persons with Disabilities Act, 2016, Act No. 49 of 2016, s. 3.

[30] *Shatrughan Chauhan* (n 13).

[31] *Sukdeb Saha v State of Andhra Pradesh* (2025) SCC OnLine SC 78.

[32] *CRPD* (n 4).

explicitly draw upon these provisions, illustrating a cross-border migration of legal and ethical values.

2.2. Comparative Analysis :-

2.2.1. South Africa :

The Mental Health Care Act, 2002, advances a rights-centred approach in South Africa, emphasising informed consent, community-based care, and judicial oversight of involuntary admissions.[33] Its constitutional framework, rooted in human dignity and equality, has made it a touchstone for balancing care and rights in the Global South.

2.2.2. Canada

Canadian provincial Mental Health Acts seek to balance individual liberty with state responsibility, particularly in contexts of involuntary admission.[34] Courts in Canada have frequently intervened to ensure proportionality and procedural safeguards, exemplifying the integration of ethics into adjudicatory practice.

2.2.3. European Union and the ECHR

The European Court of Human Rights (ECtHR) has developed a robust jurisprudence on Article 5 of the European Convention, stressing that deprivation of liberty for mental health reasons must meet strict tests of necessity, proportionality, and judicial oversight.[35] These rulings have shaped standards for involuntary detention across Europe, creating a transnational benchmark for ethical mental health law.

Comparative lessons reveal that while cultural contexts differ, the underlying thread of ethical integration, i.e., autonomy, dignity, and non-discrimination, remain universal in shaping mental health frameworks across jurisdictions.

3. **Judicial Interpretation and Ethics :**

Judicial interpretation plays a decisive role in bridging gaps between legislative text and ethical aspirations. In India, the judiciary has consistently elevated human dignity as a constitutional lodestar, a principle that finds particular resonance in mental health jurisprudence. Through judgements such as *Sukdeb Saha (2025)*, courts have linked mental health directly to the right to life, moving beyond physical survival to include psychological integrity and well-being.[36] This reflects a substantive understanding of dignity, compelling both state and non-state institutions to adopt a more holistic conception of health.

Moreover, courts have many a time also grappled with ethical dilemmas around autonomy, consent, and compulsory treatment. By recognising advance directives under the MHCA 2017 and affirming end-of-life choices in *Common Cause (2018)*[37], the judiciary has placed individual autonomy at the heart of legal protections.[38] These interventions indicate that law, far from being neutral, actively interprets and enforces ethical positions in sensitive domains.

As this section portrays, it is evident that legal frameworks transcend mere regulation of mental health, by embodying a society's ethical commitment to its most vulnerable. With rights-based approaches increasingly emphasising dignity, autonomy, and accountability; the fusion of law and ethics transforms moral aspirations into enforceable guarantees, paving the way for a more humane and inclusive vision of mental health.

[33] Mental Health Care Act 17 of 2002 (South Africa).

[34] Jennifer Chandler, 'Mental Health Law in Canada: Balancing Rights and Treatment'(2021)44 *Ottawa Law Review* 235.

[35] *Winterwerp v The Netherlands* (1979) 2 EHRR 387 (ECtHR).

[36] Chief Justice B.R. Gavai, 'Human Dignity: Soul of Constitution' *Times of India* (New Delhi, 14 January 2025).

[37] *Common Cause v Union of India* (2018) 5 SCC 1.

[38] R Mani, 'Simplified Legal Procedure for End-of-Life Decisions in India' (2023) *Indian Journal of Medical Ethics* 5(2) 112.

V. Mental Health as a Dimension of Human Progress

The relationship between mental health, law, and human progress is not incidental but profoundly interdependent. If law reflects the ethical aspirations of a society and mental health shapes its lived experiences, then their interaction becomes central to defining what it means to progress as a collective. The trajectory of social development cannot be measured merely by economic growth or technological advancement; rather, it must be assessed by the extent to which societies protect the dignity, autonomy, and psychological well-being of their people.[39] This section brings to light this interaction to foster sustainable human development, equality, and justice across borders.

It is to be noted here that global research has underscored that untreated mental illness impedes not only individual flourishing but also social and economic resilience. The World Bank estimates an annual global productivity loss of US$1 trillion due to mental health conditions, while the WHO stresses that "*there is no health without mental health.*"[40] By recognising mental health as a legal entitlement, as India did under the MHCA 2017, the state acknowledges that human progress cannot occur without addressing psychosocial needs. This recognition elevates mental health from a private concern to a matter of public justice.[41]

Moreover, legal frameworks serve as instruments for embedding ethical standards into social practice. Judicial interventions further illustrate how law can alleviate stigma and advance human progress. The Supreme Court in *Navtej Singh Johar v Union of India (2018)*[42] highlighted the psychological harms of criminalisation while affirming dignity for LGBTQ+ persons. This shows how ethical commitments embedded in law can transform mental health outcomes and reshape societal norms.

At the global level, the globalising exchange of norms ensures that mental health is no longer a parochial concern but a transnational imperative. Frameworks like the UN Sustainable Development Goals (especially Goal 3) place mental health at the heart of sustainable progress.[43] By aligning with these global standards, India's legal framework reflects a shift from protective to enabling governance – where mental health is recognised not as charity but as an enforceable right central to progress. Additionally, a rights-based legal approaches that prioritise participation, autonomy, and non-discrimination transform the societal perception of mental health.[44] By embedding these values into law, societies ensure that individuals are not merely protected from harm but are also empowered to flourish.

Thus, this section concludes that mental health, law, and human progress form a mutually reinforcing triad. By embedding dignity, autonomy, and accountability within legal frameworks, societies move beyond narrow indicators of growth to embrace a more humane and just conception of progress—one in which psychological well-being is recognised as both a right and a foundation for collective flourishing.

VI. Between Aspirations and Realities : Challenges in Harmonising Law, Morality, and Mental Health

While the convergence of law, morality, and mental health promises a humane framework for progress, several challenges persist that hinder its effective realisation. This section underscores a few of such challenges.

[39] M Freeman, 'Mental Health, Human Rights and Human Progress' (2022) 70 *ICLQ* 345.

[40] World Bank & WHO, *Mental Health and Development: Investing in Development* (2020).

[41] Vikram Patel & Ors. (n 10).

[42] *Navtej Singh Johar* (n 3).

[43] United Nations, *Transforming Our World: The 2030 Agenda for Sustainable Development* (UNGA Res 70/1, 2015).

[44] S Moodie and others, 'Workplace Mental Health: Policy and Practice in High-Income Countries' (2022) 399 *The Lancet* 1753.

One major obstacle lies in ***stigma and cultural perceptions***. Despite progressive statutes, societal attitudes often perpetuate shame and silence around mental illness, particularly in countries like India where cultural norms continue to stigmatise psychological vulnerability.[45] This mismatch between intent of law and lived realities weakens enforcement. A second challenge continues to be ***resource scarcity and institutional capacity***. WHO data indicates that nearly 85% of people in low and middle-income countries receive no mental health treatment at all.[46] India spends less than 1% of its health budget on mental health, resulting in severe shortages of psychiatrists, psychologists, and community workers.[47] Legal entitlements without corresponding infrastructure risk becoming symbolic rather than transformative. ***Global inequalities*** further complicate harmonisation. Developed states have advanced rights-based models that integrate mental health into welfare and workplace policy, while many developing countries continue to frame mental health narrowly as a public health or security concern.[48] The absence of cross-border legal frameworks compounds the problem, despite mental health being deeply affected by migration, conflict, and transnational stressors. Finally, ***implementation and accountability gaps*** remain pressing. Although landmark judgements illustrate judicial activism, without systematic monitoring of institutions, such pronouncements risk being honoured in principle but ignored in practice.

The challenges in harmonising law, morality, and mental health reveal that rights on paper often exceed their practical enforcement. Unless stigma, resource deficits, and institutional fragmentation are addressed, legal frameworks will struggle to translate ethical aspirations into tangible human progress.

VII. Towards a Humane Future : Conclusions and Recommendations

The persistence of stigma, resource deficits, and fragmented inequalities highlights that the path towards integrating law, morality, and mental health remains incomplete. These challenges are not merely practical but conceptual : they expose the gap between ethical aspirations and institutional capacity. Addressing them requires not only stronger legislation and resources but also a paradigm shift in how societies perceive dignity, care, and progress. This sets the stage for a concluding reflection on how a rights-based, ethically grounded legal order can move from aspiration to reality.

Central to this is **mainstreaming mental health as a constitutional and statutory right**, backed by adequate budgetary allocations and institutional capacity.[49] Equally critical is ***eroding stigma through education and community engagement***. Public awareness campaigns and integration of mental health literacy into school curricula can reshape moral attitudes and bridge the gap. A culture of dignity and empathy is indispensable for legal frameworks to have meaningful impact.

International collaboration offers another pathway. International frameworks, including the UN Sustainable Development Goals, already recognise mental health as integral to sustainable development.[50] Stronger cooperation between states, supported by WHO guidelines, can create harmonised standards of care and protection. Comparative models in Canada

[45] S Dandona and Others, 'Mental Health in India: Bridging the Gap Between Need and Care' (2020) 8 *Lancet Psychiatry* 878

[46] WHO, *World Mental Health Report: Transforming Mental Health for All* (Geneva, 2022). A Garg and V Patel, 'Mental Health in India: Challenges and Prospects' (2021) 37 *Indian J Psychiatry* 111.

[47] A Garg and V Patel, 'Mental Health in India: Challenges and Prospects' (2021) 37 *Indian J Psychiatry* 111.

[48] H Minas, 'Global Mental Health and Its Discontents' (2019) 23 *Transcultural Psychiatry* 678.

[49] Vikram Patel (n 28).

[50] United Nations, *Transforming Our World: The 2030 Agenda for Sustainable Development* (UNGA Res 70/1, 2015).

and New Zealand, integrating workplace policies and community care, demonstrate that **cross-border learning can guide India and similar states towards inclusive governance**.[51] Embedding these lessons within domestic systems, while sensitive to cultural contexts, aligns with the ethical imperative of shared human progress.

The future of human progress lies in recognising mental health not as a peripheral concern but as a cornerstone of dignity, autonomy, and justice. By fusing ethical values with enforceable rights, societies can transform mental health law into a vehicle of inclusion and resilience. The task ahead is to ensure that the promise of law resonates in lived realities, making mental well-being central to the very idea of human advancement.

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[51] S Moodie and Others (n 44).

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18) Lodha P and Pandya A, 'Ethical Dilemmas of Digitalisation of Mental Health' (2025) 7 *Frontiers in Human Dynamics* 1654355.

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23) Uvais NA, 'Perceptions Regarding the Indian Mental Healthcare Act 2017 Among Psychiatrists: A Critical Appraisal in the Light of CRPD Guidelines' (2024) Cambridge University Press https://www.cambridge.org/core/journals/global-mental-health/article/perceptions-regarding-the-indian-mental-healthcare-act-2017-among-psychiatrists-review-and-critical-appraisal-in-the-light-of-crpd-guidelines/30753CEAB50D4E848787FA3919F9CD1B.

24) Centre for Mental Health Law & Policy, *Mental Health & Data Privacy Challenges in India* (28 May 2025) https://cmhlp.org/imho/blog/navigating-data-privacy-in-india-and-its-emerging-intersection-with-mental-health/.

25) Vashist A, Kukreti I, and Taneja P, 'Implementation of Mental Health Care Act, 2017: Issues and Way Forward' (2022) 68(2) *Indian Journal of Public Administration* 1.

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CURRENT CHANGES IN H-1B VISA AND IT'S CROSS BORDER IMPACT OF EMPLOYMENT AND HUMAN RIGHTS (SDG8)

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ABSTRACT

A policy provision called H-1B visa programme was shaped as a part of immigration act of 1990; This act is an indispensable pathway of migration of proficient, skilled labour in the United States[1], but the recent changes in the policy have created important cross border employment and human rights effects. This paper summarises recent literature based upon H-1B visa reforms such as the outline of a new visa fee of $100,000[2], biased systems of restoration, and the advanced changes in the wage and discusses the complex effects on the labour market the economy and relations between two countries. The discussion shows that there had been an ongoing inconsistency between the economic gain of the programme and systematic human right frailties although the H-1B visa[3] workers are empirically proven to increase innovation efficiency and job creation in the U.S which do not replace native workers structural weaknesses create vulnerability to exploitation. Indian nationals who have over 70 Percent of H-1B beneficiaries and excessively experiencing the disadvantage of wage theft precarity coupled with employers' decades long green card backlogs and family fragmentation due to a limitation H-4 visa policy.

Such weaknesses are enhanced by cosy judicial enforcement tools that strict access to customer illegal defences by workers the effects of cross border are not limited to a single worker but seem to transform the global label market as well as international relations the restrictive H-1B policies increase the rate of offshoring reduce the local capacity to innovative in sending to other countries, such as India And shift talent flows to other countries, for example Canada, Australia and the United Kingdom. The Indian it companies experience more cost of project and disruption of operations whereas the US companies run a risk of losing competitive edges in technology segments due to the skilled migration limitations a substantial search cap still exist in the topic of long-term socio dash psychological impacts of migration models. This study presents the argument that the only solution to sustainable reform is going beyond the protection of labour market with the need to secure human rights. Some of the recommendations are to codify H-4 work authorization do away with employee sponsorship dependency modernise wage mechanism and clear permanent residency ways. The long-term sustainability of H-1B programme lies in creating an economical efficient legally fair and essentially human immigration structure whose contribution of skilled migraines to the knowledge economy of America and the extension of the human dignity and rights must be equal.

Key words: H-1B Visa, H-4 work, Green card, new visa fees.

INTRODUCTION

The mobility of skilled employees at the international level is one of the record noteworthy processes of the 21st century that transformed fundamentally the nature of the labour market the space of innovations and relationship between nations the U.S H-1B visa programme has shown how centre of focus to this change; A tool to an establishment policy that has enabled American forms to not just advance access to definite talent pools but also create a complex labour mobility economically domesticated as well as human

[1] Hereinafter Uniter States would be referred as U.S
[2] Sankar, S. (2025). U.S immigration fee changes start Jan 1, 2026: What to except
[3] Bieber, C.J.D. (2025). What is the H-1B Visa? Definition, Requirements and Process.
[4] USCIS Guide. (2025). H-4 Visa: Immediate Family Members of H-Visa Holders.

right concerns. An average of more than 85,000 visas has been granted to foreign workers under H-1B programme in speciality occupations Since its implementation 1990, Under the immigration act the largest portion of visas being issued was used to Indian citizens bracket open space more than 70% and Chinese citizens follow them[5]. This kind of concentration testifies to not just the distribution of technical skills around the world to the structure of the programme itself which has been very turbulent in the past few years with the focus on movement of labour markets and the magnitude of the cause of such a programme. This was a shock as Trump Administration Suggested a revenue generating visa fee of $100,000 (50- fold increase of the current rate) because it would affect the entire global technology industries and the immigrant families heavily. This proposal was a representation of a bigger trend even though it would be specified to only include new applicants which is restrictive immigration policy where more emphasis would be placed on protectionist intervention of labour markets rather than international talent mobility (Pierce and Gelatt, 2018)[6]. Simultaneously in 2023, U.S Citizenship and immigrant service (USCIS)[7] suggested so called beneficiary centric reforms which are eligibly intended to make the procedure of avoiding fraud and receiving the priority over submitting numerous applicants by the same individual. These pulse reforms together with monetary progress full and shielding hire and recent work to all workers has raised precipice questions as to whether restrictive immigrant policy can remain consistent with the International Development Agenda. Under SDG 8, the authors explicitly embrace the worth of rights of workers occupational hygiene and determination of forced labour as well as the contemporary slave free (United Nations, 2015). Nonetheless, The employer sponsored visa programme like H Dash 1B present the loop holds of the values due to the fact that workers certainly rely on how effectively their employers remunerate them once having been given the legal status structural dependency That provides workers with limited mobility being prone to rob their wages and fact that they can hardly report to abuses at their workplace without risking their chances of getting deported is much broader in terms of its economic consequences than the factors related to single worker (Vazirani,2023)[8]. As demonic treated in a research paper by Peri, Shih and Sparber (2014)[9], Foreign workers in the field of STEM have highly productive spill overs with an average H-1B worker being associated with the increased productivity to labour wages of native workers by 78 To 80% due to complimentary skills and not the displacement effects. However, the restrictive Immigration policies that inhibit the acquisition of foreign talent appears to be driven another corporate level decision which is the offshoring of successive foreign countries including India and Canada which is effectively carrying the capacity to innovate away of the US[10]. These dynamics suggest that the immigration policies may appear to play an anti-protective role on the life and employment of the domestic employees in contrast, play the macroeconomic role in the functioning of the economy and the strategic reaction of the company to the visa restrictions, And the macroeconomic outcomes of the immigrant policies on the right and welfare of a specific employees and the successful development of the target countries. The key question

[5] Bound, John, Gaurav Khanna and Nicolas Morales. The effect of the H-1B Quota on the employment and selection of foreign- born labour. IZA Discussion paper no. 11345. Bonn: Institute of Labour Economics (IZA), 2018.

[6] Pierce, S., & Gelatt, J. (2018). Evolution of the H-1B: Latest trends in a program on the Brink of Reform. Washington, DC: Migration policy Institute.

[7] Bureau of Citizenship and Immigration Services

[8] Lowell, B. L., & Christian, J., The Characteristics of Employers Using H-1B Visas and the Impact on the U.S. Workforce (University of California College of the Law, San Francisco, Hastings Law Journal, Vol. 52, No. 4, 2001

[9] Peri, G., Shih, K., & Sparber, C., STEM Workers, H-1B Visas, and Productivity in U.S. Cities (University of California, Berkeley – Goldman School of Public Policy, Berkeley CA, 2014)

[10] Doran, K. B., Gelman, M., & Shue, K., What Drives Racial and Ethnic Differences in High-Impact Entrepreneurship? (INFORMS, Maryland, Management Science, Vol. 69, No. 9, 2023)

to be used in the given research are as follows, first, how did the recent change in the U.S H-1B visa programme redefine the relation between cross border patterns of employment and human rights particularly SDG8? Second what impact does the alteration of the policy such as proposal of the paying $100,000 in top of the reorganisation of the USCIS[11] to represent the beneficiary driven organisation having global labour mobility and the competitiveness of the form located in the US? To what extent are the employer sponsored visual structures that jeopardise The Labour And human rights of migrant workers unequal? What falls outside the realm of the scholarly Inquiries is an expression of reality policies question with dire outcomes on the lives of millions of workers thousands of corporations and further of the American technological leadership the suggested $100,000 fee system, in its turn, Would in effect render foreign talent unaffordable to smaller companies and non-profit organisations because of its cost, As well as would be prone to concentrating the highest dash skilled immigration among the big technological companies that can afford to pay them[12]. This type of concentration was able to bear the current differences inside the H-1B arrangement and typify the type of choices to the employees and employers. Similarly, the beneficiary – Base system of registration has produced new ambiguities in terms of introduced process of selection and may negatively influence the workers of the countries with lower APRN, already having become victims of the system of employer - sponsored visa programmes. Systematic wage theft of thousands of H- 1B workers. In the Large outsourcing Forms was revealed by Hira and Costa[13] 2021, when the records at the disposal indicated that the firm underpaid them every year by nearly 95 million. This form of exploitation thrives well where the immigration status of the workers Is purely at the disposal of the employer which serves as the venue that does not condone science worker complaints of the violations. The result of dependency of H-1B frameworks, and the cause of what Vazirani (2023) [14]refers to as visa precarity, which is precariousness in the legal framework enabling employed lawlessness and eroding the fundamental right of Labour protection, has its costs, Which extent well beyond the United States. When the H-1B visa demand is high, reviews Malia (2023)[15], The performance of the firms in the original countries including India, is negatively Affected which brings about brain drain impact that cause a reduction in the productivity of the sending countries. This finding complicates the application of time-tested economic ideologies of the beneficial impact of migration and adds that the migration policy should be taken into account, not only regarding domestic achievements, but also regarding the global development priorities. The method of the implementation of this study will include the range of analytical models, which will provide a deep understanding of the recent changes in the H-1B policies and its multifaceted consequences to the implementation of the SDG 8 Of full industrious employment and decent work in all economies. The paper. Discusses the interaction between the immigrant policy labour market outcomes, firm behaviour and human rights situation, based on quantitative economic data, policy analysis, legal scholarship and empirical studies of fabric nominees and migration studies. The analysis follows several steps namely, the historical development and original policy objectives of the H-1B programme Recent changes in its policy AG the fees proposal and the

[11] U.S citizenship and Immigration Services
[12] George J. Borjas, The Labor Supply of Undocumented Immigrants (National Bureau of Economic Research, Cambridge MA, Working Paper No. 23153, February 2017)
[13] Costa, D., & Martin, P., Temporary Foreign Workers by the Numbers: New Estimates by Industry, Occupation, and H-2B Visa Category (Economic Policy Institute, Washington D.C., 2018).
[14] Lowell, B. L., & Christian, J., The Characteristics of Employers Using H-1B Visas and the Impact on the U.S. Workforce (University of California College of the Law, San Francisco, Hastings Law Journal, Vol. 52, No. 4, 2001
[15] Goyal, S., The Economic Impact of the H-1B Visa Program on the U.S. Labor Market (Claremont McKenna College, Claremont, Senior Thesis, 2019).

beneficiary- Focused reforms. The economic outcomes of the programme, 2. Talent flows or form productivity and or innovative capacity implications of this programme on human rights and vulnerability of workers or policy recommendations. The significance of the study is not only limited to their academic understanding, but also plays a role in significant policy disclosure of the further. Of this guilt immigration in a more interconnected, globalised economy. The immigration laws are strategic tools that enhance or hamper the national competitiveness at the country level, where nations compete to acquire talent in the emerging technological advances, such as biotechnology, renewable energy, and artificial intelligence. The existing competitive edge of the U.S is attracting the best talent in the world Is under threat by other nations and are offering safer and easier ways of immigration. Alternative frameworks to which highly skilled employees would be more attracted, such as global talent stream of Canada. The skilled migration programme of Australia and the European Union programme can be attractive (Tigau,2017)[16].

BACKGROUND AND DEVELOPMENT OF POLICIES

The history of the H1V visa programme lies in the decades of the Evolution of the American immigrant policy within the scope of the altering economic priorities and requirements of the labour market. It was especially the creation of the Immigration Act of 1990[17] that created A specific visa type called the speciality occupations, which entail the theoretic and practical learning of the highly specialised information to be applied (Kirkegaard, 2005)[18]. This law was put in a place the initial restrictive number of 65,000 visa, which would be further cut into 20,000 to the foreign nationals with the American University advanced Degrees. The programme developers considered the programme as an intermediate measure to the temporal crisis Acute skills caps in the swiftly developing technology sector, as well as cushion the local employee by the already existing minimum wage loss, and so on, after debits on labour conditions. Technological boom, which occurred during the late1900s, have high demand of the H-1B visas that saw annual limit of the visa raise to 195,000. Visa between the 1999 and 2003 (Kerr and Lincoln, 2010)[19]. This expansion was among the common knowledge that the national supply of labour was not able to match the growth that had gone sky high with the technological components, particularly the software development systems architecture, as well as the new Internet technology-based industry. This. Has seen H-1B labours become an irreplaceable part. Of the innovation surroundings of Silicon Valley, Seattle, Boston and a technological hub and over handedly represented in the Christian applicants and the startups. A search carried out by Bound, Khanna and Murals[20] in 2017 during the time indicates that H1V programme at this time indicates that the economy of the U.S in general, and the productivity in particular, significantly rows and the jobs provide for little strain on salaries to the native computer scientists. There was, however, the economic recession of 2001 and the events of the September 11th attack was totally transformed the immigration policy debate in the sense that the new disclosure of immigration policy was brought into the picture by discussing the security issues and Protectionist measures this led to its reversal and a change in 2003 where H-1B temporary was overturned and the number of edge 1B per year

[16] Tigau, Camelia. U.S. Visas for Foreign Professionals: Insights on H-1B and TN Visas. Issue Brief No. 04.25.17. Houston: Rice University's Baker Institute for Public Policy, 2017.
[17] The Immigration and Foreigners Act, 2025
[18] Kirkegaard, Jacob F. Outsourcing and Skill Imports: Foreign High-Skilled Workers on H-1B and L-1 Visas in the United States. IIE Working Paper No. 05-15. Washington, DC.
[19] Kerr, W. R., & Lincoln, W. F., The Supply Side of Innovation: H-1B Visa Reforms and U.S. Ethnic Invention (Harvard Business School, Boston MA, Working Paper No. 09-005, 2008)
[20] Bound, John, Gaurav Khanna, and Nicolas Morales. The Effect of the H-1B Quota on the Employment and Selection of Foreign-Born Labor. IZA Discussion Paper No. 11345.

reverted back to 85,000 since it was taken more than two decades to be introduced in the market. Yet the demand continues to rise. This supply demand imbalance resulted in the H-1B distribution process being lottery as of 2014 in which the applications invariably surpassed the number of visas among the initial few days of the applicants reporting. Once in April every year. The lottery system also added a high level of uncertainty to an already complex system Both the employers and the potential hires did not know. And these sustainability and effectiveness were questionable (Anderson,2024)[21].

The Obama administration came up with multiple improvements to make the H-1B programmes to additional favourable also retain the foreign talent, as this is important in the future to guarantee the popularisation of the programme. They included enhanced with security, raising the location of speciality, occupation and the elimination of fraud by the consulting and outsourcing firms. In 2015 the use of computerised registration of H-1B was presented as a method of updating and simplification of the process by submitting it. But there are still fraud and system gaming concerns that are raised. Critics mention the fact that some employers in particularly in the services market, posted multiple applicants on the same employees within the different subsidiaries or contracts and span a greater chance of entering a lottery, as compared to other applicants. A sharp reversal of the restrictive H-1B policies came in the fresh ideas of economic nationalism, America first. But Trump government will stop the entry of overseas labourers were restricted by applicants of executive orders and amendments in the regulations and principles of the management with your buyers to biased the higher pay jobs.

The administration did its vetting process tighter, increased the rates of Request for Evidence (RFE)[22] problems that slack and complicate the application process, and attempt to re- define the meaning of the specialty occupation and it will not permit H-4 visa holders (mates of the H-1B employees) towards have to work authorization. These changes introduced a high degree of uncertainty and served to reduce the rate of approval particularly to the IT consulting firms and entry-level positions (Pierce and Gelatt, 2018)[23]. Indirectly, the first sign of the intention to revoke Trump limits was the Biden administration and to create more open immigration access to skilled workers. The implementation was however relatively incremental and not based on structural reforms at a fundamental level although alleviating processing backlogs w[illegible] the main object instead of structural reforms be[illegible] the major goal. The most effective change was associated with application of USCIS 2023 regulation concerning benefits with the registration in the centre, substituting the selection criterion by an individual rather than a rage of apps to the same employee. This reform has succeeded to satisfy legitimate margin of concern of lottery gaming and brought about new challenges involving the process of worker identify and selection[24]. With this backdrop of transforming policy structures, it is perhaps within the sphere where the 2025 H-1B visa fee proposal of 100,000- dollar fee is the most radical in regards to gaining access to the program since the program was inaugurated. Even though this was clarified later as it was applicable only to new applicants, but now renewals, the offer reflects the current political push to reduce expertise entry and yield on the employment- based immigration. The fee system would fundamentally alter the economic calculus of the employers and can fully shake the small firms and non- profit-oriented organisations out

[21] Anderson, Stuart. H-1B Visa Analysis for FY 2024. National Foundation for American Policy (NFAP), December 2024.
[22] Request For evidence
[23] Pierce, S., & Gelatt, J. (2018). Evolution of the H-1B: Latest Trends in a Program on the Brink of Reform. Washington, DC: Migration Policy Institute.
[24] American Immigration Council, The H-1B Visa Program and Its Impact on the U.S. Economy (American Immigration Council, Washington D.C., 2016)

of foreign talent market. Fresh financial barriers to entice foreign research and hospitals in case the fee becomes effective in the cap- extent vacancies. This historical development can assist in the understanding that the recent H-1B debate is the continuation of old argument between the economic globalization and nationalistic laws protecting nationalistic control over the labour market, corporate needs of access to cheap and flexible talent and labour union protections, and short- term pressures of politics and long- term economic policies. The program which began as a seemingly simple system to address the short-term skills gaps has become a confused and controversial policy area that employers, domestic workers, foreign professionals, technology innovation, and national security all overlap, and conflict. This evolution is the prerequisite of the discussion of the influence of recent policy changes on the economic performance, the degree of human rights, and attaining the goals of the sustainable development.

Economic consequences of the new policy

The recent shift in the H-1B visa rules have economic power reaching effects on the behaviour of the firm, Dynamism of innovation and global competitiveness, besides the direct effect on the visa holder. A case in point. The charges in the policy with regards to the suggested increase in the price of the visa ticket to $100,000 have a domino impact on the economic systems that are interconnected with each other. Such a fee would have become a prohibitive cost to the large population of prospective H-1B employers, particularly small and medium sized employers, startups and non-profit Organizations That do not have financial capacity of large technology companies. According to economic analysis. (Morales, 2025). The program fee would exceed the annual wages of the most since H-1B median with all job varies between 85,000 to 90,000, which would substantially alter the cost benefit analysis of hiring a foreign talent. Specific attention is to be paid to the distributional impacts of high visa charges. Big tech firms such as Microsoft, Google, Amazon, and Meta can afford the six figure fees at standard business expenses. They can even think of these expenses as a reasonable premium to enter into international talent pools. But the same fee setup would oppressive to smaller competitors, educational and medical centres, and startups elsewhere in the world, labour competitors, educational and medical centres, and startups. Elsewhere in the world labour market. Such an entrepreneur of H-1B access by rich fi

rms can exacerbate any Existing inequality in the innovation processes and reduces the range of categories of employees and potentially the entrepreneur has resulted in a shift in the composition of foreign labour force by changing the beneficiary group actio whereby special skills Require access through flexible means. And recent 2024 states that startups and small businesses require H-1B workers. This appropriately due to technical positions. This is an indication that most innovative sectors of American economy may be particularly harmed by restrictive policies. The data on change in the visa lottery can benefit to comprehend the influence of restrictions on the labour market mechanism. And processes of firms first stop to access casual implications on employment and employee choice. Bound, Khanna and morals, 2018[25] will capitalize on the natural experiment that emerged as the result of H-1B Quota cuts into 2004. Based on their findings, the availability of lower visa Has resulted in a shift in the composition of foreign labour force by changing the beneficiary group that was mostly Indian nationals who have always constituted the large helper group to persons with advanced degrees Concurrently this contributed to rise in of – shoring jobs in countries such as China and India Such pattern of substitution means that firms react to local labour restrictions by de- offshoring work to overseas where talent is not exhausted instead of hiring Americans this may put in your party the goals of the policy that were mentioned and the economic interest of the Americans The relevance of

[25] Bound, John, Gaurav Khanna, and Nicolas Morales. The Effect of the H-1B Quota on the Employment and Selection of Foreign-Born Labor. IZA Discussion Paper No. 11345.

limited immigration of high skilled workers to innovations appears to be especially important as the input of foreign bond investors to technology development in America is inappropriately as Kerr and Lincoln [26]in 2010 revealed the expansion of H1V visa has a positive relationship with the increase patenting activity, with a misappropriate number of ethnic Indian and Chinese investors without crowding out the productivity of US investors The projections indicate that 10% growth in H- 1B admissions There is about six 12 percent growth in the rate of patent submissions that are trooped by Indian and Chinese investors with insignificant adverse effects on the rate of patenting that are being filed by the natives such complimentary as opposed to substituting effects denotes that foreign and native Investors are agents of synergy that is different groups yield more creative results than homogeneous groups. Policies that l This diversity restricting aggregate innovation may have moderating effects that reduce facility aggregate innovation capacity that are significantly less than simple proportionate effects.

These innovation findings are justified by the firm productivity analysis and record the overall economic benefits of H-1B access. Peri, Shih, and Sparber (2014)[27] Focus on the level of metropolitan areas analysis in order to measure the impact of concentrating of foreign STEM employees on wage, employment and productivity of native workforces. The findings reveal that the outcome of foreign staffs in STEM are positive and every extra foreign worker is correlated with seven to 8% lower wages on the metropolitan native employees Those benefits appear to realize through various channels such as foreign labour allows expansion within firms that bring more jobs to all the labours and foreign complimentary labour forces with the native labours, enhancing the overall productivity and adoption of innovation has still over benefit of the whole economy H – one B Walker raised the overall labour market outcomes rather than displacing American workers or depressing their wages due to these dynamic factors as demonstrated by the evidence.

New canvas research into somewhat random nature of H-1B visa lottery selection process has clarified the economic linkages involved when lottery results are used to estimate cash relationships the researchers have discovered that the companies obtain an increased number of H-1B visas expand quicker survive better and employ more employees including foreign and native ones. So a contest to zero sum thinking which is usually observed in restrictive policy arguments but rather a positive some situation wherein access to foreign talent is not only beneficial to the firms but also to the native workers and the economy itself The crucial one appears to be the heightened competitiveness as the access to the specialized skills makes the company take on the project acts in the service of the clients and develop the product that would otherwise be not available to everyone There will be the growth that will provide the opportunity to everyone. Dot L summarize three descriptions on international competitiveness do not have domestic effects only on the economy but also on the movement of talent within the countries and innovation levels across the globe as Myths Peri and she 2024 notes of the US become stricter and the number of skilled migrants who head towards competing countries such as Candle or the United Kingdom or Australia increases notably this changes to show that the restrictive policies do not really prevent global mobility on the high skilled workers but they just ship to countries that are much more receptive given the importance of human capital to the economic growth and technological advancement policies which drive talent out of the U.S may have counterproductive effects as it will end up strengthening the innovation potential of the other nations at the expense of the infrastructure of America.

[26] Kerr, W. R., & Lincoln, W. F., The Supply Side of Innovation: H-1B Visa Reforms and U.S. Ethnic Invention (Harvard Business School, Boston MA, Working Paper No. 09-005, 2008)

[27] Peri, G., Shih, K., & Sparber, C., STEM Workers, H-1B Visas, and Productivity in U.S. Cities (University of California, Berkeley – Goldman School of Public Policy, Berkeley CA, 2014)

The effect of the limitations of H and B to offshoring is worth mentioning, particularly with the implications of the restrictions of offshoring in the area affecting jobs and at what location Innovation is localized the article of **Glannon 2024**[28] provides sufficient arguments that firms are more likely to ourselves to other After encountering an H-1B restriction, which is focused on generating approximately 0.42 jobs in foreign country per everyone misplaced job opportunity This reallocation occurs primarily by Direct substitution, platinum hiring foreign workers would have employed in the U.S in the nonappearance of visa limits but indirectly where the firms restructure their operations to seek talent in the places still providing it. The offshoring trend appears to be more pronounced with multinational companies that usually have an existing foreign presence, specifically in the fields of research, which is high intensity such software development and product design according to these trends H1B restrictions instead of protecting American jobs may contribute to the faster pace of offshoring trends that are the target of Labor advocates. In examining various industries, we find this device impact on various industries with the technological sectors health and education often visiting a significant dependency on H-1B labourers It is significant to mark that the proportion of all H-1B applicants represented in computer related jobs is approximately 65% to show how technical education is global and the demand of American technology sector is on particularly skills Anderson 2024[29]**.** In the medical field, particularly in rural and undeserved parts of the country, medical practitioners and doctors from other countries would heavily rely on them to ensure smooth operations H1V is also used by academic institutions to bring in faculty and researchers in the STEM field due to lack of domestic PHD graduates to serve the demand. Thus, there might be CPS shortages as restrictive policies reduced access to foreign talent in these fields and its effects on the welfare of the population are not limited to economic interests. It won't be programmed and the effect on which is a subject that may be viewed with some closure attention with the heated debates on whether foreign workers are the ones whose lower wages of domestic ones One of the arguments used by these critics is that the instances of companies replacing American workforce with the cheaper H 1B labour and that this is clear evidence replacing the American workforce with the cheaper H-1B labour and that this is clear evidence that the program is being abused and that we should tighten its restrictions But a more detailed explanation of the field of economics tells us a more complicated tale although it can be of course true that some cases wages are being underpaid particularly between the outsourcing companies who can squeeze through certain loopholes General literature indicates either advantages or no effect of wage decrease on the native worker (Peri, Shih, and Sparber, 2014). Search appliance contradiction underscores the contrast between substitution effects where competition directs to a particular job categories and complementarity effect where a relative increase in the wage of specific group results in a growth in productivity and the company in general. The net effect depends on whether one can say that one of these effects is more dominant but it has been shown that complementarity card is the day in most occupations and forms.

The existing waste system that is supposed to curb suppression of wages experiences serious challenges that can be exploited beside poisoning compliances hassles the manner in which Department of Labor set wages is grounded on data provided by the Bureau of Labor static and since there may not be a true reflection of the local market or as well as the needs of various jobs. Hand pricker to 2025 highlights the way in which firms can cheat on the system by categorizing jobs as being less skilled or in residing within a particular geographic location or job occupation to be paid at the lower prevailing wage despite recruiting employees to higher skilled jobs.

[28] Glannon, J.W. (2006). Civil procedure: Examples & Explanations (5th ed.). Aspen

[29] Anderson, Stuart. H-1B Visa Analysis for FY 2024. National Foundation for American Policy (NFAP), December 2024.

The 4-step skill level Model entry, qualified, Experienced, and fully competent provide certain changes to manipulate the model due to waste differentiates between the label may be high as 40% in the same professions Such structural problem implies that rather than abolishing H-1B programs we can work on improving wage protective policies and improving the capacity to enforce them.

Labour Exploitation and Human Rights

The H-1B visa program In its Employer Sponsored Agreements entails generating inherent power imbalances that result in the emergence of serious human rights issues and allowance of Labor exploitation in contrast to citizenship or permanent residency which grant the holder independent legal status temporary work visa directly condition the legal residency of foreign employees in the U.S upon the employment in this sponsoring organizations such dependency centrally transforms the employment relationship by bringing in the immigration implications to work place conflict essentially scaring off the workers against claiming right, reporting the lapses or in search of your alternative working opportunity. According to Vazirani (2023)[30], this sort of setup is described as visa Precarity cal MOM a situation where legal vulnerability is paired with economic dependency in order to form the exploitable group subject to gaining formal rights in law and being unable to exercise them in the field without exposing themselves to deportation These structural weaknesses are worst manifested in systematic wage theft reported among leading employers of H-1B A study by **Hira and Costa (2021)**[31] on HCL Technologies revealed that the company records revealed That it habitually sent back to thousands of H-1B employees over the years by nearly $95 million in compensation by prevailing wage regulations and reassigning positions the workers were posted on clients project and billed at a rate that equated and experienced professional wages and paid them at entry level wages with the difference being realized as excess profits by the outsourcing company. This was the Paid or pre despite the continuing regulatory safeguards since affected employees were aware that Beijing war against the employer risked endangering their visa work and this day in the United States. The case is an illustration of how visa dependency allows the exploitation as would be much harder in the case of workers with independent legal status.

The processes by which employer sponsorship may make Workers vulnerable act on several levels beside the immediate reduction on wage. Employees reliant on H-1B status have serious restrictions on mobility being resulting in new visa sponsorship and labour condition applicants filing as well as USCIS approval which takes months and costs a lot in legal costs. This constraint in labour mobility minimizes the bargaining power of workers and outside alternatives so that sponsoring companies can pay workers at below market rates or provide workers with unfriendly working conditions without being threatened that table go elsewhere. Particularly, the mobile restrictions impact the workers seeking green card sponsorship by the employers which re initiates the process of permanent residency application and can lead to the loss of years of waiting time in the employment-based immigration category[32].

Combination of visa dependency with green card backlog possess particularly vulnerable situation with Indian H-1B workers who have to wait decades before employment based permanent residence because of pre country restrictions Many Indian nationals are now waiting for 15 years to be granted legal status and this effigiate workers still languish in the H-1B status

[30] Lowell, B. L., & Christian, J., The Characteristics of Employers Using H-1B Visas and the Impact on the U.S. Workforce (University of California College of the Law, San

[31] Costa, D., & Martin, P., Temporary Foreign Workers by the Numbers: New Estimates by Industry, Occupation, and H-2B Visa Category (Economic Policy Institute, Washington D.C., 2018)

[32] Impact on the U.S. Workforce (University of California College of the Law, San Francisco, Hastings Law Journal, Vol. 52, No. 4, 2001

way outside the normal six-year limit with repeated extensions as they seek the green card. This prolonged per clarity strength is employers power in that it prolongs the duration of vocals in the nature of goodwill by sponsors employees who will run out of a green card achievability within set deadlines are under special pressure to accept unfavourable conditions instead of risking Jeopardizing their chances of forever residency through a chance of employer or against the current sponsors Visa policy H-4 category allowing spouses of H-1B immigrants dependent status is a clear example of how liability extends to whole families due to the visa policy Many years ago H-4 holders were barred to full employment irrespective of the fact that most of them have professional qualifications and work experience In the year 2015, the implementation of H-4 employment authorization documents gave a limited work authorization to spouses whose H-1B principal had advanced in green card proceedings. Nevertheless, this program was confronted with several legal issues and removal which granted the consistent ambiguity around job authorization inhibiting the long-term career and labour market attendance reliance on H-4 work permission on the H-1B status of the principal also contributes to the concentration of power in the hands of applying employers effectively depriving primary worker to control over his or her work productivity.

Specific attention should be given to general aspect of H-1B precarity as results in that mail employees represent the majority of primary H-1B employees whereas women are over represented in each four dependent status The underlying factors in this generated pattern are more extensive occupational segregation of technology sectors and countries of origin but visa policy makes these inequalities worse, Setting the legal status of the family around paid Chapel family patterns the H-4 women usually hold high degrees and professional experience but they are left to languish in legal limbo because of work authorization restrictions putting their credentials and skills to waste The long term economic viability and career identity of a women are subjected to propagating costs during year of decades in terms of psychological and economic cost This forced increase in the Courier interruption.

The implementation issue around H-1B labour safeguards provide insight into the common reality that even protections that are established to keep innovation at Bay in reality are useless. The wage and separation of the division of labour has limited investigative resources compared to the size of H one B program and the proactive enforcement model based on complaints is not able to access workers who are dependent on visas which prevents them despite of fear of complaints, To file complaints with Department of Labor The study carried out by Clark 2024 [33] of the Administrative adjudication of H-1B cases indicates that administrative process of positive judicial nature have undermined the workers further by lowering transparency, shortening the ability to set precedence, and concentrating the capacity to make decision to executive agencies that can be easily affected by the political pressure. These formal constraints are substantive weaknesses, which cause aspect of enforcement loopholes because rights are formal but have no practical ways of implementation Another highly exploitive form of H-1B system is the phenomenon of body shopping that Consulting firms hire foreigners, but send them to 3rd party client locations. These arrangements establish several layers of employment relations which loses the responsibility of wage and employment conditions as well as increasing the possibility of extraction. The outsourcing company is the one that pays the visa and technically hires the worker yet the client company overseas daily work and performance assessment as well as scope of project Such a formal fragmentation gives both the entity and scape root and the sponsor does not actually have control of the dual working condition and the client does not practice any permit

[33] Ferrer, Emilio & Cespedes, Javier (2024). "Legitimacy and Accountability in Political Organizations." Law and Philosophy, 43(3), 215–237

relationship but has functional supervision Employers in these programs have been compounded in their vulnerability since they rely on H-1B sponsors to sustain them as well as the client who will constantly need the service offered by these workers The aggregate impact of these structural weaknesses takes the form of what can perhaps be called unfree labour the employment relations in which workers have officially freedom to leave yet such dire effects of using this freedom that it exists more as a legal friction. Although H-1B Employees are not literally in conditions of slavery or hand coercion the complexity of the visa dependency, green card entrapment, family vulnerability, and immigration enforcement stablish fictional restrictions on the mobility of Labor and protect rights approximately akin to the conditions of unfree labour This fact is essentially the opposite of SDG 8[34] promise to decent work and abolition of forced labour showing how even the potentially voluntary programs of employment could create rights abuse when even legal status became conditionalized on employer contentment.

GOAL MEASURES AND SDGS ALIGNMENT POLICY RECCOMENDATIONS

The eighth substantial development Goal obliges the International Committee to achieve sustainable comprehensive and maintainable economic growth the full and shielding employment and decent work of all people This general goal has several more specific aim such as full and productive work and decent work for all women and men equal pay in work of equal value health and safe working conditions to all workers and elimination of involuntary labour a Modernized Slavery and Human trafficking (United Nations 2015). An Assessment of H-1B accounting changes in the framework of these conditions between existing immigrant policies and the commitments to International Development. The economic effect of the latest H-1B limitations reveal the basic disorientation with the SSD8 goals of growth and employment As it has been noted, the so called restricting measures of high skilled immigration lower the productivity of the phones their innovativeness and treating job not among foreign bond workers but also non employees born in the country first stop the offshore displacement effect whereby restrictions push employment foreign instead of domestic employment Any direct opposite of the objective of productive employment. District policies that effectively Export jobs and innovation capacity to their competitor countries simply we can weaken instead of strengthening employment and economic security of American workers The ironical results in this case is that the domestic labour policies are meant to save the industry but instead they have opposite effects to drag the whole economy down and make it less dynamic it is a classic example of why immigration has such mixed effects and why simple protectiveness is dangerous first stop first stop even the STGA dimensions about decent work became even more incompatible with the existing H-1B systems first stop the system acting is droplet, lemons is the mobility of workers, and dependency on employers reported in the seeking sections current Term I obvious breach of the concept of decent work deployment of work was not being free to switch the employers, report any violation, or properly negotiate the compensation and conditions because of visa priority ultimately it is not aligned with the international Labor Standards of recent work. Please in what is supposed to be legal doctor regarding both foreign and domestic workers indicate how the employer sponsored temporarily user programs can be structured in a way that facilitates exploitation even though such an outcome is not aligned with the properly set policy priorities. The generic quality requirements of SDG8 draw attention to other inherent weakness in H-1B programs specifically to H 4 dependent spouses The wrong durations were professionally qualified women are not allowed to work because of restrictions imposed on derivative visas does not align with equal opportunities and

[34] Sustainable Development Goal, Decent work and economic growth.

economic engagement first go off the H-4 BAD program is resolving this divide, it is an unstable unconditional program that cannot give the safe and permanent work status that would make women have real generic quality in the workforce General visa dependency with women relatively more likely to be in subordinate H-4 status then men in the dominating H-1B roles promotes and consulates larger scale gender stratification in technology industries and immigrant populations. The first ban provisions in SDG8 need to be read critically when it comes to visa based employment although H-1B employees are clearly not victims of human trafficking or slavery the paper of slavery under the issue of international law captures the notion that employers force employees to remain with the company under less than favourable conditions such as threats of deportation. When employees stick with their unequal [35] jobs due to the risk of losing their rights or failing to find other jobs similarities that are worrying to other parts of the world due to forced labour manifestations become apparent This comparison must not be exaggerated the H-1B employees are educated resourceful and have legal immunity that most victims of trafficking lack but the structural limitation posed by the reliance on visa must be given a grave attention and regarding the human rights approach. Resolve the shortcomings, there would be a need to overhaul the system with reforms that would ensure that there is a balance between legitimate policy goals, regulation migration flows securing the domestic labour market and ensuring national security and to take into consideration the international human rights commitments and economic efficiency considerations And adjusted H-1B model which aligns it SDG8 may include some important points first to begin with movable employment which could see visa holders which their employers without renewing their legal stay would make less dependency And more workers get workplace this mobility may work by maintaining partial protection of employer investment even with the minimal grace. Instead of complete independence but with the benefit of dramatically enhancing mobility of workers the open work permit character allows open work permits of some types which presents possible model agreements.

Second, more empowered wage guarantees with higher enforcement would provide solutions to the issue of chronic underpayment as well as uphold the integrity of the program. Instead of discarding existing requirements of prevailing wages, raising fees on visas to extortionately levels, changes to the system should be made to enhance methods of wage determination, more transparency in compliance and establishment of effective enforcement mechanisms including the right to file claims under private action that enables workers to claim the wage benefits without compromising the immigration status. The main defect with the existing framework is not that the regulatory framework is flawed but that there are gaps in implementation, and there is failure of enforcement allowing systematic breaks in the framework.

Third, more obvious ways to permanent residence would mean less protracted precarity, which increases vulnerability. The delays that are caused by the backlog of the current system (especially when it is the Indian national who is asked to wait decades before they can be accepted) lead to the appearance of some cases when workers are at the temporary status much longer than it is possible to have. The changes could involve the removal or hiking of per-country employment-based green card quotas, or the establishment of faster processing of workers in prolonged H-1B designation, or by granting some H-1B period to count as permanent residency eligibility. Such reforms would be in line with SDG 8[36] priorities of having long-term employment relations instead of constant precarity.

Fourth, gender equity would be considered in terms of family reunification policies, which would grant spouses work permission irrespective of the stage of

[35] International Labour Organization, 2012

[36] Sustainable Development Goal, Decent work and economic Growth.

the green card processing of the principal. The conditional and unstable character of the H-4 EAD[37] program does not grant sufficient security and the employment prohibitions do not prevent high expenses of the human capital; the economic costs of the families are tremendous as well. Spouse work authorization would support the principle of decent work by providing some economic benefits and employment in terms of the greater involvement of labour force in the labour market and use of skills.

Fifth, a better system of transparency and controls would create greater accountability without violating the legitimacy of the business in the need of foreign talents. This may consist of publishing compliance infants' records of employers, regular audits of high-volume users, and greater protections of whistleblowers so that workers can report violations without immigration aftermath. Greater slide would enable the workers and civil society to recognize exploitative employers and also allow responsible companies to distinguish themselves by proving transparency. Sixth, international cooperation structures integrating immigration policies in leading destination nations may mitigate the effects of competition as a race-to-the-bottom, yet healthy competition over talent. When competitive restriction is witnessed among countries, it tends to impact badly on the workers and the national economies by disrupting the flow of talents and exposing workers to more vulnerability. Coordinated policies on matters such as wage protection, portability, and permanent residency options can help to set minimum standards that will stop exploitation without limiting countries to having unique policies that may be based on local situations and priorities. Such changes would bring the H-1B policy closer to SDG 8-compliance; moreover, they would deal with legitimate concerns regarding the impact of the policy on domestic labour markets and integrity of the program. It should not be unregulated high skilled immigration, the caps and demands are lawful in regulated immigration but instead put it in structures that allow those who actually get the visa to work under the provisions that do not defy human dignity, do not deny their right to assert and not subject them to a lifetime of uncertainty but offer them avenues to security instead of the current precarity that they may face. It has a broader impact on international development beyond direct SDG 8 compatibility that has to do with issues of fair global economic integration. The existing H-1B arrangements mimic unequal dynamics between developed and developing economies with the rich nations able to recruit most educated employees in poorer nations and provide them with little security or opportunities of achieving full membership. The resulting dynamic creates the effects of the so-called brain drain that can hurt the development of the origin countries and additionally benefit the destination countries and individual migrants themselves (Malice, R Continue2023)[38]. Less discriminatory models could consist of a temporary return scheme, assistance to circular migration trends or aid to the countries of origin to help meet the expenses of skilled emigration.

CONCLUSION

This thorough study of recent amendments of H-1B visa policies displays deep-seated concerns between limiting immigration systems, economic effectiveness, and ethical principles to global human rights that are enshrined in Sustainable Development Goal 8. The fact is proved by the fact that all the policies aimed at assuring protection to American workers such as restricting the immigration of highly skilled workers have created the opposite results such as decreased innovation, displacement of jobs to offshore payers, and continuous labour abuse of visa-related employees. Instead of accomplishing stated goals of domestic protection of the labour market; restrictive policies seem to adversely affect both American and foreign workers as well as jeopardizing the national economic competitiveness. The suggested increase in visa charges to 100,000 dollars is an

[37] Employment Authorization Document

[38] Goyal, S., The Economic Impact of the H-1B Visa Program on the U.S. Labor Market (Claremont McKenna College, Claremont, Senior Thesis, 2019

illustration of the impact of radical policy change on ripple effects in an interdependent economic and social framework. Such fees would force smaller employers out of foreign talent markets, concentrate H-1B access on large corporations, and cause entrepreneurial dynamism to decay faster, and perhaps catalyse offshoring trends. Although the beneficiary-driven registration reforms help to tackle legitimate lottery gambling issues, they pose new uncertainties which can be detrimental to workers in underrepresented nations and cause other administrative complexities. These cases demonstrate how the unplanned consequences of seemingly well-intended changes may be created when implemented without proper understanding of the dynamics in intricate systems. Human rights aspects of employer-sponsored visa schemes are serious issues that policy makers ought to take seriously regarding proper decent work and addressing labour rights issues. The systematized wage theft, the restrictions of mobility, the break of family, and the long-standing precarity experienced and reported during the entire process under analysis are all definite breaches of the SDG 8 principles and the global labour standards. Although such infractions take place in the courtroom surroundings that are supposed to ensure that no one is exploited by a superior, the dependency that is provided by the tie between the immigration status and the satisfaction of the employer makes these abuses possible that would otherwise be significantly more lawful with a separate legal status. These issues cannot be solved by just the improvement of enforcement but the root cause of these problems should be dealt with so that the dependency is decreased and workers are also empowered. The economic data substantially shows that high-skilled immigration has net benefits to the native workers and the overall performance of American economy in terms of productivity spillovers, increase in innovation and expansion impacts by firms. The concern of displacement and wage suppression that lies at the base of restrictive policies are not supported by systematic research which otherwise shows harmonizing effect of foreign and foreign workers in most occupations and regions. The offshoring policy to visa limitation goes beyond to discredit the protectionist logic by indicating that companies seek to adjust to local staffing rules by responding to these rules through international staffing, but not by hiring more native employees. The congruity or, to be exact, strangeness between the existing policies of H-1B and the SDG 8 promises lead to the simple inquiries about the possibility of restricting immigration models to align with the international development goals. The current visa policies allow unfree labour, perpetrate gender inequality, low wages and push jobs to another country, which contradicts the long-term inclusive and sustainable economic development and decent employment of people that SDG 8 outlines. Such misplaced orientation indicates that there is a need to have overhaul policy changes that consider the introduction of a balanced approach of migration management in terms of human rights protection and economic efficiency.

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EVALUATING CONSENT FATIGUE AND DARK PATTERNS IN ONLINE CONTRACTS UNDER INDIAN LAW

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ABSTRACT

In the current digital era every agreement we make, may it be for social media, online shopping or any mobile applications, takes place only through a single click on the button "I Agree". These online agreements which is generally known as standard form of contracts are often created by companies and offers to its users without any chance to mediate. It is usually accepted by the people quickly because they seem to be long, legal language and the urge to continue the service. This repetitive exposure and complicated consent requests causes "consent fatigue". Users end up in agreeing to the terms without reading or understanding the agreement.

This creates a very major concern under the Indian Contract Act, 1872, where in the act says that every agreement is necessarily to be based on "free-consent", meaning that an individual's decision must be informed, voluntary and not driven by fear, pressure or trick. When the user clicks "I Agree" button after being constantly prompted or tricked by digital designs such as hidden options, confusing buttons, their consent is not truly free. These design tricks are termed as "dark patterns" which influence people's behaviour and make them act against their interest without realising it.

The Indian Contract Act, as written more than 150 years ago, in the time when contracts were made in person and discussed about the terms and conditions before agreeing. The law does not mention any digital manipulation or technology-based influence, which leaves a gap in protecting people who use digital contracts every day. The study of how online consent works and how dark patterns and consent fatigue affects the users are substantial. It deals with how the current ideas of coercion, undue influence and misrepresentation under the ICA can be reconceptualised to deal with digital consent platforms.

Keywords: (Digital Contracts and Consent, Consent Fatigue, Dark patterns and Manipulation, Regulation of online consent)

INTRODUCTION

The digital revolution has transformed the way of how agreements are made, executed and enforced. In today's digital world, people enter into contracts every day by making a single click on the button "I Agree", despite of social media platforms, mobile applications or even for online shopping portals. These digital involvements are convenient and fast but often disguise complex terms and conditions written in legal complex language that users rarely read or understand. This phenomenon has given rise to "consent fatigue", a situation which causes psychological exhaustion due to repeated consent prompts that lead individuals to accept terms without comprehension.[1]

Online agreements are drafted as Standard form contracts and provided to users on a "take it or leave it" basis.[2] These agreements rarely have room for negotiation. This imbalance of bargaining power raises serious concern about voluntariness of consent. Under the Indian Contract Act, 1872, consent is the most significant part of a valid contract. Section 13 of the act defines consent as when two or more persons agree upon the same particularly in the same sense, while section 14 declares consent to be free when it is not caused by

[1] Neil M. Richards & Woodrow Hartzog, *The Pathologies of Digital Consent*, 96 Wash. U. L. Rev. 1461 (2019).

[2] Dr. Ram Prakash Chaubey, *Standard Form Contracts and Consumer Protection in the Digital Economy: Striking a Balance Between Efficiency and Fairness in India*, IJFMR Vol. 7, Issue 5 (Sept–Oct 2025).

coercion, undue influence, fraud, misrepresentation or mistake.[3] In contrast, digital revolution has led to a situation where consent is often secured through manipulative interface designs and psychological nudges, creating circumstances where user's consent may not be genuinely free.

These interface techniques, termed as dark patterns, are deceptive strategies which influence user behaviour towards choices favourable to the provider.[4] Some examples of these deceptive strategies are pre-ticked boxes, misleading colour contrasts, countdown timers and interface difficulty which makes users not to opt out or refuse permissions.[5] When combined with repeated exposures to consent requests like privacy policies, cookie acceptances, subscription renewals where user experience decision fatigue, ultimately consenting without understanding.

This digital manipulation has created a direct tussle with the principles of free consent under the ICA. The act was enacted long before the advent of the computed or algorithmic influence. It presupposed a context of face-face negotiations where consent was expressed voluntarily. However, after the modern digital contract system functions in a vastly different context, mostly by algorithms, interface design and persuasive technologies.[6] The result is the imbalance created where users are driven by cognitive fatigue than rational choice.

The European Union's General Data Protection Regulation (GDPR), emphasises that the consent must be "freely given, informed and unambiguous".[7] Similarly, the Federal Trade Commission in the U.S. has issued various warnings and enforcement actions against manipulative consent mechanisms in e-commerce.[8] In India, the Consumer Protection (E-Commerce) Rules, 2020 and the Guidelines for Prevention and Regulation of Dark Patterns, 2023 marks significant steps in acknowledging these kind of threats.[9] Despite these advances, there remains a gap in India's contractual jurisprudence, as the ICA continues to depend on traditional notions of coercion and undue influence. Coercion today not only involve physical threat but it creates a cognitive pressure through design that leaves users no genuine other way back. Similarly, undue influence may arise from digital environments that exploit a user's trust on essential services.[10]

The Consumer Protection Act and the DPDP Act provide administrative protections, the contractual remedies remain underdeveloped. A contract obtained through consent fatigue or decepting designs must be treated as vitiated, just as agreements induced by coercion or fraud are voidable under section 15 to 19 of the ICA.[11]

CHAPTER 2: CONCEPT OF FREE CONSENT UNDER ICA, 1872

The basis of Contract law is built on the principle of free consent which signifies that parties must enter the agreement only voluntarily without any external pressure or misunderstanding. The ICA,1872, codifies this essential concept through section 13 to 19 which provides that an agreement is enforceable only if both the parties consent to the same thing in same sense which should be free from coercion,

[3] *The Indian Contract Act, 1872*, §§13–14.
[4] *Guidelines for Prevention and Regulation of Dark Patterns, 2023* (Ministry of Consumer Affairs, India).
[5] Manali Palit, *Protecting Online Consumers: A Deep Dive into Dark Pattern Regulations in India*, IJCRT Vol. 12, Issue 2 (Feb 2024).
[6] Rishabh Agarwal & Ramakant Tripathi, *Consent and Coercion in the Digital Economy: Legal Perspectives on Dark Patterns in India*, IJRPR Vol. 6, Issue 5 (May 2025).
[7] *General Data Protection Regulation (GDPR)*, Regulation (EU) 2016/679, Art. 4(11).
[8] Federal Trade Commission, *Bringing Dark Patterns to Light* (FTC Report, 2022).
[9] *Consumer Protection (E-Commerce) Rules, 2020*, Rule 5(3).
[10] Gandhali R. Khamkar, *Beyond Consent: Re-imagining Digital Standard Form Contracts in India*, IJLR 5(12), 241–249 (2025).
[11] Neil M. Richards & Woodrow Hartzog, *The Pathologies of Digital Consent*, supra note 1.

undue influence or mistake. This notion of consensus ad idem, inherited from classical law reflects the moral basis of contractual fairness.[12]

In its traditional form, the law presupposed the context where parties had capacity to negotiate and understand the terms of the contract before entering into a contract. When consent was shadowed by coercion or any forceful activity, the law treated the contract as voidable at the instance of aggrieved party under section 19 and 19A.[13] However, the circumstances influencing the consent has evolved. In the traditional era, coercion took place as a physical act or an explicit threat and undue influence arose from a clear hierachial relationship, as stated in *Mannu Singh v. Umadat Pande*, where the court struck down a contract influenced by a spiritual adviser who exploited his position of trust.[14] Fraud and misrepresentation are deceptive or deliberate omission of material facts as decided in *Derry v. Peek*, which required proof of a false statement made knowingly or recklessly.[15] These judicial interpretations were sufficient in a world where contracts were tangible and the intention of parties were direct. In contrast, these provisions face several challenges.

The evolution of Standard form contracts which is commonly known as click-wrap, brows-wrap and shrink-wrap agreements has altered the traditional idea and meaning of consent. Most digital transactions now take place only through pre-drafted contracts by corporations which users accept[16] by simply clicking a button. There is no room for negotiation left and no meaningful opportunity to reject and no genuine understanding of what is being agreed upon. These imbalance of power between corporations and individuals is profound and the consent of users is largely a formality required to access these digital services.

The foremost challenge is that while ICA's explanation of coercion and undue influence are vast, they are grounded in a physical and interpersonal understanding of domination. Digital platforms employ soft and persuasive techniques known as dark patterns to influence user's behaviour. These include pre-selected options, deceptive placements of buttons and countless prompts that pressure the user act to act quickly or choose the option that is favourable to the company.[17] Such design-based manipulations are not direct threats but includes what scholars describe as behavioural coercion wherein the structure of the user is depleted through cognitive pressure rather than physical force.[18] The traditional concept of coercion, as defined in *Ranganayakamma v. Alwar Setti*, required an unlawful threat but dark patterns operate through psychological compulsion.[19] Similarly, undue influence which was confined to relationships of authority where platforms exercise intense informational and technological dominance.[20]

The classical theory of consent which is rooted in voluntariness and rational decision making has now become inadequate in the age of computer domination. Courts have presumed that a person who clicks "I Agree" has provided valid consent, as seen in *Trimex International FZE Ltd. v. Vedanta Aluminium Ltd.*, where the Supreme Court upheld a contract formed through electronic communication

[12] Pollock & Mulla, *Indian Contract and Specific Relief Acts* (LexisNexis, 15th ed. 2022).
[13] *The Indian Contract Act, 1872*, §§19–19A.
[14] *Mannu Singh v. Umadat Pande*, (1890) ILR 12 All 523.
[15] *Derry v. Peek*, (1889) 14 App Cas 337 (HL).
[16] Manali Palit, *Protecting Online Consumers: A Deep Dive into Dark Pattern Regulations in India*, IJCRT Vol. 12, Issue 2 (Feb 2024).
[17] *Guidelines for Prevention and Regulation of Dark Patterns, 2023* (Ministry of Consumer Affairs, India).
[18] Rishabh Agarwal & Ramakant Tripathi, *Consent and Coercion in the Digital Economy: Legal Perspectives on Dark Patterns in India*, IJRPR Vol. 6, Issue 5 (May 2025).
[19] *Ranganayakamma v. Alwar Setti*, (1889) ILR 13 Mad 214.
[20] Pollock & Mulla, supra note 2.

without examining the depth of understanding involved.[21] The doctrine of free consent should be interpreted in light of constitutional principles. The right to privacy and personal autonomy as recognised in Justice K.S. Puttaswamy v. Union of India are fundamental to individual under article 21 of the constitution. Consent which is uninformed or coerced in any form, whether through social pressure or digital manipulation undermines the constitutional value.

Khamkar and Agarwal observes that digital form contracts has converted users to passive participants in contractual relationships, depriving them form meaningful deliberation and dark patterns represent a new form of undue influence as they destroy human cognitive biases and emotional triggers rather than rational and wilfull choices.[22] Their arguments often align with global legal developments like European Union's General Data Protection Regulation, which mandates that consent must be freely given and should not be obtained through deception or coercion.[23]

Moreover, the concept of informational imbalance, where one party possesses far greater knowledge of data, algorithms and interface design must inform judicial analysis.[24] When users are unaware of the pattern of their behaviour, the fairness of consent becomes questionable. The user's cognitive exhaustion caused by repetitive consent requests amounts to constructive coercion. Also, free consent is not a static concept but a live doctrine that develops with social and technological contexts. The transformation to screen based from paper-based world mandates the law to look beyond visible threats towards subtle form of manipulation. Eventhough, efficiency and convenience are significant to digital commerce, they cannot override the moral foundation of contractual fairness.

CHAPTER 3: RISE OF DIGITAL CONTRACTS AND CHALLENGE OF CONSENT FATIGUE

The origin of digital contracting has disrupted the doctrine of contract law relating to consent and consideration. Under the Indian Contract Act 1872, contracts are formed in an intentional and voluntary method of agreement between two or more persons, reflected through offer, acceptance and consideration.[25] But these elements are unfolded through digital and automated interfaces such as algorithmic prompts, machine executed actions where human participation is minimal or even absent.[26] The assumption of a user click emphasizes an informed and voluntary act of acceptance. But it is not true in environments where users are influenced by interface designs and cognitive overload.[27] This leads to a very basic question about whether these digital consents satisfy the statutory mandate of "free consent" and whether automatic generated consideration can be treated as valid consideration within Section 2(d).[28]

The doctrine of consideration anticipates the exchange of promises that forms foundation of mutual obligation.[29] The digital consideration happens without any interference of human and the

[21] *Trimex International FZE Ltd. v. Vedanta Aluminium Ltd.*, (2010) 3 SCC 1.

[22] Gandhali R. Khamkar, *Beyond Consent: Re-imagining Digital Standard Form Contracts in India*, IJLR 5(12), 241–249 (2025).

[23] *General Data Protection Regulation (GDPR)*, Regulation (EU) 2016/679, Art. 4(11).

[24] Bruce Schneier, *Data and Goliath: The Hidden Battles to Collect Your Data and Control Your World* (W.W. Norton, 2015).

[25] *Pollock & Mulla, Indian Contract and Specific Relief Acts* 245 (R. Y. S. Narayan ed., 15th ed. 2022).

[26] Shoshana Zuboff, *The Age of Surveillance Capitalism* 189–94 (2019).

[27] Neil Richards & Woodrow Hartzog, *The Pathologies of Digital Consent*, 96 Wash. U. L. Rev. 1461, 1474 (2019).

[28] The Indian Contract Act, No. 9 of 1872, §§ 2(d), 13–14, India Code (1872).

[29] P.S. Atiyah, *The Rise and Fall of Freedom of Contract* 156 (1979).

subscription is renewed automatically or digital loan is triggered by an algorithm, detached from any volitional act at time of performance.[30] This creates a doctrinal vacuum while the performance is real and intention is artificial. This is substantiated from the case *Union of India v. Chaman Lal Loona & Co.*, a contract derives its validity not from the performance but from the intention and agreement.[31] In digital environments these concurrence is frequently absent as consent is programmed rather than consciously exercised. The decision in *Trimex International FZE Ltd. v. Vedanta Aluminium Ltd,* recognised that e-communications could constitute valid offers and acceptances only when there is meeting of minds.[32] This highlights that legal recognition of e-contracts under Section 10-A of the IT Act,2000 does not exempt contracts from primary requirement of free and informed consent.[33]

The art of clicking "I Agree" functions as a legal fiction which substitutes a machine-registered gesture for human participation.[34]

Section 2(d) defines consideration as an act, abstinence or promise done at the desire of the promisor.[35] The courts in *Currie v. Misa* and *Dunlop Pneumatic Tyre Co. Ltd. v. Selfridge & Co. Ltd,* it is held that consideration must flow from act or promise that initiates reciprocal obligations.[36] Digital automation lacking reciprocal intention risks transforming consideration into a mechanical output rather than intentional exchange.[37] These automated contracting often leads to unjust enrichment when users are charged without actual consent. The Supreme Court, in *Lallan Prasad v. Rahmat Ali*, observed the holding off benefits with unlawful basis attracts restituitionary liability.[38] If this principle is extended to the digital domain, the companies gaining from consent fatigue or automatic renewals may be unjustly enriched.[39] The balance of Contract obligation collapses when performance occurs away from the intention that create a mismatch between legal form and moral substance.

The development of automatic contracts like machine learning, smart contracts, further complicates the doctrinal landscape.[40] As the decisions are executed without the involvement of human, it blurs the line between agency and autonomy. Whenever the algorithm acts on behalf of the users, the primary question is whose intention governs the contract? Is it the user prior authorisation or the system's programmed decision? The absence of concurrent intention disturbs the need of "mutual assent" and weakens the moral justification for enforcement.[41] The evolution of contract law must recognise that the intention is itself under threat when software systems decision making consent and consideration becoming procedural formalities devoid of meaning.[42]

Professor Atiyah argues, "the legitimacy of contract law rests not on mechanical enforcement but on the

[30]Rishabh Agarwal & Ramakant Tripathi, *Dark Patterns and the Doctrine of Consent in Indian Contract Law*, 12 NLS Bus. L. Rev. 77, 83 (2023).

[31]*Union of India v. Chaman Lal Loona & Co.*, AIR 1957 SC 652.

[32]*Trimex Int'l FZE Ltd. v. Vedanta Aluminium Ltd.*, (2010) 3 SCC 1.

[33]The Information Technology Act, No. 21 of 2000, § 10-A, India Code (2000).

[34]Harry Brignull, *Deceptive Patterns: Exposing the Tricks Tech Companies Use to Control You* 102–05 (2023).

[35]The Indian Contract Act, No. 9 of 1872, § 2(d).

[36]*Currie v. Misa*, (1875) LR 10 Ex. 153; *Dunlop Pneumatic Tyre Co. Ltd. v. Selfridge & Co. Ltd.*, [1915] AC 847 (HL).

[37]Avtar Singh, *Law of Contract and Specific Relief* 123 (14th ed. 2022).

[38]*Lallan Prasad v. Rahmat Ali*, AIR 1967 SC 1322.

[39]P. Birks, *Unjust Enrichment* 49–50 (2d ed. 2005).

[40]Kevin Werbach, *The Blockchain and the New Architecture of Trust* 205–07 (2018).

[41]*Trimex Int'l FZE Ltd. v. Vedanta Aluminium Ltd.*, (2010) 3 SCC 1.

[42]Shoshana Zuboff, *The Age of Surveillance Capitalism* 215–17 (2019).

moral coherence of voluntary obligation[43]". Extending this reasoning to digital contracts, it is required that courts must reinterpret the ICA's provisions to preserve the keystone of human interference.[44]

CHAPTER 4: DARK PATTERNS AS DIGITAL COERCION- LEGAL IMPLICATIONS AND COMPARATIVE INSIGHT

The evolution of digital market has brought in various exploitative practices known as dark patterns that are misleading or pressure the users into decide on matters they would not made otherwise.[45] These practices exploit psychological biases and it triggers the emotions to maximise engagement, profits.[46] Traditionally, coercion under section 15 of the ICA consisted unlawful threats or physical compulsion while undue influence under section 16 addressed moral situations.[47] Digital platforms exercise a new kind of informational and psychological dominance where users are deprived of autonomy through rational technology.[48]

These issues are further intensified by the informational imbalance between users and platform owners. Corporations own broad knowledge of consumer behaviour through algorithm mapping and predictive analysis.[49] This broad data allows the corporations to design "choice architectures" which influence the users towards pre-determined outcomes.[50] Even if the user's decision autonomous, it is engineered through invisible influence.[51]Today, the digital platforms exercise similar dominance through technological structure and information control shaping the conditions of consent.

These manipulations are been addressed in the International Legal Frameworks. The European Union's General Data protection Regulation declares that the consent obtained through deception or coercion is invalid[52], and the Digital Services Act 2022 prohibits online interfaces that distort the user autonomy.[53] The U.S. Federal Trade Commission's report on *Bringing Dark Patterns to Light* classified such practices as unfair under section 5 of the FTC Act and initiated enforcement actions against companies which uses misleading cancelling systems and pre-ticked boxes.[54]

The Indian Judiciary holds precedents that supports this re-interpretation. The Supreme Court in *Inland Water Transport Corp. v. Brojo Nath Ganguly,* struck down an unconscionable employment clause which holds that freedom of contract cannot legitimise the oppressive terms.[55] In *LIC of India v. Consumer Education and Research Centre,* the court nullified the exploitative standard from contracts

[43]P.S. Atiyah, *Essays on Contract* 9–11 (1986).
[44]Avtar Singh, *Law of Contract and Specific Relief* 205 (14th ed. 2022).
[45]Harry Brignull, *Dark Patterns: Inside the Interfaces Designed to Trick You*, 13 J. Usability Stud. 45, 46 (2021).
[46]Neil Richards & Woodrow Hartzog, *The Pathologies of Digital Consent*, 96 Wash. U. L. Rev. 1461, 1463 (2019).
[47]The Indian Contract Act, No. 9 of 1872, §§ 15–16.
[48] Shoshana Zuboff, *The Age of Surveillance Capitalism* 212–14 (2019).
[49] Karen Yeung, *Algorithmic Regulation: A Critical Interrogation*, 12 Regulation & Governance 505, 507 (2018).
[50]Id.
[51]Calo, Ryan, *Digital Market Manipulation*, 82 Geo. Wash. L. Rev. 995, 1003 (2014).
[52]Regulation 2016/679, of the European Parliament and of the Council of 27 April 2016 on the Protection of Natural Persons with Regard to the Processing of Personal Data (General Data Protection Regulation), art. 7, 2016 O.J. (L 119) 1.
[53]Regulation 2022/2065, of the European Parliament and of the Council of 19 Oct. 2022 on a Single Market for Digital Services (Digital Services Act), art. 25, 2022 O.J. (L 277) 1.
[54]Fed. Trade Comm'n, *Bringing Dark Patterns to Light* 3–5 (2022).
[55] *Cent. Inland Water Transp. Corp. v. Brojo Nath Ganguly*, (1986) 3 S.C.C. 156 (India).

that defeats fairness and public policy.[56] These demonstrates the judiciary's capacity to look beyond the formal nature of consent and protect substantive fairness. By extending this reasoning, contracts attained through manipulative design can be viewed as voidable under sections 19 or 19A of the ICA, as consent was not really free. In *Justice K.S. Puttaswamy v. Union of India*, the Supreme Court observed that informational privacy is essential to personal autonomy and dignity[57]. If privacy safeguards individual decision-making against overreach, contractual consent should equally protect its users from influential digital influence. The recognition of dark patterns as digital coercion would balance the contract law with constitutional guarantee of dignity under Article 21.

Rishab Agarwal argues that dark patterns represent the digital coercion and it operates through emotional and cognitive pressures.[58] Gandhali Kamkar describes it as an expression of inability where user's consent out of exhaustion rather than voluntary participation.[59] These discussions align with the purposive interpretation in *Maneka Gandhi v. Union of India,* where the court expanded constitutional liberty to encompass fairness and the same, if applied to the contract law would ensure the concept of free consent in the digital era.

CHAPTER 5: REINTERPRETING SECTIONS 13-19 – TOWARDS FRAMEWORK OF VITIATED DIGITAL CONSENT

The expansion of digital contracts and the perpetual usage of manipulative design demand doctrinal and legal reform to protect the essence of consent under the Indian Contract Act, 1872.[60] As the evolution has challenged the assumption that the consent is freely given as user act under cognitive fatigue, informational imbalance or even manipulative design, creates a gap in the ICA's doctrines[61]. Legal scholars have argued that the coercion and undue influence is now included in the technological structure than conveying via overt threats or relational dominance.[62]

Hence a Vitiated Digital Consent (VDC) framework has been proposed that enables the courts to evaluate not only the formal expression of agreement but the substantive voluntariness and comprehension of the user at the time of contracting[63]. The proposed framework is based on behavioural evidence such as clickstream data, interface design analysis and user metric. This is inculcated to check whether the consent was coded rather than freely given.

By conceptualising Cognitive coercion, Informational domination and influential interface, the VDC framework expands its arm to existing doctrines without amending the ICA. The Indian Judiciary has served as transformation for interpreting the statutory laws which adapts obsolete

[56] *LIC of India v. Consumer Educ. & Rsch. Ctr.*, (1995) 5 S.C.C. 482 (India).
[57] *Justice K.S. Puttaswamy (Retd.) v. Union of India*, (2017) 10 S.C.C. 1 (India).
[58] Rishabh Agarwal, *Dark Patterns and the Doctrine of Free Consent in Indian Contract Law*, 12 Indian J.L. & Tech. 37, 42 (2023).
[59] Gandhali Khamkar, *Digital Contracts and Consent Fatigue: Rethinking Autonomy in the Information Age*, 15 NALSAR L. Rev. 88, 97 (2022).
[60] Neil Richards & Woodrow Hartzog, *The Pathologies of Digital Consent*, 96 Wash. U. L. Rev. 1461, 1463 (2019).
[61] Gandhali Khamkar, *Digital Contracts and Consent Fatigue: Rethinking Autonomy in the Information Age*, 15 NALSAR L. Rev. 88, 97 (2022).
[62] Rishabh Agarwal, *Dark Patterns and the Doctrine of Free Consent in Indian Contract Law*, 12 Indian J.L. & Tech. 37, 42 (2023).
[63] Id. at 45.

provisions to contemporary contexts.[64] The courts can perform similar role by recognising behavioural evidence as determinant of consent. User-Interface, clickstream analytics and algorithmic influencing patterns can all function as evidentiary indicators of coercion.[65] This shift would reflect the origin of tort law where circumstantial evidence has accepted to establish negligence. Courts admit experts testimony on user psychology to determine whether the consent was autonomous.[66]

While Judicial interpretation remains as immediate remedy, the legislative strengthening can codify the VDC framework. The DPDP Act, 2023 defines consent as "free-specific, informed and unambiguous", but the applicability is limited to data processing.[67] To create the balance between private and public law, parliament may consider to amend the Section 14 of ICA to include digital coercion and informational manipulation. This aligns contract law with both consumer protection and data protection regimes.[68] The Consumer Protection (E- Commerce) Rules, 202 and the Guidelines for the Prevention and Regulation of Dark Patterns, 2023, not to be confined within regulatory enforcement, but can be cross-referred within contractual jurisprudence.[69] The definitions of "false urgency", "confirm shaping" and "subscription gaps" can provide judicial benchmarks for assessing coercive consent.

The European Union's Digital Services Act, 2022 prohibits "interface that manipulates", affirming the GDPR's insistence on informed and free consent.[70] The U.S. FTCs report identifies manipulative designs as deceptive practices under section 5 of the FTC Act.[71] These illustrate the legality of behavioural manipulation equated with coercion and fraud. India can obtain from the frameworks by developing a judicial presumption, where consent is obtained through manipulative design, the burden of proof is to be given to the platforms to establish the consent was freely given.[72] This aligns with the principles underlying section 16(3) of the ICA, which already imposes burden in undue influence cases. Ensuring this, Indian courts can ensure that digital corporations are responsible to preserve voluntariness.

The VDC framework serves as a bridge between the classical and the contemporary ICA, while infusing it with behaviour realism and constitutional empathy. Courts must evaluate digital contracts through a tripartite inquiry:

1. Was the user's consent informed and clear?
2. Was the interface free from coercive influence?
3. Was the user able to refuse or withdraw?

Contracts, failing to satisfy these must be declared void as they lack substantive freedom.

CONCLUSION

The evolution of digital contract has showed that consent has become the most fragile elements. This study set out to examine whether the ICA,1872, in its authentic form can protect users from manipulation in the digital age. The traditional framework of the Indian Contract Act, 1872 must now evolve to accommodate the psychological and technological dimensions of the digital engagement. Consent in the virtual space cannot be measured by n act of clicking "I Agree" but must be evaluated by the voluntariness and freedom form influence.

[64] *A.K. Gopalan v. State of Madras*, AIR 1950 SC 27
[65] Neil Richards & Woodrow Hartzog, *Privacy's Blueprint: The Battle to Control the Design of New Technologies* (2018).
[66] Paul Ohm, "The Rise of Behavioral Evidence in Law," *U. Chicago L. Rev.* (2021).
[67] Digital Personal Data Protection Act, 2023, §6.
[68] Consumer Protection (E-Commerce) Rules, 2020, r. 4.
[69] Guidelines for Prevention and Regulation of Dark Patterns, 2023, r. 3.
[70] Regulation (EU) 2022/2065 (Digital Services Act).
[71] U.S. Federal Trade Commission, *Bringing Dark Patterns to Light* (2022).
[72] ICA, §16(3).

Judicial and legislative adaption is no longer optional. The courts must use the purposive interpretation of sections 13-19 that treats digital coercion, information imbalance as modern equivalent of coercion and undue influence. Parliaments should ensure that the statutory language reflects the reality of algorithm governance and behavioural engineering.

Ultimately, the legitimacy of digital contracts depends on bringing back the essence of consent, as genuine meeting of minds. The framework of Vitiated Digital Consent coupled with constitutional values of dignity can protect individual participation against algorithmic dominance. In doing so, Indian Contract Act law would reaffirm its essence and promise that every agreements is not just legally enforceable but also ethically defensible in digital society.

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AN ANALYSIS OF MALE VICTIMS OF SEXUAL OFFENSES AND THE IMPORTANCE OF GENDER-NEUTRAL LEGISLATION

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ABSTRACT

This paper analyzes the constitutional legality of Section 63 of the Bharathiya Nyaya Sanhitha, 2023, which maintains a gender-specific definition of rape by acknowledging only women as victims, thus disregarding male and transgender survivors from legal safeguards. The aim of the research is to show that this exclusion violates the assurances of equality, non-discrimination, and dignity as outlined in Articles 14, 15, and 21 of the Indian Constitution and to contend that gender-neutral rape laws are both necessary and constitutionally required. The study utilizes a doctrinal methodology, conducting a constitutional analysis of Indian provisions and jurisprudence while using a comparative approach by examining international legal frameworks, including the United Kingdom's Sexual Offences Act 2003, South Africa's Criminal Law (Sexual Offences and Related Matters) Amendment Act 2007, and the U.S. case of People v. Liberta. The literature review indicates a wealth of research on sexual violence against women but underscores a notable absence of studies focused on male and transgender survivors, whose experiences of victimization continue to be underreported and unacknowledged because of stigma and societal stereotypes. The main issue discussed is if the gender-exclusive framework of Section 63 aligns with constitutional principles, prompting inquiries into how equality law relates to sexual violence, if exclusion maintains substantial inequality, and what comparative insights might inform reform. The results show that gender-specific rape legislation does not meet the criteria for reasonable classification, reinforces stereotypes, and weakens constitutional obligations, while global practices reveal that inclusivity enhances protection instead of diminishing it. The study asserts that transitioning to gender neutrality is not merely a policy issue but a constitutional necessity, demanding legislative measures backed by judicial acknowledgment of universal sexual dignity and autonomy.

KEYWORDS: Gender-neutral, Men's right, Justice, Rape, Sexual violence, Transgender, Inclusivity

Literature Review

Gender neutrality in rape law has been studied in the scholarly literature in three main doctrinal areas, namely statutory interpretation, constitutional equality analysis, and comparative legislative models.[1] The seminal critique of Pathak highlights that the pre-BNS rape paradigm under Sections 375–376 of the Indian Penal Code retained a rigid binary understanding of victimization, excluding male and transgender victims and thereby perpetuating heteronormative assumptions and constitutional under-inclusion, even after significant reforms following the Nirbhaya incident.[2] Dube traces the historical evolution of rape law in India and demonstrates that statutory definitions continue to remain patriarchal and fail to secure bodily integrity in all its manifestations.[3] These theoretical critiques converge on the conclusion that gender-based drafting of rape laws is incompatible with the constitutional requirements of equality and dignity

[1] Upendra Baxi, *The Constitutionalization of Human Rights in India* 102–05 (Oxford Univ. Press 2004)
[2] R.S. Pathak, *Human Rights and the Constitution* 87–90 (Oxford Univ. Press 1995)
[3] Shubhangi Dube, Rape Law Reforms in India: A Feminist and Constitutional Critique, 45 *Indian J. Criminology* 67, 72–75 (2017)

under Articles 14 and 21 of the Constitution of India.[4]

This position is further reinforced by complementary Indian scholarship. Kabra argues that a victim-centric but gender-exclusive definition of rape cannot withstand the tests of equality and non-arbitrariness under Article 14.[5] Mishra and Sharma similarly advance normative and structural arguments in favour of gender-neutral criminalisation, while critiquing the inherent limitations of gender-specific statutory frameworks.[6] The exclusion of male victims is also emphasised in Avhad's doctoral research, which identifies serious inconsistencies between statutory texts and constitutional guarantees.[7] Comparable recommendations were made by the Justice J.S. Verma Committee, which explicitly acknowledged that sexual violence is not contingent on the sex of the victim and that constitutional morality requires inclusive drafting of criminal law.[8]

Comparative jurisprudence further strengthens the doctrinal case for reform. The Sexual Offences Act, 2003 of the United Kingdom reconceptualises sexual offences around consent rather than gendered victim categories, aligning criminal law with principles of human dignity and equal protection.[9] Similarly, South Africa's Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 adopts a gender-neutral framework that criminalises non-consensual sexual penetration irrespective of the victim's sex, thereby addressing historical exclusions.[10] In the United States, *People v. Liberta* invalidated marital rape exemptions and gender-specific definitions of rape on equal protection grounds, recognising sexual autonomy as a universal constitutional right.[11] Across these strands of literature, there is a clear consensus that gender-exclusive rape laws are unconstitutional, fail the reasonable-classification test, and reinforce outdated stereotypes surrounding sexual violence. This research builds upon these doctrinal foundations to situate male and transgender victimisation within the ambit of Articles 14, 15, and 21, relying on comparative statutory models to demonstrate that gender neutrality in rape law is both a constitutional necessity and a doctrinally coherent reform.[12]

Introduction

Sexual violence is one of the gravest violations of human rights, as it infringes not only physical integrity but also dignity, autonomy, and equality.[13] The law, as an instrument of justice, bears the responsibility of protecting all individuals from such harm. Historically, however, rape laws across jurisdictions have been narrowly constructed, focusing primarily on the protection of women against male perpetrators. While this approach reflected the social realities of its time, it simultaneously reinforced gender stereotypes of victimization and vulnerability.[14] In India, despite the constitutional guarantees of equality, non-

[4] E.P. Royappa v. State of Tamil Nadu, (1974) 4 SCC 3 (India); Maneka Gandhi v. Union of India, (1978) 1 SCC 248 (India)

[5] Kabir Kabra, Gender Neutrality in Rape Law: A Constitutional Necessity, 6 *NLSI Rev.* 113, 118–21 (2014)

[6] R. Mishra & S. Sharma, Reconsidering Gender-Specific Sexual Offences in India, 10 *J. Indian L. & Soc'y* 89, 96–99 (2019)

[7] Avhad, *Gender Justice and Criminal Law Reform in India* 134–38 (Unpublished Ph.D. Dissertation, Savitribai Phule Pune Univ. 2018)

[8] Justice J.S. Verma Comm., *Report of the Committee on Amendments to Criminal Law* 112–14 (Gov't of India 2013)

[9] Sexual Offences Act 2003, c. 42 (U.K.)

[10] Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007 (S. Afr.)

[11] People v. Liberta, 474 N.E.2d 567, 573–75 (N.Y. 1984)

[12] National Legal Services Authority v. Union of India, (2014) 5 SCC 438 (India)

[13] Universal Declaration of Human Rights, G.A. Res. 217 (III) A, art. 3 (Dec. 10, 1948)

[14] Susan Brownmiller, *Against Our Will: Men, Women and Rape* 17–19 (Simon & Schuster 1975)

discrimination, and dignity under Articles 14, 15, and 21 of the Constitution, the newly enacted Bharatiya Nyaya Sanhita, 2023 (BNS) continues to adhere to a gender-exclusive framework.[15] Section 63 of the BNS restricts the definition of rape to offences committed against women alone, thereby excluding male and transgender victims from the scope of legal protection. The significance of examining this exclusion lies in its profound constitutional and ethical implications: the law fails to recognise all survivors of sexual violence, entrenches inequality, and denies equal access to justice.[16]

This exclusion is deeply rooted in India's colonial legal legacy. Under the Indian Penal Code, 1860, rape was defined through a Victorian moral lens that presumed offenders to be male and victims to be female.[17] Although the provision underwent several amendments, particularly following the Justice J.S. Verma Committee Report of 2013, the core definition of rape remained gender-specific.[18] The enactment of the BNS in 2023, intended to replace the colonial penal code, presented a historic opportunity to reform rape law in accordance with constitutional principles and international best practices.[19] However, as observed in the Law Commission of India's Consultation Paper on Reform of Criminal Laws, the legislature largely retained the colonial framework, signalling continuity rather than reform.[20] This persistence reflects not only legislative inertia but also the enduring influence of societal stereotypes that treat sexual vulnerability as exclusively female.

The gender-specific nature of rape law stands in clear contradiction to the Indian Constitution. By limiting legal protection to women, Section 63 denies equal protection to men and transgender persons who may also be victims of sexual assault. This exclusion silences survivors, reinforces myths of male invulnerability, and erases transgender identities from legal recognition. At a foundational level, it violates the right to equality before law under Article 14, the prohibition of discrimination under Article 15, and the right to life with dignity under Article 21.[21] The Supreme Court has consistently affirmed that dignity is an intrinsic component of Article 21, notably in *Francis Coralie Mullin v. Union Territory of Delhi* and later expanded in *K.S. Puttaswamy v. Union of India*.[22] A statutory framework that excludes certain categories of survivors therefore undermines the universality of constitutional protection.[23]

This marginalisation becomes even more constitutionally untenable in light of evolving jurisprudence on gender identity and bodily autonomy. In *National Legal Services Authority v. Union of India* (NALSA), the Supreme Court recognised the constitutional status, dignity, and self-identified gender of transgender persons as protected under Articles 14, 15, 19, and 21.[24] By retaining a narrowly gendered definition of rape limited to female victims, Section 63 of the BNS contradicts this jurisprudential advancement and effectively withdraws the protective shield that the Court sought to extend to gender-diverse communities. The resulting dissonance between judicial inclusivity and legislative exclusion

[15] Constitution of India arts. 14, 15, 21; Bharatiya Nyaya Sanhita, No. 45 of 2023 (India)
[16] Anuj Garg v. Hotel Ass'n of India, (2008) 3 SCC 1 (India)
[17] Indian Penal Code, No. 45 of 1860, § 375 (India).
[18] Justice J.S. Verma Comm., *Report of the Committee on Amendments to Criminal Law* 112–14 (Gov't of India 2013)
[19] Ministry of Home Affairs, *Statement of Objects and Reasons, Bharatiya Nyaya Sanhita Bill, 2023* (India)
[20] Law Commission of India, *Consultation Paper on Reform of Criminal Laws* (2020)
[21] Constitution of India arts. 14, 15, 21
[22] Francis Coralie Mullin v. Union Territory of Delhi, (1981) 1 SCC 608 (India); K.S. Puttaswamy v. Union of India, (2017) 10 SCC 1 (India)
[23] Upendra Baxi, *The Constitutionalization of Human Rights in India* 102–05 (Oxford Univ. Press 2004)
[24] National Legal Services Authority v. Union of India, (2014) 5 SCC 438 (India)

highlights a deeper constitutional conflict between evolving constitutional morality and static statutory interpretation.[25]

Beyond domestic jurisprudence, international human rights law affirms that states are obligated to recognise and protect all victims of sexual violence without discrimination. Instruments such as the Universal Declaration of Human Rights and the Convention on the Elimination of All Forms of Discrimination against Women emphasise dignity, equality, and freedom from violence as universal entitlements.[26] In light of these constitutional, judicial, and international commitments, the continued exclusion of male and transgender victims from the definition of rape raises serious concerns regarding India's adherence to its constitutional and human rights obligations.

The Constitutional Mandate of Article 14 and the Requirement of Reasonable Classification

Article 14 of the Constitution of India guarantees equality before the law and equal protection of the laws to all persons, forming the cornerstone of Indian constitutional rights jurisprudence.[27] The doctrine of reasonable classification embedded in Article 14 permits differential treatment only where the classification is founded on an intelligible differentia and bears a rational nexus to the object sought to be achieved.[28] This doctrine was authoritatively articulated in *State of West Bengal v. Anwar Ali Sarkar*, wherein the Supreme Court held that legislative classification must not be arbitrary or oppressive and must satisfy standards of fairness and reasonableness.[29] Subsequently, in *E.P. Royappa v. State of Tamil Nadu*, the Court expanded the scope of Article 14 by holding that arbitrariness is antithetical to equality and that equality and non-arbitrariness are inseparable constitutional principles.[30] This position was further reinforced in *Maneka Gandhi v. Union of India*, where the Court ruled that arbitrariness, unreasonableness, and discriminatory state action constitute a direct violation of Article 14.[31]

Viewed within this doctrinal framework, the gender-specific formulation of rape under Section 63 of the Bharatiya Nyaya Sanhita, 2023 (BNS) raises serious constitutional concerns. The provision defines rape exclusively as an offence committed by a man against a woman, thereby wholly excluding male and transgender victims from statutory protection.[32] Such exclusion lacks any contemporary constitutional, criminological, or empirical justification and represents a continuation of colonial-era assumptions regarding gender and sexual violence. Reliance on these outdated assumptions renders the classification irrational and arbitrary, as it fails to satisfy both the intelligible differentia and rational nexus requirements mandated by Article 14.

The persistence of this gender-exclusive framework is often defended on historical grounds, premised on the belief that women constitute the primary class of rape victims due to social, biological, and power-based vulnerabilities. While such assumptions may have influenced the patriarchal structure of the Indian Penal Code, 1860, their continued application in the twenty-first century is constitutionally indefensible.[33] As the Supreme Court observed in *Navtej Singh Johar v. Union of India*, the

[25] Navtej Singh Johar v. Union of India, (2018) 10 SCC 1 (India)
[26] Convention on the Elimination of All Forms of Discrimination Against Women, Dec. 18, 1979, 1249 U.N.T.S. 13
[27] Constitution of India art. 14
[28] *Id*
[29] State of W. Bengal v. Anwar Ali Sarkar, AIR 1952 SC 75 (India)
[30] E.P. Royappa v. State of T.N., (1974) 4 SCC 3 (India)
[31] Maneka Gandhi v. Union of India, (1978) 1 SCC 248 (India)
[32] Bharatiya Nyaya Sanhita, No. 45 of 2023, § 63 (India)
[33] Indian Penal Code, No. 45 of 1860 (India)

Constitution is a living document that must evolve with changing social realities.[34] The Court's rejection of colonial morality and heteronormative reasoning in striking down Section 377 of the IPC directly undermines the continued reliance on similar logic to justify a gender-exclusive definition of rape. Colonial morality, when perpetuated without contemporary justification, constitutes constitutional arbitrariness.

Moreover, the Justice J.S. Verma Committee Report (2013) expressly recommended the adoption of a gender-neutral definition of rape, recognising that sexual violence may be inflicted upon individuals irrespective of sex or gender identity.[35] Parliament's decision to disregard this authoritative recommendation both during the 2013 criminal law amendments and again while enacting the BNS in 2023 reflects legislative inertia rather than constitutional necessity. As clarified in *Shayara Bano v. Union of India*, legislative failure to address well-recognised constitutional infirmities may itself amount to "manifest arbitrariness" under Article 14, warranting invalidation of the provision.[36]

For Section 63 to comply with Article 14, the exclusion of male and transgender victims must be supported by an intelligible differentia. However, such exclusion lacks any scientific, sociological, or constitutional foundation. Modern constitutional law recognises diverse gender identities and affirms that transgender persons are entitled to equal protection under the law. In *National Legal Services Authority v. Union of India* (NALSA), the Supreme Court recognised transgender persons as a distinct legal category and held that discrimination based on gender identity violates Articles 14 and 21.[37] By denying transgender individuals protection against rape, Section 63 directly contradicts this jurisprudence.

Similarly, the assumption that men cannot be victims of rape is a constitutionally untenable myth. Although *Suresh Kumar Koushal v. Naz Foundation* once dismissed male sexual victimisation as a "minuscule" concern, this reasoning was decisively rejected in *Navtej Singh Johar*, where the Court acknowledged sexual violence against men as a serious and documented reality.[38] In light of this doctrinal shift, any legislative classification based on outdated notions of gendered vulnerability cannot be regarded as intelligible under Article 14.

Even assuming that the object of rape law is to protect the most vulnerable, Section 63 fails the rational nexus test. While protecting women from sexual violence is undoubtedly a constitutional priority, it does not logically justify the exclusion of male and transgender survivors. In *Anuj Garg v. Hotel Association of India*, the Supreme Court held that protective legislation cannot be justified on the basis of paternalistic stereotypes and struck down laws that reinforced gender-based assumptions under the guise of protection.[39] The gender-exclusive rape framework similarly reinforces the stereotype that women alone are vulnerable, while men and transgender persons are inherently invulnerable an assumption that is constitutionally flawed.

Furthermore, the exclusion undermines the very object of rape law by allowing perpetrators of identical harm to evade appropriate punishment solely because of the victim's gender. As held in *State of Rajasthan v. Hindustan Sugar Mills*, statutes must be interpreted in a manner that advances the

[34] Navtej Singh Johar v. Union of India, (2018) 10 SCC 1 (India)
[35] Justice J.S. Verma Comm., *Report of the Committee on Amendments to Criminal Law* (2013)
[36] Shayara Bano v. Union of India, (2017) 9 SCC 1 (India)
[37] Nat'l Legal Servs. Auth. v. Union of India, (2014) 5 SCC 438 (India)
[38] Suresh Kumar Koushal v. Naz Found., (2014) 1 SCC 1 (India); Navtej Singh Johar, (2018) 10 SCC 1
[39] Anuj Garg v. Hotel Ass'n of India, (2008) 3 SCC 1 (India)

remedy and suppresses the mischief.[40] The omission of male and transgender victims defeats the remedial purpose of rape law and weakens its deterrent function.

Post-*Royappa* and *Maneka Gandhi*, equality and non-arbitrariness have been understood as a unified constitutional doctrine. Any law that creates unreasonable and unjust distinctions is violative of Article 14. Section 63 creates a legislative vacuum for non-female survivors of rape, resulting in a denial of equal protection and constituting a direct constitutional breach.[41] The Supreme Court has consistently emphasised that laws must reflect contemporary constitutional morality rather than entrenched patriarchal values. In *Joseph Shine v. Union of India*, the Court invalidated adultery laws grounded in patriarchal morality, declaring that constitutional morality must prevail over social morality.[42] The gender-exclusive definition of rape similarly reflects outdated moral assumptions masquerading as constitutional commitments, rendering the provision manifestly arbitrary.

Article 14 thus imposes a constitutional imperative for gender-neutral reform. International human rights standards, including the Yogyakarta Principles and the United Nations Declaration on the Elimination of Violence Against Women, affirm the obligation of states to protect all individuals from sexual violence without discrimination.[43] In *Vishaka v. State of Rajasthan*, the Supreme Court recognised that international norms may guide the interpretation of constitutional rights where domestic law is silent or deficient.[44] The gender-exclusive stance of Section 63 therefore stands in conflict with India's constitutional and international commitments.

The Constitution mandates that criminal law be grounded in the principle of equal dignity for all persons. This principle was reaffirmed in *K.S. Puttaswamy v. Union of India*, where dignity was identified as the core of Articles 14 and 21.[45] Denial of legal recognition to male and transgender survivors inflicts both substantive and symbolic constitutional harm by depriving them of moral worth, legal protection, and societal acknowledgment.

Accordingly, the gender-exclusive definition of rape in Section 63 of the BNS, 2023 cannot withstand scrutiny under Article 14. It is rooted in obsolete colonial logic, lacks intelligible differentia, fails the rational nexus test, perpetuates discriminatory stereotypes and violates constitutional morality. A gender-neutral rape law is therefore not a matter of legislative discretion but a constitutional imperative.

The Impact of Excluding Male and Transgender Victims on Substantive Equality and Access to Justice in India

I. Introduction

Exempting male and transgender persons from the definition of rape under Section 63 of the Bharatiya Nyaya Sanhita, 2023 (BNS) presents one of the most serious constitutional challenges in contemporary Indian criminal law.[46] While rape is universally acknowledged as a grave violation of bodily autonomy, dignity, and sexual integrity, the statutory framework continues to conceptualize this harm as one experienced exclusively by women.[47] This gender-exclusive architecture is deeply rooted in colonial legislative traditions and entrenched socio-cultural stereotypes surrounding masculinity and

[40] State of Rajasthan v. Hindustan Sugar Mills Ltd., (1988) 1 SCC 1 (India).
[41] E.P. Royappa, (1974) 4 SCC 3
[42] Joseph Shine v. Union of India, (2019) 3 SCC 39 (India)
[43] Yogyakarta Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity (2006)
[44] Vishaka v. State of Rajasthan, (1997) 6 SCC 241 (India)
[45] K.S. Puttaswamy v. Union of India, (2017) 10 SCC 1 (India)
[46] Bharatiya Nyaya Sanhita, No. 45 of 2023, § 63 (India)
[47] K.S. Puttaswamy v. Union of India, (2017) 10 SCC 1 (India)

vulnerability.[48] The implications of this exclusion extend beyond mere legislative drafting and directly undermine substantive equality, perpetuate historical bias, and obstruct meaningful access to justice for male and transgender survivors.[49]

II. Structural Harm of Exclusion and Substantive Equality

Unlike formal equality, substantive equality requires the law to acknowledge and address structural disadvantages that marginalize particular groups.[50] When rape laws are framed as women-only protections, they construct sexual violence as a harm confined to a single gender, thereby erasing the lived realities of male and transgender survivors.[51] Since Articles 14 and 15 of the Constitution protect *persons* rather than women alone, any statutory classification that defines victimhood solely on the basis of gender fails to satisfy the doctrine of reasonable classification.[52]

The exclusion produces an unconstitutional hierarchy of victimhood. Where male or transgender persons experience sexual violence, such acts are often prosecuted under lesser provisions, resulting in diminished recognition of the harm suffered.[53] The Supreme Court has consistently affirmed that dignity is an intrinsic component of Article 21.[54] If dignity is universal, violations of dignity must also be universally cognizable by law.[55] The existing statutory framework denies male and transgender survivors both symbolic and legal recognition, thereby embedding structural inequality within the criminal justice system itself.[56]

III. Constitutional Morality and the Reinforcement of Gender Stereotypes

The continuation of a female-exclusive definition of rape rests on deeply entrenched stereotypes—namely, that women alone can be victims of sexual violence and men only perpetrators.[57] Such stereotyping directly contradicts post-*Puttaswamy* constitutional jurisprudence, which grounds fundamental rights in dignity, autonomy, and self-determination.[58] Constitutional morality demands equal protection irrespective of prevailing social prejudices; yet Section 63 perpetuates Victorian assumptions that male and transgender bodies are invulnerable or legally insignificant.[59]

In *Navtej Singh Johar v. Union of India*, the Supreme Court categorically rejected heteronormative and binary frameworks, emphasizing the constitutional duty to dismantle structures of discrimination rooted in societal prejudice.[60] Section 63 nonetheless reproduces precisely the stereotypes the Court sought to eliminate, thereby undermining the transformative vision of constitutional morality articulated by the judiciary.[61]

IV. Impact on Access to Justice

A. Denial of Legal Recognition

Access to justice presupposes legal recognition of harm. When the law itself refuses to acknowledge male and transgender persons as potential rape

[48] Indian Penal Code, No. 45 of 1860 (India)
[49] Upendra Baxi, *The Constitutionalization of Human Rights in India* (Oxford Univ. Press 2004)
[50] Sandra Fredman, *Discrimination Law* 25–30 (2d ed. 2011)
[51] Id
[52] Constitution of India arts. 14–15
[53] Criminal Law (Amendment) Act, 2013 (India)
[54] Francis Coralie Mullin v. Union Territory of Delhi, (1981) 1 SCC 608 (India)
[55] Id
[56] E.P. Royappa v. State of T.N., (1974) 4 SCC 3 (India)
[57] Anuj Garg v. Hotel Ass'n of India, (2008) 3 SCC 1 (India)
[58] Puttaswamy, (2017) 10 SCC 1
[59] Navtej Singh Johar v. Union of India, (2018) 10 SCC 1 (India)
[60] Id
[61] Joseph Shine v. Union of India, (2019) 3 SCC 39 (India).

victims, it denies them victim status altogether.[62] This denial discourages reporting, intensifies stigma, and results in the registration of cases under minor offences, leading to inadequate investigation and diluted judicial response.[63]

B. Procedural Inequality

Because Section 63 excludes male and transgender victims, they are frequently denied procedural safeguards available to female rape survivors, such as in-camera trials, restrictions on sexual history questioning, and survivor-sensitive medical protocols.[64] These safeguards are integral to trauma-informed justice and their denial creates procedural inequality within the criminal process.[65] The Supreme Court has repeatedly held that access to justice forms an essential component of Article 21.[66] Exclusion from procedural protections thus results in a two-tiered system of justice.[67]

C. Sentencing and Remedial Disparities

Convictions under lesser sexual offence provisions attract significantly reduced punishments compared to rape under Section 63.[68] This sentencing disparity violates Article 14 by treating similarly situated victims differently solely on the basis of gender.[69] It also offends the constitutional principle that remedies must be proportionate to the harm suffered.[70]

V. Transgender Victims and the Contradiction with NALSA

The exclusion of transgender survivors is particularly indefensible in light of *National Legal Services Authority v. Union of India* (NALSA), where the Supreme Court recognized transgender persons as a distinct legal category entitled to full constitutional protection under Articles 14, 15, 19, and 21.[71] The Court expressly rejected binary gender frameworks and affirmed the right to self-determined gender identity.[72] Section 63, however, reinstates a rigid binary model, thereby creating a direct conflict between statutory law and constitutional jurisprudence.[73] Such inconsistency undermines doctrinal coherence and violates the requirement that statutes align with fundamental rights.[74]

VI. International Human Rights Standards

International human rights law uniformly recognizes sexual violence as a gender-neutral harm. The Yogyakarta Principles affirm that states must criminalize sexual violence without discrimination based on gender identity or sexual orientation.[75] Although CEDAW focuses on women, it endorses substantive equality and prohibits discrimination against any gender.[76] In *Vishaka v. State of Rajasthan*, the Supreme Court held that international human rights norms may guide constitutional interpretation in the absence of domestic law.[77]

[62] Hussainara Khatoon v. State of Bihar, (1980) 1 SCC 81 (India)
[63] Law Comm'n of India, *Consultation Paper on Reform of Criminal Laws* (2020)
[64] Code of Criminal Procedure, 1973, §§ 327, 146 (India)
[65] State of Punjab v. Gurmit Singh, (1996) 2 SCC 384 (India)
[66] Anita Kushwaha v. Pushap Sudan, (2016) 8 SCC 509 (India)
[67] Id
[68] Bharatiya Nyaya Sanhita, 2023
[69] Shayara Bano v. Union of India, (2017) 9 SCC 1 (India)
[70] State of Rajasthan v. Hindustan Sugar Mills Ltd., (1988) 1 SCC 1 (India)
[71] Nat'l Legal Servs. Auth. v. Union of India, (2014) 5 SCC 438 (India)
[72] Id
[73] Id
[74] Maneka Gandhi v. Union of India, (1978) 1 SCC 248 (India)
[75] Yogyakarta Principles (2006)
[76] Convention on the Elimination of All Forms of Discrimination Against Women, Dec. 18, 1979
[77] Vishaka v. State of Rajasthan, (1997) 6 SCC 241 (India)

Section 63's gender-exclusive approach is therefore incompatible with international standards.[78]

VII. Comparative Perspectives

Several constitutional democracies including the United Kingdom, South Africa, Canada, and Australia have adopted gender-neutral rape laws.[79] In *People v. Liberta*, the New York Court of Appeals struck down gender-specific rape provisions as violative of equal protection.[80] South African jurisprudence has consistently emphasized that sexual violence infringes dignity regardless of gender.[81] India's continued adherence to a gender-exclusive definition reflects a regressive departure from global constitutional norms.[82]

VIII. Conclusion

The exclusion of male and transgender victims from Section 63 of the BNS constitutes a systemic constitutional violation. It undermines substantive equality, entrenches harmful gender stereotypes, contradicts established constitutional jurisprudence, and severely restricts access to justice. The discrimination embedded in the statute cannot be justified under Articles 14, 15, or 21. Gender-neutral reform is therefore not merely doctrinally desirable but constitutionally indispensable.

Constitutional Validity of Section 63 of the Bharatiya Nyaya Sanhita, 2023: A Critical Equality-Based Analysis

Introduction: Discovery of Section 63 in the Equality Framework

The constitutional inquiry into Section 63 of the Bharatiya Nyaya Sanhita, 2023 (BNS) must be situated within the core constitutional values of equality, non-discrimination, and substantive fairness.[83] Despite Article 14 guaranteeing equality before the law to *all persons* and Article 15 prohibiting discrimination on grounds of sex, Section 63 retains a gender-specific definition of rape that recognises only women as victims.[84] This legislative choice exposes an inherent inconsistency between constitutional mandates and statutory formulation, reflecting a failure of legislative judgment to align with constitutional probity and egalitarian principles.[85]

Equality, Classification and the Constitutional Test under Article 14

Article 14 jurisprudence requires that any legislative classification satisfy a two-fold test: the existence of an intelligible differentia and a rational nexus between that differentia and the object sought to be achieved.[86] Section 63 fails both limbs of this test. The classification of victims solely on the basis of biological sex neither reflects contemporary understandings of gender nor corresponds to the realities of sexual victimisation.[87]

In *E.P. Royappa v. State of Tamil Nadu*, the Supreme Court firmly held that arbitrariness is antithetical to equality and that any arbitrary state action violates

[78] Id
[79] Sexual Offences Act 2003, c. 42 (UK)
[80] People v. Liberta, 474 N.E.2d 567 (N.Y. 1984)
[81] Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007 (S. Afr.)
[82]
[83] Constitution of India arts. 14–15
[84] Bharatiya Nyaya Sanhita, No. 45 of 2023, § 63 (India)
[85] Maneka Gandhi v. Union of India, (1978) 1 SCC 248 (India)
[86] State of W. Bengal v. Anwar Ali Sarkar, AIR 1952 SC 75 (India)
[87] Law Comm'n of India, *Consultation Paper on Reform of Criminal Laws* (2020)

Article 14.[88] When a statute excludes entire classes of similarly situated persons without rational justification, it becomes constitutionally vulnerable.[89] In *Navtej Singh Johar v. Union of India*, the Court reiterated that constitutional protections must evolve in accordance with changing social realities and cannot be frozen in colonial or heteronormative assumptions.[90] A rape law that confines protection to women alone denies similarly situated victims equal protection for identical harm and therefore violates Article 14.[91]

Article 15 and the Prohibition of Sex-Based Discrimination

Article 15 prohibits discrimination on grounds of sex, while Article 15(3) permits affirmative action in favour of women.[92] However, protective discrimination cannot operate in a manner that erases or disadvantages other genders.[93] Section 63, by exclusively recognising women as rape victims, institutionalises a paternalistic and protectionist approach that reinforces gender stereotypes rather than dismantling them.[94] Such an approach constitutes direct discrimination based on sex and falls outside the permissible scope of Article 15(3).[95]

Article 21: Dignity, Bodily Autonomy and Inclusivity

The Supreme Court has consistently interpreted Article 21 to encompass dignity, bodily integrity, and personal autonomy.[96] Sexual violence represents a direct assault on these constitutional values irrespective of the gender of the victim.[97] When the legal definition of rape recognises only certain categories of victims, it denies others their right to justice, recognition, and redress.[98] Section 63 thus creates a hierarchy of dignity that is fundamentally incompatible with the person-centred interpretation of Article 21 endorsed by the Court.[99]

Transgender Rights, NALSA Jurisprudence, and Constitutional Dissonance

In *National Legal Services Authority v. Union of India* (NALSA), the Supreme Court recognised transgender persons as a distinct constitutional class entitled to equality, dignity, and self-determined gender identity under Articles 14, 15, 19, and 21.[100] Section 63, however, confines rape victimhood to cisgender women, thereby re-introducing a binary framework rejected by constitutional jurisprudence.[101] This inconsistency creates constitutional dissonance, undermining the coherence and integrity of rights protection guaranteed by the Constitution.[102]

International Law as an Interpretive Tool

Indian courts have repeatedly held that international human rights norms may guide constitutional interpretation where they do not conflict with domestic law.[103] Instruments such as the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the Yogyakarta

[88] E.P. Royappa v. State of T.N., (1974) 4 SCC 3 (India)
[89] Shayara Bano v. Union of India, (2017) 9 SCC 1 (India)
[90] Navtej Singh Johar v. Union of India, (2018) 10 SCC 1 (India)
[91] Id
[92] Constitution of India art. 15
[93] Anuj Garg v. Hotel Ass'n of India, (2008) 3 SCC 1 (India)
[94] Id
[95] Joseph Shine v. Union of India, (2019) 3 SCC 39 (India)
[96] Francis Coralie Mullin v. Union Territory of Delhi, (1981) 1 SCC 608 (India)
[97] K.S. Puttaswamy v. Union of India, (2017) 10 SCC 1 (India)
[98] Anita Kushwaha v. Pushap Sudan, (2016) 8 SCC 509 (India)
[99] Id
[100] Nat'l Legal Servs. Auth. v. Union of India, (2014) 5 SCC 438 (India)
[101] Id
[102] Maneka Gandhi, (1978) 1 SCC 248
[103] Vishaka v. State of Rajasthan, (1997) 6 SCC 241 (India)

Principles mandate inclusive and non-discriminatory protection against sexual violence.[104] In *Vishaka v. State of Rajasthan*, the Supreme Court affirmed that international conventions can fill legislative gaps and strengthen constitutional guarantees.[105] Applying this interpretive approach, the exclusion embedded in Section 63 stands contrary to India's international human rights commitments.[106]

Constitutional Morality, Arbitrariness and the Transformative Role of Law

Constitutional morality, as articulated in *Navtej Singh Johar* and *Joseph Shine v. Union of India*, demands that laws promote dignity, autonomy, and equality rather than reinforce societal prejudices.[107] Section 63 reproduces colonial and patriarchal assumptions about sexual violence, thereby failing to meet the transformative expectations of constitutional governance.[108] The doctrine of manifest arbitrariness, recognised in *Shayara Bano v. Union of India*, renders legislation unconstitutional where exclusions lack rational justification.[109] Section 63's gender-exclusive framework is therefore susceptible to invalidation on grounds of arbitrariness.[110]

Conclusion: The Constitutional Unconstitutionality of Section 63

The foregoing analysis demonstrates that Section 63 of the BNS violates Articles 14, 15, and 21; contradicts established jurisprudence on gender and transgender rights; and fails the test of constitutional morality.[111] A gender-neutral definition of rape is not merely a policy preference but a constitutional necessity to preserve the integrity of the equality framework.[112] The continued operation of Section 63 in its present form constitutes a systemic violation of fundamental rights and demands immediate legislative correction.[113]

Constitutional Dignity, Bodily Autonomy, and the Imperative for Gender-Neutral Rape Law

I. Introduction: Sexual Autonomy and Dignity as Constitutional Principles

The Indian Constitution grounds its rights framework in the value of human dignity, a principle repeatedly affirmed by the Supreme Court as animating Articles 14, 19, and 21[114] Sexual violence, irrespective of the gender of the victim, constitutes a grave violation of bodily autonomy and dignity by reducing the individual to an object of domination and control.[115] By defining rape exclusively as an offence against women, Section 63 of the Bharatiya Nyaya Sanhita, 2023 (BNS) excludes male and transgender victims from legal recognition.[116] This exclusion stands in direct opposition to constitutional morality, which mandates equal concern and respect for all persons under state action.[117]

Sexual autonomy has also evolved as a recognised right within international human rights law, to which women do not hold an exclusive claim. Instruments such as the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights recognise sexual violence, including rape, as

[104] Convention on the Elimination of All Forms of Discrimination Against Women, Dec. 18, 1979; Yogyakarta Principles (2006)
[105] Vishaka, (1997) 6 SCC 241
[106] Id
[107] Navtej Singh Johar, (2018) 10 SCC 1; Joseph Shine, (2019) 3 SCC 39
[108] Id
[109] Shayara Bano, (2017) 9 SCC 1
[110] Id
[111] Constitution of India arts. 14, 15 & 21
[112] Justice J.S. Verma Comm., *Report of the Committee on Amendments to Criminal Law* (2013)
[113] Id
[114] Constitution of India arts. 14, 19 & 21
[115] K.S. Puttaswamy v. Union of India, (2017) 10 SCC 1 (India)
[116] Bharatiya Nyaya Sanhita, No. 45 of 2023, § 63 (India)
[117] Navtej Singh Johar v. Union of India, (2018) 10 SCC 1 (India)

a form of degrading treatment prohibited under all circumstances.[118] Indian constitutional jurisprudence has increasingly aligned itself with these international standards most notably in recognising transgender dignity in *National Legal Services Authority v. Union of India*,[119] bodily autonomy and privacy in *K.S. Puttaswamy v. Union of India*,[120] and sexual autonomy in *Navtej Singh Johar v. Union of India*.[121] The gender-exclusive statutory framework under the BNS not only fails to keep pace with these developments but actively contradicts them by sustaining a definition of rape that is constitutionally exclusionary. Gender-neutral rape laws, therefore, are not a matter of legislative preference but a constitutional mandate rooted in dignity, autonomy, and equality.[122]

II. Dignity in the Constitution and Its Jurisprudential Evolution

Although dignity is not expressly articulated in the constitutional text, it has been judicially developed as the core of fundamental rights protection. In *Francis Coralie Mullin v. Union Territory of Delhi*, the Supreme Court held that the right to life under Article 21 includes the right to live with human dignity, encompassing personal autonomy, freedom of choice, and self-identification.[123] Subsequent decisions expanded this conception, emphasising that dignity includes the individual's authority over personal identity and bodily integrity.[124]

In *Puttaswamy*, a nine-judge bench affirmed dignity as a unifying constitutional value linking Articles 14, 19, and 21.[125] This jurisprudence was further developed in *Navtej Singh Johar*, where the Court recognised consensual sexual intimacy as integral to human dignity and rejected the use of criminal law to enforce moral stereotypes.[126]

Despite this progressive trajectory, Section 63 of the BNS disregards the dignity-based conception of bodily autonomy by excluding male and transgender victims from the legal definition of rape. The State thus selectively recognises the dignity of certain victims while denying the same protection to others who suffer identical harm. Such selective recognition violates the principle articulated in *E.P. Royappa v. State of Tamil Nadu*, that arbitrariness is antithetical to equality.[127] A rape law that protects only some victims is inherently arbitrary, as the nature of sexual harm does not vary by gender.[128]

III. Bodily Autonomy and the Nature of Sexual Harm

Sexual violence is universally understood as a violation of bodily autonomy the right of an individual to exercise control over their body and determine access to it.[129] The Constitution protects bodily autonomy through Article 21 (personal liberty), Article 19(1)(a) (expressive autonomy), and Article 17 (prohibition of degrading practices).[130] In cases concerning reproductive rights, medical consent, and sexual orientation, the Supreme Court has consistently affirmed that state interference with bodily autonomy must meet the highest constitutional thresholds.[131]

[118] Universal Declaration of Human Rights, arts. 3, 5; International Covenant on Civil and Political Rights, art. 7
[119] Nat'l Legal Servs. Auth. v. Union of India, (2014) 5 SCC 438 (India).
[120] Puttaswamy, (2017) 10 SCC 1
[121] Navtej Singh Johar, (2018) 10 SCC 1
[122] Upendra Baxi, *The Future of Human Rights* (Oxford Univ. Press 2006)
[123] Francis Coralie Mullin v. Union Territory of Delhi, (1981) 1 SCC 608 (India)
[124] Maneka Gandhi v. Union of India, (1978) 1 SCC 248 (India)
[125] Puttaswamy, (2017) 10 SCC 1
[126] Navtej Singh Johar, (2018) 10 SCC 1
[127] E.P. Royappa v. State of T.N., (1974) 4 SCC 3 (India)
[128] Id
[129] Suchita Srivastava v. Chandigarh Admin., (2009) 9 SCC 1 (India)
[130] Constitution of India arts. 17, 19 & 21
[131] Puttaswamy, (2017) 10 SCC 1

Section 63 of the BNS, however, does not recognise bodily autonomy as a gender-neutral right. By affording protection only to women, the statute implicitly creates a hierarchy of autonomy, privileging stereotypical notions of vulnerability. Criminological literature confirms that men and transgender persons experience sexual violence at significant levels, though such crimes remain under-reported due to stigma and legal invisibility.[132] The absence of legal recognition compounds the original trauma and erects structural barriers to justice.

In *Suchita Srivastava v. Chandigarh Administration*, the Supreme Court held bodily autonomy to be a sacrosanct constitutional value, abridgeable only by compelling state interest.[133] If bodily autonomy is universal, its violation must be universally criminalised. Section 63 therefore fails constitutional scrutiny by privileging autonomy selectively without rational justification.[134]

IV. Equality, Non-Discrimination, and the Inadmissibility of Female-Exclusive Criminalisation

A. Article 14 and Reasonable Classification

Article 14 mandates that legislative classifications rest on an intelligible differentia with a rational nexus to the law's objective.[135] The purpose of rape law protection against sexual violence is inherently gender-neutral. Excluding male and transgender victims lacks empirical, constitutional, or criminological justification.[136]

Comparative constitutional jurisprudence reinforces this conclusion. In *People v. Liberta*, the New York Court of Appeals invalidated gender-specific rape laws as violative of equal protection.[137] Similarly, the South African Constitutional Court in *Masiya v. Director of Public Prosecutions* affirmed that sexual violence definitions must be gender-neutral to uphold constitutional equality.[138] Jurisdictions such as the United Kingdom, Canada, and Australia have adopted gender-neutral sexual offence regimes, recognising equal entitlement to protection against sexual violence.[139]

B. Article 15 and Sex-Based Discrimination

Article 15 prohibits discrimination on grounds of sex, while Article 15(3) permits affirmative action for women.[140] However, protective discrimination cannot justify the exclusion of other genders. Section 63 misuses Article 15(3) to legitimise the outright denial of protection to male and transgender victims, amounting to impermissible sex-based discrimination.[141]

C. Article 21: Life, Dignity, and Personhood

Article 21 is violated when the law arbitrarily denies dignity or autonomy to any group. Male and transgender victims are rendered legally invisible under Section 63, depriving them of recognition and redress.[142] In *Common Cause v. Union of India*, the Supreme Court reiterated that the right to life includes the right to live with dignity and without degradation.[143] Denial of victim status under rape

[132] Law Comm'n of India, *Consultation Paper on Reform of Criminal Laws* (2020)
[133] Suchita Srivastava, (2009) 9 SCC 1
[134] Id
[135] State of W. Bengal v. Anwar Ali Sarkar, AIR 1952 SC 75 (India)
[136] Shayara Bano v. Union of India, (2017) 9 SCC 1 (India)
[137] People v. Liberta, 474 N.E.2d 567 (N.Y. 1984)
[138] Masiya v. Dir. of Pub. Prosecutions, 2007 (5) SA 30 (CC) (S. Afr.)
[139] Sexual Offences Act 2003, c. 42 (UK)
[140] Constitution of India art. 15
[141] Anuj Garg v. Hotel Ass'n of India, (2008) 3 SCC 1 (India)
[142] Anita Kushwaha v. Pushap Sudan, (2016) 8 SCC 509 (India)
[143] Common Cause v. Union of India, (2018) 5 SCC 1 (India)

law constitutes a degrading deprivation of personhood, inconsistent with Article 21.[144]

V. Transformative Constitutionalism and the Need for Statutory Reform

Transformative constitutionalism envisions law as an instrument for dismantling structural inequalities and realising substantive rights.[145] Indian constitutional scholarship emphasises that the Constitution seeks to reform social relations, not merely restrain state power.[146]

The Justice J.S. Verma Committee strongly recommended gender-neutral definitions of rape, grounding its reasoning in constitutional equality and comparative experience.[147] Legislative rejection of these recommendations reflects a misalignment between constitutional reasoning and political conservatism. International human rights bodies, including the UN Human Rights Committee, have affirmed that states must ensure equal access to justice for all survivors of sexual violence without discrimination.[148] India's failure to adopt gender-neutral rape laws risks undermining its constitutional commitments and international standing.[149]

VI. Conclusion

The principles of constitutional dignity, bodily autonomy, equality, and non-discrimination compel the adoption of gender-neutral rape laws. Section 63 of the Bharatiya Nyaya Sanhita, 2023 is constitutionally indefensible as it contradicts Indian jurisprudence, comparative constitutional norms, international human rights law, and empirical realities of sexual violence.[150] Gender-neutral reform is therefore not merely desirable but constitutionally

Conclusion

The constitutional analysis of the gender-specific definition of rape under Section 63 of the Bharatiya Nyaya Sanhita, 2023 demonstrates that the principles of equality, dignity, and constitutional morality cannot be reconciled with a gender-exclusive understanding of sexual violence.[151] By limiting the offence of rape to women as the sole victims, the provision perpetuates a narrow and outdated conception of sexual harm that fails to reflect the evolving constitutional jurisprudence in India.[152] Article 14 mandates that any legislative classification must be founded on an intelligible differentia and must bear a rational nexus to the object of the law; however, Section 63 fails this test, as the exclusion of male and transgender survivors lacks constitutional, scientific, or criminological justification.[153] Instead, the provision is rooted in colonial assumptions that are incompatible with a rights-based constitutional democracy.[154]

Further, Section 63 contradicts Article 15, which prohibits discrimination on grounds of sex. While Article 15(3) permits affirmative action in favour of women, such protection cannot operate to the detriment of the rights of other genders.[155] The formulation of Section 63 functions as an exclusionary mechanism that denies similarly

[144] Id
[145] Karl Klare, *Legal Culture and Transformative Constitutionalism*, 14 S. Afr. J. on Hum. Rts. 146 (1998)
[146] Upendra Baxi, *Transformative Constitutionalism* (2008)
[147] Justice J.S. Verma Comm., *Report on Amendments to Criminal Law* (2013)
[148] U.N. Human Rights Comm., Gen. Comment No. 28.
[149] Id.
[150] Constitution of India arts. 14, 15 & 21
[151] Constitution of India arts. 14, 15 & 21
[152] Navtej Singh Johar v. Union of India, (2018) 10 SCC 1 (India)
[153] State of W. Bengal v. Anwar Ali Sarkar, AIR 1952 SC 75 (India); E.P. Royappa v. State of T.N., (1974) 4 SCC 3 (India)
[154] Indian Penal Code, No. 45 of 1860 (India); Upendra Baxi, *The Constitutionalization of Human Rights in India* (Oxford Univ. Press 2004)
[155] Constitution of India art. 15; Anuj Garg v. Hotel Ass'n of India, (2008) 3 SCC 1 (India)

situated survivors the legal recognition and protection central to constitutional guarantees.[156] This exclusion also violates Article 21, which secures dignity, bodily autonomy, and personal security to every individual irrespective of gender.[157] As established through the jurisprudence in *National Legal Services Authority v. Union of India*, *K.S. Puttaswamy v. Union of India*, *Navtej Singh Johar v. Union of India*, and *Joseph Shine v. Union of India*, the Constitution envisions an inclusive and transformative legal order that protects all persons against violence, discrimination, and structural injustice.[158]

Accordingly, Section 63 cannot be sustained as constitutionally valid. Its continued operation entrenches a discriminatory legal regime that fails to address the full spectrum of sexual violence. A gender-neutral definition of rape is therefore not merely desirable but constitutionally imperative.[159] To uphold the principles of equality, dignity, and justice, legislative reform must align criminal law with contemporary understandings of gender identity and ensure comprehensive protection for all survivors of sexual violence.[160]

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[156] Shayara Bano v. Union of India, (2017) 9 SCC 1 (India)
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REGULATING ALGORITHMIC GOVERNANCE IN CORPORATE DECISION-MAKING: EMERGING LEGAL AND REGULATORY CHALLENGES

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Abstract:

The increasing integration of algorithmic and artificial intelligence–based systems into corporate decision-making processes has fundamentally transformed the manner in which corporations operate, govern, and allocate responsibility. From recruitment and credit assessment to risk management and strategic planning, algorithmic governance now plays a decisive role in shaping corporate outcomes. While these systems promise efficiency, objectivity, and scalability, they also raise complex legal concerns relating to accountability, transparency, bias, and liability. This article critically examines the emerging legal and regulatory challenges posed by algorithmic governance within corporate structures, with particular reference to the Indian legal framework.

The article analyses how traditional doctrines of corporate responsibility, mens rea, and fiduciary duties struggle to accommodate automated decision-making systems that function with limited human intervention. It explores the inadequacy of existing corporate and technology laws in addressing harms caused by opaque algorithms, especially in cases involving discrimination, regulatory non-compliance, and financial misconduct. By examining statutory frameworks such as the Companies Act, 2013, the Digital Personal Data Protection Act, 2023, and relevant judicial approaches to corporate accountability, the paper highlights the regulatory gaps in attributing liability for algorithm-driven decisions.

Further, the article draws comparative insights from international regulatory developments, including the European Union's approach to AI governance, to evaluate potential pathways for reform in India. It argues for the need to recalibrate corporate governance norms to ensure transparency, human oversight, and accountability in algorithmic decision-making processes. The paper concludes by proposing a regulatory framework that balances innovation with responsibility, advocating for clearer standards of corporate liability, enhanced disclosure obligations, and ethical governance mechanisms. Through this analysis, the article seeks to contribute to the evolving discourse on corporate regulation in the age of algorithmic governance.

Key Words:

Algorithmic Governance; Corporate Decision-Making; Corporate Responsibility; Artificial Intelligence Regulation; Corporate Accountability; Digital Governance; Technology Law; Regulatory Frameworks

Introduction:

The rapid advancement of algorithmic and artificial intelligence–driven technologies has significantly altered the landscape of corporate decision-making. Corporations increasingly rely on algorithmic systems to perform functions traditionally exercised by human discretion, including recruitment and performance evaluation, credit scoring, risk assessment, compliance monitoring, pricing strategies, and strategic planning. This shift towards algorithmic governance reflects a broader transformation in corporate operations aimed at efficiency, cost reduction, and data-driven objectivity. However, the growing delegation of decision-making authority to automated systems raises complex legal and regulatory questions that existing frameworks of corporate law are ill-equipped to address.

Algorithmic governance, as a mode of decision-making, challenges foundational principles of corporate responsibility and accountability. Traditional corporate law is premised on human

agency—directors, officers, and employees acting as the "directing mind and will" of the corporation. When decisions are generated or substantially influenced by opaque algorithms, often developed by third-party vendors and trained on vast datasets, attributing responsibility for unlawful or harmful outcomes becomes increasingly difficult. Issues such as algorithmic bias, lack of transparency, explainability deficits, and unintended discriminatory effects expose corporations to legal risks while simultaneously creating regulatory blind spots.

In the Indian context, this challenge is particularly acute. India's corporate and regulatory framework has evolved to address misconduct arising from human action or omission, but it offers limited guidance on liability for algorithm-driven decisions. Statutes such as the Companies Act, 2013 emphasise fiduciary duties, due diligence, and managerial responsibility, yet they do not explicitly account for automated governance structures. Similarly, technology-focused legislation, including the Digital Personal Data Protection Act, 2023, prioritises data protection and consent but does not comprehensively regulate algorithmic accountability within corporate governance. As a result, corporate reliance on algorithmic systems risks creating accountability gaps where harm occurs without clear legal attribution.

The absence of a coherent regulatory approach raises pressing concerns about corporate compliance, consumer protection, employment discrimination, and financial integrity. Automated decision-making systems may replicate or amplify existing biases, produce outcomes that are difficult to audit, and obscure decision-making chains, thereby undermining transparency and fairness. These concerns are not merely theoretical; globally, corporations have faced legal and reputational consequences arising from algorithmic failures in hiring, lending, and market behaviour. Despite this, Indian jurisprudence has yet to fully engage with the implications of algorithmic governance for corporate responsibility.

Against this backdrop, this article examines the emerging legal and regulatory challenges posed by algorithmic governance in corporate decision-making. It analyses the tension between innovation and accountability, focusing on the limitations of traditional doctrines of corporate liability when applied to automated systems. The paper further explores whether existing statutory and judicial mechanisms are capable of addressing algorithm-induced harm or whether a recalibration of corporate governance norms is necessary.

By drawing comparative insights from international regulatory developments, particularly the European Union's evolving approach to artificial intelligence governance, the article seeks to identify potential pathways for reform in the Indian legal system. It argues that effective regulation of algorithmic governance must move beyond data protection and incorporate principles of transparency, human oversight, and accountability into corporate law. Ultimately, the article aims to contribute to the evolving discourse on corporate responsibility in the digital age by proposing a framework that ensures innovation does not come at the cost of legal accountability and ethical governance.

Conceptual Framework: Understanding Algorithmic Governance in Corporate Decision-Making

Algorithmic governance refers to the use of automated, data-driven systems to guide, influence, or determine decision-making processes that were traditionally exercised through human discretion. In the corporate context, algorithmic governance encompasses the deployment of artificial intelligence (AI), machine learning models, and predictive analytics to manage internal operations and external interactions, including recruitment, employee evaluation, credit assessment, pricing mechanisms,

compliance monitoring, and risk management.[1] These systems operate by analysing large volumes of data to generate outputs that directly shape corporate conduct, often with minimal or no real-time human intervention.

Unlike conventional decision-making tools, algorithmic systems possess a degree of autonomy and opacity that distinguishes them from earlier forms of corporate technology. Many algorithmic models, particularly those based on machine learning, function as "black boxes," where the rationale behind a specific output cannot be easily traced or explained, even by their developers.[2] This opacity raises significant concerns for corporate governance, which traditionally relies on principles of transparency, accountability, and traceability of decisions to identifiable human actors. When algorithmic outputs form the basis of corporate actions, the question of who bears responsibility for erroneous or unlawful outcomes becomes increasingly complex.

From a corporate law perspective, governance structures are premised on hierarchical accountability, with directors and senior management entrusted with fiduciary duties of care, skill, and diligence.[3] Algorithmic governance disrupts this model by diffusing decision-making authority across technological systems, software developers, data providers, and corporate users. As a result, corporate responsibility becomes fragmented, making it difficult to attribute liability under existing legal doctrines that require proof of intent, negligence, or breach of duty by natural persons.[4] This diffusion of responsibility is particularly problematic where algorithmic decisions lead to discriminatory practices, regulatory violations, or financial harm.

Moreover, the increasing reliance on third-party algorithmic tools further complicates corporate accountability. Corporations often procure AI systems from external vendors, integrating them into internal decision-making processes without full control over their design, training data, or operational logic.[5] While such outsourcing does not absolve corporations of legal responsibility, existing regulatory frameworks provide limited guidance on the standard of due diligence required when deploying algorithmic systems. This creates uncertainty regarding the extent to which corporate actors can be held accountable for harms arising from technological tools that they neither fully understand nor directly control.

Algorithmic governance also raises normative concerns regarding fairness and equality in corporate decision-making. Empirical studies have demonstrated that algorithmic systems may replicate or exacerbate existing social biases embedded within training data, leading to discriminatory outcomes in employment, credit allocation, and consumer profiling.[6] In the absence of mandatory transparency and audit mechanisms, such biases often remain undetected, undermining substantive equality and eroding trust in corporate governance processes.

In this context, algorithmic governance cannot be viewed merely as a technological advancement but must be understood as a structural shift with profound legal implications. The integration of automated decision-making systems necessitates a re-evaluation of corporate responsibility frameworks to ensure that

[1] Karen Yeung, 'Algorithmic Regulation: A Critical Interrogation' (2018) 12 Regulation & Governance 505.
[2] Frank Pasquale, The Black Box Society: The Secret Algorithms That Control Money and Information (Harvard University Press 2015).
[3] Companies Act 2013, ss 166(2), 166(3).
[4] Iridium India Telecom Ltd v Motorola Inc (2011) 1 SCC 74.
[5] Andrew D Selbst and others, 'Fairness and Abstraction in Sociotechnical Systems' (2019) 81 Proceedings of the ACM on Human-Computer Interaction 1.
[6] Solon Barocas and Andrew D Selbst, 'Big Data's Disparate Impact' (2016) 104 California Law Review 671.

accountability is not diluted by technological complexity. Without such recalibration, algorithmic governance risks creating regulatory vacuums where harm occurs without effective legal remedy, thereby weakening the foundational principles of corporate law.

Algorithmic Governance and the Indian Corporate Legal Framework

The Indian corporate regulatory framework has been developed around the assumption that corporate decision-making is fundamentally human-driven. Statutory obligations, fiduciary duties, and liability mechanisms under corporate law are designed to regulate the conduct of directors, key managerial personnel, and officers who exercise control over corporate affairs.[7] The emergence of algorithmic governance challenges this foundational premise by introducing automated systems as influential decision-makers within corporate structures, without corresponding legal recognition or regulation.

Under the Companies Act, 2013, directors are bound by duties of care, skill, and diligence, and are required to act in good faith to promote the objects of the company while safeguarding stakeholder interests.[8] These duties presuppose the existence of human judgment and oversight in corporate decision-making. However, when corporations rely on algorithmic systems to perform functions such as employee screening, financial risk assessment, or compliance monitoring, the extent to which directors can meaningfully exercise oversight becomes questionable. The law remains silent on whether reliance on automated systems satisfies the standard of due diligence expected from corporate management or whether such reliance may itself constitute a breach of fiduciary duty.

The problem of accountability becomes more pronounced when algorithmic decisions result in unlawful or harmful outcomes. Indian courts have recognised the principle of corporate criminal liability, allowing corporations to be prosecuted for offences involving mens rea through the attribution of intent from the "directing mind and will" of the company.[9] However, algorithmic governance complicates this doctrine, as automated systems do not possess intent in the conventional legal sense. When decisions are generated through machine learning models trained on historical data, attributing criminal intent or negligence to specific individuals within the corporate hierarchy becomes increasingly difficult. This creates enforcement gaps, particularly in cases involving discrimination, fraud, or regulatory non-compliance driven by algorithmic outputs.

Recent legislative developments in technology law further illustrate the limitations of India's regulatory approach. The Digital Personal Data Protection Act, 2023 represents a significant step towards regulating data processing and safeguarding individual privacy.[10] While the Act introduces obligations relating to consent, purpose limitation, and data security, its focus remains largely confined to data protection rather than algorithmic accountability. It does not impose specific duties on corporations to ensure transparency, explainability, or auditability of algorithmic decision-making systems, even where such systems materially affect individuals' rights and interests.

Moreover, sector-specific regulators such as the Securities and Exchange Board of India (SEBI) and the Reserve Bank of India (RBI) have issued limited guidelines addressing the use of technology and automation in regulated entities.[11] These measures

[7] Umakanth Varottil, Corporate Law (4th edn, Oxford University Press 2022) 213–215.
[8] Companies Act 2013, s 166.
[9] Standard Chartered Bank v Directorate of Enforcement (2005) 4 SCC 530; Iridium India Telecom Ltd v Motorola Inc (2011) 1 SCC 74.
[10] Digital Personal Data Protection Act 2023, ss 4–9.
[11] Securities and Exchange Board of India, 'Cyber Security and Cyber Resilience Framework for Stock Brokers' (SEBI Circular, 2023); Reserve Bank of India, 'Guidelines on Digital Lending' (2022).

primarily emphasise risk management and cybersecurity, without directly engaging with questions of corporate responsibility for algorithm-driven decisions. As a result, regulatory oversight remains fragmented, with no unified framework addressing the governance of algorithmic systems across corporate sectors.

Judicial engagement with algorithmic governance in India has thus far been minimal. Courts have traditionally focused on human conduct and organisational failures, rather than technological decision-making processes. This judicial restraint reflects a broader hesitation to adapt existing legal doctrines to emerging technologies. In the absence of clear statutory guidance, courts may struggle to adjudicate disputes involving algorithmic harm, particularly where causation and responsibility are obscured by technical complexity.

Consequently, the Indian corporate legal framework appears ill-equipped to address the realities of algorithmic governance. While existing laws impose broad duties on corporate actors, they fail to account for the structural and operational challenges posed by automated decision-making systems. Without explicit regulatory standards governing algorithmic transparency, human oversight, and accountability, corporations may exploit these gaps to externalise responsibility, undermining the objectives of corporate regulation and stakeholder protection.

Attribution of Liability and the Mens Rea Problem in Algorithmic Decision-Making

One of the most significant legal challenges posed by algorithmic governance lies in the attribution of liability, particularly in the context of corporate criminal responsibility. Traditional doctrines of corporate liability are premised on the attribution of human intent, negligence, or knowledge to the corporation through identifiable individuals occupying positions of control.[12] However, algorithmic decision-making disrupts this model by introducing non-human actors that influence or determine corporate conduct without possessing legal personality or cognitive intent.

Indian jurisprudence has long grappled with the problem of attributing mens rea to corporations. The Supreme Court, in *Standard Chartered Bank v Directorate of Enforcement*, affirmed that corporations can be held criminally liable for offences involving mens rea, notwithstanding the impossibility of imposing custodial sentences.[13] This principle was further developed in *Iridium India Telecom Ltd v Motorola Inc*, where the Court adopted the "directing mind and will" doctrine to attribute criminal intent of senior managerial personnel to the corporation.[14] These judgments reflect judicial willingness to hold corporations accountable; however, they are firmly rooted in the assumption that wrongful intent originates from human actors.

Algorithmic governance complicates this assumption. When corporate decisions are generated or materially influenced by automated systems, the chain of intent becomes obscured. Machine learning algorithms operate by identifying patterns in data rather than executing pre-programmed instructions with conscious awareness. As a result, harmful outcomes—such as discriminatory hiring practices or unlawful credit denial—may occur without any individual corporate actor possessing direct knowledge or intent.[15] This raises a fundamental question: can corporations be held criminally or civilly liable for outcomes produced by systems that function autonomously within parameters approved, but not actively controlled, by human decision-makers?

[12] HL Bolton (Engineering) Co Ltd v TJ Graham & Sons Ltd [1957] 1 QB 159.
[13] Standard Chartered Bank v Directorate of Enforcement (2005) 4 SCC 530.
[14] Iridium India Telecom Ltd v Motorola Inc (2011) 1 SCC 74.
[15] Solon Barocas, Sophie Hood and Malte Ziewitz, 'Governing Algorithms: A Provocation Piece' (2013) Social Science Research Network.

The problem is further exacerbated by the complexity and opacity of algorithmic systems. Courts and regulators may find it difficult to establish causation between corporate conduct and algorithmic harm, particularly where decision-making processes are non-transparent or technically unintelligible.[16] In such cases, senior management may plausibly deny awareness or foreseeability, thereby escaping liability under existing legal standards that require proof of knowledge, negligence, or recklessness.

Indian courts have historically adopted a cautious approach when extending criminal liability to directors and officers. In *Sunil Bharti Mittal v Central Bureau of Investigation*, the Supreme Court held that directors cannot be held vicariously liable solely by virtue of their position and that specific allegations demonstrating active involvement are necessary.[17] While this safeguard protects individuals from arbitrary prosecution, its application in cases involving algorithmic governance risks creating accountability vacuums. Corporate leadership may rely on algorithmic systems as decision-making intermediaries, thereby distancing themselves from responsibility for unlawful outcomes.

Moreover, algorithmic governance challenges the notion of foreseeability, a key element in establishing negligence and breach of duty. Given the probabilistic and adaptive nature of machine learning systems, predicting specific harmful outcomes may be difficult even for technical experts.[18] This unpredictability undermines traditional standards of due diligence and raises questions about whether corporations should be subject to stricter liability regimes when deploying high-risk algorithmic systems.

In the absence of doctrinal adaptation, existing liability frameworks risk becoming ineffective in regulating algorithm-driven corporate conduct. Without recognising algorithmic decision-making as a legally relevant source of corporate action, the law may fail to deter misconduct and provide remedies for harm. This necessitates a rethinking of attribution principles, potentially through the introduction of presumptive liability, enhanced disclosure obligations, or mandatory human oversight requirements for algorithmic systems used in corporate governance.

Comparative Regulatory Approaches to Algorithmic Governance: Lessons for India

Given the limitations of existing corporate liability frameworks, several jurisdictions have begun to adopt regulatory approaches specifically aimed at governing algorithmic and artificial intelligence–based systems. Among these, the European Union has emerged as a global frontrunner in addressing the legal risks associated with algorithmic decision-making. A comparative analysis of these developments provides valuable insights into how corporate responsibility may be recalibrated to address the challenges posed by algorithmic governance.

The European Union's proposed Artificial Intelligence Act (EU AI Act) represents the first comprehensive attempt to regulate artificial intelligence systems based on their potential risk to fundamental rights and public interests.[19] The regulatory framework adopts a risk-based classification, categorising AI systems into unacceptable risk, high risk, limited risk, and minimal risk. Corporate use of AI systems in areas such as recruitment, creditworthiness assessment, and

[16] Frank Pasquale, The Black Box Society: The Secret Algorithms That Control Money and Information (Harvard University Press 2015).
[17] Sunil Bharti Mittal v Central Bureau of Investigation (2015) 4 SCC 609.
[18] Brent Mittelstadt and others, 'The Ethics of Algorithms: Mapping the Debate' (2016) 3 Big Data & Society 1.
[19] European Commission, Proposal for a Regulation Laying Down Harmonised Rules on Artificial Intelligence (Artificial Intelligence Act) COM (2021) 206 final.

employee monitoring is classified as "high-risk," thereby subjecting corporations to stringent compliance obligations.[20] These obligations include risk assessment, transparency, human oversight, and post-deployment monitoring, reflecting an explicit recognition of the governance challenges posed by algorithmic decision-making.

A key feature of the EU approach is its emphasis on ex ante accountability. Rather than relying solely on post-hoc liability after harm has occurred, the EU AI Act imposes proactive duties on corporations deploying algorithmic systems.[21] Corporations are required to ensure that AI systems are trained on representative data, are explainable to regulators, and are subject to meaningful human oversight. This shifts the regulatory focus from attributing intent after misconduct to preventing harm through structural governance mechanisms. Such an approach addresses the inherent difficulties in proving mens rea or negligence in algorithm-driven decisions, a problem that remains unresolved in Indian corporate law.

In addition to the EU AI Act, the General Data Protection Regulation (GDPR) provides indirect safeguards against algorithmic harm. Article 22 of the GDPR restricts solely automated decision-making that produces legal or similarly significant effects on individuals, granting individuals the right to human intervention and explanation.[22] Although not framed as corporate governance legislation, these provisions significantly influence how corporations design and deploy algorithmic systems. They reinforce the principle that corporate reliance on automation does not absolve entities of responsibility toward affected stakeholders.

In contrast, the Indian regulatory approach remains fragmented and reactive. While the Digital Personal Data Protection Act, 2023 introduces data protection obligations, it does not impose substantive requirements regarding algorithmic transparency or accountability.[23] Unlike the EU framework, Indian law does not classify algorithmic systems based on risk, nor does it mandate impact assessments or human oversight for high-risk corporate uses of AI. This regulatory gap allows corporations to deploy automated decision-making systems without adequate safeguards, increasing the risk of unaccountable harm. Other jurisdictions have also begun experimenting with algorithmic accountability mechanisms. In the United States, while no comprehensive federal AI law exists, sector-specific regulations and enforcement actions by agencies such as the Federal Trade Commission have emphasised algorithmic fairness and corporate accountability for deceptive or discriminatory AI practices.[24] Similarly, the United Kingdom has adopted a principles-based approach, focusing on transparency, accountability, and contestability in AI governance, while resisting prescriptive regulation.[25] These models illustrate alternative pathways for balancing innovation with responsibility, though their effectiveness remains contingent on enforcement capacity.

The comparative analysis reveals that effective regulation of algorithmic governance requires a shift from traditional fault-based liability models to governance-oriented frameworks that integrate technological realities into corporate law. India's current reliance on general corporate duties and post-facto enforcement is ill-suited to address the scale and opacity of algorithmic decision-making. Incorporating elements such as risk-based classification, mandatory impact assessments, and enforceable human oversight obligations would strengthen corporate accountability without stifling innovation.

[20] ibid, arts 6–7 and Annex III.
[21] ibid, arts 9–15.
[22] Regulation (EU) 2016/679 (General Data Protection Regulation), art 22.
[23] Digital Personal Data Protection Act 2023.
[24] Federal Trade Commission, 'Aiming for Truth, Fairness, and Equity in Your Company's Use of AI' (FTC Business Blog, 2021).
[25] UK Department for Science, Innovation and Technology, A Pro-Innovation Approach to AI Regulation (2023).

Accordingly, India can draw meaningful lessons from international regulatory developments by adopting a hybrid approach that combines corporate governance principles with technology-specific safeguards. Such an approach would ensure that corporations remain accountable for algorithmic decisions while preserving flexibility for technological growth. Without comparative learning and regulatory adaptation, Indian corporate law risks lagging behind global standards, thereby weakening stakeholder protection and regulatory effectiveness in an increasingly automated corporate environment.

Regulatory Gaps and Practical Challenges in the Indian Context

Despite the increasing adoption of algorithmic systems by Indian corporations, the domestic legal and regulatory framework remains largely unprepared to address the governance challenges posed by automated decision-making. Existing laws operate in silos—corporate law, data protection, and sectoral regulation—without a unified approach to algorithmic accountability. This fragmented regulatory structure creates significant gaps that undermine effective corporate responsibility in the age of algorithmic governance.

A primary regulatory gap lies in the absence of statutory recognition of algorithmic decision-making as a distinct governance function. The Companies Act, 2013 continues to conceptualise corporate governance through human agency, focusing on the conduct and duties of directors and managerial personnel.[26] While directors are obligated to exercise due diligence and act in the best interests of the company, the Act does not specify the standard of care applicable when corporate decisions are delegated to automated systems. Consequently, it remains unclear whether reliance on algorithmic tools constitutes reasonable business judgment or whether failure to scrutinise such systems amounts to a breach of fiduciary duty.

Another significant challenge is the lack of mandatory transparency and explainability requirements. Algorithmic systems deployed by corporations often operate as proprietary technologies, protected by trade secrets and intellectual property claims.[27] In the absence of legal obligations to disclose decision-making logic or audit algorithmic outcomes, regulators and affected stakeholders face substantial barriers in identifying the source of harm. This opacity weakens enforcement mechanisms and limits access to effective remedies, particularly in cases involving employment discrimination, consumer exclusion, or unfair market practices.

The Digital Personal Data Protection Act, 2023, while progressive in its emphasis on consent and data security, does not sufficiently address algorithmic accountability.[28] The Act does not impose obligations to conduct algorithmic impact assessments, nor does it require corporations to ensure fairness or non-discrimination in automated decision-making processes. As a result, compliance with data protection standards may coexist with substantively unjust or discriminatory algorithmic outcomes, revealing a disconnect between privacy protection and broader corporate responsibility.

Practical enforcement challenges further exacerbate these regulatory gaps. Indian regulatory authorities often lack the technical expertise and institutional capacity required to audit complex algorithmic systems.[29] Without specialised knowledge or access to algorithmic models and datasets, regulators may be unable to establish causation or responsibility in cases of algorithm-driven harm. This asymmetry of information favours corporations, enabling them to externalise risks while maintaining plausible deniability regarding the functioning of automated systems.

[26] Companies Act 2013, ss 166, 134.
[27] Frank Pasquale, The Black Box Society: The Secret Algorithms That Control Money and Information (Harvard University Press 2015).
[28] Digital Personal Data Protection Act 2023.
[29] OECD, Accountability for AI Systems (OECD Publishing 2023).

Judicial limitations also play a role in constraining accountability. Courts are traditionally reliant on adversarial evidence and expert testimony, both of which may be insufficient to unravel the technical intricacies of algorithmic decision-making.[30] In the absence of clear legislative standards, judicial intervention risks being inconsistent or overly deferential to corporate explanations. This may discourage litigation and weaken the deterrent effect of legal sanctions against algorithmic misconduct.

Additionally, the widespread outsourcing of algorithmic tools to third-party vendors complicates liability attribution. Corporations often deploy externally developed AI systems without full control over their design or training data. While contractual arrangements may allocate responsibility between corporations and vendors, such private ordering cannot replace public law accountability.[31] Indian law currently provides limited guidance on how liability should be apportioned in cases involving third-party algorithmic systems, increasing uncertainty for regulators and affected individuals alike.

Taken together, these regulatory and practical challenges reveal a structural misalignment between India's corporate governance framework and the realities of algorithmic decision-making. The absence of explicit legal standards governing algorithmic governance risks creating accountability vacuums, where corporate decisions significantly affect rights and interests without corresponding legal oversight. Addressing these gaps requires not only legislative reform but also institutional capacity-building and a reconceptualization of corporate responsibility in technologically mediated environments.

Reform Proposals and the Way Forward

Addressing the challenges posed by algorithmic governance in corporate decision-making requires a shift from reactive liability models to proactive governance-oriented regulation. Given the limitations of existing corporate and technology laws in India, a recalibration of legal frameworks is necessary to ensure that innovation does not erode accountability, transparency, or stakeholder protection. This section proposes a multi-pronged reform approach that integrates corporate governance principles with technology-specific safeguards.

First, there is a pressing need for statutory recognition of algorithmic decision-making within corporate governance frameworks. The Companies Act, 2013 should be amended to explicitly acknowledge the use of automated and algorithmic systems in corporate operations. Such recognition would enable the law to impose clear duties on directors and key managerial personnel to exercise oversight over algorithmic tools deployed by the corporation. Incorporating algorithmic governance within directors' fiduciary obligations would clarify that reliance on automated systems does not dilute the standard of care, skill, and diligence expected from corporate leadership.[32]

Second, India should adopt a risk-based regulatory approach to algorithmic governance, drawing inspiration from the European Union's Artificial Intelligence Act. High-risk algorithmic systems—such as those used in employment decisions, credit assessments, consumer profiling, and compliance monitoring—should be subject to heightened regulatory scrutiny.[33] Corporations deploying such systems should be required to conduct algorithmic impact assessments to evaluate risks related to

[30] Cary Coglianese and David Lehr, 'Regulating by Robot: Administrative Decision Making in the Machine-Learning Era' (2017) 105 Georgetown Law Journal 1147.

[31] Woodrow Hartzog, 'The Case Against Idealising Control' (2018) 4 European Data Protection Law Review 423.

[32] Companies Act 2013, s 166; Umakanth Varottil, Corporate Law (4th edn, Oxford University Press 2022) 230–232.

[33] European Commission, Proposal for a Regulation Laying Down Harmonised Rules on Artificial Intelligence (Artificial Intelligence Act) COM (2021) 206 final.

discrimination, bias, and regulatory non-compliance before deployment. This preventive approach would reduce reliance on post-hoc liability, which is often ineffective in addressing algorithm-driven harm.

Third, mandatory transparency and explainability obligations should be introduced for corporate use of algorithmic systems. While concerns regarding trade secrets and intellectual property are legitimate, they cannot override the need for accountability where algorithmic decisions have significant legal or social consequences.[34] Corporations should be required to maintain internal documentation explaining the purpose, logic, and limitations of algorithmic systems, accessible to regulators and adjudicatory bodies when required. Such measures would strengthen enforcement capacity and facilitate judicial review in disputes involving algorithmic harm.

Fourth, the law should mandate meaningful human oversight over algorithmic decision-making processes. Automated systems should function as decision-support tools rather than autonomous decision-makers in high-impact corporate functions.[35] Clear guidelines must delineate the circumstances under which human intervention is required and assign responsibility for reviewing and overriding algorithmic outputs. This would help preserve human judgment within corporate governance while retaining the efficiency benefits of automation.

Fifth, regulatory reform must be accompanied by institutional capacity-building. Regulatory authorities such as SEBI, RBI, and the Ministry of Corporate Affairs should be equipped with technical expertise to audit and evaluate algorithmic systems.[36] Establishing specialised technical units or advisory bodies within regulatory agencies would enhance oversight and reduce information asymmetries between corporations and regulators.

Finally, India should consider developing a coherent national framework for algorithmic governance, integrating corporate law, data protection, and sector-specific regulation. Fragmented regulatory responses risk creating compliance loopholes and uncertainty. A unified framework would provide clarity to corporations while ensuring consistent standards of accountability across sectors.

Taken together, these reforms offer a balanced pathway for regulating algorithmic governance in corporate decision-making. By embedding accountability, transparency, and human oversight into legal frameworks, India can foster responsible innovation while safeguarding corporate integrity and stakeholder interests.

Conclusion

The increasing reliance on algorithmic systems in corporate decision-making marks a significant transformation in the structure and functioning of modern corporations. Algorithmic governance promises efficiency, consistency, and data-driven precision; however, it simultaneously exposes deep legal and regulatory vulnerabilities within existing frameworks of corporate responsibility. As this article has demonstrated, traditional doctrines of corporate governance and liability—rooted in assumptions of human agency, intent, and oversight—are ill-equipped to respond to the complexities introduced by automated decision-making systems.

In the Indian context, the challenges posed by algorithmic governance are particularly acute. Corporate law continues to conceptualise accountability through human actors, while technology regulation remains largely focused on data protection rather than decision-making accountability. This disconnect has created regulatory blind spots

[34] Frank Pasquale, The Black Box Society: The Secret Algorithms That Control Money and Information (Harvard University Press 2015).

[35] Brent Mittelstadt and others, 'The Ethics of Algorithms: Mapping the Debate' (2016) 3 Big Data & Society 1.

[36] OECD, Accountability for AI Systems (OECD Publishing 2023).

where algorithmic decisions materially affect stakeholders without clear mechanisms for transparency, attribution of liability, or effective redress. The absence of statutory recognition of algorithmic governance, coupled with limited judicial engagement, risks enabling corporations to externalise responsibility behind technological opacity.

The difficulty of attributing mens rea or negligence in algorithm-driven decisions underscores the inadequacy of fault-based liability models in regulating automated corporate conduct. As seen, doctrines such as the "directing mind and will" struggle to accommodate decision-making processes that are probabilistic, adaptive, and often outsourced to third-party vendors. Without doctrinal adaptation, corporate leadership may distance itself from responsibility by relying on algorithmic intermediaries, thereby weakening the deterrent and corrective functions of corporate law.

Comparative regulatory developments, particularly within the European Union, offer valuable lessons for India. The EU's risk-based and ex ante approach to regulating artificial intelligence reflects a shift away from post-hoc punishment toward preventive governance. By imposing obligations relating to transparency, human oversight, and accountability, such frameworks recognise that algorithmic systems must be governed as integral components of corporate decision-making rather than neutral technological tools. These developments highlight the importance of embedding technological realities into corporate governance structures rather than attempting to retrofit liability after harm has occurred.

For India, the way forward lies in adopting a balanced and context-sensitive regulatory approach. Legal reform must move beyond fragmented sectoral regulation and develop a coherent framework that integrates corporate law, technology regulation, and sector-specific oversight. Statutory recognition of algorithmic decision-making, coupled with risk-based compliance obligations and enhanced fiduciary duties, would provide much-needed clarity to corporations and regulators alike. Importantly, such reform should not be aimed at stifling innovation but at ensuring that technological advancement remains aligned with principles of accountability, fairness, and transparency.

Institutional capacity-building is equally critical. Regulators and adjudicatory bodies must be equipped with the technical expertise necessary to evaluate algorithmic systems and enforce compliance effectively. Without addressing informational asymmetries between corporations and regulators, even well-designed legal frameworks may fail in practice. Strengthening regulatory competence will be essential to ensuring that algorithmic governance does not erode stakeholder trust or corporate integrity.

Ultimately, algorithmic governance represents not merely a technological shift but a structural reconfiguration of corporate power and responsibility. If left unregulated, it risks creating accountability vacuums that undermine the foundational objectives of corporate law. By recalibrating legal frameworks to recognise and govern algorithmic decision-making, India has the opportunity to shape a model of corporate regulation that is both innovation-friendly and normatively robust. Ensuring that corporations remain accountable in the age of algorithms is not only a legal necessity but a prerequisite for sustainable and ethical corporate governance in the digital economy.

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ACCESS TO JUSTICE FOR VULNERABLE GROUPS IN INDIA: REALIZING AGENDA 2030 AND SDG 16

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Abstract

The United Nations, in its 2030 Agenda on Sustainable Development, has made access to justice a key enabler in Sustainable Development Goal (SDG) 16, which specifically aims at advancing the rule of law and closing the access to justice disparities among all. In India, a constitutionally determined welfare state with a strong socio-economic and cultural diversity, achieving this target of vulnerable groups, Scheduled Castes (SCs), Scheduled Tribes (STs), women, children, persons with disabilities, transgender individuals, administered trafficking survivors, elderly citizens, and economically disadvantaged communities, is still fraught with systematic problems. These are caste- and gender-based discrimination, low conviction rates in atrocity cases, geographical isolation, judicial pendancy of more than 50 million cases, digital divides and intersectional vulnerabilities, which increase exclusion by groups of Dalit women and tribal groups. In the following paper, the approach on SDG 16.3 in India will be thoroughly examined based on the official data on the topic, including the Voluntary National Review 2025, SDG India Index of NITI Aayog, NALSA reports, and the empirical research in India Justice Report 2025. It explores organizational processes the hierarchical legal assistance structure of the National Legal Services Authority, the alternative dispute resolution of crores of cases of Lok Adalats, and schemes focusing on marginalized peoples as source of legal empowerment and a reduction in the backlog. Major successes are observed in the field of outreach (millions of beneficiaries each year), modernization of criminal law (Bharatiya Nyaya Sanhita 2023), and local programs such as Nari Adalat.

Nonetheless, incessant loopholes, such as lapse of enforcement, lack of infrastructures, state disparities and exclusion caused by technology, demonstrate that development is unequal and the susceptible groups still experience impunity and delayed justice. The discussion highlights the necessity of radical changes to be made to be in line with the principle of Leave No One Behind. The solutions include recommendations to improve judicial capacity, intersectional sensitivity training, to integrate the digital, to monitor communities and lead, and disaggregated data systems to close inequities. Finally, although India has adopted a multi-pronged approach, which has proven to be institutional sound, equitable access to justice by 2030 would take a more inclusive step toward eliminating structural obstacles and establishing the accountable institutions toward Viksit Bharat.

Keywords

Access to justice, Sustainable Development Goal 16, Agenda 2030, Vulnerable groups, India, National Legal Services Authority (NALSA), Lok Adalats, Legal aid, Intersectional discrimination, Judicial pendency, Digital divide, Rule of law, Leave No One Behind

Introduction

The 2030 Agenda of Sustainable Development by the United Nations is a worldwide declaration on peace, prosperity and equity by handling the interconnected issues by applying 17 Sustainable Development Goals (SDGs) (United Nations, 2015). The key aspect of this framework is that SDG 16 implies to ensure peaceful and inclusive societies to sustainably develop, to provide equal access to justice to all people and to establish effective, accountable and inclusive institutions at all levels, with the Target 16.3 implying specifically promotion of the rule of law at both the national and international level and ensuring equal access to justice of all people (United Nations

Department of Economic and Social Affairs, n.d.). This objective acknowledges access to justice not just as an independent goal and objective but as one that will support the other SDGs in reducing poverty, equality among sexes, and inequalities through enabling the disadvantaged groups to assert their rights and settle conflicts in a fair manner.

In India, a country with a deep-rooted socio-economic diversity and historical inequalities, goal SDG 16 is intertwined with the requirements of the constitution. The Constitution of India under Article 39A inserted under the 42nd Amendment of 1976 guides the State to secure that the operation of the legal system promotes justice on a basis of equal opportunity and will provide, in particular, free legal aid, by appropriate legislation or scheme or in any other manner, to prevent denial of the opportunities to secure justice to any citizen by reason of economic or other disabilities (Government of India, 1950, as amended). This clause is based on the Directive Principles of State Policy and emphasizes an idea of justice that goes beyond formal equality in order to deal with substantive obstacles to the disadvantaged. In reaction, the Legal Services Authorities Act, 1987, created the National Legal Services Authority (NALSA) as a statutory institution to plan free legal service, awareness-raising, and alternative dispute resolution systems nationally, at the state, district, and taluka levels (Center for Law and Policy Research, 2023).

The vulnerable groups across India, including Scheduled Castes (SCs), Scheduled Tribes (STs), women, children, persons with disabilities, transgender people, trafficking victims, elderly, and those living in economic marginalized or remote areas face cumulative barriers to justice. They are systemic discrimination, low rates of conviction in cases of atrocity and gender-based violence, geographic isolation of access to courts, linguistic barriers, stigma as a deterrent to reporting, and economic barriers that prevent having personal legal representation (Center for Law and Policy Research, 2023). These issues are intensified by intersectional vulnerabilities to dominate the scene like Dalit women or tribal girls and continue the exclusion and impunity cycles. Having more than 50 million pending in the courts, and a lack of equality in legal awareness, especially in the rural sphere that makes up 68 percent of the population, equal access is not achievable despite the institutional structures (Center for Law and Policy Research, 2023).

India has shown significant improvement in SDG 16, the national composite score of 74 is increasing in SDG India Index 2023-24 (classified as a Front Runner) indicating improvements in institutional reform and service delivery (NITI Aayog, 2024). Modernized criminal statutes (i.e., Bharatiya Nyaya Sanhita 2023) are also emphasized, and there are larger helplines to serve millions of women and children, rapid-track courts, and grassroots-led efforts such as Nari Adalat (NITI Aayog, 2025). The networks of NALSA which provide a multi-pronged approach to legal empowerment is reflected in its wide network of more than 49,000 panel lawyers, para-legal volunteers, and individual schemes to assist disaster victims, trafficking survivors, and acid attack victims, and its Lok Adalats which resolve millions of disputes at a cost-effective manner (Center for Law and Policy Research, 2023). However, the data disaggregation of marginalized communities, consistency throughout all states, and resolving digital gaps of technology-based services are still missing.

In this paper, the author investigates the path India follows to achieving SDG Target 16.3 among vulnerable groups by 2030 with the focus on institutional mechanisms, empirical gains, current obstacles, and policy suggestions. It aims to make a contribution to both scholarly and policy debate on how to translate global commitments into inclusive justice systems that are specific to local settings through a prism of cooperative federalism and the principle of Leave No One Behind.

SDG 16 in the Indian Context

India participation in Sustainable Development Goal (SDG) 16 can be described as a strategic approach towards the global commitment and national interests in prioritizing the concept of peace, justice, and inclusive institutions to enable the implementation of sustainable development in general. India has anchored SDG 16 on localized strategy and constitutional mandates and development priorities through cooperative federalism and has tracked SDG 16 progress through mechanisms like SDG India Index and voluntary national reviews (VNRs). The national composite SDG score was improved to 66 in 2020-21 and 71 in 2023-24, which is faster progress towards the goals, including peace and justice (NITI Aayog, 2024).

A paradigm of the SDG implementation based on the whole-of-society and whole-of-government is highlighted in the third VNR of India, which was provided in 2025 at the United Nations High-Level Political Forum, and SDG 16 is viewed as one of the key drivers to equitable access to justice, reduced violence, and strengthened institutions (NITI Aayog, 2025). This method focuses more on localization based on sub-national planning, community involvement, and digital infrastructure, which is in line with the principle of Leave No One Behind. Systemic reforms and interventions have facilitated notable progress on Target 16.3 - promoting the rule of law and ensuring equal access to justice to all, but issues of data granularity and consistent application remain.

The major developments are the revision of the criminal laws of colonial era by the adoption of the Bharatiya Nyaya Sanhita 2023, Bharatiya Nagarik Suraksha Sanhita 2023, and Bharatiya Sakshya Adhiniyam 2023. Such reforms put the emphasis not on punitive actions but the delivery of justice, including victim-centred provisions, integration of technology and protection against new crimes (like human trafficking and forced labour) (NITI Aayog, 2025). In addition to these are special judicial systems among which are more than 600 Fast Track Special Courts where cases of women, children (under the Protection of Children from Sexual Offences), and atrocities against marginalized communities are handled expeditiously, and the Anti-Human Trafficking Units as well as the anti-rape units in the police stations.

By offering affordable and quick resolutions to minor cases, the alternative dispute resolution systems, especially the Lok Adalats, have added accessibility in terms of these disputes. Those piloted under programs such as Nari Adalat (combined with Mission Shakti) have been proven effective in the grassroots mediation, resolving women rights cases, and harassment in Gram Panchayats in states such as Assam and Jammu & Kashmir (NITI Aayog, 2025). The National Legal Services Authority (NALSA) has been instrumental in organizing free legal assistance, making services available to the needy groups as well as accessing more than 15 million beneficiaries in recent years via an extensive net of clinics, panel lawyers as well as para-legal volunteers.

Signs of less violence also help paint the picture of development; the purposeful murder rate is a half of the world average, as per National Crime Records Bureau statistics referred to in the VNR (NITI Aayog, 2025). Reporting and rehabilitation has been strengthened by the use of support systems such as the 605 One-Stop Centres, 404 Shakti Sadans (shelters to women and trafficking victims), and 181 Women Helpline (serving over 8.4 million women by early 2025). Apps (e.g., Nirnay or Meri Panchayat) and campaigns (e.g., Prashasan Gaon ki Aur) enhance transparency and participatory justice locally by use of digital tools.

In spite of these efforts, the differences are still observed. There are infrastructure inequalities in rural and remote locations, and awareness and stigma make it difficult to utilize in intersectorally vulnerable populations. The VNR recognizes the implementation differences between states and the necessity of more disaggregated data to monitor access metrics in a

holistic way (NITI Aayog, 2025). In general, SDG 16-related progress in India shows some signs of institutional stability and innovation which establish justice as the foundation of Viksit Bharat (Developed India) by 2047, but targeted capacity building, investment, and monitoring must continue to reduce the existing gaps by 2030.

Vulnerable Groups and Barriers to Justice

When considering the context of the endeavors by India to achieve Sustainable Development Goal (SDG) 16.3, focusing on equal access to justice by all, there are multidimensional barriers that are ingrained and embedded within the system, leading to the perpetuation of exclusion and inequality among vulnerable groups. Scheduled Castes (SCs, or Dalits), Scheduled Tribes (STs), women (especially those of a disadvantaged background), children, people with disabilities, transgender individuals, trafficking victims, elderly citizens, and the economically disadvantaged population in rural or remote locations are the main vulnerable groups in India (Center for Law and Policy Research, 2023). These are such overlapping groups that share the intersectional identities and are disadvantaged systemically such that they cannot pursue redress informal justice systems regardless of the constitutional protections and the statutory protections.

One obstacle is caste based discrimination and impunity, which is overrepresented in SCs and STs. Regardless of such laws as the Scheduled Castes and Tribes (Prevention of Atrocities) Act, 1989, implementation is still weak, which is evidenced by the low conviction rates, delays in registering First Information Reports (FIRs), and ineffective investigations (Prema et al., 2021). As an example, dominant caste groups, police indifference, and even social pressures often result in under-reporting or the need to compromise, thus the perpetration of atrocities, e.g., land encroachments, violence, and manual scavenging, remain unaddressed (Prema et al., 2021). The studies point out to the problem of economic dependency on the upper castes increasing vulnerability, making the witnesses unfriendly, and creating cycles of injustice (Dr. Ambedkar Sheti Vikas Va Sansodhan Sanstha [ASVSS], 2012).

These challenges are further aggravated by gender-based violence and patriarchal institutions particularly among women in SC/ST groups. Women of Dalit caste experience the three-layered discrimination (by caste, gender and class) and are at high risk of sexual violence with little options (Equality Now & Swabhiman Society, 2020). Intersectional discrimination makes their experience invisible in the justice system whereby hegemonic power dynamics allow offenders of dominant groups to go scot-free. These barriers are reluctance of policing to register the case, slow arrest and charge sheet, giving of bail to serious crimes, and stigma in the society that prevents reporting (Equality Now & Swabhiman Society, 2020; ASVSS, 2012). There is also an abysmal rate of conviction, which is usually less than 2% on atrocity cases of SC women, which is because of non-compliance in the procedures and settlements out of court that are forced by community elders (ASVSS, 2012).

Rural and tribal population is further alienated by geographical, economic and infrastructural barriers. As remote locations frequently situated in the forested zone, ST communities face physical inaccessibility to the court, as well as language barriers and insufficient understanding of the law (Krishnan et al., 2014). Indigent litigants are scared by the high cost of litigation, the expenditure of earnings during court appearances, and arbitrary fees, whereas judicial delays (enhanced by vacancies, frequent transfers, and overstretched staff) can prolong a case over several years (Krishnan et al., 2014). Persons with disabilities and transgender individuals face additional stigma, with limited accessible infrastructure or specialized support, while children in exploitation cases often encounter evidentiary hurdles and insensitive proceedings.

These barriers are intersectional and reinforcing: a Dalit woman in a rural area may face caste intimidation, gender stigma, economic deprivation,

and geographical isolation simultaneously, amplifying exclusion (Equality Now & Swabhiman Society, 2020; Prema et al., 2021). Such systemic failures hinder India's progress toward SDG 16.3, as unequal access perpetuates violence, erodes trust in institutions, and undermines the "Leave No One Behind" ethos. Empirical studies underscore that without addressing root causes—through sensitization, robust enforcement, and disaggregated data tracking—equitable justice remains aspirational rather than achievable.

Institutional Mechanisms and Progress

India has formed a strong institutional framework in order to promote SDG Target 16.3, which focuses on free legal assistance, awareness, and alternative dispute resolution to vulnerable populations. Legal Services Authorities Act, 1987, has given rise to a hierarchal system where National Legal Services Authority (NALSA) heads the rest of the State Legal Services Authorities (SLSAs), District Legal Services Authorities (DLSAs), and Taluk Legal Services Authorities run across the country. It provides preventive, strategic, and remedial legal services, prioritizing vulnerable groups based on the criteria of the Section 12, such as SCs/STs, women, children, people with disabilities, industrial employees, and those in custody or living below poverty lines (National Legal Services Authority, 2024a).

NALSA organizes national policies, schemes, and monitoring and lower authorities carry out grassroots delivery in the form of legal aid clinics, panel lawyers and para-legal volunteers (PLVs). It has seen improvement in increased access: by 2024-2025, an estimated thousands of legal services clinics will be operating in villages, prisons, and community centers, which will be supported by digital providers such as Tele-Law that allows rural beneficiaries to access lawyers via video conferencing (Department of Justice, 2025). Between 2022-2025, NALSA and its deputies helped millions, as over 44 lakh beneficiaries received direct legal assistance during specific intervals, and even more beneficiaries were influenced by awareness and settlement schemes (Press Information Bureau, 2025a).

Lok Adalats and Alternative Dispute Resolution

Lok Adalats (People Courts) are part of the foundation of affordable justice, and provide free, voluntary and rapid settlements in the absence of any formal processes. Awards are final and unappealable but facilitate backlog in the courts and allow disputants to have more power (National Legal Services Authority, n.d.). They are National Lok Adalats (country wide on certain dates), State Lok Adalats, Permanent Lok Adalats (public utility services a maximum of 1 crore jurisdiction), and daily/regular Lok Adalats.

The improvement has been vast: In the year 2022-23 and 2024-25, more than 23.58 crore cases have been disposed of in different Lok Adalats and businesses have been settled, which are settlements of huge monetary recoveries on litigants, especially in cases of motor accidents, bank recoveries, and matrimonial cases (Press Information Bureau, 2025b). In 2024 alone, millions of pending and pre-litigation cases were settled in National Lok Adalats, and the 4th National Lok Adalat of 2025 alone settled more than 4 crore cases in courts and tribunals (National Legal Services Authority, 2026). E-Lok Adalats and mobile Lok Adalats also increased the accessibility during and after COVID-19, to remote regions and vulnerable litigants who cannot travel.

With settlements made monthly, mediation centers, which are incorporated with courts, supplement Lok Adalats (National Legal Services Authority, 2024b). These mechanisms are in line with SDG 16 because they decongest the courts (less pendency) and offer fair resolutions, particularly the economically disadvantaged groups who do not want to go through lengthy litigation.

Specific Interventions in the High Risk Groups

NALSA has developed special plans dealing with intersectional vulnerabilities, which guarantees personalized legal services:

- Women and Children Nari Adalat Community level mediation and assistance to victims of domestic violence, acid attacks and child marriage through the NALSA (ASHA - Bal Vivah Mukt Bharat) Scheme (National Legal Services Authority, 2025a).
- SCs/STs and Tribal Communities - Schemes such as NALSA (SAMVAD Scheme, 2025) of Adivasi and denotified tribes, aimed at raising awareness and assisting the process of atrocities, land claims, and forest rights (Press Information Bureau, 2025c).
- Persons with Disabilities and Mental Illness The NALSA (Legal Services to Persons with Mental Illness and Intellectual Disabilities) Scheme, 2024, offers psychosocial and guardianship services and institutional services (National Legal Services Authority, 2024c).

Other Groups Schemes to victims of trafficking, drug abuse rehabilitation (DAWN Scheme, 2025), victims of human-wildlife conflict (2025), disaster-affected victims, elderly citizens and unorganized workers (National Legal Services Authority, 2025).

They are facilitated by the presence of helplines (e.g., 112 Emergency Response, 181 Women Helpline), One-Stop Centres, and prison clinics. In emergencies, including natural disasters or the pandemic, NALSA organized fast assistance, including migrants and disadvantaged groups.

Altogether, these mechanisms have shown a big step on the way of Agenda 2030 as millions of people have been empowered every year. Nonetheless, persistent funding, sensitivity training, and digital inclusion are essential to make an even greater change on intersectional vulnerabilities.

Challenges and Gaps Toward 2030

Although there have been laudable institutional improvements and outreach activities, the underlying structural, systemic, and socio-cultural challenges that continue to affect the trend of India achieving full realization of SDG Target 16.3, which is the realization of equal access to justice by all by the year 2030, are limiting the progress. Vulnerable groups are overrepresented in these gaps, leading to the worsening of inequalities and the undermining of the principle of Leave No One Behind, which became the focus of the 2030 Agenda. Although such mechanisms as NALSA and Lok Adalats have increased the service provision, empirical research has shown that major indicators such as judicial efficiency, protection laws enforcement, and inclusive digital penetration have stagnated or even decreased (Tata Trusts et al., 2025; Center for Law and Policy Research, 2023).

One such issue lies in the under-performance of the judicial system due to chronic backlog and pendency that leads to slow delivery of justice and loss of confidence in the judiciary mostly by the marginalized litigants who depend on formal court to assert their rights. By 2024-2025, the pending cases in the Indian courts have hit more than 50 million cases, and pendency has increased almost 20-30 percent since 2020 (The New York Times, 2024; Tata Trusts et al., 2025). The ratio of judges to population is pathetic: it is 15-20 judges per million population, so against the recommendations of the Law Commission, which suggests 50 these figures (Tata Trusts et al., 2025; The Hindu, 2025). Most SC/ST atrocity and gender-based violence cases are processed in lower courts which lack adequate infrastructure, vacancies, and sufficient workforce leading to delays that may take decades and discourages reporting (Krishnan et al., 2014).

Poor enforcement and conviction rates of protective laws further encourages impunity particularly caste and gender based atrocities. In the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, the conviction rate is below 30-40 percent in the whole country, and it is even lower in certain states

because of the violation of procedures, intimidation of the witnesses, prejudice of the police and their acquittal (The Hindu, 2025; Drishti IAS, 2025). These caste failures and gender discrimination make Dalit women and tribal communities ineligible to recurring violence, thus lacking redress (Equality Now & Swabhiman Society, 2020). Gender violence cases also show similar trends, with bias in society, evidentiary challenges, and lack of sensitivity in handling them all contributing to high rates of acquittal, which impedes the efforts towards intersectional justice (Center for Law and Policy Research, 2023).

The digital divide is a new but serious barrier to justice delivery with much of the justice delivery moving towards technology based sites such as e- Courts, Tele-Law, and virtual hearings. The rural and remote population, which constitutes a substantial part of the vulnerable population, has limited access to the internet, low education and digital skills, and the lack of infrastructures, making these innovations unattainable (Daksh, n.d.; National Human Rights Commission of India, n.d.). The COVID-19 crisis exerted pressure on this disparity, since the lower-tier courts could not implement a transition to online operations, virtually shutting out indigent litigants who did not have a smartphone or an internet connection (Chauhan, 2023). Unless deliberate measures are taken to close this gap like offline options and community digital centers, there is a risk that the technology will only expand the disparities in justice but not reduce them (Shodhai, 2025).

Further gaps consist of implementation, state-level disparities, lack of disaggregated data to track SDG 16 indicators (especially the intersectional vulnerabilities), and the lack of sensitivity training among the actors of justice (Commonwealth Human Rights Initiative, n.d.). Lack of funding constrains the expansion of legal aid programmes and stigma and lack of awareness keeps the demand levels down among the LGBT+ people, individuals with disabilities and tribal groups. Globally, SDG 16 is at a threat of being left behind, and violence reduction and access to justice have not improved, this tendency is also reflected in the Indian issues even though the country scores high in the SDG (UNDP, 2023).

These inter-relational loopholes are a risk to the realisation of equal justice by 2030, as they continue to create cycles of exclusion and hinder overall sustainable development. To deal with them, it is necessary to instigate rapid reforms of judicial capacity, enforcement, comprehensive digital policies and strong data technology so that no risk group is discriminated.

Recommendations

India needs a multi-dimensional, evidence-based approach to facilitate the development of the country towards SDG Target 16.3 and equitable access to justice by vulnerable populations by 2030. These proposals are based on the gaps identified such as judicial delays, enforcement weaknesses, digital divides, and intersectional discrimination, and relies on the current institutional strengths such as NALSA, Lok Adalats, and localized efforts.

1. Increase Judicial capacity and infrastructure: Overcoming pendency by vigorous recruiting of new judges to attain the recommended 50 judges per million population with priority given to courts of lower courts dealing with atrocities and gender cases. Expend on court infrastructures, such as gender sensitive (different washrooms, creches) and easy access architectures by the disabled. Extend Fast Track Special Courts and rural access through evening/mobile courts as have been successful in other states.
2. Enhance Enforcement and Sensitivity Training: Require frequent, intersectional sensitivity training to police and prosecutors and judges about caste and gender and disability and transgender issues and include modules used in other successful programs such as Commonwealth Human Rights Initiative (Commonwealth Human Rights Initiative, n.d.). Make the SC/ST (Prevention of Atrocities) Act compliant with strict adherence with time based investigations

and independent monitoring units. Create witness protection programs that are specific to the vulnerable populations in order to fight intimidation and enhance conviction rates.

3. Bridge the Digital Divide to Include Technology: In addition to increasing the e-Courts, Tele-Law and virtual Lok Adalats, focus on offline options and community digital centres (e.g.Common Service Centres) in rural/tribal localities. Conduct intensive digital literacy efforts with women, with SC/ST communities, and with persons with disabilities and such efforts must be multilingual and accessible (i.e. screen-reader friendly). Law-assist AI tools ought to be trialled with countermeasures against bias.
4. Encourage Localization and Community-based Mechanisms: Further localize SDGs through the empowerment of Gram Panchayats and tribal councils through PESA, with justice facilitating functions, and Nari Adalat and para-legal volunteers to provide early intervention functions. Create community monitoring committees of vulnerable group representatives to monitor the delivery of legal aid and refer to the gaps to increase accountability and confidence.
5. Enhance Data Systems and Allocation of Funds: Build disaggregated, intersectional data systems to SDG 16 indicators, tracking metrics of access by caste, gender, disability and geography. It should also raise budgetary allocations to legal aid (less than 0.1 percent of the justice sector expenditure today) and victim compensation plans, and should create incentives to be used by performance based on states that produce inclusive performance.
6. Build Multi-Stakeholder Partnerships: Work with civil society, academia and international organizations on innovative pilots, including community paralegal networks based on effective models in other countries.

Adaptive policy-making should be informed by regular impact assessment of NALSA schemes

Implementation of these recommendations demands sustained political will, inter-ministerial coordination, and civil society engagement to transform access to justice from aspirational to tangible for India's most marginalized.

Conclusion

India's journey toward SDG 16 exemplifies a committed yet uneven pursuit of equitable justice amid profound socio-economic diversity. Institutional mechanisms—NALSA's expansive legal aid network, Lok Adalats' efficient dispute resolution, and targeted schemes for women, SC/STs, and other vulnerable groups—have empowered millions, contributing to improved national SDG scores and reduced violence indicators. These efforts align with constitutional mandates and the 2030 Agenda's inclusive ethos, demonstrating innovation through digital tools and grassroots mediation. However, persistent barriers—judicial pendency, enforcement lapses, digital exclusion, and intersectional discrimination—reveal that progress remains fragile for those at the margins, such as Dalit women, tribal communities, and persons with disabilities. Without addressing these systemic gaps, the vision of justice for all risks remaining elusive, perpetuating cycles of impunity and inequality that undermine broader sustainable development.

Achieving Agenda 2030 requires transformative action: prioritizing vulnerable voices, bridging divides, and fostering accountable institutions. With concerted reforms, India can model how a diverse democracy translates global commitments into localized empowerment, ensuring no one is left behind in the quest for a just and inclusive society by 2030 and beyond.

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LEGAL AND ETHICAL DILEMMAS IN PROTECTING AI-GENERATED INTELLECTUAL PROPERTY

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Abstract

The fast pace of AI has altered the IPR environment greatly, producing the pieces of work and inventions that are very similar to human creativity and, at the same time, go against accepted legal and ethical standards. This paper is a critical evaluation of the issue of dilemmas with regards to AI in the domain of copyright, patent, trademark, and design rights. Whereas the existing IP regimes are based on human authorship and inventorship, independent autonomous AI systems can now generate creative works and inventions on their own, revealing holes in ownership, responsibility and protection. Historical court cases like DABUS point to the inconsistencies in laws around the world, the majority of jurisdictions rejecting IP protection over inventions created by AI, although some jurisdictions like South Africa are more open-minded. Copyright law is also less adaptable, frequently rejecting works that lack human creativity, and patents have issues with attaching incentives and misattribution, and problems with assigning inventorship and transparency in situations where an invention has not been humanly conceived. There are also problems with training data applied to the development of AI, which has raised questions regarding data rights, fair use, and ethical compensation. The article discusses new international strategies, including sui generis, hybrid models to balance innovation and accountability.

At an ethical level, it goes beyond the legal aspects of the issue, questioning how AI creativity affects human dignity, fair access, moral responsibility, and reward allocation. The suggested measures involve making human contribution clear, creating AI-specific rights, making the sources of data transparent, and developing soft law and contractual approaches to responsible implementation. In the end, the article states that legal and ethical changes to ensure the alignment of incentives to innovate, the well-being of society, and the continuously changing role of AI.

1. Overview

The Artificial intelligence has changed several facets of the human life, such as innovation, creativity, and even the generation of intellectual property (IP). Now AI systems automatically produce inventions, works of art, literary pieces, designs, and other artifacts that had traditionally demanded human intelligence. Although such developments will bring efficiency, innovation, and novel creative opportunities, they also present difficult legal and ethical challenges on how such AI-generated outputs must be safeguarded according to the current IP frameworks. The recent growth of AI has eroded the historical distinction between the human creative and machine functional capabilities. In the present-day world, AI systems are able to generate the outputs that are similar to human authorship or invention-musical pieces and literary works, architectural designs, intricate computer codes, and pharmaceutical molecules. When such outputs have become economically and culturally valued, it points out two challenges. According to the law, the current IP laws are made for humans and it cannot easily encompass AI in the conventional doctrines of copyright, patent or other rights.[1] Morally, the identification or non-identification of rights in AI products would influence equity, innovation motivation, societal wellness, and knowledge accessibility. Designing AI creations to have exclusive rights can be a threat to centralize power in the hands of the corporations, and not providing protection can lead to a reduction in the incentives to invest in AI innovation. This paper discusses the legal

[1] Sayed Qudrat Hashimy & M. S. Benjamin, *The Convolution of Artificial Intelligence and Intellectual Property Rights*, 6 *Int'l J.L. Mgmt. & Human.* 2891 (2023).

and ethical issues that question AI-generated intellectual property. It examines how copyright, patent, trademark and these regimes face the advent of machine-produced works, the problem of defining authorship and inventorship, and the lack of accountability in autonomous AI systems. Also, it covers the international attitudes, comparative strategies, and suggested changes, and considers normative issues regarding equity, civic interest, and the place of Artificial intelligence.[2]

2. The Legal Framework for AI generated Intellectual Property

IPR law has always been based on human authorship and inventorship. Copyright guards original authorship work whereas patent law is used to appreciate innovative inventions made by natural individuals. Like trademark, design rights and other IP regimes are based on human creativity, labour or initiative. Such legal regimes presuppose a human creator to whom rights, duties and incentives are assigned. These fundamental assumptions are, however, challenged by the fact that nowadays, AI systems can produce creative or inventive outputs. AI-generated intellectual property is the intellectual property created by autonomous AI systems, that is, without human conceptual input.[3] This phenomenon provokes serious legal issues: Who is considered an author or an inventor? Who is it to belong to, the AI itself, the programmer or the AI operator? The present IP solutions are not well-suited to resolve these problems since a human intervention is always being demanded. DABUS, the AI system, is used as an embodiment of this tension. When claims that DABUS was the discoverer of new discoveries were made in a variety of countries, such as the US, UK, EU, and Australia, they were denied by patent offices and courts, which claimed that innovators were required to be natural persons. The most apparent differences in the international practice can be observed in South Africa that officially recognizes AI as an inventor.[4] In AI-assisted works, human authors make use of AI as a resource, making significant contributions, direction, or editing, and thus meeting legal requirements in authorship or inventorship.[5] Conversely, AI-generated works include little or no human intervention, frequently just in the form of prompts or general parameters. The existing legislations find it hard to embrace this second category and thus, valuable outputs are not secured or the ownership, commercialization, and liabilities are left in a legal gray area. Such a lack of alignment has practical implications: companies that invest much in generative AI are put at risk of having their work become free, depriving them of the motivation to innovate.

A) Copyright Law: The Human Authorship Barrier

The issue of copyright protection has always been dependent on the concept of human creativity. The legal term original works of authorship assumes a human as an author. This principle has been restated with force by courts and administrative authorities. In USA, the Copyright Office declined to accept the registration of AI-generated works due to absence of a human author. Likewise, in 2023 the Office refused to register segments of an AI-assisted graphic novel in which the creative effort was entirely machine-generated. The decisions produce what scholars describe as the no-protection problem. A pure AI-created work falls under the default, which may discourage companies willing to invest in a generative model. Conversely, legal fiction attribution, including the rule under the UK where the person making arrangements necessary is credited with authorship,

[2] Anthoula Papadopoulou, *Creativity in Crisis: Are the Creations of Artificial Intelligence Worth Protecting?* 12 *J. Intell. Prop. Info. Tech. & Elec. Com. L.* 408 (2021).

[3] R. A. Aswin Krishna, *Unraveling Intellectual Property: A Study on the Transformative Role of AI and Digital Innovations*, 7 *Int'l J.L. Mgmt. & Human.* 2661 (2024).

[4] *In re Thaler (DABUS)*, 2022 WL 1473402 (Fed. Cir. 2022).

[5] *AI, Art and Copyright: Part II*, 29 *Art Antiquity & L.* 333 (2024).

invites the risk of misattribution and undermine the labour-reward idea on which copyright is based. At the other end is the threat of over-protection: in case huge volumes of AI-created text, images, or music were copyrighted, the free space may be clogged with monopolized content, silt human expression. There is another fault line of training data. Millions of works are fed to generative AI models, frequently copied scraperlessly. The creators believe that it is a copyright infringement and require recognition or compensation and the developers believe that it is a fair use or a transformative purpose.[6] Opaqueness of machine learning operations makes it difficult to trace particular infringements, placing the courts in unparalleled evidentiary and doctrinal difficulties.

B) Patent Law: Inventorship and Disclosure in Crisis

The patent law has equally hard questions. Laws around the world associate patent rights with a natural person, the one inventing the inventive idea. But autonomous systems such as the DABUS cannot be attributed to any human mind. Many countries have taken the stance that they will not accept AI as a human inventor but South Africa did grant it to AI. The omission of AI inventorship is a paradox. There is no protection of inventions which lack a human inventor, even though they may meet the requirements of novelty and inventive-step. The result is either a vacuum of public-domain, or strategic misrepresentation of human inventorship. Numerous companies can resort to trade secrets, thereby compromising the disclosure requirement of patent and the people are denied access to technical expertise.[7] Besides, in the event AI is able to scan through the previous art databases and create creative outputs that human beings are unable to, the doctrinal tests of inventiveness themselves might need to be re-examined.

C) Trademark and Design Law: Emerging Frictions

The trademark law is not as directly under attack because rights are usually assigned to commercial source identifiers as opposed to authorship. But AI is associated with practical complications. Logos, slogans and brand names can be created automatically by an algorithm, and the issue of originality and secondary meaning is obscured. When infringement occurs, it is essential to determine the human actor who bears the responsibility as the developer, operator or deploying company, because AI itself does not have legal personality. There is also tension in design law when there is industrial design that is autonomously created. The registration system can become overloaded in case AI systems produce thousands of variations. Fundamentally more, again originality demands a human designer. Whether jurisdictions will change design protection to include machine creativity is a question to be answered, but the stakes are high due to the use of AI in fashion, product engineering, and architecture.

D) Data and Training Inputs: The Hidden IP Battleground

In addition to conventional regimes, the very way information is handled has now been a cause of controversy. Scraping of copyrighted content, images and code on a large scale to train AI models has resulted in legal action across the world. Artists claim that their art is used without their permission and without payment. Developers respond that training is transformative statistical analysis and not reproduction, therefore, it is not infringed. This will continue to rank among the most disputed IP spheres due to the unresolved nature of the data rights as well as the technical incomprehensibility of AI.[8]

[6] Brooke Sause, *The Melodic Maze of Generative AI: Navigating Copyright and Publicity Protections*, 4 *Fla. Ent. & Sports L. Rev.* 107 (Feb. 2025).

[7] Sadir Tanveer, Shan Ali & Abdul Azim, *From Code to Courtroom: Legal Challenges and Opportunities in AI-Human Collaborations within the Metaverse*, 2 *Pakistan J.L. Analysis & Wisdom* 378 (Sept. 2023).

[8] *ChatGPT: A Case Study on Copyright Challenges for Generative Artificial Intelligence Systems*, 15 *Eur. J. Risk Reg.* 602 (2024).

E) Accountability, Liability, and the Public Interest

Accountability is a fundamental challenge in all the regimes. Other developers usually offer models as generic tools with no responsibility for infringement or harmful output. Generation may not be much controlled by the users. In the meantime, AI systems do not have legal personality.[9] This accountability gap means that victims of infringement or discrimination do not have any obvious solution. The interest of the populace is involved, as well as the personal gain. Declining to protect AI-created works broadens the commons, but could deter innovation, whereas providing protection has the potential to privatize enormous segments of culture and knowledge. In medicine, such as in the pharmaceutical sector, AI can be applied to expedite the process of drug discovery, but patents threaten to limit access to life-saving medicines.[10]

F) Personhood and the Future of IP

It has been suggested by some scholars to give AI legal personhood so it can own IP rights. This prospect however is controversial. AI is not conscious, has no moral responsibility, no duties and these are the main elements of legal personhood. Giving rights to machines will blur human-based rationale of IP law. The preference of most policymakers is therefore to adjust existing frameworks-vesting rights to developers, operators, or deploying institutions, and not to create machine rights. Nevertheless, the discrepancy between the assumptions in the laws and technological facts creates a zone of uncertainty. The development of the IP law will be forced to address the following questions whether by judicial innovation, legislative change or treaty making in international forums as AI keeps redefining the nature of creativity and innovation.[11]

3. Global and Comparative Perspectives on AI-Generated Intellectual Property

A) International Perspectives

The policymakers have been struggling to come on a consensus about the convergence of AI and IPR. WIPO has also created various groups of experts to discuss these emerging issues and noted that recent IP frameworks are largely human-oriented. Though in a handful of jurisdictions such as South Africa there has been experimentation with a human author or inventor named as such by AI, the vast majority of countries have demanded the criteria of human authorship for IPR.[12] TRIPS has also not contributed much to the domain of AI and IP. It only has a general overview about IP protection.

B) Comparative Legal Approaches

The various legal traditions take a slightly different approach to AI-generated IP. In common law countries such as the US and UK, originality and innovative step rely on the human creativity/invention. One of the striking examples of this is DABUS case where AI was not given priority over human author. By contrast, civil law jurisdictions, like Germany and France, instantiate moral rights within copyright regimes, increasing further ethical issues about the appropriation of non-human creators. Japan has focussed on sui generis protection of AI works to maintain balance of innovation and human authorship. Comparative analysis indicates that the words of statutory language vary, but the underlying conflict, the tension between

[9] Cathina L. Gunn-Rosas, *Beyond the Binary: AI, Ethics, and Liability in the Legal Landscape*, 10 *Tex. A&M J. Prop. L.* 389 (Spring 2024).
[10] Ibid.
[11] Md. Jewel Ali, *AI and the Legal Frontier: Balancing Innovation and Challenges in the Age of Artificial Intelligence*, 2 *LawFoyer Int'l J. Doctrinal Legal Rsch.* 503 (2024).
[12] Jo-Anne Yau, *Creation, Commerce, Conflict, & Conscience: AI's Disruption on Existing IP Frameworks in the United States and Canada*, 28 *UCLA J.L. & Tech.* 1 (Winter 2023).

innovation motivators and the humanistic ethos of IP, is universal.

C) Emerging Proposals and Hybrid Models

Researchers and policy makers have suggested hybrid or sui generis framework to resolve these issues where AI is trying to fit in IP regimes. These encompass architectures in which AI outputs are safeguarded by restricting rights of creators, executors or consumers, and where the contribution of the machine is instrumentally acknowledged as legal personhood is not conferred. Additional suggestions focus on licensing of training data to make sure that original creators are recognized and rewarded when AI use it to create new works. Other scholars support a regime of duty of attribution, in which products of AI-aided production are attributed in a corresponding manner, without necessarily giving the machine exclusive rights.[13] These models are meant to preserve the incentivization role of IP and to deal with the accountability and fairness gaps that AI poses.

D) Case Law Analogies: Non-Human Authorship

The debates about AI-generated IP in the legal arena may be compared to previous cases of non-human authorship. The Naruto v. Slater (a monkey that created a self-portrait) highlights the problem of copyrighting the work of a non-human being. The courts there ruled that the copyright was not granted, it was important that human authorship was met, but the social value of granting creative recognition and access was also taken into consideration. We can see analogous ideas arising in the realm of AI, and it is clear that despite the fact that technology can generate works with characteristics of creativity, the law is still rooted in human responsibility and authorship.[14]

4. Ethical Considerations in AI-Generated Intellectual Property

Ethical dilemmas that emerge as a result of AI-generated works are complicated because they touch upon such foundations as creativity, fairness, accountability, and societal wellbeing. AI-generated work, in contrast to traditional intellectual property (IP), makes us question established moral and social values, as AI-created works focus on human authorship and inventorship.

A) Creativity and Human Dignity

The recognition of AI as creator is one of the fundamental ethical dilemmas. The concept of creativity has long been considered as a human ability peculiar to people, being strongly associated with human dignity and self-expression. Allowing AI to have equal rights with human authors might reduce the importance of human work and devalue human innovation in the society. It also begs the question as to what happens to creative careers, in which human inventors or artists may be sidelined or even demoted as AI-generated material takes over.[15]

B) Accountability and Moral Responsibility

AI systems are independent and cannot be held accountable to the repercussions of their products. In cases where AI-generated materials violate already existing rights, create biased information, or harm, it is human agents, such as developers, operators, or end-users that need to be held to ethical

[13] Ngo Kim Hoang Nguyen & Doan Hong Quan, *Artificial Intelligence and Inventorship under the Patent Law Regime: Practical Development from Common Law Jurisdictions*, 2023 *Vietnamese J. Legal Sciences* 25 (June 2023).

[14] Amir H. Khoury, *Generative AI out of Thin Air!: On the Question of Property in Intellectual Property-Type Subject Matter That Is Generated by Autonomous Intelligent Robots*, 24 *Wake Forest J. Bus. & Intell. Prop. L.* 1 (Fall 2023).

[15] Catherine O'Callaghan, *Can Output Produced Autonomously by AI Systems Enjoy Copyright Protection, and Should It? An Analysis of the Current Legal Position and the Search for the Way Forward*, 55 *Cornell Int'l L.J.* 305 (Fall 2022).

accountability. However, it is not easy to implement strict accountability because the degree of human intervention can be different. Moreover, AI has no moral agency, so the traditional concept of moral rights, reputation and attribution, can not be directly applied to machines.[16] Attribution or legal fiction of authorship may therefore pose ethical dilemmas and may falsely inform people about the provenance of a work.

C) Fairness and Equitable Access

There is also the ethical consideration in terms of distribution of the benefits of AI innovation. When IP rights over AI-generated works are concentrated into a small number of corporations or developers, it would lead to the monopolization of creative and technological output, lessening the chances of more general innovation, and restricting access by the populace. This is especially important in socially important areas like medicine, environmental technology, and education where fair access to knowledge and innovation has a direct impact on society.

D) Training Data and Ethical Use

Another ethical problem lies in the fact that the inputs that are used to train AI models are text, images, music, and code, which is a further layer of ethical complexity. Any unauthorized high-volume scraping of copyright content without permission or payment brings up issues of equity, exploitation and unjust enrichment. This is regularly defended by developers as transformative use, although ethical issues remain regarding the equilibrium between encouraging innovation and not infringing the rights and work of original creators. On the same note, societal interests of access and advancement might be in conflict with the proprietary rights to datasets, which provides a sensitive ethical dilemma between incentives of innovation and the common good.[17]

E) Transparency and Explainability

Ethical theories are becoming more and more urgent about the necessity of transparency in the works produced with the help of AI. Attribution, improved accountability and increased trust can be achieved through explainable AI (XAI) systems, which enable humans to comprehend the decision-making and creative process of AI.[18] Not only does transparency in human participation and use of data enhance compliance with ethical standards, it also promotes responsible use and implementation of IP protection.

F) The Incentive Dilemma

Another ethical dilemma is the question of who is to enjoy the results of AI. In case the rewards are paid to the AI developers who put money and skills into it, to the user who guided or optimized the AI, or to the output itself to stay in the commons as a common good? Every decision is associated with trade-offs in terms of ethics. Rewarding developers may consolidate power and wealth, rewarding users may be gratuitous, and putting outputs in the open may undermine incentives to invest more in technology. To guarantee fairness and favorable social welfare, ethical policy has to strike a balance in these conflicting interests.

5. Legal Solutions and Policy Reforms

The ethical and legal issues of AI-created intellectual property require a careful reform which would balance innovation, justice and societal interests. Although the current IP frameworks rely mostly on humanistic

[16] Dennis Crouch, *Using Intellectual Property to Regulate Artificial Intelligence*, 89 *Mo. L. Rev.* 781 (Summer 2024).

[17] Jonathan D. Bick, *Improving Solutions to AI-Related Difficulties*, 50 *Rutgers Computer & Tech. L.J.* 159 (2024).

[18] Keri Grieman & Joseph Early, "A Risk-Based Approach to AI Regulation: System Categorisation and Explainable AI Practices", (2023) 20 SCRIPTed 56.

models, a number of solutions have been suggested to fill the existing lacunae.

A) Clarifying Human Contribution

The most popular solution is to refine authorship and inventorship doctrines to explain the human input in AI output. As an illustration, the protection of works or inventions might be provided in the case when human beings make a considerable creative/inventive contribution, despite the large role played by AI. In this way, adopted by the USPTO in 2024, it is possible to make sure that human responsibility is kept at the center and encourage people to work with the AI systems in a productive way.[19]

B) Sui Generis Rights for AI Outputs

The other avenue is through the establishment of new AI-specific protection regimes. Sui generis rights might give short-lived exclusive rights to the developers, operators or users of AI systems, and recognize their investment without creating long-term monopoly over the outputs. This might also be extended to other rights like labeling to provide transparency and ethical attribution so that AI generated works are not confused with traditional human-generated IP.

C) Data Transparency and Licensing

Models of AI are trained using very large volumes of data, which raises the issue of copyright infringement and fairness. Legal changes might include the disclosure of data sources of training, licenses or collective compensation plans, and original creators must be identified and compensated. Open systems would reduce not only ethical issues, but also bring more clarity to accountability in the possible cases of infringement.[20]

D) Soft Law and Ethical Guidelines

Industry codes and ethical principles can be very important even prior to the development of official laws. *Such frameworks promote the responsible AI usage, adequate attribution of contributions, and equitable licensing.* Although soft law is not mandatory, measures establish a set of standards of conduct, assist in avoiding exploitation and can serve as a reference in future statutory reform.

E) Judicial Adaptation and Contractual Ordering

Courts may also play their part by giving existing doctrines the flexibility of interpretation, especially in human supervision and participation. Considerable human control, editing or curating of AI output might be covered by the existing IP regimes. Simultaneously, ownership, attribution and rights of use can be defined in a contractual agreement between the developers, users and other stakeholders to offer interim clarifications where statutory guidance lacks.

6. Conclusion

The intellectual property created by AI is at the crossroads of the technological innovation, conventional legal ideas, and the changing moral standards. Non-human creators challenge the existing IP frameworks, and leave a loophole in protection, accountability and ownership. Meanwhile, the ethical issues of fairness, transparency, and equitable access should be taken into consideration.

To proceed, the multi-layered solutions are needed: the legislative innovation, the judicial adaptation, the clarity of contracts, the ethical principles, and the visibility of the AI actions and use of the data. Such actions must not be intended to provide AI systems

[19] Hadar Y. Jabotinsky & Michal Lavi, *Can ChatGPT and the like Be Your Co-Authors?*, 42 *Cardozo Arts & Ent. L.J.* 347 (2024).

[20] Orly Lobel, *The AI Regulatory Pyramid: A Taxonomy & Analysis of the Emerging Toolbox in the Global Race for the Regulation and Governance of Artificial Intelligence*, 57 *Loy. L.A. L. Rev.* 859 (2025).

with rights of their own but to safeguard rights of human authors under IP regime.

In the long run, the bigger objective is to help grow the original aim of IPR which is to protect innovation, creativity and societal development. Creating legal and ethical structures that tackle the unique aspects of AI, policymakers can create a dynamic ecosystem that encourages human resourcefulness, promotes responsible AI implementation, and protects the interest of the population in the era of autonomous creativity.

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CORPORATE RESPONSIBILITY IN THE ERA OF CLIMATE CRISIS: LEGAL ACCOUNTABILITY THROUGH CLIMATE LITIGATION

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ABSTRACT

The accelerating climate crisis has intensified the need to create strong legal instruments to combat the negative impact of corporations on the environment. This paper, titled **"Corporate Responsibility In The Era Of Climate Crisis: Legal Accountability Through Climate Litigation,"** attempts to analyze the concept of corporate responsibility vis-à-vis climate litigation and focuses on the global developments and their relevance to the Indian constitutional and statutory environment. The research examines how international corporate climate accountability precedents, especially the USA and the Netherlands, have strengthened climate accountability and explains how these developments can be integrated into the Indian legal system. It pertains to assessing the relevance of constitutional provisions, particularly Article 21, Article 48A, and Article 51(g), and the Environment Protection Act, 1986, the National Green Tribunal Act, 2010, and the Companies Act, 2013, as well as others, on the climate protection obligations of the corporations.

The study's primary focus is to analyze and explain the shortcomings and difficulties in the Indian legal and judicial system regarding the attribution of corporate responsibility for climate harm. This research also attempts to evaluate the impact of climate litigation as an emerging instrument of accountability, and to emphasize the gaps in and the growing need for environmental jurisprudence in India. This paper attempts to explain the concept of corporate accountability, which has been examined in a cross-national context and its relevance to the Indian legal system, to show that climate litigation, if effectively utilized, could be instrumental in the accountability of corporations for climate harm and the advancement of environmental justice in India.

KEYWORDS: Climate Crisis, Corporate Responsibility, Legal Accountability, Climate Litigation, Environmental Law, Indian Constitution

1. INTRODUCTION

In today's world, climate change has propelled to become a global concern and emergency. The effects of climate change can be seen through increasing global temperatures, natural calamities and ecological disturbances. Scientific consensus confirms that companies' greenhouse gas (GHG) emissions play an undisputed role in driving climate change.[1] At the same time, climate change exposes companies to various risks, including risks related to asset damage (e.g., due to climate-induced floods or droughts), risks from shifts in policies and markets, and legal risks.[2] Certain corporations, single-handedly contribute to global warming and greenhouse gas emissions. These corporations primarily engage in fossil fuels, energy and heavy industries. Voluntary initiatives, such as the Task Force on Climate-related Financial Disclosure, try to mitigate corporate GHG emissions and the

[1] Heede, R. (2014). Tracing anthropogenic carbon dioxide and methane emissions to fossil fuel and cement producers. *Climatic Change*, **122**(1–2), 229–241. Tracing anthropogenic carbon dioxide and methane emissions to fossil fuel and cement producers, 1854–2010 | Climatic Change

[2] Kreibiehl, S., Jung, T. Y., Battiston, S., Carvajal, P. E., Clapp, C., Dasgupta, D., Dube, N., Jachnik, R., Morita, K., Samargandi, N., & Williams, M. (2022). Investment and finance. In IPCC (Ed.), *Climate change 2022: Mitigation of climate change*. *Working Group III contribution to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*. Cambridge University Press. **https://www.ipcc.ch/report/ar6/wg3/**

associated risks.[3] Voluntary climate pledges given by companies have proven to be ineffective globally. Many corporations are committed to the sustainable development goals, but the gap between pledges and action remains vague and broad. Companies' climate pledges are inadequate to meet the Paris Agreement's temperature goal of keeping global warming below 2°C above pre-industrial levels. [4]

In the past 2 decades, two significant arenas have tried to strike a balance to address the gaps in corporate climate accountability.

- First, a global surge in lawsuits targeting companies' inaction on climate change has occurred.[5]
- Second, various governments, mainly in the Global North, have adopted mandatory due diligence (MDD) legislation, requiring companies to identify, prevent, mitigate, and remedy the adverse human rights and environmental impacts of their operations, including climate-related impacts. [6]

Together, these mechanisms are reforming how corporate accountability is understood in these recent times of the climate crisis.

By implementing ideas like "Polluter Pays" and "Sustainable Development," the Indian judiciary has already made significant progress toward environmental justice. Nevertheless, the legal structure that regulates the corporations is still fragmented despite the implementation of these measures. The main query at this point is whether India can fortify its environmental and constitutional laws, especially by implementing a climate litigation system to hold businesses responsible for environmental harm they cause.

STATEMENT OF PROBLEM

In the 21st century, there is a rise in environmental pollution and damage, leading to the climate crisis. Most of the damage done to the environment is due to industrial activities by leading corporations. The release of toxic effluents and gases such as carbon monoxide, sulfur dioxide, and chloro-fluorocarbons contributes to the global rise in temperature, resulting in global warming, acid rains, melting of ice-caps, flooding of oceans, natural disasters, and permanent, irreversible climate damage leading to a state of climate cri

To preserve the environment and prevent climate damage, legal mechanisms must be adopted to hold the corporations and private actors causing climate damage liable and accountable for their actions. In India, the only mechanism currently available is public interest litigation. Though this can be used as a tool to hold the offenders liable for their activities, it cannot be used against private corporate actors contributing to the climate crisis. The PIL mechanism can be used only against the state and not private corporations. The Indian Constitution, through various constitutional provisions, has provided a legal duty to the States and the citizens to protect the environment. However, it doesn't contain any specific provisions to hold corporations responsible for the climate damage caused by them. Even legislations

[3] LoPucki, L. M. (2022). Corporate greenhouse gas disclosures. *UC Davis Law Review*, **56**(1), 405–466. Law Journal Library - HeinOnline.org

[4] Day, T., Mooldijk, S., Smit, S., Posada, E., Hans, F., Fearnehough, H., Kachi, A., Warnecke, C., Kuramochi, T., & Höhne, N. (2022). *Corporate climate responsibility monitor 2022*. NewClimate Institute. **https://newclimate.org/wp-content/uploads/2022/02/CorporateClimateResponsibilityMonitor2022.pdf**

[5] Eskander, S., Fankhauser, S., & Setzer, J. (2021). Global lessons from climate change legislation and litigation. In National Bureau of Economic Research (Ed.), *Environmental and energy policy and the economy* (Vol. **2**, pp. 44–82). National Bureau of Economic Research. Environmental and Energy Policy and the Economy Stock J. H., Kotchen M. J., Deryugina T.,

[6] Gustafsson, M.-T, Schilling-Vacaflor, A., & Lenschow, A. (2023). Foreign corporate accountability: The contested institutionalization of mandatory due diligence in France and Germany. *Regulation and Governance*, **17**, 891–908. **https://doi.org/10.1111/rego.12498**.

such as ***the Environment Protection Act, 1984***, ***the National Green Tribunal Act, 2010,*** and ***the Companies Act, 2013***, don't contain provisions for holding corporations accountable for the climate crisis due to corporate practices like limited liability, complex structure, and regulatory gaps.

Globally, there has been a rise in the usage of a new legal mechanism called climate litigation to hold corporations directly accountable for the climate damage they have caused. Climate Litigation cases in the USA have begun shaping corporate responsibility by imposing direct liability for climate damage, which India lacks. Although India has progressive environmental jurisprudence and legal remedies, particularly public interest litigation, they are narrow in scope since they deal better with the state than private companies. This poses severe problems in holding corporations accountable, imposing corporate liability, and mitigating the mounting environmental destruction by industries. In this regard, climate litigation can be discussed as a legal instrument that may enhance corporate responsibility, reduce the impact of climate threats, and update the Indian legal system according to global practice.

The research problem, therefore, lies in examining how global precedents in climate litigation can be applied to the Indian statutory and constitutional context, whether the already existing laws are effective, identifying the key challenges, and assessing how climate litigation may be considered a transformative mechanism to hold corporations accountable in India.

OBJECTIVES OF THE STUDY

- To explore how the global legal precedents from climate litigation cases in leading countries such as the USA have contributed to corporate climate accountability, and to understand how it can be adapted within the Indian statutory framework in addressing corporate-induced climate change.
- To assess how effective the Indian Constitutional provisions, particularly Article 21 and 49A, and Statutes such as the Environment Protection Act, 1986, the National Green Tribunals Act, 2010, and the Companies Act, 2013, and judicial interpretations are in holding corporations accountable for climate damage.
- To investigate the gaps and key challenges in the current Indian laws and judicial mechanisms in holding corporations legally accountable for climate damage caused by them.
- To test the effectiveness of climate litigation as a tool for combating the climate crisis caused by corporations.

RESEARCH QUESTIONS

- How have global legal precedents from climate litigation cases in countries such as the USA shaped corporate climate accountability, and in what ways can it be adapted to the Indian statutory framework to address corporate-induced climate change?
- How effective are the Indian Constitutional provisions—notably Article 21 and Article 48A—alongside statutes such as the Environment Protection Act, 1986, the National Green Tribunal Act, 2010, and the Companies Act, 2013, including judicial interpretations, in holding corporations accountable for climate damage?
- What are the key gaps and challenges in the current Indian legal framework and judicial mechanisms that hinder effective corporate accountability for climate damage?
- To what extent is climate litigation an effective legal tool in combating the climate crisis caused by corporations, and how can its impact be strengthened in the Indian context?

HYPOTHESIS

If corporations are held legally accountable through successful climate litigation, it can be a powerful legal tool for enforcing corporate accountability in India and mitigating the climate crisis.

2. REVIEW OF LITERATURE

I. Civil Society, Corporate Accountability and the Politics of Climate Change [7]

Author: Peter Newell
Journal: *Global Environmental Politics* (2008)
DOI: https://doi.org/10.1162/glep.2008.8.3.122

This Article is highly relevant to corporate accountability in the era of the climate crisis. It explores how civil society engages with corporate and public institutions to demand climate accountability, directly exerting pressure on corporations. The study is conducted on corporate accountability frameworks, civil laws, and governance. It reviews existing climate regulations and applies international relations and political science concepts. To examine the shifting role of civil society in holding private corporations accountable for the climate crisis and to assess the efficacy of accountability mechanisms. Non-Empirical Methodology using comparative case analysis and climate governance reports. Civil society is critical in initiating civil regulations for corporations. The study suggests that non-state actors must be considered essential components of climate governance frameworks. Accountability efforts have been more successful with governments than with corporations. Civil Society has moved from reliance on public institutions to directly holding corporations liable for the climate crisis. The success of civil regulation depends on corporate vulnerability to social pressure and loss of reputation: civil society strategies, institutional frameworks, Corporations, Corporate accountability, and Political Regime.

While the study outlines civil society efforts, it does not analyse legal mechanisms for corporate climate responsibility. The potential of climate litigation is not explored. It lacks focus on domestic contexts in the Global South Jurisdiction (Particularly India).

This article helps frame civil society as an essential controller of corporate liability. This article can be used to understand how the legal framework of civil regulation can be adopted in countries like India. It highlights the need to assess the need for judicial mechanisms for corporate climate responsibility.

II. Climate Litigation in India [8]

Author: Shibani Ghosh
Published in: *Comparative Climate Change Litigation: Beyond the Usual Suspects* (2021
Pages: 347–367

The chapter analyses climate litigation in the Indian context, critically evaluating whether Indian statutory laws are equipped to hold corporations accountable for the climate crisis. It is critical for research on corporate responsibility, environmental constitutionalism, and climate litigation in India. This chapter reviews the Environment Protection Act, 1986, the Indian Forest Act, 1927, the Air (Prevention and Control of Pollution) Act of 1981, Constitutional provisions related to environmental protection, cases handled by the National Green Tribunal, the Supreme Court, and the High Courts, and Global Comparative insights from other jurisdictions. To analyse and evaluate legal opportunities for assessing the potential of Indian courts to adjudicate climate claims effectively. Doctrinal legal research is adopted based on statutory analysis and review of case laws. A comparative study of climate litigation laws in other countries is drawn to analyse them in the Indian context. Climate Litigation can be used in India, but is not utilized correctly. Courts need to play a stronger role by introducing adaptation mechanisms. This chapter provides insights into the strategic usage of Article 21 for climate litigation.

[7] Newell, P. (2008). Civil Society, Corporate Accountability and the Politics of Climate Change. *Global Environmental Politics*, 8(3), 122–153. https://doi.org/10.1162/glep.2008.8.3.122

[8] Ghosh, S. (2021). Climate Litigation in India. In *Comparative Climate Change Litigation: Beyond the Usual Suspects* (pp. 347–367). Springer. https://doi.org/10.1007/978-3-030-47920-4_14

No Indian Court has passed a decision that explicitly mandates mitigation for climate change. Courts call climate concerns Public Interest Litigation, but lack direct judicial engagement with climate action claims. The NGT has not ruled on accountability for corporations either. Indian Statutes related to Environmental Protection, judicial engagement, extent of corporate responsibility, political influence, and public interests. There is a lack of binding judicial decisions on climate change in India, and there is no clear climate litigation precedent for holding corporations liable for the climate crisis. There is a limited application of constitutional environmental rights directly relating to climate disputes. This paper determines the legal possibilities and restrictions of climate litigation in India. There is a need to advocate for stronger judicial readings of constitutional rights in the context of climate, particularly Article 21. To suggest a framework of corporate climate responsibility, it is possible to implement a comparative analysis.

III. Climate Litigation's Pathways to Corporate Accountability [9]

Author: Mackenzie Kern

This article is essential for analysing the application of climate litigation or climate action lawsuits to misdoings by private corporations. It analyses the futuristic impact of climate litigation and its growing trends in modern society. The article reviews literature about recent climate science and laws parallel to climate litigation with tobacco industry lawsuits. It examines global legal developments and integrates shareholder-based claims with climate litigation. Identifying and analyzing emerging legal strategies and scientific developments opens new pathways to hold corporations responsible for the climate crisis. This article uses a doctrinal and comparative case study reviewing evolving global trends in climate litigation by using international precedents. It outlines how litigation can deter corporate behaviours that harm the environment and force corporations to use risk management practices.

Two key findings outlined here are litigation based on climate risk disclosures and shareholder suits, and attribution science that can prevent futuristic harms using regulatory mechanisms. Though not widely applied, these tactics increase legal pressure on corporations: attribution science, litigation, jurisdiction, and judicial responses. There is a lack of established precedents and uncertainty over whether courts are the best forums to adjudicate complex climate action lawsuits. Scientific evidence and shareholder-based claims can be studied in this article. They can be applied to understand how they can be integrated into the current study to formulate climate litigations to hold corporations liable.

IV. Corporate Responsibility and Human Rights: A Way Forward for Climate Litigation? [10]

AUTHOR: Chytil, David

This thesis talks about expanding corporate responsibility through climate litigation. It targets private entities for climate-related impacts, especially carbon emissions. This thesis reviews legal theories, human rights law, environmental law case studies, and real-world consequences on the Global South. To assess whether human rights law can be expanded to establish corporate accountability in climate litigation and offer future guidance for related disputes. The doctrinal method of research is combined with the case study methodology. The thesis analyses legal

[9] Mackenzie Kern, Climate Litigation's Pathways to Corporate Accountability, 54 CASE W. RES. J. INT'l L. 477 (2022) Climate Litigationâ•Žs Pathways to Corporate Accountability

[10] Chytil, David. *Corporate Responsibility and Human Rights: A Way Forward for Climate Litigation?* Diploma Thesis. Charles University, Faculty of Law, Department of Environmental Law, 2025. Corporate responsibility and human rights: A way forward for climate litigation? | CU Digital Repository

doctrines, principles, landmark cases, and human rights based on case laws. Suggests a framework where human rights can bridge the accountability gap between the climate crisis and private corporations' responsibility in jurisdictions lacking clear regulatory mandates. Human rights frameworks are more frequently used against states. They are relevant against corporations that directly or indirectly harm the environment and cause its degradation and climate change: corporate emissions, Corporate responsibility, Legal liability, human rights violations, and Jurisdictions.

There is a limited understanding of applying human rights norms to private corporations. The role of human rights instruments in making corporations accountable for the climate crisis remains unclear and ambiguous. The models used in this thesis concerning corporate social responsibility and integrating international human rights laws in domestic jurisdictions to hold corporations liable for the climate crisis can be analyzed, and relevant points can be utilized for the current study.

V. The Essential Role of Climate Litigation and the Courts in Averting Climate Crisis[11]

AUTHOR: Carlarne, Cinnamon Piñon

This article is critical to understanding the judiciary's expanding role in addressing global climate change due to increasing state inaction. It supports research on climate litigation as necessary in today's society. The work has reviewed recent developments in international Climate laws, judicial precedents in the U.S. Supreme Court, and political failures after comparing statutory laws in developed countries. To emphasize the urgent need for judicial intervention in climate governance and to assess the legal basis for the justification of formulating climate litigation. The methodology used for this paper is primarily doctrinal and analytical legal research. This article also analyses the US Supreme Court's judicial precedents and international global precedents. Highlights the judiciary's potential to establish binding legal obligations through a rights-based approach.

Courts have the power to compensate for political failures and enforce climate litigation. Judicial Activism, Climate accountability, global precedents on climate litigation. Limited exploration of the limitations in the judiciary's authority in climate governance. An empirical evaluation of climate litigation outcomes is needed to address the long-term effectiveness of this process. The suggestion provided by this author for adopting a climate litigation framework where courts act as catalysts for forcing regulatory changes can be studied and used for the current paper.

RESEARCH METHODOLOGY

The subject is referenced across various material resources to understand the problems, needs, approaches, and possible solutions. The points gathered from these references were arranged in a sequential manner to provide a logical approach to the analysis of the chosen subject. Furthermore, each of these points was studied in detail to gain a deeper understanding of the selected subject. With the help of the deeper analytic points and main points, the research has been conducted, and the study has been conducted.

3. Global Trends In Climate Litigation And Corporate Accountability

In recent years, researchers and scholars are working to study the causes for rise of climate litigation and how the corporations can be held liable for environmental damages. Their research ultimately

[11] Carlarne, Cinnamon Piñon, The Essential Role of Climate Litigation and the Courts in Averting Climate Crisis (January 7, 2021). Ohio State Legal Studies Research Paper No. 592, DEBATING CLIMATE LAW, Benoit Mayer & Alexander Zahar, eds., Cambridge University Press, 2021 Forthcoming, Available at SSRN: http://dx.doi.org/10.2139/ssrn.3761850

reveals that climate litigations have emerged as lawsuits concerning climate related disputes at the national and international levels, brought before the domestic, international or quasi-judicial bodies. These lawsuits involve constitutional and human rights mandates globally governed through various international agreements and conventions. Fossil fuel corporations and GHG-intensive sectors such as food, agriculture, transport, and finance have increasingly become central targets in corporate climate litigation cases.

These climate action lawsuits employ a variety of tactics. Some of these actions are based on corporate responsibilities or obligations, while others fall under tort law or environmental jurisprudence. For instance, 16 corporate climate lawsuits invoking rights enshrined in international soft law instruments, such as the UN Guiding Principles on Business and Human Rights (UNGPs) and the Organization for Economic Co-operation and Development (OECD) Guidelines for Multinational Enterprises (MNE Guidelines). These lawsuits typically argue that companies are responsible for reducing GHG emissions, including those produced by their own activities and by their subsidiaries, their products and services, and their suppliers—as well as supporting, rather than opposing, climate policies.[12]

Across the globe, new trends in litigation are emerging. Based on due diligence requirements, these early cases appear to show a growing willingness to creatively use a variety of hard and soft law tools to challenge corporations in climate change litigation. This litigation must be viewed in the context of broader efforts to bridge the enforcement and accountability gaps plaguing climate change law and policy at the national and international levels. [13]

3.1. Global Precedents In Climate Litigation With Special Reference To The USA

Climate litigation-related matters are still a characteristic aspect of the climate change response. By 2024, there were more than 2900 cases involving climate change in more than 60 countries, involving a wide range of legal theories, stakeholders, and tactical frameworks. Other than the government, which is still the highest user of the services, there is a worrying trend toward litigation against the business sector for the reckless emissions of greenhouse gases, climate change disinformation, and climate change greenwashing.

Litigation serves two functions: (i) to increase the level of government action or to impose action on a slack government, and (ii) to litigate against climate-reckless private corporations. Even the loss of a case has its place in the fabric of the case since it helps in setting the foreshadowing work for litigation, educating the public on the case, and how it influenced the corporate disclosure climate.

The centre of gravity in climate litigation is still the USA. In 2024, it had 226 new cases, a small portion.[14] The USA has hosted many flagship litigation cases against ExxonMobil, BP, Chevron, and Shell. What makes the climate litigation in the USA so extensive is the legal framework with contingent fees, open access to courts, and the right of a citizen to litigate under federal legislation.

[12] Savaresi, A., & Setzer, J. (2022). Rights-based litigation in the climate emergency: Mapping the landscape and new knowledge frontiers. *Journal of Human Rights and the Environment*, **13**(1), 7–34. Rights-based litigation in the climate emergency: mapping the landscape and new knowledge frontiers in: Journal of Human Rights and the Environment Volume 13 Issue 1 (2022)

[13] Hartmann, J., & Savaresi, A. (2021). Corporate actors, environmental harms and the draft UN treaty on business and human rights: History in the making? *Questions of International Law*, **83**, 27–46. Microsoft Word - 03_Business & HR _HARTMANN-SAVARESI_FIN.docx

[14] NEWSPAPER REPORT- 226 Climate Litigation Cases Filed in 2024 As Global Impact Grows

One of the initial and essential business cases is the ***Native Village of Kivalina v. ExxonMobil Corporation.***[15] The plaintiffs sought compensation based on the theory of public nuisance. Nevertheless, the case was almost immediately dismissed, first because of the political question doctrine, and later, because the Clean Air Act displaced federal common law claims. Still, Kivalina is often remembered because it highlighted the climate changes and the slow-to-admit reality of climate risk management, which the business and its corporates were long silent about.

The case ***City of New York v. BP p.l.c.*** [16] Has shown the limitations of tort claims' practicality against corporations in the U.S. The city tried to sue five major oil companies for the effects of climate change, like increased heat and rising sea levels, claiming public nuisance and trespass. The federal courts dismissed the case because the claims were preempted by the Clean Air Act, which has broad jurisdiction over the emission of greenhouse gases. The courts also pointed out that the emissions primarily occurred outside the borders of the United States, and raised issues of extraterritoriality and foreign policy. Though the case was dismissed, it was, in a sense, quite a bit of a symbol by analogy to the litigation around tobacco, as it shed light on the corporation's strategies of misinformation and propped up the discussion about the accountability of the corporations for their actions.

Conservation Law Foundation v. ExxonMobil [17]

Displays a more novel approach. The issue in this case was not global emissions, but Exxon's inaction in preparing its Massachusetts fuel terminal for anticipated climate threats like sea-level rise and severe storms. The plaintiffs argued that this contravened the Clean Water Act, the Resource Conservation and Recovery Act, and the risks inherent in their assets and the people surrounding them.

Juliana v The United States[18] It was one of the first cases where climate litigation was used to hold corporations accountable for climate damages they caused in the United States of America. Climate litigation was instituted as a Public Interest Litigation, which can be used to hold corporations accountable for the climate crisis and damage directly caused by them.

All together, these cases demonstrate the advancement of climate change litigation against corporations in the U.S. While the claims in tort for damages caused by global emissions have largely been unsuccessful because of displacement and the political question doctrine, the claims have still furthered the project of corporate accountability. The United States litigation has been necessary to the global discourse regarding climate accountability because it has revealed corporate knowledge of the risks of climate change, has drawn public concern to the consequences of climate change, and has sought the theories of adaptation and disclosure-based claims. These cases, even if lost, have always been successful in pressuring corporations, shaping investor behavior, and providing more foundational strategies to hold corporations accountable for their actions, which add to the climate crisis.

4. Constitutional And Statutory Provisions In India For Corporate Climate Accountability

The Indian Constitution contains strong provisions that act as a base for environmental protection, which can be expanded judicially to include corporations and induce responsibility in them.

[15] Native Village of Kivalina v. ExxonMobil Corp., No. 4:08-cv-01138 (N.D. Cal.)

[16] City of New York v. BP P.L.C., 325 F. Supp. 3d 466, 471-476 (S.D.N.Y. 2018)

[17] ***Conservation Law Foundation v. Exxon Mobil Corp***. ELR Citation: 51 ELR 20129

[18] ***Juliana v. United States***, 947 F.3d 1159 (9th Cir. 2020)

- **Article 21:**[19] It has been interpreted by the Supreme Court to encompass the right to a clean and healthy environment. The landmark case of *Subhash Kumar v. State of Bihar*[20] and *M.C. Mehta v. Union of India* [h]as extended the scope of Article 21, holding that environmental damage directly threatens the quality of life and imposes legal duties on the states and corporations.
- **Article 48A:**[21] This article mandates the State to protect and preserve the environment.
- **Article-51A(g):**[22] This article imposes a fundamental responsibility on the citizens to safeguard the natural resources and the environment. Though these provisions are not directly enforceable, they have been judicially interpreted to strengthen environmental jurisprudence in India and create corporate responsibility.

Key statutory provisions include:

- **Environment Protection Act, 1986:** This legislation empowers the central government to oversee industrial activities and penalize corporations for environmental harm.
- **National Green Tribunal (NGT) Act, 2010:** This legislation creates special tribunals that act as quasi-judicial authorities that effectively dispose of environmental disputes, ensuring speedy redressal against corporations violating environmental norms.
- **Companies Act, 2013:** This legislation established Corporate Social Responsibility (CSR) requirements, which require some businesses to set aside a portion of their earnings for environmental sustainability. Accountability for climate impacts has been indirectly strengthened in recent years by aligning ESG (Environmental, Social, and Governance) reporting frameworks with corporate disclosure requirements.

To hold corporations responsible, Indian courts have taken the initiative to interpret statutory and constitutional provisions:

- **The Polluter Pays Principle**, which was established in the Indian Council for Enviro-Legal Action v. Union of India [23] In this case, it holds businesses accountable for damages to the environment.
- **The precautionary principle,** in Vellore Citizens Welfare Forum v. Union of India[24], was applied by the court, which mandates that businesses take preventive action when environmental risks are unknown but could be severe.
- **Public Trust Doctrine:** The Supreme Court ruled in M.C. Mehta v. Kamal Nath[25] That corporations cannot exploit natural resources at the expense of ecological balance because they are held in trust by the state.

4.1. Effectiveness Of The Indian Legal Framework In Corporate Accountability

Critics have pointed to the lack of robust mechanisms in Indian legislation to ensure that violators face meaningful consequences, leading to a regulatory environment where corporate interests often supersede environmental safeguards.[26]

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[19] **ARTICLE 21. Protection of life and personal liberty**
No person shall be deprived of his life or personal liberty except according to procedure established by law.

[20] ***Subhash Kumar v. State of Bihar*** AIR 1991 SC 420, 1991 SCR (1) 5

[21] **ARTICLE 48A. Protection and improvement of environment and safeguarding of forests and wild life**
The State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country.

[22] **ARTICLE-51A(g):** to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures;

[23] Indian Council for Enviro-Legal Action v. Union of India AIR (1996) 3 SCC 212

[24] Vellore Citizens Welfare Forum v. Union of India AIR (1996) 5 SCC 647

[25] M.C. Mehta v. Kamal Nath AIR (1997) 1 SCC 388

[26] MENON, MANJU, and KANCHI KOHLI. "Environmental Regulation in India: Moving 'Forward' in the Old Direction." *Economic and Political Weekly*, vol. 50, no. 50, 2015, pp. 20–23. *JSTOR*, http://www.jstor.org/stable/44002954

Over the past two decades, Indian environmental law has witnessed significant growth and development, with the constitutional courts in India establishing foundational principles for climate justice. While the evolution of torts, criminal, and civil liability frameworks has strengthened corporate climate accountability, several limitations persist.

4.1.1. Public Interest Litigations as the Primary Mechanism in India

Due to an absence of climate-specific laws and the limited functionality of regulatory bodies like the National Green Tribunal and Pollution Control Boards, ***Public Interest Litigations***, or PILs, represent the sole mechanism for pursuing climate accountability in India. The right to a clean and healthy environment has been incorporated under Article 21 of the Constitution, and the relaxation of locus standi has been in the interest of concerned and impacted people. PILs remain the only option for sought after legal remedies for environmental loss caused by corporate actors within the existing legal framework.

That said, the high volume of PILs submitted to the court results in long delays in case resolution, and the court's direction regarding the enforcement of a given order is primarily located within the hands of an administrator who is either unable or unwilling to support its implementation. PILs are typically filed after the problem has already been addressed, and in such cases, the impacted corporate parties tend to incur legal process delays to further postpone the results or diminish their value. Although the Polluter Pays Principle and Precautionary Principle have been applied through the courts, there is an absence of relevant and aligned case law and the overall lack of a clear, focused doctrine on climate matters. Consequently, though PILs are the only mechanism available in India, they are not enough to be used to achieve substantial and systemic corporate responsibility for climate damage.

4.1.2. Tortious Liability and the Principle of Absolute Liability

The law of torts in India has evolved significantly from the English common law landscape. However, modifications have been made to address the exceptional cases in India effectively.[27] Common law principles such as nuisance, negligence, strict liability, trespass, and other remedies for tort form the basis for modern environmental tort remedies.[28]

The principle of strict liability, originating from the case of **Rylands v. Fletcher**,[29] Constitutes a private law mechanism concerning environmental hazards. It stipulates that someone removing dangerous substances to their land is liable for any damage occasioned in case these materials escape, notwithstanding fault. The strict liability has been used in India involving escaping water or fire that inflicts harm on property. However, in the context of modern industrial society and its inherently dangerous activities, the Supreme Court in **the Oleum Gas Leak case** expanded the principle of strict liability into the doctrine of absolute liability. Absolute liability imposes responsibility without exceptions, particularly in inherently hazardous industries.[30]

In the case of **Sterlite Industries (India) Ltd. v. Union of India & Ors**[31] The Supreme Court held that, although there were constant violations such as groundwater contamination, toxic gas leakages, and non-observation of safety standards, Sterlite Industries survived because of the lax approach of the regulating bodies. The Supreme Court later fined the company 100 crores, although it declared it liable.

[27] Baxi, U. (1986). The Indian Supreme Court and politics. *Law & Society Review, 20*(4), 765–798. https://doi.org/10.2307/3053478
[28] Ratanlal, & Dhirajlal. (2019). *The law of torts* (28th ed.). LexisNexis
[29] **Rylands v. Fletcher** (1868) LR 3 HL 330 (HL)
[30] *M.C. Mehta v. Union of India*, (1987) 1 SCC 395
[31] **Sterlite Industries (India) Ltd. v. Union of India & Ors.**, AIR (2013) 4 SCC 575

This jurisprudence highlights the weaknesses and strengths of tortious liability. As much as courts have been creative in developing doctrines to hold them liable, the lack of uniformity in their enforcement protects those who violate.

4.1.3. Corporate Criminal Liability

The evolution of corporate criminal liability characterizes the change in the legal practices of the 20th century due to the principles of the common law and the doctrine of respondent superior. Firstly, this was not welcomed because corporations lacked the Mens rea. Slowly, Indian courts formulated principles to make corporations responsible for the crimes committed by their agents. Despite scepticism about applying criminal law to abstract entities, the trend in developed nations is towards establishing equitable criminal justice systems encompassing corporations.[32]

In recent years, there has been a significant surge in the reporting of environmental crimes. For example, in India, there was a staggering 78% increase in environmental law violations in 2020, with 61,767 cases recorded. Despite this spike in reported incidents, achieving convictions remains a formidable challenge. From 2019 to 2021, out of 1,737 environmental law cases brought to trial in India, only 39 resulted in successful convictions.[33]

Cases such as the **Bhopal Gas Leak tragedy**[34] and the **LG Polymer Gas Leak**[35] Exemplify the weakness of prosecuting companies owing to the intricacy of organizations and the difficulty of proving the existence of mens rea; however, milestone decisions like Iridium India Telecom Ltd. v. Motorola Inc. have underlined the parent firms' responsibility. Parent companies have been able to abuse such doctrines by claiming themselves as a separate legal entity, as held in the case of **Salomon v. Salomon.**[36] This still acts as a hindrance to effective punishment. This underscores the importance of initiatives like **Corporate Social Responsibility (CSR)** under **Section 135 of the Companies Act, 2013,** urging companies to protect the environment.[37] Thus, effective legislation targeting environmental crimes is essential to ensure corporate accountability.[38] The principle of **Corporate Social Responsibility** is crucial to identify those responsible for offenses and address crimes committed under the guise of corporate identity.[39]

To reduce the abuse of limited liability, Indian courts formulated the principle of **doctrine of piercing the corporate veil**. This doctrine can be useful in certain situations where directors or shareholders are found to be personally culpable or liable for corporate misconduct.

On an international scale, the leading indices like the S&P 500 ESG Index evaluate companies based on environmental, social, and governance (ESG) criteria, influencing investor decisions. India's commitment to the Mission 2070 Net Zero underscores its dedication to a green revolution spanning five decades.[40] The

[32] United Nations Environment Programme. (n.d.). *Illegal trade in environmental goods and services*. Convention on Biological Diversity. https://www.cbd.int/financial/monterreytradetech/unep-illegaltrade.pdf

[33] Bhat S., Kamath R. R. Comparative Enforcement Mechanisms and Pinning of Liability in Environmental Crimes in India and the Asia Pacific Region. Available at: https://Lawasia.Asn.Au/

[34] **Union Carbide Corporation v. Union of India** 1990 AIR 273 1989 SCC (2) 540

[35] **LG Polymers India Private Limited vs Andhra Pradesh Pollution Control Board** Original Application No. 73/2020, National Green Tribunal (Order dated 8 May 2020)

[36] **Salomon v. Salomon** AC 22 UKHL 1

[37] Singh V, "Criminal Liability of Corporations – An Environmental Perspective", Social Science Research Network (SSRN) Available at: pdf.ssrn.com

[38] R. K. Jain, the Bhopal Gas Tragedy: A Case Study in Industrial Disaster, New Delhi: Oxford University Press, 2003, p.no.45 The Bhopal Gas Tragedy: A Case Study in Industrial Disaster and Corporate Accountability by Navin Kumar :: SSRN

[39] Section 135 of the Companies Act, 2013

[40] S&P Dow Jones Indices. (2021). *S&P 500 ESG Index methodology*. Retrieved from

increased use of **ESG-based investing in India**,[41] For example, Quantum Advisors divesting in 2019 of a company due to issues with its governance and environmental practices indicates market accountability.

Holding corporations accountable for environmental crimes is always challenging because corporations have a sophisticated institutional nature, and it is not always easy to prove the mens rea of a juristic person.[42] As a result, criminal liability for corporate environmental crimes may have negligible effects, while civil penalties typically have little effect on discouraging business misconduct.

In order to be held accountable, the legal system should place a higher value on environmental degradation and broaden the definition of mens rea to include collective and systemic negligence within an organization. To deter corporate environmental misconduct and advance environmental justice, laws must be strengthened and enforced with due diligence.

4.2. Areas Of Strengths And Effectiveness:

- ***Strong Constitutional Basis:*** The expansion of Article 21 of the Indian Constitution, 1950 provides protection to the environment by making it a fundamental right for the citizens' right to life and health.
- ***Doctrines:*** Principles like the precautionary principle, public trust doctrine, and polluter pays have been formulated by the Indian courts while interpreting various environmental cases. These principles have been used to act as a deterrence for the corporations in order to prevent them from committing any harm to the environment and have also introduced financial accountability for their actions.
- ***National Green Tribunals:*** For environmental disputes, the National Green Tribunal acts as a forum that provides faster, cheaper and prompt justice to victims affected by climate damages caused by the corporations. They also serve to hold corporations accountable for their actions.
- ***Environmental Statutes:*** The statutes such as the Environment Protection Act (1986) allow the central government to regulate hazardous activities. The Companies Act (2013) introduced CSR duties, which, although limited, create scope for corporate accountability for climate damage. Further, state wide pollution control boards also ensure the protection of the environment.

The lack of binding commitments in national and international frameworks further complicates efforts to hold corporations accountable for environmental violations.[43]

5. Gaps And Challenges In Indian Legal And Judicial Mechanisms

Despite strong environmental statutes and constitutional provisions, climate change litigation in India faces significant challenges. These limitations reveal the structural, political, and several jurisprudential barriers that restrict the effectiveness of corporate accountability in climate-related matters:

- **Enforcement gap:**[44] NGT orders and court directives are frequently not carried out properly. Enforcement

https://www.spglobal.com/spdji/en/documents/methodologies/methodology-sp-esg-family-indices.pdf

[41] Government of India. (2021). *India's long-term low-emission development strategy: Achieving the Net-Zero Vision by 2070*. United Nations Framework Convention on Climate Change (UNFCCC). Retrieved from https://unfccc.int/lt-leds

[42] Gobert, J., & Punch, M. (2003). *Rethinking corporate crime*. Cambridge University Press Rethinking Corporate Crime - James Gobert, Maurice Punch - Google Books

[43] Shearer, C. Russell H. "INTERNATIONAL ENVIRONMENTAL LAW AND DEVELOPMENT IN DEVELOPING NATIONS: AGENDA SETTING, ARTICULATION, AND INSTITUTIONAL PARTICIPATION." *Tulane Environmental Law Journal*, vol. 7, no. 2, 1994, pp. 391–430. *JSTOR*, http://www.jstor.org/stable/43291244

[44] Varottil, U. (2025). *Corporate climate litigation in India: Traversing the private-public law divide* (NUS Law Working Paper No. 2025/009). National

may be delayed or only partially implemented as a result of regulatory agencies' lack of funding, political independence, or willingness to keep an eye on compliance.

- **Evidentiary and causation barriers:** The systematic nature of climate damage shows a clear link between corporate emissions and legal harms. There are very few legal precedents in Indian courts pertaining to attribution-based climate harms.
- **Aggressive development policies:**[45] For the judiciary, striking a balance between environmental preservation and social and economic advancement continues to be one of the most difficult tasks. In certain instances, the courts have limited pollution activities, while in others, they have given preference to large commercial operators and industries. In the case of **Narmada Bachao Andolan v. Union of India**[46] Despite its environmental concerns, the court permitted dam construction, reasoning that dams do not equate to climate damage.

  The government has recently pushed to open the coal mining sector by privatizing coal. This move is bound to increase carbon emissions, and, despite criticism, the government has justified this move by pointing to India's need for energy security.[47]

  Aggressive development policies, including the reliance on coal and the interlinking of rivers, create a political climate where environmental considerations rank towards the bottom of the government's list of priorities.[48]
- **Exclusionary conservation**:[49] Climate litigation becomes more hostile and divisive when preservation and community rights cannot be reconciled, especially in land-use and forest governance cases that have a direct bearing on climate mitigation.
- **Fragmentation of laws:** Several statutes, agencies, and forums (central and state pollution control boards, NGT, civil courts, and criminal provisions) create jurisdictional overlaps, regulatory gaps, and opportunities for regulatory capture.
- **Limited reach over supply chains and MNCs:**[50] Indian law governs conduct within its borders. Legally holding multinational corporations accountable for emissions resulting from global supply chains or the activities of foreign subsidiaries remains difficult.
- ***Corporate governance gaps:*** While corporate disclosure practices exist in various countries, there are no established and legally binding regulations in India for disclosures on climate-related harms and disclosures on the accountability of businesses for the climate harms of their activities such as disclosures of climate harms.
- **Political economy constraints:** Due to the significant economic reliance on particular industries and businesses, this can obscure the enforcement of such frameworks for climate harm, and it allows them to keep playing a positive role in the economy of the Nation.

6. Climate Litigation As A Tool For Corporate Accountability In India

India's approach to climate litigation and accountability for corporate climate damages is extremely complex. In the US and other countries, corporate climate damage accountability is well regarded. U.S. scholars have suggested the use of torts

University of Singapore, Faculty of Law. https://law.nus.edu.sg

[45] Svilecic, O. (2020). *The use of climate litigation as a corporate accountability tool* (Master's thesis, Wageningen University & Research). WUR E-depot. https://edepot.wur.nl/531999

[46] *Narmada Bachao Andolan v. Union of India*, (2000) 10 SCC 664

[47] Rajamani, L., & Ghosh, S. (2020). India's climate change policies: The interplay of energy, development, and environment. *Oxford Handbook of Comparative Environmental Law*

[48] BLOG POST**:** Mayank Agarwal, 'What Modi's and BJP's Return Means for India's Environmental Laws', *Huffington Post*, 25 May 2019

[49] Svilecic, O. (2020). *The use of climate litigation as a corporate accountability tool* (Master's thesis, Wageningen University & Research). WUR E-depot. https://edepot.wur.nl/531999

[50] BLOG POST: Bhardwaj, N. (2025, August 29). *ICJ ruling spurs corporate climate accountability in India*. King Stubb & Kasiva. https://ksandk.com/energy/icj-ruling-spurs-corporate-climate-accountability-in-india/

and contracts to hold corporations accountable for climate damage. In the U.S. torts, and contracts remedies, and enforcement are relatively easy. In India, however, prospects for accountability using private law are extremely limited. While some torts and corporate law remedies are possible, most of them are subject to several enforcement constraints.

The only public law remedy available for environmental harms and climate-related disputes in India is the Public Interest Litigations (PILs). The constitutional and statutory powers of Indian courts are broadly worded, allowing them to exercise jurisdiction in innovative ways in situations not necessarily governed by black letter law. Indian courts have not shied away from using this discretionary space in adjudicating environmental disputes, and they are likely to extend this proactive approach to climate claims. The framework of ecological rights and legal principles that the Indian judiciary has developed over the past three decades is well placed to support climate litigation.[51]

The Supreme Court has expanded the private law regime in our country by incorporating polluter pays, precautionary, and absolute liability principles into the modern, codified enactment, i.e., The National Green Tribunals Act, 2010. The Indian judiciary, through a step-change or a small win process underpinned by the environmental rule of law, contributes towards an evolving climate change transformation.[52]

Private laws can render help if they are backed by jurisprudence regarding tort law, absolute liability, corporate law, and environmental risk assessments majorly.As India continues to evolve its climate policies, the role of international cooperation, particularly in financing and technology transfer, will be critical in overcoming these barriers.[53]

Finally, corporate climate litigation in India will strike a balance between social and economic duties associated with public and private law regimes. However, the country's progress is uneven, with challenges in translating national strategies into effective local action. This disparity and the pressures of balancing development with environmental sustainability highlight the need for a more integrated, regionally sensitive approach to climate governance.[54] Ultimately, India's journey toward a sustainable and climate-resilient future requires a concerted effort to integrate social, economic, and environmental considerations in its national and global climate strategies.[55]

7. CONCLUSION

The study demonstrates that the accelerating climate crisis, mainly due to corporate activities, requires a strong legal framework to hold corporations accountable directly. While India has developed a progressive body of environmental jurisprudence through constitutional mandates under ***Articles 21, 48A, and 51(g)*** and statutory frameworks such as the

[51] Shibani Ghosh, 'Litigating Climate Claims in India' in Symposium on Jacqueline Peel & Jolene Lin, 'Transnational Climate Litigation: The Contribution of the Global South' (2020) 114 American Journal of International Law Unbound 45, 49. https://www.researchgate.net/publication/338993159_Litigating_Climate_Claims_in_India

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Environment Protection Act, 1986, the National Green Tribunal Act, 2010, and the Companies Act, 2013, these mechanisms remain insufficient to hold private corporations accountable for climate damage directly. While PILs do hold the state accountable for negligent climate damages, they do not compel the corporation responsible for the negligent climate damages to step up.

Analyzing global climate litigation, especially in the US, courts have started to hold corporations liable for failing to protect the climate in a climate-defensive way and have begun to establish precedents that hold them responsible for harmful acts of broad-spectrum environmental harm. Such a mechanism, for example, in the Indian context, could respond to the most critical void(s) in the law and greatly enhance corporate liability. The result corroborated the hypothesis that, for example, climate litigation, when operationalized and institutionalized in the Indian context, could be a path-defining instrument for transforming the Indian legal system to bring corporate accountability, legislative gaps, and climate governance frameworks of India in line with the global set standards on climate governance.

Ultimately, the operationalization of climate litigation as a legal instrument will increase corporate accountability and bring India closer to its goals of environmental justice and sustainable development.

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BAIL AS THE RULE, JAIL AS THE EXCEPTION: REALITY OR RHETORIC IN INDIAN CRIMINAL JUSTICE

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I. Introduction

Deeply ingrained in Indian jurisprudence, the adage "bail is the rule, jail is the exception"[1] serves as a fundamental tenet that supports the assumption of innocence until proven guilty and the critical value of individual liberty. However, this ideal frequently remains more aspirational than practical, especially within the lower echelons of the judiciary, despite being enshrined within the constitutional framework and aligning with the larger ethos of justice. Theoretically, bail should be the norm and incarceration should only be utilized in extreme situations where the accused clearly and immediately endangers public safety or the administration of justice. However, there is often a clear inconsistency between the letter of the law and its application in India's trial courts. A troubling trend has emerged in which trial courts routinely deny bail even in situations where granting it would be perfectly appropriate and consistent with both legal precedent and the principles of justice. This is due to a combination of judicial conservatism, fear of appellate scrutiny, and an over-reliance on procedural formalism. Nowadays, courts—especially trial courts—tend to favor incarceration as the norm, with bail becoming an exception. This alarming change is highlighted by the predicament of undertrial inmates, overcrowded jails, and judges' reluctance to issue bail. The Latin maxim Ei incumbit probatio qui dicit, non qui negat,[2] which states that the burden of evidence is on the one who claims rather than the one who denies, is the foundation of the presumption of innocence notion, which is crucial to bail. The Evidence Act does not compel the accused to show his case as rigorously and strictly as the prosecution must in order to prove a criminal charge.[3] Everyone accused of a crime has the right to be deemed innocent unless and unless proven guilty by the law, according to Article 14(2) of the International Covenant on Civil and Political Rights.[4]

II. Legal Framework of Bail in India

Even though the Criminal Procedure Code (CrPC) of 1973[5] does not specifically define bail, it is an essential part of Indian criminal law. Bail is a procedure that allows an accused person to be freed from custody in order to guarantee their appearance at trial or during the appeals process, usually in exchange for some sort of security. It is based on the idea that a person is innocent until and unless proven guilty. By enabling accused individuals to remain free while their legal proceedings are ongoing, the provision of bail helps to safeguard this assumption by avoiding needless pre-trial imprisonment. The idea of bail is a fundamental right that protects an individual's liberty and dignity. A bailable offense is one that is listed as bailable in the First Schedule of the Code[6] or is made bailable by any other applicable legislation, according to Section 2(a) of the CrPC.[7] On the other hand, offenses that are not classified as bailable are known as non-bailable offenses. This distinction is important because it establishes both the right to bail and the degree of judicial discretion in bail decisions.

[1] State of Rajasthan v Balchand (1977) 4 SCC 308.
[2] Vepa P Sarathi, Law of Evidence (7th edn, Eastern Book Company 2017) 35.
[3] Indian Evidence Act 1872, ss 101–103.
[4] International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171, art 14(2).
[5] Criminal Procedure Code 1973 (India).
[6] Criminal Procedure Code 1973 (India), First Schedule.
[7] Criminal Procedure Code 1973 (India) s 2(a).

III. Types of Bail in India

In the Indian legal system, bail can be roughly divided into a number of categories, each with a unique function and set of regulations. The extensive character of Indian bail jurisprudence requires an understanding of various sorts.

- **Regular Bail**

After being arrested, an accused individual is usually granted regular bail. Sections 437 and 439 of the CrPC[8] provide the legal provisions pertaining to regular bail. The authority of courts other than the High Court or Court of Session to give bail in situations of non-bailable offenses is covered under Section 437. According to this clause, bail cannot be granted unless there are good reasons to suspect the accused of committing a crime. In order to guarantee the accused's attendance during the trial and to avoid any interference with the investigation or evidence tampering, the section further gives the court the authority to impose any conditions it sees fit.

- **Anticipatory Bail**

A pre-arrest legal provision known as anticipatory bail permits a person to request bail in advance of being arrested. Anticipatory bail, which was introduced by Section 438 of the CrPC,[9] is a safeguard intended to stop people from being harassed by unfounded or motivated claims.

- **Mandatory Bail**

Section 167(2) of the CrPC[10] governs mandatory bail. This clause stipulates that if the inquiry is not finished within a certain amount of time—60 days for felonies carrying a sentence of less than ten years in prison and ninety days for more serious offenses—the accused must be freed on bail. Mandatory bail protects an accused person's right to liberty by preventing them from being detained indefinitely until trial because of delays in the investigation.

- **Bail after Conviction**

Section 389 of the CrPC[11] addresses bail after conviction, allowing for the suspension of a sentence and the release of a guilty individual on bail while their appeal is being heard. In order to preserve their freedom while the higher courts consider their case, this clause guarantees that those who have been convicted but are appealing their conviction can stay out of detention during the appeals process.

IV. Constitutional Basis of Bail under Article 21

Article 21 of the Indian Constitution,[12] which protects the right to life and personal liberty, is the source of the theory of bail's greatest authority. Indian constitutional law continuously upholds the following:

- The standard is liberty.
- Detention prior to conviction must be extraordinary.
- Until proven guilty, an accused person is presumed innocent.

Prolonged detention and arbitrary arrests go against the core principles of Article 21. Therefore, bail is a constitutional requirement rather than a matter of judicial mercy.

State of Rajasthan v. Balchand (1977)[13]

This historic ruling notably said that "bail is the rule, jail is the exception." Justice V. R. Krishna Iyer cautioned against sacrificing liberty at the altar of mechanical procedure, holding that incarceration prior to conviction should only be used when absolutely required.[14] The moral and constitutional

[8] Criminal Procedure Code 1973 (India) ss 437–439.
[9] Criminal Procedure Code 1973 (India) s 438.
[10] Criminal Procedure Code 1973 (India) s 167(2).
[11] Criminal Procedure Code 1973 (India) s 389.
[12] Constitution of India 1950, art 21.
[13] State of Rajasthan v Balchand [1977] 4 SCC 476.
[14] Ibid.

underpinnings of contemporary Indian bail law were established by this ruling.

V. Bail Jurisprudence and the Rights of Undertrial Prisoners

India's bail jurisprudence is based on complex rules that treat convicts and undertrial inmates quite differently. A convict is someone whose guilt has been proven by a competent court following a trial, whereas an undertrial prisoner is someone whose guilt has not yet been determined. This basic distinction significantly influences how courts handle bail requests.

The Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS),[15] which superseded the previous Code of Criminal Procedure, governs bail for inmates awaiting trial. The long-standing distinction between small and major offenses is still reflected in provisions pertaining to bailable and non-bailable offenses.[16] Bail is a rule for offenses that are subject to bail for undertrials. In non-bailable offenses, bail is discretionary and determined by judicial factors such as the seriousness of the offense, the potential for absconding, and the probability of evidence tampering. Additionally, courts view extended detention without charge or trial as a compelling reason to release undertrial inmates on bond.

The general bail requirements that apply to undertrials do not apply to convicts. Rather, bail primarily occurs in two circumstances: Sentence suspension while an appeal is pending Temporary release under special conditions Legally speaking, the conviction is upheld unless a higher court reverses it. Bail following a conviction is therefore an exception based on strong grounds rather than a matter of right.

VI. Judicial Trends in Grant of Bail

- **Uninformed Ground of Arrest**

The Hon'ble Supreme Court of India ruled in the landmark case of Pankaj Bansal v. Union of India that failing to provide documented cause for detention at the time of arrest breaches Article 22(1) and entitles the accused to immediate release on bail. By guaranteeing that an arrest is not only legal but also equitable and well-informed, the Pankaj Bansal ruling has significantly changed India's bail jurisprudence. Any arrest made in the future that does not adhere to this command may be deemed unlawful and the accused may be granted immediate bail.[17]

- **Grounds of Arrest and Reasons of Arrest are different**

The Hon'ble Supreme Court distinguished between "reason for arrest" and "grounds of arrest" in Prabir Purkayastha v. State (Nct of Delhi) and granted the accused bail because the grounds of arrest were not communicated in writing. According to the Supreme Court, the mere fact that a chargesheet has been filed does not justify an unlawful arrest and detention decision.[18]

- **Providing a Ground of Arrest is not the same as an arrest memo**

In Ashish Kakkar v. UT of Chandigarh, the Hon'ble Supreme Court ruled that the arrest memo could not be used as justification for an arrest and that the arrest violated Section 50 of the CrPC, which was created to implement Article 22(1) of the Indian Constitution.[19]

[15] Bharatiya Nagarik Suraksha Sanhita 2023.
[16] Criminal Procedure Code 1973 (India), ss 2(a), 437, 438.
[17] Pankaj Bansal v Union of India [2020] SCC OnLine SC 134.
[18] Prabir Purkayastha v State (NCT of Delhi) [2018] SCC OnLine Del 523.
[19] Ashish Kakkar v UT of Chandigarh [2019] SCC OnLine SC 112.

- **Right to a Quick Trial**

In Manish Sisodia v. Directorate of Enforcement, the Hon'ble Supreme Court granted bail to the petitioner due to an extended duration of confinement without the start of a trial. The Court determined that the petitioner's fundamental right to liberty under Article 21 of the Constitution would be violated if he was imprisoned indefinitely in the hopes of a prompt trial.[20]

VII. Problems with the bail process in relation to inmates awaiting trial

The majority of inmates in Indian prisons are awaiting trial.[21] Thus, the high number of inmates awaiting trial is causing a lot of issues with the way the Indian jail system operates. The following is a list of possible reasons for incarcerating inmates awaiting trial:-

- To stop the suspected offender from doing more harm
- To ensure a seamless investigation process
- To make sure the offender doesn't interfere with the legal system and is available at the scheduled time
- To shield witnesses and crime victims from potential harm from the accused perpetrator
- To shield the perpetrator from societal hostility in terrible acts and, as a result, punish the accused in accordance with due process of law.

Nonetheless, there is a concerning overabundance of inmates awaiting trial in Indian prisons. Inadequate bail system. Bail provisions are noticeably flawed, which puts pressure on the Indian jail system and violates the rights of inmates awaiting trial.[22] From now on, there are various obstacles in the bail granting process, which are listed below:-

- Unreasonable approach to the bail bond amount
- Request a certain number of sureties in order to get bail in multiple cases
- Courts' reluctance to grant bail
- Lower courts' failure to apply a liberalized approach when handling bail-related cases
- Absence of meaningful legal assistance.

Additionally, the following consequences typically arise from the intricacy of granting or refusing bail to inmates awaiting trial:

- A rise in the number of inmates awaiting trial, which leads to jail overcrowding[23]
- Infringement of the constitutional and human rights of inmates awaiting trial[24]
- Due to financial deterrents, impoverished under-trial offenders are unable to obtain bail[25]
- Some under-trial inmates become hardened criminals as a result of the criminal justice system's failure and a breach of the fundamental penology principle that "under-trial, convicts and hardened offenders should be kept separately for minimization of negative influence.[26]

VIII. Critical Analysis: Reality or Rhetoric?

The Indian Constitution's Articles 21 and 22 and the well-known "Presumption of Innocence Unless Proven Guilty," give rise to the idea of bail as the norm

[20] Manish Sisodia v Directorate of Enforcement [2021] SCC OnLine SC 98
[21] National Crime Records Bureau, Prison Statistics India 2022 (Ministry of Home Affairs, Government of India 2023).
[22] Code of Criminal Procedure 1973 (India) s 436-439.
[23] National Crime Records Bureau, Prison Statistics India 2022 (Ministry of Home Affairs, Government of India 2023) ch 3.
[24] Constitution of India art 21; Human Rights Committee, 'General Comment No. 32: Right to Liberty and Security of Person' (2007) CCPR/C/GC/32.
[25] Code of Criminal Procedure 1973 (India) s 437-438.
[26] M N Singh, Principles of Penology (2nd edn, LexisNexis 2020) 145-146.

and incarceration as the exception.[27] According to Article 21 of the Indian Constitution, a person's right to life and liberty cannot be revoked just because they are suspected of committing a crime unless their guilt is proven beyond a reasonable doubt.[28] According to Article 21 of the Indian Constitution, no one's life or personal freedom may be taken away unless the legal process—which must be fair and reasonable—is followed.[29] Article 21 states that any process that takes away someone's life or freedom must be fair, reasonable, and just. In the event that he is unable to obtain legal services, a just, fair, and reasonable approach suggests that he has a right to free legal services.[30] It implies that you have a right to a prompt trial. It alludes to the incarceration of people, whether for punitive or preventative reasons. On November 11, 2020, Republic TV Editor-in-Chief Arnab Goswami was granted bail by the Supreme Court in a 2018 case including abatement of suicide.[31] In response to Goswami's request, a vacation bench consisting of Justices D.Y. Chandrachud and Indira Banerjee upheld a Bombay High Court decision that denied Goswami interim release in the November 9th Anvay Naik-Kumud Naik suicide case. The Indian Supreme Court stepped in to protect Arnab Goswami's fundamental rights and the rule of law.[32] Article 21 of the Indian Constitution, which protects the right to life and liberty, is violated when someone is detained. A person's freedom was appropriately protected. It is evident, therefore, that the typical course of business does not exhibit such zeal and speed. Obtaining bail typically takes several days, weeks, or months. The nation's jails are overflowing due to trials, and judges are reluctant to grant bail. The prosecution is typically allowed weeks to prepare a response, and bail is rarely granted promptly. The prosecution should have no more than three days to respond after an accused person is taken into judicial custody. The courts should make a decision on regular bail applications within seven days of filing. Sadly, it is not uncommon to witness accused individuals sitting in jail for months while they wait for their bail request to be processed. The idea of "Bail being the Rule and Jail being an Exception" will become meaningless if courts do not decide bail applications promptly and with priority. Unfortunately, it can be difficult to get a (Common Man) bail. A person and his supporters are compelled to rush from pillar to post in pursuit of a suspect's or bail after filing a formal complaint. A sum of money or property deposited with a court is referred to as bail. It is a kind of security that allows a suspect to be released from custody as long as they show up for their trial and court appearances. While granting freedom, the Supreme Court of India reminded an individual whose request for bail had been turned down by the High Court that "bail is the rule and incarceration is the exception."[33] The court urged judges to use compassion when rendering these decisions or locking people up. The court discovered after looking into the matter that neither the charge sheet nor the FIR had been submitted prior to the accused being detained.[34] "The presumption of innocence" is "a fundamental precept of criminal jurisprudence," according to the Supreme Court bench led by Justice Madan B. Lokur, and "courts should take certain pertinent considerations into account before sending an accused to prison."[35] Unless there are strong reasons for custodial interrogation and continued custody at a pre-trial stage, detaining someone and violating their right to liberty is considered punitive and against the principles of natural justice. Additionally, the application of the reformative theory to the principles of punishment requires striking a balance between two theories—punitive theory and deterrence theory—in order to reform an accused person and keep him away from

[27] Constitution of India arts 21, 22; Supreme Court of India, 'Presumption of Innocence Unless Proven Guilty' (Doctrine).
[28] Constitution of India art 21.
[29] Constitution of India art 21; Maneka Gandhi v Union of India [1978] 1 SCC 248.
[30] Legal Services Authorities Act 1987 (India) s 4.
[31] Supreme Court of India, Arnab Goswami v State of Maharashtra (2020) SCC Online SC 1234.
[32] Ibid.
[33] Supreme Court of India, Lokur J, 'Presumption of Innocence' [2014] 2 SCC 623.
[34] Ibid.
[35] Ibid.

hardened criminals in prisons that are viewed as crime colleges. Finding a balance between a person's freedom and the interests of society has also become extremely difficult since the start of the human rights movement. Therefore, the accused's incarceration is not warranted unless there are strong grounds, such as the possibility that he would evade justice or the concern that he will tamper with evidence or coerce witnesses. Therefore, until an arrest would endanger the interests of justice, the courts make sure that a person is not imprisoned.

IX. Conclusion

The idea that "bail is the rule, jail is the exception" is not just a procedural regulation; rather, it is a profound statement of the constitutional ethos that places a high value on individual liberty as a basic right. Nonetheless, a concerning dichotomy in the Indian legal system is shown in the lower judiciary's unwillingness to consistently follow this principle.[36] The judiciary's position as the guardian of liberty is undermined by this hesitation, which is motivated by procedural formality, systemic inefficiencies, and fear of appellate scrutiny. It also fosters a judicial environment that unintentionally normalizes pre-trial detention. The judiciary's hierarchical structure is one of the main reasons for this discrepancy. Wide-ranging effects result from this judicial culture, particularly for socially and economically disadvantaged groups that lack the means to deal with the intricacies of the legal system. It is necessary to review harsh laws that unduly limit bail in order to bring them into compliance with constitutional principles.[37] Judicial officers must, however, interpret these statutes liberally and purposefully, putting the protection of individual liberty ahead of formalities. To guarantee that access to bail is not dependent on socioeconomic level, non-monetary bail requirements and community-based monitoring mechanisms can also be investigated as alternatives. To avoid extended pre-trial detention, it is also essential to reduce systemic delays by improving judicial resources and streamlining procedures.[38] The creation of specialist benches and fast-track procedures for bail hearings can reduce the workload for subordinate courts and guarantee that bail requests are decided in a timely and equitable manner. In the end, the judiciary needs to reiterate its dedication to the fundamental idea that liberty is a right that each and every person has, not a privilege. In the words of Chief Justice D.Y. Chandrachud, "Deprivation of liberty even for a single day is one day too many."[39] This proclamation emphasizes the judiciary's obligation to serve as the first line of defense against the arbitrary deprivation of liberty. Its role requires bravery, independence, and a thorough comprehension of the socio-legal ramifications of pre-trial confinement.

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[36] State of Rajasthan v Balchand (1977) 4 SCC 476, 479 (Krishna Iyer J) (‘bail is the rule, jail is the exception’).

[37] Constitution of India 1950, art 21; Hussainara Khatoon v Home Secretary, State of Bihar (1980) 1 SCC 81.

[38] Law Commission of India, Report No. 262: Review of the Bail System in India (2015).

[39] D.Y. Chandrachud, ‘Deprivation of liberty even for a single day is one day too many’, Supreme Court of India, Statement, 2023.

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STRENGTHENING INDIA'S AAEC STANDARD: TOWARDS A PREDICTABLE, EVIDENCE-BASED FRAMEWORK FOR MERGER CONTROL

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Abstract

The concept of Appreciable Adverse Effect on Competition (AAEC) is one of the quintessential concepts that ensure the free and fair movement of trade by mitigating anti-competitive agreements or any form of domination abuse. AAEC Test adopts two-pronged, effects- based approach but it's shortcomings is seen in the vagueness of it's provisions, persistent procedural delays and the highly unpredictable interpretation of the concept read with the provisions. This paper seeks out to not only identify the areas of lacunae but also compare the robust Indian system with established, dynamic systems of developed economies like that of EU, USA & UK, it also breezes through how the leaks in the Indian system can be fixed by drawing parallels between these systems. With evolving market structure and FTAs being carved out with various countries, India's evolving market structure calls for analytical certainty and it's assessment on the same is critical. The paper concludes by calling for the amalgamation and adjustment of the Indian system in accordance to a developing economy.

Introduction

Mergers and Acquisitions have taken up the spot as a central strategy for business growth and market consolidation in developed, emerging economies. While such transactions can generate efficiencies, promote innovation, and strengthen firms' competitive capacities, they also carry the risk of reducing market competition, excluding rivals, and harming consumer interests. Recognizing this dual nature, competition laws across jurisdictions impose regulatory scrutiny on mergers and acquisitions to ensure that market concentration does not undermine the competitive process.

In India, merger control is governed by the Competition Act, 2002, which subjects certain combinations to review by the Competition Commission of India (CCI). The substantive benchmark used by the CCI is whether a proposed transaction causes, or is likely to cause, an Appreciable Adverse Effect on Competition (AAEC)[1] in the relevant market within India. This standard reflects an effects-oriented approach, aiming to assess the actual or potential impact of a transaction on market structure, consumer welfare, and competitive dynamics rather than merely its formal characteristics. Despite its broad alignment with international competition law principles, the Indian AAEC framework has faced criticism for its interpretative ambiguity, procedural limitations, and challenges in addressing complex and evolving markets, particularly in the digital and technology sectors. Issues such as uncertainty surrounding competitive harm assessment, reliance on structural indicators, and difficulties in capturing asset-light and innovation-driven acquisitions have highlighted the need for reform.

In contrast, other jurisdictions such as the European Union and the United States apply more elaborated substantive standards—namely, the Significant Impediment to Effective Competition (SIEC) test and the substantial lessening of competition standard—supported by detailed guidelines, economic analysis, and well-developed jurisprudence. A comparative examination of these systems provides useful insights into how merger control regimes can balance regulatory certainty with effective competition

[1] Competition Act, 2002, § 20(4).

enforcement. This paper seeks to critically analyse the shortcomings of India's AAEC-based merger control regime and explore how these limitations may be addressed by drawing on comparative practices from other jurisdictions. Through this analysis, the study aims to contribute to the discussion on strengthening India's merger control framework in line with global best practices.

The Primordial Defect : Lack of Definition

A key structural limitation of the framework is the absence of a clearly articulated definition of Appreciable Adverse Effect on Competition (AAEC). Although the Competition Act, 2002 identifies AAEC as the decisive standard for evaluating mergers and acquisitions, it does not specify the threshold at which competitive harm becomes "appreciable." Instead, Section 20 of the Act enumerates a broad set of factors that the Competition Commission of India (CCI) may consider, leaving the interpretation of AAEC largely to administrative discretion.[2]

This open-ended approach contrasts sharply with the merger control regimes of the European Union and the United States, where the substantive standards are more precisely framed and supported by detailed analytical guidance.[3] In the European Union, merger assessments are governed by the Significant Impediment to Effective Competition (SIEC) test. The SIEC standard expressly links competitive harm to a demonstrable impairment of effective market competition, whether through the creation or strengthening of dominance or through unilateral and coordinated effects. This clarity allows firms to assess regulatory risk with greater confidence and ensures consistency in enforcement.

Similarly, the United States applies the "substantial lessening of competition" standard under the Clayton Act, which is reinforced by comprehensive and regularly updated Merger Guidelines issued by the Department of Justice and the Federal Trade Commission[4]. These guidelines explain how competitive harm is evaluated, including price effects, innovation loss, and foreclosure risks. As a result, the U.S. system offers a more predictable framework in which businesses can anticipate enforcement outcomes based on established economic principles.

In contrast, India's reliance on an undefined AAEC standard has resulted in uncertainty regarding the relative importance of different competitive factors. The absence of structured analytical categories—such as unilateral effects, coordinated effects, or innovation harm—means that parties often struggle to determine how the CCI will assess complex transactions, particularly those involving digital platforms or emerging markets. This uncertainty can discourage legitimate business combinations or lead to excessive caution in transaction structuring.

The lack of a clearly defined AAEC benchmark limits the development of consistent merger jurisprudence in India. While EU and U.S. merger decisions benefit from extensive judicial review that refines substantive standards over time, Indian merger control remains largely administrative, with fewer opportunities for appellate courts to clarify the meaning of competitive harm. Consequently, AAEC assessments in India tend to be fact-specific rather than principle-based. A comparative analysis suggests that India could benefit from adopting elements of the EU and U.S. approaches without abandoning the flexibility of the AAEC standard[5]. Issuing detailed merger assessment guidelines, explicitly incorporating effects-based

[2] Aditya Bhattacharjea, *"India's New Competition Law: A Comparative Assessment"* (2008) 4(3) Journal of Competition Law & Economics 609.

[3] Anish Jaipuriar and Sarita Rout, "*Tests of SIEC and AAEC in M&A: A Comparative Study of Competition Act, 2002 and EU Competition Law*" (2014) 1 NLIU Law. Rev. 84.

[4] Clayton Act, 15 U.S.C. § 18.

[5] Dheeraj Budaraju and Chetan Jayant Dixit, *"Strengthening merger control framework in India: Evolving trends, challenges, and regulatory reforms*", International Journal of Law, Justice and Jurisprudence 2025; 5(1): 328-334

theories of harm, and clarifying the meaning of "appreciable" competitive harm would improve predictability and transparency. Such reforms would align India's merger control regime more closely with international best practices while preserving its adaptability to domestic market conditions.

Inadequate Capture of Digital & Asset-Light Transactions

A significant limitation of India's merger control regime lies in its historical inability to effectively capture digital and asset-light transactions. The Competition Act, 2002 initially relied on asset- and turnover-based jurisdictional thresholds[6] to determine whether a merger or acquisition required prior notification to the Competition Commission of India (CCI). While these thresholds were appropriate for traditional, asset-intensive industries, they proved inadequate in the context of digital markets, where competitive significance is often driven by data, network effects, and innovation rather than tangible assets or immediate revenue.

Digital enterprises and start-ups frequently operate with minimal physical assets and limited turnover during their early growth stages, yet may exert substantial competitive influence through user base expansion, control over data, or technological capabilities. As a result, several high-value acquisitions involving digital platforms and technology firms were not subject to merger review in India, despite their potential to eliminate future competitors or reinforce market power[7]. This gap raised concerns about so-called "killer acquisitions," where dominant firms acquire nascent rivals to neutralize future competitive threats.

The inadequacy of traditional thresholds also limited the CCI's ability to conduct forward-looking competitive assessments in innovation-driven markets. In the absence of jurisdiction, the authority could not examine whether such transactions might reduce incentives to innovate, restrict consumer choice, or entrench dominant digital ecosystems. This regulatory blind spot undermined the effectiveness of the AAEC standard, as transactions capable of causing long-term competitive harm escaped scrutiny altogether.

In contrast, several other jurisdictions have adopted more flexible mechanisms to address similar challenges. Countries such as Germany and Austria have introduced transaction value thresholds that allow competition authorities to review high-value deals even when asset and turnover criteria are not met. The United Kingdom applies a "share of supply" test[8] that enables intervention in digital mergers based on competitive presence rather than financial size, while the European Union has encouraged referral mechanisms to capture strategically significant acquisitions in the digital sector.

India has recently taken steps to address this deficiency through legislative reform, including the introduction of a deal value threshold aimed at covering high-value acquisitions[9] with substantial business operations in India. While this represents an important shift towards aligning with global best practices, uncertainties remain regarding valuation methodologies and the interpretation of key concepts. Consequently, further clarification and guidance will be necessary to ensure that digital and asset-light transactions are consistently and effectively assessed under the merger control framework.

Prominent Jurisprudential Dent

A fallback of the Indian merger control framework is the relatively limited role played by the judiciary in shaping substantive merger jurisprudence. Since the introduction of merger control under the Competition

[6] Competition Act, 2002, No. 12 of 2003, §§ 5–6.
[7] Kumar, Nitish & Saurabh Singh, *"Digital Markets and Merger Control in India"*,(2022) Indian Journal of Competition Law.
[8] Enterprise Act 2002 (UK), § 23
[9] Competition (Amendment) Act, 2023

Act, 2002, the assessment of combinations has largely remained within the administrative domain of the Competition Commission of India (CCI)[10]. While the CCI has developed a substantial body of decisional practice, the scarcity of appellate review has constrained the evolution of well-defined legal principles governing merger analysis.

Most merger notifications in India are cleared either unconditionally or subject to negotiated remedies, leaving few opportunities for contested decisions to reach appellate forums such as the National Company Law Appellate Tribunal (NCLAT) or the Supreme Court of India[11]. As a result because of this crucial concepts such as the interpretation of Appreciable Adverse Effect on Competition (AAEC), standards of proof, and the appropriate weight to be given to economic evidence have not been extensively examined or refined through judicial scrutiny. This contrasts with jurisdictions where courts play a central role in clarifying merger control standards.

In the European Union, merger decisions of the European Commission are frequently subject to review by the General Court and the Court of Justice of the European Union. Judicial oversight has contributed significantly to the development of merger law by refining analytical frameworks, clarifying evidentiary thresholds, and reinforcing procedural fairness[12]. Similarly, in the United States, merger enforcement is deeply rooted in judicial proceedings, with federal courts adjudicating challenges brought by competition authorities. Landmark judicial decisions have shaped the interpretation of the "substantial lessening of competition" standard and provided authoritative guidance on market definition, competitive effects, and efficiencies[13].

The limited involvement of Indian courts has implications for legal certainty and predictability. In the absence of robust judicial precedents, businesses must rely primarily on administrative practice and informal guidance to assess merger risks. This can lead to uncertainty, particularly in novel or complex transactions where regulatory discretion plays a significant role. Furthermore, the lack of judicially articulated standards may constrain the ability of parties to effectively challenge regulatory decisions or seek clarity on unsettled areas of law. Strengthening the role of judicial review in merger control could enhance the credibility and consistency of India's competition law framework, this can be ensure through detailed and reasoned decisions by the CCI, coupled with active appellate scrutiny by NCLAT, would facilitate the development of principled jurisprudence on merger control. Over time, such judicial engagement would contribute to a more transparent, predictable, and balanced system that aligns administrative expertise with judicial oversight.

Exhaustion of Factors in Assessment

There always exists the tendency to place disproportionate emphasis on market share and other structural indicators when assessing the competitive impact of mergers and acquisitions in the Indian eco-system. While market concentration levels, barriers to entry, and the number of competitors are relevant considerations under the Competition Act, 2002, excessive reliance on these factors may lead to an incomplete understanding of competitive dynamics, particularly in rapidly evolving markets.

Market share, by its nature, offers only a static snapshot of competitive conditions at a given point in time[14]. In several merger assessments, high combined market shares or increased concentration have been treated as strong indicators of potential competitive

[10] Competition Act, 2002, No. 12 of 2003, §§ 5–6, 20–31

[11] Competition Act, 2002, §§ 53A–53T.

[12] Case T-5/02 *Tetra Laval BV v Commission* [2002] ECR II-4381.

[13] *United States v. Philadelphia National Bank*, 374 U.S. 321 (1963).

[14] U.S. Department of Justice & Federal Trade Commission, *Horizontal Merger Guidelines* (2010)

harm. However, such an approach risks overlooking the actual behaviour of firms, the intensity of competitive rivalry, and the ability of market forces to discipline post-merger conduct. Markets characterized by technological change, innovation, or low switching costs may remain competitive despite high concentration levels.

An overly structural approach also tends to undervalue factors such as potential competition, countervailing buyer power, and the role of innovation in shaping market outcomes. In digital and technology-driven sectors, competition often occurs "for the market" rather than "within the market," making traditional structural indicators less reliable predictors of competitive harm. As a result, mergers that appear problematic based on concentration metrics alone may, in practice, generate efficiencies or promote innovation without diminishing consumer welfare.

In contrast, competition authorities in other jurisdictions increasingly adopt an effects-based analysis that focuses on how a merger is likely to influence prices, output, quality, and innovation over time. The European Union, for example, supplement structural indicators with detailed economic analysis of unilateral effects, coordinated effects, and dynamic competition[15]. Structural measures are treated as starting points rather than decisive conclusions whilst the Indian approach on the other hand when overly anchored in market share thresholds, may also discourage efficiency-enhancing transactions or lead to conservative enforcement outcomes. Without sufficient consideration of economic evidence and market realities, there is a risk of regulatory intervention that is not proportionate to the actual competitive harm posed by a transaction. To address this limitation, the Indian merger control regime would benefit from a more balanced methodology that integrates structural indicators with robust effects-based analysis. Greater emphasis on behavioural evidence, innovation incentives, and long-term consumer impact would enable a more nuanced assessment of competitive harm and bring Indian merger review closer to global best practices.

Lacunae in Merger Analysis

One of the notable limitations of the Indian merger control framework is the relatively limited depth of economic analysis employed in assessing the competitive impact of mergers and acquisitions. While the Competition Commission of India (CCI) considers economic factors such as market shares, concentration levels, and entry barriers, the analytical approach often remains largely structural rather than effects-based.

In many cases, merger review in India relies heavily on static indicators like post-merger market concentration and the number of competitors operating in the relevant market. Although these factors provide a preliminary understanding of market power, they do not always capture the actual or likely competitive outcomes of a transaction. As a result, dynamic elements such as price effects, consumer welfare changes, innovation incentives, and strategic firm behaviour may not receive sufficient attention.

Advanced quantitative tools—such as price simulation models, counterfactual analysis, and innovation impact assessments—are used only extensively in the jurisdictions of EU & USA[16] whilst they are selectively in Indian merger investigations. This limits the ability of the competition authority to accurately predict whether a merger would result in higher prices, reduced output, diminished quality, or slower innovation. The absence of consistent econometric analysis also makes it difficult to distinguish between mergers that are genuinely harmful and those that may enhance efficiency without restricting competition.

[15]European Commission, *Guidelines on the Assessment of Horizontal Mergers under the Council Regulation on the Control of Concentrations between Undertakings* [2004] OJ C31/5.

[16] OECD, *Merger Control and the Use of Economic Evidence* (OECD Policy Roundtables, 2011).

By contrast, competition authorities in jurisdictions such as the European Union and the United States increasingly adopt effects-based economic methodologies. These include the use of concentration indices, pricing pressure tests, and merger simulation techniques to evaluate the real-world consequences of transactions. Such tools allow regulators to move beyond formal market structures and assess how firms and consumers are likely to respond post-merger.The limited integration of advanced economic analysis in India may lead to both over-enforcement and under-enforcement. Transactions that pose minimal competitive risk may face unnecessary scrutiny, while mergers with subtle but significant long-term effects—particularly in innovation-driven or digital markets—may escape rigorous examination[17]. Strengthening the economic foundation of merger review by institutionalizing quantitative tools and expanding technical expertise would therefore enhance the accuracy, credibility, and consistency of AAEC assessments in India.

Conclusion & Way Forward

The Appreciable Adverse Effect on Competition (AAEC) standard occupies a pivotal position in India's competition law framework, acting as the decisive test for identifying anti-competitive conduct and market-distorting combinations. While the adoption of an effects-based approach reflects a progressive legislative intent, its practical implementation in India remains uneven. The absence of clear thresholds, inconsistent application of economic reasoning, and limited judicial guidance have diluted the certainty and predictability that a competition regime demands.

A comparative examination reveals that mature jurisdictions such as the United States, European Union, and United Kingdom have succeeded in operationalizing similar standards by embedding them within structured analytical frameworks supported by economic evidence and well-defined safe harbours. In contrast, India's AAEC framework continues to rely heavily on discretion, often at the cost of transparency and business confidence. Consequently, AAEC has not fully evolved into a robust tool capable of balancing market efficiency, innovation, and consumer welfare.

For AAEC to function as an effective and credible competition assessment standard, a shift from discretionary evaluation to structured analysis is essential. The Competition Commission of India should formulate comprehensive guidelines clarifying the meaning of "appreciable" by introducing indicative thresholds and market share benchmarks. Such guidance would not only enhance legal certainty but also reduce unnecessary regulatory intervention in cases with negligible competitive impact.

Greater integration of economic analysis must form the core of future AAEC assessments. The use of counterfactual reasoning, demand-side substitution analysis, and quantification of consumer harm would align Indian practice with international standards. At the same time, efficiency defences should be meaningfully evaluated through a transparent balancing exercise, ensuring that pro-competitive collaborations are not inadvertently discouraged.

Institutional capacity building is equally critical. Strengthening economic expertise within the CCI and expediting adjudicatory timelines would improve both the quality and relevance of AAEC determinations, particularly in fast-evolving digital markets. Finally, consistent judicial interpretation by appellate bodies can play a decisive role in refining the contours of AAEC and establishing authoritative precedents. By adopting these reforms, India can transform AAEC from an abstract statutory standard into a predictable, evidence-based, and business-friendly competition test that effectively safeguards market competition while promoting economic development.

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[17] Massimo Motta, *Competition Policy: Theory and Practice* (CUP 2004).

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MARITIME BOUNDARIES AND TRADITIONAL FISHING RIGHTS: A LEGAL ANALYSIS OF THE RAMESWARAM FISHERMEN DISPUTE

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ABSTRACT

The maritime boundary dispute affecting fishermen at Rameswaram in India and Northern Province of Sri Lanka represents one of the most complex intersections of International law, traditional fishing practices, economic survival and regional diplomacy in South Asia. The delimitation of maritime boundaries in the Palk Bay and the Gulf of Mannar particularly following the Indo-Sri Lankan agreements of 1974 and 1976, transformed what had historically been a shared fishing zone into a heavily regulated and contested maritime space. This paper examines the historical background of fishing communities in the region, the legal framework governing maritime boundaries and traditional fishing rights, the socio-economic and environmental dimensions of the conflict and the diplomatic and policy measures undertaken to address the issue. It argues that while international law provides mechanisms for maritime delimitation, the Rameswaram fishermen dispute demonstrates the limitations of legal frameworks when traditional livelihoods and ecological sustainability are not adequately considered. The study concludes by suggesting cooperative fisheries management, phased transition to sustainable fishing methods and institutionalized bilateral mechanisms as potential pathways to long-term resolution.

KEYWORDS

Maritime boundaries, Traditional fishing rights, Palk Bay, Rameswaram fishermen, Indo-Sri Lanka relations, UNCLOS, Fisheries conflict.

INTRODUCTION

Maritime boundary disputes are often perceived primarily as conflicts over sovereignty, territorial control or natural resources. However in many regions of the world such disputes directly affect back communities whose livelihoods depend on access to the sea. The dispute involving fishermen from Rameswaram, Tamil Nadu and their Sri Lankan counterparts is a compelling example of how geopolitical agreements can reshape centuries-old patterns of livelihood. The Palk Bay, a narrow stretch of water separating India and Sri Lanka has historically functioned as a shared ecological and cultural space. Fishing communities on both sides developed similar fishing techniques shared kinship ties and seasonal migration patterns. The formal demarcation of maritime boundaries in the 1970s however redefined this shared space into distinct national jurisdictions.

In recent decade arrests of Indian fishermen by the Sri Lankan Navy, allegations of illegal fishing, destruction of fishing gear and environmental degradation have intensified tensions. The dispute has become a recurring issue in Indo-Sri Lanka diplomatic relations, raising questions about sovereignty, humanitarian considerations and sustainable fisheries management. This paper explores the Rameswaram fishermen dispute from historical, legal, socio-economic and environmental perspectives, emphasizing the need for a balanced approach that integrates law with local realities.

CONCEPT OF MARITIME BOUNDARIES IN INTERNATIONAL LAW

Maritime boundaries play a central role in international law by defining the spatial limits within which coastal states exercise sovereignty, sovereignty rights and jurisdiction over marine resources. The modern legal framework governing maritime boundary delimitation is largely derived from the United Nations Convention on the Law of Sea (UNCLOS), 1982 which established rules for

determining territorial seas. Contiguous zones, exclusive economic zones and continental shelves. Under UNCLOS, a coastal state is entitled to a territorial sea extending up to twelve nautical miles from its baseline within which the state exercises full sovereignty subject to the right of innocent passage. Beyond this zone lies the contiguous zone which may extend limited control necessary to prevent or punish infringements of its customs, fiscal, immigration or sanitary laws. Further seaward, coastal states may claim an exclusive economic zone extending up to two hundred nautical miles within which they possess sovereign rights for the purpose of exploring, exploiting, conserving and managing natural resources.

Maritime boundary delimitation becomes particularly significant where the maritime claims of two states overlap as is often the case between states situated opposite or adjacent to each other. UNCLOS provides general principles to guide delimitation in such circumstances, Article 15 of UNCLOS addresses the delimitation of territorial sea between states with opposite or adjacent coasts and emphasizes the use of the median line or equidistance principle unless historic title or special circumstances justify another boundary. Similarly Articles 74 and 83 of UNCLOS govern the delimitation of the exclusive economic zone and continental shelf requiring that boundaries be established by agreement in order to achieve an equitable solution. The principle of equity has emerged as a key element to maritime boundary jurisprudence. International courts and tribunals including the international Court of Justice and arbitral tribunals have repeatedly emphasized that delimitation should result in an equitable outcome rather than a strictly mathematical division factors such as the length of coastlines, geographical configuration, the presence of islands and socio-economic considerations may influence delimitation decisions. International courts have consistently emphasized equitable solutions in maritime delimitation. In Maritime Delimitation in the Black Sea (*Romania v. Ukraine*), the International Court of Justice clarified the modern three stage approach to maritime boundary delimitation.

In addition to treaty law, customary international law also plays an important role in maritime boundary disputes. State practice and judicial decisions have contributed to the development of principles such as equidistance, proportionality and the consideration of relevant circumstances. Historic usage and traditional fishing practices have occasionally been raised as relevant factors although their legal status remains complex and often depends on specific bilateral agreements or regional arrangements. Maritime boundaries not only determine control over marine resources but also affect the livelihoods of coastal communities that have historically depended on shared fishing grounds. In many regions fishing activities predate the formal delimitation of maritime boundaries by centuries. Consequently the establishment of rigid maritime borders has sometimes disrupted traditional practices creating tension between the legal rights of states and the economic and social rights of local populations.

The Palk Bay region between India and Sri Lanka provides a notable example of these challenges. The maritime boundary agreements concluded between the two states in the 1970s were intended to provide legal clarity and prevent disputes over sovereignty. However these agreements also altered long standing fishing patterns, raising important questions about the extent to which international law accommodates traditional fishing rights after the delimitation of maritime boundaries.

Thus while international law provides a comprehensive legal framework for maritime delimitation, it does not always fully address the human and historical dimensions associated with maritime resource use. The gap has contributed to recurring disputes in several parts of the world, including the Rameswaram fishermen dispute which illustrates the tension between the enforcement of maritime boundaries and the recognition of traditional fishing practices.

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TRADITIONAL FISHING RIGHTS AND CUSTOMARY INTERNATIONAL LAW

Traditional fishing rights have long been recognized as an important but complex aspect of international maritime law. These rights generally refer to fishing practices carried out over long periods by coastal communities in particular maritime areas often predating the establishment of modern maritime boundaries. While international law does not provide a universally binding definition of traditional fishing rights such practices have been acknowledged in treaty law customary international law and judicial decisions in certain contexts. Customary international law is formed through consistent state practice accompanied by opinio juris or the belief that such practice is legally obligatory in some regions. States have historically tolerated or formally recognized the continued fishing activities of neighboring communities even after maritime boundaries were established. Such practices have sometimes been incorporated into bilateral agreements or local arrangements reflecting recognition of the economic dependence of coastal populations on shared marine resources.

The United Nations Convention on the Law of Sea (UNCLOS) contains limited but significant references to historic and traditional fishing practices. For example Article 51 recognizes traditional fishing rights in archipelagic waters requiring archipelagic states to respect existing agreements and traditional fishing rights of immediately adjacent neighboring states in certain circumstances. Although this provision applies specifically to archipelagic states it demonstrates that international law acknowledges the relevance of historic usage in maritime resource management. Judicial decisions have also addressed the issue of historic or traditional fishing rights, international courts and tribunals have occasionally considered historic fishing activity as a relevant circumstance in maritime delimitation or resource sharing arrangements. However such rights are not automatically recognized their validity often depends on clear evidence of long standing practice, mutual recognition and the absence of explicit legal restrictions. The relevance of historic fishing practices has been recognized in International jurisprudence. In *Eritrea v. Yemen*, the arbitral tribunal acknowledged that traditional fishing activities of local communities may continue even after maritime delimitation.

Despite these limited recognitions traditional fishing rights often remain subordinate to the sovereign rights of coastal states over their territorial seas and exclusive economic zones. Once maritime boundaries are formally delimited, coastal states generally possess the authority to regulate, restrict or prohibit foreign fishing activities within their jurisdiction. As a result, traditional fishing communities may have face significant hardship when legal boundaries restrict access to historically used fishing grounds. The tension between sovereign control and traditional livelihood rights has led to various cooperative mechanisms in different parts of the world. Some states have negotiated access agreements, seasonal fishing arrangements or joint management regimes to mitigate conflicts. These arrangements illustrate that while traditional fishing rights may not always be legally enforceable under general international law they can be recognized through diplomatic and regulatory frameworks.

In the context of the Palk Bay region fishermen from the coastal districts of Tamil Nadu including Rameswaram historically fished in areas that now fall within Sri Lankan maritime jurisdiction following the bilateral agreements of 1974 and 1976. The absence of explicit provisions guaranteeing traditional fishing access in these agreements has contributed to recurring disputes, arrests and humanitarian concerns This situation highlights the limitations of existing international legal frameworks in balancing territorial sovereignty with the economic and cultural practices of coastal communities.

Therefore the question of traditional fishing rights remains one of the unresolved challenges in international maritime law. While the law recognizes the importance of equitable solutions and regional

cooperation the protection of traditional fishing practices largely depends on political will, bilateral negotiations and the development of cooperative fisheries management regimes rather than on clearly defined universal legal norms.

UNCLOS AND THE REGULATION OF FISHERIES

The United Nations Convention on the Law of Sea (UNCLOS), 1982, provides the primary legal framework governing the conservation, management and utilization of marine living resources. As a comprehensive treaty regulating maritime zones and the rights and duties of coastal states, UNCLOS establishes clear principles regarding fisheries, jurisdiction, conservation obligations and the equitable use of maritime resources. Under UNCLOS, coastal states enjoy sovereign rights for the purpose of exploring, exploiting, conserving and managing natural resources within their Exclusive Economic Zone (EEZ) which may extend up to two hundred nautical miles from the baseline. Article 56 confers upon coastal states the authority to regulate fishing activities and adopt measures necessary to ensure the sustainable use of marine resources. These rights include determining allowable catch issuing fishing licenses and enforcing conservation measures.

At the same time UNCLOS imposes certain responsibilities on coastal states. Article 61 requires states to ensure that living resources in the EEZ are not endangered by overexploitation and to maintain or restore populations at sustainable levels. This provision reflects the broader principle of conservation and responsible fisheries management which has become a central objective of international maritime law. Article 62 further provides that coastal states shall promote the objective of optimum utilization of living resources and where they do not have the capacity to harvest the entire allowable catch, they may give other states access to the surplus under agreed conditions. Although this provision primarily addresses commercial fishing arrangements between states it also demonstrates that access to fisheries resources may be regulated through cooperative arrangements.

UNCLOS also emphasizes cooperation between states sharing marine resources. Article 63 and 64 address the management of shared or highly migratory fish stocks requiring states to cooperate directly or through regional organizations to ensure effective conservation and management. These provisions recognize that marine ecosystems do not conform to political boundaries and that unilateral regulation may be insufficient to prevent disputes or resource depletion. Despite these regulatory mechanisms UCLOS contains limited explicit protection for traditional or small scale fishing communities operating across maritime boundaries. The Convention primarily focuses on the rights and obligations of states rather than individuals or local communities. Consequently the protection of traditional fishing practice often depends on domestic legislation or bilateral agreements rather than direct treaty provisions.

In regions such as the Palk Bay the regulatory powers granted to coastal states under UNCLOS have enabled the enforcement of maritime boundaries and fisheries vessels operating without authorization. While such enforcement actions are legally permissible under the Convention they may also give rise to humanitarian and diplomatic concerns when they affect economically vulnerable fishing communities that have historically depended on shared fishing grounds. Furthermore, modern concerns about environmental sustainability have intensified regulatory efforts in many coastal regions. Practices such as bottom travelling which are common in certain fishing communities have been criticized for causing significant ecological damage to marine habitats. These environmental considerations have influenced both national policies and bilateral negotiations adding another layer of complexity to disputes involving traditional fishing rights.

Thus UNCLOS establishes a comprehensive legal regime for fisheries regulation that balances sovereign

rights, conservation obligations and the need for international cooperation. However the Convention leaves significant discretion to states in determining how fishing access is managed and it provides only limited mechanisms for addressing conflicts involving traditional fishing practices. This gap has contributed to continuing disputes in regions such as the Palk Bay where legal jurisdiction, environmental concerns and livelihood interests intersect.

INDIA-SRI LANKA MARITIME BOUNDARY AGREEMENTS (1974 AND 1976)

The maritime boundary between India and Sri Lanka in the Palk Bay and the Gulf of Mannar was formally established through two bilateral agreements signed in 1974 and 1976. These agreements were intended to provide legal certainty regarding sovereignty, prevent jurisdictional disputes and regulate the exploitation of marine resources in the region. However, their implementation has had significant implications for traditional fishing communities particularly fishermen from the coastal districts of Tamil Nadu including Rameswaram.

The First agreement signed in 1974 delimited the maritime boundary in the Palk strait and recognized the island of Katchatheevu as falling under Sri Lankan sovereignty, Katchatheevu had historically been used by fishermen from both India and Sri Lanka for resting, drying nets and attending the annual St. Antony's Church festival. Although the agreement permitted Indian fishermen and pilgrims to visit the island for specific purposes it did not explicitly grant fishing rights in the surrounding waters. This omission later became a major source of dispute and legal debate.

The Second agreement concluded in 1976 further extended maritime boundary delimitation into the Gulf of Mannar and the Bay of Bengal. This agreement reinforced the principle that each country would exercise exclusive jurisdiction and sovereign rights over the waters seabed and resources within the designated maritime zones. It also provided that fishing vessels and fishermen of one country should not engage in fishing in the waters of the other effectively restricting cross border fishing activities that had previously been common practice.

These agreements were negotiated at a time when mechanized fishing and trawling were expanding in the region increasing pressure on marine resources and intensifying competition between fishing communities. While the agreements succeeded in clarifying legal boundaries they did not incorporate comprehensive mechanisms to protect traditional fishing practices or to provide alternative livelihood arrangements for affected communities. As a result fishermen who had historically operated across the Palk Bay found themselves subject to new legal restrictions and enforcement measures. From the perspective of international law, the Indo-Sri Lanka agreements are consistent with the principles set out in UNCLOS which encourages states with adjacent or opposite coasts to delimit maritime boundaries through mutual agreement in order to achieve equitable solutions. However the agreements also illustrate the limitations of boundary delimitation processes that focus primarily on state sovereignty without adequately addressing the socio-economic realities of local populations.

In the decades following the agreements incidents involving the arrest and detention of Indian fishermen by Sri Lankan authorities have occurred frequently. These incidents have periodically strained diplomatic relations between the two countries and have prompted calls for renegotiation, joint fishing arrangements, or the establishment of cooperative fisheries management mechanisms. Despite several rounds of bilateral talks a durable and mutually acceptable solution has remained elusive. The legal and humanitarian issues arising from these agreements highlight the broader challenge of reconciling maritime boundary enforcement with the protection of traditional livelihood practices. While the agreements remain legally binding and continue to govern maritime jurisdiction in the region their implementation underscores the need for

supplementary arrangements that balance sovereign rights with the economic and cultural interests of fishing communities.

Accordingly the Rameswaram fishermen dispute must be understood within the framework of these bilateral agreements which form the immediate legal basis for the regulation and enforcement of fishing activities in the Palk Bay. An analysis of the dispute therefore requires not only an examination of international legal principles but also a consideration of how these agreements operate in practice and affect the lives of coastal communities.

LEGAL ANALYSIS OF RAMESWARAM FISHERMEN DISPUTE

The Rameswaram fishermen dispute represents a complex intersection of maritime boundary enforcement, traditional fishing practices and humanitarian considerations. Although the legal framework governing the region is defined by the Indo-Sri Lanka maritime boundary agreements and the broader provisions of the United Nations Convention on the Law of Sea (UNCLOS) the practical realities of enforcement have created recurring tensions and legal challenges. From a strictly legal perspective Sri Lanka possesses the sovereign right to regulate and control fishing activities within its territorial sea and exclusive economic zone. UNCLOS recognizes the authority of coastal states to enforce fisheries laws including the boarding, inspection, arrest and judicial proceedings against foreign vessels engaged in unauthorized fishing. Accordingly the detention of Indian fishermen who cross the maritime boundary may be considered legally permissible under international law.

However the dispute cannot be fully understood through a narrow interpretation of sovereignty alone. The fishermen of Rameswaram have historically relied on fishing grounds in the Palk Bay for their livelihood and many of these practices predate the maritime boundary agreements of the 1970s. The sudden transformation of historically shared waters into strictly regulated national zones disrupted long standing economic and cultural patterns. This raises important legal and ethical questions regarding the treatment of traditional fishing communities and the extent to which historic usage should be considered in enforcement practices. Another significant issue in the dispute is the method of fishing employed by certain segments of the fishing community particularly mechanized bottom trawling Sri Lanka has expressed strong objections to trawling on environmental grounds, arguing that such practices damage marine ecosystems, destroy fish breeding habitats and threaten the livelihoods of small scale Sri Lankan fishermen. These environmental concerns provide an additional legal justification for stricter enforcement measures as UNCLOS places an obligation on states to conserve marine living resources and protect the marine environment.

The dispute has also raised concerns relating to humanitarian principles and human rights. Prolonged detention of fishermen, seizure of fishing vessels and the economic hardship faced by affected families have drawn attention from policymakers, civil society organizations and international observers. While international maritime law primarily regulates state conduct, broader principles of international human rights law emphasize the importance of protecting the right to livelihood and ensuring humane treatment or detained individuals. Diplomatic engagement between India and Sri Lanka has periodically resulted in the release of detained fishermen and vessels indicating recognition by both states of the humanitarian dimension of the issue. Nevertheless such measures are often temporary and do not address the underlying structural causes of the dispute including declining fish stocks, limited listing areas and the absence of a comprehensive bilateral fisheries management frame work.

The Rameswaram fishermen dispute therefore illustrates a broader challenge in international law balancing the sovereign rights of traditional fishing communities and the need for environmental

sustainability. The existing legal framework provides clear rules regarding jurisdiction but offers limited mechanisms for addressing the socio-economic consequences of boundary enforcement. As a result ling term resolution of the dispute is likely to depend not only on legal principles but also on cooperative arrangements, policy innovation and sustained diplomatic dialogue.

In the context the dispute serves as a significant case study demonstrating the limitations of existing international maritime law in addressing conflicts involving traditional fishing rights. It highlights the need for greater integration of livelihood concerns, environmental protection and regional cooperation within the legal and policy frame work governing shared marine resources.

CHALLENGES IN BALANCING SOVEREIGNTY, LIVELIHOOD RIGHTS AND ENVIRONMENTAL PROTECTION

One of the most significant difficulties in resolving the Rameswaram fishermen dispute lies in balancing three competing consideration: the sovereign rights of coastal states, the livelihood needs of traditional fishing communities and the obligation to protect marine ecosystems. Each of these factors is recognized, either directly or indirectly, within the framework of international law, yet reconciling them in practice remains a complex challenge.

The principle of state sovereignty over maritime zones is well established in international law and is reinforced by the provisions of the United Nations Convention on the Law of Sea (UNCLOS) coastal states possess the authority to regulate fishing activities, conserve marine resources and enforce laws within their territorial sea and exclusive economic zone. In the context of the Palk Bay, Sri Lanka's enforcement of the fisheries laws is consistent with these principles particularly in relation to unauthorized fishing by foreign vessels. At the same time the livelihood rights of traditional fishing communities cannot be overlooked coastal population in regions such as Rameswaram have depended on marine resources for generations and fishing constitutes not only an economic activity but also a cultural and social practice. Restrictions on access to traditional fishing grounds have led to economic hardship, increased indebtedness and social instability among fishing communities. Although international maritime law primarily regulates relations between states, broader principles of international human rights law emphasize the importance of safeguarding the right to livelihood measures remain proportionate and humane.

Environmental sustainability represents a third and increasingly important dimension of the dispute. Overfishing destructive fishing techniques and the depletion of marine resources have intensified competition in the Palk Bay region. Bottom trawling in particular has been widely criticized for damaging seabed ecosystems and reducing fish stocks thereby affecting both Indian and Sri Lankan fishermen. International law including UNCLOS obliges states to conserve living marine resources and to adopt measures necessary to prevent environmental degradation. These obligations provide a legitimate basis for stricter regulation and enforcement of fisheries laws. Another challenge arises from the limited institutional mechanisms available for cooperative fisheries management in the region. While bilateral talks between India and Sri Lanka have been conducted periodically the absence of a permanent joint management authority or a comprehensive regulatory framework has hindered the implementation of long term solutions. Without sustained cooperation enforcement actions and diplomatic negotiations tend to address only immediate incidents rather than the structural causes of the conflict.

The dispute is further complicated by technological and economic disparities within the fishing sector. Mechanized trawlers are capable of travelling longer distances and harvesting larger quantities of fish compared to traditional small scale fishing vessels. This disparity does not only contribute to

environmental degradation but also creates tensions between different segments of the fishing community both within and across national boundaries. In addition legal awareness and access to alternative livelihood opportunities remain limited among many fishing communities. The absence of effective rehabilitation or transition programs has made it difficult for fishermen to shift to sustainable fishing methods or alternative occupations. As a result, many fishermen continue to cross maritime boundaries despite the risks of arrest and vessel seizure.

These overlapping challenges demonstrate that the Rameswaram fishermen dispute cannot be resolved solely through legal enforcement or diplomatic negotiations. A durable solution requires an integrated approach that recognizes the legitimacy of state sovereignty protecting the economic security of coastal communities and ensures the long term sustainability of marine resources. Addressing these competing priorities remains one of the most pressing policy and legal challenges in the governance of shared maritime spaces.

RECOMMENDATIONS AND CONCLUSION

The continuing dispute involving fishermen from Rameswaram demonstrates the limitations of existing legal and police frameworks in addressing conflicts arising from maritime boundary delimitation. Although international law provides clear rules regarding jurisdiction and sovereign rights it offers limited practical guidance for reconciling these rights with the economic dependence of traditional fishing communities and the growing need for environmental protection. A long term and sustainable resolution therefore requires a combination of legal, institutional and policy measures. One important step toward reducing conflict would be the development of a bilateral fisheries and management frame work between India and Sri Lanka. Such a framework could include regulated access arrangements, seasonal fishing permissions or the establishment of designated fishing zones in specific areas of the Palk Bay. Cooperative mechanisms of this kind have been used in other regions of the world to balance resource sharing with conservation objectives.

Another significant measure would be the gradual transition from destructive fishing practices to more sustainable methods. Programs that support the modernization of fishing techniques provide financial assistance and promote alternative livelihoods could reduce pressure on marine ecosystems and lessen the incentives for crossing maritime boundaries. Greater investment in marine conservation and responsible fisheries management would benefit fishing communities on both sides of the border in the long term. Strengthening institutional cooperation is also essential. Regular joint working group meetings, improved communication between maritime enforcement agencies and the creation of a permanent bilateral monitoring mechanism could help prevent misunderstandings and ensure that enforcement measures are carried out in a humane and proportionate manner. Rapid repatriation procedures for detained fishermen particularly those engaged in small scale fishing would also help migrate humanitarian concerns.

In addition greater awareness among fishing communities regarding maritime boundaries, high risks and sustainable fishing practices is necessary. Educational and outreach programs conducted in coastal regions could play a significant role in reducing accidental boundary crossings and encouraging compliance with fisheries regulations. From a broader legal perspective the Rameswaram fishermen dispute highlights the need for the continued development of international legal norms relating to traditional fishing rights. While UNCLOS provides a comprehensive framework for maritime governance future regional agreements and state practice may contribute to the evolution of more explicit standards that recognize historic usage and livelihood considerations alongside sovereign rights.

In conclusion, the Rameswaram fishermen dispute illustrates the complex relationship between maritime boundary delimitation, traditional fishing practices and environmental sustainability. The enforcement of

maritime boundaries though legally justified has significant socio-economic consequences for coastal communities whose livelihoods depend on shared marine resources. A durable solution requires sustained bilateral cooperation, responsible resource management and policies that address both humanitarian and environmental concerns. By adopting cooperative and forward looking approaches India and Sri Lanka can work towards reducing conflict in the Palk Bay on promoting the equitable and sustainable use of shared maritime resources.

RESEARCH METHODOLOGY

In this research I have adopted a doctrinal and analytical methodology to examine the legal issues surrounding maritime boundaries and traditional fishing rights, with particular reference to the Rameswaram fishermen dispute. The study is primarily based on secondary sources, including international treaties, judicial decisions, scholarly books, journal articles and official reports.

The doctrinal approach has been used to analyze the relevant provisions of the United Nations Convention on the Law of Sea (UNCLOS), bilateral agreements between India and Sri Lanka, and principles of customary international law relating to maritime delimitation and fisheries regulation. Judicial decisions of international courts and tribunals have also been examined to understand the interpretation and application of legal principles concerning maritime boundaries and traditional fishing practices. In addition, the research employs an analytical method to evaluate the practical implications of maritime boundary enforcement on traditional fishing communities in the Palk Bay region. The study assesses the interaction between legal norms, environmental concerns, and livelihood issues and it explores possible police measures for resolving conflicts through cooperative fisheries management and bilateral mechanisms.

The research is descriptive as well as analytical in nature, aiming to provide a clear understanding of the legal framework governing maritime boundaries while critically examining the limitations of existing international law in addressing disputes involving traditional fishing rights.

LITERATURE REVIEW

The issues of maritime boundary delimitation and traditional fishing rights have been widely discussed in the field of international maritime law. Scholars have examined the legal principles governing maritime zones, the role of customary international law, and the socio-economic implications of boundary enforcement, particularly in regions where coastal communities depend heavily on maritime resources.

Churchill and Lowe, in their work on the law of sea, provide a comprehensive explanation of the legal framework governing maritime zones and delimitation. They emphasize that the evolution of modern maritime law, particularly after the adoption of the United Nations Convention on the Law of Sea (UNCLOS), has significantly strengthened the sovereign rights of coastal states over marine resources. However, they also acknowledge that delimitation process often overlook the interests of local fishing communities whose traditional practices predate modern legal regimes.

Similarly, Malcolm N. Shaw discusses the increasing importance of equitable principles in maritime boundary disputes. Shaw argues that international courts and tribunals have consistently emphasized fairness and relevant circumstances when delimiting maritime boundaries. Nevertheless, the primary focus of such adjudication remains the rights and obligations of states rather than the protection of small scale fishing communities.

A number of scholars have specifically examined the concept of historic or traditional fishing rights. Treves notes that historic usage has occasionally been recognized in international law, particularly where long standing fishing practices were acknowledged by neighboring states. However, he observes that the legal status of such rights remains uncertain and often

depends on bilateral agreements rather than universally applicable rules.

Research relating to fisheries conflicts has also highlighted the growing tension between conservation measures and livelihood concerns. Studies published by the Food and Agriculture Organization (FAO) emphasize that overfishing, declining fish stocks, and the expansion of mechanized fishing have intensified competition in coastal regions around the world. These studies underline the need for cooperative fisheries management and sustainable fishing practices in order to prevent conflicts and ensure long term resource availability.

In the South Asian context, several scholars have examined the fisheries conflict in the Palk Bay between India and Sri Lanka. Vivekanandan research identifies multiple causes of the dispute, including mechanized trawling, depletion of marine resources and the absence of effective bilateral regulatory mechanisms. He argues that the problem cannot be resolved solely through law enforcement and requires coordinated management of shared fish stocks and gradual transition to sustainable fishing methods.
Satheesh Shenoi also analyses the Palk Bay dispute from a police perspective, highlighting the economic dependence of fishing communities in Tamil Nadu and northern Sri Lanka. His work emphasizes that repeated arrests of fishermen have humanitarian and diplomatic consequences and suggests that joint fishing arrangements and licensing mechanisms could help reduce tensions.

Other scholars have focused on the environmental dimension of fisheries conflicts. Studies on bottom trawling have shown that destructive fishing methods contribute significantly to the degradation of marine ecosystems and the reduction of fish breeding habitats. These findings support the argument that stricter regulation of fishing practices may be necessary to ensure the long term sustainability of marine resources, even though such measures may create short term economic challenges for fishing communities.

Judicial decisions and arbitral awards have also contributed to academic discussion on maritime boundaries and fishing rights. Cases such as the *Eritrea v. Yemen* arbitration have been widely cited in the legal literature for recognizing the relevance of traditional fishing practices in maritime delimitation. Similarly, judgments of the International Court of Justice in cases involving maritime boundaries have reinforced the importance of equitable solutions and cooperation between states.

Despite this substantial body of scholarship, a significant gap remains in the literature regarding the interaction between maritime boundary enforcement and the socio economic realities of traditional fishing communities in developing regions. Many studies focus primarily on legal principles or environmental concerns, while fewer works provide an integrated analysis that considers legal, humanitarian and policy dimensions together.

The present study seeks to address this gap by examining the Rameswaram fishermen dispute through the combined lens of international maritime law, traditional fishing rights and fisheries governance. By analyzing treaty provisions, judicial decisions and regional developments, this research aims to contribute to a more comprehensive understanding of how international law can respond to conflicts involving shared marine resources and vulnerable coastal communities.

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ROLE OF ARTIFICIAL INTELLIGENCE IN PROMOTING WOMEN'S HEALTH: SCOPE WITHIN SUSTAINABLE DEVELOPMENT GOALS 3 AND 5

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Abstract

Artificial intelligence (AI) is increasingly recognized as a pivotal tool in advancing women's health, offering innovative solutions in diagnostics, predictive modeling, maternal and reproductive care, and personalized monitoring. This review examines the multifaceted role of AI in addressing critical challenges in women's health, including reproductive cancers, maternal mortality, and gender-specific chronic conditions, while evaluating its contributions to United Nations Sustainable Development Goals (SDG) 3 (Good Health and Well-being) and SDG 5 (Gender Equality). Through synthesis of peer-reviewed evidence, AI demonstrates substantial potential to enhance early detection, risk stratification, and equitable access to sexual and reproductive health services, particularly in low- and middle-income countries. Applications such as deep learning-based imaging, wearable technologies, and predictive analytics align with SDG targets by reducing preventable maternal deaths and empowering women through informed health decision-making. However, persistent challenges, including algorithmic biases stemming from underrepresented female datasets, historical gender data gaps, and digital divides, risk exacerbating health inequities and hindering SDG progress. This paper highlights the dual nature of AI as both an enabler and potential inhibitor of gender-equitable health outcomes. Recommendations emphasize inclusive data practices, bias mitigation strategies, participatory design, and robust ethical governance to ensure equitable deployment. Ultimately, ethically designed AI can accelerate achievement of SDGs 3 and 5, fostering sustainable, inclusive advancements in women's health by 2030.

Keywords
Artificial Intelligence; Women's Health; Sustainable Development Goals; SDG 3; SDG 5; Gender Equality; Health Equity; Algorithmic Bias; Maternal Health; Reproductive Health; Digital Health Technologies; Bias Mitigation

Introduction

Women's health encompasses a multifaceted interplay of biological, socioeconomic, cultural, and environmental factors that profoundly influence health outcomes across the lifespan, including reproductive health, maternal care, gynecological conditions, and gender-specific manifestations of non-communicable diseases (World Health Organization, 2024). Despite global progress, persistent disparities remain evident: maternal mortality ratios continue to disproportionately affect low- and middle-income countries, access to sexual and reproductive health services is uneven, and conditions such as endometriosis, polycystic ovary syndrome, and reproductive cancers are often underdiagnosed or undertreated due to systemic gaps in research and care delivery (Lau et al., 2023). These inequities not only undermine individual well-being but also hinder broader societal development.

The United Nations Sustainable Development Goals (SDGs), adopted in 2015, provide a framework for addressing such challenges. SDG 3 aims to ensure healthy lives and promote well-being for all at all ages, with specific targets including the reduction of the global maternal mortality ratio to less than 70 per 100,000 live births (Target 3.1) and universal access to sexual and reproductive health-care services (Target 3.7). SDG 5 seeks to achieve gender equality and empower all women and girls, emphasizing the elimination of discrimination, violence, and harmful practices, while ensuring universal access to sexual and reproductive health and reproductive rights (Target 5.6) (Lau et al., 2023). These goals are

intrinsically linked, as gender inequalities exacerbate health disparities, and improved health outcomes empower women economically and socially.

Artificial intelligence (AI), encompassing machine learning, deep learning, and predictive analytics, has emerged as a transformative force in healthcare. AI excels in processing vast datasets to identify patterns, support diagnostics, optimize resource allocation, and enable personalized interventions (World Health Organization, 2024). In the context of women's health, AI applications hold particular promise for advancing SDG 3 and SDG 5 by enhancing early detection of reproductive cancers, predicting maternal risks such as preeclampsia or postpartum hemorrhage, facilitating telemedicine for remote prenatal care, and providing digital tools for fertility tracking and sexual health education (Lau et al., 2023; World Health Organization, 2024). For instance, AI-driven imaging analysis has improved screening for cervical cancer, while chatbot-based interventions offer confidential information on contraception and rights, potentially bridging access gaps in underserved regions.

However, the integration of AI in women's health is not without significant challenges. A systematic review of AI contributions to healthcare reveals that women's specific health needs are markedly underrepresented in AI research and applications, with a persistent gender data gap rooted in historical biases where biomedical studies predominantly focused on male subjects (Lau et al., 2023). This underrepresentation perpetuates sex and gender biases in AI systems, leading to reduced diagnostic accuracy for women, particularly those from diverse ethnic or socioeconomic backgrounds (Buslón et al., 2023). Algorithmic biases amplify discrimination, violating principles of equity and potentially widening disparities in health outcomes, contrary to the aims of SDG 3 and SDG 5 (Buslón et al., 2023).

This paper examines the role of AI in promoting women's health, with a focused scope on its contributions and limitations within the frameworks of SDG 3 and SDG 5. By synthesizing peer-reviewed evidence, it argues that ethically designed and inclusively developed AI can accelerate progress toward health equity and gender empowerment, but only through deliberate efforts to mitigate biases, ensure diverse data representation, and prioritize participatory approaches involving women from marginalized communities.

Applications of AI in Women's Health

Artificial intelligence (AI), particularly machine learning (ML) and deep learning techniques, has been increasingly applied to address critical challenges in women's health, spanning diagnostics, predictive modeling, and continuous monitoring (Macedonia, 2025). These applications leverage large datasets, imaging modalities, physiological signals, and multi-omics to enhance accuracy, enable early intervention, and improve accessibility, especially in resource-limited settings. This section examines key domains: diagnostics and imaging, maternal and reproductive health risk prediction, and wearable-based monitoring, drawing on validated peer-reviewed evidence.

Diagnostics and Imaging

AI has shown remarkable efficacy in imaging-based diagnostics for gynecological and breast cancers, where pattern recognition from visual data is paramount. Deep learning models, particularly convolutional neural networks (CNNs), have achieved high performance in detecting breast cancer from mammography, ultrasound, and magnetic resonance imaging (MRI), often matching or exceeding radiologist accuracy (Nasser & Yusof, 2023). Systematic reviews indicate that CNN-based approaches yield accuracies up to 99% in binary classification tasks, with superior handling of imbalanced datasets compared to traditional methods (Nasser & Yusof, 2023). Meta-analyses further confirm that deep learning enhances image-based detection of breast and cervical cancers, with pooled sensitivities and specificities outperforming

conventional screening in diverse populations (Xue et al., 2022).

In obstetrics and gynecology, AI-augmented ultrasound systems, such as GE Voluson SWIFT and Samsung iNSIGHT, automate fetal anomaly detection and real-time segmentation, achieving sensitivities around 94% and Dice coefficients of 0.89 in large-scale validations (Macedonia, 2025). For cervical cancer screening, transformer-vision models applied to colposcopy images reach area under the curve (AUC) values of 0.91, while smartphone-based systems like Mobile ODT EVA enable point-of-care detection with 92% sensitivity in low-resource environments (Macedonia, 2025). These advancements reduce diagnostic delays and inter-observer variability, facilitating earlier interventions in oncology and prenatal care.

Maternal and Reproductive Health Risk Prediction

Predictive analytics represent a major AI application in maternal health, focusing on high-risk conditions like preeclampsia, preterm birth, and postpartum complications. ML models integrating maternal history, biomarkers, and cell-free RNA signatures have demonstrated strong performance in early preeclampsia detection, with platforms like Mirvie achieving 75% detection rates weeks before clinical onset (Macedonia, 2025). Combined algorithms, such as the ASPRE model, incorporate maternal factors and biomarkers to detect 82% of early-onset cases in prospective cohorts (Macedonia, 2025).

Noninvasive testing for endometriosis, a historically underdiagnosed condition, has advanced through ML analysis of serum microRNA (e.g., DotLab DotEndo, with 94% sensitivity and 91% specificity) and multi-omics subtyping (Macedonia, 2025). In obstetric risk stratification, AI tools enhance precision by processing electronic health records and vital signs, supporting personalized care pathways (Aftab, 2025). These models contribute to reducing maternal morbidity by enabling timely prophylaxis and resource allocation.

Wearables and Continuous Monitoring

Wearable devices integrated with AI algorithms offer continuous, noninvasive tracking of reproductive health parameters, transforming self-management of menstrual cycles, fertility, and menopausal symptoms. Physiological signals—such as skin temperature, heart rate (HR), heart rate variability (HRV), and respiratory rate—captured by wrist-worn or other sensors enable accurate phase identification without user input (Kilungeja et al., 2025). Random forest models applied to these data achieve up to 87% accuracy in classifying menstrual phases (period, ovulation, luteal) using fixed-window features, with AUC-ROC of 0.96 (Kilungeja et al., 2025).

Systematic reviews highlight devices like the Ava bracelet (90% accuracy for fertile window detection) and Oura Ring, which detect ovulation and cycle stages through temperature rises (+0.33°C in luteal phase) and HR increases (+2–3.8 beats/min) validated against hormonal benchmarks (Lyzwinski et al., 2024). Remote maternal-fetal monitoring systems, such as Nuvo INVU, use AI to interpret non-stress tests, reducing unnecessary hospitalizations by 30% in real-world deployments (Macedonia, 2025). These technologies empower women with personalized insights, improve fertility awareness, and support remote care in underserved areas.

Alignment with SDG 3 and SDG 5

Artificial intelligence (AI) and broader digital health technologies (DHTs) demonstrate significant potential to advance Sustainable Development Goal 3 (Good Health and Well-being) by enhancing healthcare delivery, early detection, and equitable access, particularly in women's health domains such as maternal care, reproductive health, and oncology (Lau et al., 2023; Vinuesa et al., 2020). Expert assessments indicate that digital technologies, including AI, exert a medium-to-high positive impact

on multiple sub-goals under SDG 3, including health education, surveillance, early warning systems, and universal health coverage (Kshetri, 2024). For instance, AI-enabled diagnostics and predictive modeling support targets like reducing maternal mortality (Target 3.1) and ensuring universal access to sexual and reproductive health services (Target 3.7) through scalable interventions in resource-limited settings (Lau et al., 2023). Scoping reviews of DHTs further confirm improvements in pregnancy outcomes, postpartum care, screening adherence, and disease prevention, with over 75% of studies reporting positive health benefits for women (Chantler et al., 2025).

In relation to SDG 5 (Gender Equality), AI and DHTs can promote empowerment by facilitating health literacy, autonomous decision-making, financial independence, and awareness of reproductive rights, thereby addressing Target 5.6 on universal access to sexual and reproductive health and rights (Chantler et al., 2025; Lau et al., 2023). Approximately 84% of evaluated studies on DHTs highlight gains in women's skills acquisition, social connectivity, and household dynamics, contributing to reduced gender inequalities and alignment with broader goals like SDG 10 (Reduced Inequalities) (Chantler et al., 2025). Ethically deployed AI has the potential to bridge gender data gaps, empower underrepresented communities, and inform policies that enhance accessibility and informed health choices (Lau et al., 2023).

However, AI's alignment with these SDGs is not unequivocal. Biases in algorithms and datasets can inhibit progress on SDG 5 by reproducing gender stereotypes and discrimination, while underrepresentation of women's health in AI research limits equitable benefits for SDG 3 (Vinuesa et al., 2020). Systematic analyses reveal persistent gender data gaps and inadequate focus on women's specific conditions, underscoring the need for inclusive design to fully realize AI's supportive role (Lau et al., 2023; Vinuesa et al., 2020).

Overall, when designed with equity in mind, AI serves as an enabler for 79% of SDG targets, including those in health and gender equality, but risks inhibiting others without deliberate bias mitigation (Vinuesa et al., 2020).

Challenges: Bias, Inequity, and Ethical Concerns

The integration of artificial intelligence (AI) in women's health, while promising, introduces substantial risks of perpetuating or exacerbating existing disparities through algorithmic bias, inequitable access, and ethical dilemmas (Cirillo et al., 2020; Buslón et al., 2023). These challenges stem primarily from historical underrepresentation of women in biomedical research and datasets, leading to AI systems that perform suboptimal for female physiology, diverse ethnic groups, and intersectional identities (Cirillo et al., 2020).

Algorithmic bias arises when training datasets reflect systemic gender imbalances, such as the predominance of male subjects in clinical trials or electronic health records skewed toward male-presenting symptoms (Buslón et al., 2023). For instance, AI models for cardiovascular disease detection, often trained on data where women are underrepresented, exhibit lower accuracy in diagnosing female patients due to sex-specific symptom variations (Cirillo et al., 2020). In women's health specifically, this manifests in reduced performance for conditions like endometriosis or polycystic ovary syndrome, where diagnostic delays are already prevalent, and in oncology, where imaging algorithms may underperform for breast or cervical cancers in non-Western populations (Gaye et al., 2025). Systematic reviews highlight that biases amplify discrimination, with AI potentially reinforcing sex and gender inequities in diagnosis, treatment recommendations, and resource allocation (Buslón et al., 2023).

In maternal health, these biases pose acute risks. Predictive models for complications like preeclampsia or preterm birth, when trained on non-representative

data (e.g., predominantly from high-income countries or certain ethnic groups), demonstrate poorer calibration for women in low- and middle-income countries (LMICs) or from minority backgrounds, potentially widening maternal mortality gaps contrary to SDG 3 targets (Gaye et al., 2025). Ethnic diagnostic biases have been documented in AI tools for common infections affecting women, further illustrating how unrepresentative data perpetuates health inequities (University of Florida study referenced in multiple sources, 2023).

Inequity extends beyond algorithms to access and deployment. The digital divide—encompassing infrastructure limitations, low digital literacy, and affordability barriers—disproportionately affects women in LMICs, limiting benefits from AI-driven telemedicine or wearables (Lau et al., 2023). Moreover, "data colonialism" concerns emerge when data from marginalized populations are extracted for AI development without local benefits or consent, exacerbating power imbalances (Gaye et al., 2025).
Ethical concerns include privacy vulnerabilities, as women's sensitive reproductive health data (e.g., fertility tracking or abortion-related queries) are at risk of breaches or misuse in AI systems (World Health Organization, 2021). Lack of transparency in proprietary algorithms hinders accountability, while over-reliance on AI may erode patient-provider trust and informed consent, particularly in gender-sensitive care (Cirillo et al., 2020). Without mitigation, these issues risk inhibiting progress on SDG 5 by reinforcing gender stereotypes and discrimination (Vinuesa et al., 2020).

Addressing these challenges requires proactive measures, including diverse dataset curation, bias audits, and inclusive governance, to ensure AI advances rather than hinders health equity (Buslón et al., 2023; Gaye et al., 2025).

Recommendations for Equitable AI Deployment

To maximize the benefits of artificial intelligence (AI) in women's health while mitigating risks of bias and inequity, deliberate and evidence-based strategies are essential. These recommendations, drawn from peer-reviewed literature and international guidelines, emphasize inclusivity, accountability, and sustainability to align AI deployment with SDG 3 (health equity) and SDG 5 (gender equality).

1. Prioritize Inclusive and Representative Data Practices: AI systems must be trained on diverse, sex- and gender-disaggregated datasets that include women from varied ethnic, socioeconomic, and geographic backgrounds, particularly those in low- and middle-income countries (LMICs). This involves mandating the use of standardized sex/gender ontologies and actively addressing historical data gaps through targeted collection efforts (Cirillo et al., 2020; Buslón et al., 2023). Without representative data, AI risks amplifying existing disparities in diagnostic accuracy and treatment outcomes for women's specific conditions.

2. Implement Robust Bias Detection and Mitigation Mechanisms: Regular algorithmic audits should be conducted using intersectional frameworks that account for sex, gender, race, and other factors. Techniques such as debiasing algorithms, counterfactual fairness testing, and explainable AI (XAI) models are recommended to enhance transparency and reduce discriminatory outputs (Buslón et al., 2023; World Health Organization, 2021). These measures ensure accountability and prevent AI from perpetuating gender biases in clinical decision-making.

3. Adopt Participatory and Community-Centered Design Approaches: Women from marginalized and underrepresented communities should be actively involved throughout the AI lifecycle—from design and development to testing and evaluation. Co-creation with stakeholders, including patients, healthcare providers, and gender experts, fosters responsive technologies that address real-world needs and cultural contexts (Gaye et al., 2025; Lau et al., 2023).

4. Invest in Capacity Building and Infrastructure in Underserved Regions: Targeted programs to enhance digital literacy, AI education for women healthcare workers, and infrastructure development in LMICs are critical. This includes building local innovation ecosystems and ensuring affordable access to AI tools, thereby reducing the digital divide that disproportionately affects women (Lau et al., 2023; World Health Organization, 2021).

5. Strengthen Governance and Ethical Frameworks: National and international policies should adopt comprehensive guidelines, such as the WHO's consensus principles for ethical AI in health, which emphasize protecting autonomy, ensuring inclusiveness and equity, and promoting sustainability. Specific attention to gender equity in regulatory oversight, including mandatory impact assessments for women's health applications, is advocated (World Health Organization, 2021; Vinuesa et al., 2020).

Implementing these recommendations requires multidisciplinary collaboration among researchers, policymakers, technologists, and civil society. By embedding equity-by-design principles, AI can become a powerful enabler for advancing women's health outcomes and contributing to the achievement of SDGs 3 and 5 by 2030.

Conclusion

The rapid evolution of artificial intelligence (AI) presents a transformative opportunity to advance women's health, addressing longstanding disparities in diagnostics, maternal care, reproductive health services, and personalized monitoring. As demonstrated through peer-reviewed evidence, AI applications—ranging from deep learning-enhanced imaging for cancer detection to predictive models for maternal risks and wearable-based cycle tracking—offer scalable, precise interventions that directly support Sustainable Development Goal 3 (SDG 3) targets for reducing maternal mortality and ensuring universal reproductive health access, while empowering women through informed decision-making aligned with SDG 5. These technologies have the potential to bridge gaps in resource-limited settings, enhance health literacy, and foster gender equity by democratizing access to high-quality care.

Nevertheless, the promise of AI is tempered by profound challenges, including algorithmic biases rooted in historical underrepresentation of women in biomedical data, which risk exacerbating inequities and discriminating against diverse populations. In maternal and reproductive health contexts, non-representative datasets can lead to suboptimal performance for women in low- and middle-income countries or from marginalized ethnic groups, potentially widening rather than narrowing health disparities. Ethical concerns, such as data privacy vulnerabilities and the digital divide, further underscore the imperative for cautious deployment.

Ultimately, realizing AI's catalytic role in achieving SDGs 3 and 5 by 2030 hinges on proactive, equity-centered strategies: inclusive data curation, rigorous bias mitigation, participatory design, capacity building in underserved regions, and robust governance frameworks. When guided by these principles, AI can transcend mere technological innovation to become a cornerstone of gender-equitable, sustainable health systems. Future research should prioritize longitudinal evaluations of AI interventions in diverse contexts, interdisciplinary collaborations to address intersectional biases, and policy integration to ensure that technological progress translates into tangible, inclusive improvements in women's well-being worldwide.

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ETHICS IN ARBITRATION: CONDUCT AND CONSIDERATION

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ABSTRACT

This research examines ethics in arbitration from the perspective of arbitrators and parties, and the conduct and considerations involved. The fundamental question posed is the absence of a coherent ethical framework and of the consequences for the fairness and legitimacy of arbitration as an institutional method of dispute resolution. To understand the ethical duties of arbitrators and parties and to identify the concerns of impartiality, transparency, and confidentiality. The study is qualitative research based on analysis of case laws, arbitration rules and literature. Its main conclusions include that, while a number of arbitral institutions have codes of ethics, there are still gaps in terms of enforcement and clarity, particularly in the areas relating to conflict of interest and disclosure obligations. The study also finds that there is a need for stronger ethical standards and training to help ensure that the arbitration process is seen as credible. It also makes the case that universal ethical standards can play a role in reducing bias and misconduct. In conclusion, ethical behaviour is an important factor to ensure the integrity of arbitration, and there is a need for greater awareness, regulation and consistency across jurisdictions.

I. Introduction

Arbitration has taken centre stage in the dispute resolution arena and is increasingly seen as an alternative to litigation. It has acquired special importance together with the development of the world trade and the developed legal systems. Ethical behaviour is essential in order to achieve fairness, integrity, transparency, and impartiality in the arbitration process and its success.[1] This paper discusses the principles of ethics in arbitration, the fundamental rules of behaviour, issues that are likely to arise and in what ways, regulatory considerations, practice and current trends, all within the broad scope of what is considered ethical behaviour in arbitration. Arbitration provides parties with a confidential, time-saving, and in many cases, cost-efficient way of dispute resolution.[2] The arbitration should be ethical to ensure fairness, impartiality and trust in the system. But its authority rests on the honesty of the arbitral process. Without a proper ethical foundation, arbitration may be considered biased, unreliable or easily manipulated. The ethical behaviour of this quasi-judicial process applies to all the arbitrators, parties, and counsel. It turns out to be one of the building blocks of justice. It is thus significant to study the issue of ethics in arbitration, not only in the sense of behaviour, but in the sense of considerations, which is significant to legal practitioners, arbitrators and disputants. All these morals are channelled towards impartiality, respect to procedural fairness and conflict of interests.

II. The Foundation of Ethics in Arbitration

There are no checks and balances in the judicial system and that is why good ethical values are required since not many decision-makers have high level of discretion.

The values of arbitration (neutrality, fairness, efficiency, and finality) are interlaced with the ethical

[1] "Ethics in International Arbitration," 32 Arbitration International 545 (2016).

[2] Peter Halprin & Stephen Wah, "Ethics in International Arbitration," 2018 Journal of Dispute Resolution 87 (2018).

cloth of arbitration. Mutual agreement of parties is the main theme of arbitration where they have consented to be bound by the decision of third people, the arbitrators. The greatest feature of arbitration ethics is the trait of impartiality of arbitrators. They need to be independent for that process. Such discretion, when not controlled, may result in abuses that undermine the confidence of the parties in the procedure and acceptance of the final award.[3]

Violations of ethics that include failure to report relationships, ex-parte communication, failure to accept or reject gifts appropriately can cause the award to be contested, reputations to be ruined and even legal action itself to be initiated.

Arbitration ethics can be defined as moral and professional values that will direct the actions of every member because it is not part of the formal legal system, the rules and protections of the court are usually substituted with codes of conduct, internal regulations and globally accepted ethical standards. These ethics are supposed to be disinterested, subservient to procedural fairness and conflict avoidance.[4] To arbitrators, ethics extend past legality into greater standards of integrity, transparency and accountability. Any ethical violation including not reporting of relationship, ex-parte communication, not accepting or rejecting gifts can result in an award being overturned, reputation can be ruined, legal proceeding can be initiated on its own. Ethics, therefore, is the unseen structure that helps uphold trust in arbitration.

III. Ethical Frameworks and Sources

Arbitration ethics are based on a set of statutory provisions, institutional rules, and professional codes. Some ethical safeguards exist in the Arbitration and Conciliation Act, 1996 of India, notably since 2015 and 2019, when the Fifth, Sixth and Seventh Schedules were introduced to outline circumstances that raise justifiable concerns about the independence or impartiality of an arbitrator. Documents that expand on standards at the international level include the IBA Guidelines on Conflicts of Interest in International Arbitration (2014)[5], the UNCITRAL Arbitration Rules[6] and the Code of Professional and Ethical Conduct of the Chartered Institute of Arbitrators (CIArb)[7]. The sources all establish expectations on neutrality, disclosure, confidentiality, efficiency and bias avoidance. Although not legally enforceable, all guidelines have been used as a guiding authority in the interpretation of ethical obligations in domestic and international arbitration cases.[8]

A) Impartiality and Independence

Impartiality means that arbitrators are not supposed to favor one side over the other, but rather they have to make a decision on presented facts and applied law. They cannot be biased in this process[9]

The basis of ethical behaviour is integrity and honesty. Likewise, false representations on behalf of, or falsified evidence by one or other parties must be avoided. This affects the process including fine and annulment of awards. Independence The arbitrators are required to be independent of relationships, interests or circumstances that may affect or purport

[3] "Ethics Rules in Arbitration – Pay Attention to Procedure," 34 South Carolina Lawyer 14 (2022–2023).
[4] Ibid.
[5] IBA Guidelines on Conflicts of Interest in International Arbitration, 2014.
[6] UNCITRAL Arbitration Rules, 1976 (as amended 2010).
[7] The Code of Professional and Ethical Conduct of the Chartered Institute of Arbitrators (CIArb), 2020.
[8] Arman Sarvarian, "Ethics in International Arbitration by Catherine Rogers," 16 Journal of World Investment & Trade 751 (2015)
[9] Verlyn Francis, "Ethics in Arbitration: Bias, Diversity, and Inclusion," 51 Cumberland Law Review 419 (2021).

to affect their judgment.[10] Even the belief in prejudice is negative as arbitration is credible when it has the confidence of the parties. Thus, the vast majority of major arbitration rules and institutional codes, including those available through the International Bar Association (IBA) and national organizations, impose upon arbitrators full disclosure of any relationship or interest that may be relevant to their neutrality. The disclosure is a continuous process and not a single incident because circumstances can vary throughout an arbitration.

The IBA Guidelines classifies conflicts of interest into three categories, Red List (severe conflict), Orange List (disclosure is necessary) and Green List (there is no need to disclose).[11]

The ethics of arbitration emphasize that arbitrator needs to be neutral and independent. Impartiality can be defined as the absence of bias against any party whereas independence can be defined as not being influenced by any external factors be it financial, professional or personal.[12] The Arbitration and Conciliation Act, 1996 requires parties to disclose any situation that would reasonably raise the question of impartiality prior to acceptance of appointment and to maintain the obligation of disclosure during the proceedings. Absence of impartiality and independence can present impediments to the arbitrator under Section 12 of the Act that will ultimately undermine the credibility of the award.[13] This includes monetary interests, prior dealings with the parties or counsel or involvement in such controversies.

B) Duty of Disclosure

The ethical obligation of disclosure supplements the obligation of impartiality and independence. An arbitrator should immediately identify facts or relationships, whether current or past, that might influence his or her impartiality. Disclosure will bring credibility to the arbitral process and minimise challenges after award. Notably, the disclosure obligation is continuous, i.e., it is the obligation to disclose new circumstances that appear in the course of the proceedings as well. The Sixth Schedule of the Arbitration Act[14] directs the arbitrators to make a written statement of independence and impartiality but it should happen prior to appointment. The same rule is applicable to international practice, where non-disclosure may result in an award being set aside under Section 34[15] of the Act or refusal to enforce it under Section 48[16] in foreign awards. Do away with Conflict of Interest.

Counsel and arbitrators are expected to behave honestly and not engage in any form of deception that could mislead parties, the tribunal and third parties. The parties rely on arbitrators to not only decide justly, but also carry out proceedings in an open, dignified, and respectful manner. It is, however, ethical conduct to to ensure that access to confidential material is extremely circumscribed and that it is mediated by secure communications and storage patterns.

C) Confidentiality and Privacy

One of the most attractive features of arbitration is confidentiality; this is particularly important in commercial arbitration when the parties wants to keep the details of their business confidential. In the vast

[10] Troy L. Harris, "Ethics in International Arbitration: They're Not Just for Lawyers," 8 Constitutional Law International 37 (Sept. 2013).
[11] IBA Guidelines, 2024.
[12] Silvano Domenico Orsi, "Ethics in International Arbitration: New Considerations for Arbitrators and Counsel," 3 Arbitration Brief 92 (2013).
[13] s. 12, Arbitration and Conciliation Act, 1996.
[14] Sixth Schedule, Arbitration and Conciliation Act, 1996.
[15] s. 34, Arbitration and Conciliation Act, 1996.
[16] s. 48, Arbitration and Conciliation Act, 1996.

majority of arbitration agreements and institutional regulations, it is stated that proceedings, evidence, and awards must not be disclosed. Arbitrators, counsel, secretaries and other participants should strictly strive to prevent unauthorized disclosures. What can be shared and what should not be not always clear, especially in multi-party or multi-jurisdictional cases or complex cases. This is an obligation, not limited to substantive expertise but also to procedural management; to determine whether proceedings are being managed well, case management is sound and parties have the right to present and challenge evidence.[17]

Another ethical issue that is central to arbitration is confidentiality. The reason why parties will opt to use arbitration is to ensure that sensitive commercial information remains confidential. Documents, testimony, and award itself remain confidential to the arbitrator, parties and counsel except when it is necessary to disclose such information by law or agreement. In the 2019 amendment to the Arbitration Act, Section 42A was added[18], which expressly requires that arbitration proceedings be confidential, except that an arbitral award must be disclosed where it is needed to enforce the award. Most arbitral institutions in the world, including the ICC, LCIA, and SIAC, incorporate provisions of confidentiality in their regulations. Not only does breach of confidentiality destroy trust, but it can also result in professional misconduct claims against counsel and disqualification against arbitrators.

D) Duty of Diligence and Competence

Being careful not to be inefficient and unfair, be willing to balance cases to be fair, not do it arbitrarily and unreasonably. Ethical behavior is based on competence and hard work. Arbitrators should have the necessary skills in the applicable law and the subject of the conflict and strive to update their knowledge and skills. They are capable of annihilating objectivity and process integrity. Failure to follow through diligence (including failure to read submissions, consideration of evidence in its entirety, or failure to issue awards) may not only have an impact on justice, but tarnish the reputation of individual arbitrators and arbitration in general.

One of the ethical requirements of arbitration that is often ignored is the competence and diligence of the arbitrator. To effectively resolve the conflict, arbitrators have to have the required level of legal knowledge, subject-matter expertise, and procedural skills. Delays or refusal of the arbitrator to prepare can be an infringement of the integrity of proceedings, and may amount to professional negligence.[19] Timeliness is important in the sense that section 29A[20] of the Act requires the arbitral award in domestic arbitration is to be given within 12 months of the date pleadings have been completed. Fair and Righteous Treatment. In the same way, counsel should be careful to represent his or her clients, striking a balance between being an aggressive advocate and being just to the opposing party.

E) Fairness and Equality

The principles of ethics in arbitration is that all parties, irrespective of nationality, financial capacity, or experience, should be accorded equal and full opportunity to make their case. This involves the application of processes fairly so that both parties have fair time and space to present evidence and argument and avoids the prejudging of matters prior to hearing all materials. Even tangential or peripheral links when covert, may give the appearance of bias and basis of contention.

[17] "Ethics Rules in Arbitration – Pay Attention to Procedure," 34 South Carolina Lawyer 14 (2022–2023).
[18] s. 42A, Arbitration and Conciliation (Amendment) Act, 2019.
[19] Paolo Marzolini, "Counsel Ethics in International Arbitration: Is There Any Need for Regulation," 6 Indian Journal of Arbitration Law 124 (Jan. 2018).
[20] s. 29A, Arbitration and Conciliation Act, 1996.

Ethical arbitration practice is all about fairness. The arbitrators should make sure that each party has a fair chance of explaining their case and addressing the arguments made by the other party. Section 18[21] of the Act of Arbitration provides this principle of treating parties equally. Ethical impartiality is applied to procedural choices, assignment of trial time, admission of evidence and undue favouritism.

The mere feeling that one party has been disadvantaged is enough to destroy the validity of the process. The ethos of arbitral in international law is audi alteram partem (hear the other side.

F) Ex-Parte Communications

In almost all systems and codes of arbitration, unilateral communications (ex-parte) between arbitrators and one party, without the knowledge or presence of the other party, are strictly forbidden.[22] One such guideline, the IBA Guidelines on Conflicts of Interest[23], contains detailed disclosure criteria and color-coded types of conflicts to help determine what must be disclosed, and what is presumed to lead to unacceptable conflicts. Ethical behavior means that all substantive communications should happen with presence and awareness of all parties and that arbitrators must be alert to disclose any inadvertent ex-parte contacts that might occur.

G) Conflicts of Interest

One of the most difficult and most enduring ethical issues in arbitration is conflicts of interest. They can be the result of previous relationships, either professional, commercial, or personal. Infringement of such standard leads to an arbitrator being disqualified, annulment of the award or professional punishment. One such guideline, IBA Guidelines on Conflicts of Interest[24], has elaborate disclosure requirements and color-coded types of conflicts that inform what should be disclosed, and what is presumed to create unacceptable conflicts. The question is, whether the relationship would create justifiable doubts as regards independence.[25]

Ethics require arbitrators and counsel to stay out of cases in which their personal interests are in conflict with their professional obligations. There can be a conflict of interest when an arbitrator is financially interested in one side, has a personal relationship with a party representative, or is somehow involved in the issue of dispute. In the Seventh Schedule to the Arbitration Act, there are specified situations when the appointment of an arbitrator is automatically disqualified on the principle of no man being a judge in his own cause. They are also anticipated to spend enough time on the proceedings not to waste time on unnecessary delays and award the award within the stipulated time.

H) Institutional and Statutory Codes

In the wake of the increased need to have a higher level of ethical rigor, many institutions and organizations have reacted by adopting codes of ethics and conduct. Codes of conduct dealing with arbitrator behavior, disclosure, hearing conduct, confidentiality and relationships with parties and counsel have been developed by the American Arbitration Association (AAA), Chartered Institute of Arbitrators (CIArb) and numerous others. Such codes tend to establish minimum requirements and can be complemented by an arbitral agreement between the parties or the national laws. Any of the standards violated may lead to disqualifying an arbitrator, set aside of award or professional sanction.[26]

[21] s. 18, Arbitration and Conciliation Act, 1996.
[22] "Counsel Ethics in International Arbitration – Could One Take Things a Step Further," 32 ASA Bulletin 453 (2014).
[23] IBA Guidelines on Conflicts of Interest in International Arbitration, 2014.
[24] IBA Guidelines on Conflicts of Interest in International Arbitration, 2014.
[25] Jay Folberg, "Arbitration Ethics," 9 Dispute Resolution Magazine 5 (Fall 2002).
[26] Carrie Menkel-Meadow, *Ethical Ordering in Transnational Legal Practice: A Review of Catherine*

Many of these ethical imperatives, and in particular impartiality, independence, equal treatment, and the right to be heard, are reflected in International commercial Arbitration, which has been widely adopted and adapted in national laws. National courts may set aside if any violation happens in these obligations.

I) Ethical Duties of Counsel

Even though the actions of arbitrators are mostly considered in the context of ethics, the ethics of counsel and party representatives are also an important consideration. Conflicts of interest is very common in international arbitration.[27] Witness preparation, document-production tactics, rough cross-examination, and tactical delays are all questions to consider.[28] In an effort to create a shared system, the IBA Guidelines on Party Representation in International Arbitration have tried to establish a general standard, yet arbitration participants should be keen to ensure that the conduct of counselors maintains the same levels of honesty, civility, and openness that the behaviour of arbitrators themselves maintains.[29]

Although arbitrators have serious ethical obligations, so too do the counsel representing parties in arbitration. Lawyers should not use tricks that hinder justice like presenting misleading evidence, making frivolous claims or threatening witnesses.[30] They should not disrespect any confidentiality agreements, or ex parte communication, neither should they be given inducements. Counsel in cross-border disputes can be bound by more than one ethical regime and therefore must closely navigate through conflicting standards they may encounter. The IBA Guidelines on Party Representation in International Arbitration (2013) are helpful with respect to how counsel should conduct themselves in these situations.[31]

IV. Emerging Patterns:

A) Third-Party Funding, Technology, and Diversity

In third party funding, the outside party arbitrates an issue and pays to fund this arbitration and gets a portion of the award. Despite the benefits of increasing access to justice, it introduces ethical problems of disclosure, process control and conflict of interests. Many jurisdictions, including India through the consultative powers of the Arbitration Council of India, are considering mandatory to avoid the insider trading of prejudices or any unfair influence. Such disclosure is also one of the approaches to achieving transparency and safeguarding the integrity.

The past few years have seen a booming industry in third-party finance of arbitration, with third parties financing the case of a party in exchange for a portion of the result. Such arrangements have the potential to contribute to improved access to justice, but they introduce new ethical dilemmas: unknown financiers can introduce covert conflicts of interest to arbitrators, dominate the process, or affect the settlement strategy. Gradually, institutional rules are compelling parties to disclose funders identity and presence, to create transparency and to be fair.

The COVID-19 pandemic has only added to the ethical questions concerning the digital transformation of arbitration. Electronic evidence, virtual hearings, and cloud-based document sharing

A. Rogers's Ethics in International Arbitration, 29 GEO. J. LEGAL ETHICS 207 (Winter 2016).

[27] Margaret L. Moses, "Ethics in International Arbitration: Traps for the Unwary," 10 Loyola University Chicago International Law Review 73 (Fall/Winter 2012).

[28] Richard M. Mosk, "Attorney Ethics in International Arbitration," 5 Publicist 32 (2010).

[29] Arman Sarvarian, "Ethics in International Arbitration by Catherine Rogers," 16 Journal of World Investment & Trade 751 (2015)

[30] Seok-Mo Hong, "Regulation of Attorney Ethics in International Arbitration," 25 Journal of Arbitration Studies 3 (2015).

[31] IBA Guidelines on Party Representation in International Arbitration, 2013.

require an increased concern with data security, privacy, and cyberattack threats. Arbitrators, counsel and parties should exercise reasonable efforts to guarantee that technological devices do not affect the integrity, confidentiality or accessibility of proceedings.

The other element is the encouragement of diversity and inclusion in the arbitral tribunals. Lack of gender, geographic, and professional diversity can affect the attitude towards legitimacy, as well as the quality of decisions made.[32] The institutions and the users should contribute to the process of ensuring that panels are representative of the large constituencies they represent, and that the principle of fairness is followed in the selection and appointment process.

B) Technology and Digital Ethics in Arbitration

With the advent of virtual hearings, e-Discovery and AI-supported case analysis, technology has also introduced new ethical challenges. Arbitrators and counsel must provide cybersecurity, mitigate unauthorized access to confidential information and adjust to new standards of practice, but not at the expense of fairness. Online arbitration is a relatively new practice, but due to the COVID-19 pandemic, it has gained momentum, placing it on the list of urgent issues of digital ethics. Institutional rules already have the data protection principle, and arbitrators are likely better-informed on some of the broader mechanics of cyberspace to keep the process confidential and intact.[33]

C) Cultural Sensitivity and Ethics

Parties to international arbitration may be of different cultures and legal systems. Ethical behavior in these situations should be culturally sensitive, conscious of other traditions of law, and free of ethnocentrism. Arbitrators must find the proper balance between culture and global norms of equality and justice. The perceived discrimination or injustice may be due to ignorance or lack of cultural context particularly when questioning a witness and interpreting a contract.[34]

D) Consequences of Ethical Breaches

Arbitration violations of ethics can be devastating. In the case of arbitrators, a breach can result in removal by Section 14[35] or Section 15[36] of the Arbitration Act, set aside of the award by Section 34[37], or reputational harm. In counsel, decency can mean the difference between the imposition of disciplinary action by bar councils, loss of credibility and even civil liability. Lapses in ethics also contravene the wider acceptance of arbitration as a sound dispute resolution tool which might push parties to a more conventional litigation.

E) Enforcement and Remedies

Unethical conduct on the part of arbitrators, counsel or a party can be severe. Some of the remedies are disclosure, removal of arbitrators, costs orders or--as a last resort--annulment of awards. Sanctions are generally commensurate to the character and the severity of the violation, and a bad faith or gross misconduct finding has particularly severe consequences. The capacity to impose moral norms lies finally in the hands of arbitral institutions, national courts, and, in certain circumstances, professional organizations governing lawyers and arbitrators.[38]

[32] Lorin Dale-Pierce, "Ethics in Employment Arbitration: An Analysis of the Feasibility of a Code of Ethics for Employment Arbitrators," 26 Georgetown Journal of Legal Ethics 613 (Fall 2013).

[33] Carrie Menkel-Meadow, "Ethics Issues in Arbitration and Related Dispute Resolution Processes: What's Happening and What's Not," 56 University of Miami Law Review 949 (July 2002).

[34] Arman Sarvarian, "Ethics in International Arbitration by Catherine Rogers," 16 Journal of World Investment & Trade 751 (2015)

[35] s. 14, Arbitration and Conciliation Act, 1996.

[36] s. 15, Arbitration and Conciliation Act, 1996.

[37] s. 34, Arbitration and Conciliation Act, 1996.

[38] "Arbitrator Ethics in International Arbitration: A Developing Story of Challenges, Codes, Conflicts, and Disclosures," 3 ITA Review 1 (2021).

F) Building Ethical Culture: Training, Feedback, and Continuous Improvement

To make the arbitration process ethical and effective, the stakeholders need to establish a culture of ethics between the two parties. Ethical dilemmas should be discussed and trained on regularly and peer reviewed. The institutions should provide clear guidance and support to arbitrators who are faced with complex situations and the users of arbitration, parties, in-house counsel and outside lawyers should be encouraged to report cases of misconduct without fear of repercussions.[39]

Achieving the right balance between the number of rules and the flexibility and efficiency of the system is one of the oldest dilemmas: overabundance leads to stagnation and loss of efficiency, and vice versa.

The arbitration institutions and professional bodies ought to promote ethical behavior by training them on ethical conduct periodically, by expressing their codes of conduct and by enforcing their codes of conduct. Amendment 2019 will enhance professionalism and ethical practice by establishing an institution of grades arbitral and accreditation of arbitrators based on his conduct and performance.

V) Conclusion

Arbitration is bound to change to meet the economic, legal and technological trends in the world and the ethical framework of arbitration should change with it. There will likely be more efforts to harmonize and strengthen ethical codes, increase transparency, and seal loopholes around conflicts and disclosures. Ethical behavior is not only legally and institutionally required, but it is also trusted by the user and the validity of discoveries. The answer is to develop principled behavior that goes beyond hard and fast prescriptions and permeates the arbitration process at all levels.

The very essence of arbitration is a product of consent and trust. As soon as the new baby is born, the mother and her relatives are supposed to practice the Jatakarma. The commitment of all parties in the process, including the arbitrators, counsel, institutions, and parties, to be of integrity, independent, fair, and respectful is important when stakes are high. It is only then that arbitration can really fulfill its promise as a credible, reliable and just form of dispute resolution in an interconnected and complex world.

Arbitration Ethics is not a ritual, it is the flesh and blood of arbitration. Ethical standards address the legitimacy of arbitration as a fair and fast method of resolving disputes through transparency and integrity, etc. High ethical standards are not only a challenge in a fast changing legal landscape due to globalisation, technology, and commercial complexity, but also a necessity. All parties, including the arbitrators, counsel, parties and institutions, must be dedicated to the principles of integrity, transparency and fairness if arbitration is to be created an alternative to litigation. The genius of arbitration, however, is not only in the elasticity of its procedures, but also in the undying ethos of those who practice it.

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[39] "Ethics in International Arbitration," 12 Revista Brasileira de Arbitragem 227 (2015).

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DELEGATUS NON POTEST DELEGARE IN MODERN GOVERNANCE: CONTEMPORARY JUDICIAL APPROACH TO SUB-DELEGATION IN INDIA

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ABSTRACT

This research project provides a critical analysis of the doctrine of delegatus non potest delegare within the contemporary landscape of Indian administrative law. In the modern welfare state, the sheer complexity and volume of regulatory requirements have made delegated legislation a practical necessity; however, the subsequent sub-delegation of these powers creates a significant tension between administrative efficiency and constitutional accountability. This study traces the historical and doctrinal foundations of sub-delegation, examining its evolution from early statutory practices to its current ubiquitous role in sectors such as taxation, licensing, and essential commodities.

Through a doctrinal methodology, the paper evaluates recent judicial shifts from a rigid, presumptive prohibition of sub-delegation toward a more pragmatic, contextual interpretation. By analyzing recent landmark Supreme Court decisions, this work delineates the boundaries of lawful redelegation. Furthermore, the study highlights critical accountability gaps, including the dilution of parliamentary oversight and the "delegation running riot" that occurs when sub-orders escape legislative scrutiny. The research concludes by proposing institutional reforms, such as the enactment of a uniform statute for sub-delegation guidelines, mandatory parliamentary laying of sub-delegated legislation, and the institutionalization of pre-publication consultation to safeguard democratic values and the rule of law.

KEYWORDS

Sub-delegation; Delegatus Non Potest Delegare; Legislative Intent; Judicial Scrutiny of administrative actions; Parliamentary Oversight; Constitutional Accountability; Rule of Law.

INTRODUCTION

Administrative law deals with the control of power exercised by authorities in the modern welfare state. One of its most debated features is delegated legislation, where law-making power is conferred by the legislature upon the executive. Delegation itself has been recognised as a practical necessity, given the complexity of modern governance, the technical nature of regulations, and the limited time of legislatures. However, when a delegate, instead of exercising the power directly, further transfers it to another authority, the question of sub-delegation arises. This raises constitutional, legal, and administrative concerns.

The maxim *delegatus non potest delegare*, which means a delegate cannot further delegate, reflects the general principle that powers entrusted to one body must not be passed down unless expressly authorised. Yet, in India, sub-delegation has become increasingly common in areas such as essential commodities, taxation, licensing and regulation of services. Textual analysis of statutory provisions and judicial pronouncements reveals a consistent tension between administrative convenience on one side and accountability, transparency and constitutional limits on the other.

Recent judicial pronouncements illustrate this conflict. In *Noida Toll Bridge Co. Ltd. v. Federation*

of Noida Residents Welfare Assn.[1], the Supreme Court declared that sub-delegating the power to collect tolls to a private concessionaire was unlawful, stressing the importance of preserving legislative intent and public accountability. On the other hand, in cases such as *Inspector General of Registration v. K. Baskaran*[2], courts have accepted limited sub-delegation where statutes impliedly permitted it, reflecting a more pragmatic approach. This uneven application has left the boundaries of lawful sub-delegation blurred.

The dangers of unchecked sub-delegation are particularly its potential to dilute statutory safeguards and create uncertainty for citizens. Parliamentary committees have repeatedly flagged that wide or unguided sub-delegation undermines legislative control, yet the practice continues because of administrative compulsions.

The study of sub-delegation in India is therefore not merely theoretical but highly relevant in practice. It involves balancing efficiency in governance with the constitutional principles of accountability and separation of powers.

HISTORICAL AND DOCTRINAL FOUNDATIONS OF SUB-DELEGATION

The doctrine of sub-delegation of legislative power emerges from the broader framework of delegated legislation, a mechanism whereby parliaments confer rule-making authority upon administrative bodies to address the complexities of governance. In administrative law, delegation has long been recognized as essential due to the limitations of legislatures in handling intricate and voluminous regulatory details. However, sub-delegation, where the initial delegate further transfers this power, invokes the maxim *delegatus non potest delegare*, implying that a delegate cannot redelegate unless expressly or impliedly authorized. This principle safeguards against the dilution of accountability and ensures that powers remain with the intended authority.

Historically, delegated legislation traces back to early statutory practices. In England, the Statute of Proclamations 1539 empowered Henry VIII to legislate by proclamations, illustrating an early form of executive rule-making under parliamentary sanction.[3] This set a precedent for delegation during emergencies or administrative necessities, as seen in wartime regulations. By the 20th century, with the expansion of the welfare state, delegation became ubiquitous. Parliaments, constrained by time and expertise, began outsourcing law-making to administrators, leading to a proliferation of subordinate rules. Salmond defined delegated legislation as deriving from an authority subordinate to the sovereign, dependent on superior validation for its efficacy.[4] In this context, sub-delegation arose as a practical extension, but it was viewed with caution to prevent unchecked bureaucratic expansion.

The maxim *delegatus non potest delegare* embodies a rule of statutory construction rather than an absolute prohibition. As articulated in judicial interpretations, it presumes against sub-delegation of substantial powers unless the parent statute indicates otherwise through express words or necessary implication.[5] For instance, where a statute vests discretion in a specific office, such as a minister, redelegation is typically barred to maintain personal accountability. De Smith emphasized a strong presumption against granting delegates the power to sub-delegate core legislative functions, treating it as a rebuttable rule grounded in legislative intent.[6] Halsbury's Laws of England[7]

[1] (2025) 6 SCC 717.
[2] (2020) 14 SCC 345.
[3] Statute of Proclamations 1539 (31 Hen 8 c 8).
[4] John Salmond, Jurisprudence (Glanville L Williams ed, 12th edn, Sweet & Maxwell 1966) 116.
[5] Shakil Ahmad Khan, *M P Jain's Principles of Administrative Law* (7th edn, LexisNexis 2011).
[6] S A de Smith, *Judicial Review of Administrative Action* (6th edn, Sweet & Maxwell 1995).
[7] Halsbury's Laws of England (4th edn, Butterworths 1973) vol 1.

reinforces this, stating that delegated powers must be exercised by the named body applying its own mind, with sub-delegation permissible only if implied by the statute's language, scope, or object.

An important exception is the Carltona rule, originating from wartime administrative necessities. In *Carltona Ltd v Commissioners of Works*[8], it was held that ministers could act through departmental officials without formal delegation, as officials serve as extensions of the minister's authority under principles of ministerial responsibility. This doctrine permits sub-delegation for ministerial or preparatory tasks, provided the ultimate decision rests with the delegate. It balances efficiency with accountability, allowing administrative bodies to handle voluminous work without impairing core functions. In the Indian context, this principle is not just a judicial doctrine but a constitutional reality anchored in Articles 77[9] and 166[10]. These articles create a legal fiction where a Minister's action is effectively the action of their entire department. When a Secretary or a Joint Secretary issues an order, it is not technically an "illegal sub-delegation" in the restrictive sense, but rather the Minister exercising power through the "limbs" of the executive branch. This constitutional framework provides the flexibility required for a modern welfare state to function without the need for the President or Governor to act personally in every instance.

In India, sub-delegation evolved amid colonial legacies and post-independence regulatory needs. Statutes like the Essential Commodities Act 1955[11] exemplified multi-layered delegation, from central government to commissioners and subordinates, justified by administrative exigencies.[12] Judicial scrutiny emphasized that sub-delegation must not abdicate essential legislative policy, which remains the legislature's domain. In *Barium Chemicals Ltd v Company Law Board*[13], the Supreme Court clarified that the maxim is not rigid but interpretive, allowing sub-delegation under procedural rules if it advances the statute's purpose. Similarly, *Central Talkies Ltd v Dwarka Prasad*[14] upheld sub-delegation to additional magistrates as valid when notifications authorized it, interpreting offices like 'District Magistrate' as institutional rather than personal. This distinction hinges on whether the law views the delegate as a *persona designate* or as an institution. When a statute confers power on an office like the "District Magistrate," it is often interpreted as an institutional power that can be shared with subordinates to prevent administrative paralysis. This logic of necessity allows for sub-delegation when the volume of work makes it humanly impossible for one person to act alone, provided the core decision-edge remains with the original delegate. However, the moment a sub-delegate starts making final adjudicatory or quasi-judicial calls without express authority, courts intervene to protect the rule of law.

Contrasting cases like *Allingham v Minister of Agriculture and Fisheries*[15] invalidated further sub-sub-delegation beyond statutory limits, underscoring that powers must stay within prescribed bounds. *Ganpati Singhji v State of Ajmer*[16] struck down sub-delegation of rule-making to district magistrates without express authority, violating natural justice. These foundations highlight sub-delegation's role in flexible governance while stressing safeguards against overreach.

It is often argued that sub-delegation, though necessary for plenitude in administration, risks creating regulatory pyramids if unguided. It demands clear statutory frameworks to preserve democratic

[8] [1943] 2 All ER 560 (CA).
[9] The Constitution of India, 1950 art 77.
[10] The Constitution of India, 1950 art 166.
[11] The Essential Commodities Act, 1955 (10 of 1955).
[12] I. P. Massey, *Administrative Law* (9th edn, Eastern Book Company).
[13] AIR 1967 SC 295.
[14] AIR 1961 SC 606.
[15] [1948] 1 All ER 780 (KB).
[16] AIR 1955 SC 188.

oversight, ensuring that delegation enhances, rather than undermines, legislative supremacy.

SUPREME COURT'S APPROACH TO SUB-DELEGATION: RECENT DEVELOPMENTS

In the realm of Indian administrative law, judicial scrutiny of sub-delegation has evolved significantly in recent years, reflecting a nuanced balance between administrative efficiency and constitutional safeguards. Courts have increasingly emphasized the maxim *delegatus non potest delegare*, treating it as a principle of statutory interpretation rather than an inflexible rule, while permitting sub-delegation where expressly or impliedly authorized by the parent statute. This development underscores the judiciary's role in preventing the erosion of accountability, particularly in complex regulatory frameworks involving multi-tiered delegations. Through key pronouncements, the Supreme Court has clarified the boundaries of permissible sub-delegation, distinguishing between core decision-making functions and ancillary tasks, thereby adapting historical doctrines to modern governance needs.

A pivotal shift is evident in the judiciary's reaffirmation of principles from earlier precedents, applied to contemporary contexts. In *Inspector General of Registration v K Baskaran*[17], the Supreme Court upheld sub-delegation for preparatory work, such as site inspections, as long as the appellate authority retained ultimate control over decisions. Drawing from *Pradyat Kumar Bose v High Court of Calcutta*[18], the Court articulated that deputing officials for inquiries does not constitute improper delegation if it aligns with administrative practicality, provided the affected party receives a fair hearing. This ruling built on the Carltona principle, viewing departmental officials as extensions of the authority's will, thus allowing sub-delegation for non-essential functions without violating statutory intent.[19] The decision marked a pragmatic development, recognizing that "humanly impossible" tasks, like personal inspections in every appeal, necessitate limited redelegation under close supervision.

Further evolution is seen in *Gene Campaign v Union of India*[20], where the Court synthesized prior jurisprudence to delineate valid sub-delegation. Referencing *Union of India v PK Roy*[21], it held that initial decisions by delegates could be preparatory, with the primary authority approving or disapproving them, ensuring the decision remains the authority's own. This approach rebuts presumptions against sub-delegation by focusing on the degree of control maintained, as per De Smith's framework of rebuttable presumptions.[22] The judiciary here analysed sub-delegation not as abdication but as a tool for exigencies, provided essential legislative policy, formulated by Parliament, remains intact, echoing Massey's view that sub-delegation requires explicit statutory backing to avoid bureaucratic overreach.[23]

In *Noida Toll Bridge Co Ltd v Federation of Noida Residents Welfare Association*[24], the Supreme Court invalidated sub-delegation of toll collection powers to a private developer, deeming it unlawful for undermining the objectives of the parent Act.[25] This development highlights a stricter judicial lens on sub-delegation involving public functions, insisting on express authorization to preserve legislative supremacy. The Court concurred with the High Court's view that regulations enabling such redelegation contravened statutory goals, aligning with Jain's caution against pyramid-like delegations that dilute safeguards. By invoking *Sahni Silk Mills (P) Ltd v ESI Corporation*[26], it reinforced that sub-delegation is impermissible without implied or express statutory dispensation, particularly for revenue-related powers.

[17] (2020) 14 SCC 345.
[18] (1955) 2 SCR 1331.
[19] *Carltona* (n 8).
[20] 2024 SCC OnLine SC 1793.
[21] AIR 1968 SC 850.
[22] Smith (n 6).
[23] Massey (n 9).
[24] Noida (n 1).
[25] (2025) 6 SCC 717.
[26] (1994) 5 SCC 346.

These cases illustrate a developmental trajectory where courts have moved from rigid prohibitions to contextual allowances. Early doctrines, like those in *Barium Chemicals Ltd v Company Law Board*[27], treated the maxim as interpretive, adaptable to statutory purpose. Recent judgments extend this by prioritizing accountability, as in *A A Padmanbhan v State of Kerala*[28], where executive actions under Article 166[29] were validated as ministerial sub-delegations, not personal exercises by the Governor. This analysis reveals a judiciary fostering flexibility while curbing excesses, ensuring sub-delegation serves administrative viability without compromising constitutional principles.

The progression indicates a maturing jurisprudence, from presumptive bars to conditional permissions, grounded in legislative intent and practical necessities. As Massey[30] notes, this prevents weakening of delegated powers through unchecked redelegation. Overall, these developments affirm the courts' guardianship role, adapting sub-delegation to welfare state demands while upholding democratic oversight.

CONTEMPORARY LEGAL DEVELOPMENTS IN HIGH COURTS

The High Courts have adopted a similarly restrictive approach in matters involving quasi-judicial functions. In *Sau. Anjali v. Zilla Parishad, Nagpur*[31], the Bombay High Court considered whether a statutory authority under the Maharashtra Zilla Parishad and Panchayat Samitis Act could delegate the conduct of inquiries to a subordinate officer. The Court held that a quasi-judicial authority is required to apply its own mind and cannot sub-delegate fact-finding or inquiry functions unless the statute expressly provides for such delegation. In the absence of such authorization, the proceedings were held to be without jurisdiction. This judgment reaffirms the doctrinal distinction between permissible administrative assistance and impermissible transfer of adjudicatory power.

The limits of sub-delegation have also been tested in the sphere of fiscal administration. In *Tata Play Ltd. v. Union of India*[32], the Madras High Court struck down a notification extending limitation periods under the GST regime on the ground that it was issued on the basis of post-facto ratification by the GST Council rather than a prior recommendation. The Court invoked the principle of *delegatus non potest delegare* to hold that the Council could not indirectly exercise its recommending power through subsequent approval or through sub-committees not contemplated by statute. The judgment highlights that even in exceptional circumstances, statutory procedure and constitutional discipline cannot be diluted through informal or retrospective sub-delegation.

More recently, concerns regarding informal redelegation were addressed by the Gauhati High Court in *Abdul Rahman v. State of Assam*[33]. The Court reiterated that where a statute vests discretion in a designated authority, such discretion must be exercised personally and cannot be transferred to third parties merely as a matter of administrative convenience. Emphasising the continued relevance of the maxim *delegatus non potest delegare*, the Court observed that permitting such practices would lead to a diffusion of responsibility and weaken legislative control over delegated powers.

Taken together, these contemporary developments reflect a judicial effort to recalibrate the balance between administrative efficiency and constitutional safeguards. While courts have shown pragmatism in permitting sub-delegation of ministerial and preparatory functions, they have consistently drawn a firm line against the redelegation of substantive, discretionary, or quasi-judicial powers. This evolving jurisprudence seeks to prevent “delegation running riot” while accommodating the functional demands of

[27] *Barium Chemicals Ltd.* (n 20).
[28] (2018) 4 SCC 537.
[29] The Constitution of India, 1950 art 166.
[30] Massey (n 9).
[31] 2025 BHC 522.
[32] 2025 DHC 8526.
[33] 2015 GLT 3 624.

modern governance, thereby reinforcing the rule of law and preserving institutional accountability within India's administrative framework.

ACCOUNTABILITY AND CONTROL CHALLENGES IN SUB-DELEGATION

The challenges of accountability in sub-delegation come from the very structure of transferring power through multiple levels. When Parliament or a higher authority delegates rule-making power to a body, it does so because it trusts that authority's expertise and judgment. But if that body then passes on the power further down, the original trust does not automatically follow. The further the decision-maker is from the original source of authority, the harder it becomes for the public to know whether they are acting within their legal limits. This often blurs who is ultimately responsible for a decision. Legal scholars caution that such unchecked sub-delegation can weaken statutory safeguards and create uncertainty for ordinary citizens.

Traditionally, courts have taken a strict view and presumed that sub-delegation is not allowed unless the law, expressly or by clear implication, permits it. The reasoning is simple as if the legislature entrusted a particular authority with a power, it expected that authority to apply its own mind and not pass the responsibility on to someone else. A statutory authority cannot just surrender its essential functions, nor can a delegate freely pass on power without clear legal backing. For this reason, both courts and parliamentary committees stress that whenever sub-delegation is allowed, it must come with limits and safeguards to prevent abuse and preserve legislative control.

The issue of oversight is just as important. If delegation itself is too wide, it risks becoming what critics call "delegation running riot", where agencies have such vast powers that their boundaries are unclear. Sub-delegation makes this worse. For example, if rules made under sub-delegation are not required to be presented before Parliament, they escape effective legislative scrutiny. With thousands of such sub-orders and directions being issued, the task of reviewing and authenticating them becomes overwhelming.[34] This lack of supervision means the administration may act with near-complete autonomy, creating rules that may not be easily understood, accepted or effective for society. To make matters worse, the absence of procedural safeguards, such as the requirement to publish rules, reduces transparency and accountability, since citizens may not even be aware of the laws binding them.

As governance enters a digital-first era in 2026, the line between human administrative action and automated processing has created an opacity for delegation. When an official employs an AI-driven algorithm to process tax refunds or verify licenses, a silent form of sub-delegation occurs. The core legal anxiety here is whether an algorithm can "apply its mind" as required by the maxim *delegatus non potest delegare*. If the parent Act intended for a human delegate to exercise discretion, passing that discretion to a pre-programmed code without explicit legislative backing risks "delegation running riot" in a digital format. As the Supreme Court emphasized in the *Noida Toll Bridge Co. Ltd.* (2025), public functions involving financial burdens or rights must remain tied to an accountable authority; they cannot be outsourced to a private logic without clear statutory sanction.

REFORMS FOR ENHANCING CLARITY AND OVERSIGHT IN SUB-DELEGATION

To tackle the problems created by unchecked sub-delegation, both administrative and legislative bodies have often called for reforms to make the process clearer and more accountable. The basic aim is to ensure that the ease of administration does not come at the cost of democratic responsibility or the rule of

[34] Committee on Subordinate Legislation, Lok Sabha, Report on Excessive Delegation (2022).

law. One of the most important areas of reform is the demand for more precise legal provisions.

The Lok Sabha Committee on Subordinate Legislation has consistently emphasized that sub-delegation should never be drafted in overly broad terms. It should only be allowed where the parent statute clearly authorizes it. The Committee has criticized situations where powers that the law specifically gave to the Central Government were further passed on to bodies like the Silk Board without any proper legal authority. In such cases, the Committee has insisted on amending the rules to remove these unauthorized transfers of power. This shows how vital it is for laws to be written with precise and unambiguous language so that the scope of sub-delegated powers is clearly defined.

Another key area for reform is stronger parliamentary oversight. While many parent laws require rules to be placed before Parliament, this requirement is often not extended to sub-delegated orders or directions. As a result, a huge number of minor orders escape any legislative review. The Committee has argued that because these sub-orders ultimately trace their authority back to the parent act, they too should be laid before Parliament. But in practice, concerns about the overwhelming volume of such documents and their temporary nature have often outweighed this argument. Despite these difficulties, there is general agreement that parliamentary control over sub-delegation remains weak and needs to be tightened.

Beyond parliamentary checks, procedural reforms are equally important to ensure transparency and public trust. Committees and legal experts have stressed that all sub-delegated legislation should be mandatorily published, yet many statutes do not require this. The Supreme Court has stepped in at times, ruling that even principles governing permits, which are a form of sub-delegated legislation, must be published in the official gazette to have legal force. This ensures that citizens can know and understand the rules that affect them. Many scholars also argue for a consistent "pre-publication" practice, where draft rules are shared publicly to invite objections and feedback before being finalized. Although not always legally required, this consultative step could build more legitimacy and confidence in administrative decision-making.

Lastly, judicial scrutiny must be more rigorous. Courts play a vital role in ensuring that sub-delegates do not exceed the powers granted to them. The doctrine of ultra vires is central here. Yet, inconsistencies sometimes arise. For example, the Rajasthan High Court once accepted ex post facto consent for a state order, which weakened the principle that prior approval should act as a real safeguard.[35] Such instances highlight why courts must adopt a strict and consistent approach, treating procedural checks not as technicalities but as essential limits on delegated authority.

Taken together, these reforms aim to strike a healthier balance between the practical needs of administration and the core principles of accountability, transparency and democratic control.

CONCLUSION

The project embarked on an analytical journey to explore the concept of *delegatus non potest delegare* in the context of modern Indian administrative law, and its application to sub-delegation. The central hypothesis was that while sub-delegation is a necessary administrative tool, its pervasive and often unguided use leads to significant accountability gaps. Based on the analysis of primary and secondary sources, this hypothesis is substantiated. The research findings confirm that sub-delegation, when lacking clear statutory and procedural safeguards, undermines the democratic principles of legislative oversight and administrative transparency.

Judicial pronouncements, though varied, demonstrate a clear trend towards contextual interpretation of the

[35] *Foremost Dairies v State*, AIR 1986 Raj 116.

maxim. While cases like *Inspector General of Registration v K Baskaran*[36] and *Pradyat Kumar Bose v High Court of Calcutta*[37] have allowed for sub-delegation of ministerial and preparatory functions for reasons of administrative necessity, the judiciary has maintained a firm stance against the abdication of essential decision-making power. The recent judgment in *Noida Toll Bridge Co Ltd v Federation of Noida Residents Welfare Association*[38] further reinforces this by invalidating the sub-delegation of a public function to a private entity, thereby upholding the principle that a delegate cannot exceed the powers granted by the parent Act. These findings collectively show that while the doctrine is not a rigid prohibition, its application hinges on a nuanced assessment of legislative intent and the preservation of accountability.

SUGGESTIONS

Parliament should enact a clear and uniform statute that prescribes mandatory guidelines for sub-delegation. This would ensure that all enabling acts adhere to consistent standards, preventing the use of vague and overly broad language.

A statutory obligation must be imposed for all sub-delegated legislation to be laid before Parliament. This would subject these instruments to the same level of legislative scrutiny as primary delegated legislation, thereby enhancing parliamentary control and public accountability.

The practice of mandatory pre-publication and consultation with affected interests for all rules, regulations, and orders, including those that are sub-delegated, should be institutionalized. This would increase transparency and provide a vital procedural check on administrative overreach.

By adopting these reforms, the government can effectively enhance clarity, uphold the rule of law and ensure that the convenience of sub-delegation does not come at the expense of democratic values.

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[36] *Inspector General of Registration* (n 2).
[37] (1955) 2 SCR 1331.
[38] *Noida Toll Bridge Co Ltd* (n 1).

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CORPORATE SUSTAINABILITY AND LEGAL ACCOUNTABILITY: RETHINKING THE FIDUCIARY DUTY OF DIRECTORS IN THE ESG ERA

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Abstract

Introduction

Climate change poses systemic financial and operational risks that global regulators and courts now expect corporate boards to manage. As the UK Bank of England has noted, the "*breadth and magnitude*" of climate risk across the economy which compel directors to consider it under traditional duties. [1]In India's ESG era, this pressure is growing. Institutional investors, regulators and civil society alike demand that companies account for environmental impacts. Notably, the Indian Companies Act, 2013 explicitly directs directors to act in the company's best interests "*and for the protection of environment*". [2]This statutory language signals a legal basis for environmental stewardship in governance. The task now is to examine whether and how India's fiduciary duty regime truly incorporates climate risk in practice, and to develop solutions to align corporate governance with climate imperatives.

Research Problem

The core research problem is the evident gap between the legal framework's recognition of environmental interests and the reality of corporate governance in India. Although Section 166(2) of the Companies Act nominally covers environmental protection, observers argue this provision has been "*a mere eye wash*," failing to protect non-shareholder stakeholders in practice. There is no established mechanism for holding directors accountable when they ignore climate risks. For example, one commentator notes Section 166(2)'s broad stakeholder language appears to address environmental duty, "*but implementation issues make it ineffective and leave stakeholders without a way to hold directors accountable*". This problem is exacerbated by the lack of derivative remedies for stakeholders under Indian law and minimal judicial guidance on director's climate responsibilities. This research will primarily interrogate on whether the directors in India are effectively obligated or ought to be obligated to factor in climate risk into decision-making, and to what extent is the accountability and incentives mechanisms are missing.

Objectives

The paper aims to:

- Clarify the legal scope of fiduciary duty by examining on how the existing statutes and regulations (Companies Act 2013, SEBI rules, independent director norms) addresses the climate risk and environmental interests in board duties.
- Analyse conflicts and compliance by identifying the tensions between traditional shareholder-value decision-making and long-term climate resilience, whilst assessing on where Indian boards currently stand on managing climate risk.

[1] Author(s): Ellie Mulhollandet *al.* (2021) *UK directors' duties in a changing climate and the Net Zero*, *Oxford Law Blogs*. Available at: https://blogs.law.ox.ac.uk/business-law-blog/blog/2021/06/uk-directors-duties-changing-climate-and-net-zero-transition#:~:text=Given%20what%20the%20Bank%20of,both%20sections%20172%20and%20174 (Accessed: 10 January 2026).

[2] *Section 166. duties of directors: Companies act integrated ready reckoner: Companies act 2013: Cairr* (no date) *Companies Act Integrated Ready Reckoner|Companies Act 2013|CAIRR*. Available at: https://ca2013.com/166-duties-of-directors/#:~:text=,for%20the%20protection%20of%20environment (Accessed: 20 January 2026).

- Compare international practices by drawing out lessons from UK, EU and other jurisdictions where climate has been explicitly integrated into director's duties and corporate governance norms.
- Propose reforms by developing pragmatic policy and legal proposals for India, by including amendments, regulatory measures and best practices that align fiduciary duties with climate accountability.

Legal Framework

Indian corporate law provides a broad foundation for environmental consideration in governance. Section 166(2) of the Companies Act, 2013 codifies director's duty as to act in good faith for the benefit of the company "*and in the best interests of the company, its employees, the shareholders, the community and for the protection of environment*". [3]This explicit reference places "*environment*" alongside the traditional stakeholders. Schedule IV (code for independent directors) further mandates that the IDs "*safeguard the interests of all stakeholders*" and balance conflicting interests. [4] Companies must also further report on the measures taken for the conservation of energy and environmental compliance, financial regulators reinforce these norms. It is noteworthy that the SEBI's Listing Obligations requires the top 1,000 listed companies to publish a Business Responsibility and Sustainability Report (BRSR), by mandating disclosure of ESG initiatives, which by including climate-related risks and opportunities. By this, these regulatory measures would establish a base structural framework in which directors are statutorily expected to consider the environmental and social factors, whilst the listed entities are obligated to report climate-related risks. Despite this progress, it is evident that neither the Companies Act nor the current existing regulatory framework prescribes any set of concrete procedure or a meaningful penalty for directors who fail to address climate impacts. This absence of defined accountability mechanisms continues to leave significant enforcement gaps in India's corporate climate governance framework.

Key Arguments

The paper advances three principal arguments as portrayed down below.

Firstly, the director's duty of care and diligence necessarily extends to the climate-risk oversight. Climate change presents foreseeable financial and operational risks which a reasonably diligent director cannot ignore such threats without breaching fiduciary standards.

Secondly, the duty of loyalty and good faith requires the prioritization of a long-term corporate resilience over the short-term profit maximization. It is to be noted that climate negligence exposes companies to regulatory penalties, stranded assets, reputational loss, and investor divestment. Acting in the "*best interests of the company*" must therefore encompass climate-resilient decision-making.

Third, the existing ESG regulation in India emphasizes disclosure rather than consequence. Whilst the BRSR reporting improves transparency, enforcement against greenwashing, inaccurate reporting, or failure to act on disclosed risks remains limited. Penalties for breach of Section 166 duties are quite minimal, derivative shareholder actions are rare, and judicial deference to business judgment shields directors from meaningful scrutiny. As a result, climate-risk governance remains under-enforced despite statutory recognition.

[3] Companies Act, 2013, Sec 166 (India), Companies Act Integrated Ready Reckoner (CAIRR), https://ca2013.com/166-duties-of-directors/ (last visited Jan. 20, 2026).

[4] (2021) *Directors' liability and climate risk: White Paper on India*. Available at: https://ccli.ubc.ca/wp-content/uploads/2021/10/Directors-Liability-and-Climate-Risk-White-Paper-on-India.pdf (Accessed: 11 January 2026).

Reform Proposals and Expected Findings

This paper aims to propose the following targeted reforms.

Statutory reforms which should include amending Section 166 to expressly clarify that the directors are required to consider the climate-change risks in corporate decision-making. The penalties for fiduciary breaches involving environmental harm must be strengthened, and standing to initiate enforcement actions should be broadened to ensure meaningful accountability.

Regulatory reform which should involve SEBI mandating board-level ESG or climate-risk committees, by requiring climate-scenario risk disclosures, and strengthening assurance standards for ESG reporting to curb greenwashing. Additionally, linking executive remuneration to sustainability performance would help align managerial incentives with effective climate governance.

Policy reform, by adoption of an institutional investor stewardship code and mandatory climate-governance training for every director would in turn build a boardroom competence and accountability.

The expected finding is that India possesses a strong normative foundation for climate-oriented fiduciary duties, However, the effectiveness depends on clearer legal articulation, stronger enforcement, and governance capacity-building.

Conclusion

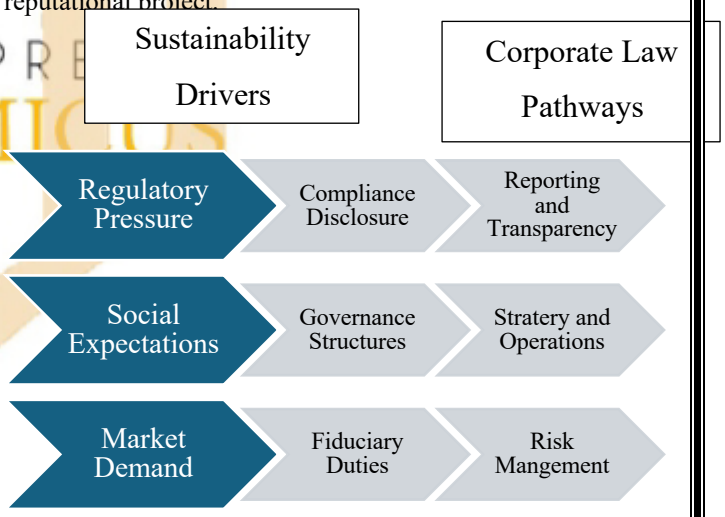
Indian corporate law already recognizes environmental protection and stakeholder welfare as elements of fiduciary responsibility. However, doctrinal ambiguity and weak enforcement limit the transformative potential of these duties. As climate risks increasingly shape corporate survival and investor confidence, fiduciary norms must evolve from disclosure-driven compliance toward substantive climate-risk governance. Strengthening director's climate-risk responsibilities is therefore both a legal necessity and a strategic imperative for aligning corporate India with national and global sustainability commitments.

Keywords: fiduciary duty, climate risk, corporate governance, ESG, India

Evolving Frameworks of Corporate Law and Sustainable Business Practices

Scope, framing and methodology

Sustainable business practices are defined as operational and strategic decisions that reduces negative environmental and social impacts, manages sustainability that are related to those risks and opportunity that could potentially affect the enterprise resilience while strengthen governance integrity through transparent reporting, responsible incentive design and effective remediation. The legal question is how corporate law that are traditionally oriented is being re-engineered so that sustainability concerns enter corporate strategy and reporting as an imperative governance rather that of a discretionary or purely reputational project.



The comparative method uses three recurring "*levers*". First, the information forcing rules to convert from sustainability which are narrative into comparable, useful data. Second, process duties

require boards and management to implement risk identification, prevention and remediation system with documented escalation channels and internal controls that could be litigated. Third, purpose and corporate form tools which accept the legally acceptable sets of corporate objectives.

Historical evolution from shareholder primacy to sustainability-aware governance

Modern corporate law's classical architecture arose to facilitate the capital accumulation through incorporation limited liability and delegated management. The governance doctrine was designed to manage agency problems, Directors and managers control corporate assets. In the overview, sustainability concerns were often treated as externalities which were often handled through sector regulation rather than internal corporate governance doctrine. The sustainability turn began when the regulators, courts and investors increasingly treated environmental social issues as financial relevant risks. A key legal step was the expansion of the director's deliberative horizons. In the United Kingdom, section 172 of the Companies Act 2006 which requires directors to promote company success while having regard [5]to factors that include environmental impacts and community considerations.

A second historical development is the purpose embedding through alternative corporate forms. This is where a corporate character can specify a public benefit and the directors are than instructed to balance stockholders' pecuniary interests, the best interests are those materially affected by the corporation's conduct, and the identified public vested benefit.[6]

The third development is the evolution of the sustainability reporting from voluntary CSR reports into mandated disclosure. A fourth development is the value chain accountability. Corporate sustainability regulation increasingly targets parent companies and lead firms that have leverage over suppliers, contractors, and downstream distribution. Modern reforms respond by imposing due diligence obligations and remediation expectations on firms whose purchasing practices and control system can contribute to adverse impacts.

Core concepts bridging sustainability and corporate law

ESG is best understood as a translation layer between the sustainability objectives and the corporate governance techniques. In corporate law, ESG integration must be operationalized through concepts that can be audited, disclosed and enforced. There are four concepts that are, materiality, due diligence, assurance and accountability design that connect sustainability to corporate law in ways that can be expanded into full doctrinal analysis. [7]The materiality determines on when mush be disclosed and what must be governed. The investors-oriented regimes treat sustainability as legally salient when risks or opportunities are material to the enterprise value. The 2024 climate disclosure rules require registrants to disclose material climate related risks and describe related governance structures by embedding climate oversight into the securities reporting architecture. This is because the disclosure typically requires internal verification, materiality thresholds can create "*government pull*". It is to be noted that even firms are cautious about the sustainability claims which should build the internal system, capable of determining on

[5] Legislation.gov.uk. (2026). *Companies Act 2006*. [online] Available at: https://www.legislation.gov.uk/ukpga/2006/46/section/172/enacted?view=plain [Accessed 27 Jan. 2026].

[6] delcode.delaware.gov. (n.d.). *Delaware Code Online*. [online] Available at: https://delcode.delaware.gov/title8/c001/sc15/.

[7] IN THE HIGH COURT OF JUSTICE BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES INSOLVENCY AND COMPANIES LIST (ChD) DERIVATIVE CLAIM. (n.d.). Available at: https://www.judiciary.uk/wp-content/uploads/2023/07/ClientEarth-v-Shell-judgment-240723.pdf.

what is material and documenting the basis for those determinations.[8]

Regulatory mechanisms and recent reforms promoting sustainable business practices

Mandatory sustainability reporting is a central reform pathway because disclosure requirements often reshape the internal governance and operational system. The EU's CSR directive, [9]expands the population of the reporting firms and integrates the sustainability reporting into the annual reporting requirements. Moreover, the European Sustainability Reporting Standards adopted by the Commission Delegated Regulation[10], provide a detailed cross cutting and topic specific disclosure. Sustainable finance regulation indirectly disciplines corporate practices by changing what the investors must disclose and what counts as a credible sustainability claim. It is to be noted that the EU Taxonomy Regulation creates a criterion for *"Environmental Sustainability"* economic activities, while the Sustainable Finance Disclosure Regulation requires financial market participants and advisers to disclose sustainability risk integration and adverse considerations.[11]

In the United States, the SEC has adopted a climate disclosure rule around 2024 which was intended to standardize disclosure of material climate related risks.[12] However, in March 2025, the SEC had voted to end its defence of the rule in litigation, illustrating sustainability disclosure mandates in polarized setting.[13]

This subnational climate reporting illustrates how market access requirements can generate quasi national sustainability obligations. However, a U.S appeals court temporarily paused the climate financial risk reporting timeline, which underscores that the constitutional or administrative litigation can create staggering regimes even within a single state level framework.[14]

Governance models supporting sustainability as a corporate objective

It is well noted that the legal reforms could only translate into corporate behaviour through governance models. Four models down below provide a structured way to analyse how corporate law promotes the said sustainable business practices.

Model one is board centred risk oversight. Sustainability is treated as a core element and strategy domain, which requires board level attention which is comparable to financial reporting, cybersecurity and safety. The climate disclosure frameworks and sustainability reporting standards reinforce this model by asking firms to describe board oversight and the

[8] Securities and Exchange Commission (2024). *The Enhancement and Standardization of Climate-Related Disclosures for Investors*. [online] Available at: https://www.sec.gov/files/rules/final/2024/33-11275.pdf.

[9] Directive - 2022/2464 - en - CSRD directive - EUR-lex, https://eur-lex.europa.eu/eli/dir/2022/2464/oj/eng (last visited Feb 1, 2026)

[10] Delegated regulation - EU - 2023/2772 - en - EUR-lex, https://eur-lex.europa.eu/eli/reg_del/2023/2772/oj/eng (last visited Feb 1, 2026)

[11] Regulation - 2020/852 - en - taxonomy regulation - EUR-lex, https://eur-lex.europa.eu/eli/reg/2020/852/oj/eng (last visited Feb 1, 2026)

[12] Conformed to federal register version securities and exchange commission, https://www.sec.gov/files/rules/final/2024/33-11275.pdf (last visited Feb 2, 2026)

[13] SEC votes to end defense of climate disclosure rules U.S. Securities and Exchange Commission, https://www.sec.gov/newsroom/press-releases/2025-58 (last visited Feb 2, 2026)

[14] Appeals Court pauses California law requiring companies to report climate-related financial risk AP News, https://apnews.com/article/california-climate-disclosure-law-paused-court-appeal-42708d5fc7ed15001f4ac5a870eb105d (last visited Feb 3, 2026)

management's role in evaluating the climate and the sustainability risks.[15]

Model two is integrated governance with the stakeholder orientation. The South Africa's King IV report frames that the organisation is a part of the society and emphasizes the ethical leadership, stakeholder involvement, and integrated thinking. The Johannesburg Stock Exchange sustainability disclosure guidelines, aligns issuer reporting with that of a government philosophy.[16]

Model three is purpose locking through the corporate firm. The Delaware public benefit corporations embed these public benefits into the charter and require director balancing, creating the legal infrastructure for sustainability missions while maintaining the investors governance rights.[17]

The below table is the governance model and the corporate law mechanism they rely on:

Governance model	**Primary corporate-law anchor**	**Typical internal practice**	**Most relevant sustainability dimension**
Board-centred risk oversight	Disclosure duties and fiduciary care processes	Risk mapping, scenario analysis, targets, control testing	Climate resilience and transition risk
Stakeholder-integrated governance	Governance codes and "have regard" duties	Integrated reporting, stakeholder engagement, ethics systems	Human rights, legitimacy, community impacts
Purpose-locking legal form	Charter design and specialized corporate forms	Benefit reporting, mission KPIs, impact governance	Long-term impact and trade-off legitimacy
Value-chain governance	Due diligence statutes and contractual leverage	Supplier mapping, remediation, audit programs	Supply-chain labour and environmental harm

International standards and agreements influencing corporate-law reforms

International frameworks influence corporate law by creating shared expectations and interpretative reference that domestic regulators incorporate into guidance and enforcement priorities. The Paris Agreement is a legally binding climate treaty for states, which was in the year 2015 and has been in force ever since 2016. This has provided a long-term mitigation objectives and signals to regulators that climate risk is structurally persistent.[18]

The Human rights framework shapes the corporate sustainability law through the concept of due diligence. The UN guiding principles stress that the businesses should avoid infringing human rights and should address the adverse effects of which they are

[15] Securities and Exchange Commission, supra note 08.

[16] Website version not for commercial use report on corporate governance for, https://www.ecgi.global/sites/default/files/codes/documents/King_Report_On_Corporate_Governance_For_South_Africa_2016.pdf (last visited Feb 4, 2026)

[17] Del. Code Ann. tit. 8, sec 141 (2024).

[18] Paris agreement text English, https://unfccc.int/sites/default/files/english_paris_agreement.pdf (last visited Feb 4, 2026)

involved by using the remediation structures[19]. Moreover, the OECD guidelines translate similar expectations onto the government backed standards to address topics such as relating to climate changes.[20] These instruments would ultimately influence corporate law by supplying a shared *"Process Vocabulary"* which could be embedded into binding obligations.

The financial reporting convergence is increasingly shaped by the IFRS Foundation and the ISSB. The IFRS S1 and S2 provides a general sustainability disclosure requirements and climate related disclosures which are designed to be investors friendly.[21]

The international influence is not related to constant expansion. In February 2025, the Kings IV report on corporate governance for South Africa, signalled an "*omnibus* "approach to simplify the due diligence part. Moving onto December 2025, the Securities and Exchange Commission updated the sustainability reporting and due diligence rules which narrow the scope of obligations for companies which are above a specific threshold.[22] This political volatility is itself an object of research where corporate law for sustainability is entering into a phase where legal obligations are significantly enough to provoke competition which could ultimately shape the corporate compliance framework.

Comparative analysis

The focus over here is to show on sustainability is "*made corporate"* through various mixes of fiduciary frameworks, reporting structure and value chain process obligations.

The corporate law under the United States remains largely state based and shareholder oriented. Hence, sustainability integration is achieved through optional corporate forms and contested disclosure mandates. The Delaware public benefit corporations demonstrate the purpose locking by requiring the director balancing and benefit reporting. It is to be noted that the US Securities and Exchange commission had adopted a 2024 climate disclosure rule but defended its defence in litigation in 2025, significantly increasing the uncertainty about the uniform federal requirements. [23]

Under the European Union, the EU has constructed of the most comprehensive sustainability corporate law stack for reporting, Taxonomy and SFDR for sustainability finance discipline and the CSDDD for the value chain due diligence with supervisory and civil liability via transportation.[24]

India's sustainability is integrated through both the fiduciary language and the securities market reporting. The companies Act, 2013 explicitly states "*Protection of Environment"* within the spectrum of the director's duties by supplying a statutory hook for climate and

[19] Guiding principles on business and human rights implementing, https://www.ohchr.org/sites/default/files/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf (last visited Feb 5, 2026)

[20] OECD Guidelines for Multinational Enterprises on Responsible Business Conduct, https://www.oecd.org/content/dam/oecd/en/publications/reports/2023/06/oecd-guidelines-for-multinational-enterprises-on-responsible-business-conduct_a0b49990/81f92357-en.pdf (last visited Feb 5, 2026)

[21] Introduction to the ISSB and IFRS sustainability disclosure standards IFRS, https://www.ifrs.org/sustainability/knowledge-hub/introduction-to-issb-and-ifrs-sustainability-disclosure-standards/ (last visited Feb 6, 2026)

[22] Corporate sustainability due diligence European Commission, https://commission.europa.eu/business-economy-euro/doing-business-eu/sustainability-due-diligence-responsible-business/corporate-sustainability-due-diligence_en (last visited Feb 6, 2026)

[23] Securities and Exchange Commission, supra note 08.

[24] European Union (2022). *Directive - 2022/2464 - EN - CSRD Directive - EUR-Lex*. [online] Europa.eu. Available at: https://eur-lex.europa.eu/eli/dir/2022/2464/oj/eng.

environmental stewardship. The Securities and Exchange Board of India under the Companies Act, 2013 operationalizes ESG disclosure through BSPR and BRSP core.[25]

The sustainability governance under China is being built through the exchange led reporting systems and staged standardization under the oversight of the China Securities Regulatory Commission and the Shanghai Stock Exchange which had issued sustainability reporting guidance and toolkits that clarify the climate risk concepts while covering this broadly.[26]

The Brazil shows how the emerging markets can directly impact global reporting baselines into binding securities law. The "COMISSÃO DE VALORES MOBILIÁRIOS" Resolution regulates sustainability related financial information based on ISSB standards and requires mandatory reporting for fiscal year after January 1, 2026. [27]

The South African Sustainability integration is anchored under its governance codes and market discipline., the Kings IV report on corporate governance for South Africa has issued sustainability disclosure guidance and support consistent issuer reporting.

Challenges and Criticisms

Sustainability under the corporate law faces persistent critiques. The measurement and comparability remain difficult, significantly for the value chain emission and complex social impacts, creating disputes over the accuracy and materiality. The fragmentation across regimes increases compliance cost and risks multiple reporting. The process heavy rules can encourage box ticking rather than an operational change, while uneven enforcement can privilege firms with strong compliance capacity. Furthermore, the political backlash can reduce the regulatory durability or narrow scope.[28]

Conclusion

A realist approach is guided convergence and strategic accountability. The disclosure frameworks must be brought to the focus of core climate metrics and governance disclosure. By converging to ISSB baselines or by mapping them out expressly, and retaining impact reporting where democratically mandated. The due diligence regimes ought to focus on risk scoping that is sector sensitive and realistic remediation pathways, supervisory coordination and definite safe harbour. Incentives of good-faith compliance. This should be empirically evaluated.

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[25] www.sebi.gov.in. (n.d.). *SEBI | Business responsibility and sustainability reporting by listed entities*. [online] Available at: https://www.sebi.gov.in/legal/circulars/may-2021/business-responsibility-and-sustainability-reporting-by-listed-entities_50096.html.

[26] 上海证券交易所 (2024). *SSE Releases Sustainability Reporting Guidance to Drive High-quality ESG reporting by Listed Companies | SHANGHAI STOCK EXCHANGE*. [online] Sse.com.cn. Available at: https://english.sse.com.cn/news/newsrelease/c/c_20250117_10770311.shtml.

[27] COMISSÃO DE VALORES MOBILIÁRIOS. (n.d.). Available at: https://www.gov.br/cvm/en/foreign-investors/regulation-files/ResolutionCVM193.pdf?utm_source=chatgpt.com.

[28] Sec.gov. (2025). *SEC.gov | SEC Votes to End Defense of Climate Disclosure Rules*. [online] Available at: https://www.sec.gov/newsroom/press-releases/2025-58?utm_source=chatgpt.com.

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BEYOND TWENTY-FOUR WEEKS- CONSTITUTIONAL AUTONOMY AND JUDICIAL EXPANSION UNDER INDIA'S MTP FRAMEWORK

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Abstract

The Medical Termination of Pregnancy Act, 1971, as amended in 2021, establishes a statutory framework that permits termination of pregnancy up to twenty-four weeks under specified conditions, while restricting termination beyond that threshold to narrowly defined circumstances. Despite this legislative limit, constitutional courts in India have repeatedly authorized medical termination of pregnancy beyond twenty-four weeks in individual cases, invoking Article 21 and the principles of dignity, privacy, and reproductive autonomy. This judicial practice raises a structural constitutional question: whether such interventions represent legitimate protection of fundamental rights or an incremental dilution of parliamentary policy through case-by-case constitutional exemptions. This paper examines the evolution of India's abortion law from its origins as a criminal prohibition under the Indian Penal Code to its current status as a regulated statutory exception regime under the Medical Termination of Pregnancy Act. The study investigates why legislators modified the 2021 amendment which maintains the twenty-four-week limit. The research examines how reproductive autonomy rights exist within constitutional frameworks which rely on privacy law precedents and modern Supreme Court rulings that grant women abortion rights without considering their marital status. The research assesses judicial reasoning through doctoral analysis of judicial rulings that allow abortion after 24 weeks which show how courts depend on medical boards to evaluate fetal defects and assess mental and physical danger to the mother. The research evaluates whether new judicial methods work as a rights-based autonomy system which replaces the medical-permission system. The research analyzes how constitutional principles about separation of powers and rule of law relate to the current debate. The research contends that judicial intervention becomes acceptable for extreme cases which need protection against rights violations but constitutional exceptions create doctrinal uncertainty and institutional imbalance, which require legislative clarification to resolve. The research ends by proposing that Indian reproductive rights laws need better legal coherence between the statutory framework and constitutional protections.

Keywords: Medical Termination of Pregnancy Act, Reproductive autonomy, Article 21 constitutional rights, Judicial intervention in abortion law, Doctrine of Separation of Powers

Introduction: The 24-Week Limit and the Constitutional Question

The regulation of abortion in India reflects a gradual shift from criminal prohibition toward conditional statutory permission. The Medical Termination of Pregnancy Act allows abortion until the twenty-fourth week of pregnancy under specific conditions and permits abortion only under exceptional situations which include major fetal defects. The twenty-four-week threshold represents a conscious legislative determination which evaluates medical risks and advances in prenatal diagnostic technology and the state interest of protecting potential life. The Indian constitutional courts have permitted women to terminate pregnancies after twenty-four weeks despite the existence of a statutory limit. The decisions follow

Article 21 of the Constitution [1]which safeguards life and personal freedom and judicial interpretations which extend protection to dignity and privacy and the right to make personal choices. Courts have used these principles to allow abortion in cases of severe fetal defects and rape-related pregnancies and when the woman faces danger to her physical or mental well-being and when doctors discover a medical condition after a significant period of time. The new judicial development creates a fundamental issue that affects constitutional structure. When courts allow termination beyond the express statutory limit, are they engaging in legitimate constitutional interpretation to prevent rights violations, or are they effectively modifying legislative policy through case-specific exemptions? The issue is not merely about abortion access; it concerns institutional competence and the allocation of authority between Parliament and the judiciary in resolving morally and medically complex questions.

This paper argues that the judicial authorization of termination beyond twenty-four weeks reflects an ongoing transformation of India's abortion framework from a doctor-centric exception model to a rights-based autonomy model. However, this transformation has largely occurred through constitutional adjudication rather than legislative redesign. While judicial intervention may be normatively justified in exceptional cases to safeguard fundamental rights, sustained reliance on constitutional exceptions risks generating doctrinal uncertainty and blurring the boundaries of separation of powers. The tension between statutory limits and constitutional guarantees therefore demands closer doctrinal and structural scrutiny.

From Criminal Prohibition to Statutory Regulation

The legal regulation of abortion in India did not originate as a recognition of reproductive choice, but as a prohibition. The Indian Penal Code between its Sections 312[2] and 316[3] treated miscarriages as a criminal act which only became legal when performed with good intentions to protect a pregnant woman's life. The law established punishment as the standard response while medical termination served as an extremely limited defense option. Abortion existed as a criminal activity because legal protections for abortion rights did not exist at that time. The Medical Termination of Pregnancy Act created a major change in legal framework, although it maintained its original legal foundations. The Act did not decriminalize abortion in a broad sense. The law established specific exemptions which allowed medical professionals to conduct terminations based on established rules and gestational period boundaries. The law required medical doctors to determine whether pregnancy termination could proceed based on their assessment of a woman's health risks which included potential threats to her life and severe physical and mental health damage and large chances of significant fetal defects. The system functioned through a medical framework which dedicated authority to doctors. The woman required to give her consent, but medical certification served as the primary factor which determined her legal authority. The law allowed abortion until the twenty-week mark because medical professionals determined that period to be safe based on existing medical knowledge and safety standards. The twenty-week limit became ineffective because prenatal diagnostic methods progressed together with changing social conditions throughout the following decades. Some severe fetal defects become identifiable exclusively after the twentieth week, while sexual assault victims encounter both procedural and social blockages that prevent them from obtaining medical assistance. The Medical Termination of Pregnancy (Amendment) Act was created by Parliament as a response to that situation. The amendment established a new upper gestational limit of the twenty-four weeks mark which applies to certain groups of women who include rape survivors, underage girls, and other people who need special protection. The rule required Medical Board

[1] India Const. art. 21
[2] Indian Penal Code, 1860, § 312.
[3] Indian Penal Code, 1860, § 316.

assessment for cases which showed major fetal defects that occurred after the twenty-four-week point. The amendment showed legislative support for medical progress and social requirements which needed to be addressed. The establishment of a fixed twenty-four-week threshold shows that Parliament intentionally decided on this specific policy direction. The law-maintained abortion restrictions through gestational age limits and required medical procedures which prevented free access to abortion services. The existing legal system operates through conditional permission which exists inside a framework of criminal laws. The MTP Act functions as an exception that protects people from criminal charges instead of serving as a separate law for reproductive rights. The present constitutional conflict requires this system of organization which serves as its essential structure. Courts that allow abortions after twenty-four weeks to proceed without following existing laws operate as courts that decide between two opposing forces: one which comes from legislative power and the other which originates from constitutional rights.

Constitutionalizing of Reproductive Autonomy

The Indian abortion system exists as a criminal law exemption which creates controlled access to abortion but constitutional rights have now transformed the framework into an individual rights system. The Constitution guarantees protection of life through Article 21 which provides the right to life and personal liberty. Over time, Article 21has been understood to include not merely survival, but dignity, bodily integrity, and decisional autonomy. A significant doctrinal turning point occurred in *Justice K.S. Puttaswamy v. Union of India*[4], where the Supreme Court recognized the right to privacy as a constitutionally protected right intrinsic to life and liberty. Privacy was defined broadly to include decisional autonomy in matters concerning the body and personal relationships. Although the case did not directly concern abortion, its reasoning provided a constitutional foundation for reproductive choice. If privacy encompasses control over intimate personal decisions, then decisions relating to continuation or termination of pregnancy fall within that protected sphere. Subsequent decisions of the Supreme Court of India have explicitly linked reproductive autonomy to dignity and equality. The Court determined in *X v. Principal Secretary*, *Health and Family Welfare Department*[5]that unmarried women must receive access to termination services during the first twenty-four weeks of pregnancy under the same conditions which apply to married women who experience contraceptive failures. The judgment established that people have reproductive choice rights which remain independent of their marital status and that laws should uphold these constitutional rights to equality and autonomy. From this point onward society began to view abortion as a fundamental aspect of personal freedom instead of a matter which medical and marital status determine. The judicial language present in these decisions shows that courts currently understand abortion as an essential element of personal autonomy and bodily rights. The Court has classified forced pregnancy continuation as a human rights violation which affects personal dignity and freedom especially in cases where sexual violence results in pregnancy or when severe fetal defects occur. The judiciary has expanded its legal analysis by interpreting constitutional principles while moving beyond the original statutory text. The process of constitutionalizing creates a conflict with the MTP framework which originally established its system. If Article 21 protects reproductive choice, then the constitutionality of gestational limits must face judicial examination instead of remaining under legislative authority. The Constitution fails to define the limits of reproductive rights and does not establish specific gestational period requirements. The judiciary therefore holds the power to interpret laws by applying constitutional concepts to statutory limitations. The result is a doctrinal transition.

[4] K.S. Puttaswamy (Privacy-9J.) v. Union of India, (2017) 10 SCC 1

[5] X2 v. State (NCT of Delhi), (2023) 9 SCC 433

Abortion in India functions as more than a medical exception because it exists under criminal law regulations. It increasingly becomes recognized as a personal freedom right. Whether this transformation justifies judicial authorization beyond the twenty-four-week statutory limit is the central issue that emerges from this constitutional evolution.

Judicial Authorization Beyond Twenty-Four Weeks: Practice and Reasoning

The legal system of constitutional courts has established a pattern which allows termination of pregnancy until the end of the twenty-four-week period through their ability to respond to writ petitions which parties submit under Article 226[6] and Article 32[7]. The cases involved show situations which lack clear legal authorization for termination but display evidence of severe physical and psychological and social damage during the pregnancy period. A common category involves substantial foetal abnormalities detected after the twenty-fourth week. The amended statute permits termination beyond twenty-four weeks only when a Medical Board provides certification of significant abnormalities. The system shows that hospital restrictions together with diagnosis delays and administrative problems create situations where petitioners must turn to courts for assistance. Judicial orders in such cases frequently rely on expert medical reports confirming non-viability or serious congenital defects. Courts then authorize termination, grounding their reasoning in the protection of dignity and avoidance of avoidable suffering. Another recurring category concerns pregnancies resulting from rape, including cases involving minors. Survivors face multiple challenges which include delays in reporting and social stigma and limited access to healthcare, which together lead to pregnancy advancement beyond the legal limit. The courts have allowed termination after considering mental distress which results from mandatory pregnancy continuation to multiple parties. The legal system considers psychological damage as a constitutionally protected injury which falls under Article 21. The legal system presents multiple cases which involve both diagnostic mistakes and delays that occur throughout entire systems. The courts have established a precedent which considers medical professionals' failure to identify abnormalities during their designated time as a valid basis for judicial decisions justifying relief beyond twenty-four weeks. The reasoning reflects concern that rigid adherence to the statutory limit would unfairly penalize the pregnant woman for circumstances beyond her control. Courts in this situation use specialized medical boards as their primary assessment method to determine threats against a woman's life and health. The board makes recommendations but the court holds the authority to make the final decision. Judicial orders usually state that people have the right to choose their reproduction options which protects their personal freedom and that the refusal to allow abortions in severe situations breaks the constitution. The operational pattern demonstrates a development that results in a physical change. The courts established a constitutional pathway for people to seek relief because of their court-created rights which they gained through judicial decisions. The law maintains its upper limit through formal means but judicial decisions create exceptions which allow case-by-case assessments to modify its strict application. The next inquiry needs to be answered through structural analysis. The court has to decide if this judicial practice shows genuine constitutional understanding or if it uses statutory exceptions to modify the legislative framework.

Separation of Powers and Rule of Law Concerns

The judicial system permits abortion past twenty-four weeks as hospitals maintain their authority to make medical decisions. The constitutional system faces a fundamental challenge because courts allow termination procedures to continue after twenty-four weeks which creates a conflict between existing laws and judicial decisions. Parliament through the 2021

[6] India Const. art. 226

[7] India Const. art. 32

amendment increased the maximum termination period from twenty to twenty-four weeks for certain situations while maintaining existing procedures and restrictions on abortions. The law shows legislative interest in medical science and public health issues and it also addresses ethical questions about potential life. The establishment of a gestational limit represents a deliberate decision because it serves as a policy choice which needs to be made. The threshold emerges as a point of conflict when courts allow terminations to occur beyond established limits because people show their need for termination. The purpose of constitutional adjudication exists to assess whether laws protect fundamental rights. Most of the time, courts do not declare the statutory limit unconstitutional. The courts maintain the statutory system but provide specific legal outcomes for individual cases. The system creates two distinct pathways which establish a strict legislative system that applies to all citizens while allowing successful litigants to access constitutional exemptions. Rule of law systems prioritize two fundamental values which require consistent application across all situations. Judicial discretion establishes relief criteria which lead to different outcomes for similar cases because of variations in legal access and case timing and judicial methods across different regions. The process of justice based on petitions creates an advantage for those who can quickly reach higher courts. In these situations, law becomes a reactive force which lacks systematic organization. The matter of gestational limits presents medical and ethical questions which continue to be disputed between different viewpoints. Scientists currently define viability as a term which depends on existing technology and personal health conditions. The argument fails because the twenty-four-week limit does not define a complete medical and moral boundary. The courts will consider extreme situations which involve non-viable foetuses and severe maternal trauma as valid reasons to depart from the statutory limit. The constitutional dilemma, therefore, is not whether autonomy matters. Article 21 establishes the requirement that autonomy must be considered. The institutional competence dilemma creates two possibilities for decision-making. The courts should establish new gestational limits through court decisions or they should wait for Parliament to update laws based on current scientific and social developments. The continuous pattern of courts easing statutory restrictions without either constitutional declaration or legislative revision creates dangers that threaten to undermine the principle of separated governmental powers. The practice of complete judicial deference might result in rights violations during complex legal situations. The structural relationship between these two elements establishes an ongoing connection that cannot be resolved. Bioethical issues cannot reach resolution because constitutional democracies require both legislative structures and fundamental rights to exist as authoritative standards.

Comparative Perspective and Normative Evaluation

The study utilizes comparative analysis to assess normative standards between the two subjects. The Indian legal system has developed into its own distinct system according to the findings of a brief comparative study. The decision in *Dobbs v. Jackson Women's Health Organization*[8] resulted in the United States federal government revoking constitutional protections for abortion rights which had existed since *Roe v. Wade*[9] while returning regulatory powers to state governments. The judicial system has decreased its responsibilities because courts no longer implement policies that extend abortion rights from their previous limits. The United Kingdom uses the Abortion Act 1967 as its main legal framework for abortion regulation because it establishes medical certification requirements for legal termination which allows for procedures up to twenty-four weeks. UK courts usually follow the established statutory

[8] Dobbs v. Jackson Women's Health Org., 597 U.S. 215 (2022)
[9] Roe v. Wade, 410 U.S. 113 (1973)

framework instead of granting case-specific constitutional rights for individuals. The system operates through established laws and government-run administrative procedures. India occupies a middle position because it maintains both statutory abortion laws and judicial rights-based abortion access. The Medical Termination of Pregnancy Act establishes statutory gestational limits which are comparable to the UK system, yet constitutional courts have utilized rights-based arguments to increase access to their rights. The Indian constitutional tradition allows for broad interpretation of Article 21 through this judicial engagement. The Indian judiciary has chosen to provide case-by-case relief through incremental legal decisions instead of declaring the gestational limit unconstitutional. The approach contains both beneficial aspects and potential weaknesses according to its normative evaluation. The system permits judges to show compassion toward exceptional cases which would lead to unfair results through strict enforcement of laws. The system establishes reproductive freedom as a constitutional principle which exceeds basic legal recognition. Individualized legal decision-making creates a situation where legal doctrines become unclear. The legal authority which establishes permissible limits for termination procedures exists in a state of ambiguity because judicial authorities exercise discretion without definite statutory guidelines. The main assessment requires multiple possibilities which extend beyond simple two-way choices. Courts can justify permission for procedures after twenty-four weeks when those cases involve exceptional rights protection needs. The process of constitutional exceptions being used continuously shows how the laws of the country do not match with the fundamental principles of the constitution. A complete reproductive rights system should combine clear legislative rules with constitutional protections because this combination will minimize the need for judicial decisions while protecting essential personal freedoms.

Conclusion: Toward a Coherent Reproductive Rights Framework

The conclusion leads to developing a complete system for reproductive rights protection. The Medical Termination of Pregnancy Act creates a legal conflict through its regulations which restrict termination procedures to permissible cases that last up to twenty-four weeks. The Indian abortion system originated as a total ban which later gave way to defined exceptions through legal regulations. The process of judicial interpretation for Article 21 has progressed to establish reproductive choice as a fundamental aspect of human dignity and personal privacy and individual freedom. The shift between these two positions holds doctrinal value because it proves that women need control over their pregnancy decisions to maintain their constitutional rights. The process of continuing pregnancy establishes itself as a decision which belongs to the constitutional right of a person rather than a medical procedure which falls under statutory regulation. The practice of courts assigning permanent judicial authority to exceed established legal boundaries demonstrates how this legal standard has undergone actual transformation. The judiciary has intervened to address cases which involve critical foetal defects and cases of rape and medical diagnosis delays and cases which lead to major psychological or physical damage. The individuals involved have chosen to exercise their rights which they consider more important than the normal restrictions that the law establishes. The decisions made by the organization have a foundation which connects to constitutional principles and receives validation from scientific research. The process of denying permission for termination in extreme situations creates a situation which violates a person's right to dignity and control over their own physical body. The process of expansion through the current method creates issues which affect the fundamental framework of the organization. The legislative process established the twenty-four-week limit after lawmakers engaged in extensive discussions about the issue. The system develops into a mixed format because courts continuously make

exceptions to the established limit while the legislative framework remains unchanged. People who receive judicial relief can navigate the system because existing laws provide them with protection yet the legal system maintains its formal structure. The unpredictable nature of this dynamic creates difficulties which make it hard for people to get help when they need it because they cannot afford to go to higher courts. The constitutional question at hand relates to the protection of reproductive autonomy. It does. The question requires an examination of how institutions operate. The constitutional courts need to step in when legislative policies clash with essential human rights because this situation creates conditions which lead to unfairness. The current judicial exception system shows that laws should go through a new assessment process. A coherent framework would align statutory thresholds with constitutional principles, provide clearer procedural pathways, and reduce dependence on urgent writ petitions for relief. India's abortion jurisprudence stands at a transitional moment. It has moved beyond a purely medical exception model, yet has not fully restructured the statutory regime to reflect its constitutional commitments. The long-term stability of reproductive rights will depend not only on compassionate judicial orders, but on deliberate harmonization between Parliament and the Constitution.

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WORKPLACE DISCRIMINATION AGAINST MEN

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ABSTRACT

धर्मेण नारी पुरुष सदा, समानं कर्म कर्तव्यं। धन अर्जन में कोई भेद न हो, समाज में सबका समुचित स्थान हो॥ (Shlok from Mahabharata)

''Both men and women, united in righteousness, must perform their duties. There should be no difference in earning wealth; all should have their rightful place in society.''

This shloka from Mahabharata appropriately breaks the stereotype of men as the ''default breadwinners''. For decades, society has been shaped by the long-standing stereotype of males as the main providers, which has influenced expectations in both the personal and professional domains. The key target of this study to explore the workplace discrimination against men and putting the emphasis on gender equity in traditionally female- dominated professions.

It is our social norm that it doesn't matter whether women are earning or not but there is always a burden on men's shoulders to earn, he should be the one who should have responsibility of his family members even if women has the highest degree or more educated than men, still the expectation of being a breadwinner is from the MEN.

But society is changing since last two decades there were many professions which were especially dedicated to women like COOKING or NURSING. The dynamics of gender equity in various sectors are examined in this paper, with particular attention to the obstacles and difficulties men encounter, including gendered expectations, limited leadership prospects, and wage inequities.

To sum up, combating workplace discrimination against males necessitates a multipronged strategy that includes fostering inclusive workplace rules, establishing supportive legislative frameworks, and altering cultural perceptions. This will guarantee that both sexes can prosper in workplaces devoid of discrimination and unfair treatment. With an emphasis on the social, economic, and cultural elements that support the notion that males are the primary breadwinners, this paper examines the ramifications of dispelling this myth.

Keywords: WORKPLACE, HARASSMENT, DISCRIMINATION, STEREOTYPE, BREADWINNERS

INTRODUCTION

- The status of women in India has been subject to many great changes over the past few millennia.
- From equal status with men in ancient times, through the low points of the medieval period.
- In modern India, women have held high offices in India including that of the President, Prime Minister, Speaker of Lok Sabha and Vice Chancellor of reputed university.
- Men and Women are created to complete each other, not to compete with each other.
- Traditionally, men went to work while women were homemakers. Although this is no longer the case in contemporary society.

GENDER DISCRIMINATION

- Gender based discrimination represents the ugly face of the society. As human development moves center-stage in the global development debate, gender equality is emerging as major challenges. Gender Discrimination, though amongst the most subtle, is

one of the most all- pervading forms of the institutionalized deprivation.[1]

- Stereotypes that men are harmful to women and children have led to gender-based discrimination against men in the health and education sectors. For comparable offenses, men are typically sentenced to lengthier terms and higher rates of incarceration in the legal system than women.
- When we think of gender discrimination, many of us immediately think of how women are affected by this practice. While it is the case that many women experience gender discrimination in the workplace and deal with complex issues such as pay inequality and maternity discrimination, this doesn't mean it only affects women.[2]
- Gender is a protected feature under **the Equality Act of 2010**. This implies that a person's gender cannot be the basis for any form of discrimination. This discrimination may manifest as victimization, harassment, direct discrimination, or indirect discrimination.

DIFFERENCE BETWEEN ''SEX'' AND ''GENDER''

- The term 'Sex' and 'Gender' are often used in the same context but nevertheless they are totally different if we seek its deeper meaning.
- The term 'Sex' is applied to those distinctions between men and women which are based on biological differences, such as anatomy, physiology, hormones and chromosomes and in this respect people are male and female.
- The term 'Gender' is applied to the cultural aspects of male and female roles, in other words, the behavior, personality and other social attributes that are expected of ales and females.
- So, we can say that Sex difference is natural, but gender differences are created by the people according to their own convenience.

THE INDIAN CONSTITUTION

The Preamble of Our Constitution promotes EQUALITY[3].

EQUALITY BEFORE LAW[4]

The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

PROHIBITION OF DISCRIMINATION ON GROUNDS OF RELIGION, RACE, CASTE, SEX OR PLACE OF BIRTH[5]

(1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.
(2) No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to— (a) access to shops, public restaurants, hotels and places of public entertainment; or (b) the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public.
(3) Nothing in this article shall prevent the State from making any special provision for women and children.
(4) Nothing in this article or in clause (2) of article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes.
(5) Nothing in this article or in sub-clause (g) of clause (1) of article 19 shall prevent the State from making any special provision, by law, for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes or the Scheduled Tribes in so far as such special provisions relate to their admission to educational institutions including private educational institutions, whether aided or

[1] Bhatt JN Justice, in ''Gender Equality: Turmoil or Triumph''
[2] https://www.aspiringtoinclude.com/can-men-be-the-target-of-gender-discrimination-in-the-workplace/

[3] Equality Of Status And Of Opportunity
[4] Article 14 of Indian Constitution
[5] Article 15 of Indian Constitution

unaided by the State, other than the minority educational institutions referred to in clause (1) of article 30.

EQUALITY OF OPPORTUNITY IN MATTERS OF PUBLIC EMPLOYMENT[6]

(1) There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State.
(2) No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the State.
(3) Nothing in this article shall prevent Parliament from making any law prescribing, in regard to a class or classes of employment or appointment to an office under the Government of, or any local or other authority within, a State or Union territory, any requirement as to residence within that State or Union territory prior to such employment or appointment.
(4) Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favor of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State.
(4A) Nothing in this article shall prevent the State from making any provision for reservation in matters of promotion, with consequential seniority, to any class or classes of posts in the services under the State in favor of the Scheduled Castes and the Scheduled Tribes which, in the opinion of the State, are not adequately represented in the services under the State.
(4B) Nothing in this article shall prevent the State from considering any unfilled vacancies of a year which are reserved for being filled up in that year in accordance with any provision for reservation made under clause (4) or clause (4A) as a separate class of vacancies to be filled up in any succeeding year or years and such class of vacancies shall not be considered together with the vacancies of the year in which they are being filled up for determining the ceiling of fifty per cent reservation on total number of vacancies of that year.

BREAKING THE STEREOTYPE OF MEN AS THE DEFAULT BREADWINNERS

- Men are expected to be the main breadwinners and women are expected to take care of the home for generations due to patriarchal conventions. This misconception has been strengthened in India by social, religious, and cultural norms. But these dynamics have undergone a slow but notable change in the 21st century. Women are breaking down barriers in sectors that have historically been dominated by males, going to college, and joining the workforce in greater numbers. Men are starting to share household duties and, in certain situations, resign from their position as the only provider at the same time.
- Economic, social, and cultural shifts in India are challenging the archetype of men as the primary breadwinners. Men are adopting caregiving and supportive tasks, while women are increasingly taking on breadwinning roles, as seen by real-life situations from around the nation. This change could lead to better family dynamics, gender equality, and a redefining of traditional roles. But maintaining this change requires tackling structural obstacles and societal reluctance. Breaking the notion of the breadwinner would be crucial to creating a more inclusive and equal society as India develops.
- The Supreme Court of India came out with a 'Handbook on Combating Gender Stereotypes' in August 2023 in which it has mandated that the word 'housewife' be replaced by 'homemaker' while writing judgments or filing cases before courts.

ELEMENTS THAT CAUSE CHANGE

The conventional breadwinner stereotype in India has been weakened by a number of causes, including: **Economic Necessity:** Women are increasingly entering the workforce as a result of rising living expenses and inflation, which have made single-

[6] Article 16 of Indian Constitution

income homes increasingly unsustainable.

Empowerment and Education: Women now have more access to education, which has allowed them to seek occupations and become financially independent.

Globalization and Urbanization: Traditional gender roles have been questioned as a result of exposure to international concepts and urban lifestyles.

Legal and Policy Reforms: Government programs that favor gender equality, like equal pay laws and maternity leave policies, have encouraged women to enter the workforce.

Changing Attitudes: Men are increasingly sharing domestic duties, and younger generations are more receptive to altering gender norms.

CONTRIBUTION OF BOLLYWOOD MOVIES IN THIS ASPECT

KI & KA

Ki & Ka is a romantic comedy that challenges traditional gender roles. In this movie Kia & Kabir(ii) establish a relationship where Kabir handles the daily household affairs, while Kia is the main breadwinner.

RIGHTS OF MEN IN WORKPLACE HARASSMENT AND ABUSE CASES

- Abuse and harassment in the workplace are serious(iii) problems that have attracted a lot of attention(iv) worldwide, especially in light of gender-based violence. Although a lot of the discussion centers on women as victims, men can also experience harassment and abuse at work. In India, the legal(v) system and public attitudes around workplace harassment have largely focused on safeguarding women, frequently ignoring the experiences of men.
- Employees in a variety of professions and businesses are impacted by the widespread problem of workplace harassment. The main piece of law addressing workplace harassment in India is the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (POSH Act). However, this Act only targets women as victims, making it gender-specific. Although the historical and social background of gender-based violence justifies this focus, it unintentionally ignores the experiences of males who might also be subjected to harassment and abuse at work.
- According to Roberta Chinsky Matuson, ‘‘Many people believe that sexual harassment is limited to females’’.

DEFINING WORKPLACE[7]

(i)

Any department, organization, undertaking, establishment, enterprise, institution, office, branch or unit which is established, owned, controlled or wholly or substantially financed by funds provided directly or indirectly by the appropriate Government or the local authority or a government company or a co-operative society;

Any private sector organization or a private venture, undertaking, enterprise, institution, establishment, society, trust, non-governmental organization, unit or service provider carrying on commercial, professional, vocational, educational, entertainment, industrial, health services or financial activities including production, supply, sale, distribution or service;

Hospitals or nursing homes;

Any sports institute, stadium, sports complex or competition or games venue, whether residential or not used for training, sports or other activities relating thereto;

Any place visited by the employee arising out of or during the course of employment including transportation by the employer for undertaking such journey;

[7] Section 2(O) of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013

(vi) A dwelling place or a house;

DEFINING SEXUAL HARASSMENT

- Sexual Harassment is uncivilized, unethical, immoral(i) and a fundamental legal wrong, has been in our society (Globally) since long. The concept of sexual(ii) harassment in India and other countries has been(iii) influenced by the development in US sexual(iv) harassment law.[8]
- Sexual Harassment includes any one or more of the following unwelcome acts or behavior (whether directly or by implication) namely:-[9]

(i) physical contact and advances; or
(ii) a demand or request for sexual favours; or
(iii) making sexually coloured remarks; or
(iv) showing pornography; or
(v) any other unwelcome physical, verbal or non-verbal conduct of sexual nature;

- Sexual Harassment has been provided under section 354A which was inserted by Criminal Law (Amendment) Act, 2013.[10]
- A man committing any of the following acts- [11]

(i) physical contact and advances involving unwelcome and explicit sexual overtures; or
(ii) a demand or request for sexual favours; or
(iii) showing pornography against the will of a woman; or
(iv) making sexually coloured remarks,
shall be guilty of the offence of sexual harassment.

Punishment for sexual harassment - Punishment for sexual harassment may be divided into two parts –
(1) Punishment for (i),(ii) and (iii) (Three Years) -Any man who commits the offence specified in clause (i) or clause (ii) or clause (iii) of sub-section (1) shall be punished with rigorous imprisonment for a term which may extend to three years, or with fine, or with both.
(2) Punishment for (iv) (One Year) -Any man who commits the offence specified in clause (iv) of sub-section (1) shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

- A man committing any of the following acts- [12]

physical contact and advances involving unwelcome and explicit sexual overtures; or
a demand or request for sexual favours; or
showing pornography against the will of a woman; or
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(2) Punishment for (iv) (One Year) -Any man who commits the offence specified in clause (iv) of sub-section (1) shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

- Prevention of Sexual Harassment[13]

1) No woman shall be subjected to sexual harassment at any workplace.
2) The following circumstances, among other circumstances, if it occurs, or is present in relation to or connected with any act or behavior of sexual harassment may amount to sexual harassment ;-

(i) Implied or explicit promise of preferential treatment in her employment; or
(ii) Implied or explicit threat of detrimental treatment in her employment; or
(iii) Implied or explicit threat about her present or future employment status; or
(iv) Interference with her work or creating an intimidating or offensive or hostile work environment for her; or

[8] Article on 'Historical Background of Sexual Harassment at Workplace' by Dr. K. Rajani Kumari on Indian Bar Review Vol. XLIV (1) 2017
[9] Section 2(n) of Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013
[10] IPC by Krishna Murari Yadav, Assistant Professor, Faculty of Law, University of Delhi, Delhi.
[11] Section 354A of Indian Penal Code,1860
[12] Section 75 of Bhartiya Nyaya Sanhita, 2023
[13] Section 3 of Sexual Harassment of Women at Workplace Act,2013

(v) Humiliating treatment likely to affect her health or safety.

- All the laws that we have in India which specifically talks about Sexual Harassment are related to women which considers only men as perpetrators.

LAWS WHICH ARE NOT GENDER SPECIFIC[14]

1. The Protection of Children from Sexual Offences Act of 2012 that criminalizes sexual harassment of anyone under the age of 18 is gender neutral in terms of perpetrator and the victim.
   A person is said to commit sexual harassment upon a child when such person with sexual intent,[15]

(i) utters any word or makes any sound, or makes any gestures or exhibits any object or part of body with the intention that such word or sound shall be heard, or such gesture or object or part of body shall be seen by the child; or

(ii) makes any child exhibit his body or nay part of his body so as it is seen by such person or any other person; or

(iii) shows any object to a child in any form or media for pornographic purposes; or

(iv) repeatedly or constantly follows or watches or contacts a child either directly or through electronic, digital or any other means; or

(v) threatens to use, in any form of media, a real or fabricated depiction through electronic, film or digital or any other mode, of any part of the body of the child or the involvement of the child in a sexual act; or

(vi) entices a child for pornographic purposes or gives gratification therefor.

2. University Grants Commission (Prevention, Prohibition and Redressal of Sexual Harassment of Women Employees and Students in Higher Educational Institutions) Regulations, 2015 – a sexual harassment prevention law which applies to all colleges, universities and deemed to be universities- is also gender-neutral.
3. Indian labour laws, such as the Industrial Employment (Standing Orders) Act, 1946, and the Industrial Disputes Act, 1947, provide general protections against workplace harassment and abuse. These laws apply to all employees, regardless of gender, and can be used to address issues such as bullying, verbal abuse, and physical assault. However, these laws are often underutilized in cases of harassment, particularly when the victim is male.

SUGGESTIONS TO PROMOTE GENDER EQUALITY IN WORKPLACE

Gender-Neutral Legislation

There is a need for gender-neutral legislation that addresses workplace harassment and abuse, ensuring that the rights of all individuals are protected. Such legislation should provide clear guidelines for the prevention, prohibition, and redressal of harassment, regardless of the gender of the victim or perpetrator.

Awareness Campaigns

Awareness campaigns should be conducted to educate men about their rights and the legal remedies available to them in cases of workplace harassment. These campaigns should also aim to challenge gender stereotypes and encourage men to report harassment without fear of stigma.

Institutional Reforms

Organizations should implement gender-neutral policies and procedures to address workplace harassment. This includes the establishment of dedicated mechanisms to handle complaints from men and the training of HR personnel to handle such cases sensitively and effectively.

Encouraging Open Dialogue

By fostering transparent communication, organization allows employees to raise their concerns about gender

[14] https://elearnposh.com/major-laws-against-harassment-of-men-in-india/amp/

[15] Section 11 of Protection of Children from Sexual Offences Act, 2012

inequality and potentially prevent it altogether. Some effective methods of collecting employee feedback include one-on-one meetings, interviews and anonymous surveys.

Reporting Mechanisms and Support Systems

Organizations with clear and formal reporting mechanisms for gender discrimination are better equipped to detect and address it. Providing an easy and confidential way for employees to notify or receive support ensures that incidents do not go unreported.

Recognizing Subtle forms of Discrimination

Not every instance of gender discrimination in the workplace is overt. Sometimes, an employee's unconscious bias can cause them to commit subtle discriminatory acts. Organization can improve awareness of gender prejudice and help employees understand their biases through workshops and training programs.

CONCLUSION

- The Country is still at a cross-road.
- There is an annual report of Supreme Court of India which is known as 'Gender Sensitisation and Internal Complaints Committee (GSICC)' in which Committee tries to sensitise the staff regarding gender issues and address instances of Sexual Harassment within the precincts of the Supreme Court. It have been formulated to address issues related to gender discrimination, harassment, and inequality.
- International health expert from India, Dr Edmond Fernandes stated that India needs to urgently create gender neutral laws and deliver speedy justice to save Indian families from being decimated.[16]
- In 2024, the Statue of Our Honorable Supreme Court named 'LADY JUSTICE' had been changed, now it no longer has blindfold in her eyes and symbolizes a justice system that is open- minded and sees everyone equally.
- Lord Woolf (Chief Justice of England) said that ''Like old clocks, our judicial institutions need to be oiled, wound up and set to true time''.[17]
- 74% of the SDG targets won't be achieved without gender equality.[18]
- To be an effective instrument of Social Change, it is necessary to update all laws, as per the societal requirements. We are strongly of the view that reform which is imposed upon people through a law can not be effective only education, knowledge and human values can bring about the desired change.[19]

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CONSTITUTIONAL MORALITY ON CAMPUS: THE UGC EQUITY REGULATIONS, 2026 IN PERSPECTIVE

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ABSTRACT

The University Grants Commission (UGC), which has been India's primary statutory body responsible for determining and maintaining standards of higher education for over 70 years, introduced the *Promotion of Equity in Higher Education Institutions Regulations* on January 13, 2026, with the aim of tackling discrimination happening within higher educational spaces, and thus, strengthening the principles of equity and inclusivity within these institutions.

Many view these regulations as one of the most sincere and meaningful attempts made in recent years to tackle the persistent issue of discriminatory practices on Indian campuses. At a glance, they also call for the creation of Equal Opportunity Cells (EOCs), related committees, dedicated helplines to monitor and complaints or progress and even penalties for institutions that fail to comply. In both intent and spirit, long-standing concerns surrounding caste-based discrimination, gender harassment and marginalization of students with disabilities, has been acknowledged.

Unsurprisingly, there are certain voices that question certain aspects of the framework and call for clearer solutions to its shortcomings. Some opine that the rules seem skewed against "general category" students, and are concerned about potential abuse, reverse discrimination and increased campus tensions.. They believe that rules focus too narrowly on protecting reserved categories, and may also lead to an increase on potential misuse by filing false or exaggerated complaints. Yet, the core issue goes beyond intention.

This research article shall critically examine the legal framework surrounding the 2026 Regulations, and analyse where it is lacking, objectives, enforceability in light of constitutional safeguards and existing educational laws which aims to explore whether it can meaningfully contribute towards creation of more just and inclusive academic spaces. It will help people in gaining an insight into the UGC Equity Regulations 2026 and how these regulations attempt to put the idea of equity into practice across the country's institutions.

KEYWORDS: Affirmative Action, Indian Higher Education, Caste-based Discrimination, Regulatory Enforcement, Structural Inequality

INTRODUCTION

Education in any country should be regarded as a vital instrument for becoming a valuable asset to society, transcending barriers of class, caste, race or sexuality, and offering an individual a pathway towards economic empowerment and meaningful democratic participation. However, for many students, acceptance to university does not automatically mean that they will receive an equal treatment or equal opportunity once they become a part of higher education. Age-old social hierarchies, economic inequalities, gender biases and physical accessibility challenges still shape how a student experiences campus life. With the rapid growth and diversification[i] in the higher education spaces, the weight is not just on increasing enrolment but on ensuring that the institutions are genuinely fair and responsive to the needs of all the learners.

Caste-based discrimination continues to remain a rampant and deeply serious issue in the Indian higher education system, posing significant challenges to the ideal of equal access and opportunity for all the students. It is visible in various forms ranging from

unequal academic opportunities and instances of humiliation to the psychological distress experienced by those affected. Evidence from research as well as personal accounts suggests that caste bias is not confined to student interactions alone but can also be reflected in institutional practices and, at times, in the attitudes of faculty.[ii] The sudden rise in suicide amongst students, particularly those belonging from Dalit community, has highlighted the seriousness and urgency of this issue.

Accounts and narratives derived from Dalit scholars shed some light on the harsh realities that many students on campus on a daily basis, including stereotyping, subtle exclusion and prejudice based on birth status or simply caste identity[iii]. These experiences have a major impact on not only academic results and self-confidence but also students' long-term goals and sense of belonging. Hence, having a domino effect in a person's life for the sole reason of belonging from lower caste, which they did not even consent to be born into. Beyond the harm caused to the individual on personal level, when a place of education allows these conditions to continue, it leads to wider social inequalities and fails to be a true community. Instead of being a safe haven where ever individual is appreciated, institutes have become a place that promote stigma, making it difficult for marginalized students to feel like they belong.
It is also important to not that these laws are extensions of existing regulations like anti-ragging committees, SC/ST help offices and student support groups which have been there for ages and are even mandatory at some institutes. However, practical effectiveness is limited with such procedures being on paper or in writing.

Many people are concerned that if the new equity framework is not carefully implemented and monitored, it will become just another administrative formality, reduced to paperwork, reports and symbolic displays, rather than resulting in real and meaningful change.

The University Grants Commission (UGC) Promotion of Equity in the Higher Education Institutions Regulations, 2026 replacing the 2012 framework, sheds light on the growing awareness across the country and a rising public consciousness surrounding discrimination in educational spaces, with the primary motto of ***"eradicating discrimination"***[iv] which targeted not only the students belonging from scheduled castes, tribes and disabilities but also extends its scope to faculty, non-teaching and management staff. However, turning these well-meaning policies into real and measurable equality continues to be challenging, given the institutional, financial and administrative obstacles involved.
Since the Supreme Court on 29th January, 2026, heard a petition challenging the said Regulations and chose to place an interim stay on their implementation, it becomes all the more important to closely examine both the Regulations themselves and the decision taken by the Hon'ble Court.

RESEARCH OBJECTIVES

The research objectives addressed in the paper are mentioned below: -

- To examine the constitutional principles underlying the Regulations, particularly those concerning equality, non-discrimination, dignity and social justice and to further evaluate whether Regulations align with Articles 14, 15, 19 and 21 of the Constitution of India.
- To analyse whether various implementation measures introduced under the regulations, including grievance redressal and relevant monitoring bodies are functioning properly.
- To evaluate whether these mechanisms are capable of ensuring accountability, transparency and timely redressal of discrimination-related disputes.
- To analyse the concerns and criticism raised by different stakeholders regarding potential misuse and perceived bias in the regulations.

- To examine the impact of new regulations across universities and determine the key factors that affect their effectiveness in reducing discriminatory practices.

RESEARCH QUESTIONS

- Whether the UGC regulations passed in 2026 are constitutionally valid under Articles 14, 15, and 21 of the Indian Constitution, particularly regarding their scope of application across different categories of educational institutions (autonomous, deemed, private, and government colleges).

- Whether excluding the general category from anti-discrimination protections creates a two-tiered system of rights within the same institution, and if this contradicts the principle of equal protection under the Indian Constitution.

- Whether equity committees lacking representation from the general category can credibly investigate complaints affecting all students, and what blind spots this might create.

- Whether this legislation compares favourably to international models of non-discrimination frameworks, or whether other democracies exclude majority groups from anti-discrimination protections in similar ways.

- Whether the legislation actually expands equity, or whether it primarily redistributes discrimination rather than eliminate it.

- Whether these measures can truly confront and reshape the structural inequalities that remain deeply embedded in India's higher education system.

METHODOLOGY

The study was conducted using ***Doctrinal*** method. Most of the information was easily available Online. For the research, a comprehensive study was done by using online sources such as journals, articles and newspapers. The study is organized with the help of secondary data collected through different online articles, publications, judicial precedents and websites including JSTOR, SAGE JOURNALS, MANUPATRA, SCC ONLINE amongst various others.

LEGAL ANALYSIS

1.1 Understanding the Call for Intervention

To understand why **UGC Equity Regulations 2026 was necessary**, we need to shed light on the painful history that led up to this point. The debate on these regulations was set off by the deaths of **Rohith Vemula** in 2016 and **Payal Tadvi** in 2019. These were not just two individual cases; they were also a symbol of the larger issue of caste-based discrimination that has become ingrained in our educational institutions. This issue has also been taken up by the mothers of the two students who decided to take the battel to the Supreme Court with a ***Public Interest Litigation (PIL),*** titled ***"Abeda Salim Tadvi & Anr. v. Union of India."***[1] They contended that the regulations of 2012 were inadequate to provide protection to their children. The regulations were also necessary because of the long history of data pointing to the need for change.

In early2007, the **Thorat Committee** revealed that SC/ST students were being neglected, humiliated and isolated in top-tier institutes. It was also revealed that 75% of SC/ST/OBS students faced discrimination, as recorded by a survey done in 2019 at IIT Delhi. In 2025, the supreme court passed an order for a robust mechanism to be set up, which finally resulted in the regulations of 2026.

However, these regulations have also set off a huge firestorm, with political parties divided and even

[1] 2025 SCC OnLine SC 1280

government officials resigning. The question of concern is whether these regulations can be misused. The question at the heart of the debate is whether caste discrimination is just an act of a few individuals or whether it has become ingrained in our society, requiring a complete change.

1.2. Constitutional Foundation

The authority of the UGC Equity regulations 2026 comes directly from the Indian Constitution. The regulations fall under the equality regulations, as they are founded on Articles 14,15,16 and 21. These regulations ensure that every citizen is treated equally before the law, prohibits discrimination and protect human dignity.

It is also important to note that Article 15(4) and 15(5), allow the government to make special provisions to assist Scheduled Castes, Scheduled tribes and Other Backward classes of students in schools and higher education. The Supreme Court had emphasized that these regulations are not just about equality in name, but also substantive equality. By introducing these 2026 Regulations, the government is essentially turning broad constitutional promises into specific duties that becomes mandatory for every university to follow every day in order to ensure social justice.
The Regulations also derive their legal authority from the Directive Principles of State Policy, specifically **"Article 38"**, which directs the State to create social order aiming for the welfare of people and reduce inequalities, and **"Article 46"**, which requires the State to promote educational (and economic) interests of SCs, STs and other weaker sections while safeguarding them from injustice[2].

1.3. Development of the Equity Framework

The 2012 Regulations were widely criticized for being ineffective and also poorly enforced given the atrocities which were committed against lower caste students, but the 2026 regulations introduced significant changes to ensure real and appropriate impact. The most imperative shift is that the new rules are strictly binding. Unlike the previous advisory guidelines, the 2026 framework carries heavy penalties for non-compliance or violations, including being barred from ***UGC funding, losing the right to receive degrees or being removed from official university lists.***
Additionally, the scope of these regulations has been vastly expanded as wider protection has been granted to cover OBC individuals alongside SC and ST communities. The extended protection covers faculty, management, and non-teaching staff, not just the student body.[v]

Discrimination no longer refers only to obvious discrimination; it now includes hidden discrimination as well as anything that threatens human dignity. The new language helps deal with modern prejudices that the earlier language missed. However, there is a certain ambiguity to the language so that the final interpretation of "discrimination" rests with the committee.

1.4. Judicial Intervention and Decision

The Supreme Court addressed the legal challenge to the 2026 regulations on January 29th, and observed that some parts were unclear and could potentially be misused. As a result, the Court paused the implementation of these new rules and used its special powers granted under **Article 142**, ordered that the **2012 Regulations** should remain in effect for the time being.

The Court's decision to put a stay on the regulations are based on two major legal precedents. In ***"Indian Express Newspapers v. Union of India"***[3] the Court stated that while rules created by the bodies UGC are assumed to be legal, they are still subject to court review.

[2] Constitution of India

[3] AIR 1986 SC 515

In ***"Bhavesh D. Parish v. Union of India"***[4] it was cautioned that courts should be exercise restraint when it comes to staying new laws or legislations unless they are clearly unconstitutional or unfair, especially at an early stage.

While the Court is right to review the 2026 Regulations, a complete interim stay on them raises concerns about whether such a move is "proportional," provided that the final decision is still pending. Despite the delay, the 2026 framework represents an important step forward in moving from the concept of equity in universities to making enforceable rather than voluntary. The temporary pause offers an opportunity to tighten rules to ensure they are legally sound and feasible so that the next round of changes results in actual progress.

1.5. Legal Challenges to UGC Equity Regulations, 2026

The UGC (Promotion of Equity in Higher Education Institutions) Regulations, 2026 has been subject to judicial review on the grounds of being fundamentally flawed on constitutional and legal grounds, resulting in a stay order by the Supreme court in 2026. The regulations were in contravention to **Article 19(1)(a),** which guarantees freedom of speech and expression by laying sweeping anti-discrimination provisions without clearly articulating the prohibited conduct, which could have a chilling effect on the freedom of speech. The supreme Court established that restrictions on fundamental rights must be narrowly tailored and clearly articulated in the case of **"*Shreya Singhal v. Union of India*"**[5]. The 2026 Regulations fail to make a proper distinction, leaving faculty guessing about what is or is not permissible to discuss in class, especially topics related to caste systems, religious beliefs or gender roles.[vi]

The vagueness of the regulations violates the void for vagueness doctrine which was reaffirmed in the case of ***"K.A Abbas v. Union of India"*[6],** and the regulation should have a clearer notice of what behaviour is considered to be discriminatory behaviour.

The regulations also violate the equality principles enshrined in Article 14 of the Indian Constitution as they place arbitrary uniform requirements on institutions of vaguely differing capabilities. This leads to arbitrary distribution of burdens in violation of the principles of Article 14 which were laid out in **"*E.P Royappa v. State of Tamil Nadu*"**[7], where the court stated that arbitrary action by the state is a violation of equality. The consequence of such arbitrary action is "paper compliance" where elite institutions develop comprehensive centres and rural colleges develop nominal structures. The apex court in the case of **"*State of Karnataka v. Ranganatha Reddy*"**[8] stated that the state cannot impose regulations without providing necessary resources. The regulations leave institutions that are underfunded with the options of choosing between non-compliance resulting in penalties or diverting scare funds from academic programs.

The regulations also violate the principles of natural justice under Article 21 of the Constitution of India. The regulations provide mechanisms for complaints but fail to provide adequate safeguards against false complaints. The also fail to provide what evidentiary standards are to be followed, what due process rights institution can claim and what kind of penalties can be imposed.[vii]

In the case of ***"Maneka Gandhi v. Union of India"***[9], the Supreme court held that the procedure in ***'Article 21' had to be "right, just and fair".*** The regulations set up Equity Committees constating of institutional colleagues who are subject to peer pressure or institutional loyalty, lack legal training in

[4] (2000) 5 SCC 471

[5] (2015) 5 SCC 1

[6] (1970) 2 SCC 780

[7] (1974) 4 SCC 3

[8] (1978) 1 SCC 641

[9] (1978) 1 SCC 248

discrimination law, and lack any protection from conflict of interest-all in violation of the principles of natural justice set forth in **"A,K. Kraipak v. Union of India"**[10].

The regulations exceed the statutory Authority of the UGC Act,156 which permits to promulgate regulations "consistent with the act" for the purpose of carrying out the UGC's purpose related to coordination, establishment of regulation standards and allocation of grants, and not the creation of quasi-judicial complaints procedures for discrimination. These regulations' creation of institutional penalties such as suspension of the right to grant degrees is not supported by the UGC Act and thus may constitute a violation of the principles of "excessive delegation" set forth in the case of ***"Raj Narain Singh v. Chairman, Patna Administration Committee"***[11].

The opposition to these regulations is a product of these basic flaws and results in a "fear versus equity" conundrum. The fear that general category students and professors harbour is that anti-discrimination regulations will be abused to lodge complaints to settle personal scores or to silence unpopular academic opinions, rather than to address actual instances of discrimination. This fear may be justified in the light of the regulations' procedural failing and the absence of safeguards against abuse. The violent protest on January 30, 2026 at Delhi University in which a Youtuber named Ruchi Tiwari was assaulted and threatened with sexual violence by pro-regulation protestors, ironically illustrates this fear: protestors who were committed to equity and equity- based regulations committed a violent and gender-based crime that sheds light on the limits of formal regulations to bring cultural change. This incident highlights the regulations' failure to address actual instances of discrimination that occurs outside the scope of formal complaints procedures.

These regulations focus on the symptoms of educational inequality and not the causes. The fact that there was a 11.84% increase in caste-discrimination complaints between 2019 and 2024[viii] indicates that the earlier regulations have failed, and yet the regulations introduce more bureaucratic red tape to address the symptoms and not the causes, which include delayed scholarship payments that lead to financial hardship, inadequate academic support for students belonging to disadvantaged groups and unfair evaluation systems that impede promotions and leadership positions. The fact that the Supreme Court calls these regulations "symbolic gestures" and not serious attempts at reform highlights the basic failings that necessitate a stay on these regulations until more viable and constitutionally valid regulations that address the causes and not the symptoms can be formulated.

LITERATURE REVIEW

1. *"An Anatomy of UGC Regulation on Equity 2026,"* Narender Nagarwal[ix]

This paper incorporates how ideals of fairness and inclusion in Indian universities have developed over the past few decades, focusing on the part that merely gaining admission to a college does not automatically ensure equal treatment on campuses for all. Many students still face subtle bias or exclusion often connected to caste.

The new UGC Regulations of 2026 have further sharpened the debate on the role universities play in controlling these issues. The new regulations have been seen by many as a step in the right direction towards safeguarding the rights of students and protecting the values that the Constitution espouses.
There has been a lot of Scholarly work done on the efficacy of these legal interventions and whether they will be mostly procedural.

[10] 1969) 2 SCC 262
[11] *A*.I.R. 1954 SCC 569

CASTE BASED DISCRIMINATION PREVELANT IN HIGHER EDUCATION

Caste-based discrimination continues to be a problem in higher education institutes. Narendra Nagarwal argues that universities are not just places for academic pursuits, but they also play a role in perpetuating caste-based biases, both subtle and obvious.

Further, Nagarwal argues that more stringent rules and regulations are mandatory to fix these issues. Other researchers also add to the hostile environment often take a very heavy toll on the mental health of the marginalized students, sometimes leading to the tragic student suicide cases that periodically make headlines in the national news. Together, these experts argue that until systematic issues are solved altogether, the idea that universities are "fair" or based strictly on "merit" is more of a myth than actual reality.

CONSTITUTIONAL FOUNDATION

it has been argued by the Legal experts that fairness in universities should not be considered just a good idea but is a requirement under the **Indian Constitution**. Several key sections **(Articles 14, 15, 16, 17, and 21)** guarantees that everyone is treated equally, that discrimination is banned and that dignity of each and every student is protected. Furthermore, there are also laws that specifically tasks the government to ensure the protection of disadvantaged communities through "affirmative action" or *special provisions to help those who have been historically left behind.*

DEBATE SURROUNDING POTENTIAL MISUSE

A very common and widespread concern in these discussions is the **fear of misuse** as some people worry that very stringent rules might lead to people making false accusations. Nagarwal (2026) counters this by arguing that people have always used this same "*fear of misuse*" for decades to oppose almost every law designed to help marginalized groups. According to him, just because a certain law could be abused does not mean that we should take away imperative protectional provisions from vulnerable people. Instead, the better solution might be building a better oversight, fair appeal process and clear checks and balances

In the legal world, if a law is being handled poorly, you fix the **implementation but** you don't throw away the **rights** of the people who need them the most

2. *"Understanding Students' Attitudes Towards Affirmative Action Policy in Higher Education in India,"* Nidhi S. Sabharwal[x]

PURPOSE

Recent research on Indian higher education has now moved beyond just looking at the rules to ensure fairness and is now focusing on how the caste system is till affecting a student's and personal life on campus every day. Constitution till this date requires reservation policies to help groups that have been considered historically backwards or depressed groups of society, but there are people who still condemn these groups and argue over whether these rules are fair or even necessary.

Lately, scholars and policymakers have stopped looking at the numbers and started focusing on how these enrolled students actually **feel** about these policies. A fundamental factor in this shift is the 2024 study conducted by **Nidhi S. Sabharwal**, which looks at student takes on affirmative action. This paper will help us understand how personal opinions fit into the bigger socio-legal debates about justice and in ensuring that everyone has an equal share of opportunities.

CONSTITUTIONAL RATIONALE

Experts agree that affirmative action or reservation policies in India are widely recognized as a tool to address the long-standing injustices of the caste system. The policies ensure that the Scheduled Castes

(SC), Scheduled tribes (ST), and Other Backward Classes (OBC), who have traditionally not had access to education or beneficial employment, now have a rightful place at the table. Extensive research indicates that while these students enroll in colleges in huge numbers, the gap between them and their peers remains wide. Some communities especially SC and ST find it much harder to get admission into top-tier schools compared to others.

Many scholars do argue around the policies stating that they are not just some charity or welfare but rather an imperative tool for making sure that everyone gets to have an equal opportunity especially when it comes to achieving success. Even so, there is still a lot of pushbacks from society. While many others continue to argue that economic vulnerability and merit should be given the priority as these policies shall be interfering with "merit" (the idea that only test scores should matter), which keeps the debate over whether these laws are fair very much alive.

FACTORS AFFECTING STUDENT ATTITUDE

Sabharwal's research breaks down why students feel the way they do about affirmative action into four main categories:

1. Group Self-Interest: A viewpoint of the student is often limited to their own life. Students that personally benefit from reservations are naturally in support of it when compared to students belonging from wealthier or "upper-caste" backgrounds that often oppose these policies as they feel they might be losing the opportunities that they are capable of achieving in a competitive system.

2. Socialisation: Generally social circles do have an important say in such issues. Students who go to a highly reputable schools and have friends from similar social backgrounds tend to be more supportive of equality measures. However, those students who grow up in "bubbles" where they have no one else to interact with except for themselves are more likely to hold onto narrow or negative views regarding reservations.

3. Academic Orientation: The subjects undertaken by students can have an impact over their perspective. Students from Humanities background (who are well-versed with Sociology or History) are usually more supportive because they about social justice. In contrast, students in technical fields (like Engineering) or Business tend to be more sceptical.

4. Deep-Seated Biases: Sometimes, opposition is not about "fairness" at all, but about hidden prejudice. While there are many people who claim that they oppose reservations since they believe in "merit," but the study suggests this is often just a cover for believing that certain castes are naturally superior or blatantly denying the very existence of discrimination that still exists today.

When people oppose and carry a negative perception towards reservation policies, it often leads to people belonging from marginalized backgrounds specifically students feeling judged, left out, or socially isolated, creating a tense environment.

Sabharwal argues that to fix this problem colleges need to take accountability and ensure that discriminatory acts do not take place by encouraging peers to mix with each other and inclusive teaching without showing biases towards one or more students.

3. *"Affirmative Action in Higher Education in INDIA And US: A Study in Contrasts,"* Asha Gupta[xi]

The question of affirmative action in universities has always been considered a tug-of-war between several big ideas: **equity vs. merit** (fairness vs. test scores), **access vs. excellence** (providing opportunities vs. high standards), and **social justice vs. school independence** (fixing society vs. letting universities run themselves).

This detailed research paper by **Asha Gupta (2006)** helps us understanding that how things work in India in comparison to how things usually work in **United**

States. By having a look at the laws and policies of both the countries, her work displays the disparity in the "fairness rules" depending on a country's history and its Constitution. This comparison will help us in gaining an insight into why such policies exist and how they are supposed to function in different societies.

AFFIRMATIVE ACTIONS IN INDIA

Asha Gupta elucidates on the fact that India's reservation system is not a temporary but a permanent part of its educational policy because it is rooted in the Constitution and the country's unique caste system. Since the law recognizes the need to help Scheduled Castes, Scheduled Tribes and Other Backward Classes, these policies are central to how universities function. Nevertheless, the system faces several challenges, including but not limited to political pressure and loopholes when it comes to the application of such rules.

A constant debate surrounding ***"meritocracy,"*** is also persistent with some people worrying that these quotas might have a direct impact on lowering academic standards or benefitting people who are relatively well-off within those groups, while those who actually need them are left behind. Ultimately, Gupta highlights a constant struggle in India to balance the aim of social justice and desire for high academic excellence.

AFFIRMATIVE ACTIONS IN U.S.A.

In contrast of the above, Gupta explains that affirmative action is not strictly mandatory under the Constitution of U.S.A. Instead, it has been built over time through presidential orders and decisions made by judges. Unlike India's system of fixed quotas, the American model focuses on creating a "diverse" student body. They have also used famous court cases for instance *Bakke* and *Grutter*, to disseminate the idea that while a student's race can be one factor considered during admissions, it cannot be the sole reason behind being selected. Ultimately, the U.S. views these policies as a way to make the learning environment better and simultaneously preparing students for a multicultural world, rather than as a direct tool for redistributing opportunities to specific groups.

ALTERNATIVES

She strongly suggests that focusing on "diversity" rather than just "strict quotas" might be effective in lowering social tension and make these policies easier for the public to accept. Further, in order to keep these programs effective, Gupta also looks at other methods to measure need such as a student's family income, where they live, or a broader definition of "merit" that looks beyond test scores. Ultimately, she argues that these policies should be based on clear evidence and must have guidelines in order to ensure that they are actually working as intended.

4. *"UGC (promotion of equity in higher education institutions) Regulations, 2026: An Analysis of Systemic Inequalities and Implementation Challenges,"* Ankush Shrivastava and Neelank Rao[xii]

This paper provides a critical analysis of India's UGC (Promotion of equity in Higher Educational Institutions) Regulations, 2026, that aim to eradicate discriminations based on caste, religion, gender, disability and other protected categories across around 45,000 institutions serving 41.4 Millon students. The authors have attempted to establish their arguments on firm ground, using the theory of cultural capital as advanced by Bourdieu to explain the dominance of certain social groups in the education sector. The authors also use the theory of intersectionality introduced by Crenshaw to explain the discrimination faced by certain social groups. The authors have provided convincing statistical data to prove the existence of inequality in the education sector. The SC and ST communities have not reached their constitutional targets of 14.2% and 5.8% respectively. The authors have provided statistical data to prove that there was an increase of 11.84% in caste discrimination between 2019 and 2024. The authors

have identified five main structural flaws that may perpetuate the inequality in the educational sector, namely:

Disparities in Implementation Capacity: The regulations require uniform and compliant structures to be put in place, without providing any dedicated funding to implement them. The outcome is obvious: elite metropolitan universities have well-funded centres, while rural colleges with limited resources have only nominal "paper compliance".

Institutional Apathy and Systemic Discrimination: The authors, in their paper, using the research done by Latika Gupta, have argued that the regulations deal with surface-level discrimination, while the underlying systemic discrimination in terms of financial gaps and social exclusions, which do not fall within the formal complaint mechanisms, are not being addressed.

The "Fear v. Equity" paradox: The regulations have also met with backlash from general category students, as they perceive the regulations to have a chilling effect on their academic freedom. This paradox reveals the underlying reality that addressing discrimination can sometimes involve the loss of privilege that was not previously challenged.

Representation without power: The regulations require representation from reserved categories in the equity bodies, without actually providing them any power.

Intersectional Invisibility: Single-axis frameworks inadequately capture compounded marginalization. And example of this is a Dalit woman with disabilities in a rural institution faces barriers that the current formal complaint mechanism cannot address.

The authors recommend five interconnected reforms: establishing a dedicated Educational Equity Fund with different resource allocation based on student composition and institutional capacity: creating an independent National Educational Equity Commission with investigative powers; mandating comprehensive capacity-building training for equity personnel; extending frameworks beyond formal discrimination to address linguistic pluralism and requiring intersectional data disaggregation in order to identify compounded marginalization.

Therefore, the paper highlights that while the 2026 regulations show the necessary regulatory evolution, their success depends on complementary governmental action addressing the resource disparities that structure the current landscape.

5. *"Affirmative Action in Indian Higher Education,"* Veronica Frisancho Robles and kala Krishna[xiii]

This paper examines India's caste-based affirmative action policies in higher education using data from elite engineering institution's 2008 graduating class and 2009 entrance exam applicants. The study addresses three central debates: targeting, catch-up and mismatch.

The authors state that India offers superior conditions for evaluating affirmative action compared to the U.S with transparent admission criteria, reservation quotas creating substantial admission standard differences and rigid curriculum prevents students from selecting easier courses, making grades more reliable indicators of performance. The study finds that caste-based preferences effectively target economically disadvantaged students. While a small subset of wealth SC/ST students exists who perform like general-category peers, the vast majority of SC/ST students are significantly poorer than general-category students. Using entrance exam data covering all applicants, the authors demonstrate that minority students admitted through preferences come from substantially poorer districts that the general-category students they displace, suggesting affirmative action successfully redistributes educational opportunities towards economically disadvantaged populations. Evidence contradicts the catch-up hypotheses. The supposed narrowing of the performance gap between general and SC/ST students from first year to graduation by 15%, disappears when relative

performance is measured. The authors noted that SC/ST students in non-selective majors maintain their positions but those in competitive majors fall behind their peers rather than catching up.

The mismatch hypothesis suggests that students admitted beyond their preparation levels would perform better in less selective settings., especially for SC/ST students. For SC/ST students, selective major enrolment reduces wages by approximately 38% compared to similar SC/ST students in non-selective majors, even controlling for grades and backgrounds. This provides compelling evidence for mismatch effects. Additionally, SC/ST students in selective majors report significantly higher stress and discomfort compared to their peers in less selective majors, documenting psychological cost of competitive academic environments.

This study finds that systemic occupational sorting disadvantages minorities. SC/ST students are significantly less likely to obtain prestigious finance and consulting positions, even controlling for majors, grades and background characteristics suggesting discrimination may operate through job placement rather than wages.

This study demonstrates that caste-based targeting reaches economically disadvantaged populations, catch-up does not occur (particularly in selective majors), mismatch effects substantially reduce both wages and well-being for minority students in selective programs, and labour market discrimination operates through occupational sorting. These findings suggest potential policy benefits from better matching students to programs aligned with their preparation levels.

CONCLUSION

The UGC's Promotion of Equity in Higher education Institutions Regulations 2026 finds its roots in a long and painful past of exclusion and humiliation within Indian higher educational institutions. The regular instances of caste-based discrimination, student deaths and tragedies like that of Rohit Vemula and Payal Tadvi, and the rising numbers of reported cases indicate that this is not an isolated incident but a larger problem withing the higher educational institutions in India. In this context, it is not only a choice but a constitutional mandate that finds support in **Articles 14.15.16. and 21** along with the directive principles contained in Article 38 and 46 of the Constitution.

It is also noted in this study that the 2026 regulations, although a step in the right direction, may have some drawbacks that need to be addressed, such as the question of vagueness, the role of natural justice in procedure and the question of overreach and the regulations of academic freedom, which may warrant a review by the Supreme court and fine-tuning to ensure that the regulations do not result to being bureaucratic burdens or mere symbolism.

Such regulations are a necessary step forward, from soft language to hard accountability. After ages, equity has been treated as an imperative with consequences rather than a buzzword. This is a huge change in the governance of higher education in India. Rules alone are not capable of fixing deep hierarchies that are part of university culture. Regulations by themselves cannot bring real cultural change. What is needed is proper representation in decision-making, among faculty and in how power is shared amongst the people. It is important to ensure that this representation should be meaningful, not just symbolic and marginalized groups should have real roles in creating knowledge and shaping governance. Equity as a concept means reducing the distance between rights guaranteed by the Constitution and the harsh realities that some people face in everyday life. Regulation should be the point connecting social justice with fairness by helping reduce inequalities while also making institutions stronger. In order for this to be impactful, we must better understand how different types of marginalization intersect and impact individuals.

It is also important that future regulations also encourage **epistemic inclusion** which in simple terms

refers to thinking about whose knowledge is valued, whose experiences influence what is taught and whose histories are talked about in academics. If there is no fairness in whose knowledge and victories are included, then rules and policies alone cannot bring real change.

The new rules and regulations have pushed us as a society to face the reality of discrimination which is still very much prevalent in education. But, fixing this gap between what we hope for and actual outcomes requires more than these written rules. It calls for strong political commitment, support and truthful social reflection. Only then can universities go beyond providing enrolment to students and begin making students feel intrinsic part of the society

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AI-GENERATED DEEPFAKES AND THE CONSTITUTIONALISATION OF PERSONALITY RIGHTS IN INDIA: INTELLECTUAL PROPERTY, ARTICLE 19 AND 21, AND THE GOVERNANCE OF SYNTHETIC MEDIA

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Abstract

The rapid proliferation of artificial intelligence–generated deepfake videos and images has introduced complex challenges to existing legal frameworks governing identity, authorship, and individual autonomy. In India, these challenges have exposed the structural limitations of classical intellectual property regimes in addressing harms arising from the unauthorised replication and manipulation of personality attributes such as name, image, voice, and likeness. This article examines how Indian courts have responded to these regulatory gaps through the progressive constitutionalisation of personality rights, drawing upon Articles 19 and 21 of the Constitution. It argues that personality rights are increasingly being treated as a hybrid doctrinal construct—situated at the intersection of intellectual property, constitutional dignity, and equitable remedies—particularly in cases involving AI-generated synthetic media. Through a doctrinal analysis of intellectual property law and constitutional jurisprudence, the article demonstrates how courts have extended Intellectual Property rights-style enforcement mechanisms, including passing off principles, John Doe orders, and dynamic injunctions, to regulate deepfake-related harms. At the same time, it critically evaluates the judicial balancing of free speech claims under Article 19(1)(a) against the imperatives of dignity, reputation, and autonomy under Article 21. The article concludes by highlighting the need for a coherent governance framework that integrates intellectual property principles with constitutional safeguards to address the growing challenges posed by synthetic media technologies.

Keywords: Deepfakes; Personality Rights; Intellectual Property; Article 21; Article 19

Introduction

The rapid proliferation of artificial intelligence–driven generative technologies has fundamentally altered the relationship between identity, representation, and law. Among the most disruptive manifestations of this transformation are AI-generated deepfake videos and images—synthetic media that realistically replicate or manipulate an individual's face, voice, or bodily attributes without consent. Unlike earlier forms of digital manipulation, deepfakes do not merely distort reality; they manufacture *credible alternative realities*, thereby enabling unprecedented forms of identity appropriation (Bobby Chesney and Danielle Citron 2019). In the Indian legal context, this phenomenon poses acute challenges to existing intellectual property frameworks and constitutional protections alike.

Deepfakes are not confined to political misinformation or entertainment parody. Their more pernicious uses—non-consensual sexual imagery, fabricated speech, reputational sabotage, and unauthorised commercial exploitation—directly implicate individual autonomy, dignity, and reputation. What distinguishes deepfakes from conventional infringements is that the victim is neither the author nor the rights-holder of the impugned content, yet is its central subject (Khushi Saraf and Akshay Sriram 2024). This structural anomaly exposes a fundamental limitation of classical intellectual property law, which is premised on authorship, originality, and ownership, rather than on the protection of identity per se.

Indian intellectual property statutes—the Copyright Act, 1957 and the Trade Marks Act, 1999—offer, at best, fragmented and indirect remedies against

deepfake harms. Copyright law protects original expressions, not the personality embedded within them; trademark law guards source identifiers, not the integrity of human identity outside commercial confusion (Unni 2005). Consequently, individuals targeted by deepfakes often find themselves without a clear statutory IP remedy, despite suffering tangible reputational and dignitary harm. This normative gap has increasingly drawn Indian courts into constitutional terrain.

In recent years, the judiciary has responded to technological disruptions by progressively *constitutionalising personality rights*, situating them within the broader ambit of Article 21 of the Constitution of India (Bhatia 2019). While personality rights initially emerged as incidental protections under privacy and passing-off doctrines, judicial interpretation has gradually elevated them into an autonomous, enforceable category of rights grounded in dignity, autonomy, and informational self-determination[1]. This shift has been particularly pronounced in cases involving digital impersonation, voice cloning, and AI-generated content, where statutory IP law has proven inadequate[2].

At the same time, judicial intervention has not been unidirectional. Courts have been careful to balance personality rights against the constitutional guarantee of free speech under Article 19(1)(a), recognising the legitimate space for satire, critique, and artistic expression[3]. The challenge posed by deepfakes lies precisely at this intersection: they often masquerade as protected speech while operating as instruments of deception, misappropriation, and commercial exploitation. As a result, Indian courts have increasingly relied on IP-inspired doctrines—such as passing off, unfair competition, and equitable injunctions—while grounding enforcement in constitutional reasoning.

This article argues that AI-generated deepfakes have accelerated a distinctive Indian jurisprudential response: the emergence of a *constitutional-intellectual property hybrid framework* for the protection of personality rights. Rather than treating deepfakes solely as privacy violations or technological harms, courts have begun to conceptualise personality as a form of constitutionally protected intellectual and moral capital, deserving of robust judicial safeguards. This development reflects both judicial pragmatism and doctrinal innovation in the absence of a comprehensive statutory regime governing personality rights or synthetic media.

Methodologically, the article adopts a doctrinal and case-law–centric approach, analysing constitutional provisions, intellectual property statutes, and evolving judicial interpretations. By situating deepfakes within the broader trajectory of personality rights jurisprudence, the article seeks to demonstrate how Indian courts are redefining the boundaries of intellectual property and constitutional law to govern identity in the age of artificial intelligence.

Deepfakes and the Limits of Classical Intellectual Property Law

AI-generated deepfakes expose foundational limitations within India's classical intellectual property (IP) framework, which was neither designed to regulate synthetic identities nor to protect individuals from technologically mediated misappropriation of persona. While copyright, trademark, and unfair competition doctrines offer partial analogies, they remain structurally inadequate to address the specific harms caused by deepfake

[1] *Justice K.S. Puttaswamy (Retd.) v. Union of India*, (2017) 10 SCC 1.

[2] *Anil Kapoor v. Simply Life India & Ors.*, CS(COMM) 652/2023 (Del. HC Sep. 20, 2023), *Arijit Singh v. Codible Ventures LLP & Ors.*, 2024 SCC OnLine Bom 2445 and *Asha Bhosle v. Mayk Inc. & Ors.*, COM IPR SUIT (L) No. 27863 of 2025 (Bom. HC Sep. 29, 2025).

[3] *Anil Kapoor v. Simply Life India & Ors.*, CS(COMM) 652/2023 (Del. HC Sep. 20, 2023), para 38.

videos and images. This inadequacy has, in turn, catalysed judicial movement towards constitutional and personality-rights–based solutions.

Under the Copyright Act, 1957, protection is premised upon *originality* and *authorship* (Narayanan 2007). Deepfakes destabilise both concepts. In most cases, the individual whose face, voice, or likeness is synthetically replicated is not the author of the work, nor can such individual claim originality in the AI-generated output. Conversely, the creator of the deepfake—often anonymous or operating through automated systems—may assert authorship despite engaging in deceptive appropriation. This inversion of authorship undermines copyright's normative logic, wherein protection is granted to creative labour rather than to identity itself (Hughes 1988). As a result, victims of deepfakes frequently find themselves without a direct copyright remedy, even when their likeness is central to the infringing content. The growing prevalence of generative AI thus exposes a significant remedial gap within copyright law when identity, rather than creative expression, is the locus of harm.

Trademark law and the common law tort of passing off offer a closer, though still imperfect, parallel. Indian courts have long recognised that names, images, and other identifying attributes can function as source identifiers, particularly in the case of public figures[4]. Deepfakes, especially when deployed for commercial gain, may amount to a form of digital passing off by falsely suggesting endorsement, association, or sponsorship. However, traditional passing off actions require proof of goodwill, misrepresentation, and damage—elements that may be difficult to establish where deepfakes circulate virally without a clear commercial transaction or identifiable defendant (Wadlow 2021). Moreover, deepfake harms often extend beyond consumer deception to encompass dignitary and reputational injuries, which trademark law is ill-equipped to address.

The doctrine of unfair competition, though not statutorily codified in India, has emerged through judicial interpretation as a flexible tool to restrain misappropriation of commercial value (Ahuja 2017). In personality rights litigation, courts have increasingly characterised unauthorised use of name, voice, or likeness as unfair commercial exploitation[5]. Deepfakes fit squarely within this logic when they monetise identity without consent. Yet even here, the protection remains contingent upon demonstrating commercial gain, leaving non-commercial but harmful deepfakes—such as those used for harassment, political manipulation, or reputational sabotage—largely outside the scope of IP-based remedies.

These doctrinal limitations reveal a deeper structural problem: intellectual property law is oriented towards protecting *commodified creativity*, not *personal identity*. Deepfakes, by contrast, convert identity itself into a manipulable digital resource, blurring the distinction between personhood and property. The absence of a clear statutory framework addressing this transformation has compelled Indian courts to rely on equitable principles and constitutional reasoning to protect individuals from synthetic misrepresentation (Banerjee 2023). In recent personality rights cases, judicial remedies have drawn upon IP-style enforcement mechanisms—such as injunctions, John Doe orders, and dynamic restraints—while grounding the substantive right in constitutional notions of autonomy and dignity rather than in statutory IP entitlements.[6]

Accordingly, while intellectual property law provides important conceptual tools and remedial techniques, it cannot, by itself, adequately govern the phenomenon of AI-generated deepfakes. The failure

[4] *D.M. Entertainment Pvt. Ltd. v. Baby Gift House*, MANU/DE/2043/2010.

[5] *Modicare Ltd. v. Gautam Bali*, 2019 SCC OnLine Del 10511.

[6] *UTV Software Communication Ltd. & Ors. v. 1337X.to & Ors.*, 2019 SCC OnLine Del 8002.

of classical IP categories to capture identity-based harms explains the judiciary's turn towards the constitutionalisation of personality rights. This shift does not displace IP law but repositions it as a supporting framework within a broader constitutional architecture—one that recognises personal identity as deserving of protection beyond the confines of authorship, originality, or commercial goodwill.

Article 21 and the Constitutionalisation of Personality Rights

The inability of classical intellectual property regimes to adequately address the harms caused by AI-generated deepfakes has prompted Indian courts to turn increasingly towards Article 21 of the Constitution as a normative and remedial anchor. This judicial move has resulted in what may be described as the constitutionalisation of personality rights, wherein attributes of identity—such as name, image, voice, likeness, and persona—are protected not merely as commercial interests but as integral components of individual dignity and autonomy[7].

Article 21, which guarantees the right to life and personal liberty, has undergone significant interpretive expansion over the past four decades. From its early procedural understanding, the provision has evolved into a repository of substantive rights encompassing dignity, privacy, autonomy, and informational self-determination. The Supreme Court's decision in *Justice K.S. Puttaswamy (Retd.) v. Union of India* marked a decisive moment in this evolution by recognising privacy as a constitutionally protected right intrinsic to human dignity. Importantly, the judgment conceptualised privacy not as a single, monolithic right but as a cluster of interests, including decisional autonomy, control over personal information, and protection of identity.

It is within this expanded understanding of Article 21 that Indian courts have located personality rights. While early cases treated unauthorised use of a person's name or image as an incidental privacy violation or as a matter of passing off, recent jurisprudence reflects a shift towards recognising personality rights as an autonomous constitutional interest[8]. This shift is particularly significant in the context of deepfakes, where the harm suffered by the individual is not limited to economic loss or reputational damage, but extends to the erosion of control over one's very identity.

AI-generated deepfakes operate by extracting and replicating personal attributes—most notably facial features and voice—without the knowledge or consent of the individual concerned. Unlike traditional forms of misrepresentation, deepfakes create a convincing illusion of authenticity, thereby collapsing the distinction between the real and the synthetic. This technological capability strikes at the heart of personal autonomy, a value that Article 21 has consistently sought to protect. The involuntary insertion of an individual into fabricated visual or audio-visual narratives deprives them of the freedom to determine how their identity is expressed, represented, or commercialised in the public domain.

Judicial recognition of this harm is evident in recent personality rights cases, where courts have emphasised the individual's exclusive right to control the use and dissemination of attributes uniquely associated with them[9]. Although these cases often arise in the context of celebrity litigation, the underlying constitutional logic is not confined to public figures. Rather, the courts' reasoning reflects a broader concern with safeguarding dignity and identity in a digitally mediated society, where technological tools enable large-scale and irreversible misuse of personal attributes.

[7] *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248; AIR 1978 SC 597; (1978) 2 SCR 621.
[8] *Anil Kapoor v. Simply Life India*, 2023 SCC OnLine Del 777.
[9] *Amitabh Bachchan v. Rajat Nagi & Ors.*, CS(COMM) 819/2022 (Delhi High Court Nov. 25, 2022).

The constitutionalisation of personality rights also reflects a conceptual move away from viewing identity solely through the lens of property or privacy. Under Article 21, personality is increasingly treated as a form of constitutionally protected moral and intellectual capital, deserving of protection irrespective of statutory recognition (Liang 2016). This approach allows courts to overcome the doctrinal limitations of intellectual property law, particularly in situations where the victim of a deepfake is neither the author nor the owner of any copyrightable work. By grounding protection in dignity and autonomy rather than originality or authorship, Article 21 provides a more inclusive and normatively robust framework for addressing deepfake harms.

At the same time, this judicial strategy underscores the adaptive capacity of constitutional law in responding to technological change. In the absence of a comprehensive statutory regime governing personality rights or AI-generated content, courts have relied on Article 21 to craft remedies that are preventive rather than merely compensatory. Injunctions restraining the creation and dissemination of unauthorised deepfakes are justified not only as a means of preventing economic exploitation, but as necessary to avert continuing violations of personal liberty and dignity.

However, the constitutionalisation of personality rights is not without its challenges. The expansive use of Article 21 raises concerns about doctrinal overreach and the potential dilution of constitutional standards. Yet, in the specific context of deepfakes, this development appears less as an act of judicial excess and more as a response to a regulatory vacuum. By positioning personality rights within Article 21, Indian courts have sought to ensure that technological innovation does not outpace constitutional protections for the individual.

In sum, Article 21 has emerged as the primary constitutional site for the protection of personality rights in India, particularly in cases involving AI-generated deepfakes. This development signifies a broader jurisprudential trend in which identity is understood as central to personal liberty and dignity, warranting protection even in the absence of explicit statutory recognition.

Article 19, Synthetic Speech, and Judicial Balancing

The constitutionalisation of personality rights through Article 21 inevitably invites a countervailing inquiry under Article 19(1)(a) of the Constitution, which guarantees freedom of speech and expression. In the context of AI-generated deepfake videos and images, this tension assumes a distinctive character, as courts are required to adjudicate claims where synthetic speech is asserted as a form of expression, creativity, or even parody, while simultaneously producing tangible harms to individual personality and reputation. Indian constitutional jurisprudence has thus been compelled to recalibrate the traditional free speech framework to account for technologically mediated deception.

At a doctrinal level, Indian courts have consistently recognised that the freedom of speech under Article 19(1)(a) is not absolute and is subject to reasonable restrictions enumerated under Article 19(2), including defamation, decency, morality, and public order (Jain 2018). Deepfake content—particularly when deployed without consent and with the potential to mislead—frequently falls within these constitutionally permissible restrictions. Unlike conventional speech, deepfakes are not merely expressive acts; they are algorithmically constructed representations that simulate identity, often blurring the boundary between truth and fabrication. This feature renders them qualitatively different from satire, caricature, or artistic imitation, which Indian courts have traditionally protected.

Judicial engagement with personality rights litigation demonstrates an emerging consensus that speech which derives its communicative force from deception cannot claim robust constitutional

protection[10]. Where deepfake videos or images are used for commercial gain, impersonation, or reputational harm, courts have shown little hesitation in subordinating Article 19(1)(a) claims to the individual's right to dignity and autonomy under Article 21[11]. This approach mirrors the intellectual property doctrine of balancing proprietary interests against expressive freedoms, particularly in cases involving passing off, trademark dilution, or unfair competition. The analogy is instructive: just as commercial speech that misleads consumers attracts regulatory intervention, synthetic speech that misleads the public by appropriating another's persona attracts constitutional restraint.

Moreover, Indian courts have drawn a careful distinction between transformative expression and exploitative replication. Deepfakes that merely reproduce an individual's likeness, voice, or gestures through AI tools, without any meaningful transformation or critical commentary, are increasingly viewed as lacking expressive merit. Such content, when circulated at scale, undermines not only individual reputation but also the epistemic integrity of public discourse. Consequently, judicial reasoning has begun to frame deepfakes as a category of speech that erodes constitutional trust—an interest that courts have implicitly linked to the maintenance of public order and democratic legitimacy.

Importantly, this balancing exercise has been informed by intellectual property–style reasoning, even when adjudicated within a constitutional framework. Courts have assessed factors such as the purpose of use, commercial intent, likelihood of deception, and harm to goodwill—criteria traditionally associated with IP adjudication. This hybrid analytical method allows courts to preserve legitimate expressive freedoms, including parody and criticism, while restraining synthetic speech that amounts to identity appropriation. In doing so, the judiciary has avoided adopting a blanket prohibition on AI-generated content, opting instead for a context-sensitive evaluation rooted in constitutional proportionality.

The judicial reluctance to accord strong protection to deepfakes under Article 19(1)(a) also reflects a broader normative concern: synthetic speech is capable of producing irreversible harm at unprecedented speed and scale. Unlike defamatory print or broadcast speech, deepfake videos and images can be replicated, modified, and disseminated across platforms instantaneously, rendering post hoc remedies ineffective. This reality has strengthened the judicial case for pre-emptive restraints, including injunctions, without being perceived as prior censorship. By analogising deepfakes to infringing intellectual property rather than protected speech, courts have justified such restraints within constitutional limits.

In sum, Indian constitutional adjudication is gradually crystallising a principled approach to synthetic media: freedom of expression does not extend to technologically mediated impersonation that compromises dignity, autonomy, and reputational integrity. Article 19(1)(a) remains a vital constitutional safeguard, but its protective ambit contracts where speech is founded on deception and commercial exploitation. This evolving jurisprudence underscores how intellectual property principles have informed constitutional balancing, enabling courts to govern deepfakes without undermining the core values of free expression.

Remedies, Governance Gaps, and the Way Forward

The judicial response to AI-generated deepfakes in India has been marked less by statutory certainty and more by remedial innovation, drawing heavily from the enforcement logic of intellectual property law. In the absence of a dedicated legislative

[10] *Subramanian Swamy v. Union of India*, (2016) 7 SCC 221; AIR 2016 SC 2728.

[11] *Anil Kapoor v. Simply Life India*, 2023 SCC OnLine Del 777.

framework addressing personality rights and synthetic media, courts have relied on equitable and preventive remedies traditionally associated with IP litigation to curb the proliferation of deepfake harms.

A significant development in this regard has been the increasing use of John Doe orders, which allow courts to restrain unidentified and anonymous defendants who generate or disseminate deepfake content. Given the decentralised, transnational, and often anonymous nature of AI-driven content creation, conventional defendant-specific injunctions are frequently ineffective. John Doe orders enable courts to issue ex ante restraints, thereby preventing the circulation of infringing content even before specific infringers are identified[12]. This approach mirrors copyright and trademark enforcement strategies against online piracy and counterfeit networks, underscoring the continued relevance of IP-style remedies in regulating synthetic media.

Closely allied to this is the judicial deployment of dynamic injunctions, which extend injunctive relief to future and evolving instances of infringement without requiring repeated litigation[13]. Dynamic injunctions acknowledge the technical reality that deepfake content can be rapidly altered, re-uploaded, and redistributed across multiple platforms with minimal effort. By allowing injunctions to "travel" with the infringing content, courts have sought to overcome the procedural inertia that would otherwise render legal remedies illusory. This innovation reflects a pragmatic judicial understanding that deepfakes operate within an ecosystem of platforms, algorithms, and intermediaries rather than as isolated acts of infringement.

Notably, these remedial strategies also impose indirect obligations on digital intermediaries and AI platforms, compelling them to take proactive measures to disable access, remove content, and prevent re-uploads. While such obligations are not always explicitly grounded in statutory intermediary liability provisions, they emerge through the courts' equitable jurisdiction and constitutional duty to protect fundamental rights. This raises important questions about the evolving role of platforms as quasi-regulatory actors in the governance of synthetic media.

Despite these developments, the current approach remains structurally fragile. The heavy reliance on constitutional adjudication to address deepfake harms risks producing fragmented and inconsistent outcomes, contingent on judicial discretion rather than clear legislative standards. Over-constitutionalisation may also blur doctrinal boundaries, transforming personality rights into an all-encompassing claim that potentially chills legitimate speech, satire, and artistic expression. From an intellectual property perspective, the absence of statutory clarity leaves unresolved questions concerning the nature, scope, and duration of personality-based claims, as well as their relationship with existing IP rights.

This lacuna underscores the need for a coherent statutory framework that recognises personality rights as a distinct legal interest while harmonising them with intellectual property law and constitutional safeguards. Such a framework should clearly define protectable attributes of personality, establish consent-based thresholds for AI-generated content, and delineate permissible exceptions grounded in public interest and free expression. Importantly, legislative intervention would reduce the current burden placed on courts to function as de facto regulators of emerging technologies.

[12] A*mitabh Bachchan v. Rajat Nagi*, 2022 SCC OnLine Del 4109.

[13] *Sadhguru Jagadish Vasudev & Anr. v. Igor Isakov & Ors.*, CS(COMM) 578/2025 (Delhi High Court May 30, 2025).

At the same time, any regulatory response must avoid technological determinism or excessive prohibition. Deepfake technologies are not inherently illegitimate; their misuse, rather than their existence, generates constitutional and IP conflicts. A calibrated approach—combining statutory recognition of personality rights, platform accountability mechanisms, and proportionate judicial remedies—offers a more sustainable model of governance.

Conclusion

Indian courts have responded to the challenge of AI-generated deepfakes by creatively adapting intellectual property enforcement tools within a constitutional framework. While this judicial strategy has provided immediate relief against personality rights violations, it cannot substitute for comprehensive legislative action. The future governance of synthetic media in India will depend on the ability of lawmakers and courts to jointly construct a legal architecture that protects individual identity, preserves constitutional freedoms, and accommodates technological innovation without sacrificing legal certainty.

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A CRITICAL ANALYSIS OF PLATO, ARISTOTLE, AND JOHN STUART MILL'S IDEAS ON GENDER EQUALITY AND THEIR RELEVANCE TO CONTEMPORARY WOMEN IN INDIA

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ABSTRACT

Gender inequality continues to weaken constitutional democracy and human rights in India, despite efforts in legislation and policy. This study examines the status of women in modern India through the views of Plato, Aristotle, and John Stuart Mill. Plato supported limited inclusion of women in public life. Aristotle defended traditional gender roles, while Mill put forth a rights-based case for true equality. Using doctrinal methods and secondary sources, the research looks at gender gaps in education, employment, property rights, marriage, and violence against women in India. The study argues that Mill's liberal approach offers a better basis for current gender justice than older patriarchal models. It concludes that legal reform should go hand in hand with accountability, awareness, and structural change to create real equality for Indian women.

KEYWORDS: Gender Inequality; Constitutional Democracy; Women's Rights; Patriarchy; Feminist Political Philosophy;

INTRODUCTION

Gender inequality, or discrimination based on sex, is a serious violation of civil rights in many societies. It shows up in different ways, including sexual harassment, unequal pay for the same work, discrimination related to maternity, limited access to education and jobs, and social marginalization. Despite constitutional guarantees of equality, women in India still face structural and societal obstacles that stop them from fully exercising their rights. The Constitution of India guarantees equality before the law and prohibits discrimination based on sex. It also includes specific provisions to improve the status of women and promote social justice. However, in practice, many women in India still struggle to access the opportunities and protections that should be available to them. Deep rooted patriarchal attitudes, traditional gender roles, and societal expectations often limit women to domestic responsibilities. This restricts their involvement in economic, political, and public life. Gender disparity in India shows up in various indicators such as lower female literacy rates, unemployment, wage gaps, economic dependency, and an increase in poverty among women. According to the World Economic Forum's Gender Gap Report 2025,[1] India ranked 131st out of 148 countries in gender parity. This highlights the urgent need for structural reforms and social change.

The issue of gender equality has been debated by philosophers for centuries. Thinkers such as Plato, Aristotle, and John Stuart Mill have provided different views on the role, status, and abilities of women in society. While Plato supported a relatively progressive view of women's involvement in public life, Aristotle defended a hierarchical model of gender relations. John Stuart Mill strongly argued for women's legal and social equality.[2]This research paper examines the ongoing gender inequality in India even seventy-five years after independence. It aims to look at the philosophical ideas of Plato, Aristotle, and John Stuart Mill regarding gender equality and evaluate their relevance in addressing the current situation of women in India. By engaging with these classical and modern

[1] https://www.weforum.org/publications/global-gender-gap-report-2025

[2] Dr. Raju , *Gender Inequality in India*, 17 PJAE 1, 1-2 (2020) https://archives.palarch.nl/index.php/jae/article/view/3272

philosophies, the study explores how their ideas can help advance gender justice and social reform in today's Indian society.

STATEMENT OF PROBLEM

Even with constitutional guarantees of equality under Articles 14, 15, and 21 of the Constitution of India, gender inequality is still deeply rooted in Indian society. Women face discrimination in education, work, inheritance, political involvement, and protection from violence. Strong patriarchal norms, cultural traditions, economic dependency, and institutional bias make it hard to realize women's rights effectively. Though several protective laws have been passed, gaps in implementation remain. Often, societal attitudes support subordination instead of equality. This leads to a critical question, Can classical and liberal political philosophy offer a framework for understanding and tackling gender inequality in modern India? The issue is not just the presence of laws but the ongoing structural and ideological obstacles that hinder true gender justice. This study aims to critically explore these topics through philosophical analysis and socio legal evaluation.

RESEARCH OBJECTIVES

• To examine and highlight the main issues of gender inequality in modern India.
• To discuss and explain the views of Plato, Aristotle, and John Stuart Mill on women and gender equality, and to evaluate their relevance in today's global context, especially for Indian women.
• To assess these philosophers' ideas in relation to the current situation of women in India and explore how their perspectives might contribute to national progress and gender justice.

SCOPE AND LIMITATIONS OF THE RESEARCH

This research aims to link the ideas of Plato, Aristotle, and John Stuart Mill on gender equality with the present Indian socio legal context. The study mainly focuses on legal principles and is limited to an analysis of philosophical writings and related secondary literature. It does not include the views of other philosophers beyond these three thinkers. The research is confined to a review of existing research papers, scholarly articles, journals, textbooks, and credible online sources. It particularly examines how John Stuart Mill's concept of gender equality can be applied to the current situation in India as a framework for social progress.

RESEARCH METHODOLOGY

This study uses a doctrinal research methodology. The researcher conducts a thorough examination of both primary and secondary sources related to the ideas of Plato, Aristotle, and John Stuart Mill on gender equality and their relevance to modern Indian women. Primary sources include original philosophical texts, legal documents, and trusted online resources. Secondary sources consist of textbooks, scholarly articles, research papers, journals, and writings by notable authors. Through careful analysis of these materials, the study intends to evaluate how classical and modern philosophical theories apply to the current Indian context.

REVIEW OF LITERATURE

E. S. Smith, "*John Stuart Mill's "The Subjection of Women": A Re-Examination*", JSTOR (2001)

In this article, the author examines The Subjection of Women by John Stuart Mill through textual and contextual analyses, including personal, historical, and literary perspectives. The study reviews several major criticisms raised by contemporary scholars and reassesses them through a close reading of the text and deeper contextual interpretation. The author ultimately argues that "The Subjection of Women" should be understood not merely as a philosophical treatise, but as a political intervention aimed at securing women's suffrage rights.

Sehreen Far Bokhari, "*Mill and the Status of Women,"* AH (2017)

In this article, the author explores John Stuart Mill's position on the status of women from a liberal feminist perspective. The study also points out certain weaknesses in Mill's arguments, such as inconsistencies and circular reasoning, while evaluating criticisms raised by other thinkers. It provides historical background to the development of Mill's liberal feminist ideas, his political philosophy, and his utilitarian approach to human welfare. The author concludes that both the consistencies and inconsistencies in Mill's thought were shaped by the socio- political environment in which he lived.

I. A. Kanu, "*The Equality of Sexes in J. S. Mill Vis-à-Vis the Participation of Women in the Nigerian Labour and Economy*," AJOL (2012)

In this paper, the author investigates the participation of women in the Nigerian labour force and economy. Using empirical data, the study examines this situation in light of J. S. Mill's argument for gender equality. While not claiming to exhaust all aspects of the issue, the paper adopts a fresh approach by arguing that gender equality, as advocated by Mill, serves as an effective strategy for enhancing women's participation in Nigeria's labour market and economic development.

CHAPTER- I

GENDER INEQUALITY IN INDIA

Although gender equality is a basic human right, it is one of the biggest issues affecting human rights in our society today. Gender equality helps create peaceful and strong communities, support sustainable development, and boost economic growth through women's empowerment. India still ranks among the countries with the lowest gender equality index. Despite many efforts over the past few decades to eliminate discrimination and reduce the gender inequality gap, it remains a serious problem. This issue persists due to attitudes, stereotypes, and the strong social norms of a male centered culture. A significant portion of India's population is made up of women, but they often face obstacles in the country's economic growth. According to the Global Gender Gap Report 2022, India ranks 135 out of 146 countries, which is quite low. Gender inequalities are clear and widespread in India, even though the country's constitution guarantees equal rights for men and women. Patriarchal and patrilineal traditions are prevalent, giving men more advantages than women in these social systems. Men typically have control over property and wealth and are seen as authority figures in families and leadership roles. This is especially true regarding inheritances, where wealth and property usually pass from father to son. Dowries also reflect this dynamic, as the bride's family often pays the groom's family in cash or kind. The preference for sons over daughters is another important factor contributing to gender inequality. Sons are believed to have more economic value because they can better support the family farm or business.[3]

Poverty, unemployment, strong conservative beliefs, and lack of education are the main causes of gender inequality. Some women are in good positions, while others find themselves in vulnerable situations. Literacy is the first step toward understanding women's rights and empowerment. It provides women with the tools they need to reach their full potential. According to data from Statista,[4] the male literacy rate in India is about 84%, while the female literacy rate is about 72%. This gap is even more pronounced in rural areas than in urban centers. National research shows that illiterate women are more likely to marry young and endup unemployed or underpaid. Additionally, marginalized women tend to have more children, which can negatively affect their

[3] CARE, https://www.careindia.org/blog/gender-in-inequality/(viewed on Jan 12,2026,9.00 PM)

[4] https://www.statista.com/

quality of life and that of their families. The results also indicate that women with less education are more likely to be controlled by their husbands.

Despite the growing recognition of the importance of education, especially for women, the literacy gap remains unaddressed by government policies and programs.

There is also a lack of awareness among women about their rights and their ability to achieve equality, particularly for rural women. Social customs, beliefs, and practices further contribute to gender inequality.

CHAPTER II

PLATO, ARISTOTLE AND JOHN STUART MILL'S VIEWS ON WOMEN

Plato's Idea on Women

Plato shares his views on women mainly in Book V of the Republic. Here, the discussion focuses on justice, governance, education, and the ideal state's structure. Through Socrates, Plato raises important questions about marriage, education, family organization, and jobs. This marks one of the earliest philosophical discussions on gender equality.

From a feminist standpoint, Plato's ideas seem progressive for ancient Greece. He argues that women should receive the same education as men, especially in the guardian class. He claims that if both men and women are to perform the same roles in society, they must be trained similarly. According to Plato, the main difference between the sexes lies in biological differences, not in intelligence. Education should therefore depend on personal skills and natural talents, not gender.

Plato famously maintains that women who have the right natural abilities should be allowed to become Guardians and rulers. He thus opens up political participation and intellectual growth for women, which was rare in Greek society. Many scholars view Plato as an early supporter of female education and some degree of gender equality.

However, a closer look shows contradictions in Plato's philosophy. While he acknowledges women's intellectual potential, he still holds onto certain patriarchal views. In his vision of society, women are often categorized with children and slaves, suggesting a hidden hierarchy. Furthermore, Plato claims that women, as a group, are generally weaker than men, although he admits that some individual women may be stronger and more capable.

Plato's idea to eliminate the traditional family among the Guardian class adds complexity to his views. He recommends communal marriages and the sharing of women and children to promote unity and prevent divisions within the state. Following a eugenics principle, he suggests that the "best" men and women should be matched to produce superior offspring, while less desirable pairings should be avoided. Though this aims for political stability and equality among Guardians, it restricts individuals, especially women, from choosing their partners. The idea of women being held "in common" implies they are primarily seen as tools for ensuring social unity and political order.

Thus, Plato's philosophy shows a tension between promoting educational inclusion and maintaining patriarchal control. While he recognizes women's intellectual abilities and political potential, his arguments come from a male centered viewpoint, prioritizing the state's stability over women's freedom. Still, including women in philosophical discussions marks a significant step toward acknowledging them as subjects worthy of political and intellectual focus.[5]

[5] Hiling Wang , *Plato on Women* , ACADEMIA https://www.academia.edu/19661294/Plato_on_women (Viewed on Jan 13, 2026, 10.00 PM)

Aristotle's Idea on Women

Aristotle offers a very different and more hierarchical view of women. His ideas rest largely on his biological and metaphysical theories, particularly in Generation of Animals and Politics.

Aristotle believes that the male principle is superior and more "divine" than the female principle. In his biological theory, he argues that women are "defective" or "misbegotten" males because they cannot produce semen, which he sees as central to reproduction. According to him, females contribute only material, while males provide form and soul. This biological view serves as the basis for his broader social theory.

Although Aristotle admits that women have rational souls, he believes they lack the full ability to use reason independently. He claims that women are naturally passive and need male leadership. In Politics, he compares the husband-wife relationship to that of a ruler and a subject. As a result, Aristotle confines women to the home, assigning them roles related to household management and child-rearing instead of public or political life.[6]

Aristotle's view of gender is clearly hierarchical. He regards men as rational, active, and fit for political power, while he identifies women as irrational, passive, and naturally inferior. For centuries, this philosophical framework profoundly impacted Western thought and supported patriarchal social systems.

Some modern scholars suggest that Aristotle's arguments were influenced by the scientific limitations and competing biological theories of his time. Nevertheless, his writings provided a philosophical justification for women's subordination.[7]

John Stuart Mill's Idea on Women

John Stuart Mill offers one of the strongest and most organized cases for gender equality in modern philosophy. In his important work, The Subjection of Women, Mill criticizes the legal and social oppression of women in Victorian society and advocates for complete equality between the sexes.

Mill argues that the current social relations defining men and women, marked by legal subordination, are unfair and hinder human progress. He rejects the idea that women are naturally inferior, asserting that their perceived shortcomings come from social conditioning and lack of opportunities. According to Mill, society has never permitted women to develop their abilities fully, so any claims about their natural limits are unfounded.

Mill compares married women's situation to a form of domestic slavery. Under Victorian law, married women had no property rights, and their legal identity merged with that of their husbands. Mill strongly disagreed with such laws and supported reforms like the Married Women's Property Bill. He believed that marriage should be a partnership between equals, not a situation of dominance and submission.

Moreover, Mill advocated for women's right to vote and political involvement. He reasoned that since women make up half the population, they should have an equal say in the laws that affect them. He believed there was no rational or moral basis for denying women the right to vote. Mill also makes a practical case for women's freedom. He argues that society benefits when women are educated and empowered. Educated women improve relationships within marriage, enhance child care, and contribute to social progress. Unlike Plato and Aristotle, Mill focuses on women's independence and individual rights rather than subordinating them to state interests. In this way,

[6] IVYPANDA https://ivypanda.com/essays/aristotle/ (viewed on Jan 13, 2026,11.00 PM)
[7] LFC https://www.lakeforest.edu/news/everybodys-a-little-bit-sexist-a-re-evaluation-of-aristotles-and-platos-philosophies-on-women (Viewed on Jan 14, 2026,2.00 PM)

Mill's philosophy marks a significant shift from traditional hierarchical models to a modern view of real equality based on liberty, justice, and human development.[8]

Comparative Critical Analysis and Relevance to Contemporary India

The philosophical views of Plato, Aristotle, and John Stuart Mill represent three different stages in the development of gender thought. This progression goes from conditional inclusion to structured subordination and finally to full legal and political equality.

(a) Plato

Conditional Equality within a Patriarchal Framework Plato's philosophy is progressive for its time. He recognized that women have intellectual abilities similar to men. His argument that women should receive the same education as men and could become Guardians challenges the deeply rooted patriarchal norms of ancient Greece. However, Plato's idea of equality is functional and state-oriented rather than rights-based. Women are included in public life primarily to strengthen the unity and efficiency of the state. His concepts of communal marriage and sharing women highlight the lack of individual freedom, especially for women. Thus, Plato supports educational and political involvement, but not personal liberty.

Relevance to India: Today in India, women have constitutional equality, access to education, and political representation in local governance. Yet, similar to Plato's model, women's empowerment is often justified in terms of national development instead of individual freedom. Women are encouraged to contribute to economic growth, but issues like marital autonomy, reproductive rights, and personal liberty still face challenges. Therefore, Plato's ideas reflect India's transitional stage progressive in structure but limited in social change.

(b) Aristotle

Naturalization of Female Subordination Aristotle's theory is fundamentally hierarchical. He bases women's inferiority on biological claims and argues that women are naturally subordinate to men. His approach legitimizes male dominance by framing it as "natural." This philosophical view has historically shaped patriarchal legal systems and social norms, reinforcing domestic confinement and exclusion from public power.

Relevance to India: Many gender inequalities in India still reflect assumptions similar to Aristotle's ideas. Cultural practices such as son preference, restrictions on women's movement, dowry, and domestic decision-making power stem from the belief that men should be the heads of households. Even when laws ensure equality, social structures often treat women as secondary members of society. Aristotle's philosophy helps us see how deeply ingrained biological justifications can sustain inequality.

(c) John Stuart Mill

Equality as a Principle of Justice and Utility In contrast, John Stuart Mill promotes a rights based and freedom centered theory of gender equality. In The Subjection of Women, he argues that the legal subordination of women is morally wrong and socially harmful. Unlike Plato, Mill does not justify equality for state efficiency; unlike Aristotle, he does not link inequality to biology. Instead, he attributes women's subordination to historical oppression and unjust social conditioning. Mill emphasizes: Equal education, Property rights within marriage, Political suffrage, Freedom of choice, Intellectual companionship in marriage His theory is rooted in liberalism and utilitarianism, asserting that society

[8] Sehreen Fan Bokhari, Mill and the status of women ,57AH 27, 30-41(2017) http://pu.edu.pk/images/journal/phill/pdf_files/3_v37_17.pdf

improves when both men and women can fully develop their abilities.

Relevance to India: Mill's philosophy is very relevant to modern India. While constitutional provisions assure equality, the ongoing presence of structural inequality shows that legal reform alone falls short.[9] Mill's focus on: Changing social attitudes, Giving women a political voice, Ensuring economic independence, Reforming marriage laws remains directly applicable. His ideas align closely with contemporary feminist constitutionalism and human rights discussions in India. Conclusion of Comparative Chapter Plato initiated the philosophical acknowledgment of women's intellectual abilities. Aristotle established biological determinism that justified subordination. Mill challenged both state centered and biological arguments and pushed for complete equality grounded in justice and freedom. For today's India, Mill's model offers the strongest basis for reform. However, Plato's emphasis on equal education remains crucial, and Aristotle's framework helps identify the cultural roots of discrimination. Thus, advancing women in India requires: Structural reform -Plato, Cultural transformation- challenging Aristotle, Legal and political equality- Mill.

CHAPTER III

CRITICAL ANALYSIS OF THE IDEAS OF PLATO, ARISTOTLE AND JOHN STUART MILL IN THE CONTEXT OF PRESENT INDIAN WOMEN

This chapter examines gender inequality in India across several key areas: education, political empowerment, economic participation, marriage and family, religion, sports, and crimes against women. It uses data and recent reports to assess how the ideas of philosophers like Plato, Aristotle, and John Stuart Mill can be applied in the Indian context. The chapter also critiques the shortcomings in each philosopher's views.

A. Education

Education is crucial for empowerment and social mobility. Despite improvements in enrollment at the primary level, gender gaps still exist in secondary and higher education. The Global Gender Gap Report 2022 from the World Economic Forum ranks India 107 out of 146 countries in educational attainment. Data from NFHS-5 shows that male literacy is around 84.7%, while female literacy is about 70.3%, indicating a significant difference. In many rural and economically disadvantaged areas, girls' education is often deprioritized because of the belief that daughters "belong" to another family after marriage. This leads to viewing investment in their education as economically unwise. John Stuart Mill argued for equal access to education in The Subjection of Women, stating that social prejudice not nature limits women's intellectual growth. Similarly, Plato believed that if women are expected to do the same jobs as men, they should also receive the same education.

Mill's argument remains highly relevant. Denying education keeps people unaware of their rights, dependent on others, and socially vulnerable. Aristotle's claim that women have inherent intellectual limits contradicts evidence showing women's academic success in India. Therefore, Plato's and Mill's ideas on educational equality provide a solid basis for closing India's literacy gap.

B. Political Empowerment

Political representation is a sign of real equality. India ranks 48th out of 146 countries in political empowerment (Global Gender Gap Report 2022).[10] Though women's representation in Parliament has gradually increased to around 14–15%, it still falls

[9] Deepika Mishia, *John Stuart Mill's view on women and its relevance* . 8 IJCRT 811, 810- 812 (2020) https://www.ijcrt.org/papers/IJCRT2012088.pdf

[10] Global Gender Index, 2022

short compared to their share of the population.[11] Mill focused on women's right to vote and argued that excluding women from politics slows societal progress. He insisted that democracy cannot be genuine if half the population is left out of legislative processes. While Plato did not advocate for modern democracy, he acknowledged that capable women could serve as Guardians and leaders.[12] Aristotle's belief that women are naturally unfit for leadership is contradicted by India's political history, which includes successful leaders like J. Jayalalithaa and Mamata Banerjee, who have shown strong leadership abilities.[13] Mill's ideas align closely with the need for reforms like better legislative representation and reservation policies. Including women in politics strengthens democratic legitimacy and makes policies more responsive to gender concerns.[14]

C. Workplace Discrimination and Economic Participation

India has a significant gender gap in economic participation. Reports highlight wage differences, job segregation, and a low rate of female participation in the workforce. Discrimination affects pay and career opportunities heavily.[15] Mill criticized wage inequality and the laws that denied married women control over their earnings. He argued that economic independence is key to women's freedom. Plato similarly asserted that women who can perform the same jobs as men should get equal training and opportunities.[16]

Aristotle's view that women belong in domestic roles continues to shape societal attitudes in India, where women's jobs are often seen as secondary to household duties. Mill's call for equal pay and changes to marriage laws is particularly relevant in India, where motherhood and unpaid care often hamper women's career growth. Economic empowerment benefits not just individuals but also national productivity and social stability.[17]

D. Marriage

Family Marriage is a major area of gender inequality in India. Studies show that many women leave the workforce after having children, and only a small number return to leadership positions.[18] Practices like dowry, early marriage, and unequal domestic responsibilities remain widespread. Plato's communal family setup limits individual freedom and reduces women to mere tools for state welfare. Aristotle saw

[11] Dr Santosh Kumar Mohapatra, *Faltering on the road to close the gender gap,* SAMBA(Viewed on Jan 16, 2026, 8.00 PM) https://sambadenglish.com/faltering-on-the-road-to-closing-the-gender-gap/

[12] Deepika Mishia, *John Stuart Mill's view on women and its relevance* . 8 IJCRT 811, 810- 812 (2020) https://www.ijcrt.org/papers/IJCRT2012088.pdf

[13] Marj Maceda , *Women in Politics , the contemporary issue of women representation* , ACADEMIA (viewed on Jan 16, 4.00PM)https://www.academia.edu/34153187/Women_in_Politics_The_Contemporary_Issue_of_Women_Political_Re presentation

[14] Fauzia Khan , *Indian politics was a clear gender imbalances : That's why we need the women's reservation bill*, THEWIRE (viewed on Nov 24,2022, 2.00 PM)https://thewire.in/women/indian-politics-has-a-clear-gender-imbalance-thats-why-we-need-the-womens-reser vation-bill

[15] THETIMESOFINDIA, https://m-timesofindia-com.cdn.ampproject.org/v/s/m.timesofindia.com/business/india-b usiness/gender-discrimination-reason, viewed on Jan 17,2026, 3.00 PM)

[16] Deepika Mishia, *John Stuart Mill's view on women and its relevance* . 8 IJCRT 811, 810- 812 (2020) https://www.ijcrt.org/papers/IJCRT2012088.pdf

[17] Andrea Borghoni, *Plato and Aristotle on women : Selected quotes* ,THOUGHTCO (viewed on Nov 22, 2022, 3.00 PM) https://www.thoughtco.com/plato-aristotle-on-women-selected-quotes-2670553

[18] THEQUINT,https://www.thequint.com/neon/gender/india-ranks-low-at-135-in-world-economic-forum-global-gender-gap- report-2022 (viewed on Jan 22,2026,4.00 PM)

marriage as a hierarchy between ruler and ruled.[19] In contrast, Mill viewed marriage as a partnership among equals and criticized the legal subjugation of wives.[20] Mill's ideas offer the strongest basis for reform. Issues like marital rape (still poorly addressed), unequal household labor, and minimal paternity leave stress the need for shared parenting responsibilities. Aristotle's hierarchical view strengthens patriarchy, while Mill promotes equality in the private sphere.

E. Religious-Based Discrimination

Religious customs have historically influenced gender roles in India. Practices like temple entry restrictions and inequalities in personal laws highlight patriarchal readings of religious texts.[21] Mill warned against using tradition and religion to justify oppression. Plato's focus on equal capabilities would likely lead him to reject exclusion based on biological factors like menstruation.[22]

Legal actions, such as challenges to discriminatory practices, echo Mill's logical critique of tradition. Gender equality should take precedence over customs that infringe on fundamental rights.

F. Discrimination in Sports

There are clear gender disparities in sports, including unequal pay, inadequate representation, and lack of institutional backing. Plato supported physical training for women in both Republic and Laws, arguing that civic excellence requires developing all citizens.[23] Mill's principle of equality also advocates for equal participation. Aristotle's belief that women are physically weaker and should avoid rigorous activities continues to perpetuate stereotypes.[24]

Modern scientific research disproves Aristotle's claims. Women athletes in India have gained global recognition, challenging the idea that they lack capability.[25]Equal funding, representation, and support are essential to dismantle bias in sports.[26]

G. Crimes against Women

Data from the National Crime Records Bureau shows that over 400,000 cases of crimes against women were reported in 2022,[27] with increases in domestic violence, assault, and rape. These figures highlight systemic vulnerabilities.[28] Aristotle's view of women as weaker beings feeds into cultural narratives that normalize control and violence. Mill believed women are socialized into submission, making it hard for them to resist.

[19]STC, https://www.savethechildren.in/others/gender-discrimination-in-the-indian-society/ (Viewed on Nov 22, 2026,5.00 PM)

[20] Luci Brisson, *Women in Plato's republic*,9OEJ 130, 129-136(2012) https://journals.openedition.org/etudesplatoniciennes/277?lang=en

[21] Ayush Mishra, *Plato and Gender Equality : In context of Sabarimala*, MPNLU (viewed on Jan 24, 2026, 5.00 PM

[22] INDIATODAY, https://www.dailyo.in/politics/sabrimala-triple-talaq-why-religions-in-india-discriminate-against-women-27052 (Viewed on Jan 24,2026,4.00PM)

[23] Hannah Smith , *Sexism started with Aristotle* ,JSS (viewedon Jan 23, 2026, 9.00 PM)

[24] Deepti Kohli, *Gender Discrimination in Sports : Depleting respect of women Players in India* , 6IJSR 1493, 1494 (2012) https://www.ijsr.net/archive/v6i12/ART20179052.pdf

[25]Healther Reid, *Plato on women in Sport* , 47JPS 344, 344(2020) https://www.academia.edu/44072342/Plato_on_Women_in_Sport

[26] Deepika Mishia, *John Stuart Mill's view on women and its relevance* . 8 IJCRT 811, 810- 812 (2020) https://www.ijcrt.org/papers/IJCRT2012088.pdf

[27] National Crime Record Bureau , 2022

[28] TOI, https://timesofindia.indiatimes.com/india/womens-safety-in-india-between-official-data-and-lived-reality-in-2025-year-ender/articleshow/126190067.cms (Viewed on Jan 30, 2026)

Legal frameworks, including the Protection of Women from Domestic Violence Act, exist, but there are implementation challenges. Mill's focus on social reform, legal equality, and dismantling oppressive customs is vital for addressing gender-based violence. Achieving structural change requires gender-sensitive training for police, judges, and administrators.

ANALYSIS

Aristotle's framework upholds patriarchal hierarchy and is not useful for advancing gender justice. Plato's framework supports educational and civic inclusion, but is limited in personal freedom. John Stuart Mill's framework offers the most complete and relevant basis for gender equality, emphasizing freedom, legal reform, political involvement, and economic independence. For meaningful gender equality in contemporary India, we need: 1. Equal access to education and work 2. Political representation 3. Revisions to marriage and personal laws 4. Elimination of discriminatory religious practices 5. Protection against violence 6. Changing patriarchal attitudes While Plato recognized women's capabilities and Aristotle reflects historical oppression, Mill provides the most relevant model for today's Indian women

CONCLUSION AND SUGGESTIONS

This research looked at gender inequality in India through a philosophical and socio legal views, focusing on the ideas of Plato, Aristotle, and John Stuart Mill. The study aimed to see if classical and liberal philosophical frameworks can effectively address the current situation of Indian women. Gender inequality in India continues despite constitutional promises of equality. Disparities are clear in education, employment, political participation, property rights, and protection from violence. Patriarchal norms, preference for sons, economic dependency, and deep cultural practices shape women's experiences. Plato recognized that women have intellectual potential and pushed for equal education and participation in public life. However, his ideas were state-focused and conditional. Aristotle viewed women's subordination as natural and biological, reinforcing hierarchical gender roles. His framework does not hold up in today's democratic societies. In contrast, John Stuart Mill presented a rights based theory of gender equality based on liberty, justice, and individual autonomy. Mill rejected biological determinism and argued that women's subordination comes from historical oppression and social conditioning, not from natural inferiority. The analysis showed that many structural inequalities such as limited political representation, wage gaps, workplace discrimination, domestic violence, unequal marital power dynamics, and crimes against women reflect persistent patriarchal attitudes similar to those endorsed by Aristotle. Plato's focus on equal education and civic participation provides some guidance but does not address autonomy in private life. Mill's framework, however, offers a solid foundation for reform, especially regarding legal equality, economic independence, political representation, and marital partnership.

The study concludes that while legal reforms in India have promoted gender justice, ongoing violence, economic marginalization, and institutional bias highlight the gap between formal equality and real equality. Gender inequality in India is not just a legal issue but also a structural and cultural one. Mill's liberal and rights based approach offers the strongest foundation for transforming Indian society towards true gender justice. However, lasting change needs more than new laws. It requires changes in social attitudes, accountability from institutions, and empowerment through education and economic participation. The fight for gender equality in India is ongoing, and achieving women's equal status requires continued philosophical thought, legal reform, and social commitment. This research shows that philosophical inquiry is still highly relevant to today's socio-legal challenges. While Plato began the intellectual acknowledgment of women's abilities and Aristotle highlights the historical roots of subordination, John Stuart Mill presents the most compelling framework for achieving true gender

equality in modern India. The path toward equality is gradual but necessary. Legal reform, educational improvement, economic empowerment, and social change must work together to make gender justice more than just a constitutional promise, it must become a lived reality.

SUGGESTIONS

Based on the findings of this research, here are some recommendations:

Strengthening Legal Implementation Mechanisms- Laws that protect must be effectively enforced through accountable institutions. Police officers, protection officers, medical professionals, and judicial authorities should handle gender-based complaints with care and fairness. Mandatory gender-sensitivity training should be instituted in enforcement agencies.

Promotion of Equal Education-Equal access to quality education for girls, especially in rural and marginalized communities, should be prioritized. Education is essential for understanding rights, achieving economic independence, and facilitating social mobility.

Economic Empowerment and Equal Pay- Government policies should aim to increase women's participation in the workforce, ensure equal pay, and support women's entrepreneurship. Economic independence is key to lowering vulnerability to domestic violence and exploitation.

Political Representation-More women should participate in legislative bodies and decision- making institutions through effective enforcement of reservation policies and leadership development programs.

Reform of Marital and Family Laws- Marriage should be viewed as a partnership of equals. Legal reforms must address issues related to marital autonomy, shared domestic responsibilities, and acknowledgement of unpaid care work.

Elimination of Discriminatory Social Practices- Strict enforcement of laws against dowry, sex-selective abortion, and child marriage is essential. Public awareness campaigns must challenge son preference and patriarchal stereotypes.

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CROSS-BORDER MERGERS IN THE FINANCIAL SECTOR: LEGAL IMPLICATIONS OF CONSOLIDATION IN A GLOBALIZED ECONOMY

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Abstract

Cross-border mergers and acquisitions (M&As) in the financial sector have become a critical strategy for institutions seeking scale, diversification, and competitive advantage in an interconnected global economy.[1] This paper examines the complex legal frameworks governing such transactions, focusing on the European Union, India, and the United States, while analyzing regulatory obstacles that impede seamless integration.[2] The research employs doctrinal-comparative methodology to assess EU prudential barriers under the Banking Union, India's Companies Act and FEMA framework, and cross-border insolvency mechanisms under the UNCITRAL Model Law.[3] Key findings reveal that despite regulatory advances, fragmented approval processes, territorial capital requirements, and valuation constraints continue to hinder cross-border consolidation.[4] The study proposes harmonization strategies including expanded cross-border waivers in the EU, streamlined FEMA compliance in India, and enhanced UNCITRAL Model Law implementation for failed merger resolution. The research contributes to the literature by providing comprehensive doctrinal synthesis across jurisdictions and policy recommendations for strengthening global financial system resilience through improved legal frameworks.

Keywords: Cross-border mergers, financial sector, Banking Union, FEMA regulations, UNCITRAL Model Law, prudential barriers, regulatory harmonization

1. Introduction

In today's interconnected global economy, cross-border mergers and acquisitions (M&As) have emerged as pivotal mechanisms for financial institutions to achieve scale economies, diversification benefits, and competitive positioning.[5] The liberalization of capital markets, coupled with technological advancement and regulatory convergence initiatives, has facilitated unprecedented growth in international financial transactions.[6] However, these developments operate within a complex maze of legal frameworks that often create execution risks and integration challenges, potentially undermining the resilience benefits of consolidation.[7] The post-global financial crisis regulatory environment has fundamentally reshaped the landscape for cross-border financial mergers.[8] While initiatives such as the European Banking Union and harmonized Basel III standards have promoted regulatory convergence, persistent fragmentation in national laws, prudential requirements, and insolvency frameworks continues to impede seamless

[1] European Central Bank. Bank Mergers and Acquisitions in the Euro Area: Drivers and Patterns, *Financial Stability Review Special Feature* (2021), https://www.ecb.europa.eu/press/financial-stability-publications/fsr/special/html/ecb.fsrart202111_02~33910adb15.en.html.

[2] Bank for International Settlements. *European Banking Integration - Harnessing the Benefits*, BIS Review (2025), https://www.bis.org/review/r250414g.pdf.

[3] UNCITRAL. *Digest of Case Law on the UNCITRAL Model Law on Cross-Border Insolvency* (United Nations 2021), https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/mlcbi_judicial_perspective_2021_advance_copy.pdf.

[4] Bank for International Settlements. supra note 2

[5] European Central Bank, supra note 1

[6] European Central Bank. *Financial Integration and Structure in the Euro Area*, Biennial Report (2022).

[7] Bank for International Settlements, supra note 4

[8] European Central Bank, supra note 1

cross-border integration.[9] The European Banking Authority notes that M&A activity in the EU banking sector remains significantly below pre-crisis levels, hampered by issues including inefficient intra-group financial support mechanisms and territorial capital requirements.[8] Similarly, emerging markets like India face complex regulatory overlaps between the Reserve Bank of India, Securities and Exchange Board of India, and other authorities, creating procedural delays and compliance uncertainties.[10]

The stakes of addressing these legal impediments extend beyond individual transactions to systemic financial stability.[11] Unresolved cross-border insolvency disputes and integration failures can amplify contagion risks, fragment markets, and undermine investor confidence in global financial systems.[12] This challenge has become particularly acute in the post-pandemic environment, where cross-border consolidations are essential for risk-sharing, capital optimization, and sustainable growth in the financial sector.[13] Contemporary scholarship emphasizes the urgency of addressing cross-border merger barriers in light of emerging challenges including digital transformation, climate transition financing, and geopolitical shifts.[14] The European Union's Capital Markets Union project and Savings and Investment Union strategy highlight the critical role of integrated financial markets in supporting economic competitiveness and strategic autonomy.[15]

Similarly, emerging economies recognize cross-border financial integration as essential for accessing global capital markets and enhancing domestic financial system development.[16] This research addresses these challenges through comprehensive doctrinal analysis of legal frameworks governing cross-border financial mergers across three key jurisdictions: the European Union (with emphasis on Banking Union mechanisms), India (focusing on Companies Act and FEMA provisions), and the United States (for comparative perspective).[17] The study evaluates the effectiveness of the UNCITRAL Model Law on Cross-Border Insolvency in resolving disputes arising from failed cross-border mergers and proposes harmonization strategies to enhance legal certainty and systemic resilience.[18]

2. Literature Review and Theoretical Framework

2.1 Economic and Strategic Drivers of Cross-Border Financial M&A

The theoretical foundation for cross-border financial mergers rests on several economic rationales including economies of scale, scope economies, diversification benefits, and market access considerations.[19] Recent empirical evidence from the European Central Bank demonstrates that cross-border bank M&A transactions in the euro area are

[9] Bank for International Settlements. supra note 2

[10] PwC India. *Foreign Exchange Management (Cross Border Merger) Regulations, 2018*, Tax & Regulatory Services Alert (2018), https://www.pwc.in/assets/pdfs/news-alert-tax/2018/pwc_news_alert_26_march_2018_fema_cross_border_merger.pdf

[11] International Monetary Fund. *Cross-Border Resolution: A Global Solution to a Global Problem*, IMF Working Paper (2020).

[12] International Insolvency Institute. *Cross-Border Resolution of Financial Institutions*, III Global Research Paper (2021).

[13] European Parliament. *The Capital Markets Union -- an Extra Feather to the EMU*, IPOL Study (2024).

[14] SUERF. *A Single Market for Capital: Five Priorities for the EU*, Policy Note (2025), https://www.suerf.org/publications/suerf-policy-notes-and-briefs/a-single-market-for-capital-five-priorities-for-the-eu/.

[15] European Central Bank. *Capital Markets Union: A Deep Dive - Five Measures to Foster a Single Market for Capital*, Occasional Paper Series (2025).

[16] Semantic Scholar. *Due Diligence in Mergers and Acquisitions in Emerging Markets: Evaluated Risk Factors From the Academic and Practical View* (2015).

[17] UNCITRAL, Supra note 3

[18] UNCITRAL. *Model Law on Cross-Border Insolvency: The Judicial Perspective* (United Nations Commission on International Trade Law 2021).

[19] Academy of Strategic Management Journal. *Determinants of Merger and Acquisition Strategies Success in Emerging Markets: Evidence from EGX* (2022).

predominantly driven by pre-existing financial links and network effects, with gravity models showing that stronger bilateral interbank loans and securities holdings correlate with higher cross-border M&A frequency.[20] Contemporary research emphasizes the strategic imperatives driving cross-border consolidation in the post-pandemic environment. European banks face persistent challenges in achieving adequate returns on equity, with profitability levels averaging 6.7% in 2021 compared to 11% for US peers, reflecting structural impediments including market fragmentation and limited scale economies.[21] The European Banking Federation identifies regulatory-induced costs as contributing 0.8-1.0 percentage points to the return on equity gap between EU and US banks, highlighting the competitive implications of fragmented regulatory frameworks. Emerging market studies reveal different drivers for cross-border M&A activity, with emphasis on technology transfer, market access, and regulatory arbitrage considerations. Research on Indian cross-border mergers demonstrates that success factors include regulatory compliance efficiency, valuation methodology alignment, and post-merger integration capabilities. However, empirical analysis reveals mixed outcomes for cross-border merger performance, with success dependent on strategic complementarity, cultural integration, and regulatory environment stability.[22]

2.2 Legal-Regulatory Frameworks as Determinants of M&A Outcomes

The regulatory environment significantly influences both the likelihood and success of cross-border financial mergers through multiple channels.[23] EU supervisory and prudential mechanics create friction points including entity-level versus consolidated capital requirements, limited scope of cross-border waivers, and AML/CFT prudential overlays in qualifying holdings approvals. Advanced research demonstrates that these regulatory barriers explain the concentration of cross-border transactions within small groups of neighboring countries rather than achieving true pan-European integration. Comparative legal scholarship reveals significant variations in regulatory approaches across jurisdictions.[24] The OECD's analysis of cross-border merger control mechanisms highlights challenges facing developing and emerging economies, including resource constraints, inadequate legal frameworks, and limited extra-territorial application of national competition laws.[25] Studies of COMESA's supra-national competition authority demonstrate both the potential and limitations of regional harmonization efforts in addressing cross-border merger challenges. In India, the legal framework evolution through Section 234 of the Companies Act, 2013, and the Foreign Exchange Management (Cross Border Merger) Regulations, 2018, represents significant progress but with persistent implementation constraints.[26] Research indicates that automatic approval mechanisms under FEMA 2018 have

[20] European Central Bank, supra note 1

[21] European Banking Federation. *The EU Banking Regulatory Framework and Its Impact on Banks and the Economy*, EBF Reference Study (2023), https://www.ebf.eu/wp-content/uploads/2023/02/The-EU-banking-regulatory-framework-and-its-impact-on-banks-and-the-economy_30Jan-1.pdf.

[22] ScienceDirect. *Mergers and Acquisitions in and Out of Emerging Economies*, 60 *Journal of Business Research* (2020).

[23] COMESA Competition Commission. *Cross-Border Merger Regulation in Developing and Emerging Economies* (Doctoral Dissertation 2018), https://www.comesacompetition.org/wp-content/uploads/2018/05/Thesis-Dr-Willard-Mwemba.-pdf.pdf.

[24] Dialnet. *The Capital Markets Union in the Scope of the European Financial System*, *Revista de Estudios Constitucionais* (2018), https://dialnet.unirioja.es/descarga/articulo/6574500.pdf

[25] OECD. *Cross-Border Merger Control*, Global Forum on Competition Proceedings (2011).

[26] PwC India, Supra note 10

streamlined some processes, but pricing guideline compliance and outbound merger restrictions continue to create execution delays.[27] Comparative analysis with developed markets reveals that jurisdictions with clearer regulatory frameworks and harmonized approval processes experience higher cross-border M&A activity.[28]

2.3 Cross-Border Insolvency and Failed Merger Resolution

The UNCITRAL Model Law on Cross-Border Insolvency provides the primary international framework for managing multinational insolvency proceedings, including cases involving failed cross-border merger transactions.[29] Scholarly analysis demonstrates that while the Model Law facilitates cooperation and coordination between jurisdictions, it does not achieve substantive law unification, leaving significant gaps in entity-specific resolution procedures for financial institutions. Contemporary research emphasizes the sector-specific challenges of applying general insolvency frameworks to financial institutions with complex cross-border structures.[30] The Financial Stability Board's work on resolution regimes for global systemically important financial institutions reveals the limitations of the universalist approach when applied to systemically important banks with multiple jurisdictional operations and regulatory relationships. Empirical studies of Model Law implementation demonstrate high recognition rates in adopting jurisdictions, illustrating the effectiveness of the cooperation model. However, academic analysis reveals persistent challenges in coordinating timing between different jurisdictional proceedings and addressing conflicts between national resolution authorities with different policy priorities. Recent scholarship advocates for enhanced court-to-court guidelines and sector-specific protocols specifically designed for financial sector transactions. The evolution toward "group solutions" in insolvency law and bank resolution represents an important development that addresses some limitations of traditional territorial approaches.

3. Methodology

This research employs a doctrinal-comparative legal methodology to analyze the regulatory frameworks governing cross-border mergers in the financial sector.[31] The approach involves systematic examination of primary legal sources including statutes, regulations, administrative guidance, and judicial decisions, supplemented by policy documents and industry reports from relevant regulatory authorities. The jurisdictional focus encompasses three primary legal systems: the European Union (with particular emphasis on Banking Union mechanisms), India (analyzing Companies Act and FEMA frameworks), and reference to United States practice for comparative perspective.[32] The research incorporates cross-border insolvency analysis through examination of UNCITRAL Model Law implementation, case law digest materials, and comparative studies of regional harmonization efforts. Primary sources include EU legislation (Capital Requirements Directive/Regulation, Banking Union framework), ECB supervisory guidance and policy

[27] Archer & Angel. *Challenges in Cross Border Mergers*, Practice Guide India M&A (2023), https://archerangel.com/pdf/2023 Practice Guide India M&A – Challenges in Cross-Border Mergers.pdf.

[28] Facto Law Journal. *Cross-Border Mergers and Acquisitions: Challenges under Indian Corporate Law*, Contemporary Legal Analysis (2025), https://defactolawjournal.org/papers/cross-border-mergers-and-acquisitions-challenges-under-indian-corporate-law1/.

[29] UNCITRAL, Supra note 3

[30] PMC/NCBI. *The Rise of 'Group Solution' in Insolvency Law and Bank Resolution*, *European Business Organization Law Review* (2021), https://pmc.ncbi.nlm.nih.gov/articles/PMC8319584/.

[31] Insolvency Law Academy. *Harmonizing UNCITRAL Model Law: A TWAIL Analysis of Cross-Border Insolvency Law* (2022), https://insolvencylawacademy.com/wp-content/uploads/2022/09/Harmonizing-UNCITRAL-Model-Law-a-twail-analysis-of-cross-border-insolvency-law.pdf.

[32] Bank for International Settlements. supra note 2

papers, India's Companies Act 2013 and FEMA Cross Border Merger Regulations 2018, UNCITRAL Model Law text and judicial perspective materials, and relevant policy reports from European Central Bank, European Banking Federation, Reserve Bank of India, and international organizations.[33] The analytical framework emphasizes identifying structural barriers to cross-border financial mergers, evaluating regulatory harmonization efforts, and assessing the effectiveness of dispute resolution mechanisms for failed transactions. Limitations include concentration on regulated financial entities (banks, insurers, payment institutions) rather than broader financial services sectors and focus on merger control and authorization processes rather than quantitative performance analysis of completed transactions.

4. Legal and Regulatory Frameworks

4.1 European Union: Banking Union Architecture and Capital Markets Union

The European Union's approach to cross-border financial mergers operates within the interconnected frameworks of Banking Union and Capital Markets Union, encompassing the Single Supervisory Mechanism (SSM), Single Resolution Mechanism (SRM), and harmonized prudential requirements under the Capital Requirements Directive and Regulation. Recent scholarly analysis emphasizes that these frameworks aim to create integrated banking and capital markets while maintaining financial stability through common supervisory standards and resolution procedures.[34] Contemporary research reveals that authorization and qualifying holdings procedures represent critical components of the EU framework, with the European Central Bank exercising competence over significant institutions through prudential assessments that include governance, suitability reviews, and AML/CFT risk evaluations. The forthcoming Capital Requirements Directive VI (CRD VI) is expected to harmonize merger approvals at the EU level from 2026, with the European Banking Authority developing common assessment methodologies to reduce regulatory uncertainty and promote integration.[35]

Advanced analysis demonstrates that capital and liquidity treatment creates significant impediments to cross-border consolidation despite Banking Union advances. While consolidated supervision frameworks exist, practical implementation involves entity-level requirements that limit optimization of group-wide capital and liquidity management.[36] Cross-border waivers for capital requirements remain underutilized, and liquidity waivers face similar constraints despite regulatory provisions allowing such flexibility.[30] Basel III adjustments lowering risk scores for intra-banking union cross-border exposures since 2022 represent positive developments, but structural obstacles persist.[32] Contemporary Capital Markets Union scholarship reveals similar fragmentation challenges affecting non-bank financial integration.[14] The European Commission's Savings and Investment Union strategy recognizes that deeper capital market integration is essential for financing innovation, supporting the green and digital transitions, and enhancing European strategic autonomy.[13] However, progress remains limited due to persistent barriers in taxation, insolvency law harmonization, and supervisory integration.[33]

[33] European Banking Federation, Supra note 21

[34] IEP Bocconi. *The Next Goal: Euro Area Banking Integration*, Policy Brief (2023), https://iep.unibocconi.eu/sites/default/files/media/attach/PB09_The Next Goal Euro Area Banking Integration.pdf.

[35] European Parliament. *Can Banking Union Foster Market Integration, and What Lessons Can Be Drawn?*, IPOL Study (2024), https://www.europarl.europa.eu/RegData/etudes/IDAN/2024/760259/IPOL_IDA(2024)760259_EN.pdf.

[36] Oxford University Press. *One Market, One Vision: How Interstate Consolidation Can Transform Europe's Financial Architecture*, 11 *Journal of Financial Regulation* (2025).

4.2 India: Companies Act and FEMA Framework Evolution

India's legal framework for cross-border mergers has undergone significant evolution with the introduction of Section 234 of the Companies Act, 2013, and subsequent operationalization through the Foreign Exchange Management (Cross Border Merger) Regulations, 2018.[34] Contemporary legal scholarship emphasizes that this framework represents a paradigm shift from the restrictive approach of the Companies Act, 1956, which only permitted mergers where the transferee company was registered in India.[35] Section 234 provides foundational legal authority for both inbound and outbound cross-border mergers, requiring approval from the National Company Law Tribunal (NCLT) and compliance with multiple regulatory clearances. However, recent analysis reveals that practical implementation remains constrained by the restricted list of eligible jurisdictions and complex multi-authority approval processes.[37]

The FEMA Cross Border Merger Regulations 2018 establish a bifurcated approach distinguishing between transactions eligible for automatic approval and those requiring prior RBI clearance.[38] Contemporary research demonstrates that the regulations require valuation of both Indian and foreign companies in accordance with internationally accepted pricing methods certified by Category I Merchant Bankers or Chartered Accountants, ensuring compliance with fair market value norms. Recent scholarly analysis reveals persistent constraints under the Indian framework, particularly regarding pricing and valuation alignment requirements that may conflict with commercial deal terms. Outbound merger restrictions through jurisdiction eligibility requirements and FATF compliance prerequisites limit transaction structures, particularly affecting Indian companies seeking to merge with entities in non-recognized jurisdictions. The requirement for multiple regulatory approvals from RBI, SEBI, Competition Commission of India, and NCLT creates procedural complexity and extends transaction timelines compared to more integrated supervisory frameworks found in developed markets.[39]

4.3 United States: Comparative Framework Elements and International Standards

The United States provides instructive comparative benchmarks for cross-border merger regulation through its integrated approach to bank holding company regulation, foreign bank supervision, and insolvency recognition under Chapter 15 of the Bankruptcy Code. Contemporary analysis demonstrates that the US framework benefits from more unified supervisory approaches compared to EU and Indian systems, with clearer authority allocation and established precedents for cross-border financial institution resolution.[40] International standard-setting initiatives, particularly through the Financial Stability Board's work on resolution regimes for global systemically important financial institutions, provide frameworks that transcend individual jurisdictional approaches. These standards emphasize the importance of home-host coordination, mutual recognition of resolution actions, and maintenance of critical functions across borders during resolution proceedings.[41]

[37] Archer & Angel. Supra note 27

[38] IBBI. *Cross Border Insolvency: A Case to Cross the Border Beyond the UNCITRAL*, Insolvency and Bankruptcy Board of India (2018), https://ibbi.gov.in/uploads/resources/c3593c9f41984c6f31f278974de3cf37.pdf.

[39] International Journal of Independent Research and Technology. *A Study on Mergers and Acquisitions in Indian Banking Sector* (2024).

[40] International Monetary Fund, supra note 11

[41] Centre for International Governance Innovation. *Cross-Border Resolution of Financial Firms Policy*, CIGI Policy Brief (2020).

5. Regulatory Obstacles and Integration Challenges

5.1 EU Prudential Impediments and Banking Union Limitations

Contemporary analysis reveals that the European Union's regulatory framework creates several specific impediments to successful post-merger integration in cross-border financial transactions. Territorial capital and liquidity requirements represent the most significant structural barriers, preventing optimal allocation of capital and liquidity resources within merged banking groups across national borders.[42] These requirements effectively create ring-fencing mechanisms that limit the scale economies and synergy benefits that justify cross-border mergers. Recent scholarly research demonstrates that limited utilization of cross-border waivers compounds integration challenges. While regulatory provisions exist for capital and liquidity waivers within banking groups, practical implementation remains constrained by supervisory conservatism, complex application procedures, and inconsistent interpretation across national competent authorities.[43] Multi-authority coordination costs further dampen integration prospects, as merged entities must navigate different national supervisory approaches and regulatory interpretations despite harmonized EU-level standards.

Advanced analysis reveals that AML/CFT prudential implications introduce additional transaction approval risks that can prolong merger timelines and introduce conditionalities affecting deal structures. These compliance overlays often require extensive due diligence and regulatory engagement that increases transaction costs and execution uncertainty.[44] Contemporary scholarship emphasizes that European banks consequently operate at suboptimal scale compared to international peers, limiting their ability to compete effectively and generate adequate returns on invested capital. The persistence of these barriers undermines the Banking Union's fundamental objective of creating a truly integrated European banking market.

5.2 India's FEMA and Companies Act Pathway Frictions

Contemporary analysis of India's regulatory framework reveals specific frictions in cross-border merger execution through valuation and pricing guideline requirements that may conflict with commercial deal terms.[45] Recent scholarly research demonstrates that outbound merger constraints present additional structural barriers through jurisdiction eligibility requirements and compliance prerequisites that limit transaction structures.

Advanced analysis reveals that procedural complexity arising from multiple regulatory approval requirements creates execution uncertainty and extended timelines. Companies must obtain clearances from RBI, SEBI (for listed entities), Competition Commission of India, and NCLT, each operating under different timelines and assessment criteria.[46] This fragmented approach increases compliance costs and regulatory risk compared to more integrated supervisory frameworks found in developed markets. Contemporary legal scholarship emphasizes that certification and NCLT process management requirements add further procedural complexity, particularly in ensuring compliance documentation meets varied regulatory standards across multiple authorities. Recent practitioner studies reveal that while automatic approval mechanisms under FEMA 2018 have reduced some regulatory

[42] Oxford University Press, Supra note 36

[43] Bruegel. *Completing Europe's Banking Union: Economic Requirements and Legal Conditions*, Policy Contribution (2022), https://www.bruegel.org/system/files/2022-11/PC 20 2022_5.pdf.

[44] European Banking Federation, Supra note 21

[45] Archer & Angel, Supra note 27

[46] International Journal of Independent Research and Technology, Supra note 39

burdens, the overall compliance framework remains more complex than many international alternatives.[47]

5.3 Emerging Market Challenges and Comparative Perspectives

Comparative analysis of emerging market approaches to cross-border merger regulation reveals common challenges including resource constraints, inadequate legal frameworks, and limited experience in enforcement of merger laws.[48] The OECD's comprehensive study demonstrates that developing and emerging economies face particular difficulties in regulating cross-border mergers due to exposure to different national competition laws and lack of extra-territorial application provisions. Contemporary research on ASEAN's approach to cross-border M&A regulation highlights the absence of comprehensive regional instruments for addressing competition impacts of cross-border transactions.[49] Despite the ASEAN Economic Community's commitment to effective competition policies, member countries lack harmonized approaches to merger control, creating potential for anti-competitive activities by multinational corporations.[50] Advanced scholarship on emerging market due diligence requirements reveals additional complexities in cross-border transactions involving developing economies. The evolution of supra-national competition authorities in developing regions, exemplified by COMESA's experience, provides insights into both opportunities and limitations of regional harmonization efforts.

6. Cross-Border Insolvency Interface in Failed Mergers

6.1 UNCITRAL Model Law Framework and Implementation Challenges

The UNCITRAL Model Law on Cross-Border Insolvency provides the primary international framework for managing insolvency proceedings that span multiple jurisdictions, including cases involving failed cross-border merger transactions.[51] Contemporary scholarly analysis emphasizes that the Model Law's architecture centers on facilitating cooperation and coordination between courts and insolvency representatives across borders while respecting differences in national substantive insolvency laws.[52] Recognition procedures under the Model Law establish presumptions for identifying the debtor's center of main interests (COMI) and enable courts to recognize main proceedings, non-main proceedings, and foreign representatives. However, advanced research reveals that this recognition framework, while facilitating cross-border relief and coordination, leaves choice-of-law and entity-specific resolution complexities unresolved, particularly for financial institutions with multiple jurisdictional operations and complex regulatory relationships.[53]

Contemporary empirical analysis demonstrates high recognition rates in adopting jurisdictions, with 47 states in 50 jurisdictions having adopted the Model Law, illustrating the effectiveness of the cooperation model in facilitating cross-border insolvency proceedings. However, scholarly research reveals that sector-specific regimes for banks and other financial institutions can limit Model Law application, as financial institution insolvency often involves specialized resolution procedures and regulatory

[47] IBBI, Supra note 38
[48] COMESA, Supra note 23
[49] University of Indonesia. *Cross-Border Merger and Acquisition In ASEAN: A Comparative Study To The Merger Control Regulation*, *Journal UII* (2023).
[50] Id.
[51] UNCITRAL, Supra note 3
[52] Indian Journal of New Dimensions in Research. *Comparative Analysis of Cross Border Insolvency Laws*, IJNRD Publication (2025).
[53] Sage Publications. *The Need for Implementing a Cross-Border Insolvency Regime in India*, *Vivekananda Journal of Research* (2020).

considerations that fall outside general insolvency frameworks.[54] The Indian experience with cross-border insolvency reform demonstrates both opportunities and challenges in Model Law adoption.[42] Research reveals that Indian courts have historically addressed cross-border insolvency cases through judicial cooperation and private international law principles, but lack of statutory framework creates uncertainty.[4]

6.2 Financial Institution Resolution and Sectoral Challenges

Advanced scholarship on cross-border financial institution resolution reveals significant gaps between general insolvency frameworks and specialized bank resolution regimes.[26] The Financial Stability Board's work on Key Attributes of Effective Resolution Regimes demonstrates that financial institution failures create unique challenges requiring rapid resolution to prevent contagion while maintaining critical functions.[55] Contemporary research emphasizes that coordination challenges are particularly acute for failed cross-border financial mergers, where regulatory authorities in multiple jurisdictions may have conflicting interests regarding asset preservation, creditor protection, and systemic stability concerns. The evolution toward "group solutions" in bank resolution represents an important development that addresses some limitations of traditional territorial approaches to financial institution insolvency.[27] Recent scholarship advocates for sector-specific protocols that complement the UNCITRAL Model Law framework while addressing the unique characteristics of financial institution operations and regulatory relationships.

6.3 Regional Approaches and Harmonization Efforts

Contemporary analysis of regional approaches to cross-border insolvency reveals varying levels of integration and cooperation. The European Union's approach through the Insolvency Regulation provides more extensive harmonization than the Model Law, with direct applicability and unified jurisdiction rules. The ASEAN region's experience demonstrates both opportunities and challenges in developing regional cooperation mechanisms for cross-border insolvency. Advanced scholarship emphasizes that effective cross-border insolvency regimes require not only legislative frameworks but also institutional capacity, judicial training, and practical cooperation mechanisms between courts and insolvency professionals.[56]

7. Comparative Analysis and Emerging Trends

7.1 Cross-Border M&A Activity Patterns and Market Integration

Contemporary analysis of cross-border M&A trends in the financial sector reveals significant variation across jurisdictions, transaction types, and regulatory environments.[1] Euro area M&A flows demonstrate strong correlation with financial linkages between countries, but overall volumes remain subdued compared to pre-crisis levels, highlighting persistent structural impediments despite Banking Union advances. The European Parliament's recent analysis demonstrates that EU policy evolution toward CRD VI merger-approval harmonization, expected to take effect from 2026, represents a significant development that may reduce regulatory uncertainty and promote integration.[30] Contemporary research on India's operational experience since FEMA 2018 implementation reveals that while automatic approval pathways have facilitated some transactions, pricing and valuation constraints, along with outbound jurisdictional restrictions, remain significant pain points for market participants.[57]

[54] PMC/NCBI, Supra note 30
[55] Centre for International Governance Innovation, Supra note 41
[56] Indian Journal of New Dimensions in Research, Supra note 52
[57] Archer & Angel, Supra note 27

7.2 Regulatory Cost Differentials and Competitive Implications

Advanced comparative analysis reveals significant regulatory cost differentials between jurisdictions that affect cross-border merger attractiveness and execution. The European Banking Federation's comprehensive study demonstrates that EU banks face higher capital requirements on average compared to US peers, with total requirements approximately 1.3 percentage points higher due to different business models, regulatory approaches, and buffer frameworks. Additionally, contributions to deposit and resolution funds are almost twice as high for EU banks, while bail-in capacity requirements exceed US levels by approximately 3.9 percentage points.[58] Contemporary research reveals that these regulatory cost differentials translate to meaningful impacts on return on equity, with incremental regulatory-induced costs explaining 0.8-1.0 percentage points of the RoE gap between EU and US banks. The Copenhagen Economics analysis of Final Basel III implementation demonstrates that higher capital requirements will translate into increased costs for banks, with estimated annual increases in lending costs of EUR 25-30 billion for the European economy. These costs will eventually be passed onto customers, resulting in higher borrowing costs and potential deleveraging effects. India's regulatory framework presents different cost structures through multiple authority approvals, valuation certification requirements, and extended timelines that increase transaction execution costs.

7.3 Technology, Innovation, and Digital Transformation Impacts

Contemporary research reveals that digital transformation and financial technology innovation are creating new drivers and challenges for cross-border financial mergers. The European Central Bank's analysis emphasizes that financing innovation and supporting digital transition are critical objectives for capital market integration and financial sector consolidation.[59] Advanced scholarship on emerging market fintech development demonstrates that cross-border partnerships and acquisitions are increasingly important for technology transfer and market expansion. However, regulatory uncertainty regarding digital assets, data protection, and cross-border technology transfers creates additional complexity for cross-border merger transactions.

8. Doctrinal Gaps and Harmonization Strategies

8.1 Identified Legal and Regulatory Gaps

Comprehensive analysis across jurisdictions reveals several critical gaps that impede effective cross-border financial mergers. In the EU context, scholarly research demonstrates that uneven application of capital and liquidity waivers across borders creates structural impediments to integration, while AML/CFT prudential overlays vary in practice despite harmonized regulatory standards.[60] Contemporary analysis of India's framework reveals gaps in pricing and valuation convergence mechanisms that can conflict with commercial deal terms, constraining transaction structures and creating execution uncertainty. Advanced scholarship on cross-border insolvency frameworks demonstrates gaps in sector-specific applications for financial institutions, where the UNCITRAL Model Law's general cooperation mechanisms may not adequately address the specialized requirements of financial institution resolution. Comparative analysis reveals that these gaps are not merely technical deficiencies but reflect deeper challenges in balancing national sovereignty

[58] Copenhagen Economics. *EU Implementation of the Final Basel III Standard*, Economic Impact Assessment (2021), https://copenhageneconomics.com/wp-content/uploads/2021/12/copenhagen-economics_eu-implementation-of-the-final-basel-iii.pdf.

[59] IEP Bocconi, Supra note 34

[60] Bank for International Settlements. supra note 2

concerns with the imperatives of global financial integration.[61]

8.2 Proposed Harmonization Strategies and Reform Directions

Contemporary scholarship emphasizes that effective harmonization strategies must address both structural and procedural impediments to cross-border financial mergers through coordinated reforms across multiple regulatory domains. For the EU, advanced research demonstrates that expanded practical utilization of cross-border waivers with clear supervisory cooperation protocols could significantly reduce integration barriers while maintaining financial stability safeguards. Implementation of CRD VI merger-approval harmonization alongside EBA's common assessment methodology should provide greater certainty and reduce regulatory fragmentation. Enhanced coordination mechanisms between national supervisory authorities and the ECB could streamline approval processes and reduce compliance costs for cross-border transactions. Contemporary research on India's framework suggests that clarified valuation and pricing convergence mechanisms that balance regulatory requirements with commercial flexibility would significantly enhance transaction viability. Streamlined approval processes for compliant transactions, expanded eligible jurisdictions for Section 234 purposes, and enhanced coordination between regulatory authorities could significantly improve the framework's effectiveness.[62]

8.3 Regional Integration and Multilateral Approaches

Advanced scholarship emphasizes that regional integration approaches offer promising pathways for addressing cross-border merger barriers while respecting national differences and sovereignty concerns. The European experience with Banking Union, despite its limitations, demonstrates that substantial progress is possible through graduated integration with appropriate institutional frameworks. Contemporary research on ASEAN integration reveals potential for enhanced cooperation in cross-border merger regulation, despite current limitations. Advanced research suggests that multilateral approaches through international organizations and standard-setting bodies could complement regional efforts.

9. Policy Recommendations

9.1 EU Banking Union and Capital Markets Union Enhancements

Contemporary scholarship emphasizes that completion of Banking Union objectives requires specific, coordinated policy interventions to address persistent cross-border integration barriers. Advanced research demonstrates that operationalizing CRD VI merger approval with transparent assessment criteria should reduce regulatory uncertainty and promote cross-border consolidation.[63] Enhanced intragroup support frameworks that facilitate capital and liquidity mobility within banking groups across EU borders represent critical reforms for achieving true market integration. Contemporary research suggests that monitoring Basel risk-score treatment to maintain neutrality for intra-union cross-border exposures will be essential for preserving competitive balance as international regulatory frameworks evolve. Capital Markets Union advancement requires more ambitious reforms than currently contemplated in existing action plans.

9.2 India's Regulatory Framework Optimization and Modernization

Advanced analysis demonstrates that India's cross-border merger framework could be significantly enhanced through several targeted reforms that balance regulatory oversight with transaction

[61] OECD. *Cross-Border Merger Control*, Global Forum on Competition Proceedings (2011).

[62] IBBI, supra note 38

[63] European Parliament. *Supra note 35*

efficiency. Contemporary scholarship emphasizes that institutionalizing expedited approval tracks for compliant inbound and outbound mergers would reduce transaction timelines and execution uncertainty while maintaining appropriate safeguards. Recent research suggests that expanding automatic approval scope under FEMA 2018 where appropriate safeguards are met would reduce regulatory burden while maintaining oversight for high-risk transactions. Enhanced coordination mechanisms between RBI, SEBI, CCI, and NCLT through integrated timelines, information sharing protocols, and unified case management systems could streamline approval processes and reduce compliance costs.[64]

9.3 Global Cross-Border Insolvency Framework Development

Contemporary scholarship emphasizes that strengthening cross-border insolvency frameworks requires coordinated international efforts to address financial sector-specific challenges while building on existing UNCITRAL Model Law foundations. Advanced research demonstrates that encouraging broader adoption of the Model Law with sector-specific implementation guidance for financial institutions could improve coordination capabilities. Recent analysis emphasizes that enhanced court-to-court guidelines addressing timing coordination, asset preservation, and regulatory notification requirements could significantly improve resolution outcomes. Creating specialized judicial training programs focused on cross-border financial institution insolvency would build institutional capacity for effective case management.[65]

10. Implications and Future Research Directions

10.1 Systemic Risk Implications and Financial Stability Considerations

Contemporary scholarship reveals that the persistence of cross-border merger barriers in the financial sector has profound implications for systemic risk management and global financial stability.[66] Advanced research demonstrates that fragmented markets with limited cross-border integration may be more vulnerable to localized shocks and contagion effects, as diversification benefits remain unrealized and risk concentration persists at national levels. The Financial Stability Board's analysis emphasizes that enhanced cross-border integration through improved merger frameworks could strengthen systemic stability through better risk distribution, enhanced capital efficiency, and improved operational resilience. Recent scholarship emphasizes that climate change and green transition financing create additional imperatives for cross-border financial integration.

10.2 Implications for Economic Development and Financial System Evolution

Advanced scholarship demonstrates that legal and regulatory barriers to cross-border financial mergers have broader implications for economic development, financial system evolution, and global competitiveness.[67] Limited cross-border merger activity may constrain financial sector efficiency, reduce competitive pressure, and limit innovation diffusion across borders. The Capital Markets Union project's analysis demonstrates that deeper, more integrated capital markets are essential for supporting innovation financing, pension savings adequacy, and economic convergence across European regions. Emerging market research reveals that cross-border financial integration can provide significant benefits

[64] International Journal of Independent Research and Technology, supra note 39
[65] Indian Journal of New Dimensions in Research, supra note 52
[66] International Monetary Fund, supra note 11
[67] Semantic Scholar, supra note 16

for economic development, including technology transfer, institutional capacity building, and access to global capital markets.

10.3 Future Research Priorities and Methodological Considerations

Contemporary scholarship identifies several critical research directions that emerge from current analysis and could inform future policy development. Empirical assessment of post-2026 CRD VI merger-approval impacts on EU cross-border M&A activity represents a high priority for understanding harmonization effectiveness and identifying remaining barriers.[68] Advanced research priorities include tracking Indian outbound mergers to FATF-compliant jurisdictions under the expanded FEMA framework to illuminate practical implementation challenges and success factors. The compilation and analysis of UNCITRAL Model Law case developments intersecting with financial sector combinations could inform protocol development for sector-specific applications.

11. Conclusion

This comprehensive research has examined the intricate legal and regulatory landscape governing cross-border mergers in the financial sector, with particular focus on the European Union, India, and comparative elements from the United States and other jurisdictions. The analysis reveals persistent and multifaceted structural barriers that continue to impede seamless cross-border integration despite significant regulatory reform efforts and policy initiatives across jurisdictions over the past decade. The findings demonstrate that while frameworks such as the EU Banking Union, India's FEMA Cross Border Merger Regulations, and international standards like the UNCITRAL Model Law represent substantial progress in enabling international financial consolidation, practical implementation remains severely constrained by territorial requirements, procedural complexity, and coordination challenges between multiple regulatory authorities.

In the European Union context, despite ambitious Banking Union and Capital Markets Union initiatives, territorial capital and liquidity requirements, limited cross-border waiver utilization, and multi-authority coordination costs continue to fragment markets and prevent realization of integration benefits. The forthcoming CRD VI merger-approval harmonization and proposed supervisory integration represent critical opportunities to address structural impediments, but success requires comprehensive reforms extending beyond approval processes to include fundamental changes in capital mobility frameworks and supervisory cooperation mechanisms.

India's regulatory framework evolution demonstrates both the opportunities and challenges facing emerging markets in developing effective cross-border merger regimes. While automatic approval mechanisms under FEMA 2018 and Section 234 provisions have created new pathways for international transactions, persistent constraints including pricing and valuation requirements, limited jurisdictional eligibility, and fragmented regulatory approval processes continue to create significant execution barriers. The analysis of cross-border insolvency frameworks reveals critical gaps in addressing failed cross-border mergers, particularly for financial institutions subject to specialized resolution regimes. While the UNCITRAL Model Law provides valuable foundations for international cooperation, practical application requires sector-specific protocols, enhanced court-to-court coordination mechanisms, and institutional capacity building specifically tailored to financial sector characteristics.

Contemporary research demonstrates that regulatory cost differentials between jurisdictions significantly affect cross-border merger attractiveness and contribute to persistent fragmentation in global financial markets. These differentials not only affect

[68] European Parliament, Supra note 35

individual transaction economics but also influence broader patterns of financial sector consolidation and competitive dynamics. The proposed harmonization strategies emphasize comprehensive approaches that address both structural and procedural impediments to cross-border integration. The persistence of cross-border barriers may limit the financial sector's ability to support economic growth, manage systemic risks, and adapt to evolving challenges including digital transformation and climate change. By addressing these multifaceted challenges through coordinated policy reforms, policymakers can enhance the contribution of cross-border mergers to financial sector resilience, economic development, and global financial stability. The research demonstrates that successful cross-border financial integration requires not merely technical regulatory changes but fundamental shifts in approach toward greater coordination, mutual recognition, and shared responsibility for global financial stability.

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THE RIGHT TO SILENCE IN THE SMARTPHONE ERA: AN EXAMINATION OF ARTICLE 20(3) AND FORCED DECRYPTION

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Abstract:

The emergence of digital technology has transformed smartphones and electronic devices into comprehensive repositories of personal, financial, intellectual and communicational data. This transformation has generated complex constitutional questions concerning the scope of the right against self-incrimination under Article 20(3) of the Constitution of India[1] and the right to privacy under Article 21. The judicial divergence between *Virendra Khanna v. State of Karnataka* [2]and *CBI v. Mahesh Kumar Sharma*[3] illustrates the doctrinal uncertainty regarding whether compelled disclosure of passwords constitutes testimonial compulsion. This article examines the historical development of the privilege against self-incrimination, its constitutional foundation in India, relevant statutory provisions, and leading judicial precedents including *M.P. Sharma*[4], *Kathi Kalu Oghad*[5], *Nandini Satpathy*[6], *Selvi*[7], *Puttaswamy*[8], and *Ritesh Sinha*[9]. It argues that compelled password disclosure involves cognitive communication of personal knowledge and therefore falls within the protective ambit of Article 20(3). The article concludes that investigative necessity cannot override constitutional guarantees in the absence of narrowly tailored legislation satisfying the proportionality standard.

Keywords: Right Against Self-Incrimination, Testimonial Compulsion, Compelled Password Disclosure, Digital Self-Incrimination, Smartphone Decryption, Electronic Evidence, Cognitive Testimony

I. Introduction

The interrelationship between the right against self-incrimination and the right to a fair trial has been recognised across constitutional democracies and international human rights instruments as a foundational principle of criminal jurisprudence. The protection against compelled testimony is not merely a procedural safeguard but a substantive guarantee that preserves the integrity of the accusatorial system. In the United States, the privilege against self-incrimination is explicitly enshrined in the Fifth Amendment to the Constitution. Its scope has been judicially shaped through its interaction with other constitutional guarantees, particularly the protection against unreasonable search and seizure under the Fourth Amendment and the guarantee of due process under the Fourteenth Amendment. American constitutional jurisprudence thus treats the privilege not in isolation, but as part of a broader framework designed to restrain coercive state power and to maintain fairness in criminal proceedings.

International human rights law similarly affirms this principle. Article 14(3)(g) of the International Covenant on Civil and Political Rights, 1966, enumerates the minimum guarantees available to an accused during trial and explicitly recognises the right not to be compelled to testify against oneself or to confess guilt. The European Convention for the Protection of Human Rights and Fundamental

[1] The Constitution of India, arts.20(3), 21
[2] 2021 SCC OnLine Kar 5032
[3] 2022 SCC OnLine Dis Crt (Del) 48
[4] M. P. Sharma And Others vs Satish Chandra, District Magistrate Delhi & Others AIR 1954 SUPREME COURT 300
[5] The State Of Bombay vs Kathi Kalu Oghad And Others AIR 1961 SUPREME COURT 180
[6] Nandini Satpathy vs Dani (P.L.) And Anr AIR 1978 SUPREME COURT 1025
[7] Selvi & Ors vs State Of Karnataka & Anr AIR 2010 SUPREME COURT 1974
[8] Justice K.S.Puttaswamy(Retd) vs Union Of India AIR 2018 SC (SUPP) 1841
[9] Ritesh Sinha v. State of Uttar Pradesh (2019) 8 SCC 1

Freedoms, 1950, reinforces this protection through Article 6. Article 6(1) guarantees the right to a fair trial, while Article 6(2) enshrines the presumption of innocence. The guarantee of presumption of innocence bears a direct and inseparable connection to the right against self-incrimination. Compelling an accused to testify effectively shifts the burden of proof from the prosecution to the defence, thereby undermining the foundational principle that the prosecution must establish guilt beyond reasonable doubt.

The doctrinal origins of the right against self-incrimination can be traced to the Latin maxim *nemo tenetur seipsum prodere*, meaning that no one is bound to accuse himself. Leonard Levy, in his seminal academic commentary[10], has demonstrated that the historical development of this principle is closely linked to the evolution of the concept of due process of law as reflected in the Magna Carta. The privilege emerged as a response to coercive interrogation practices, particularly those of ecclesiastical courts and inquisitorial proceedings, which compelled individuals to confess under oath. Over time, the privilege evolved into a core component of civilised criminal jurisprudence, designed to restrain the abuse of state power and to protect individual dignity.

Central to this protection is the concern for voluntariness. If involuntary statements were routinely admitted and accorded evidentiary weight during trial, investigative authorities would possess a powerful incentive to obtain such statements through coercion, threats, inducements, deception, or physical and psychological pressure. Even if such statements were subsequently found to be factually accurate, their procurement through improper means would erode the moral legitimacy of the criminal justice system. The law cannot incentivise investigative shortcuts that compromise dignity and bodily integrity. In this sense, the right against self-incrimination functions as a vital safeguard against torture and other "third-degree methods" employed to extract information. It acts as a structural check on police behaviour during investigation and ensures that the burden of proving guilt remains firmly upon the prosecution.

The importance of excluding compelled testimony has been emphasised in comparative jurisprudence. In *Wong Kam-ming v. R*[11]., Lord Hailsham of St Marylebone observed that any civilised system of criminal jurisprudence must provide the judiciary with the means to exclude confessions or admissions obtained by improper methods. This exclusion is justified not only by concerns about the reliability of such statements but, more fundamentally, by the necessity of preventing ill-treatment or improper pressure upon persons in custody. Courts must insist that before extra-judicial statements are admitted, the prosecution must prove beyond reasonable doubt that they were made voluntarily and were not obtained through reprobated methods.

Indian constitutional jurisprudence echoes these concerns with particular clarity. In *Nandini Satpathy v. P.L. Dani*, Justice V.R. Krishna Iyer characterised Article 20(3) of the Constitution of India as a "human article" that guarantees dignity, integrity, and inviolability of the person. He emphasised that the constitutional framework rejects the transformation of an adversarial system into an inquisitorial scheme within the confines of a police station. According to him, the legitimacy of investigation depends not on coercive tactics but on intellectual diligence, underscoring that the police, as part of society, must earn public respect through fairness and restraint rather than through force or deception.

Comparative constitutional protections further reinforce this universal commitment. Section 11(c) of the Canadian Charter of Rights and Freedoms safeguards individuals from being compelled to testify against themselves in criminal proceedings. Similarly, Article 14(3)(g) of the ICCPR unequivocally provides that no one shall be compelled to testify against

[10] Leonard Levy, "The Right against Self-Incrimination: History and Judicial History" 84 Political Science Quarterly 1 (1969).

[11] Wong Kam-ming v. R., [1980] A.C. 247 : [1979] 2 WLR 81 : (1979) 1 All ER 939 (PC).

themselves or to confess guilt. These international and comparative guarantees collectively demonstrate that the privilege against self-incrimination is a hallmark of civilised legal systems.

Thus, the right against self-incrimination is not an isolated procedural technicality but a substantive constitutional commitment to fairness, dignity, and the preservation of the accusatorial process. It protects individuals from coercive state practices, preserves the presumption of innocence, and ensures that criminal convictions are secured through lawful and ethical investigative methods rather than through compelled confessions. In the contemporary era, particularly with the rise of digital evidence and technological surveillance, the continuing vitality of this principle demands careful constitutional scrutiny to ensure that evolving investigative techniques do not erode its foundational safeguards

II. Arguments of the Petitioner in *Virendra Khanna v. State of Karnataka*

In *Virendra Khanna v. State of Karnataka* (2021 SCC OnLine Kar 5032 : (2021) 3 AIR Kant R 455), the petitioner was accused of offences punishable under Section 21(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 and Section 14 of the Foreigners Act. During the course of investigation, the Trial Court passed an order directing the petitioner to cooperate by unlocking his mobile phone and to undergo a Polygraph Test. Aggrieved by this direction, the petitioner approached the High Court challenging the legality and constitutionality of the order.

The principal contention of the petitioner was that the impugned order was in direct violation of the judgment of the Supreme Court in *Selvi v. State of Karnataka* (2010) 7 SCC 263. It was argued that the Supreme Court had unequivocally held that the compulsory administration of techniques such as narco-analysis, polygraph examination and Brain Electrical Activation Profile (BEAP) tests amounted to testimonial compulsion and was therefore violative of Article 20(3) of the Constitution of India. The petitioner relied extensively on paragraphs 184 to 189 of the judgment in *Selvi*.

In *Selvi*[12], the Supreme Court observed that although the process of undergoing a polygraph or BEAP test may not be identical to making oral or written statements, the consequences are substantially similar. By drawing inferences from physiological responses, the examiner derives knowledge from the subject's mind which would otherwise remain inaccessible. The Court distinguished such techniques from ordinary medical examinations involving blood, semen or hair samples, reasoning that polygraph and BEAP tests correlate physiological responses directly to mental faculties. Through lie detection and familiarity with stimuli, personal knowledge relating to relevant facts is conveyed. The investigators cannot have prior knowledge of the subject's thoughts and memories, and therefore extraction of such knowledge amounts to compelling personal testimony.

Paragraph 185 further clarified that during such examinations, the subject makes a mental effort accompanied by physiological responses. The measurement of these responses facilitates transmission of knowledge to investigators. This knowledge may assist in ongoing investigations or lead to the discovery of fresh evidence capable of prosecuting the subject. The Court emphasized that compulsory administration impedes the individual's right to choose between remaining silent and offering substantive information. The requirement of a positive volitional act becomes immaterial, since the subject is compelled to convey personal knowledge irrespective of volition.

The petitioner also relied on academic authorities cited in *Selvi*. In paragraph 186, the Supreme Court referred

[12] Supra note 7

to Michael S. Pardo's [13]argument that the results of polygraph tests are testimonial because they constitute inductive evidence of the defendant's epistemic state. Such evidence purports to determine whether the defendant's assertions can be relied upon or what propositions the defendant would endorse if testifying truthfully. Paragraph 187 cited Ronald J. Allen and M. Kristin Mace[14], who argued that the right against self-incrimination protects individuals where the State relies on the "substantive results of cognition." Cognition was defined as the intellectual processes by which a person gains and applies substantive knowledge, comparing inner mental content with external stimuli. The petitioner contended that compelled disclosure of a password similarly involves substantive cognition and communication of personal knowledge.

Further reliance was placed on paragraph 188 of *Selvi*, wherein the National Human Rights Commission Guidelines on Polygraph Tests (2000)[15] were discussed. These guidelines acknowledged that self-incrimination encompasses positive volitional acts furnishing evidence and that conveying information based on personal knowledge falls within constitutional protection. Paragraph 189 concluded that results obtained through involuntary administration of polygraph, narco-analysis or BEAP tests constitute "personal testimony" and fall within the ambit of testimonial compulsion under Article 20(3).

On this doctrinal foundation, the petitioner contended that compulsory polygraph testing violated the right against self-incrimination because Article 20(3) extends to the investigative stage of criminal proceedings. Read together with Section 161(2) of the Code of Criminal Procedure[16], the protection applies not only to accused persons but also to suspects and witnesses examined during investigation. The petitioner emphasized that Article 20(3) protects the choice between speaking and remaining silent irrespective of whether the testimony is inculpatory or exculpatory. Its purpose is to prevent the forcible conveyance of personal knowledge relevant to the facts in issue. Since the Supreme Court had categorically held that the results of such tests bear a testimonial character and cannot be treated as material evidence, the Trial Court's direction was unlawful.

It was further contended that the petitioner was not willing to undergo a Polygraph Test. No opportunity of hearing had been provided before passing the order dated 23 September 2020. Had such an opportunity been granted, the petitioner would have expressly refused consent. The denial of opportunity was argued to be violative of the principles of natural justice, particularly the fundamental rule of *audi alteram partem*. The absence of consent rendered the direction unconstitutional under Articles 20(3) and 21.

The petitioner submitted that the ratio of *Selvi* had subsequently been approved by the Supreme Court in *Toofan Singh v. State of Tamil Nadu*[17]. The principle was also reiterated in *Justice K.S. Puttaswamy v. Union of India*[18], thereby strengthening the constitutional position that coercive extraction of personal knowledge violates fundamental rights.

In relation to the direction requiring the petitioner to unlock his mobile phone, it was argued that Sections 53 and 311-A of the Code of Criminal Procedure[19] do not empower any court or magistrate to compel an

[13] Michael S. Pardo, "Self-Incrimination and the Epistemology of Testimony" 30 Cardozo Law Review 1046 (2008)

[14] Ronald J. Allen and M. Kristin Mace, "The Self-Incrimination Clause Explained and its Future Predicted" 94 Journal of Criminal Law and Criminology 247 (2004)

[15] National Human Rights Commission, "Guidelines Relating to Administration of Polygraph Test (Lie Detector Test) on an Accused" (2000)

[16] The Bharatiya Nagarik Suraksha Sanhita, 2023 (Act 46 of 2023), s.180

[17] 2020 SCC OnLine SC 82

[18] (2017) 10 SCC 1

[19] The Bharatiya Nagarik Suraksha Sanhita, 2023 (Act 46 of 2023), ss.51,349.

accused during investigation to disclose the password of a mobile device or to facilitate access to data contained therein. These provisions relate to medical examination and specimen signatures or handwriting, and cannot be extended to compel cognitive disclosure.

The petitioner contended that insisting upon unlocking the mobile phone amounted to a violation of the right to privacy recognized in *Puttaswamy*. Reference was made to the scholarly work "A Typology of Privacy" by Bert-Jaap Koops and others, which conceptualizes privacy along two axes and identifies nine types of privacy: bodily, spatial, communicational, proprietary, intellectual, decisional, associational, behavioural and informational privacy[20]. A mobile phone, it was argued, contains intimate communicational and informational data and implicates multiple dimensions of privacy simultaneously. Forcing the petitioner to unlock the device would intrude upon communicational privacy, intellectual privacy and informational privacy.

It was emphasized that there exists no specific statutory provision authorizing any court to direct an accused to disclose a password or unlock a mobile device for investigative purposes. Since the right to privacy is a fundamental right under Article 21, it can only be curtailed by a law enacted by Parliament that satisfies the test laid down in *Maneka Gandhi v. Union of India*[21], namely that the procedure must be just, fair and reasonable. In the absence of such legislation, the order of the Special Court dated 14 September 2020 was argued to be unsustainable.

The petitioner further asserted that even during police interrogation, an accused is entitled to remain silent. Compelling disclosure of a passcode or decryption of data amounts to forcing the accused to become a witness against himself, contrary to Section 161(2) Cr.P.C[22]. and Articles 20(3) and 21 of the Constitution. Reliance was placed on the decision of the United States Supreme Court in *Miranda v. Arizona*[23], which recognized the right to remain silent during custodial interrogation.

The petitioner reiterated that compelling decryption of data or access to e-mail accounts amounts to extracting personal information. Even if incriminating material were contained therein, the accused retains the right to refuse disclosure under Section 161(2) Cr.P.C. In this regard, reliance was placed on *Nandini Satpathy v. P.L. Dani* (1978) 2 SCC 424, where the Supreme Court held that the right to silence extends to the stage of police interrogation.

Further support was drawn from *State of Bombay v. Kathi Kalu Oghad*, wherein the Supreme Court interpreted the phrase "to be a witness" as meaning imparting knowledge in respect of relevant facts by oral or written statements by a person possessing personal knowledge. The petitioner argued that revealing a password constitutes imparting special knowledge residing in the mind of the accused and therefore cannot be compelled, particularly in the absence of specific legislation. Even if such a law were enacted, it would have to withstand scrutiny under Articles 20(3) and 21.

Finally, it was submitted that Section 45-A of the Indian Evidence Act[24] merely concerns the relevancy of the opinion of an examiner of electronic evidence under Section 79-A of the Information Technology Act, 2000. These provisions do not authorize the abrogation of fundamental rights guaranteed under Articles 20(3) and 21. The statutory recognition of expert opinion does not extend to compelling an

[20] "A Typology of Privacy" [Bert-Jaap Koops et al., "A Typology of Privacy", University of Pennsylvania Journal of International Law (2017), Vol. 38 Issue 2, at p. 566.] in the University of Pennsylvania Journal of International Law

[21] 1978 AIR 597

[22] The Bharatiya Nagarik Suraksha Sanhita, 2023 (Act 46 of 2023), s.181

[23] Miranda v. Arizona, 384 U.S. 436 (1966)

[24] The Bharatiya Sakshya Adhiniyam, 2023 (Act 47 of 2023), s.39(2)

accused to furnish cognitive access to personal digital information.

On these cumulative grounds, the petitioner contended that the impugned order directing him to undergo a polygraph test and to unlock his mobile phone was unconstitutional, violative of Articles 20(3) and 21, contrary to Section 161(2)[25] of the Code of Criminal Procedure, inconsistent with binding precedent, and in breach of principles of natural justice.

III. Arguments of the Respondent – Public Prosecutor in *Virendra Khanna v. State of Karnataka*

The Respondent–State, represented by the learned Public Prosecutor, opposed the writ petition and defended the order dated 14 September 2020 directing the petitioner to unlock his mobile phone and the subsequent order dated 23 September 2020 in relation to the polygraph test. The central submission of the Respondent was that neither direction violated Article 20(3) or Article 21 of the Constitution of India.

At the outset, the Respondent emphasized that Article 20(3) provides that no person accused of an offence shall be compelled to be a witness against himself. In order to claim the protection of this provision, the petitioner was required to demonstrate two essential elements: first, that the disclosure of the password amounted to personal testimony; and second, that such disclosure would lead to self-incrimination. It was argued that neither of these conditions was satisfied in the present case. Consequently, the order dated 14 September 2020 did not infringe the petitioner's rights under Article 20(3).

In support of this submission, heavy reliance was placed on the Constitution Bench judgment in *State of Bombay v. Kathi Kalu Oghad*[26]. The Respondent reiterated that the expression "to be a witness" is not synonymous with "furnishing evidence" in its widest amplitude. While it may include making oral or written statements, it does not extend to giving thumb impressions, palm or finger impressions, specimen handwriting, or exposing parts of the body for identification. Self-incrimination, as explained in *Kathi Kalu Oghad*, must involve conveying information based on personal knowledge and not merely the mechanical production of material that may be relevant at trial.

The Respondent stressed that the production of a document containing an accused's handwriting or signature for comparison does not amount to personal testimony. Such material is considered neutral and belongs to the category of material evidence, which lies outside the ambit of testimonial compulsion. A specimen handwriting or fingerprint is wholly innocuous by itself and does not make the case against the accused probable unless corroborated by other evidence. They are neither oral nor documentary testimony but material for comparison.

The Public Prosecutor further relied upon the conclusions drawn in *Kathi Kalu Oghad*. It was emphasized that mere questioning by police resulting in a voluntary statement does not amount to compulsion. "To be a witness" does not include production of documents or materials that are relevant to determining guilt or innocence. The giving of thumb impressions, specimen writings, or other identifying marks does not fall within Article 20(3). To attract the constitutional prohibition, the statement must, by itself, have a tendency to incriminate the accused. Furthermore, the person must have been an accused at the time of making the statement.

Applying this reasoning, the Respondent contended that disclosure of a password does not, by itself, incriminate the accused. It does not constitute a statement regarding the commission of an offence nor does it make the prosecution's case probable on its own. At best, it enables access to material that may be

[25] The Bharatiya Nagarik Suraksha Sanhita, 2023 (Act 46 of 2023), s.180.

[26] Supra note 5.

examined independently. Therefore, disclosure of a password cannot be characterised as self-incrimination within the meaning of Article 20(3).

With respect to the right to privacy under Article 21, the Respondent relied on the nine-judge bench decision in *Justice K.S. Puttaswamy v. Union of India*, which recognised privacy as an intrinsic element of the right to life and personal liberty. However, the Public Prosecutor emphasized that the Court had unanimously held that the right to privacy is not absolute. It may be curtailed if three requirements are met: the existence of a law; the pursuit of a legitimate or compelling state interest; and proportionality, meaning a rational nexus between the object sought to be achieved and the means adopted.

It was submitted that the order dated 14 September 2020 satisfied all these requirements. The direction was grounded in statutory provisions contained in the Code of Criminal Procedure, 1973 and the Indian Evidence Act, 1872. Section 139 of the Indian Evidence Act[27] provides that a person may be summoned to produce a document. The term "evidence" under Section 3 of the Evidence Act[28] includes all documents, including electronic records. Consequently, the term "document" in Section 139[29] encompasses electronic records in the possession of the petitioner. Since the mobile phone and its contents constitute electronic records, the Trial Court was empowered to direct their production, and disclosure of the password was incidental to that power.

Additionally, reliance was placed on Section 54-A of the Code of Criminal Procedure[30], which permits the Court to direct identification of a person arrested when such identification is necessary for investigation. The Respondent argued that the password functions as an identification mark used by service providers to identify the petitioner in relation to his data. Therefore, compelling disclosure of the password is analogous to requiring identification and is sanctioned by law.

The Respondent further contended that disclosure of a password is akin to providing specimen signatures or handwriting. Under Section 311-A[31] of the Code of Criminal Procedure, a Magistrate is empowered to order a person to give specimen signatures or handwriting for purposes of investigation. Drawing support from *Ritesh Sinha v. State of Uttar Pradesh*[32], it was argued that even in the absence of an express statutory provision, courts may interpret existing provisions in light of contemporary realities. In *Ritesh Sinha*, the Supreme Court held that a Magistrate could direct collection of voice samples under Section 311-A Cr.P.C., notwithstanding the absence of explicit language to that effect. The Court recognized the necessity of adapting procedural law to modern technological contexts. Similarly, in the present case, disclosure of a password—being comparable to a specimen signature—can be ordered in the interests of effective investigation.

The Respondent emphasized that constitutional courts must exercise jurisdiction in light of contemporaneous realities and existing ground conditions. Judicial power should not become an impediment to legitimate investigation, particularly in serious offences under the Narcotic Drugs and Psychotropic Substances Act. In *Puttaswamy*[33], the Supreme Court acknowledged that prevention and investigation of crime constitute legitimate state interests. The direction to disclose the password was issued solely for the purpose of investigating offences under the NDPS Act and the Foreigners Act. Thus, it pursued a legitimate aim.

[27] The Bharatiya Sakshya Adhiniyam, 2023 (Act 47 of 2023), s.144
[28] The Bharatiya Sakshya Adhiniyam, 2023 (Act 47 of 2023), s.2(1)(d)
[29] The Bharatiya Sakshya Adhiniyam, 2023 (Act 47 of 2023), s.144
[30] The Bharatiya Nagarik Suraksha Sanhita, 2023 (Act 46 of 2023), s.54
[31] The Bharatiya Nagarik Suraksha Sanhita, 2023 (Act 46 of 2023), s.349.
[32] (2019) 8 SCC 1
[33] Supra note 8

On the requirement of proportionality, it was submitted that the action was limited in scope. The order merely required disclosure of the password in aid of investigation. There was a rational nexus between the objective—effective investigation of serious offences—and the means adopted. The measure was neither excessive nor arbitrary.

Regarding the order directing the petitioner to undergo a polygraph test, the Respondent relied on paragraph 262 of *Selvi v. State of Karnataka*, wherein the Supreme Court held that compulsory administration of polygraph tests violates Article 20(3). It was argued that the order dated 23 September 2020 did not mandate compulsory administration. It merely directed the petitioner to undergo a polygraph test, which would require his consent. In the absence of compulsion, no infraction of Article 20(3) would arise. If the petitioner declined consent, the test could not be forcibly administered. Therefore, the impugned order did not violate constitutional safeguards.

In conclusion, the Respondent maintained that disclosure of the password does not amount to testimonial compulsion, does not by itself incriminate the accused, and is supported by statutory provisions read in light of evolving investigative necessities. The right to privacy, though fundamental, is subject to reasonable restrictions grounded in legality, legitimate state interest, and proportionality. Since these requirements were fulfilled, the orders of the Trial Court were constitutionally valid and did not warrant interference under writ jurisdiction.

IV. Judgment in *Virendra Khanna v. State of Karnataka*

The High Court of Karnataka, while deciding *Virendra Khanna v. State of Karnataka* (2021 SCC OnLine Kar 5032 : (2021) 3 AIR Kant R 455), undertook a detailed examination of the constitutional and procedural questions arising from directions to unlock a smartphone and to undergo a polygraph test during investigation of offences under Section 21(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 and Section 14 of the Foreigners Act.

Technological Context and the Nature of Smartphones

At the outset, the Court acknowledged the transformative impact of technology on modern life. The traditional landline telephone has been replaced by smartphones, devices possessing computing power far exceeding that of computers from the 1990s. A smartphone today functions not merely as a communication tool but as a central hub for personal and professional activities. The Court observed that voice communication may in fact be the least used feature of a smartphone.

Smartphones are used for messaging, social media interactions through platforms such as WhatsApp, Facebook, Twitter, Instagram, Telegram and Signal, sending and receiving emails, internet browsing, online financial transactions, online purchases, storage of photographs and documents, and access to cloud-based data. In many cases, the smartphone has replaced the laptop, which had earlier replaced the physical office; for numerous individuals, the smartphone itself constitutes a portable office.

Recognising these realities, the Court noted that the Law of Evidence and the Code of Criminal Procedure, originally enacted in an era of physical documentation, have been amended over time to address technological developments. The Information Technology Act, 2000 has also been enacted and amended to accommodate electronic records and digital data.

Traditionally, documentary evidence referred to material written or printed on paper. Today, documents exist in both physical and electronic formats, often stored in binary, encrypted or other digital forms. The definitions of "electronic form" and "electronic record" under the Information Technology Act are broad enough to encompass all forms of data storage, including images, photographs and digitised

documents. Such data constitutes information stored in electronic media, and it is this data that investigating officers seek to access for purposes of investigation, filing of charge sheets and adjudication at trial.

Investigative Powers to Seek Passwords or Access

The Court addressed whether an investigating officer could direct an accused to furnish a password, passcode or biometric information to open a smartphone or email account. It held that during investigation, it is routine for an investigating officer to issue directions or requests to the accused or other connected persons to furnish information or produce material objects. Thus, the investigating officer may request or direct the accused to provide the password, passcode or biometrics necessary to access a device or email account. It is for the accused to decide whether to accede to such a request. If the accused voluntarily provides access, the investigating officer may make use of it.

However, the Court drew a distinction when it came to judicial intervention. It held that a court cannot suo motu issue a direction compelling an accused to furnish a password, passcode or biometrics. A general direction to "cooperate" in the investigation does not amount to a specific direction to disclose such credentials. The gathering of evidence and the methodology of investigation lie primarily within the domain of the investigating officer.

Statutory Framework under the Code of Criminal Procedure

The Court examined Chapter VII of the Code of Criminal Procedure dealing with search, seizure and production. Section 91[34] empowers a court or officer in charge of a police station to issue summons or orders requiring a person in possession of a document or thing to produce it. Section 92[35] enables certain judicial authorities to require postal or telegraph authorities to deliver documents or articles for purposes of investigation, enquiry or trial. Section 93[36] authorises issuance of search warrants in circumstances where a person does not comply with a summons under Section 91, where possession is unknown, or where general search is necessary. The Court may restrict such searches to specific places, times or purposes.

Section 94[37] provides power to search places suspected of containing stolen property or objectionable articles. Section 100 mandates that persons in charge of premises must permit ingress and afford reasonable facilities for search upon production of a warrant. It also permits personal searches, subject to safeguards such as requiring that a woman be searched only by another woman.

In emergent circumstances, Section 102[38] authorises a police officer to seize property suspected to be stolen or connected with commission of an offence. The Court noted that the phrase "suspicion of commission of any offence" is broad enough to encompass numerous situations. In urgent cases, it would be unreasonable to expect investigating officers to rush to court for a warrant; however, when time permits, a warrant should ordinarily be obtained, and safeguards must be observed in urgent searches.

Password Disclosure and Section 161 Cr.P.C.

Given that smartphones may contain vast amounts of potentially incriminatory data, the Court considered whether providing a password amounts to giving testimony or making a statement under Section 161

[34] The Bharatiya Nagarik Suraksha Sanhita, 2023 (Act 46 of 2023), s.94
[35] The Bharatiya Nagarik Suraksha Sanhita, 2023 (Act 46 of 2023), s.95
[36] The Bharatiya Nagarik Suraksha Sanhita, 2023 (Act 46 of 2023), s.96
[37] The Bharatiya Nagarik Suraksha Sanhita, 2023 (Act 46 of 2023), s.97
[38] The Bharatiya Nagarik Suraksha Sanhita, 2023 (Act 46 of 2023), s.106

Cr.P.C. Upon issuance of notice under Section 160 Cr.P.C., any witness, including the accused, may be examined. Under Section 161, such person must answer questions relating to the case, except those answers that may expose him to a criminal charge, penalty or forfeiture, reflecting the constitutional protection under Article 20(3).

The Respondent had argued that disclosure of a password is akin to providing specimen signatures or handwriting under Section 311-A Cr.P.C. The Court, however, observed that providing a password or biometrics is more than furnishing a specimen signature and therefore cannot be directly equated with Section 311-A.

Whether Disclosure Amounts to Testimonial Compulsion

On the core issue of testimonial compulsion, the Court held that providing a password, passcode or biometrics does not amount to giving testimony. Relying on the eleven-judge bench decision in *State of Bombay v. Kathi Kalu Oghad*[39], the Court reiterated that giving thumb impressions, palm or finger impressions, specimen handwriting or exposing parts of the body for identification does not constitute testimonial compulsion.

Mere provision of access to a smartphone or email account does not amount to being a witness against oneself. The act of providing access does not itself communicate personal knowledge of relevant facts in issue. The information accessed by the investigating officer remains subject to proof in accordance with law. The presence of a document or data on a smartphone does not, by itself, establish guilt or innocence. Both prosecution and defence must prove the authenticity and relevance of such material through independent evidence.

The Court thus concluded that a direction to provide a password or biometrics is in the nature of directing production of a document and does not constitute testimonial compulsion. Accessing a device does not equate to self-incrimination; it remains the burden of the investigating agency to establish its case through cogent material evidence.

Right to Privacy and Digital Access

Addressing the question of privacy, the Court considered the principles laid down in *Justice K.S. Puttaswamy v. Union of India*. It acknowledged that smartphones may contain deeply personal data, including financial transactions, privileged communications and cloud-stored information. Unlike physical documents, where privileged or confidential documents may be segregated, digital access often provides comprehensive entry into all stored data, making strict compartmentalisation difficult.

The Court recognised the possibility that investigating officers, upon gaining access, may encounter data unrelated to the investigation and intensely private in nature. However, it held that use of such data for purposes of investigation would fall within the exceptions to privacy recognised in *Puttaswamy*, particularly in the context of criminal investigation. Disclosure of such data in court proceedings would require judicial scrutiny and appropriate orders. The investigating agency cannot share such data with third parties during investigation without written permission from the court seized of the matter. The responsibility of safeguarding sensitive information rests with the investigating agency.

Consequences of Refusal to Cooperate

The Court further observed that if an accused refuses to provide the password, passcode or biometrics despite being given an opportunity, the investigating agency may engage specialised agencies to crack or bypass the security measures in order to access the device or email account. Once such opportunity to

[39] Supra note 5

cooperate has been declined, the accused cannot later challenge the methodology adopted by the investigating agency to access the information.

The investigating agency would be at liberty to clone the smartphone, hard disk or cloud data connected to the device and use the same during investigation, subject to compliance with evidentiary rules governing electronic evidence. The admissibility and evidentiary value of such material would be governed by the applicable provisions of the Indian Evidence Act and related statutory requirements.

Conclusion of the Court

In conclusion, the High Court held that while a court cannot directly compel an accused to disclose passwords or biometrics, an investigating officer may request such disclosure during investigation. Providing such access does not amount to testimonial compulsion under Article 20(3), nor does it automatically violate the right to privacy under Article 21, provided that investigative use of the data is confined to legitimate purposes and subject to judicial safeguards. The burden remains on the prosecution to prove the evidentiary value of any material obtained from electronic devices in accordance with law.

V. Arguments of the Accused in *CBI v. Mahesh Kumar Sharma*

In *Central Bureau of Investigation v. Mahesh Kumar Sharma and Another* (2022 SCC OnLine Dis Crt (Del) 48), the issue before the Delhi Court concerned an application filed by the Central Bureau of Investigation seeking directions against the accused for disclosure of passwords and access credentials to electronic devices. The accused opposed the application and raised several substantive constitutional and procedural objections.

At the outset, it was contended that the application had been filed without invoking any specific statutory provision. The accused argued that the trial court possesses no inherent powers to issue such directions in the absence of express legislative authorization. Unlike constitutional courts exercising writ jurisdiction, a criminal court of original jurisdiction cannot assume inherent authority beyond the statutory framework of the Code of Criminal Procedure. Since no specific provision empowered either the Investigating Officer or the court to compel disclosure of passwords, the application was liable to be rejected. The accused further submitted that Section 91[40] of the Code of Criminal Procedure could not be invoked against an accused person. Relying upon judicial precedents of superior courts, it was argued that Section 91, which provides for summons to produce documents or things, does not apply to an accused in a manner that would compel him to produce incriminatory material. The legislative intent behind Section 91 does not extend to overriding the constitutional safeguard against self-incrimination. Therefore, the Investigating Officer could not rely on Section 91 as a source of authority to demand passwords from the accused.

A central plank of the defence was grounded in Article 20(3) of the Constitution of India and Section 161(2) of the Code of Criminal Procedure. The accused asserted that he had a constitutional right to remain silent and not to be compelled to be a witness against himself. Section 161(2) Cr.P.C. specifically protects an individual from being compelled to answer questions that may expose him to criminal charges, penalty or forfeiture. Compelling the accused to disclose his password would amount to extracting self-incriminatory testimony, as the password is a matter of personal knowledge residing in his mind. Such compelled disclosure would therefore violate both the constitutional guarantee under Article 20(3) and the statutory protection under Section 161(2).

[40] The Bharatiya Nagarik Suraksha Sanhita, 2023 (Act 46 of 2023), s.94

The prosecution had relied upon the judgment of the Karnataka High Court in *Virendra Khanna v. State of Karnataka*. The accused challenged the applicability of that precedent on two grounds. First, it was argued that the decision of the Karnataka High Court was not binding on a Delhi Court due to territorial limitations, as it was not a judgment of the Supreme Court. Second, it was contended that the judgment was rendered *per incuriam*, implying that it failed to consider binding precedents or relevant statutory provisions and therefore lacked persuasive authority.
The accused also invoked the right to privacy under Article 21 of the Constitution. It was submitted that the computer system and electronic devices in question might contain private and confidential data unrelated to the investigation. Disclosure of passwords would grant the investigating agency unrestricted access to personal, financial, professional and potentially privileged communications. Such intrusion would amount to an impermissible interference with the right to privacy, as recognised in *Justice K.S. Puttaswamy v. Union of India*. In the absence of a specific statutory framework authorising such intrusion and prescribing adequate safeguards, compelling disclosure would be unconstitutional.

Finally, it was argued that if the accused chose to refuse disclosure of passwords or access credentials, no adverse inference could be drawn against him. The right to silence and the protection against self-incrimination are substantive constitutional guarantees. Penalising their exercise, whether directly or indirectly by drawing adverse inference, would dilute the essence of Article 20(3). The burden of proving the allegations rests solely upon the prosecution, and the accused cannot be compelled to assist the State in building its case.

On these grounds, the accused sought dismissal of the application filed by the Central Bureau of Investigation, contending that compelling disclosure of passwords would violate constitutional protections, statutory safeguards, and established principles of criminal jurisprudence.

VI. Judgment in *Central Bureau of Investigation v. Mahesh Kumar Sharma and Another*
(2022 SCC OnLine Dis Crt (Del) 48)

The Delhi Court, while deciding the application filed by the Central Bureau of Investigation seeking a direction to the accused to disclose passwords and access credentials of his computer system, undertook a detailed examination of the statutory scheme under the Code of Criminal Procedure, 1973, the Criminal Procedure (Identification) Act, 2022, the Information Technology Act, 2000, and the constitutional protection under Article 20(3) of the Constitution of India.

Statutory Powers of Investigation under the Cr.P.C.

The Court held that Sections 102 and 161 of the Code of Criminal Procedure confer powers upon the investigating agency to seek information or documents from any person, including an accused. These powers may be exercised independently or with the assistance of the Court under Sections 91 and 93 Cr.P.C. Section 102 authorises seizure of property suspected to be stolen or connected with the commission of an offence. Section 161 empowers the investigating officer to examine witnesses, including the accused, during investigation.[41]

However, the Court made it clear that while the investigating agency possesses wide powers to collect evidence, the accused or even a witness is not bound to provide any answer, information or document that is self-incriminatory. This protection flows from the independent constitutional guarantee under Article 20(3), which states that no person accused of an offence shall be compelled to be a witness against himself.

[41] Supra note 28

The Court further observed that Section 157 Cr.P.C.[42], which authorises investigation into the "facts and circumstances of the case," is wide enough to include seeking any information, object or material required for a fair investigation, provided such action does not violate established legal provisions. The Court noted that even prior to the enactment of the Criminal Procedure (Identification) Act, 2022, and amendments relating to blood samples, fingerprints, DNA samples and other physical evidence, the Supreme Court had recognised that such powers fall within the ambit of "investigation."

Meaning of Testimonial Compulsion under Article 20(3)

A central issue before the Court was whether compelling disclosure of a password amounts to "testimonial compulsion." Section 161(2) Cr.P.C. protects an individual from answering questions that may have a tendency to expose him to a criminal charge, penalty or forfeiture. Article 20(3) uses the expression "to be a witness against himself."
The Court referred to *M.P. Sharma v. Satish Chandra* [43]and the observations therein that "to be a witness" is equivalent to "to furnish evidence," and includes every positive volitional act which furnishes evidence. However, the prohibition under Article 20(3) applies to testimonial compulsion involving personal knowledge.

The Court also referred to *State of Bombay v. Kathi Kalu Oghad*, where the Supreme Court classified evidence into three categories: oral testimony, documentary evidence, and material evidence. It was held that "self-incrimination" means conveying information based upon personal knowledge, and does not include the mechanical production of documents that do not contain statements based on such knowledge. The Supreme Court laid down a distinction between "testimonial evidence" and "physical material evidence," such as fingerprints, specimen handwriting, and bodily substances.

The bar of Article 20(3) applies when statements are likely to incriminate the accused by themselves or "furnish a link in the chain of evidence." The Court also referred to comparative jurisprudence such as *Schmerber v. California*[44], where physical evidence such as fingerprints, photographs, measurements and gestures were held outside the scope of testimonial privilege.

Criminal Procedure (Identification) Act, 2022 and Biometrics

The Court analysed the Criminal Procedure (Identification) Act, 2022, particularly Section 3[45], which permits the taking of "measurements" including biometrics from convicts, arrested persons and detainees under preventive provisions of Sections 107 to 109[46] Cr.P.C. The Court noted that the Act does not limit the taking of such measurements solely for purposes of identification or comparison with existing evidence. Thus, biometrics may be collected even for broader investigative purposes, subject to the proviso to Section 3.

The Court observed that biometrics obtained under the Identification Act may be used for accessing mobile phones, computer systems, email accounts or software applications wherever necessary for fair investigation. However, a distinction was drawn between biometric features and passwords.

The Court specifically addressed pattern-drawn security features on electronic devices. It held that drawing a pattern requires application of mind and personal knowledge, similar to recalling a password. Therefore, such security features fall within the same legal analysis as passwords.

[42] The Bharatiya Nagarik Suraksha Sanhita, 2023 (Act 46 of 2023), s.176.
[43] Supra note 4.
[44] 384 US 757
[45] The Criminal Procedure (Identification) Act, 2022 (Act 11 of 2022), s. 3
[46] The Bharatiya Nagarik Suraksha Sanhita, 2023 (Act 46 of 2023), ss.126.127,128

Password as Testimonial Fact

The Court disagreed with the reasoning adopted by the Karnataka High Court in *Virendra Khanna v. State of Karnataka*, holding with due respect that the said observations were per incuriam because they did not adequately consider the principles laid down in *Selvi v. State of Karnataka*. The Supreme Court in *Selvi* had clarified that "to be a witness" means imparting knowledge in respect of relevant facts by oral or written statements based on personal knowledge.

The Delhi Court held that when an accused is asked to disclose his password, he must apply his mental faculty and memory to recall it. This involves personal mental effort and knowledge. Therefore, the password falls within the category of "testimonial fact" as explained by the Supreme Court.

Although a password by itself may not constitute incriminating evidence, it cannot be considered in isolation. From a practical perspective, the investigating officer seeks the password not for its own sake, but to access the data stored in the computer system or mobile phone seized from the accused. Thus, the password is an integral and inseparable component of the electronic device. When considering whether disclosure is incriminatory, the password cannot be viewed independently of the data it unlocks.

Illegally Obtained Evidence and Risk to Article 20(3)

The Court highlighted the distinction between Indian and American law regarding illegally obtained evidence. In the United States, the doctrine of "fruit of the poisoned tree" excludes illegally obtained evidence. In India, however, evidence obtained by improper means may still be admissible in certain circumstances. Therefore, if the accused is compelled to provide his password and incriminating data is accessed, there exists a real risk that such material may be used against him. This possibility strengthens the need to protect Article 20(3) rights.

Relying upon *Selvi*[47], where compulsory administration of lie detection and narco-analysis tests was struck down, the Court held that compelling disclosure of information based on mental effort or knowledge violates Article 20(3).

Section 79-A of the Information Technology Act, 2000

The Court clarified that Section 79-A of the Information Technology Act, 2000 merely provides for establishment of laboratories for examination of electronic records. It does not authorise compelling an accused to disclose passwords. The law relating to seeking production of electronic devices differs from seeking disclosure of passwords or biometrics. While a device may be seized or produced under Sections 91 and 102 Cr.P.C., disclosure of a password based on personal knowledge remains protected.

Privacy under Article 21

The Court acknowledged the right to privacy as recognised in *K.S. Puttaswamy v. Union of India*. The nine-judge bench had emphasised dignity, autonomy and liberty as intrinsic to Article 21. The Court reiterated the various facets of privacy identified in *Puttaswamy*, including bodily, informational and decisional privacy.

Electronic records in the form of computer systems, mobile phones, pen-drives, hard disks, memory cards, email communications and cloud storage often contain private data. While such electronic devices are not immune from seizure or scrutiny under Section 102 Cr.P.C. and other statutory provisions, the right against self-incrimination remains paramount.

The Court held that although the investigating officer has no right to compel disclosure of a password without consent, the officer is not precluded from decrypting or accessing the data through specialised

[47] Supra note 7.

agencies. Thus, the balance between privacy rights and investigative powers is maintained by prohibiting compelled testimonial disclosure while permitting lawful technical access.

No Adverse Inference from Refusal

Finally, the Court categorically held that if the accused refuses to provide his password, no adverse inference can be drawn against him. Section 161(2) Cr.P.C. enables silence during investigation. Section 313(3) Cr.P.C.[48] provides that the accused shall not render himself liable to punishment by refusing to answer questions. Proviso (b) to Section 315(1) Cr.P.C. mandates that failure of the accused to give evidence shall not be the subject of adverse comment or presumption.

Thus, the constitutional and statutory scheme recognises the right to silence at both the investigation and trial stages. The prosecution bears the burden of proof, and the accused cannot be penalised for exercising his constitutional privilege.

The Court concluded that while investigating agencies possess wide powers under Sections 102, 157, 161, 91 and 93 Cr.P.C. [49]and may seize and examine electronic devices, they cannot compel an accused to disclose passwords or security patterns based on personal knowledge, as doing so would violate Article 20(3) and Section 161(2) Cr.P.C. The power to decrypt or access data through technical means remains available, but compelled testimonial disclosure is constitutionally impermissible. No adverse inference may be drawn from the accused's refusal to cooperate in this regard.

VII. Critical Analysis of *Virendra Khanna* and *CBI v. Mahesh Kumar Sharma*

The conflicting decisions in *Virendra Khanna v. State of Karnataka* and *CBI v. Mahesh Kumar Sharma* reflect a deeper constitutional uncertainty regarding the scope of Article 20(3) in the digital age. While both courts relied upon *Kathi Kalu Oghad*[50], *M.P. Sharma*[51], and *Selvi*[52], their interpretative approaches diverge sharply, revealing doctrinal inconsistencies and analytical gaps.

Critique of the Karnataka High Court's Approach

The Karnataka High Court concluded that compelled disclosure of a password, passcode, or biometric does not amount to testimonial compulsion. However, this reasoning suffers from three significant weaknesses.

First, the Court conflated passwords with biometrics. By treating both as analogous to fingerprints or specimen signatures under *Kathi Kalu Oghad*, the Court overlooked the cognitive element inherent in password disclosure. Unlike fingerprints, a password exists only in the "mental zone" of the accused. As emphasized in *Selvi*, Article 20(3) protects against the extraction of information based on personal knowledge. Recalling and communicating a password necessarily involves mental effort and volition. The judgment insufficiently engaged with this mental faculty test.

Second, the Court's reliance on Sections 91, 93, and 100 Cr.P.C. appears strained. A password was treated as a "document" capable of production under Section 91, and a smartphone was indirectly treated as a "place" under Section 93. Such interpretation stretches statutory language beyond its ordinary meaning. A password does not exist as a physical document but as cognitive information. Similarly, applying the doctrine of ejusdem generis, an electronic device does not comfortably fit within the

[48] The Bharatiya Nagarik Suraksha Sanhita, 2023 (Act 46 of 2023), s.351
[49] The Bharatiya Nagarik Suraksha Sanhita, 2023 (Act 46 of 2023), ss.106,176,180,94.
[50] Supra note 5
[51] Supra note 4
[52] Supra note 7

statutory definition of "place" under Section 2(p) Cr.P.C.[53]

Third, the Court failed to meaningfully address the doctrine of "foregone conclusion." Instead of examining whether the investigating agency already possessed prior knowledge of specific incriminating material on the device, the Court adopted a broad investigatory justification. Comparative jurisprudence suggests that compelled production may be permissible only where the accused adds "little or nothing" to the prosecution's existing knowledge. The absence of this analytical step weakens the constitutional balancing exercise.

Evaluation of the Delhi Special CBI Court's Approach

The Delhi Court adopted a rights-centric framework and correctly emphasized that password disclosure involves application of mental faculty, thereby constituting testimonial communication. Its reliance on *Selvi* and the "furnishing a link in the chain of evidence" test aligns closely with established Supreme Court jurisprudence.

However, this judgment is not beyond criticism.
While the Court rightly distinguished passwords from biometrics under the Criminal Procedure (Identification) Act, 2022, it assumed that biometrics fall squarely within the category of non-testimonial physical evidence. This conclusion may be overly simplistic. Comparative U.S. jurisprudence has introduced the "functional equivalence" argument — that biometrics and passwords perform the same function of securing digital data. If biometrics serve as the functional equivalent of a password, compelling their use to unlock a device may implicitly authenticate ownership, control, and access to its contents, thereby conveying testimonial assertions.
The Delhi Court did not fully engage with this functional equivalence challenge. Nor did it reconcile how compelling biometrics for unlocking differs materially from compelling password disclosure when both ultimately provide access to the same protected data.

Further, while the Court rejected compelled password disclosure, it allowed the investigating agency to decrypt devices through specialized agencies. This creates a structural paradox: if mental privacy is constitutionally protected, indirect circumvention through technical means raises questions about the meaningfulness of the protection.

The Unresolved Constitutional Tension

The divergence between the two judgments exposes three unresolved tensions:

1. Whether the test for testimonial compulsion should focus on the act of disclosure (mental effort) or the nature of the evidence obtained (digital content).
2. Whether biometrics and passwords are constitutionally distinct or functionally equivalent.
3. Whether Indian law should formally adopt a calibrated version of the "**foregone conclusion**" doctrine to balance investigative necessity with Article 20(3).

The Karnataka High Court prioritized investigative efficiency but inadequately protected cognitive autonomy. The Delhi Court prioritized constitutional safeguards but left ambiguities regarding biometrics and indirect access.

I. Conclusion

Both judgments, though well-intentioned, reveal doctrinal incompleteness. The Karnataka decision underestimates the mental privacy dimension of passwords, while the Delhi decision insufficiently interrogates the functional equivalence between passwords and biometrics and does not articulate a

[53] The Bharatiya Nagarik Suraksha Sanhita, 2023 (Act 46 of 2023), s.2(1)(s).

structured test such as the foregone conclusion doctrine.

In the digital era, smartphones function as repositories of personal identity, communication, and autonomy. A constitutional framework developed in the era of handwritten documents cannot be mechanically applied to encrypted devices without recalibration.
A definitive pronouncement by the Supreme Court is necessary to evolve a principled standard—one that preserves the core of Article 20(3), respects informational privacy under *Puttaswamy*, and simultaneously allows fair investigation through narrowly tailored exceptions such as a carefully structured foregone conclusion rule.

Until such clarification emerges, compelled decryption jurisprudence in India will remain doctrinally fragmented and constitutionally unsettled.

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QUANTUM COMPUTING: HOW IT IS A RISK TO MANAGING ELECTRONIC EVIDENCE IN A CRIMINAL TRIAL

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Abstract

Quantum computing introduces unprecedented risks to managing electronic evidence in criminal trials, threatening the integrity, authenticity, and admissibility of digital records. This paper explores how quantum algorithms, leveraging superposition and entanglement, can compromise cryptographic protections, enabling evidence tampering, deep fake fabrication, and chain-of-custody violations. Unlike classical computing, quantum systems could bypass digital signatures and hash-based proofs, undermining metadata reliability and evidence verification in cloud and IoT ecosystems. These capabilities amplify vulnerabilities in evidence storage and transmission, potentially eroding judicial trust and creating disparities between prosecution and defence capabilities. The paper examines quantum-assisted cybercrime tactics, such as synthetic evidence creation and social engineering, which challenge current forensic methodologies. It also investigates judicial implications, including evolving admissibility standards and jurisdictional gaps in quantum readiness. To counter these threats, the paper proposes quantum-resilient cryptographic protocols, quantum key distribution (QKD) for secure evidence transmission, and adaptive forensic techniques, alongside proactive legislation and international harmonization of cybersecurity laws. Through hypothetical scenarios and simulated quantum attacks, the paper highlights practical risks to high-stakes criminal trials and underscores the need for interdisciplinary collaboration between legal, forensic, and technological stakeholders. By fostering legal-tech synergy and developing quantum-safe infrastructure, the judicial system can prepare for a quantum future. This paper offers a roadmap for mitigating risks, ensuring the reliability of electronic evidence, and upholding justice in an era of quantum disruption.

Keywords: Quantum Computing, Electronic Evidence, Digital Forensics, Cryptographic Vulnerabilities, Judicial Integrity

Introduction

The rapid advancement of quantum computing poses transformative challenges to the criminal justice system, particularly in the management of electronic evidence. As quantum technologies near practical implementation, their ability to disrupt cryptographic frameworks, manipulate digital data, and undermine forensic processes threatens the reliability of evidence in criminal trials. Electronic evidence ranging from emails and financial records to surveillance footage and metadata is a cornerstone of modern judicial proceedings. However, quantum computing's potential to bypass current encryption standards and fabricate synthetic evidence introduces unprecedented risks to evidence integrity and authenticity.

This paper highlights the intersection of quantum computing, digital forensics, and criminal law, examining how quantum capabilities reshape the lifecycle of electronic evidence by adopting a conceptual framework that integrates quantum computing's technical mechanisms such as superposition, entanglement, and quantum algorithms with their practical impacts on evidence management, from collection to courtroom presentation. By addressing these questions, the paper aims to bridge the gap between emerging technology and legal practice.

The convergence of quantum computing and criminal justice demands an interdisciplinary approach, uniting

legal scholars, forensic experts, and technologists. Quantum computing's ability to manipulate data at unprecedented scales challenges existing forensic methodologies, which rely heavily on classical cryptographic tools. For legal practitioners, this raises questions about evidence admissibility, due diligence, and ethical considerations in handling potentially compromised data. Meanwhile, technologists must develop quantum-resilient solutions, such as post-quantum cryptography and secure evidence transmission protocols. This paper underscores the importance of collaborative efforts to address these challenges, fostering dialogue across disciplines to safeguard the integrity of criminal trials. Its findings are relevant not only to judicial stakeholders but also to policymakers and cybersecurity experts navigating the quantum transition.

A mixed-method approach, combining theoretical analysis of quantum computing principles with hypothetical scenarios and case studies to illustrate their impact on electronic evidence is employed. It draws on existing literature in quantum cryptography, digital forensics, and criminal law, supplemented by speculative threat modeling to anticipate future risks. Limitations include the nascent stage of quantum computing, which restricts empirical data on real-world quantum attacks, and the evolving nature of legal frameworks, which may vary across jurisdictions. Despite these constraints, the paper provides a forward-looking analysis by synthesizing current knowledge and projecting quantum-driven risks, offering actionable recommendations for stakeholders.

Quantum computing's disruptive potential for evidence management

Firstly, quantum algorithms, such as Shor's and Grover's pose significant threats to the integrity of electronic evidence by undermining cryptographic protections fundamental to digital forensics. Shor's algorithm can factorise large numbers exponentially faster than classical methods, rendering widely used encryption schemes like RSA vulnerable.[1] In criminal trials, where electronic evidence such as encrypted communications or financial records is pivotal, quantum decryption could enable malicious actors to access and alter data undetectably. For instance, a tampered email chain could falsely incriminate or exonerate a defendant, compromising judicial outcomes. Furthermore, Grover's algorithm, which accelerates unstructured search, could be exploited to identify vulnerabilities in evidence databases, allowing selective manipulation of metadata or file contents.[2] These capabilities challenge the assumption of evidence immutability, necessitating new forensic protocols to detect quantum-driven tampering.

Secondly, quantum superposition and entanglement introduces novel risks to evidence authenticity by enabling sophisticated data obfuscation techniques. Superposition allows quantum systems to process multiple states simultaneously, potentially creating ambiguous data trails that obscure the origin or authenticity of electronic evidence.[3] For example, a quantum computer could generate multiple plausible versions of a digital artifact, such as a surveillance video, complicating forensic verification. Entanglement, where quantum states are correlated across systems, could be exploited to manipulate evidence provenance, making it difficult to trace the chain of custody. In a criminal trial, such obfuscation

[1] Shor PW, 'Polynomial-Time Algorithms for Prime Factorization and Discrete Logarithms on a Quantum Computer' (1997) 26 SIAM Journal on Computing 1484.

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[3] Nielsen MA and Chuang IL, Quantum Computation and Quantum Information (10th edn, CUP 2010).

could undermine trust in digital records, as prosecutors or defenders struggle to prove whether evidence has been altered. These properties demand advanced forensic tools capable of analyzing quantum-induced anomalies in evidence datasets.

Thirdly, quantum error correction, which is considered essential for stabilizing quantum computations, paradoxically heightens risks to evidence integrity. Techniques like surface codes ensure reliable quantum processing but could be repurposed to conceal deliberate alterations in electronic evidence.[4] For instance, a malicious actor with access to a quantum system could use error correction to mask tampering in a database, making changes appear as natural errors or noise. This is particularly concerning for long-term evidence storage, where digital records are preserved for future appeals or retrials. Current forensic methods, designed for classical systems, lack the capability to detect such quantum manipulations, leaving evidence vulnerable to undetectable corruption. This underscores the need for quantum-aware forensic standards to ensure data integrity in judicial contexts.

Lastly, so to say, quantum supremacy looms as a game-changer for cybercrime, directly impacting electronic evidence management. The recent advancements, such as Google's Sycamore processor achieving supremacy in 2019, indicate that quantum systems are nearing practical deployment.[5] In the context of criminal trials, quantum supremacy could empower cybercriminals to execute attacks that overwhelm classical forensic defenses, such as forging digital signatures or planting synthetic evidence in law enforcement databases. For example, a quantum-enhanced attack could compromise a police server, altering body camera footage without leaving detectable traces. As quantum computing becomes accessible to malicious actors, the risk of evidence fabrication escalates, threatening the reliability of digital evidence in courtrooms. This necessitates urgent development of quantum-resilient forensic and legal frameworks.

Vulnerabilities in the electronic evidence ecosystem

The lifecycle of electronic evidence from collection to courtroom presentation is increasingly reliant on cloud and Internet of Things (IoT) environments, which are vulnerable to quantum computing attacks. Cloud-based storage systems, used by law enforcement for preserving digital evidence like emails or CCTV footage, depend on classical encryption protocols susceptible to quantum decryption algorithms, such as Shor's algorithm.[6] IoT devices, including smart cameras and wearables, generate vast datasets often stored in distributed systems, amplifying exposure to quantum-enabled breaches. For instance, a quantum computer could decrypt cloud-stored evidence, allowing unauthorized access or alteration, which undermines its admissibility in criminal trials. The decentralized nature of IoT data collection further complicates attribution, as quantum systems could exploit network vulnerabilities to manipulate evidence at its source.

Furthermore, blockchain technology, often touted for its immutable ledgers, will be frequently employed to secure the chain of custody for electronic evidence. However, quantum computing challenges its reliability. Quantum algorithms like Grover's can accelerate attacks on cryptographic hash functions, such as SHA-256, potentially enabling tampering with blockchain records.[7] In a criminal trial, a compromised blockchain could cast doubt on the integrity of evidence logs, such as timestamps or custodial records, leading to legal challenges over admissibility. Moreover, blockchain's reliance on public-key cryptography, vulnerable to quantum attacks, risks the authenticity of evidence entries,

[4] Gottesman D, 'An Introduction to Quantum Error Correction and Fault-Tolerant Quantum Computation' in Quantum Information Science and Its Contributions to Mathematics (American Mathematical Society 2010) 13.

[5] Arute F and others, 'Quantum Supremacy Using a Programmable Superconducting Processor' (2019) 574 Nature 505.

[6] Shor PW (n 1).

[7] Grover LK (n 2).

necessitating the development of quantum-resistant ledger systems to maintain judicial trust.

Also, the evasion metadata, such as timestamps and geolocation data, is critical for establishing the authenticity and context of electronic evidence in criminal trials. Quantum computing threatens metadata reliability by enabling the evasion of digital signatures, which are foundational to forensic verification. Quantum algorithms can forge or invalidate signatures by exploiting weaknesses in cryptographic protocols like ECDSA.[8] For example, a quantum attacker could alter metadata in a digital document to misrepresent its creation date, misleading investigators or courts. This vulnerability undermines the foundational trust in metadata as a forensic tool, requiring new authentication mechanisms resilient to quantum computational power.

Additionally, the long-term storage and real-time transmission of electronic evidence face significant risks from quantum-induced corruption. Quantum computers could exploit error correction techniques to introduce subtle, undetectable alterations in stored evidence, such as modifying pixel data in surveillance footage to create false narratives.[9] During transmission, evidence shared between law enforcement and courts via secure channels could be intercepted and altered using quantum decryption, compromising the chain of custody. Such corruption risks eroding judicial confidence in digital evidence, as courts may struggle to distinguish authentic records from quantum-manipulated ones. This necessitates quantum-safe encryption and transmission protocols to safeguard evidence integrity.

Quantum threat vectors to evidence authenticity

Quantum computing's computational power amplifies the risk of fabricating synthetic evidence, such as deep fakes, which can deceive judicial processes in criminal trials. Quantum algorithms can process vast datasets to generate hyper-realistic audio, video, or documents indistinguishable from authentic evidence.[10] For instance, quantum-enhanced machine learning could create a forged surveillance video implicating an innocent party, challenging forensic verification methods. This capability threatens the reliability of electronic evidence, as courts may struggle to differentiate genuine records from quantum-generated fakes.

Hash-based proofs and digital signatures, such as those using SHA-256 or ECDSA, are critical for authenticating electronic evidence in criminal trials. Quantum algorithms, notably Grover's, can reduce the computational effort required to forge or break these mechanisms, undermining their reliability.[11] For example, a quantum attacker could generate a false hash that mimics the original, allowing tampered evidence such as an altered email to appear authentic. This evasion erodes the foundational trust in digital authentication, potentially leading to wrongful convictions or acquittals.

Further, quantum computing can enhance social engineering attacks, enabling cybercriminals to compromise evidence through sophisticated manipulation of human and system vulnerabilities. Quantum systems could accelerate phishing or impersonation schemes by analyzing behavioral data at unprecedented speeds, crafting targeted attacks to gain access to evidence repositories.[12] For instance, a quantum-assisted attack might deceive law enforcement into accepting planted evidence, such as a fabricated chat log, as legitimate. Such tactics exploit the human element in evidence management, bypassing technical safeguards and undermining the

[8] Proos J and Zalka C, 'Shor's Discrete Logarithm Quantum Algorithm for Elliptic Curves' (2003) 3 Quantum Information & Computation 317.
[9] Gottesman D (n 4).
[10] Yampolskiy RV, 'From Deepfakes to Quantum Deepfakes: The Next Frontier in Digital Forensics' (2023) 29 Journal of Cybersecurity 1.
[11] Grover LK (n 2).
[12] Kiktenko EO and others, 'Quantum-Safe Cryptography and Security' (2018) 20 EPJ Quantum Technology 1.

chain of custody. This underscores the need for quantum-aware training for judicial stakeholders to mitigate social engineering risks.

Also, the chain of custody which is essential for ensuring evidence admissibility, is at optimum risk of collapse in quantum environments. As quantum computing could enable covert manipulation of evidence logs, such as altering timestamps or custodial records, without detection.[13] For example, a quantum system could exploit entanglement to correlate falsified data across multiple systems, creating a seamless but fraudulent chain of custody. In a criminal trial, this could render critical evidence inadmissible, as courts require unbroken custodial records to establish reliability. The potential for quantum-induced disruptions necessitates robust, quantum-resistant tracking systems to maintain the integrity of the evidence lifecycle.

Judicial challenges in a quantum era

Quantum computing's potential to manipulate electronic evidence necessitates a reassessment of admissibility standards, particularly in India, where the Bharatiya Sakshya Adhiniyam 2023 (BSA 2023) has redefined electronic evidence as primary evidence, moving beyond the Indian Evidence Act 1872.[14] Quantum algorithms, capable of forging digital signatures or creating deep fakes, challenge the reliability of evidence in cases like State (NCT of Delhi) v Navjot Sandhu, which established protocols for digital evidence admissibility.[15]

Indian courts, reliant on hash value verification and expert testimony under BSA 2023, face technical challenges due to limited quantum-aware forensic infrastructure.[16] For instance, a quantum-generated forgery could bypass current authentication mechanisms, risking wrongful admissions. The All India Forensic Science Summit 2025 emphasizes aligning forensic techniques with new criminal laws to address such issues, urging courts to adopt quantum-resistant validation standards to ensure judicial fairness.[17]

Quantum computing exacerbates disparities between prosecution and defence capabilities in India, where access to advanced forensic tools is uneven. State agencies, supported by initiatives like the National Quantum Mission (NQM), may adopt quantum-safe technologies, while under-resourced defence teams struggle to challenge quantum-altered evidence.[18] For example, in a trial under the BSA 2023, prosecutors could present quantum-verified evidence, leaving defence attorneys reliant on outdated forensic methods, skewing justice.

The Uttar Pradesh State Institute of Forensic Science (UPSIFS), inaugurated in 2024, aims to train forensic experts, but its reach is limited, exacerbating disparities in smaller jurisdictions.[19] Globally, similar imbalances are noted, with advanced jurisdictions deploying quantum forensics while others lag.[20] India

[13] Nielsen MA and Chuang IL (n 3).
[14] The Bharatiya Sakshya Adhiniyam, 2023 (47 of 2023).
[15] State (NCT of Delhi) v Navjot Sandhu (2005) 11 SCC 600.
[16] Law Web, 'Judicial Perspectives on Electronic Evidence Authentication: A Comprehensive Analysis of Proving Digital Documents Under the Bharatiya Sakshya Adhiniyam 2023' (Law Web, 2024 <https://www.lawweb.in/2025/06/judicial-perspectives-on-electronic.html> accessed 5 June 2025.
[17] NFSU, 'All India Forensic Science Conference 2025' (National Forensic Sciences University, 2025) <https://aifsc.nfsu.ac.in> accessed 8 June 2025.
[18] National Quantum Mission, 'Quantum Technologies for India' (Department of Science and Technology, Government of India 2023) <https://dst.gov.in/national-quantum-mission-nqm> accessed 11 June 2025.
[19] UPSIFS, 'Uttar Pradesh State Institute of Forensic Science, Lucknow, India' (UPSIFS, 2024) <https://upsifs.org> accessed 7 June 2025.
[20] Slobogin C, 'Technologically-Assisted Litigation: The Future of Evidence Law' (2021) 74 Vanderbilt Law Review 1167.

must invest in accessible quantum forensic training, possibly through I4C, to ensure equitable trial processes.

In India, where trials are judge-driven, judicial perception of potentially tampered electronic evidence is critical, especially given quantum computing's ability to create undetectable forgeries. Quantum-generated deep fakes, such as falsified CCTV footage, could mislead judges, as seen in cases relying on digital evidence under BSA 2023. The NQM's focus on quantum forensics could support judicial training to recognize such threats, but current judicial education lacks quantum-specific modules.[21] Globally, studies on evidence reliability highlight how perceived tampering erodes trust, impacting rulings.[22] India's Digital India initiative, promoting judicial digitalization, must integrate quantum risk awareness into judicial training programs, ensuring judges can evaluate evidence credibility in quantum-affected trials.[23]

Jurisdictional disparities in quantum readiness pose significant challenges in India, where states vary in technological infrastructure. Advanced states like Uttar Pradesh, with UPSIFS, may adopt quantum-safe protocols, while others lack resources, impacting evidence handling in inter-state cases. The BSA 2023's emphasis on technical authentication strains under-resourced courts, risking inadmissibility of compromised evidence.[24] Globally, the Budapest Convention on Cybercrime highlights the need for harmonized standards, but India's non-signatory status complicates cross-border evidence sharing.[25] The NQM's collaboration with institutions like IIT Madras can drive quantum-ready protocols, but national coordination, possibly through MeitY, is needed to standardize evidence management across jurisdictions.[26]

Legal and policy responses to quantum risks

Quantum computing's threat to electronic evidence necessitates proactive legislation to establish quantum-resistant standards, particularly in India, where digital evidence is increasingly central to criminal trials under the BSA 2023. Quantum algorithms, such as Shor's, can compromise encryption protocols like RSA, risking the integrity of evidence stored in systems like India's e-Courts platform.[27] To address this, India must amend the Information Technology Act 2000 to mandate quantum-safe cryptographic standards for evidence management, aligning with global efforts like NIST's post-quantum cryptography framework. The Indian judiciary should integrate quantum-aware forensic validation to ensure reliability.[28] Proactive legislation could require law enforcement to adopt quantum-resistant protocols, such as lattice-based cryptography[29] to safeguard evidence authenticity and maintain judicial trust.

The global nature of quantum threats demands international harmonisation of cybersecurity laws, with India playing a pivotal role through initiatives like the NQM.[30] Jurisdictional disparities, where

[21] National Quantum Mission (n 18).
[22] Yampolskiy RV (n 10).
[23] EY, 'Modernizing Criminal Laws: A Step Towards Legal Reform' (EY India, 2024) <https://www.ey.com/en_in/insights/forensic-integrity-services/modernizing-criminal-laws-a-step-towards-legal-reform> accessed 9 June 2025.
[24] Law Web (n 16).
[25] Budapest Convention on Cybercrime (adopted 23 November 2001, entered into force 1 July 2004) ETS No 185.
[26] National Quantum Mission (n 18)
[27] Shor PW (n 1).
[28] State (NCT of Delhi) v Navjot Sandhu (n 15).
[29] Relyea R, 'Post-Quantum Cryptography: Lattice-Based Cryptography' (Red Hat - We make open source technologies for the enterprise, 30 October 2023) <https://www.redhat.com/en/blog/post-quantum-cryptography-lattice-based-cryptography> accessed 13 June 2025.
[30] National Quantum Mission (n 18) ; G S, 'Navigating the Quantum Frontier: India's Strategic Ascent and Leading States' (LinkedIn, 23 May 2025) <https://www.linkedin.com/pulse/navigating-quantum-frontier-indias-strategic-ascent-leading-g-6xgbc> accessed 12 June 2025.

advanced nations adopt quantum-safe protocols while others lag, create vulnerabilities in cross-border evidence sharing, critical for cases under India's Mutual Legal Assistance Treaties (MLATs). The Budapest Convention on Cybercrime, to which India is not a signatory but collaborates through bilateral agreements, lacks quantum-specific provisions.[31] India's NQM, aiming to advance quantum key distribution (QKD), could lead regional efforts to harmonize standards, ensuring evidence reliability in transnational trials.[32] Collaborative frameworks, such as those proposed by the International Organization for Standardization (ISO), should be adopted to align India's cyber laws with global quantum-ready protocols.

Quantum-enhanced investigations raise ethical dilemmas, particularly in India, where balancing privacy and security is governed by the Digital Personal Data Protection Act 2023 (DPDP Act).[33] Quantum decryption could enable excessive surveillance, potentially violating privacy rights enshrined in Puttaswamy v UOI[34] For instance, quantum-assisted access to encrypted communications could produce admissible evidence but infringe on data protection principles, creating ethical tensions in criminal investigations. Indian courts must develop guidelines to limit quantum-driven overreach, ensuring compliance with the DPDP Act while preserving investigative efficacy. Public awareness campaigns, supported by India's NQM, could educate stakeholders on ethical quantum use, fostering a balance between technological advancement and fundamental rights.

Quantum-compromised evidence introduces complex liability issues, particularly in India's legal system, where accountability for evidence mishandling is underdeveloped. If quantum attacks forge digital signatures or alter evidence in systems like the Crime and Criminal Tracking Network & Systems (CCTNS), determining responsibility whether with law enforcement, forensic teams, or technology providers becomes challenging.[35] The Indian Penal Code 1860 (now BNS) and IT Act 2000 lack provisions for quantum-related breaches, which addressed digital liabilities broadly. Establishing clear liability frameworks, including penalties for failing to adopt quantum-safe measures, is essential. India's NQM could support public-private partnerships to develop quantum-resistant infrastructure, reducing liability risks and ensuring accountability in criminal trials.

Innovative strategies for quantum-resilient evidence management

The deployment of quantum-secure cryptographic protocols is critical to protect electronic evidence from quantum computing threats in criminal trials. Quantum algorithms, such as Shor's, can break classical encryption like RSA, jeopardizing evidence stored in systems like India's e-Courts platform or global cloud repositories.[36] Post-quantum cryptography (PQC), such as lattice-based algorithms, offers a solution by resisting quantum attacks. India's National Quantum Mission (NQM), launched in 2023, prioritizes PQC development, aiming to integrate these protocols into judicial systems.[37] For instance, adopting NIST's PQC standards can secure evidence

[31] Budapest Convention on Cybercrime (n 25).
[32] Kiktenko EO and others (n 12).
[33] The Digital Personal Data Protection Act 2023 (31 of 2023).
[34] Justice KS Puttaswamy v Union of India (2017) 10 SCC 1.
[35] Lehot L, 'Quantum Future and the Quantum Arms Race' (Data Driven Investor, 30 June 2021) <https://www.datadriveninvestor.com/2021/06/30/quantum-future-and-the-quantum-arms-race/#:~:text=We've%20seen%20that%20sophisticationon%20of%20attacks%20has,to%20apply%20quantum%20computing%20to%20their%20attacks.> accessed 11 June 2025 .
[36] Shor PW (n 1).
[37] Ray K, 'India Plans National Mission on Quantum Technology to Get Super-Secure Communication Networks' (Dspace, 21 January 2021) <http://dspace.rri.res.in/bitstream/2289/7648/1/DH_24jan20.pdf> accessed 11 June 2025.

databases, ensuring authenticity and admissibility.[38] Law enforcement agencies must implement these protocols to safeguard digital evidence, aligning with India's Information Technology Act 2000, which governs electronic records.[39]

Quantum Key Distribution (QKD) provides a quantum-resistant method for secure evidence transmission, critical for maintaining the chain of custody in criminal trials. QKD leverages quantum mechanics to detect eavesdropping, ensuring secure data transfer between law enforcement and courts.[40] In India, the NQM supports QKD research, with initiatives like the Quantum Communication Testbed in Ahmedabad advancing secure communication frameworks.[41] Globally, QKD systems, such as those tested in China's quantum networks, demonstrate feasibility for judicial applications.[42] Implementing QKD in evidence transmission can prevent quantum-induced interception, as per India's cybersecurity strategy under the Digital India initiative. The courts must adopt QKD to ensure evidence integrity, particularly in high-stakes cases involving cross-border data.

Blockchain technology, used for immutable evidence ledgers, faces vulnerabilities from quantum algorithms like Grover's, which can compromise hash functions.[43] Developing quantum-resilient blockchain systems is essential to maintain the chain of custody. India's NQM emphasizes quantum-safe ledger technologies, aligning with global efforts to integrate post-quantum cryptographic primitives into blockchain frameworks. For example, hash-based signatures like XMSS can replace vulnerable algorithms, ensuring evidence logs remain tamper-proof. In India, where blockchain is explored for judicial record-keeping under the e-Courts project, quantum-resilient ledgers could enhance trust in digital evidence. Collaborative research between India's Department of Science and Technology and international bodies like the ISO can accelerate these advancements, ensuring admissibility in trials.

Current forensic techniques, designed for classical systems, are inadequate against quantum threats like synthetic evidence fabrication. Adaptive forensic methodologies, leveraging quantum-aware tools, are necessary to detect manipulations such as deep fakes or altered metadata.[44] India's Forensic Science Laboratories, supported by the NQM, can develop quantum-enhanced forensic tools, such as quantum-based anomaly detection algorithms, to verify evidence authenticity.[45] Globally, research into quantum forensics highlights the need for machine learning models trained on quantum attack patterns.

[38] Osborne M, Moskvitch K and Janechek J, 'NIST's Post-Quantum Cryptography Standards Are Here' (IBM Research, 15 August 2024) <https://research.ibm.com/blog/nist-pqc-standards> accessed 10 June 2025.

[39] The Information Technology Act, 2000 (21 of 2000).

[40] Alam A, 'Quantum Cryptography and Encryption: How It Works' (Troop Messenger - Team Collaboration and Instant Messaging App, 25 May 2023) <https://www.troopmessenger.com/blogs/quantum-cryptography> accessed 12 June 2025.

[41] The Times of India, 'ISRO chief says Ahmedabad to lead India's quantum communication efforts: Ahmedabad News' (23 June 2023) <https://timesofindia.indiatimes.com/city/ahmedabad/ahmedabad-to-lead-indias-quantum-communication-efforts-isro-chief/articleshow/101204266.cms> accessed 11 June 2025.

[42] Qi C, 'China's Quantum Ambitions: A Multi-Decade Focus on Quantum Communications' (Yale Journal of International Affairs, 23 May 2024) <https://www.yalejournal.org/publications/chinas-quantum-ambitions> accessed 15 June 2025.

[43] Grover LK (n 2).

[44] Cybersecurity Centre of Excellence (CCoE),'Unmasking The False: Advanced Tools And Techniques For Deepfake Detection' <https://ccoe.dsci.in/blog/Deepfake-detection> accessed 12 June 2025.

[45] Samson A, 'Quantum Computing and Wireless Networks Security: A Survey' (GSCARR, 22 August 2024) <https://gsconlinepress.com/journals/gscarr/sites/default/files/GSCARR-2024-0308.pdf> accessed 12 June 2025.

Training Indian forensic experts under initiatives like the Cyber Crime Coordination Centre (I4C) can ensure readiness, enabling courts to rely on robust forensic validation in quantum-affected trials.

Case scenarios and threat modelling

A simulated quantum attack on digital evidence chains illustrates the vulnerabilities in current judicial systems. Consider a hypothetical scenario where a quantum computer, leveraging Shor's algorithm, decrypts an encrypted database in India's Crime and Criminal Tracking Network & Systems (CCTNS), altering a custodial log for CCTV footage in a high-profile criminal trial.[46] The tampered log falsely indicates uninterrupted custody, rendering the evidence admissible despite manipulation. Such an attack could exploit weaknesses in RSA encryption, undermining the BSA 2023's requirements for authenticity. Globally, similar vulnerabilities exist in cloud-based evidence systems, as noted in NIST's cybersecurity reports.[47] This scenario highlights the need for quantum-resistant encryption to protect evidence chains, a priority under India's National Quantum Mission (NQM).[48]

In a high-stakes Indian criminal trial, such as a terrorism case under the Unlawful Activities (Prevention) Act 1967[49] a quantum exploit could fabricate evidence, such as a deep fake video implicating a defendant. Quantum-enhanced machine learning could generate synthetic footage indistinguishable from authentic recordings, bypassing forensic detection tools used by India's Forensic Science Laboratories. Globally, similar exploits could target evidence in international cases, as seen in hypothetical scenarios where quantum algorithms forge digital signatures.[50] The case of Navjot Sandhu underscores India's reliance on digital evidence, amplifying the impact of such exploits.[51] Courts must adopt quantum-aware forensic tools to detect and mitigate these threats, ensuring judicial fairness.

Quantum-related cybercrime scenarios offer critical lessons for evidence management. In India, a quantum-assisted phishing attack could target the e-Courts platform, planting falsified documents that appear legitimate under current verification protocols[52] Globally, quantum-driven social engineering has been explored in cybersecurity literature, where attackers use quantum computing to analyze behavioral data for targeted evidence compromise.[53] For instance, a 2023 study highlights how quantum algorithms could accelerate data breaches in judicial systems.[54] India's Cyber Crime Coordination Centre (I4C) must integrate quantum threat intelligence to counter such attacks, drawing lessons from global incidents to strengthen forensic readiness and protect evidence integrity.

Preparing courts for quantum-driven evidence challenges requires proactive measures, particularly in India, where digital transformation is accelerating under the Digital India initiative.[55] Training judges and legal practitioners on quantum risks, as supported

[46] Shor PW (n 1).
[47] Badge L and others, 'Cloud Computing Synopsis and Recommendations' (NIST, 29 May 2012) <https://nvlpubs.nist.gov/nistpubs/legacy/sp/nistspecialpublication800-146.pdf> accessed 5 June 2025.
[48] Ray (n 37).
[49] The Unlawful Activities (Prevention) Act, 1967 (37 of 1967).
[50] Suhai S and others, 'On the Role of Hash-Based Signatures in Quantum-Safe Internet of Things: Current Solutions and Future Directions' (arXiv, 22 April 2020) <https://arxiv.org/pdf/2004.10435> accessed 11 June 2025.
[51] State (NCT of Delhi) v Navjot Sandhu (n 15).
[52] Sahu D, 'Supreme Court Warns Public of Phishing Attack Targeting' (VARINDIA , 1 January 2025) <https://www.varindia.com/public/news/supreme-court-warns-public-of-phishing-attack-targeting-its-official-website> accessed 13 June 2025.
[53] SaberiKamarposhti M and others, 'Post-Quantum Healthcare: A Roadmap for Cybersecurity Resilience in Medical Data' (Heliyon, 16 May 2024) <https://www.sciencedirect.com/science/article/pii/S2405844024074371> accessed 10 June 2025.
[54] Yampolskiy RV (n 10).
[55] EY (n 23).

by the NQM's educational outreach, can enhance judicial preparedness. For example, workshops on quantum forensics could equip Indian courts to evaluate evidence authenticity addressed digital liabilities. Additionally, jurisdictions are developing quantum-aware admissibility standards, as seen and observed in discussions around the Daubert standard.[56] India must establish similar guidelines, integrating quantum-resistant protocols and forensic validation to ensure courts can handle quantum-compromised evidence effectively.

Building capacity for a quantum future

Mitigating quantum risks to electronic evidence requires robust legal-tech synergy, particularly in India, where the digital justice system is expanding under the Digital India initiative. Collaboration between legal practitioners, forensic experts, and technologists can drive the development of quantum-resistant evidence management systems. India's National Quantum Mission (NQM), launched in 2023, fosters interdisciplinary research to integrate quantum-safe technologies into judicial processes, such as those governed by the Information Technology Act 2000.

Globally, initiatives like the Quantum Alliance Initiative emphasize cross-sector partnerships to address quantum threats.[57] In India, establishing joint task forces involving the Ministry of Electronics and Information Technology (MeitY) and the National Judicial Academy can align legal frameworks with technological advancements, ensuring courts are equipped to handle quantum-compromised evidence. Training forensic experts in quantum-resilient practices is essential to counter threats to electronic evidence. In India, the Cyber Crime Coordination Centre (I4C) can expand its training programs to include quantum forensics, focusing on detecting quantum-driven manipulations like deep fakes or metadata tampering.[58] The NQM supports such initiatives by funding research into quantum-aware forensic tools, such as anomaly detection algorithms. Globally, studies highlight the need for forensic training to address quantum threats, advocating for curricula that cover post-quantum cryptography and quantum key distribution (QKD).[59] Indian Forensic Science Laboratories must collaborate with institutions like the Indian Institute of Science to develop training modules, ensuring experts can validate evidence authenticity in quantum-affected trials.

Public-private partnerships (PPPs) are critical for developing quantum-safe infrastructure to protect electronic evidence. In India, the NQM collaborates with private entities like Tata Institute of Fundamental Research and tech firms to advance quantum technologies, including QKD and quantum-resistant blockchain.[60] These partnerships can enhance platforms like the e-Courts system, ensuring evidence security.[61] Globally, PPPs, such as those under the EU's Quantum Flagship, demonstrate success in deploying quantum-safe infrastructure for judicial applications. In India, MeitY can partner with industry leaders to implement NIST's post-quantum cryptographic standards, safeguarding evidence

[56] Cappellino A, 'The Daubert Standard: Expert Testimony, Admissibility, Rules' (Expert Institute, 9 May 2024) <https://www.expertinstitute.com/resources/insights/the-daubert-standard-a-guide-to-motions-hearings-and-rulings/> accessed 9 June 2025.

[57] Mavroeidis V and others, 'The Impact of Quantum Computing on Present Cryptographic Solutions' (2018) 2018 IEEE Security & Privacy 1.

[58] Vaishnavi, 'What Is the Impact of Quantum Computing on Digital Forensics? The Complete Guide' (WebAsha Technologies, 21 January 2025) <https://www.webasha.com/blog/what-is-the-impact-of-quantum-computing-on-digital-forensicsthe-complete-guide> accessed 13 June 2025.

[59] Montanari S and Sharma N, 'Cybersecurity and Deepfakes in Retail: A Double-Edged Sword' (Cognizant, 19 November 2024) <https://www.cognizant.com/no/en/insights/blog/articles/cybersecurity-and-deepfakes-in-retail-a-double-edged-sword> accessed 11 June 2025.

[60] National Quantum Mission (n 18).

[61] The Information Technology Act (n 39).

databases.[62] Such collaborations can also address liability issues under the Information Technology Act 2000, ensuring accountability for quantum-related breaches.

Furthermore, ethical frameworks are vital to ensure quantum-enabled digital justice aligns with principles of fairness and privacy, particularly in India, where the Digital Personal Data Protection Act 2023 (DPDP Act) governs data handling.[63] Globally, ethical considerations for quantum technologies emphasize balancing security and individual rights.[64] In India, the NQM can support ethical training programs for judicial stakeholders, ensuring compliance with the DPDP Act while leveraging quantum tools for evidence validation. Developing a national ethical code for quantum-enhanced investigations, integrated with frameworks like the Budapest Convention, can uphold justice in quantum-affected trials.[65]

Conclusion & suggestions

Quantum computing presents profound risks to electronic evidence management in criminal trials, threatening the integrity, authenticity, and admissibility of digital records. Quantum algorithms, such as Shor's and Grover's, can decrypt classical encryption and forge digital signatures, compromising evidence stored in systems like India's Crime and Criminal Tracking Network & Systems (CCTNS) or global cloud platforms. The potential for quantum-enabled deep fakes and metadata tampering undermines judicial trust, particularly in India, where digital evidence is critical under the BSA 2023 (erstwhile Indian Evidence Act 1872). However, opportunities exist to counter these risks through quantum-resistant technologies like post-quantum cryptography (PQC) and quantum key distribution (QKD), supported by India's National Quantum Mission (NQM).[66] These advancements, coupled with adaptive forensic techniques, offer a pathway to secure evidence management, ensuring fairness in trials.

To mitigate quantum risks, legal and forensic stakeholders must act decisively. In India, the Ministry of Electronics and Information Technology (MeitY) should amend the Information Technology Act 2000 to mandate PQC for evidence databases, aligning with global standards like NIST's CRYSTALS-Kyber. Judicial training programs, supported by the NQM and the National Judicial Academy, should educate judges on quantum threats. Forensic experts, through India's Cyber Crime Coordination Centre (I4C), must adopt quantum-aware tools to detect manipulations.[67] Public-private partnerships, leveraging the NQM's collaborations with institutions like the Tata Institute of Fundamental Research, can develop quantum-safe infrastructure for platforms like e-Courts. Internationally, India should advocate for quantum provisions in frameworks like the Budapest Convention to ensure cross-border evidence reliability.[68]

Future research must address gaps in quantum-resilient evidence management. In India, the NQM should fund studies on quantum forensics, focusing on detecting synthetic evidence in judicial systems. Globally, research into quantum-resistant blockchain and QKD scalability can enhance evidence ledgers.[69] Legal scholarship should examine ethical frameworks, particularly in India under the DPDP Act

[62] Tandon A, 'Meity, CERT-in, DST Collaborate on Quantum-Safe Network Framework' (Communications Today, 8 April 2025) <https://www.communicationstoday.co.in/meity-cert-in-dst-collaborate-on-quantum-safe-network-framework/> accessed 15 June 2025.
[63] DPDP Act 2023 (n 33).
[64] Richards J, 'The Impact of Quantum Computing on Cybersecurity Law' (2022) 28 Journal of International Cybersecurity Law 45.
[65] Budapest Convention on Cybercrime (n 25).
[66] National Quantum Mission (n 18).
[67] Horsman D and others, 'Quantum Computing: The Next Challenge for Digital Forensics?' (2020) 16 Digital Investigation 100582.
[68] Budapest Convention on Cybercrime (n 25).
[69] Kiktenko EO and others (n 12).

2023, to balance privacy and security in quantum-enhanced investigation. Interdisciplinary collaborations, involving India's I4C and global bodies like the ISO, can drive innovation in quantum-safe standards. A roadmap for technological development should prioritize pilot projects, such as QKD implementation in India's e-Courts, to ensure judicial systems worldwide are prepared for the quantum era.

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THE ILLUSION OF CHOICE: MECHANISMS OF STATE CONTROL IN DEMOCRACIES AND DICTATORSHIPS

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ABSTRACT

This research paper delves into the idea that how much do citizens living in democratic governance systems are able to choose freely or whether they are manipulated in the less obvious manners than that of people who are living in authoritarian or dictatorships regimes. It raises questions on the stereotypical view of democratic governance systems as providing absolute freedom to its citizens and authoritarian or dictatorship regimes as having absolute control over its citizens.

This paper uses a comparative method to analyze the governance systems of Ancient Greece and the Roman Republic who are considered to be the first societies to contribute to the ideas of democracy and republics. In Ancient Greece, Athenian democracy was the system in which the citizens could directly influence the decision-making processes, whereas Rome created the new system of distributed power between various institutions in their governance structure.

These governance systems then are compared with the Nazi Germany, where the Nazi Regime under Adolf Hitler dismantled the democratic institutions, and used propaganda to dictate what people thought, and established a police state that killed all its enemies. This analogy between these governance systems demonstrates that how the dictatorships apply fear, censorship, and manipulation of the law to ensure absolute power.

The paper then discusses the current India and its democratic system with emphasis on the safeguards provided by the Indian Constitution namely: basic rights, autonomy of the courts, separation of power among the branches of government, and federalism. Nevertheless, it also examines areas of constitutional pledges and constitutional reality, such as employing emergency powers, sedition laws, and civil liberties. The analysis of the important Supreme Court cases is used to comprehend the ways in which courts strike a balance between government power and individual freedom,

One of the primary points for consideration in this research paper is on the influence that the media has on the general opinion and the broadcasting of factual or false information. The prime example of this is the Nazi Germany who enjoyed full control of all the media houses in order to promote its propaganda and agenda. On comparison with India, the democratic governments place the media as a watchdog whereby it keeps the government accountable. However, the present media landscape has experienced a considerable change in the light of corporate ownership systems, especially with the advent of social media services.

This paper also examines the probability of misleading the voters with false information, echo chambers, and strategic disinformation campaigns, which makes the issue of whether the citizens have the ability of making informed electoral decision a huge concern. This paper concludes that both democracies and dictatorships use very different methods of control but do use the way of control over their citizens where the dictatorships are based on the use of blatant methods of control such as censorship, physical violence, and coercion whereas democracies use minor mechanisms such as complex legal frameworks, censored narratives in the media and calculated regulation of education and information availability. Both of these governance structures offer an illusion of choice where dictatorships does so through its pretense of choice, which has already been predetermined by strong power structures.

KEYWORDS: *Democracy, Dictatorship, Governance, Control, Mechanism*

INTRODUCTION

Democracy is often described as the picture of freedom, a system of individual rights, where the sovereignty of the people is in power whereas dictatorship is described as the opposite of freedom a place where intimidation and fear shaped by the government prevail but a closer examination will show that this sharp contrast starts to fade away. However, democracies still depend on consent manufacture, perception shaping, and dissent limiting operations that in many ways are more advanced and, hence, more persistent than the coercive appearance common to authoritarian governments. Democratic institutions, elections, free speech, separation of powers, judicial review, are glorified as the protector of freedom but the same processes can justify compliance, making the previously obedience a voluntary one. In these systems, obedience seems to be voluntary, and power is hidden under the discourse of self-determination.

Contemporary democratic nations are more and more relying on narrative legitimacy, in which patriotic identities are made to equate loyalty with obedience. This can be observed in various settings: in the United States, where media polarization is used to persuade people into partisan tribalism; in India, where digital nationalism is being used to discourage dissent by labeling critics as anti-national; in Europe, where securitization of migration has empowered the intrusive surveillance as a matter of course. The fact that propaganda and public information is blurred as well as the corporatization of the press indicates a democracy in which public knowledge is produced and sold and citizens often protect official structures of power even to their own disadvantage.

This study will seek to question the qualitative content of freedom in the democracies through analyzing how consent is fashioned, surveillance normalized and legitimacy produced. This paper provides a historical-comparative analysis of four political regimes, namely, the Athenian democracy, the Roman Republic, Nazi Germany, and modern India, and proves that all regimes eventually strive to achieve obedience, but democracies are particularly successful in making their citizens emotionally engaged in their control. In case power is best used where least noticed, then democracy is the epitome of domination: human beings struggle to maintain the same system that they are constrained by. Power is not alienated, but it is internalized in the psyche of the citizen[1].

RESEARCH QUESTIONS

The following are the core questions that will define this research and question the issue of democratic legitimacy outside of the formal institutional structures.

1. Are citizens in democracies substantively autonomous or is the state through the help of the media and social-political systems crafting or manipulating the menu of choices presented to them in such a way that they will comply?
2. What creates the illusion of choice that replicates in the form of freedom and strengthens structural domination?
3. What are the mechanisms of behavioural guidance, identity-based political stories and manipulation of information? How far is the experience of political freedom under present-day democracies to be contrasted with the coercive mechanism of the dictatorships and are the key distinction to be found in technique and not in intent?
4. Lastly, is it the continuation of democratic ritual that conceals the shift of government to a docile authoritarianism, in which dissent is suppressed by prompting legality, persuasion and psychological conformity instead of by coercion?

[1] Hannah Arendt, The Origins of Totalitarianism, Harcourt, 1951

METHODOLOGY

The study utilizes a historical-comparative approach coupled with the analysis of the law of the people and the media-political psychology study. The methodology is designed in a trifold manner and is interdependent, focused on three approaches, that are in operation concurrently, but not defined by time.

This paper uses the institutionalism of the past to discuss the functioning of power in the government systems of Ancient Athens, Rome, Nazi Germany and India which altogether demonstrate the development of compliance mechanisms implemented by the governments. Another element of analysis is the constitutional and legal analysis which delves into structural vulnerabilities in liberal democracies that show signs of authoritarian tendencies. Using India as an example, this paper presents a unique case where the country is both a constitutional democracy and an institutionally fragile state. The Basic Structure Doctrine which was established in the landmark case of Keshavananda Bharti v. State of Kerela strengthened the judicial authority in order to prevent legislative overreach and protect democratic principles.

Another element of analysis covers the media and surveillance studies, which investigates that how modern technology has changed the relationship between state, citizens and private entities. Soshana Zuboff terms this as "instrumentarian power" which means the transformation of human behaviour into the form of data that can be further analyzed and manipulated in order to produce politically desired outcomes, therefore, making digital control both invisible and voluntary as modern digital platforms collect behavioural data of the citizens that is then used in the prediction and influencing the civic conduct. This paper challenges the common and conventional notions of democracies being inherently liberating and dictatorship as inherently oppressive and examines how both of these governance structures regulate autonomy and instill obedience among its citizens, thereby making the compliance appear rational and morally justified.

THEORETICAL FRAMEWORK: POWER, AUTONOMY AND BUILDING OBEDIENCE AMONG CITIZENS

The Illusion of Free Consent

Consent which is supposedly the baseline of democratic legitimacy only makes sense when people have the necessary epistemic autonomy to assess and dismiss options. There is however, a loss of authenticity of consent when the context that forms choices is built on power. Raw political reality seldom reaches the citizens; they are exposed to interpreted reality, selectively filtered by the state-oriented media, educational systems, cultural institutions, and the digital platforms. This phenomenon, of which French theorist [2]Guy Debord wrote, is the spectacle: a mechanism whereby society ceases to engage with reality but with images that are provided by those in power. What is important to note is that when political creativity turns towards production, choice is no longer a sign of independence but a performance.

Inclusiveness, Hierarchy and Democratic Obedience

Democracy asserts inclusiveness, but rather than being inclusive, its implementation is usually characterized by domination of participation. According to [3]Jacques Ranciere, equality of democracy is only on paper, and actual politics is established on the basis of structures that dictate who is visible, credible, and significant in the public space. Groups that would issue a challenge to dominant norms are not treated as the participants of democracy but as the threats to it. It is the force of this dynamic that protests are only left unchecked when they are non-violent, that the media accepts that the majority voice is large and loud, whereas the voice of minorities, especially those that invoke the national identity, is marginal, and that no other discourse is left

[2] Guy Debord, The Society of the Spectacle, Buchet-Chastel, 1967.

[3] Jacques Ranciere, Hatred of Democracy, Verso, 2006

without resistance. Inclusion therefore, becomes a process of ideological conformity.

The psychological motivation and self- regulated power

Democracies are based on emotional obedience unlike dictatorship that is founded on body harm. The experiments conducted by [4]Stanley Milgram concerning obedience proved that common people are obedient to the authorities only when this obedience is justified by the sense of morality or even social order. This psychological habit is taken advantage of by democratic institutions: citizens believe that by obeying the authorities they save national security, social order, and economic development. What is obtained is the voluntary submission disguised in the patriotic language. Similarly, the Patriot Act in the United States was supported by fear before and after 9/11, and this shifted mass surveillance to become a normal practice of authoritarian regimes. The citizens welcomed the annihilation of privacy owing to the fact that it guaranteed security. It was with fear but not through coercion that freedom was exchanged.

From protection of law to domination of law

The rule of law has been used by democracies to offer moral superiority over authoritarianism. But coercion can also be promoted by law. When the legislatures empower the executive with wide powers of national security or of emergency, the executive tends to misinterpret these powers. A good historical example of India was the Emergency of 1975, where the suspension of the fundamental right to life was upheld by [5]ADM Jabalpur v Shivkant Shukla after it was stated that it was not the law that permitted liberty but it terminated it. Law does not have to quash dissent illegally under democratic conditions, it can do so in a procedurally valid manner.

CLASSICAL DEMOCRACIES AND ORIGINS OF STATE MANUFACTURED OBEDIENCE

Athens: A Democracy of Controlled Participation

[6]Athens is widely recognized as the cradle of democracy but this story hides the advanced compliance systems inherent in the Athenian city state. The Assembly (Ekklesia), Council (Boule), and law courts were created not only as the governing institutions but as the means of the ideological reinforcement since citizens incessantly proved their loyalty by means of participation.

It is important to understand that Athenian citizenship was only available to a minority born male who were part of the native population and were exposed to a system of civic education called paideia which was meant to instill the allegiance to the state. The democratic citizen was not just a rightsholder but a subject of politics, who had been trained to be a carrier and reproducer of communal values. As soon as the very act of taking part turns into civic virtue, the autonomy can turn into conformity as citizens become democratic because this is what democracy dictates. This is shown through Ostracism. Although ostracism was believed to protect against tyranny, it also acted as a method of punishment to nonconformity and dissent. The demos did not only eliminate possible threats but also directly punished dissent linking social belonging with political compliance. Exile posed a risk of exile thus making the community a self-governing institution where obedience was a question of life and death.

Therefore, Athens was not only a legitimate state but also one that adapted and conformed to its institutions yet it was the psychological domination, the fact that citizens were not subjugated to democratic order but rather the best form of citizenship. Athens shows that since its beginning, democracy needed structured obedience, in which citizens were only allowed to serve within the ideological confines of the polity.

[4] Stanley Milgram, Obedience to Authority: An Experimental View, Harper & Row, 1974

[5] ADM Jabalpur v. Shivkant Shukla, (1976) 2 SCC 521

[6] Mogens H Hansen, The Athenian Democracy in the Age of Demosthenes, Blackwell Publishing, 1991.

These boundaries of political subjecthood were predetermined: to dispute Athens was to renounce the nature and soul of citizenship. The ideal of democracy as being liberating in nature is historically unsound since domination in Athens was not eliminated but perfected. Citizens considered themselves to be in the control of themselves whereas the collective identity that was characterized by the state controlled them.

Rome: Compliance through Economic Dependency

[7]Roman Republic came up with a constitutional structure that blended aristocracy with some aspects of the populace. Nevertheless, the political agency of Roman citizens was under structural constraint because they depended economically on the possessors of material resources. The hierarchical system of state involved the distribution of grain, land, patron-client relations and military pay, which incorporated the survival of citizens in the state. There was no use of force to provide obedience but made it rational because failure to obey posed a threat to livelihood. An example of this is the Annona system, which linked food security with obedience making obedience a food currency. Notably, Roman law and magistracies gave the impression that citizens had the legal power in principle, but they were in practice subject to the decision of the Senate and those of the elite who dominated the political agenda. This was the system which enabled the republic to have the pretence of popular governance, but the optimates to make sure that results were such that specified to oligarchic interests. Popular sovereignty was privatized effectively with dominance being centralized to elite families and when there was a choice, there was little that was substantively significant.

The fact that Rome was transformed into an Empire under Augustus shows the final aggregate of this illusion of democracy. Elections were made, offices crammed, and republican symbolics maintained, but served as the decorations of power not its content. [8]Citizens were willing that they should be subject to imperial rule, since they were not made to realise that they had lost their freedom of action - the ritual of participation had been maintained. Already ingrained in the Republic by means of economic and social dependence, obedience passed over with a natural transition into a government of the many to the rule of the one. Rome thus shows how a political community may feel itself free living within a carefully regulating framework as it shows that elite hegemony is maintained best when disguised in democratic legitimacy.

The Athenian and the Roman political traditions indicate that the processes of control which are inherent in democracy are much older than the modern criticisms may imply. Obedience reflections in both cultures were reworked to be more of a civic virtue whereby the citizens were influenced to make decisions that were consistent with the ideals approved by the state without necessarily feeling, they were making one. This conversion of coercion into a nurtured sense of dependency depicts how the aspects of democracy participation can cover structural inequalities: individuals internalize the power of the authority and hence voluntarily obey the demands made to them. Therefore, autonomy which is promised by democracy is more a figment than a reality which is nurtured by socialization, institutional design, and rhetoric of civic responsibility. The classical experience then shows that the illusion of choice is not a new democratic failure, but a structural feature, an inherent part of the very DNA of the democratic government- it was brought about in its very founding, and it has remained an unresolved, irreconcilable paradox of citizen liberty and the state authority.

[7] Peter Garnsey, Food and Society in Classical Antiquity, Cambridge University Press, 1999.

[8] David Shotter, Augustus Caeser, Routledge, 2005.

The Nazi State: The Intersection of Law, Myth and Complete Obedience.

Naziism regime was founded on ideological and psychological ideological approach that had never been witnessed in the earlier regimes. [9]Propaganda that was centrally orchestrated by Joseph Goebbels was not a persuasion but it threatened the imagination and it was a mixture of national identity, racial purity, and political loyalty. A citizen that wanted to obey was worked out in all the movies, radio broadcasts, school curriculums and even in the ceremonies. Domination did not exist in the component of fear but of the component of persuading tenderness, of subordination to the Fuhrer not only as a legal but in something approaching to the moral. The rise of the Nazi regime can serve as the best historical example of how democratic institutions may be turned into the scaffoldings of the totalitarian domination. It is through constitutional rhythms of the Weimar Republic that Adolf Hitler came to the power and it was initially through elections, alliance-making by the parliament. Once in power the Enabling Act transformed the executive powers into the tool of the legalized dictatorship that demonstrates how it is the very engine of democracy that can be switched on itself to extinguish the lights of the very freedoms it is designed to protect.

According to one of the works on the Nazi ideology by [10]Claudia Koonz, the regime transformed individuals into the law enforcers of the Nazis. The thematic neighbours became voluntary spies of the Gestapo and they betrayed their neighbours in numbers not due to fear, but due to an ideological euphoria in the state, the people had become the means of control, the state and the society were confounded. The effect was some sort of obedience that was self-defeating because it was now a belief system. The holocaust based upon bureaucratic order and mobilisation of cultures reveals the most horrible form of political obedience.The holocaust with its origins in painstakingly well-organized bureaucracy and mobilisation of cultural sentiment shows the most frightening variant of political obedience: when a society engages in atrocities on the pretext that obedience is a virtue of moral conduct. In this type of system, the line between the enforcers and the followers disappear, and regular people are state violence instrument not by force but by belief. The aim of total control is not reached when the state only controls behaviour, but when it influences the consciousness, namely, colonises minds to make it impossible to think differently. The Nazi regime demonstrates that law and propaganda are not the opposite poles but technologies of control that are interrelated: law gives a pretense of appearing legitimacy to the oppression, and propaganda makes people feel better to say, excited with the same oppressive policies. This relationship is an effective reflection of the modern democracies and indicates the implicit totalitarian character of liberal institutions. The state takes control of narrative power, be it via concentrated media ownership, electronic surveillance and data manipulation, increased hyper-nationalism, criminalisation of political dissent, or the covert application of so-called neutral legal processes to eliminate dissent, compliance is no longer imperative but desirable.

Transition to Modern Democratic Control

The historical path of classical Athens to imperial Rome and finally to the totalitarian rule of the Nazi Germany shows a process of perfection of the political control in the systems which outwardly proclaim to empower the citizens. Democratic participation is rather slowly turned into a disciplinary mechanism, civic activity, and social conformity are interwoven; economic dependence is shifted to an insidious means of political obedience, staying alive to being loyal; and propaganda is internalised into patriotic feelings, so that even belief becomes a tool of regulation. The pretense of choice is reinforced in this development, just as obvious force falls out of sight, and people begin to view their obedience as voluntary. This

[9] Ian Kershaw, Hitler: A Biography, Penguin Books, 2008

[10] Claudia Koonz, The Nazi Conscience, The Belknap Press of Harvard University Press, 2003.

legacy takes new, more technologically advanced forms in the modern constitutional democracies like India: there are data-oriented behavioural monitoring that directs citizen behaviour; there is algorithmic curation that is both a source and a constraint of popular discourse; there are judicial bodies that tend to legitimize the growth of state power; there is the effect of cultural nationalism that serves as moral and social discipline, prescribing the acceptable identities and ideologies. These tendencies do not indicate that India is unusually authoritarian, but simply that India is a symbolic figure of a wider world change where freedom is formally present, but freedom of meaningful autonomy is increasingly diffused - washed away in the refined forms of the contemporary democratic regulation.

INDIA'S CONSTITUTIONAL DEMOCRACY: LAW, POWER AND MANAGED ILLUSION OF RESTRAINT

The Indian context is an especially illuminating case study on the illusion of choice in a constitutional democracy since it is a country that has both an ostensically strong rights culture and a politics where the state has highly effective instruments of coercion, surveillance and control of the story. The Constitution of India states itself as transformative and emancipatory, which is devoted to liberty, equality and fraternity. Part III fundamental rights are intended to put the state to check and leave the individual in charge. Nevertheless, the architects of the Constitution also incorporated powerful centralising devices in the very first place: broad emergency powers, vast preventive detention, a strong Union executive, and broad authority of the legislature to limit rights under the pretext of preserving order, state security and decency or decency. The constitutional process in India illustrates the presence of a constant conflict between these liberating and disciplinary urges. The Constitution does not only limit the state, it also endows it with arms.

This strain manifested itself very early in the constitutional practice. [11]In the case of preventive detention laws, such as legislation, it was passed in the same months of the inception of the Constitution. The law of detention and security laws were constantly turned to by parliament and state legislatures to suppress political dissent, especially in places where there was separatist or ideological rivalry. The courts, which were technically empowered to declare such laws invalid on the basis of their violation of fundamental rights, tended to relinquish to the judgment of the executive about what was threatening their order. The right of people to vote and elect their representatives was thereby maintained, and the extent of possible opposition politics and dissent was controlled by the lawful coercion.

The declaration of the Internal Emergency in 1975 is the most dramatic expression of how plainly constitutional democracy can tend to slip into utter authoritarianism without formally forsaking legality. The suspension of the basic rights, mass arrest of political dissidents, the blocking of the press and the centralisation of power in the Prime Minister office were all done under the provisions of the constitution. When the Supreme Court in the [12]ADM Jabalpur v Shivkant Shukla case sanctioned the argument by the government that even the right to life could be suspended in case of the Emergency, it was sanctioning a chilling principle, that formal democracy would co-exist with a black hole in the statute that allowed individuals to have no protection of their rights in the state. It is generally a narrative of constitutional resurrection and judicial renewal, the post-Emergency age. These rulings were properly hailed as landmark in the safeguarding of liberty in [13]Kesavananda Bharati v State of Kerala, in which the Supreme Court promulgated the fundamental structure doctrine in which the amending power of Parliament could not be invoked to wipe out the essential characteristics of the Constitution, namely, democracy, the rule of law, and fundamental rights

[11] A. G., Noorani, "Preventive Detention Under the Indian Constitution", (1961) 3 Journal of the Indian Law Institute 195.

[12] Supra Note 5

[13] Supra Note 6

and [14]Maneka Gandhi v Union of India, in which the Court broadened the meaning of the right to life and personal liberty, discontinuing the formalism of previous cases. But they will only work to maintain judicial readiness to interpret them with force against executive and majoritarian pressure. The doctrines do not dictate themselves, and they need institutional boldness.

[15]The state still had strong legal tools to punish political life even during the post-Emergency period. [16]Section 124A of the Indian Penal Code became still applied to journalists, activists and protestors even though it had colonial roots and was frequently condemned as being inconsistent with the modern democracy. Anti-terrorism legislation such as [17]TADA, [18]POTA, and then the [19]Unlawful Activities (Prevention) Act UAPA, were overly broad, highly restrictive about bailing, and so pre-trial imprisonment itself was punitive. It is not the person who has been formally impoverished of the right to vote or to political expression, but rather is put in an environment of law, in which political expression can make him or her susceptible to be charged under indistinct national security categories. The Constitution is not infused; but the room to hold substantial opposition becomes smaller.

THE DIGITAL STATE: SURVEILLANCE, BEHAVIOURAL CONTROL AND DATAFICATION

When law offers a formal structure of punishing dissent, the digital revolution of governance offers its technological platform. The rapid adoption of digital identification and biometric authentication and mass collection of data in India has once again placed the citizen in the role of a constantly surveilled subject. The Aadhaar project which was initially introduced as an instrument of efficient delivery of welfare, in effect produced a centralised biometric database which encompassed more than a billion individuals, connecting identity with a variety of services. The group that supported civil liberties claimed that such centralisation eases profiling, which is targeted exclusion and possible surveillance. The state however packaged Aadhaar as benign and essential with its discourses focusing on inclusion, leak reduction and modernisation. By allowing the right to privacy to be understood as a fundamental right when cases of constitutional challenge came before the Supreme Court, the Court in [20]Justice K S Puttaswamy (Retd) v Union of India unanimously affirmed the use of Aadhaar in core welfare schemes and allowing PAN-Aadhaar linkage but has effectively legalised a national surveillance system. Controllingly speaking, the importance of Aadhaar is not in its current applications but in its potential applications in the future. The more spheres of life are connected to Aadhaar identity the banking, telecommunications, welfare, taxation, etc. the less the individual can live without exposure to state surveillance. The opportunities to access vital services are now based on submissiveness to this system. To give his or her consent, people do not have to be shot at gunpoint; it becomes impossible to make the choice. The freedom of the citizen is formally restored when his existence, well-being and participation in the economy demand constant digital readability to the state, but is conditionally determined in practice. [21]This change is described by Zuboff in terms of his concept of instrumentarian power: power is no longer exercised through the threat of physical punishment but instead by organizing the behavioural space in which individuals have to exist.

[14] Maneka Gandhi v. Union of India, (1978) 1 SCC 248.
[15] K. Balgopal, "Erosion of Civil Liberties", (1990) 25 (24) Economic and Political Weekly 1317.
[16] Indian Penal Code, 1860, s.124A
[17] Terrorist and Disruptive Activities (Prevention) Act, 1985.
[18] Prevention of Terrorism Act, 2002.
[19] Unlawful Activities (Prevention) Act, 1967
[20] Justice K.S. Puttaswamy (Retd.) v. Union of India, (2017) 10 SCC 1.
[21] Supra Note 7

[22]The example of India and the use of digital tools in policing and protest management can serve as an example of the way this architecture may be utilized to control and suppress dissent. The case of facial recognition at the protest locations, the connection of phone metadata to the work of the investigators, and geo-location tracking of the COVID-19 pandemic demonstrate that emergency measures and policing practices can set precedents of the normalisation of online control. Applications developed on smartphones to track health or governance-related functions gather large amounts of data, which is frequently not informed by any meaningful consent, and organize the behaviour of the citizens by providing nudges, alerts and notifications. Surveillance is not only everywhere, but people are willingly ready to be watched, as they carry in their pockets what are the same tools that track them and manipulate them.

The concept of democratic choice is a very problematic concept in this regard. A citizen can vote, make criticism against government online or go to the court, but their actions can always be measured and traced and analysed. The state (and the players of politics which are on the same side with the state) acquire the ability to foresee and pre-empt opposition. The control is no longer about prohibition of the opinions; it is able to profile and isolate those opinion holders. The fear of being used against them, i.e., either legally persecuted, tax-investigated, or socially harassed, makes people self-censor, which proves how digital governance promotes the illusion of freedom and eliminates its reality.

FREE SPEECH, MEDIA CAPTURE AND FABRIATED CONSENSUS

The liberty of expression has been referred to as the blood of democracy, but in reality it can be associated with far-reaching administrative and organizational restriction. The constitutional right to free speech of India as guaranteed by [23]Article 19(1)(a) has a long list of reasonable restrictions such as the security of the state, the peace of the country, decency and morality. In [24]Shreya Singhal v Union of India, the Supreme Court declared [25]section 66A of the Information Technology Act invalid on the ground that its imprecise and indiscriminate terms criminalising annoying or grossly offensive online speech could not be squared with the right to free speech. That ruling became an important judicial acknowledgment that imprecise and indiscriminate speech prohibition provisions made the state selectively suppress critical opinions. The larger regulation framework around online and offline expression is, however, very disputed. Even though conviction after conviction is seldom achieved, police still invoke colonial provisions on public order and criminal provisions on hate speech and sedition, which they do in a mechanized manner to avert critics. The punishment itself is the cost of the criminal process targeting, which is arrest, trial, reputational damage. Being advertised as a space of freedom, digital platforms are now regarded as an area of disinformation and manipulated political communication. [26]Social media algorithm emphasizes on the content that is friendly to the engagement, as a rule, the content that is emotionally provocative or sensational. Political players do this in the coordinated campaigning, troll armies and targeted advertisements. The Cambridge Analytica crisis in the world and the systematic manipulation of information in Indian elections are instances of how the internet architecture may be made a consent factory, pre-emption of bias and non-conformity. Echo chambers enable the users to be exposed to ideas that reinforce their personal beliefs hence, become open to those stories which equate government criticism with disloyalty. The collective effect is, that the popular will is never the spontaneous self-expression of a free citizenship, but is an

[22] Usha Ramanathan, "Aadhaar: From Welfare to Surveillance", (2014) 49(13) Economic and Political Weekly 10.
[23] Constitution of India, 1950, art. 19(1)(a).
[24] Shreya Singhal v. Union of India, (2015) 5 SCC 1.
[25] Information Technology Act, 2000, s. 66A.
[26] Paranjoy Guha Thakurta, Media Ethics: Truth, Fairness and Objectivity, Oxford University Press, 2019.

atmosphere cultivated by the elites of the state and business.

The attitude of the judiciary is ambivalent. In the case of [27]Anuradha Bhasin v Union of India, the Supreme Court observed that the right to access the internet falls under the confines of [28]Article 19(1)(a), but it did not immediately grant relief to the wholesale shutdowns of the internet in Jammu & Kashmir but mandated it to be proportional and reviewed periodically. Such a reluctant adjudication is an example of a way the courts can recognize the principle of freedom without overturning the executive methods of control especially when it is accompanied by national security rhetoric. Freedom is therefore there in doctrine but not necessarily in living reality.

CIVILISED AUTHOURITARIANISM AND ACCEPTANCE OF CONTROL

Combined, the law, digital and media changes described above represent the presence of what can be called polite authoritarianism. In contrast to the blatant dictatorships where the suppression of the opposition and the abolition of elections is part of the system, the polite dictatorships bear the constitutional forms, regular elections and courts, but use them in a way that makes the opposition structurally non-functional. In theory, citizens can remove incumbents, but their vote is more and more affected by majoritarian discourses, algorithmically mediated information and fear-based discourses of national security or cultural identity. The rights are still enumerated in constitutional documents but their enforcement is limited with the aid of reasonable restrictions, judicial review that is deferential to authority and selective penalisation of nonconformity. Obedience in such a regime will no longer be viewed as subservience to power, this is redefined as a sense of patriotism. The protestors can be defined as urban Naxals, NGOs as foreign agents, and the student movements as anti-national. These labels build moral clusters of belonging that frighten people not to associate with the voices of criticism. The citizen is insidiously urged not to think of him or herself as a rights-holder, bringing a responsible state to account, but as part of a besieged majority whose only survival is unity in the face of internal or external foes. The further the internalisation of this identity, the less the state has to coerce people into it; obedience is the consequence of belief.

The psychological effects are far reaching. Citizens learn the language of power and justify any limitation of freedom as something vital to defend, even should it be. They insist on stricter laws against sedition, surveillance or stricter protest regulations since they have been persuaded that freedom becomes dangerous when it is exercised by the opponents. The traditional authoritarian pattern, where fear has to be obeyed, is slowly yielding way to a democratic one where fear, pride and resentment render obedience to be attractive ideologically. The fact that Arendt uses the example of complete domination, whereby individuals begin to regard the objectives of the regime as their own, becomes frighteningly relatable when considering the state of affairs in democratic circles. [29]The higher the citizens are willing to tolerate limitations on other people in the names of stability, the more they become accustomed to restrictions that will be directed at them at some point. Polite authoritarianism is therefore a paradoxical convergence: democracies are taking on a great deal of the behavioural repertoires of dictatorships, such as surveillance, narrative management, delegitimisation of dissent, but in a constitutional and participatory form that does not allow citizens to see it as authoritarian. The pretence to choice is thus self-authenticating: the voting process, the having of courts, the existence of a plural media space all become evidence, in the popular mind, that the system itself cannot be an authoritarian one, however curtailed may be the real power of autonomy.

[27] Anuradha Bhasin v Union of India (2020) 3 SCC 637.

[28] Supra Note 25

[29] Supra Note 1.

SUGGESTIONS TO WAYS FORWARD

The defence of democracy cannot be grounded anymore on the ritualistic connection to elections and institutional discourse to pull the democracy out of this drift. It is an issue of reconstruction of democracy at other conditions which would entail placing the substantive autonomy above the procedural symbolism. On the one hand, this entails re-thinking media pluralism. An engaged democratic state must institute strong anti-concentration policies so as to ward off such a small group of corporate owners who begin to frame the discourse of the people. Broadcasting privately owned by the government must be safeguarded by the independent statutory bodies and the local media where the marginalized can be heard needs to be encouraged.

Secondly, the digital governance must be redirected towards non-opaque data derivation to open citizen-oriented governance. This would also include of comprehensive data protection legislation which is rigorously controlled, clear-cut limits limiting access by the state, and redress rights against citizens whose data is stolen. The principle of minimisation of data should prevail in state databases. It should also be pre-judgmental or parliamentary passed as opposed to the beck and call of the executive on other biometric technologies such as facial recognition. Without these defensive strategies, digital infrastructures will continue to reinforce asymmetrical power that allows the state and business players to affect the behaviour in the background.

Thirdly, civic education must cease to be informed by the traditional constitutionalism by rote but informed by the critical democratic literacy. A citizen cannot only know that s/he is entitled to rights, but also be aware of the way law, media story and technology design can take away rights. The capacity to realise that the majoritarian talk is being played with, oppose the majoritarian discourse and identify with the opposing views is a precondition that cannot be left out in case autonomy is to be restored to its media version. Where individuals cherish domination over liberty then democracy could not flourish.

Finally, the courts and other constitutional watchdogs must not be too comfortable with the majoritarian spirit and the rhetoric of national security. It is only logical that the judicial review would only be effective when the courts are willing to say no to unconstitutional yet popular actions. Without such an institutional resistance, the law could not be any better than merely a measure of putting the fiction of democratic freedom alive at the expense of losing the substantive autonomy.

CONCLUSION

Since Athens and Rome to the Nazi Germany and modern-day India, the articles of control have changed their forms to include social shaming and reliance to propaganda, surveillance and digital behaviour control. But the bottom point is that political regimes have their freedom because of the capability of the citizens to develop, articulate, and take actions on judgments that are not shaped by power structures. In a place where identity is politicised, where legalisation is used to justify suppression and where media and online infrastructure socialise perception the ability of the citizen to make their own judgment is diminished. They still take part in elections, they voice their views and hail constitutional anniversaries but their agency has been redirected in silence. They make their choices, but they make their choices out of choices that are presented to them.

The illusion of choice in democracies is that which is not incidental but a phenomenon of structure which is created by the convergence between legal systems, economic interests, the media systems and psychological motivations. Otherwise, this illusion will escalate to make democratic polities become soft authoritarianism, where control is internalised and tyranny put on the mask of consent of the people. It takes more than a procedural reformation to resist this outcome. It requires a philosophical and political belief in autonomy as resistance - resistance to manipulative discourses, to unreasonable laws and technologies of control in the name of progress. When citizens are able once more to say an informed no to power, not just a directed yes, then and only then will

democracy move beyond its present state and will become something rather than a (seemingly) sophisticated architecture of obedience.

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FROM MARRIAGE-CENTRISM TO RELATIONSHIP-CENTRISM: REDEFINING STATUS AND FUNCTION IN INDIAN FAMILY LAW

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1. Abstract

Indian family law remains marriage-based and allocates rights to maintenance, inheritance, guardianship, and adoption primarily based on marital status. Although constitutional jurisprudence highly values autonomy and intimate choice under Article 21, entitlements remain tied to formal marriage. According to this paper, this status-based allocation creates structural inequality, especially among women and children living in non-marital families. Using doctrinal, constitutional, and comparative analysis, the paper shows that the judicial system's application of the relationship "in nature of marriage" test contributes to a marital hierarchy rather than its destruction. It proposes a relationship-based theory that recognizes legal status based on caregiving, economic interdependence, and vulnerability. This shift from ritual status to a relational one can bring Indian family law into conformity with constitutional obligations of dignity, equality, and substantive justice without undermining marriage as an institution.

Keywords: *Marriage-centrism, Live-in relationship, Status-based family law, Relational justice, Constitutional dignity, Economic interdependence, Care-based recognition, Indian family law.*

Introduction: Architecture of Marriage-Centrism.

2.1 The Structural Question

Marriage-friendly does not imply that the family law is non-marriage-dependent in India; it is marriage-dependent. This is a dogmatic distinction. An amiable system towards marriage can provide marriage with a symbolic edge and offer the same benefits to other types of intimacy. A marriage-based system, in its turn, grants access to legal rights according to the status of being married. The Indian family law operates on the latter architecture.

Traditionally, marriage is an institution of position, which has a strong foundation in religious, social, and legal order but is not an individual contract (Singh, 2017; Ruwa, 2018). It is more central than culturally legitimate; it organizes the maintenance, inheritance, guardianship, and adoption. Juridical triggering of marital status is indicated in the design of personal laws that show that the status is a juridical trigger, and it triggers a bundle of rights. They are not normatively central and are always conditional by law, even in situations when their non-marital relationships simulate the social and economic roles of marriage (Agrawal, 2012; Mukherjee and Ahmed, 2023).

This is a historical inertia, which is reflected in this structural dependency on marital status. The Indian context perceives marriage as the most traditional way of maintaining lineages, divine mandate, and social organization, and considers it the key to the legitimacy of the family (Singh, 2017; Samyuktha and Vijaya, 2023). The procedure of marriage also changed with the codification of the post-independence period, which did not alter the structural centrality. In this way, marriage is the legal system through which family rights are distributed.

The structural issue, as it is, would not be whether non-marital relationships should be given piece meal protection. That is what causes Indian law to still hold fast to the rights of ritual status rather than a relational role. This alteration of doubting the pertinence of

acknowledging live-in relationships to doubting the construction turns the discourse of including what is on its surface into the very building.

2.2 The Core Research Problem

The research problem is founded on a paradox in the doctrines. More and more autonomy, dignity, and intimate choice are recognized as key values of personhood by constitutional jurisprudence in Article 21 (Agarwal, 2024; Bajpai, 2022). As judicial rhetoric defines, consensual cohabitation of adults is deemed to be under the protection of liberty. Nevertheless, the family law continues to distribute rights with the assistance of the institution of marriage as a form of status (Joshi, 2022; Kumar, 2023).

Such disjunction leads to structural inequality. Non-marital cohabiting people should be able to fulfil judicially created conditions, including length, exclusivity, and publicity, to get circumscribed protection in the situation when the marital status is perceived as the genitor of rights (Nikitha and Sai, 2024; Naik and Maley, 2017). The law does not take caregiving functionality as a leading factor of entitlement; instead, it regards relational close to marriage.

The problem of interest is, therefore, rather a conceptual than a legislative one. The Indian family law is organized in terms of a status-based pattern of organizing marriage, which is an institution of gatekeeping. Formalization of marriages in this model is expected to cause stability, legitimacy, and moral order. However, according to socio-legal research, the process of caregiving and economic interdependence, not to mention the formation of the family, is becoming increasingly common outside the institution of formal marriage (Mukherjee & Ahmed, 2023; Ghosh, 2021). When rights are not maintained without status, but based on it, this becomes an area of vulnerability, particularly for women and children (Kaur and Kaur, 2024; Hansaria, 2023).

Consequently, the central study question is a structural question of why Indian family law is structured and not substantive.

2.3 Central Thesis

This paper argues that the Indian family law has a status architecture that promotes marriage as a legal entry point to the rights of the family. Marriage is not something that is accepted; it is the creation of rights and legal personality in intimate life. The marital status triggers the awakening of maintenance rights, presumption of succession, the power of guardianship, and, in the case of adoption.

Although the existence of live-in relationships has been acknowledged by the courts as a legally viable form of personal freedom (Agrawal, 2012; Garg, 2023), the recognition of the same is analogous and conditional. The courts tend to require the relationship to be of a marriage nature, which only strengthens marital normativity beyond rejecting it (Joshi, 2022; Nikitha and Sai, 2024). This marriage dependency introduces the dependency of recognition of a non-marital relationship.

The normative and structural thesis developed here is as follows: the Indian family law must be transformed not into marriage-centric, but into relationship-centric. Legal status should be accorded to relational functions, which are caregiving, economic interdependence, vulnerability, and child-rearing, and not ritual status. Such an amendment would bring the family law to the constitutional requirements of dignity, autonomy, and equality (Agarwal, 2024; Bajpai, 2022).

2.4 Methodology and Scope

The approach used in this study is the doctrinal-analytical one. It then initiates by initiating the close statutory examination of structures of maintenance, succession, guardianship, and adoption in a manner that depicts the centrality of marriage structure. Second, it presents an argument based on the

constitutional interpretation to examine the distance between autonomy jurisprudence and the distribution of entitlement. Third, it applies jurisprudential criticism to theoretically define the concept of status as an automatic bundle of rights, a legal technology. Finally, it conducts selective comparative inferences of the jurisdictions which have adopted functional recognition models of non-marital families (Clark and Van Heerden, 2023; Gamage, 2025). The study is not intended to subjugate the institution of marriage. Rather, it challenges its monopoly as the principle that orders the right to family law.

3. Status-Based Family Law: Historical and Structural Foundations

3.1 Marriage as Sacrament and Status

It is impossible to comprehend the structural primacy of marriage in the Indian family law without the historical bases. According to Vedic and Smriti, marriage was a sacrament (sanskara), which was indissoluble and was ordained by religion (Singh, 2017). It was entrenched in moral cosmology between dharma (duty), lineage continuity, and social hierarchy. Marital recognition mediated legitimacy of children, right to inheritance, and gender roles (Ruwali, 2018).

Marriage, therefore, acted both as a religious and a legal condition. It not only gave a relational identity, but social legitimacy and economic security. Scholars of sociology prove that marriage has traditionally been the mechanism that enabled social order supporting caste endogamy, patriarchal inheritance, and division of labor by gender (Grover, 2009; Samanta and Varghese, 2019). Even other types of unions were measured based on their adherence to marriage standards instead of relative legitimacy of relationships (Singh, 2017).

These sacramental constructions provided legitimacy with marriage as their core. Notably, the rights are those that are associated with status and not caregiving. This structural legacy is to be seen in the modern secular state, though in procedural ways.

3.2 Codification Without Structural Transformation

The codification after independence led to the introduction of statutory controls with the help of acts like the Hindu Marriage Act and the Personal Laws. These laws embraced consent, divorce, and procedural protection (Chitkara, 2014). Nevertheless, the codification did not relegate marriage as the entry to the right.

The maintenance claims, the right to inheritance, the right to adopt, and the presumption of guardianship are also still triggered by marriage (Mukherjee and Ahmed, 2023; Kumar, 2023). The change was therefore formal and not structural. Essentially, the sacramentalism of religion was perhaps watered down, although status-based entitlement was still in place.

The marriage-centrism that has continued to exist, shows that codification was merely a translation but not a transformation of the logic behind the family law. The assumption of the formation of stable families based on marriage remains to design statutory formation.

3.3 Status as Legal Technology

Status is theoretically a legal technology by which rights are automatically bundled on formal recognition. After determining the marital status, there is a set of privileges with no personalized evidence maintenance, presumptions of succession, guardianship, and right to adopt (Joshi, 2022; Singh et al., 2022). Status eases administration and makes it predictable.

However, this bundling results in exclusion as well. In order to obtain a limited relief, non-marital partners have to create relational traits: duration, exclusivity, economic interdependence (Nikitha and Sai, 2024;

Naik and Maley, 2017). Illegitimate children, who have been born out of marriage, use the special protection of the right to be legitimized through the judicial interpretation (Mathur & Mahecha, 2022). Automatic status-based rights versus the conditional function-based recognition are asymmetric, and this denotes structural hierarchy.

Marriage is not just the giving of rights; it is an organization of legal personhood in the area of family law. The individuals in the status have presumptive claim; the ones are not forced to file lawsuits to be heard. The hierarchy is entrenched in the architecture of the doctrines as opposed to being incidental.

Marriage as an Indian family law is not merely accepted as one type of intimacy but it is the organizing principle where family rights are distributed. The system gives ritual status superiority to relational role, form superiority to caregiving, and institution-symbolism superiority to justice based on vulnerability. Although social realities are becoming more and more representative of various forms of families (Mukherjee and Ahmed, 2023; Ghosh, 2021), the architecture of the doctrine is still based on marital centrality. To conform Indian family law to constitutional promises against discrimination, inequality, and subordination, Indian family law has to reevaluate whether status as a sole determinant of right to entitlement to intimate life should be maintained.

4. The Functional Reality of Non-Marital Families

4.1 Live-in Relationships as Functional Families

The modern Indian socio-legal environment can be observed to have a growing disparity between institutional form and relational practice. Although marriage is still the official entry point to family status, non-marital relations often carry out the same social, economic, and caregiving services. In the case of live-in relationships, especially, the latter are becoming more functional families in nature, though not in rank (Mukherjee & Ahmed, 2023; Ghosh, 2021).

Cohabitation

Long-term live cohabitation is not acute or discrete but rather shows consistent household set-ups in terms of co-residence and integration of daily routines (Khanna, and Kaur, 2023). According to sociological research, these relations are often associated with a long-term commitment, co-management of the household, and interdependence (Ghosh, 2021). The normative belief that cohabitation is a fragile state does not explain historical facts where individuals live together for several years and even decades without getting married (Narayan, Narayan, and Deepanshu, 2021).

Economic Interdependence

Functional families are characterized by economic interdependence. In most cohabiting couples, they distribute the economic burden, act as a source of income to the family, and make collective investments (Kaur & Kaur, 2024). The separation of labor, whether paid or nonpaid labor, is a reflection of marriage arrangements. Feminist studies underline that female partners of such live-in relationships often share the job of unpaid care and household work similar to wives, but without the relevant legislative protection (Hansaria, 2023).

Lack of marital status does not nullify economic dependency. Instead, it makes such dependency have a legal veil unless a court of law challenges it by proving such connections as the type of relationship of the kind of marriage (Joshi, 2022). In this manner, economic interdependence is a factual relationship which is not automatically recognized under the juristical law.

Emotional Partnership

The emotional companionship and support that Live-in relationships often encapsulate are further

becoming the key components of modern conceptualisation of the family, as sociological studies just begin reporting on them (Samanta & Varghese, 2019). The change in sacramental permanence to relational intimacy has shifted the expectations of partnership in both marital and non-marital settings (Mukherjee & Ahmed, 2023). Emotional association, which was less important than the lineage and rituals, now forms an indispensable aspect of intimate association.

However, the continuing system of family law is still pegged on status-specific instigations, as opposed to affections or relational content. Emotional interdependence, which is a major constituent of lived experience, does not produce entitlement alone.

Child-Rearing

Probably, the most important thing is that in a lot of live-in relationships, there is a child-rearing aspect involved. Empirical and ideological studies show that children born in such relationships have structural functions functionally equivalent to marital households (Mathur and Mahecha, 2022). The cohabiting parents are financially supportive and take care of one another.

Regardless of this functional similarity, the legalization of the rights of children in non-marital settings is often determined by the judicial interpretation, as opposed to its structural entitlement (Mukherjee & Ahmed, 2023). Child welfare, which is paramount in teaching, is indirectly mediated by the marital status of parents.

4.2 Care Without Status

The main paradox of non-marital families is that they do the same work of caring but do not obtain the work recognition in terms of status. The substantive basis of the family life is care, which can be conceptualized as emotional support, financial contribution, household work, and childcare. Nevertheless, in status-centric government, caregiving does not produce rights.

In live-in relationships, women have higher caregiving responsibilities but are not entitled to automatic maintenance/division of properties upon the relationship ending (Hansaria, 2023; Kaur and Kaur, 2024). They have to prove that the relationship meets judicially defined requirements that are in the approximation of marriage, unlike spouses (Joshi, 2022). This necessity makes caregiving a subject of documentation instead of a right.

Structural precarity is similar in children born in non-marital unions. Although the evolution of the judiciary has lowered the stigma and guaranteed legitimacy in specific situations, it is still reactive and interpretive as opposed to structural (Mathur and Mahecha, 2022). The work of caregiving, therefore, exists without a legal guarantee. This inequality of status and role reveals the drawbacks of a marriage-based system. Care is the relational content of family life, but the law favors institutional form over care-giving reality.

4.3 The Structural Mismatch

Indian family law has a doctrinal protection of ritual composition, but not of the relational content. Marriage is a privilege, and it automatically comes with rights (maintenance, succession, guardianship, adoption) without having to prove the quality of relations (Singh, 2017; Mukherjee and Ahmed, 2023). Non-married relationships, in turn, have to prove their validity by establishing some analogical closeness to marriage (Nikitha & Sai, 2024).

This mismatched structure brings about inequity. Two families that carry out the same care givers are treated differently purely on the marital status. The legislation thus equates stability to ritualization, as opposed to functional interdependence.

The wider suggestion is theoretical: Indian family law governs institutional structure and not the role of caregiving. It supposes that ritual status ensures the stability of relations and moral order despite the presence of empirical realities (Ghosh, 2021; Sharma, 2024). An approach based on functions would rather

compare dependency, vulnerability, and care giving as entitlement triggering factors.

The point driven here is thus structural: family law should shift its focus on normative of the symbolic institutional form to the relational functional as the foundation of law protection.

5. Constitutional Tensions: Autonomy Without Entitlement

5.1 Article 21 and Intimate Choice

The judicial interpretation of Article 21 of the Constitution of India includes the notions of dignity, autonomy, and freedom of intimate association. It has been established by courts that consensual living between adults is covered under the safeguarded personal liberty (Agrawal, 2012; Garg, 2023). This acknowledgement is a major shift when compared to the previous moralistic systems that were stigmatizing non-marital relationships.

The constitutional jurisprudence is also trying to underline that the state should not be able to criminalize or punish consensual adult intimacy simply because it finds it abnormal based on traditional norms (Agarwal, 2024). In this regard, cohabiting relationships are constitutionally acceptable and not to be interfered with as a form of punishment. Legality recognition, however, does not translate to entitlement recognition.

5.2 The Limits of Constitutional Protection

Protecting live-in relationships constitutionally does much work in a negative liberty scheme of freedom of interference, but no right of protection. Adults can decide to live together, although this decision does not necessarily create rights similar to marriage (Joshi, 2022).

Such a difference between negative liberty and positive entitlement is doctrinal in nature. Although Article 21 safeguards the exercise of choice, the law of family still assigns substantive rights based on marital status (Mukherjee and Ahmed, 2023). In defence to legislative frameworks, the courts have been hesitant to apply the principles of the constitution to structural adjustments of family entitlements (Bajpai, 2022).

Consequently, the autonomy is identified abstractly, but the material implications of it are low. Constitutional dignity does not prohibit cohabitation; however, it does not ensure an equivalent of maintenance, inheritance, or guardianship unless there is a statutory change.

5.3 Equality Concerns

Marital Status as Indirect Discrimination

The privilege granted to marriage is still there. In cases where maintenance, succession, and adoption require being married, people in non-marital relationships receive different treatment, even though they play the same roles in their families (Kaur and Kaur, 2024).

This type of differentiation can be considered as indirect discrimination, especially when it targets women and economically dependent partners in disproportionate measures. The status-based allocation is formally neutral but has a background of substantive inequality.

Gendered Impact

Feminist theory emphasizes that women in live-in relationships are more vulnerable than ever when the relationship breaks since the rights are not automatic (Hansaria, 2023). The pressure to demonstrate a comparable relationship with marriage unfairly falls on the side of those who have heightened caregiving work in an unpaid manner. The marriage systems, therefore, replicate gender disparity in the name of institutional stability.

Child Vulnerability

Structural vulnerability is also experienced by kids who are born in non-marital families. To the extent that courts put a strong focus on the best interests of the child, legitimacy and succession rights are rather often based on the interpretive accommodation, instead of automatic recognition (Mathur and Mahecha, 2022). Reliance of child security on the marital status of parents is against the constitutional pledges of dignity and equality.

The dignity and autonomy as provided in the constitution have not been structurally applied in the family law. Article 21 does not undermine marriage-based entitlement architecture, although it safeguards intimate choice. The notion of autonomy has no claim; dignity has no institutional translation.

The conflict is not therefore between morality and freedom but between constitutional personhood and status- founded legal formulation. Constitutional commitments under the regime of family law will be, as long as family law is not reoriented towards relational roles, aspirational, and no longer transformative.

6. The Marriage Analogy Problem

6.1 The "Relationship in the Nature of Marriage" Test

The development of the relationship in the nature of marriage test is one of the greatest doctrinal changes in Indian jurisprudence regarding relationships that are lived in. This judicial creation purportedly widens the protection not just to formal marriage, especially when it comes to maintenance and protection legislation. But its logic structure shows that it entails an implicit dependency on marital analogy and not its own independent acknowledgment (Joshi, 2022; Nikitha and Sai, 2024). The test usually assesses the relational validity based on such criteria as duration, exclusivity, and public representation. Although these requirements are put across as practical protections against informal or short-lived formations, they all recreate marital norms as the standard of legitimacy.

Duration

A sufficiently long cohabitation period is often one of the factors that courts take into consideration to conclude that the cohabitants are stable (Joshi, 2022). Time is a proxy of permanence, which was traditionally linked with marriage (Singh, 2017). Nevertheless, permanence is not a privilege of marriage; to be married does not warrant relational equality or taking care. Courts implicitly substitute the notion of relational with the notion of time by conditioning recognition on the long duration.

Such a strategy also hurts partners of shorter but economically dependent relationships, especially women who might have left the workforce or taken up caregiving roles at the early stages of cohabiting (Hansaria, 2023).

Exclusivity

Sexual and relational exclusivity frequently becomes the focus of the judicial reasoning (Nikitha and Sai, 2024). Exclusivity is a reflection of monogamous matrimonial anticipations based on individual legal customs (Singh, 2017). Nevertheless, exclusivity as a dogmatic filter mixes ethical demands with claims to rights activates.

The demand to have exclusivity shows an effort to draw the line between what is considered a relationship of a serious moral nature and what is thought to be a causal relationship. However, entitlement based on vulnerability or dependency does not have to be exclusive; relations of care and economic interdependence can be present in other relational structures than the ones recreating marital monogamy (Mukherjee & Ahmed, 2023).

Public Representation

The question of whether partners put themselves publicly as spouses is also reviewed by the courts (Joshi, 2022). Public representation acts as a manifestation of symbolic validation and reflects the historical social recognition which marriage had (Ruwali, 2018). This condition supports the fact that legitimacy is a result of the perception of society and not functional interdependence.

The sum of these requirements is obvious: recognition by the judiciary is derivative. Only in cases when live-in relationships approach the form of marital, they are safeguarded.

6.2 Judicial Filtering: Recognition Through Mimicry

The doctrine of relationship in the nature of marriage is a filtering mechanism. It is a selective recognition that is retrospective on marriage mimicry instead of recognition of the diversity of relationships (Nikitha and Sai, 2024). This is a structural filtering that has two functions. To begin with, it maintains the symbolic centrality of marriage in that it places it as the normative template. Second, it enables the courts to offer minimal protection without disrupting the landscape of the marital privilege (Garg, 2023).

As noted by scholars, such a tactic is an indication of judicial restraint in exploring delicate areas of personal law and morality (Bajpai, 2022). Instead of the re-conceptualization of the rights of families in terms of the caregiving role, courts use analogy to curtail the growth of the doctrine. But this recognition by mimicry introduces asymmetry. Marriage is a right that is granted without any burden of evidence. Non-marital relations should demonstrate relational equality. The result of this asymmetry of evidence is the entrenchment of status hierarchy in the name of inclusivity.

6.3 The Normativity Trap

The marriage analogy issue ends up showing the more fundamental normative trap. Courts recreate the hierarchy that they seem to dilute by granting protection only to relations that are similar to marriage. Marriage is used as the reference category; unmarried unions are rated in terms of their nearness to the reference. This arrangement is an indication that marriage is not just a type or one of the kinds of families but the normative ideal according to which legitimacy is quantified (Mukherjee and Ahmed, 2023; Sharma, 2024).

There are more widespread implications of such reasoning. It limits relational innovation, excludes non-conformist family structures, and bases dignity on conformity. Autonomy is expected to be constitutionally recognized under the condition that it can meet marital expectations. The structural argument presented in this case, thus, is that all marriage analogy does is to support, rather than destroy, status hierarchy. Mimicry ensures marriage-centrism. A functional approach would rather scrutinize care giving, dependency, and vulnerability without necessarily symbolically matching with marriage.

7. Comparative Functional Models

Comparative jurisprudence provides an idea of alternative regulatory models that go beyond ritual status. Instead of enumerating various jurisdictions in a brief fashion, this section reviews some of the systems that have embraced a functional or hybrid model of identity of non-marital families.

7.1 Cohabitation Frameworks

Some common-law jurisdictions have invented cohabitation regimes that acknowledge long-term partners according to length and interdependence and not according to marital types. To illustrate, South African jurisprudence has struggled to incorporate post-relationship rights to unmarried relationships

based on dependency and fairness and not on formal status (Clark and Van Heerden, 2023).

In the same vein, debates in the UK legal educational establishment support that monetary redress should be granted to cohabitants on the premise of economic contribution and cohabitant domesticity as opposed to ritual marriage (Gamage, 2025). Such structures are different in scope but share the same principle: functional recognition, rights are based on relational substance. The move to relational dependency as opposed to ritual validation is conceptually different and not based on status-centric models. Duration does not exist as a surrogate of marriage, but a display of interdependence.

7.2 Civil Partnerships and Registered Relationships

Several jurisdictions have brought in civil partnerships or registered domestic partnerships as an intermediate status. Although these systems still have formal systems of registration, they separate entitlement to religious or sacramental basis. European examples of codified private law show a possible coexistence of alternative regimes of partnership with marriage without making it fragile (Ela, Fekolli, and Kalemaj, 2024). These structures are accommodating of different families, but they are also administrative.

Notably, the mentioned systems prove that institutional pluralism is not incompatible with legal certainty. Family rights should not be the preserve of marriage.

7.3 Functional Care Tests

A more revolutionary model happens when jurisdictions have a happen-on-the-ground or working family. These systems evaluate care, economic interdependence, and dependency as entitlement triggers by courts (Weber, 2025). The ritual is no longer emphasized but relational. Some functional models guide the discussion of the adoption and parental authority when the principle of the best interest of the child prevails over marital formalism (Azis et al., 2025). The well-being of the child no longer depends on the marital status of the parents. This is an indication of a changing legal philosophy: family law governs vulnerability and care as opposed to ceremonial form.

Even some comparative analysis will demonstrate a wider picture: the law relies more and more on care giving, economic interdependence, and dependency as grounds of entitlement in modern family law. Ritual status is not exclusive anymore, but is still involved. Conversely, the Indian family law still regards marriage as the main juridical filter. The doctrine of marriage analogy does not eliminate hierarchy, as it entails mimicry instead of functional diversity.

The point of comparison is not that India is compelled to copy other models in mass production. Instead, it is that the legal systems can become less marriage-centric and more relational pluralism, creating institutional stability. It can base entitlement on care giving and dependency as opposed to ritual form. This would be a move to bring Indian family law into conformity with constitutional promises of dignity, equality, and substantive justice.

8. Toward a Relationship-Centric Framework

This is the substantive part of the normative contribution of this article. Since it has been demonstrated that Indian family law is organized around a marriage-based, status-based architecture, the question arises: what might a structurally consistent alternative be? The solution that can be advanced here is not to abolish marriage but to decentralize marriage as the prerequisite to entitlement. A relationship-based system would reshape family law with relational functionalities, including care, economic interdependence, vulnerability, and child welfare, as opposed to ritual status.

8.1 Theoretical Shift: From Status to Function

Relationship-Centric Law

Relationship-centric law is a regulatory mode where the legally relevant family rights are deemed as being created through the content of relationship interdependence as opposed to formal marital status. Relationship-based systems assess the performance of a relational unit in performing family functions, unlike status-based systems, in which, by definition, rights are initiated through the automatic effect of ceremony or statutory acknowledgements.

Such a shift has theoretical grounds that are compatible with the modern socio-legal literature acknowledging the evolving family structures (Mukherjee & Ahmed, 2023; Ghosh, 2021). Since marriage is changing permanently from a sacrament to companionship and independent living (Samanta and Varghese, 2019), the law should also adjust the entitlement criteria.

Care-Based Recognition

Care-based acknowledgement puts care giving-emotional, domestic, economic, parental at the focal point of law entitlement. Feminist literature stresses the fact that caregiving labor, which can be unpaid and is frequently gendered, is the cornerstone of a family economy (Hansaria, 2023; Kaur and Kaur, 2024). Such caregiving is exposed when protection under the law is based solely on marital status. A care-based model recognizes that dependency is related to joint life arrangements and not the solemnization of rituals.

Economic Interdependence

Economic interdependence can be described as joint financial accountability, input towards the family income, resource sharing, and dependence on one another to survive. Research on cohabiting relationships in India indicates that there is a high level of financial integration between the two parties (Narayan, Narayan, and Deepanshu, 2021). However, this interdependence has no automatic legal ramifications in the absence of marriage (Joshi, 2022).

A relationship-based approach would consider economic integration as a precipitating factor to entitlement.

Dependency and Vulnerability

The reason why family law exists is to control vulnerability. The mechanisms used to safeguard the economically or socially dependent individuals are maintenance, succession, and guardianship doctrines. The functional approach considers dependency regardless of marital status.

This trend is compatible with constitutional promises of dignity and equality (Agarwal, 2024; Bajpai, 2022). The question does not point to the relationship being ceremonially valid, but rather, one party will be vulnerable owing to relational dependence.

8.2 Proposed Functional Recognition Model

The article suggests a three-level conceptual model of functional recognition, which is organized according to the Indian constitutional and socio-legal realities.

A. Functional Care Test

When the following aspects are met, legal recognition should be instated:

- **Duration of Cohabitation**
  A minimum threshold (e.g., two to three years) to distinguish stable relationships from transient arrangements. Duration should operate as evidence of stability—not as mimicry of marriage.

- **Shared Financial Responsibility**
  Proof of joint bank accounts, shared household expenses, or economic contribution toward common assets.

- **Joint Child-Rearing**
  Recognition automatically triggered where partners jointly raise a child, whether biological or adopted.

- **Mutual Dependency**
  Demonstrable reliance on economic or social such that dissolution would produce hardship.

This model does not need exclusivity or publicity, as opposed to the current so-called relationship in the nature of a marriage test (Nikitha and Sai, 2024). It is functional as opposed to symbolic.

On meeting these conditions, partners would be entitled to:

- Maintenance claims,
- Equal sharing of property,
- Guardianship recognition.

B. Child Protection Not Connected to Marriage.

Child welfare should be completely separated from the marital status of parents. The best interest principle is already a doctrine functioning in the guardianship jurisprudence (Mathur and Mahecha, 2022). To ensure this, this principle should be modified to provide:

- Automatic legitimacy,
- Equal inheritance rights,
- Both partners as guardians recognized to provide care,
- Guarantee against discrimination on parental status.

The conditioning of child rights to marriage also lacks constitutional equality.

C. Maintenance Not on Status, but Dependency.

Maintenance would have to occur due to provable economic dependency and not only marital status. The need and contribution are already evaluated by the courts in spousal maintenance cases. This principle can be applied to functionally dependent cohabitants and is logically coherent (Joshi, 2022).

The following are maintenance claims that should be taken into account:

- Failure of jobs,
- Donation to home labor,
- Sacrifice of earning capacity,
- They are limited by the length of economic dependence.

This would not exploit marriage.

D. Evident Exit Framework of Property Division.

Equity principles of property division like in matrimony should be incorporated in a statutory property regime of qualifying cohabitants. Courts would assess:

- Financial contributions,
- Non-monetary contributions on care giving,
- Duration of cohabitation,
- Economic loss in the case of dissolution.

This type of arrangement is already present in jurisdictions that regulate unmarried partners (Clark & Van Heerden, 2023; Weber, 2025). India would be able to take a modified version without disordaining marital law.

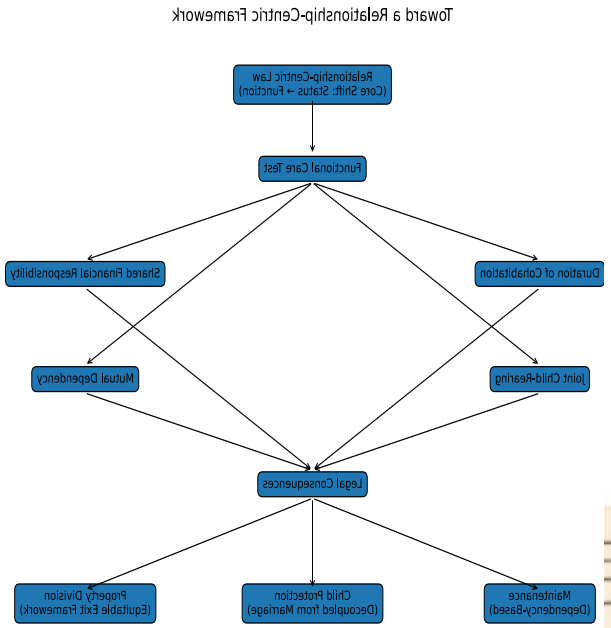


Figure 1: Proposed Relationship- Centric Framework

8.3 Safeguards Against Misuse

A functional structure should have procedural protection to stop the frivolity of claims.

Threshold Duration

The only thing that can cause entitlement is a minimum cohabitation period that ensures that casual relationships do not cause entitlement.

Evidentiary Standards

The interdependence must be shown by documentary or testimonial evidence of interdependence joint accounts, joint leases, and evidence of financial support.

Optional Registration Mechanism.

Evidentiary clarity may be enhanced by an optional registration system that should not be compulsory. Compulsory registration would bring status-centrism back, but by a new name.

Such precautions strike the balance between inclusivity and legal certainty.

9. Objections and Rebuttals

9.1 "This Will Weaken Marriage."

The critics can present the argument that allowing non-marital partners to enjoy their rights is ultimately degrading marriage as a society institution. Nonetheless, the experience shows that the legalization of cohabitants does not reduce the stability of marital life (Gamage, 2025). Marriage is not one of the things that are undermined by regulation; it eliminates the second folding of vulnerable partners.

Marriage is traditionally symbolic, religious, and social regardless of its distribution of entitlement. The safeguarding of non-marital families is one way of dealing with injustice as opposed to undermining marital commitment.

9.2 Cultural and Religious Sensitivities

Cultural and Religious Sensitivities. There are cultural and religious differences between the two nations, and these should be taken into account.

The critics can argue that the change of the family law contradicts the religious customs. However, according to constitutional morality, state law has to rely on dignity and equality instead of social morality (Agarwal, 2024; Bajpai, 2022). Structural discrimination cannot be justified in personal law pluralism. Indian culture is accustomed to changing types of marriages (Singh, 2017). Reform is continuity in social development, not discontinuity.

9.3 Administrative Complexity

The other objection is on difficulty of implementation. Nonetheless, dependency, contribution, and vulnerability are already considered in courts during matrimonial disputes. Functional assessment does not bring new principles to the mind; it simply reasons the same reasoning beyond marital status.

Cohabitation regimes operationalized by comparative jurisdictions have not disturbed family law regimes (Clark and Van Heerden, 2023; Weber, 2025). Structural inequality cannot be supported by the idea of administrative feasibility.

Drawing a Conclusion to the Normative Position

The suggested relationship-based model does not break marriage. It dismantles hierarchy. It maintains institutional plurality as well as aligning the family law with constitutional commitments to dignity, autonomy, and substantive equality.

Marriage would still be an acknowledged status - but not the only entry-point to the right.

10. Conclusion: Redefining the Idea of Family in the Law

The thesis that has been advanced in this article is not the fact that marriage is obsolete, but that it needs to be replaced in the Indian family law. Instead, it has shown that marriage must no longer serve as the sole juridical portal to family entitlements in a constitutional democracy wedded to the ideals of dignity, independence, and equality. Indian family law can still be described as marriage-centric, and this is not simply a symbolic gesture. Marriage is a status-based filtering mechanism where maintenance, succession, guardianship, and adoption rights are devolved. By doing so, it gives preference to ritual form and not relational function.

Traditionally, marriage in India was a part of the religious cosmology and social hierarchy, which was a process that preserved the lineage and ensured the moral order (Singh, 2017; Ruwali, 2018). Reforms to procedural changes offered by codification during the post-independence period did not change the entitlement architecture significantly. The family rights are still organized by marriage (Mukherjee & Ahmed, 2023). Even though the legality of live-in relationships as manifestations of individual freedom has been recognized by courts (Agrawal, 2012; Garg, 2023), this has been done on conditional and derivative terms, i.e., based on analogical closeness to marriage as opposed to relational legitimacy (Nikitha and Sai, 2024).

The existing inequality is a result of such structural dependence on marital status. Conditional protection is provided to women subjected to unpaid caregiving work in non-marital relationships, instead of being entitled (Hansaria, 2023; Kaur and Kaur, 2024). Children born out of marriage rely on the court to offer a sense of legitimacy and welfare protection (Mathur & Mahecha, 2022). The asymmetry is not accidental; it is coded in the logic of status-based allocation.

Constitutionally, this type of architecture creates tension. Autonomy and intimate choice are considered in article 21 jurisprudence, but the family law still imposes substantive rights to formalization of marriage (Agarwal, 2024; Bajpai, 2022). The autonomy is recognized; the right is denied. Dignity is confirmed on a more abstract level but not on a more structural level. The outcome is a constitutional personhood/family-law design doctrinal disjunction. The fundamental message of this paper is that family as a legal concept should change its focus on ritual centrality to relational justice. A more modern social reality is a function-based, relationship-centered model based on the principles of caregiving, economic dependence, and vulnerability (Ghosh, 2021; Mukherjee and Ahmed, 2023). This type of approach does not weaken marriage; it disentitles exclusivity. There is a chance that marriage will be one of the known types of family organization, yet it can no longer be the only ground of legal protection.

The contemporary relational comparative developments depict that the family law systems are able to accommodate plural forms of relationships without disruption to institutional stability (Clark & Van Heerden, 2023; Weber, 2025). The application of cohabitation on the basis of functionality rather than ritual status does not destroy marriage- it alleviates exploitation and brings law into agreement with substantive equality.

The conceptual realignment of the law of family is what will then be necessary. The family law should govern dependency, ensure vulnerability, and child welfare regardless of the form of ceremony. It should be aware that the basis of familial obligation is care giving and interdependence rather than ritual solemnization.

The family law in India is at a normative cross. It can still maintain its symbolic status and allow diversity to be accepted solely by analogies. Or it can accept relational pluralism and be coincident with constitutional morality. It is not between tradition and modernity but rather between hierarchy and justice. The future of the Indian family law is not in the rejection of marriage, but the overcoming of the marriage-centrism. The law can only keep its constitutional pledge of dignity, autonomy, and equality by being transformed, or rather changing its status-based entitlement to functional protection.

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PRE-EMPTIVE CYBERSECURITY MEASURES : A COMPARATIVE LEGAL STUDY OF EU AND INDIA

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ABSTRACT :
The study demonstrates that machine learning is indeed effective in identifying new vectors of attacks, correct zero-day attacks, and combat sophisticated risks such as adversarial AI attacks, polymorphic malware, deepfakes disinformation. This paper will demonstrate deep into the legal front and how law can determine the extent to which AI powered security is embraced, the people who will be responsible and the level to which it can expand. This emphasizes the necessity of explicable and transparent AI in order to trust it and have a stronger cyber ecosystem. The regulatory framework in the EU is risk-based, and the conformity checks are mandatory along with the security-by-design regulations and the mandatory cybersecurity requirements of high-risks AI systems. This demonstrates an initiative form of law-making that is in tandem with technology. The study also highlights that this type of regulation allows organizations to install some pre-emptive cyber precautions and ensure that they do not have loopholes that are aided by algorithms.
On the contrary, the legal framework of India is fragmented. It mainly depends on the Information Technology Act 2000, the Digital Personal Data Protection Act 2023, and a number of advisories rather than actual requirements. Adversarial AI, accountability of algorithms, and necessary risk tests lack a clear regulation, which causes India to fail to scale proactive cyber defence despite its threat environment increasing at a rapid pace. Comparing these routes, the paper raises the question of how these rule books create cyber preparedness and toughness in no less than an artificial intelligence scenario. This paper aims at proposing policy changes and roadmap through which India can borrow a phase based Implementation of the EU risk-oriented strategies to help it prepare better against emerging cyber threats.

KEYWORDS: Pre-emptive cybersecurity, Artificial intelligence regulation, EU regulation, Indian cyber law regulation.

INTRODUCTION :

The accelerating Hack attacks are becoming far more sophisticated and it is disrupting the traditional methods of protection such as signature inspections or rule engines[1]. The surface of attack is growing exponentially with additional cloud, IoT, autonomous stuff, Web 3.0, and colossal automation. Multi-vector attacks can be removed by hackers in a few seconds, which is faster than manual or conventional tools. This is predominantly why AI has come in as a complete game-changer in cybersecurity introducing intelligent and predictive threat modelling, autonomous response, and intelligent anomaly detection[2]. AI systems scan behaviour, can detect network abnormalities, and monitor real-time data to isolate threats unknown by the static signatures[3].

The Traditional defense preparedness focuses on responding to vulnerabilities only after they had begun to manifest it. Due to the centrality of AI to digital

[1] Leka, B., & Leka, D. (2025). *Advancing Cybersecurity through AI : Insights from EU and Candidate Nations*,13 Balt. J. Mod. Computing 166(2025).
[2] K. Achutan, S.Ramanathan, S. Srinivas & R.Raman, *Advancing Cybersecurity and Privacy with Artifical Intelligence: Current Trends and Future Research Directions, Frontiers in Big Data, Art*. 1497535 (2024).
[3] Selcuk Okdem & Sema Okdem, *Artificial Intelligence in Cybersecurity: A Review and a Case Study*, 14 APPL. SCI. 10487 (2024).

defence, it is essential to enact laws. The rules determine the way AI is constructed, trained, examined, utilized, and inspected in its entire process. This creates security and abuse possibilities which can occur at the time. The EU is at the forefront with AI Act and other additional provisions, such as NIS2, the Cybersecurity Act and GDPR[4]. These are the largest worldwide drive to control AI with threat categories, compulsory security scrutiny, strict transparency responsibility, and continuous oversight. At the same time, the legal environment of India continues to crack down. It has been divided, lacks actual AI-specific cybersecurity regulations. Although we have such policies as the Digital Personal Data Protection Act, draft National Cybersecurity Strategies, and sector guidelines, which do not address adversarial AI, automated cyber weapons, or algorithm bugs in their entirety. Therefore, AI-based cyber threats continue to be a challenge to India.

This paper will delve into the interaction between AI and pre-emptive cybersecurity, relying on the studies on AI threat detection, adversarial machine learning, algorithmic obscurity, and governance hiccups. The parallel drawn between the EU legal system as a prevention paradigm, and will discuss how India might follow comparable step-by-step approaches to increase its level of digital resilience.

RESEARCH PURPOSE & OBJECTIVE :

The research question examines the fundamental study on How can the risk-based AI regulatory framework used by the EU support enforceable pre-emptive cybersecurity against the voluntary compliance approach used by India and what does it mean to the security of AI systems?

The study investigates a critical dimension to address this question. Firstly, it will disaggregate how EU AI Act actually realizes pre-emptive cybersecurity, such as their risk classification, obligatory conformity checks, the technical documents that must be submitted, and security-by-design provisions that are actually integrated into the law. Secondly, it will explore the existing AI situation in India, including the recommendations of the Ministry of Electronics and Information Technology (MeitY), the activity of the Computer Emergency Response Team (CERT-In), and industry-specific regulations to understand how self-regulation in reality provides the desired outcomes. Thirdly, it will contrast the enforcement component the tough sanctions by the EU hefty fines and market prohibition against the one of India, which relies on self-regulation by the industry and advisory structures.

Furthermore, the study explores the practicality of the contrasting approaches security for AI system security and investigating whether there is a mandatory pre-emptive measure that will reduce cybersecurity vulnerabilities compared to voluntary standards[5]. This will examine expenses, its impact on innovation, market behaviour and the actual security outcomes observed in the framework of each model. Also, it will reflect on what it entails of multinational AI developers operating both where and whether we can speak of harmonisation or not. Ultimately, it would select the best practices, determine whether the EU model can be adapted to the Indian context, and make evidence-supported recommendations to enhance pre-emptive cybersecurity in artificial intelligence systems at the same time keeping regulations relative and promoting technology development of both locations simultaneously.

RESEARCH METHADOGOLY :

This study employs a primarily methodology which is based on a combination of doctrinal analysis of primary legislation (the EU AI Act, NIS2, GDPR and the EU Cybersecurity Act) and a systematized review of secondary sources, including scholarly articles, policy papers, and regulator guidance. It takes the

[4] Council of the European Union, Regulation (EU) 2024/1689 – *Artificial Intelligence Act* (2024).

[5] Zarif Bin Akhtar & Ahmed Taibuil Rawol, *Enhancing Cybersecurity through Artificial Intelligence (AI)-Powered Security Mechanism*, 9 ITJRD 50 (2024).

provisions of substantive risk based, conformity assessment mechanisms and security by design requirements of the EU framework and compares them to the Information Technology Act 2000 of India, the Digital Personal Data Protection Act 2023 of India and MeitY/CERT In advisories. The qualitative data will be collected using semi structured interviews with regulators, industry practitioners and legal scholars across both jurisdictions in order to capture the realities of implementation, and a gap analysis matrix is used to identify differences in enforcement, accountability and technical standards. It is an iterative process, where the legal mapping is used to guide the design of a more gradual process of policy implementation in India.

LITERATURE REVIEW :

The studies have made it clear that AI is redefining defensive cybersecurity by being able to offer real-time anomaly detection, automated responses to incidents, detecting insider threats, and constantly checking vulnerabilities in complex digital environments[6]. The emphasis of modern research is on the fact that machine and deep learning models accelerate and narrow the behavioural red flags detection, isolate bad nodes, and patch zero-day issues[7]. Some literature enables AI not to be an attractive and helpful add-on, but a fundamental change in favor of pre-emptive and autonomous protection against cybercrime. Systematic reviews indicate that AI-based studies on security are generally interested in intrusion detection, malware classification, federated learning to facilitate privacy-preserving analytics, and resilience against attacks. It also shows the increasing attention to safe data-sharing structures and AI models that can operate in uncertainty in line with the changing threats landscape in the world. Nevertheless, concept drift, algorithm bias and deployment issues still have a gap in their management.

The tech reviews demonstrate advancements in both the IoT and wireless sensor network lockdown and lightweight AI models and adaptive encryption[8]. These trends are used to display how more power efficient, scalable, and context aware security solutions are needed, which can operate on decentralized energy constrained systems. However, in a study, however, the majority of breakthroughs occur in the top-resource labs and this raises unanswered questions regarding whether it can be applied in the context of lower budget or rural locations[9].

Several articles indicate how that use of AI may even create new security vulnerabilities. And continue being extremely consistent regarding the large-scale threats such as data poisoning, model evasion, input manipulation etc. Such attacks are able to disrupt the functioning of an AI, disrupt its forecasts, and lead people to doubt the use of automated security systems. The other big issue that continues to emerge is the level of opaqueness of these systems. The problem with black-box AI is that it is nearly impossible to audit, difficult to comply with regulatory bodies, and unimaginable to hold anyone accountable once a failure happens, particularly when the consequences of such failures can be extremely serious, like in the finance and surveillance sectors or national security[10]. Looking at the cyberspace scenario in India, it is easy to see that there exists a set of structural gaps. The nation remains entangled in outdated legislation which fails to address AI, the supervision of institutions is uncontrollable, actions are lax, and it completely lacks security responsibility of the AI. The existing laws are not even abreast with newer threats such as deepfakes, autonomous malware, AI-based fraud, and algorithmic-accountability concerns. Consequently, the effect is that India is more playing

[6] A.L. Buczak & E. Guven, *A Survey of Machine Learning for Cyber Intrusion Detection*, IEEE Comm. Surveys & Tutorials (2016).
[7] D.Dey & R. Singh, AI in Zero-Day Vulnerability Management, Int'l J. of AI Security (2023).
[8] AI-Driven Security: *How Machine Learning Will Shape the Future of Cybersecurity* (2023).
[9] *Supra Note 1 at Pg. 2*
[10] R. Raji & J. Buolamwini, Actionable Auditing: Investigating Bias in AI, FACCT Proc. (2019).

on the defensive, than on the offensive[11]. Their regulatory background seems to be constructed on the notion that security and AI should be hand-in-hand at any given time. This creates a harmonised, deterrent framework that directly draws the cybersecurity into the heart of AI governance. The strategy of the EU is based on obligatory risk evaluation, the tasks of Security-by-design, ongoing monitoring, and micro organization across the borders. The combination of those rules forms a complete stack strategy that in fact attempts to lock in pre-emptive cyber resilience and provides the digital ecosystem with a safe and stable aesthetic.

LEGAL AND INSTITUTIONAL FRAMEWORK :

1. EUROPEAN UNION -

- The EU AI Act and Risk Based Governance and Cybersecurity Integration –
  The world of regulations set by EU is on a level of the most progressive in the world to incorporate cybersecurity into the book of AI[12]. The most significant is the EU AI Act, which relies on an automated risk system to define and govern AI systems according to their potential societal and security risks to society. High-risk AI, such as the biometrics, critical infrastructure, medicine, policing, etc., must endure the most stringent examination. The Act transforms cybersecurity into a legal requirement that must be met to be compliant, and instead of fixing the bugs when they emerge, it is now looking at the possible attacks even before the product was even developed. This is transforming the response measures to a counter on the offense. The EU is necessitating pre-emptive cybersecurity by compelling developers to think today on the future of attack vectors and drop in defense, as well as making pre-emptive state why nice-to-have than mandatory habeas corpus.

- Implementing Security-by-Design and Security by Default Concepts –
  The security-by-design and security -by- default are the two foundations of the AI Act. A high-risk AI should demonstrate good lifecycle management to maintain constant updates, periodic risk assessment, human supervision, tracking of traceability, as security can no longer rest at the beginning and be diluted over time. This acknowledges that AI evolves with time, particularly when new data or environments are introduced and fast security plans are not so good. The tech innovation and a high degree of systemic risk reduction can be achieved through implementation efforts of digital ecosystem systemic compliance[13]. The promotion of a culture of pre-emptive governance in the AI architecture will increase trust and resilience because security becomes an essential layer of the system rather than an enhanced feature of the operation.

- Conformity Testing as Forms of Enforcement –
  The high-risk AI has to survive a rigorous test to enter the European market or implement it in a sensitive environment, so it must ensure it is robust, accurate, has proper documentation, is transparent, and has cybersecurity measures in place. According to study, such pre-deployment testing is necessary to prevent disastrous events that may arise due to an algorithm malfunction, malicious use, or secret strengths[14]. The

[11] Anuradha Chakraborty et al., *An Analytical Study on Challenges and Gaps in India's Cyber Security framework*, 5 INT'L J. CRIM., COMMON & STATUTORY L. 04 (2025).

[12] Regulation (EU) 2024/1689 of the European Parliament and of the council of 13 June 2024 Laying Down Harmonised Rules on Artificial Intelligence (Artificial Intelligence Act), 2024 O.J.(L 1689).

[13] Celine Gauthier- Maxence, *European Cybersecurity and AI Framework : Towards Proactive Regulation for a Secure Digital Future*, EU L. LIVE 212 (2024).

[14] Vaios Bolgouras et al., EU Regulatory Ecosystem for Ethical AI & ETHICS 5063 (2025).

requirement of such assessments by the EU means that the issue of security risk is addressed way before it can be miscreant in actual reality.

- Ensuring that the infrastructure is more resistant to cybercrime using the NIS2 Directive- The NIS2 Directive is an addition to the AI Act which fortifies the security responsibilities of critical businesses and significant organisations in the EU- energy, telecoms, finance, healthcare, digital services, you name it. This establishes tough criteria of identifying and reporting incidents, access controls, safety of a supply chain and systemic risk management. A company should have a complete security system that is able to identify the incidences and respond swiftly. The NIS2 strengthens the overall security of the EU as it coordinates its cyber standards and ensures that AI-based systems remain secure[15].

- Cybersecurity Basic in GDPR and Data Protection –
  The GDPR operates as a security backbone. It mandates strict data governance, minimisation, and protection of user's rights. Also, that the such data is processed in accordance with the principle of privacy-by-design and privacy-by-default. The accountability and transparency components of GDPR create an illusion of a safe, reliable environment in which the AI implementation will take place without personal data in appropriation or any other breach of information integrity[16]. This renders data protection to be an unavoidable component of cybersecurity and a method to keep AI systems effective and ethically sound.

- EU Certification Schemes and Cybersecurity Act –
  The EU Cybersecurity Act is the taking of the puzzle together because it implements a pan-European system of certifications of ICT products, cloud services, AI-powered cybersecurity applications. The different certifications standardise benchmarks of security and audit practices in such a way that all the member states are enjoying the same amount of protection. This also promotes digital trust, streamline cross-border operations, enhance stability in supply-chain operations, and cement it[17]. Ultimately, there are opportunities to bring together certification, risk-based governance, data protection, and incident response into a single, consistent, pre-emptive regime with the EU having a strong, legally enforceable cyber safety net based on technical competence.

2. INDIA -

- Weaknesses of the IT Act in a Cyber Threat Landscape Scale Driven by AI –
  In essence, the increasingly slow, yet not quick, evolution of the laws on cybersecurity in India is a consequence of the fact that they are still not adequately suitable to the rapidly expanding AI threat with which we are currently confronted. Its fundamental cyber law is the Information Technology Act, 2000 (IT Act) that addresses hacking, identity theft, data disclosure and cyberterrorism[18]. The Act was drafted prior to the actual relevance of AI, and therefore lacks some of the current risks such as algorithmic manipulation, deepfakes, autonomous malware, machine-learning evasion tricks and giant automated decision-making. Where AI technology can now establish fake identities,

[15] Raluca Csernatoni & Katerina Mavrona, *The Artificial Intelligence and Cybersecurity Nexus: Taking Stock of the European Union's Approach* (2022).

[16] Blessing Winifed Odume, Regulating AI in Cybersecurity: Challenges and Opportunities (SSRN 2024).

[17] *Supra Note 12 at pg. 5.*

[18] The Information Technology Act, No. 21 of 2000, INDIA CODE (2000).

evade detection tools as well as interfere with digital infrastructure, the previous law-oriented approach of the IT Act cannot control these novel dangers or hold AI creators and consumers accountable. The latter uncertainty restricts the manner in which India can enhance national cyber preparedness or bring companies to bear on careless AI applications.

- Weaknesses of CERT-In Directions AI-Centric Cybersecurity –
  The incident reporting was conducted to be made successful in the CERT-In Directions (2022) to synchronise the system clocks, standardise retention of logs, and provide timely notifications on attacks[19]. Although that is helpful, it does not address the technological shortcomings of AI systems. The Directions lacks the requirements of adversarial robustness tests, machine-learning models stress tests, data-poisoning attacks, or transparency obligations of AI-facilitated applications[20]. In the absence of such precautions, business owners will be able to deploy AI that responds harshly to minor adversarial modifications or can be intentionally trained to be manipulated in a malicious manner. The absence of AI-specific cybersecurity standards permitting high-risk systems, facial recognition, fraud detection algorithms, predictive policing software, etc, to work with a poor resilience opens the country to smarter attacks.

- Criminal Loopholes in the Digital Personal Data Protection Act (2023) of AI Governance[21] -
  The Digital Personal Data Protection Act (DPDP Act) of 2023 solidifies the privacy regulations in India with establishing the standards of consent, subsection obligation, and individuals on the use of their personal information[22]. Nevertheless, researchers claim that it is insufficient regarding AI-specific problems. This research also examines that it does not have the specifications of transparency, explainability, automated decision review, or reduction of bias in AI models[23]. The Surveillance networks that have been improved with AI, behavioral analytics tools, and predictive algorithms rely on this massive data which can be used to profile or discriminate individuals. And the Lack of AI-specialized security removes privacy and cybersecurity security, and, therefore, there is no detailed law handling the AI-related gathering, processing, and protection of sensitive personal data in India.

- Fragmented Framework of India -
  One of the recurrent issues that is being highlighted is the fragmentation of the ecosystem of cybersecurity in India. Each of the different agencies, CERT-In[24], NCIIPC, MeitY and Ministries of Home Affairs and sector-specific regulators perform portions of the responsibilities, creating overlapping responsibilities and uneven enforcement[25]. During a large cyber-attack, this patchwork hinders the process of national responsiveness. It was also pointed that the number of trained cybersecurity professionals and the relevant skills in governance of AI, the deficiency of

[19] CERT-IN, Guidelines for Chief Information Security officers (Jan. 2022)
[20] S. Nakkeeran & Dharamveer Singh , *Challenges in Cybercrime Prevention and Legal Frameworks in India: An Analytical Study, 21 J. ADVANCES & SCHOLARLY RSCH . ALLIED EDUC. 232 92024).*
[21] The Digital Personal Data Protection Act, No. 22 f 2023, INDIA CODE (2023).
[22] *Ibid.*
[23] Amit Jaiswal & Prakash Chandra Mishra, Artificial Intelligence and Cybersecurity Law: Legal Issues in AI-Driven Cyber Defense and Offense, 5 SHODHKOSH : J. VISUAL & PERFORMING ARTS 555 (2024).
[24] *Supra note 18 at pg. 7.*
[25] NITI AAYOG , National Strategy for Artificial Intelligence (June 2018).

digital forensics systems, and the insufficient training of relevant parts of the anti-hacking AI attack vectors. Such loopholes prevent India to research on sophisticated AI-based cybercrimes or implement the existing regulations properly.

- Increasing Cybercrime and Frail Enforcement Machinery –
  The cybercrime in India is on a boom: ransomware, phishing, online financial fraud, identity spoofing, cyberbullying, etc. However, conviction remains excruciatingly low due to processing bottlenecks and archaic investigation processes. According to the study , the lack of AI-specific laws, combined with the out-of-date IT Act processes, will reduce the capacity of India to counter high-tech threats[26]. AI tools allow criminals to attack more quickly and covertly, and as such, the legal and institutional loopholes of the Indian cyber architecture endanger the security of the nation, its economic stability, and its population.

COMPARATIVE ANALYSIS : EUROPEAN UNION - INDIA

An empirical examination reveals drastic variations in the philosophies and frameworks of AI governance and cyber regulations between that of EU and India. It is found that the EU is risk-centric, preventive and focuses on safety, transparency and accountability. India, on its part, has an active approach of reacting to events based on post-facto inquiries and ad hoc warnings. EU regulations involve risk assessment, conformity test, and security-by-design during the AI live stage, active security habits, whereas India has no such legal obligations[27].

The Systemic strength has been also evident in the layered nature of the machinery of the EU: laws governing AI, data protection laws, sector cyber laws, and certification regimes are all interoperative. Such a layered arrangement maintains cyber norms on digital industries. India on the other hand has used the old IT Act that offers divided structure. It is being noted that India does not have a specific AI organization, and there is a lack of inter-agency cooperation, which develops fundamental vulnerabilities and brings national cyber resilience down[28].

Besides, the implementation instruments provided by EU such as conformity assessments, market surveillance, and incident reporting can be viewed as the warning signals and keep AI developers and operators responsible. India does not have required pre-deployment testing or AI audits, as they allow high-risk tools to be left unmonitored to operate either in prejudice, adversarial breakdown, or explainability. This difference indicates the significant divide at the preparations: the EU is equipped to address the new threats, whereas India is susceptible to systemic exploitation.

It is mentioned that despite the EU establishing a digital trust by enacting stringent privacy laws and cyber legislation, India continues to experience a lack of trust due to the occurrence of data breaches, a lack of accountability, and a weak legal framework to curb AI-driven surveillance or profiling. That destroys the trust in society and curbs the harmless use of AI technologies[29]

The comparative results indicate that the preventive, transparent, and technologically adaptive regulatory frameworks are the key to effective cybersecurity in the age of AI. EU provides us with an example of how legal requirements can lean the technological development towards safety, responsibility, and

[26] *Supra note 19 at pg. 7*
[27] Henrik Nolte et al., Robustness and Cybersecurity in the EU Artificial Intelligence Act, in PROCEEDINGS OF THE 2025 ACM CONFERENCE ON FAIRNESS, ACCOUNTABILTY AND TRANSPARENCY (FAccT'25) (2025).
[28] *Supra note 21 at pg. 6*
[29] Hemanth Kumar B.R., *The Impact of Artificial Intelligence on Cyber Laws in India*, 16 INT'L J. SCI. & TECH. 1(2025).

sustainability[30]. The EU ensures that AI systems do not harm but benefit cybersecurity by imposing rigorous testing, documentation, management, and transparency. This proves that tech innovation and tough regulation are not antagonistic towards one another but rather are symbiotic towards digital trust.
The regulatory issues faced by India are not related to the unrealistic potential of technology, it is related to structural change. It is further noted that India is a fast-growing digital economy, massive artificial intelligence talent, and an expanding technologic infrastructure. However, the absence of preventative regulatory institutions implies that the country is unable to put a restraint on risks before they evolve into harm. According to scholars, unless there are AI-specific considerations of explainability, adversarial robustness, algorithmic bias, and automated decision-making, India will be only responsive and operationalized in cybersecurity.

Also, India faces many challenges in regulatory enforcement such as low technical capacity, institutional ineffectiveness, and a low level of cross-border cooperation pulls down its cyber preparedness. On the other side, the harmonised regulatory system by EU increases the level of coordination amongst member countries, enhances common digital markets and enables holistic threat-response strategies. Thus, this comparative analysis explains why implementing law in cyberspace and matchmaking on a global scale is important when addressing cyber threats embedded in AI.

PRIMARY FINDINGS :

1. The Regulatory Orientation and Governance Ideology –
   The European Union has a risk-based and preventive regulatory philosophy, the safety, transparency, and accountability of an AI system are integrated at all adopted phases of its life cycle. This is demonstrated by the EU AI Act, which stipulates that risk assessments, conformity checks, and security-by-design should be conducted prior to implementation to ensure vulnerabilities are identified early enough and flaws or malicious programs are prevented before the system decides to malfunction or attack others[31]. By comparison, India employs a reactive system of governance, which is based on post-incidents investigation, industry specific advisory and obsolete provisions of the law under the IT Act, 2000[32]. According to scholars, India does not have any laws that compel organisations to assess AI models to adversarial robustness, bias or explainability prior to deployment, which increases the exposure to AI-related threats.

2. Differences in the structure and institutional Framework –
   The regulatory ecosystem of the EU is of a multi-layered and harmonized nature, combining AI-related laws with laws on cybersecurity (NIS2) and data-protection regulations (GDPR) and Eurozone-wide certification systems. The result of this coherence is consistent cybersecurity standards in sectors. The organization of India is however torn and old fashioned, with regulatory duties being fragmented between CERT-In, MeitY and other sector organisations[33]. A lack of a specialized artificial intelligence controller or coordinated mechanism of enforcement creates inherent vulnerabilities on a systemic level and uneven national cyber preparedness.

3. Enforcement Capacity and Trust in the State –
   The Amplified compliance between the EU is enforced with the conciseness of the conformity tests and market mapping and accountability,

[30] Vaios Bolgouras et al., EU Regulatory Ecosystem for Ethical AI, 5 AI & ETHICS 5063(2025).
[31] Regulation (EU) 2024/1689 of the European parliament and of the Council of 13 June 2024 Laying Down Harmonised Rules on Artificial Intelligence (Artificial Intelligence Act), 2024 O.J. (L 1689).
[32] *Supra Note 17 at pg. 7*
[33] CERT-IN, Guidelines for Chief Information Security Officers (Jan.2022).

which require secure and transparent AI systems. In India, there are no checks exist to perform before deployment and potentially high-risk AI tools are left to work without formal auditing. Consequently, the EU develops increased digital trust, and India is confronted by social distrust towards the frequent cases of data breach and the absence of legislation to protect against AI-based threats. These variations explain why India needs to implement preventive decisive regulations.

RECOMMENDATIONS AND POLICY FRAMEWORK :

1. EUROPEAN UNION -

- Improving SME Support of AI Act Implementation –
  Even though the European Union has one of the most complex AI and cybersecurity regulation systems, the population-level support of small and medium-sized enterprises (SMEs) remains a priority. The EU technology landscape consists of SMEs that constitute a significant portion of the tech system yet are commonly unable to meet the financial, technical, and administrative needs of the high-risk AI compliance. As a solution, the EU can expand the technical assistance programmes, implement specific funding initiatives and invoke so-called regulatory sandboxes allowing SMEs to test AI systems under a closely monitored, low-risk environment[34]. Such actions would assist the SMEs in the safety and cybersecurity needs without suffocating innovation, competition and operational capacity.

- Improving Conformity Evaluations Standards in High Risk Sectors –
  The other major area of improvement is to strengthen the conformity assessment in the AI Act. Replacement of old methods by newer assessment tools might fail to integrate sector risks as the adversarial AI threats develop in multiple sectors such as medical care, banking, transit, and critical infrastructure. It would be possible to build finer, context-specific testing conditions that would help the auditors compare vulnerabilities more objectively and guarantee that AI systems going to the EU market will be resistant to upcoming cyber threats[35]. Landmarking of such tests would enhance conformity and a sense of reliability in users, developers and regulators.

- Enhancing the EU Cybersecurity Research and Innovation Ecosystems –
  The long-term resiliency expresses the need to invest in the long-term cybersecurity research and innovation landscape in Europe[36]. EU must fund specialised research centres, encourage the formation of partnerships between the public and the industry and the extension of more advanced ranges of cyber Attacks that would occur on a scale with the intention to simulate a large scale attack and test the defensive mechanisms. These measures would help streamline the development of advanced AI-based malware detection, prediction, and neutralisation solutions to identify, predict, and mitigate advanced patterns of threats. With the development and support of a culture of innovation solution, the EU will be able to maintain its technological dominance and at the same time provide sufficient safeguards against increasingly sophisticated cyber offenders.

- Growing Digital Forensics and Incident Response Cross-border Operations –

[34] ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT, *Artificial Intelligence in Society* (2019).
[35] EUROPEAN UNION AGENCY FOR CYBERSECURITY (ENISA), *Cybersecurity Certification: European Scheme for ICT Products* (2020).
[36] Fei Su et al., advancing the Role of the European Union in Promoting Global Cyber Stability (SIPRI. Plo'y Paper Dec. 2023).

Lastly, to safeguard the Digital Single Market in the EU, cross-border cooperation in digital forensics and incident response is needed to strengthen. In these cases, cyber threats tend to move across national borders, which makes the partnership of investigative skills inevitable. Paying closer attention to the development of a better-knit network of digital forensics units, which are able to cooperate on intelligence exchange, to joint investigations and to quick exchange of technical expertise on large-scale cyber-attacks would significantly enhance the overall capacity of the EU to respond to major cyber-attacks. This co-operation would ease enforcement and enhance the and strength and cohesion of the larger EU cybersecurity structure.

2. INDIA -

- Building Institutional and technical Capacity -
  The broad institutional and technical capacity building must commence, and India should implement a differentiated, context sensitive regulatory framework. Being a fast-evolving yet a little poor economy, the informational trend of regulation in India today should not rush in introducing the strict EU-style commitments and bombard native institutions and businesses, causing inefficient adherence and retarded innovations. Rather, the urgent need should be the enhancement of the institutional capacity concerning the critical levels of regulatory and enforcement functions, including CERT-In, NCIIPC, MeitY, state-level cyber-cells, and data protection institutes. It is possible to eliminate the risks through fitting professional certification channels in AI safety, adversarial machine learning, digital forensics, and cybersecurity risk analysis, promoting academic partnerships, and targeted training programs to empower regulators with the means to assess the algorithmic systems, identify their vulnerabilities, and react to the arising issues. The establishment of such human capital comprises the basic layer upon which the regulatory framework can be put in place in future with a lot of success.

- Improving Inter- Agency coordination and Cyber Governance Architecture -
  The cybersecurity situation in India is characterized by cracks in responsibilities and mandate overlay among organizations. The consequence of this fragmentation is the lack of consistency in enforcement, slow response to threats, and gaps in regulations. This makes it important to strengthen mechanisms of coordination in order to have coherent governance of a country[37]. With implementation of combined command schemes, centralised threat intelligence organs, and expedited and direct communication at CERT-In/NCIIPC and to the sectoral regulators and state cyber cells, the government can significantly enhance the preparedness to cyber-attacks. A centralized national incident reporting system, cross-agency auditing and sharing data would eliminate overlaps and produce a more resilient, synchronized cybersecurity structure that can deal with AI-driven threats.

- Adopt phased and Adaptive Regulatory Exercise -
  The Strengthening of Indian industries is a key aspect, considering that it has varied abilities. India must initially include a set of ethical, transparent, and responsible AI adoption guidelines to the government and the applications in the public sector so that they can be used as a national standard without overloading the private sector. Also, AI-based regulatory sandboxes would facilitate staged testing, risk-taking, and part-experimental learning when arbitrating binding commitments. Such sandboxes are able to test such critical issues as explainability of

[37] *Supra Note 27 at pg. 9.*

algorithms, bias reduction, robustness against adversarial examples, and automated decision-making[38]. India could allow a slow, evidence-based regulatory implementation approach to enable the ecosystem to be ready to embrace more all-inclusive AI laws in the future.

POLICY RECOMMENDATION : PHASED IMPLEMENTATION MODEL

PHASE 1	PHASE 2	PHASE 3
Foundational Stage Companies in the 1st Stage are encouraged not being forced to follow basic AI safety guidelines. Training and awareness programmes which will help people to understand the risk of artificial Intelligence. The government and industry should start working together and set up small expert groups to further prevent Risk.	Sector Specific Mandatory Rules Rules in this phase had become slightly strict, but not only for important sectors like finance, healthcare and critical infrastructure. AI system can be tested safely inside a regulatory sandbox before it is set to be released out. For the startups and low-risk users they get lighter rules so it does not affect new innovation.	National Framework Rules become clearer and more organised and now India has enough skilled experts, labs and testing systems and is being moved to strong national law. All-important AI systems go through audits, testing, and certification to ensure that there are a safety and cyber-check before it is being released.

The EU has been experiencing the Pre-emptive AI cybersecurity principles, which India can be willing to adopt, through a gradual risk-based, and capacity-building approach as opposed to an outright copying of the EU model in all its strictness. India can first in the initial stage provide voluntary principles on AI Security-by-design, initiate prelim risk-classification systems, introduce countrywide awareness programmes and introduce A regulatory sandboxes to test risky AI systems in a safe manner. The second phase explores where India is able to progressively make high-risk sectors, including finance, healthcare, transport, and important infrastructure, subject to mandatory rules, but startups and low-risk sectors should take flexible paths with the low-burden compliance requirements. The last phase would bring with it a comprehensive national AI cybersecurity legislation that has structured audits, adversarial testing, certification schemes and harmonisation with adapted EU standards. This gradual strategy would be enough to enhance the regulatory intensity in accordance with the increase of the technical capacity, the maturity of the institution and the economic preparedness of India and thus Pre-emptive AI cybersecurity can be both possible and sustainable in a developing country like India.

CONCLUSION :

It has emerged that artificial intelligence has turned out to be a disruptive technology in the area of cybersecurity in particular in the manner organisations, identifying, analysing and responding to cyberattacks. The features of AI-powered systems are far superior to the features of traditional cybersecurity tools and enable real-time anomaly detection, predictive threat modelling, automatic response to incidents, and advanced behavioural analytics. This means that such inventions can help security infrastructure to transcend stagnant, signature-based design of infrastructures to dynamic and adaptive defence designs capable of sensing new attack patterns and responding in machine time. The

[38] Trajkovska Elena et al., Prevention of Cybercrime in the Age of Artificial Intelligence (AI) Within the European Union, in 11TH INT'L SCI. CONF. PROC. (Pearl Blue Rsch. Grp. Ed., 2025).

qualities that make AI powerful, however, introduce novel types of risks that have never been encountered. Accountability is threatened by algorithmic opacity which refers to the state of affairs in which the decision-making process becomes difficult to comprehend[39]. This type of adversarial manipulation, such as data poisoning, model evasion, and synthetic identity attacks, puts vulnerabilities in such a way that they can no longer be adequately addressed using traditional security structures. Besides this, AI-dependent systems will also be more likely to spread systemic risks in the sense that they will enable automated cyberattacks to propagate promptly by using digital ecosystems. Only under the condition that technological advancement will be accompanied by the system of governance which is preventative, transparent and capable of changing together with any new threats the full potential of AI to offer cybersecurity as the modern literature suggests can be reached.

To this extent, the European Union is a pioneer in applying the logic of cybersecurity requirements into the AI governance in the world. EU has adopted a risk-based governance approach to preventative security using a highly complex and multidimensional regulatory framework incorporating the AI Act, the General Data Protection regulation or GDPR, and the EU Cybersecurity Act. The AI Act demands high countries to possess a more rigorous pre-deployment risk judging, conformity check, and data regarding lifecycle management of the high-risk AI systems. This will ensure that the vulnerabilities in the area of cybersecurity are identified at an early age and addressed when such systems are not yet within the societal or critical infrastructure domain. The ecosystem will be enhanced by GDPR through its requirement of accountability, data protection and data breach notification protocols that would restore the integrity of data utilized to train and run AI systems. At the same time, the NIS2 Directive and the Cybersecurity Act increase the overall resilience in the cyber domain standardizing the security requirements, introducing certification frameworks, and enabling the co-ordinated gamification of the cyber incident response of the member states[40] . All of these devices institutionalise Cybersecurity-by-design and puts the EU in a normative position of the responsible use of the AI.

India's at a big turning point. It also possesses one of the most active and fast-growing digital economies and a substantial amount of innovation based on AI, and the regulation has not been coordinated yet. It lacks specific AI legislation, the IT Act is old and the regulation is spotty. This disrupted banking, healthcare, e-governance and telecoms putting them at risk of AI-based cyber-attack. The current system does not require hard adversarial tests, provide transparency of algorithms, and requires inadmissible standards of the use of the high-risk AI. They argue that we should adopt the preventative approach of the EU, including require explainability, assure robustness, certifications and a domestic policy on AI, to keep up with India.

India should begin to reform the post facto enforcement strategy in the future through the use of a risk-based strategy. The various ways in which India can have a stable and reliable AI ecosystem include improving the institutional capacity, which will improve interagency coordination and introduce the rules gradually that are aligned with the local investment in tech preparedness. The future of cyber security will be pegged upon the harmonization of the policies with the technological progress the two are a dynamic balancing forward and backward that the EU and India need to keep perfecting in order to keep their digitalized societies safe.

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[39] *Supra Note 11 at pg. 5.*

[40] *Supra note 23 at pg. 11.*

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THE INTERFACE BETWEEN ANTI-DUMPING MEASURES UNDER THE CUSTOMS TARIFF ACT, 1975 AND COMPETITION LAW IN INDIA

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Abstract

This research paper examines the complex interface between anti-dumping measures under the Customs Tariff Act, 1975, and the competition regime established by the Competition Act, 2002, in India. While both frameworks originate from a shared need to regulate unfair trade practices, they operate on fundamentally divergent philosophies: anti-dumping law is producer-centric, focusing on shielding domestic industries from material injury caused by foreign imports, whereas competition law is consumer-centric, prioritizing market efficiency and consumer welfare.

Through a doctrinal analysis of landmark judicial pronouncements and recent empirical data from high-impact sectors such as steel and chemicals, this study highlights how Indian courts have maintained a strict functional separation between these regimes. The analysis confirms that although a narrow overlap exists where dumping mirrors predatory pricing, the two frameworks often conflict. Anti-dumping duties frequently act as protectionist tools that sideline consumer interests and risk market distortions. To resolve these tensions, the paper proposes critical reforms, including the statutory integration of consumer welfare into anti-dumping inquiries, formal inter-agency coordination between the DGTR and the CCI, the adoption of competition-based tests in dumping investigations, and the codification of a structured public interest test modelled on the European Union approach, all so that trade remedies complement rather than undermine competitive market integrity.

Keywords: Anti-Dumping; Competition Law; Consumer Welfare; Customs Tariff Act 1975; Competition Act 2002; Predatory Pricing; Trade Remedies; Industrial Protection; DGTR-CCI Coordination; WTO Anti-Dumping Agreement; Public Interest; Lesser Duty Rule

Introduction

In the liberalized global economy, international trade has emerged as both an opportunity and a challenge for domestic markets. To ensure fair competition and protect economic interests, India has developed two distinct yet interrelated legal regimes: the anti-dumping framework under the Customs Tariff Act, 1975 and the competition regime under the Competition Act, 2002. While both originate from the need to regulate unfair trade practices, their scope, objectives, and mechanisms diverge significantly, giving rise to a complex and underexamined doctrinal interface.

Anti-dumping law, rooted in Sections 9A and 9B of the Customs Tariff Act, 1975[1] and the Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995,[2] operates as a trade remedy. Its central aim is to shield domestic industries from injury caused by foreign producers selling goods below their "normal value," in contravention of Article VI of the GATT, 1994 and

[1]Customs Tariff Act 1975, ss 9A and 9B.

[2]Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules 1995.

the WTO Anti-Dumping Agreement.[3] In contrast, competition law, codified in the Competition Act, 2002, focuses on preserving market integrity by curbing anti-competitive agreements (Section 3), abuse of dominant position (Section 4), and regulating combinations (Sections 5 and 6).[4] Its guiding principle is consumer welfare and economic efficiency, not industry protection.

The current institutional landscape in India is defined by the Directorate General of Trade Remedies (DGTR), a specialized body created in 2018 to integrate all trade remedial functions, including anti-dumping, countervailing, and safeguard measures.[5] Despite this institutional modernization, the doctrinal tension remains unresolved. Do anti-dumping duties complement competition law by preventing predatory behavior, or do they function as protectionist barriers that insulate inefficient industries and ultimately harm consumer interests?

Judicial pronouncements such as *Haridas Exports v All India Float Glass Manufacturers' Association* (2002)[6] and *Reliance Industries Ltd v Designated Authority* (2006)[7] reflect the uneasy overlap between these regimes. Whereas anti-dumping measures prioritize protecting producers from "injury," competition law prioritizes protecting competition itself. This divergence raises critical doctrinal questions about whether anti-dumping duties complement competition law by preventing predatory pricing, or whether they distort markets by protecting inefficient industries at the expense of consumers and downstream sectors.[8]

This project undertakes a doctrinal analysis of the interface, conflicts, and convergences between anti-dumping measures and competition law in India, evaluating statutory provisions, case law, and policy implications. It further draws on recent empirical data and comparative experience from the European Union and the United States to propose a harmonized framework suited to India's developmental needs and WTO obligations.

Extent of Coherency: Anti-Dumping Measures under the Customs Tariff Act, 1975 and the Objectives of the Competition Act, 2002

The relationship between anti-dumping measures under the Customs Tariff Act, 1975 and the objectives of the Competition Act, 2002 is characterized by both convergence and divergence. Anti-dumping law under Sections 9A and 9B of the Customs Tariff Act, 1975, read with the 1995 Anti-Dumping Rules, is designed to protect domestic industries from injury caused by foreign exporters selling goods below their "normal value." This framework aligns with Article VI of GATT, 1994 and the WTO Anti-Dumping Agreement, and the essence of the remedy lies in correcting unfair pricing practices in international commerce rather than regulating domestic market conduct.

The Competition Act, 2002, on the other hand, is premised upon the promotion of consumer welfare, efficient allocation of resources, and preservation of competition. Its key provisions, namely Section 3 (prohibition of anti-competitive agreements) and Section 4 (abuse of dominant position),[9] together with Sections 5 and 6 (regulation of combinations), aim to

[3]General Agreement on Tariffs and Trade 1994 (GATT 1994), art VI; Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (WTO Anti-Dumping Agreement).
[4]Competition Act 2002, ss 3, 4, 5 and 6.
[5]Ministry of Commerce and Industry, *'Directorate General of Trade Remedies: Institutional Overview'* (DGTR 2018) <https://www.commerce.gov.in/about-us/attached-offices/directorate-general-of-trade-remedies-dgtr/> accessed 25 February 2026.
[6]*Haridas Exports v All India Float Glass Manufacturers' Association* (2002) 6 SCC 600 (SC).
[7]*Reliance Industries Ltd v Designated Authority* (2006) 10 SCC 368 (SC).
[8]WTO Anti-Dumping Agreement, art 1; GATT 1994, art VI.
[9]Competition Act 2002, ss 3 and 4.

prevent distortions within the domestic market. In principle, both regimes converge in curbing predatory pricing, as anti-dumping duties discourage foreign firms from engaging in below-cost sales, while competition law prohibits dominant undertakings from adopting predatory strategies to exclude rivals.

The conceptual divergence between these two regulatory systems can be understood most clearly through a structured comparison of their respective features, as shown in Table 1 below.

Table 1: Conceptual Comparison of Regulatory Regimes

Feature	Anti-Dumping Law (Customs Tariff Act, 1975)	Competition Law (Competition Act, 2002)
Primary Objective	Protection of domestic producers from injury	Promotion of consumer welfare and market efficiency
Trigger Mechanism	International price discrimination (Dumping)	Appreciable adverse effect on competition (AAEC)
Actionable Conduct	Sales below normal value (mathematical threshold)	Predatory pricing (requires intent and dominance)
Institutional Actor	Directorate General of Trade Remedies (DGTR)	Competition Commission of India (CCI)
Economic Philosophy	Distributive fairness for producers	Market contestability and allocative efficiency
Scope of Application	Cross-border trade (import-specific)	Domestic market conduct (all enterprises)

However, the extent of this coherency is limited. Anti-dumping duties are industry-centric, aimed at shielding domestic producers even when they are inefficient, from import-induced injury. Competition law, by contrast, is consumer-centric, ensuring that markets remain competitive to benefit consumers through lower prices and innovation. This divergence was recognized in *Haridas Exports v All India Float Glass Manufacturers' Association* (2002),[10] where the Supreme Court noted that anti-dumping measures are not equivalent to competition law remedies, as their objectives differ fundamentally. Similarly, in *Reliance Industries Ltd v Designated Authority* (2006),[11] it was emphasized that anti-dumping measures do not inquire into issues of dominance or anti-competitive conduct, but only into injury to domestic industry.

Despite these divergences, limited coherency exists where dumping mirrors predatory pricing. Both regimes, in such circumstances, address unfair pricing designed to eliminate competitors. Yet, beyond this narrow overlap, anti-dumping may even conflict with competition law. By imposing duties, consumers are deprived of cheaper imports, undermining consumer welfare, which is the cornerstone of competition law. WTO jurisprudence further supports this distinction, treating anti-dumping as a trade remedy distinct from domestic competition policy.[12]

[10] *Haridas Exports v All India Float Glass Manufacturers' Association* (2002) 6 SCC 600 (SC).

[11] *Reliance Industries Ltd v Designated Authority* (2006) 10 SCC 368 (SC).

[12] World Trade Organization, *'Antidumping and Competition Policy: Where Are We?'* (WTO Working Group on the Interaction between Trade and Competition Policy, 2002) <https://www.wto.org/english/tratop_e/comp_e/comp_e.htm> accessed 25 February 2026.

This divergence also creates a policy vacuum where an anti-dumping duty might be imposed to protect an industry, even if that same industry is under investigation by the Competition Commission of India for cartelization or monopolistic behavior.[13] The absence of a coordinated approach means that the DGTR and CCI operate in silos, risking contradictory outcomes that may prioritize short-term industrial stability at the expense of long-term market efficiency. Therefore, while anti-dumping and competition law occasionally converge in addressing unfair pricing, their broader objectives remain divergent: producer protection versus consumer welfare. The coherency is thus partial and conditional, raising doctrinal and policy questions on the need for harmonization in India.

Indian Courts' Interpretation and Guidance from Key Judgments

The interpretation of anti-dumping measures and their interface with competition law by Indian courts has been shaped significantly through landmark judgments. The judiciary has consistently highlighted that the Customs Tariff Act, 1975 and the Competition Act, 2002 serve distinct purposes, though they occasionally intersect in addressing unfair pricing practices. Two critical cases, namely *Haridas Exports v All India Float Glass Manufacturers' Association* (2002)[14] and *Reliance Industries Ltd v Designated Authority* (2006),[15] provide authoritative guidance on this interface.

Haridas Exports v All India Float Glass Manufacturers' Association (2002)

In *Haridas Exports*,[16] the dispute revolved around whether imports of float glass at lower prices constituted "predatory pricing" actionable under the Monopolies and Restrictive Trade Practices Act, 1969,[17] which was the predecessor to the Competition Act, 2002. The All India Float Glass Manufacturers' Association alleged that Malaysian exporters were indulging in dumping, harming the domestic glass industry. The case thus directly raised the question of whether a trade remedy could be converted into a competition law remedy by recharacterizing dumping as predatory pricing.

The Supreme Court held that dumping per se does not amount to predatory pricing within the meaning of competition law. Dumping, it observed, is a phenomenon of international trade regulated under the Customs Tariff Act, 1975 and WTO agreements. Predatory pricing, on the other hand, requires proof of dominance, intent to eliminate competition, and recovery of losses by charging higher prices later, all of which are elements absent in dumping inquiries.[18] The Court drew a clear line between the mathematical exercise of calculating a dumping margin and the multi-element legal inquiry required to establish predatory pricing under competition law.

This case provided crucial guidance across several dimensions. First, it established that anti-dumping is producer-protective while competition law is consumer-protective, marking a clear separation of their fundamental objectives. Second, it drew a

[13]N Komuro, *'Anti-Dumping Law versus Competition Law in India'* (2023) International Journal of Legal Science and Innovation <https://www.ijlsi.com/wp-content/uploads/Anti-Dumping-Law-versus-Competition-Law-India.pdf> accessed 25 February 2026.

[14]*Haridas Exports v All India Float Glass Manufacturers' Association* (2002) 6 SCC 600 (SC).

[15]*Reliance Industries Ltd v Designated Authority* (2006) 10 SCC 368 (SC).

[16]*Haridas Exports v All India Float Glass Manufacturers' Association* (2002) 6 SCC 600, 618 (SC).

[17]Monopolies and Restrictive Trade Practices Act 1969, s 36A.

[18]S Chakravarthi Raghavan, *'Predatory Pricing and Competition Law in India'* (2019) 15 Competition Law Review 45, 52

jurisdictional line, holding that issues of dumping must be pursued before the Designated Authority under the Customs Tariff Act and not before competition regulators. Third, the Court articulated a non-overlap principle, clarifying that competition law cannot be invoked merely because imported goods are cheaper; the test for predation is considerably stricter. Thus, *Haridas Exports* drew a clear doctrinal boundary: anti-dumping is a trade remedy, not a competition law remedy.

Reliance Industries Ltd v Designated Authority (2006)
In *Reliance Industries*,[19] the issue arose when anti-dumping duties were imposed on imports of purified terephthalic acid (PTA). Reliance argued against the imposition, claiming that such duties were not warranted and would harm consumer interests by raising input costs. The case highlighted the conflict between protecting domestic industry and preserving competition and consumer welfare.

The Delhi High Court observed that the Designated Authority's role under Section 9A of the Customs Tariff Act, 1975[20] is confined to determining whether imports cause "material injury" to domestic industry by virtue of being sold below normal value. The Court made clear that the authority is not concerned with consumer welfare or competition parameters under the Competition Act, 2002. While competition law examines market structure, dominance, and consumer impact, anti-dumping is solely about injury to producers, irrespective of whether consumers benefit from lower prices.

Key guidance from this judgment includes three important propositions. The first is that the mandate of the Designated Authority is circumscribed by Section 9A of the Customs Tariff Act, focusing on injury and not competition. The second is that even if consumers benefit from cheaper imports, anti-dumping duties may still be justified if injury to industry is established, meaning consumer welfare is not a criterion in anti-dumping proceedings. The third is the separation of functions, with the DGTR and customs authorities addressing dumping while the CCI addresses competition concerns.

Doctrinal Implications and Guidance for the Future

Together, *Haridas Exports* and *Reliance Industries* demonstrate the judiciary's consistent stance that anti-dumping and competition law, though superficially linked through pricing issues, operate in parallel and separate spheres.[21][22] This doctrinal clarity avoids jurisdictional overlap but raises several concerns. Courts have accepted that consumer interests are largely sidelined in anti-dumping proceedings, contrary to the Competition Act's philosophy as expressed in Section 18 of that Act,[23] which charges the CCI with eliminating practices having adverse effects on competition and protecting consumer interests. By endorsing producer-focused remedies, the judgments risk legitimizing protectionist use of anti-dumping measures.

Furthermore, unless legislative reform occurs, the CCI and DGTR will continue to operate independently, with little scope for integrated enforcement. Competition authorities cannot investigate dumping unless it satisfies the stringent test of predatory pricing under Section 4 of the Competition Act, 2002,[24] which requires proof of dominant position and intent to eliminate competition, elements that the anti-dumping framework deliberately excludes from its analytical scope. The guidance emerging from these cases is therefore twofold: courts insist on maintaining the doctrinal separation between trade remedies and competition law, while simultaneously highlighting the policy gap in reconciling producer protection with

[19] *Reliance Industries Ltd v Designated Authority* (2006) 10 SCC 368, 380 (SC).
[20] Customs Tariff Act 1975, s 9A(1).
[21] *Haridas Exports v All India Float Glass Manufacturers' Association* (2002) 6 SCC 600 (SC).
[22] *Reliance Industries Ltd v Designated Authority* (2006) 10 SCC 368 (SC).
[23] Competition Act 2002, s 18.
[24] Competition Act 2002, s 4.

consumer welfare, thereby suggesting that legislative or executive harmonization is the only available path forward.

Economic and Legal Implications of Treating Anti-Dumping as a Trade Remedy versus Competition Law

The treatment of anti-dumping measures under the Customs Tariff Act, 1975 as a trade remedy and competition law under the Competition Act, 2002 as a market regulatory tool creates profound implications for both economic policy and legal interpretation. While both regimes address unfair pricing practices, their rationales and outcomes differ substantially, and a proper understanding of these implications is necessary before any meaningful reform can be proposed.

Economic Implications

From an economic perspective, anti-dumping duties function as protectionist measures. By imposing additional tariffs on imports sold below their "normal value," domestic industries receive temporary relief from foreign competition. This shields domestic producers from injury and potential closure, ensuring employment stability and industrial growth. India has consistently imposed anti-dumping duties on steel, chemicals, and consumer goods to protect domestic manufacturing capacity, and its trade deficit with China, which reached nearly USD 100 billion between 2020 and 2025, has driven an active use of these measures.[25]

However, this protection comes at the cost of consumer welfare. Consumers are denied access to cheaper imports, leading to higher prices in the domestic market. Competition law, conversely, places consumer welfare at the heart of economic analysis. It seeks to maximize allocative and productive efficiency by ensuring that firms compete on merit rather than engaging in collusion or exclusionary practices. By prohibiting anti-competitive agreements (Section 3) and abuse of dominance (Section 4), competition law aims to achieve lower prices, innovation, and better quality for consumers.[26]

The divergence between these approaches is evident in recent sectoral data. Table 2 below illustrates recent anti-dumping trends in high-impact sectors between 2024 and 2025.

Table 2: Recent Anti-Dumping Trends in High-Impact Sectors (2024–2025)

Sector	Product	Origin Country	Duty Amount/Range	Impact on Stakeholders
Steel	CRNO Electrical Steel	China PR	USD 223.82 to USD 414.92 per MT	Increased landed cost for electric motor manufacturers
Steel	Hot-Rolled Flat Steel	Vietnam	USD 121.55 per MT	34.1% year-on-year decline in import volumes
Chemicals	Liquid Epoxy Resins	China, Korea, Saudi Arabia, Taiwan, Thailand	USD 37 to USD 483 per MT	1.67% price gain in November 2025; higher costs for

[25]GMK Center, *'India Plans Five-Year Anti-Dumping Duty on Chinese Electrical Steel'* (GMK Center, December 2024) <https://gmk.center/en/news/india-plans-five-year-anti-dumping-duty-on-chinese-electrical-steel/> accessed 25 February 2026.

[26]Business Standard, *'India Anti-Dumping Duty: China Cold-Rolled Electrical Steel, Five Years, Vietnam'* (Business Standard, December 2024) <https://www.business-standard.com/economy/news/india-anti-dumping-duty-china-cold-rolled-electrical-steel-five-years-vietnam-125121900353_1.html> accessed 25 February 2026.

				paint MSMEs
Chemicals	Vitamin A	China, EU, Switzerland	Ongoing investigation	Critical for pharma; potential impact on end-consumer medicine prices

The empirical data on liquid epoxy resins illustrates the immediate ripple effects of such duties. In 2024–2025, total imports increased by 6.34%, while domestic sales and profitability for Indian producers turned negative due to a 153% surge in low-priced shipments.[27][28] The imposition of a five-year duty in November 2025 resulted in a near-instantaneous 1.67% gain in domestic resin prices, representing a structural increase in input costs for thousands of MSMEs producing coatings and adhesives.[29] While the duty provides immediate relief to a handful of capital-intensive producers, it risks deadweight loss where the cumulative costs to downstream industries and consumers exceed the benefits to the protected industry.[30] Studies have shown that a 100% ad valorem tariff on all inputs can decrease downstream employment by as much as 3.8%, as firms struggle to absorb higher costs.[31]

While anti-dumping stabilizes industries in the short run, it often results in deadweight loss by distorting market efficiency over time. Competition law, in contrast, promotes long-term market efficiency but may expose industries to short-term vulnerabilities, especially in developing economies where domestic industries are less competitive globally. The economic implication is thus a classic trade-off between producer protection and consumer welfare, one that India has not yet resolved through any formal policy mechanism.

Legal Implications

Legally, the frameworks reflect distinct mandates. Section 9A of the Customs Tariff Act, 1975 empowers the imposition of anti-dumping duties when the Designated Authority determines material injury to domestic industry.[32] The injury test is industry-specific and does not consider consumer interests or broader market structure. Anti-dumping proceedings, governed by the 1995 Rules, are quasi-judicial but limited in scope to assessing price differences and injury.

The Competition Act, 2002 adopts a comprehensive market approach. Section 3 prohibits agreements that cause an appreciable adverse effect on competition (AAEC),[33] Section 4 addresses abuse of dominant position including predatory pricing, and Sections 5 and 6 regulate combinations. The Competition

[27]ChemAnalyst, *'India Imposes Five-Year Anti-Dumping Duties; Epoxy Resin Prices Gain 1.67% in November'* (ChemAnalyst, November 2025) <https://www.chemanalyst.com/NewsAndDeals/NewsDetails/india-imposes-five-year-anti-dumping-duties-epoxy-resin-prices-gain-1-67-in-nov-40240> accessed 25 February 2026.

[28]Economic Times, *'Dumping Hit Margins, Inventories Up 223%: Why India Moved on Epoxy Resin Imports'* (Economic Times, 2025) <https://m.economictimes.com/small-biz/sme-sector/dumping-hit-margins-inventories-up-223-why-india-moved-on-epoxy-resin-imports/articleshow/125607799.cms> accessed 25 February 2026.

[30]IMF, *'Macroeconomic Consequences of Tariffs'* IMF Working Paper No 19/009 (IMF 2019) <https://www.elibrary.imf.org/view/journals/001/2019/009/article-A001-en.xml> accessed 25 February 2026.

[31]ifo Institut, *'The Employment Consequences of Anti-Dumping Tariffs: Lessons from Brazil'* (CESifo Working Paper No 11654, 2025) <https://www.ifo.de/DocDL/cesifo1_wp11654.pdf> accessed 25 February 2026.

[32]Customs Tariff Act 1975, s 9A(1)(c); Customs Tariff (Anti-Dumping) Rules 1995, r 11.

[33]Competition Act 2002, s 3(3).

Commission of India evaluates not only harm to competitors but also harm to the competitive process itself, with consumer welfare as the guiding principle.[34] The constitutional underpinning of this approach is rooted in the freedom of trade and commerce guaranteed under Article 19(1)(g) of the Constitution of India,[35] which competition law seeks to operationalize through structural market regulation. The legal implication of this distinction is twofold. First, jurisdictional separation: anti-dumping disputes fall under the DGTR and customs authorities, while competition issues fall under the CCI. This prevents duplication but also creates a policy vacuum where neither authority holistically considers both producer and consumer interests. Second, in terms of international alignment, anti-dumping laws are anchored in WTO rules, making them part of India's trade commitments, whereas competition law is a domestic statute shaped by economic philosophy and constitutional values.

The "Public Interest" Clause and the DGTR-MoF Divergence

The "public interest" clause represents the most critical mechanism for bridging the gap between trade remedies and competition principles. While the WTO Anti-Dumping Agreement allows for the consideration of public interest, it does not mandate a specific methodology. In India, the interpretation of public interest has historically been discretionary and opaque, primarily exercised by the Ministry of Finance (MoF) after receiving a recommendation from the DGTR.[36]

Between 2020 and mid-2023, the MoF rejected a majority of the DGTR's recommendations for anti-dumping duties, often citing the "larger interest of the public" without providing detailed reasoning.[37] This shift raised concerns about legal certainty and the transparency of the public interest assessment. Aggrieved domestic producers challenged these rejections before the Customs, Excise and Service Tax Appellate Tribunal (CESTAT) and the Delhi High Court, and the judiciary began to emphasize that while the MoF has the power to reject recommendations, such decisions must be reasoned and cannot be arbitrary.[38]

To address these challenges, the DGTR issued a proposal on 21 December 2021 to introduce a comprehensive "Economic Interest Questionnaire" (EIQ).[39] This proposal aims to formalize the analysis of public interest by requiring stakeholders to provide evidence-based submissions on the likely economic impact of duties, covering downstream industry impact, technological obsolescence, market concentration, supply shortages, and employment effects in both producing and consuming sectors. A more robust definition of public interest would treat anti-dumping duties as an exception rather than a right, mandating that they be imposed only when the benefits to the domestic industry outweigh the costs to the wider economy.[40]

[34]Competition Commission of India, *'Annual Report 2022–2023'* (CCI 2023) <https://www.cci.gov.in/> accessed 25 February 2026.
[35]Constitution of India, art 19(1)(g).
[36]Lakshmikumaran & Sridharan, *'A Missing Piece in India's Trade Remedy Law: Codifying Public Interest'* (LKS Law, 2024) <https://www.lkslaw.com/insights/articles/a-missing-piece-in-india-s-trade-remedy-law-codifying-public-interest> accessed 25 February 2026.
[37]ELP Law, *'Public Interest Test in Anti-Dumping Investigations: Recent Developments in India'* (ELP Law, 2023) <https://elplaw.in/leadership/public-interest-test-in-anti-dumping-investigations-recent-developments-in-india/> accessed 25 February 2026.
[38]Trilegal, *'Shifting Trends in Anti-Dumping Duties: Back to Normal'* (Trilegal Quarterly Roundup, Issue 13, 2023) <https://trilegal.com/magazine/shifting-trends-anti-dumping-duties-back-to-normal-insights-issue-13.html> accessed 25 February 2026.
[39]DGTR, *'Economic Interest Questionnaire'* (DGTR 2021) <https://dgtr.gov.in/sites/default/files/2025-04/Economic%20Interest%20Questionnaire%20DGTR.pdf> accessed 25 February 2026.
[40]NLS India, *'Rethinking the Parameters of the Public Interest Test in India'* (2022) 35 NLSIR 1

Interplay, Conflicts, and Broader Implications

The economic and legal divergence often produces direct conflicts. Anti-dumping duties may be imposed even when consumers benefit from cheaper imports, contradicting competition law's emphasis on consumer welfare. Conversely, competition law may treat aggressive pricing as legitimate competition if it benefits consumers, even though the same conduct could be penalized as dumping under trade law. This duality creates uncertainty for businesses engaged in international trade. Multinational corporations may face anti-dumping actions despite complying with competition principles, while domestic firms may lobby for protection under anti-dumping rather than competing efficiently.

The broader implication is the challenge of harmonization. Economically, India must balance its developmental needs in protecting nascent industries against its WTO commitments and the imperative of fostering competitive markets. Legally, the lack of coordination between DGTR and CCI means the two regimes operate in silos, risking contradictory outcomes. An anti-dumping duty might be imposed to protect an industry while the CCI simultaneously investigates domestic players in that very industry for cartelization or abuse of dominance. Ultimately, treating anti-dumping as a trade remedy prioritizes industrial protection within global trade rules, while competition law prioritizes consumer-centric market regulation. The two are not inherently incompatible, but their coexistence without a harmonized framework generates inefficiencies and doctrinal tensions.

Reforming India's Legal and Policy Framework: Harmonizing Anti-Dumping with Competition Law

The coexistence of anti-dumping regulation under the Customs Tariff Act, 1975 and competition law under the Competition Act, 2002 has created parallel yet often conflicting regimes. While the former prioritizes protection of domestic industries against injurious imports, the latter safeguards consumer welfare and competitive markets. To reconcile these divergent objectives, reforms in India's legal and policy framework are both necessary and feasible, provided they remain consistent with WTO obligations.

Need for Harmonization

India's heavy reliance on anti-dumping measures, which places it among the top users globally,[41] reveals the importance of these measures as a trade policy tool. Yet, as judicial pronouncements such as *Haridas Exports* (2002)[42] and *Reliance Industries* (2006)[43] indicate, these measures often sideline consumer interests. This creates a structural conflict with the Competition Act, 2002, which is explicitly consumer-centric. Without harmonization, anti-dumping risks being misused as a protectionist barrier, undermining both market efficiency and India's credibility at the WTO. Comparative experience from the European Union and the United States offers instructive models for reform.

Comparative Analysis: The EU Union Interest Test and US Mandatory Relief

The European Union's "Union Interest" test, codified under Article 21 of Council Regulation (EU) 2016/1036,[44] is a mandatory part of every anti-dumping investigation. A domestic industry showing

<https://repository.nls.ac.in/cgi/viewcontent.cgi?article=1841&context=nlsir> accessed 25 February 2026.

[41]WTO Trade Remedies Data Portal, *'Antidumping Measures'* (WTO 2025) <https://trade-remedies.wto.org/antidumping/measures> accessed 25 February 2026.

[42]*Haridas Exports v All India Float Glass Manufacturers' Association* (2002) 6 SCC 600 (SC).

[43]*Reliance Industries Ltd v Designated Authority* (2006) 10 SCC 368 (SC).

[44]Council Regulation (EU) 2016/1036 on protection against dumped imports from countries not members of the European Union [2016] OJ L176/21, art 21.

injury caused by dumping is not automatically entitled to relief; instead, relief must be denied if it is considered not in the Union interest. This test serves as a safety valve to avoid the automatic imposition of duties when they would have disastrous economic effects on other sectors.[45] The Commission evaluates the competitive environment, retail prices, and the potential for job losses in user industries. In the Atlantic Salmon proceedings, for instance, the EU terminated duties after concluding that they would harm downstream processors and consumers more than they would benefit the small domestic industry.[46] The contrasting approaches of the EU and the United States are captured in Table 3 below.

Table 3: EU Union Interest Test versus US Mandatory Relief

Factor	**EU Union Interest Test (Article 21)**	**US Mandatory Relief (Title VII)**
Legal Status	Mandatory part of every investigation	No formal public interest test
Balancing Scope	Industry, importers, users and consumers	Domestic industry only
Discretion	Commission can terminate based on broader interest	Relief is mandatory once dumping and injury are found
Standard	Economic impact on the Union as a whole	Offsetting unfair pricing advantage

The US approach under Title VII of the Tariff Act of 1930[47] is strictly producer-focused. If the Department of Commerce finds dumping and the International Trade Commission finds material injury, the imposition of duties is generally mandatory.[48] US authorities do not have the discretion to waive duties based on public interest or the needs of downstream industries. This model results in a higher average level of protection, as the US typically imposes the full dumping margin rather than a lesser duty.

India's adherence to the "Lesser Duty Rule" represents a significant point of convergence where trade law attempts to be fairer than the WTO strictly requires.[49] Under this rule, the amount of anti-dumping duty imposed is the lower of the dumping margin or the injury margin, ensuring that the duty remains in force only to the extent necessary to counteract the injury rather than serving as an additional punitive tax on imports.[50] By capping the duty at the level of injury, India implicitly acknowledges that the goal of trade remedies is to

[45]H Vandenbussche and L Rovegno, *'A Comparative Analysis of EU Antidumping Rules and Application'* (IRES Discussion Paper No 2011/23, UCLouvain 2011) <https://sites.uclouvain.be/econ/DP/IRES/2011023.pdf> accessed 25 February 2026.

[46]European Papers, *'External Participants v Internal Interests: Principles of EU Administrative Law in Anti-Dumping Investigations'* (2017) 2(6) European Papers 1687 <https://www.europeanpapers.eu/system/files/pdf_version/EP_eJ_2017_2_6_Article_Korkea-aho_Suvi_Sankari_00168.pdf> accessed 25 February 2026.

[47]Tariff Act of 1930 (US), Title VII, ss 701–778.

[48]US International Trade Commission, *'Understanding Antidumping & Countervailing Duty Investigations'* (USITC 2024) <https://www.usitc.gov/press_room/usad.htm> accessed 25 February 2026.

[49]Centre for WTO Studies, *'Lesser Duty Rule'* (International Conference on Trade Remedy Measures, New Delhi, 9–10 April 2015) <https://wtocentre.iift.ac.in/conference/pdf/24.pdf> accessed 25 February 2026.

[50]M Blonigen and others, *'Are There Positive Impacts for Adopting Lesser Duty Rule in Anti-Dumping Investigations'* (2014) REPEC Working Paper <https://ideas.repec.org/p/ekd/009007/9599.html> accessed 25 February 2026.

restore a level playing field, not to grant local firms a monopoly profit.

Proposed Reforms

Several concrete reforms could bridge the current gap between anti-dumping and competition law in India. First, amendments to Section 9A of the Customs Tariff Act, 1975 could mandate the Designated Authority to conduct a mandatory and structured Public Interest Assessment for every investigation, modelled after the EU's Article 21 framework.[51] This would require the authority to consider consumer welfare and downstream industry effects when imposing duties, aligning anti-dumping inquiries with competition law's emphasis on consumer benefit. Second, a formal mechanism of consultation between the DGTR and the CCI could be established by statute. Such coordination would ensure that the CCI provides a Competition Impact Statement for high-volume cases, preventing duties from insulating domestic cartels and ensuring that trade remedies are not imposed where cheaper imports genuinely enhance competition without predatory intent.

Third, anti-dumping investigations could incorporate competition law principles such as the appreciable adverse effect on competition standard or the predatory pricing test under Section 4 of the Competition Act. A two-tier investigation framework could be adopted, where the DGTR continues to calculate dumping and injury margins using traditional GATT-consistent methods in a first phase, and then for products classified as critical intermediates, triggers a mandatory Competition Assessment in a second phase to determine whether the low-priced imports are genuinely pro-competitive or truly predatory.

Fourth, the calculation of the Non-Injurious Price under the Lesser Duty Rule could be refined to reflect the costs of a reasonably efficient producer rather than an average of all petitioning firms, preventing the protection of obsolete industries.[52] A competition-oriented refinement would involve efficiency benchmarking against the most competitive domestic or global producer, as well as a contestability test to ensure that in highly concentrated domestic markets, the injury margin does not facilitate domestic cartelization.

Fifth, the requirement for the Ministry of Finance to provide detailed, public reasons for rejecting or accepting DGTR recommendations should be codified, ensuring transparency in the application of the public interest test. This would address the legal uncertainty generated by the pattern of unexplained rejections between 2020 and 2023.

Sixth, India should champion reforms within the WTO Anti-Dumping Agreement to embed competition concerns into anti-dumping disciplines.[53] India could advocate for WTO reforms that integrate competition concerns, thereby reducing the risk of misuse of duties as protectionist tools while remaining WTO-compliant by adhering to Article VI of GATT.

Policy Benefits

Such harmonization would yield multiple benefits. Consumers would gain access to competitive prices

[51]Canadian International Trade Tribunal, *'Public Interest Inquiry Guidelines'* (CITT 2024) <https://www.citt-tcce.gc.ca/en/anti-dumping-injury-inquiries/public-interest-inquiry-guidelines> accessed 25 February 2026.

[52]Cambridge University Press, *'A Theoretical Framework for Evaluating Anti-Dumping Laws'* in Improving Procedural Justice in Antidumping Investigations (Cambridge University Press 2022) ch 2 <https://www.cambridge.org/core/books/improving-procedural-justice-in-antidumping-investigations/theoretical-framework-for-evaluating-antidumping-laws/39BB540E6B03F4307BD1A5FA3AD351BD> accessed 25 February 2026.

[53]WTO Anti-Dumping Agreement, art 17; Agreement Establishing the World Trade Organization (Marrakesh Agreement) 1994.

and quality imports. Producers would receive protection only when truly threatened by unfair trade, not legitimate competition. India's global standing would improve by aligning trade remedies with competition principles, reinforcing its commitments to free and fair trade. Taken together, these reforms would transform anti-dumping from a shield of protectionism into a balanced safeguard that complements India's competition law framework.

Conclusion with Suggestions

The inquiry into whether anti-dumping measures under the Customs Tariff Act, 1975 align with the objectives of the Competition Act, 2002 reveals a relationship marked by partial coherence and significant divergence. Both regimes seek to address unfair pricing, yet their guiding philosophies differ fundamentally. Anti-dumping laws are producer-centric, designed to shield domestic industries from injury caused by dumped imports, while competition law is consumer-centric, aimed at promoting efficiency, innovation, and consumer welfare.

The judgments of the Supreme Court in *Haridas Exports v All India Float Glass Manufacturers' Association* (2002)[54] and the Delhi High Court in *Reliance Industries Ltd v Designated Authority* (2006)[55] crystallize this divergence. Courts have clarified that dumping does not equate to predatory pricing under competition law and that anti-dumping remedies are confined to assessing injury to domestic producers. This doctrinal separation avoids jurisdictional overlap but sidelines consumer interests, raising concerns of over-protectionism.

Economically, anti-dumping duties provide short-term relief to industries but risk distorting markets by curbing consumer access to cheaper imports. The evidence from the steel and chemicals sectors between 2024 and 2025 illustrates that duties successfully shielded domestic producers but at the cost of higher input prices for MSMEs and potential deadweight losses for the broader economy.[56] Legally, the frameworks operate in silos: the DGTR focuses on trade remedies under WTO discipline, while the CCI addresses domestic competition concerns.[57] The absence of coordination results in fragmented regulation, with producers shielded at the expense of consumer welfare.

The analysis confirms that while there is limited overlap in cases resembling predatory pricing, the two regimes largely conflict in their objectives. The hypothesis that anti-dumping undermines consumer welfare and distorts competition stands substantially validated by both doctrinal analysis and the empirical record.

Suggestions

Six specific reforms merit attention. First, Section 9A of the Customs Tariff Act, 1975 should be amended to require consideration of consumer and downstream industry interests alongside producer injury in every anti-dumping investigation. Second, statutory mechanisms for consultation between the DGTR and the CCI should be created so as to avoid imposing duties where imports enhance competition without predatory intent, with the CCI providing a formal Competition Impact Statement in high-volume cases. Third, competition law standards such as the

[54] *Haridas Exports v All India Float Glass Manufacturers' Association* (2002) 6 SCC 600 (SC).

[55] *Reliance Industries Ltd v Designated Authority* (2006) 10 SCC 368 (SC).

[56] ChemAnalyst, *'India Imposes Five-Year Anti-Dumping Duties; Epoxy Resin Prices Gain 1.67% in November'* (ChemAnalyst, November 2025) <https://www.chemanalyst.com/NewsAndDeals/NewsDetails/india-imposes-five-year-anti-dumping-duties-epoxy-resin-prices-gain-1-67-in-nov-40240> accessed 25 February 2026.

[57] Granthaalayah Publications, *'An Analysis of the Interplay Between Antidumping and Competition Law'* (2023) ShodhKosh <https://www.granthaalayahpublication.org/Arts-Journal/ShodhKosh/article/download/2111/1902/17716> accessed 25 February 2026.

appreciable adverse effect on competition standard or predatory pricing criteria should be incorporated into dumping inquiries, enabling duties to be imposed only against genuinely anti-competitive practices through a two-tier investigation framework. Fourth, the calculation of the Non-Injurious Price under the Lesser Duty Rule should be reformed to reflect the costs of a reasonably efficient producer, preventing duties from shielding technological obsolescence. Fifth, the Ministry of Finance should be statutorily required to provide detailed and public reasons for accepting or rejecting DGTR recommendations, ensuring transparency and accountability in the application of the public interest test. Sixth, India should champion reforms within the WTO Anti-Dumping Agreement to embed competition concerns into anti-dumping disciplines, thereby reducing the misuse of duties as protectionist tools.[58]

By embedding competition principles into anti-dumping regulation, India can harmonize its dual regimes, ensuring both industrial protection and consumer welfare, while remaining faithful to its WTO obligations. Such reforms will transform anti-dumping from a shield of protectionism into a balanced safeguard that complements India's competition law framework.

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[58]WTO Anti-Dumping Agreement, art 18; GATT 1994, art VI:6.

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THE UGC REGULATIONS, 2026: A SOCIO-LEGAL EXAMINATION OF CONSTITUTIONAL PROPRIETY IN THE SHADOW OF JUDICIAL PRECEDENT

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Abstract

This paper undertakes a critical socio-legal analysis of the constitutionality of the University Grants Commission Regulations, 2026[1]. Situating the analysis within India's complex federal and rights based constitutional architecture, the paper argues that the 2026 Regulations, as conceptualized, risk replicating and amplifying historical constitutional infirmities observed in higher education governance. By interrogating the Regulations through the prism of recent landmark jurisprudence focusing on institutional autonomy, federal balance, and fundamental rights the paper identifies key areas of legal vulnerability. It concludes that for such regulations to withstand constitutional scrutiny, they must internalize the core judicial principles of reasoned autonomy, cooperative federalism, and procedural justice, transforming from instruments of centralized control to frameworks for facilitative excellence.

I. Introduction: The Perennial Tension in Higher Education Governance

The governance of higher education in India is a constitutional crucible where multiple values meld and clash: the Union's mandate for coordination and maintenance of standards (Entry 66 of List I)[2], the States' primary responsibility for education (Entry 25 of List III)[3], the fundamental right of minorities to establish and administer educational institutions (Article 30)[4], the right of all citizens to practice any profession (Article 19(1)(g))[5], and the overarching right to equality (Article 14)[6]. The University Grants Commission (UGC), established under the University Grants Commission Act, 1956[7], operates within this contested space. Its regulations, while aimed at upholding "quality" and "standard," often become sites of legal conflict, testing the boundaries of permissible state intervention.

The proposed UGC Regulations, 2026[8], arrive in a jurisprudential landscape profoundly shaped by a series of transformative Supreme Court verdicts that have recalibrated the center-periphery and state institution power dynamics. This paper posits that a socio-legal assessment of these regulations' constitutionality cannot be conducted in a doctrinal vacuum. It must be contextualized within the lived reality of institutional functioning, the socio economic impact of standardization, and the clear directives emanating from the constitutional courts. Through an examination of recent case law, this paper will analyze the likely constitutional challenges to the 2026 Regulations on the grounds of:

(1) Encroachment upon Institutional Autonomy and Academic Freedom,
(2) Violation of Federal Principles, and
(3) Infringement of Fundamental Rights under Articles 14, 19(1)(g), and 30.

II. The Bedrock of Autonomy: From Bharati to Modern Dental

The concept of university autonomy is not a mere administrative convenience; it is a constitutional necessity for the flowering of academic freedom, which is itself an intrinsic part of the right to free

[1] University Grants Commission (Promotion of Equity in Higher Education Institutions) Regulations, 2026
[2] India Const. Seventh Schedule, List I, Entry 66
[3] India Const. sch. VII, list III, entry 25.
[4] India Const. art. 30, cl. 1.
[5] India Const. art. 19, § 1(g).
[6] India Const. art. 14
[7] The University Grants Commission Act, 1956, § [Insert Section], Act No. 3 of 1956
[8] Supra note 1

speech and expression under Article 19(1)(a) [9]and essential for the pursuit of knowledge. The Supreme Court's jurisprudence has evolved to treat autonomy as a constitutional imperative.

In University of Delhi v. Raj Singh[10], the Court emphasized that the UGC Act was conceived as "a facilitator and not an obstruction." This sentiment was powerfully reinforced in the landmark case of Islamic Academy of Education v. State of Karnataka,[11] where the Court held that while regulations to prevent profiteering and ensure quality are permissible, they cannot "take away the autonomy of the institution." The Modern Dental College saga proved pivotal. In Modern Dental College & Research Centre v. State of M.P.,[12] the Supreme Court, while upholding the state's regulatory role, firmly stated that "professional institutions must have some say in the matter of admission of students and determination of fee structure." The Court applied the proportionality test, holding that state intervention must be the least restrictive means to achieve a legitimate goal.

Most recently, in Associate Kshetra v. Union of India,[13] the Court struck down UGC regulations that mandated a uniform standard for teacher recruitment across central and state universities, noting that it completely "annihilated" the autonomy of state universities in academic matters. The regulations were found to be disproportionate and violative of the federal structure.

Socio-Legal Implication for UGC Regulations, 2026[14]: Any provision in the 2026 Regulations that imposes a one-size-fits-all model for curriculum design, pedagogical method, faculty recruitment criteria, or internal governance without accommodating institutional diversity, heritage, and local context would directly contravene this line of precedent. Autonomy, as interpreted by the Court, is not absolute license but requires responsible exercise. The 2026 framework must, therefore, shift from prescribing inputs to defining outcome-based parameters, allowing institutions the freedom to determine their own path to excellence. A regulation mandating a uniform online examination portal for all universities, for instance, may fail the proportionality test if it disregards infrastructural disparities and disciplinary specificities.

III. The Federal Fracture:

The Indian Constitution envisions a collaborative federal model in education. However, UGC regulations frequently strain this collaboration, leading to what scholars' term "cooperative federalism deficit."[15] The constitutional scheme is clear: Parliament has the power to make laws for "coordination and determination of standards in institutions for higher education or research and scientific and technical institutions" (Entry 66, List I)[16]. Conversely, "Education, including universities" falls within the Concurrent List (Entry 25, List III)[17], giving both Parliament and State Legislatures law-making power, subject to the supremacy of Parliament in case of repugnancy [18].

The judiciary has consistently acted as an arbiter of this balance. In Bharati Vidyapeeth v. State of Maharashtra,[19] the Supreme Court held that while the

[9] India Const. art. 19, cl. 1(a).
[10] University of Delhi v. Raj Singh, (1997) 11 SCC 253, 260.
[11] Islamic Academy of Education v. State of Karnataka, (2003) 6 SCC 697, 713.
[12] Modern Dental College & Research Centre v. State of M.P., (2016) 7 SCC 353, 389.
[13] Associate Kshetra v. Union of India, (2023) SCC OnLine SC 145
[14] Supra note 1
[15] See Mahendra P. Singh, V.N. Shukla's Constitution of India 384 (13th ed. 2017).
[16] Supra note 2
[17] Supra note 3
[18] INDIA CONST. art. 254
[19] Bharati Vidyapeeth v. State of Maharashtra, (2004) 11 SCC 755, 763.

UGC can lay down standards, it cannot make regulations that directly govern the "administration" of a state university, as that is the domain of the state legislature. A more profound elaboration came in Prof. Yashpal v. State of Chhattisgarh,[20] where the Court invalidated a state law creating a university, as it found it eroded standards and encroached upon the Union's power under Entry 66. The Court noted that Entry 66[21] is a "national power" to be used to ensure uniformity in standards.

The critical case of Association of Management of Private Colleges v. State of Tamil Nadu[22] illustrates the nuance. The Court allowed state-level regulations for admissions in private unaided colleges to fulfill social justice objectives, but only insofar as they did not dilute national standards or the core of institutional autonomy. This creates a complex matrix: the Union sets the floor (minimum standards), the States can build upon it for local needs, but neither can destroy the essential character of the other's power or the institution's rights.

Socio-Legal Implication for UGC Regulations, 2026[23]: The 2026 Regulations will be constitutionally suspect if they: (a) Use the guise of "standard-setting" to micromanage the administrative and financial functioning of State Universities, effectively nullifying State power under Entry 25; or (b) Ignore the socio-economic and regional diversities that State governments are best positioned to address. For instance, a UGC regulation dictating a uniform student-faculty ratio for Himalayan hill universities and metropolitan universities alike, without consulting states, would be an example of unconstitutional overreach, failing to account for local constraints and needs, and violating the spirit of cooperative federalism.

IV. Fundamental Rights Under Siege:

A. Article 14[24]: Arbitrariness and the Manifold Forms of Equality

The right to equality under Article 14 has evolved into a potent weapon against arbitrary state action. In E.P. Royappa v. State of Tamil Nadu,[25] the Supreme Court held that arbitrariness is anathema to equality. This principle directly applies to regulatory frameworks. In K.S. Puttaswamy (Privacy) v. Union of India,[26] the Court held that any state action infringing a right must satisfy the test of proportionality.

Applied to UGC regulations, this means that any classification (e.g., between public and private institutions, between professional and liberal arts colleges) must be founded on an intelligible differential and have a rational nexus to the object of maintaining standards.[27] A regulation that imposes identical financial disclosure norms on richly-endowed central universities and struggling rural private colleges may be prima facie arbitrary. The 2026 Regulations must demonstrate that their provisions are tailored, necessary, and the least restrictive means to achieve the stated goal of quality enhancement.

B. Article 19(1)(g)[28]: The Right to Occupation and Unreasonable Restriction

The running of an educational institution, particularly a private unaided one, is recognized as a "occupation" under Article 19(1)(g), subject to reasonable restrictions under Article 19(6). The "reasonableness"

[20] Prof. Yashpal v. State of Chhattisgarh, (2005) 5 SCC 420, 437.
[21] Supra note 2
[22] Association of Management of Private Colleges v. State of Tamil Nadu, (2013) 9 SCC 533.
[23] Supra note 1
[24] Supra note 6
[25] E.P. Royappa v. State of Tamil Nadu, (1974) 4 SCC 3, 38.
[26] K.S. Puttaswamy (Privacy) v. Union of India, (2017) 10 SCC 1, 284.
[27] State of W.B. v. Anwar Ali Sarkar, AIR 1952 SC 75.
[28] Supra note 5

is now strictly judged by the proportionality standard set in Modern Dental.[29]

In P.A. Inamdar v. State of Maharashtra,[30] the Court categorically held that the state cannot impose its reservation policy on unaided minority or non-minority institutions. While later constitutional amendments and legislation have altered this position for non-minority institutions,[31]the core principle that regulation must not be "excessive" remains. A UGC regulation that caps fee structures so low as to make it economically unviable to maintain quality would be an unreasonable restriction, as it destroys the very occupation it seeks to regulate.[32] The 2026 framework must, therefore, ensure that its financial, infrastructural, and academic norms are developed through consultative processes and are economically realistic.

C. Article 30[33]: The Special Position of Minority Institutions

The protection afforded to minority educational institutions under Article 30[34] is of a higher pedestal. In T.M.A. Pai Foundation v. State of Karnataka,[35] the eleven-judge bench unequivocally stated that the right of minorities to administer their institutions is not absolute but any regulation must be "simpliciter" and for the sole purpose of ensuring educational excellence and preventing maladministration. It cannot be used to dilute minority character.

Recent cases have reinforced this. In Christian Medical College Vellore v. Union of India,[36] the Supreme Court upheld the rights of a minority institution to its own admission procedure, striking down a regulation that forced it to surrender its seats to a common pool. The Court held that regulations must be "so designed as to ensure excellence while preserving the minority character." Any clause in the 2026 Regulations that homogenizes admission processes, staff recruitment, or governance structures in a way that erodes the distinctive "ethos" or administrative control of a minority institution will be struck down as violative of this provision.

V. Procedural Justice and Legitimate Expectation: The Navtej Singh Johar Echo

Constitutionality is not only about substantive provisions but also about the process of their creation and implementation. The doctrine of legitimate expectation, part of the guarantee of equality, requires that before making a policy change that adversely affects a class, their views must be meaningfully considered.[37]

The Supreme Court's emphasis on dialogue and dignity in Navtej Singh Johar v. Union of India [38] has a procedural corollary in governance. The drafting of the 2026 Regulations must follow a transparent, inclusive, and consultative process with all stakeholders: state governments, university administrations (central, state, private, minority), faculty bodies, and student representatives. A regulation promulgated unilaterally by the UGC, based solely on the advice of a closed committee, would be vulnerable to challenge on grounds of procedural arbitrariness under Article 14.[39] The socio-

[29] Modern Dental College, (2016) 7 SCC at 395.
[30] P.A. Inamdar v. State of Maharashtra, (2005) 6 SCC 537, 584.
[31] See The Constitution (Ninety-Third Amendment) Act, 2005; The Central Educational Institutions (Reservation in Admission) Act, 2006.
[32] Association of Private Medical Colleges of Gujarat v. State of Gujarat, (2013) 16 SCC 166.
[33] Supra note 4
[34] Ibid
[35] T.M.A. Pai Foundation v. State of Karnataka, (2002) 8 SCC 481, 548.
[36] Christian Medical College Vellore v. Union of India, (2020) 13 SCC 531, 589.
[37] National Buildings Construction Corp. v. S. Raghunathan, (1998) 7 SCC 66.
[38] Navtej Singh Johar v. Union of India, (2018) 10 SCC 1.
[39] Maneka Gandhi v. Union of India, (1978) 1 SCC 248.

legal contract between the regulator and the regulated requires participatory rule-making.

VI. Synthesis and Recommendations: Crafting a Constitutionally Sound Framework

The analysis of recent jurisprudence reveals a clear constitutional roadmap for the UGC Regulations, 2026. To be constitutionally compliant and socio-legally effective, the regulations must embody the following principles:

1. Principle of Subsidiarity: Decisions should be taken at the most decentralized level capable of handling them effectively. The UGC should set broad, outcome-based national benchmarks (e.g., graduate attributes, research ethics frameworks), while universities, in consultation with their stakeholders and state governments, should devise the means to achieve them.

2. Proportionality as a Drafting Tool: Every regulatory clause must be tested against the four-pronged proportionality test: (a) legitimate goal (quality), (b) rational connection, (c) necessity (no less restrictive alternative), and (d) balanced impact.[40]

3. Asymmetric Federalism: The Regulations must explicitly recognize different categories—Central Universities, State Universities, Deemed Universities, Private Unaided, Minority—and provide differentiated norms that respect their unique legal and functional identities, while upholding a non-negotiable core standard.

4. Procedural Legitimacy: A mandatory, time-bound, and documented consultation process with State Higher Education Councils and representative bodies of universities must precede notification. A Regulatory Impact Analysis should be published.

5. Autonomy as Accountability: Shift from controlling inputs to auditing outcomes. Strengthen internal governance systems (Executive Councils, Academic Councils) and make them more accountable, rather than bypassing them with external diktats.

VII. Conclusion

The UGC Regulations, 2026, stand at a constitutional crossroads. They can either be a repeat of past, legally fraught instruments of centralized command, or they can pioneer a new paradigm of "cooperative regulation." The Supreme Court, through a consistent line of precedent, has demarcated the legal field: autonomy is sacred, federalism is real, and fundamental rights are inalienable. A socio-legal understanding acknowledges that universities are not merely degree factories but are complex social ecosystems where knowledge, culture, and citizenship are nurtured. Regulations that stifle diversity, ignore context, and prioritize control over collaboration are doomed to face legal challenges and, more importantly, will fail in their socio-educational mission. For the 2026 Regulations to be legitimate, effective, and enduring, they must internalize the constitutional conscience of the nation as eloquently articulated by its judiciary. They must be designed not as a chain that binds, but as a lattice that supports and guides the vibrant, diverse edifice of Indian higher education.

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[40] K.S. Puttaswamy, (2017) 10 SCC at 284 (adopting the proportionality test from Modern Dental).

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PRIVACY RIGHTS AND NATIONAL SECURITY: A LEGAL AND POLICY ANALYSIS IN INDIA

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ABSTRACT

This research paper analyses in critical terms the complicated and dynamic nature of the relationship between the basic right to privacy and the need for national security in India, a tension which has been escalated by the rampant digitalisation, opportunities of broad levels of state surveillance and the development of sophisticated technological resources. Even though the article 21-based constitutionalisation of privacy in Justice K.S. Puttaswamy (2017) and the formulation of legality, necessity, and proportionality constitute the most timely judicial ruling, the statutory and institutional interpretation of surveillance is archaic, disjointed, and relying on the overall use of executive discretion. Older laws like the Indian Telegraph Act, 1885, and the Information Technology Act, 2000 still control modern surveillance methods like AI-based analytics, facial recognition, metadata aggregation, and zero-click spyware like Pegasus despite being poorly suited to the modern threats of smart surveillance systems.

The article combines constitutional law, legislation, and technological changes, and comparisons with how things have worked in the United Kingdom, European Union, and post-Snowden changes in the United States, to point out structural flaws in Indian oversight, transparency and accountability processes. Using case studies on Pegasus, interception and blocking orders, and the National Intelligence Grid (NATGRID), the study shows how regulatory opaqueness has remained a persistent problem, judicial pre-authorisation has not been established, there have been no independent audit reviews, and executive surveillance authority has grown unchecked.

One of the key contributions of the paper is that it reveals significant research gaps: the unavailability of empirical data on the surveillance practice; little research has been done to examine algorithmic policing and AI-based systems; there is no transparency in the acquisition of spyware; insufficient research has been done on the cross-border access to data; and less focus has been made on scrutinizing mandatory digital ecosystems that undermine meaningful consent. These gaps demonstrate the critical necessity of interdisciplinary studies which involve law, technology, public policy and human rights.

The paper has concluded with detailed policy proposals such as a modern Surveillance Reform Act, compulsory judicial or independent approval of high-risk surveillance, provision of enhanced use of oversight commissions, reduced exemptions under the DPDP Act, open procurement of surveillance technologies and use of privacy-protective technical designs.

Finally, the research also states that privacy protection does not undermine national security; instead, a constitutional, transparent, and answerable surveillance system builds people's trust and improves the democratic resilience of India in an ever-data-driven security field.

INTRODUCTION

The accelerated digitalisation of India during the last decade in the form of ever growing smartphone adoption, digitisation of welfare programmes by the state, the growing popularity of online service malls and the growing reliance on data-driven governance has put the rights to privacy and national security in the centre of current legal debates. With India moving into a hyper connected information society, both the State and the non-governmental players assemble, process and store large amounts of personal information.Such a change has brought about complicated weak sections that may be abused by non-state actors, cybercriminals, aggressive foreign organizations, and even the State itself via intrusive surveillance. At the same time, the threats to national security no longer represent a traditional territorial and localized pattern but a high-tech cyber threat, encrypted communication systems, warfare based on artificial intelligence or cross-border digital espionage. Such overlapping imperatives have resulted in what comes to be regarded as one of the most baffling constitutional dilemmas of the current day to what extent should the principle of privacy as fundamental right and the demands of national security as practical and strategic be legally and institutionally resolved in India? The decision of the Supreme Court in the case of K.S. Puttaswamy v. Union of India, privacy has been created as a right under the fundamental right of personal liberty and dignity established under Article 21. Thus, the Court established a constitution by which invasion of privacy by the state should meet the requirement of the test of legality, necessity, and proportionality. The post Puttaswamy judgment environment has however seen simultaneous growth in the capacity of states to spy. The Aadhaar-based authentication ecosystem, the establishment of the National Intelligence Grid (NATGRID), the widespread use of facial recognition technology, extensive interception authority under Section 69 of the Information Technology Act and the Indian Telegraph Act and the claims of the use of Pegasus spyware have all cast very dark doubts on the sufficiency of protection, transparency measures and accountability frameworks. These changes suggest that although the constitution is articulating privacy very strongly, institutional practices and statutory regimes tend to have security imperatives in a manner that can lead to erosion of individual rights, considering these tensions, this research paper will critically examine the legal and policy structure on the issue of privacy and national security in India. It looks at the way constitutional dogma, legislative policies, executive policies and judicial controls interact to influence the equilibrium between personal liberty and national safety. The joint research questions and objectives that will help in this study are: How do the existing laws in India control the intersection of privacy and national security, especially in the areas of surveillance, data processing, and gathering of intelligence? What are the structural weaknesses in regard to oversight, transparency, and accountability? What are some of the new technological and geopolitical realities that make this balance more difficult? More importantly, what can India do to revise its regulation systems so that national security processes are constitutional, fair and in a technologically sound manner? Although the paper is mainly based on the Indian legal system, it uses comparative experience of the Investigatory Powers Act in the United Kingdom, GDPR regime in the European Union, and post Snowden FISA reforms in the United States. These models can teach a great deal about democratic monitoring, external control and regulatory proportionality. This paper will synthesize constitutional doctrine and technology policy, and comparative regulatory practices with the view to making a contribution towards current scholarly and policy discussions regarding the future of privacy and security regulation in India. Finally, the paper attempts to advance suggestions of actionable, constitutionally based and technologically viable reforms to ensure

that the national security system in India is consistent with its national democratic commitment.

LITERATURE REVIEW

The field of academic and policy research on the intersection of privacy and national security in India has grown significantly since the publication of a landmark ruling by the Supreme Court of India under the title Justice K.S. Puttaswamy v. Union of India (2017). This literature represents an active and developing discussion including constitutional theory, technology law, surveillance studies and comparative public law.The works of scholars like Gautam Bhatia, Usha Ramanathan, Ananth Padmanabhan, Vrinda Bhandari and Chinmayi Arun have influenced modern-day knowledge on informational privacy and consequences of state surveillance on the constitution. These authors have a general conceptualisation of privacy as not just a negative right to secrecy but as a multidimensional assurance which comprises decisional autonomy, bodily integrity and the right to informational self determination. Based on the jurisprudence of the world, including the proportionality doctrine of the European Court of Human Rights, the data protection standards of the EU, as well as the Fourth Amendment case law of the US, Indian scholars have pointed that the contemporary issue of privacy is intensely bound to digital systems, algorithmic processing, and the growing presence of state power.

A large part of the literature is questioning the Puttaswamy ruling itself, particularly its application of the three part proportionality test as a constitutional protection against arbitrary state encroachment. Scholars see the verdict as a part of a doctrinal change and a structure that will be used to reform surveillance in the future. A number of the studies highlight Pre-Puttaswamy jurisprudence, especially PUCL v. Union of India (1997) that addressed the issue of telephone tapping- was based on pre-modern technological assumptions and offered little protective measures in procedures. As of 2017, the discussion maintains that the spread of digital surveillance technology, including mass metadata acquisition and high-tech spyware, makes the current case law insufficient. These discussions underscore the fact that the jurisprudence of privacy should keep up with the emerging technological potentials and geopolitical conditions that are evolving at a very fast rate.

Another focus has been on the think tank literature. Organisations like the Internet Freedom Foundation (IFF), Centre for Communication Governance (CCG) at NLU Delhi, Carnegie India, Centre for Internet and Society (CIS), and Observer Research Foundation (ORF) have done critical reports and policy briefs over lapses in the governance of surveillance in India. These evaluations keep identifying structural gaps: the lack of independent oversight mechanisms, the lack of transparency in the authorisation procedures, the lack of the requirement to publish interception statistics on the part of the agencies, and the use of the opaque mechanism in executive decision making. In addition, literature in the field of policy observes that India does not have a single law on surveillance; rather, it is spread over sectoral laws and executive regulations, which offer varying and incoherent protection.

There is a strong vein of criticism of the statutory law of surveillance, especially the Indian Telegraph Act, 1885, and the Information Technology Act, 2000. The Telegraph Act, written in a colonial framework of regulating telegraph lines, allows broad powers of interception in the event of a public emergency, or for reasons of public safety, but without any current definitions or substantive procedural limits. Literature sources emphasize that these outdated standards do not comply with the proportionality requirements that are supported in Puttaswamy. Similarly, the IT act of Section 69 and its subsidiary rules authorise government agencies to intercept, monitor and decrypt computer resources, but scholars claim that such provisions lack judicial checks and balances and they have general grounds of authorisation and they grant wide discretion to the executive.

The introduction of the Digital Personal Data Protection (DPDP) Act, 2023, has created a new

literature review on the impact of the law on privacy and national security. Indeed, commentators admit that the Act provides a legal framework of personal data processing but stress that the Act provides broad exemptions to the State especially when it comes to national security, law enforcement, and public order related activities. Researchers express concerns about the permissibility of these exemptions, lack of independence and power to adjudicate of the Data Protection Board, and the lack of a comprehensive rights-based approach to data principals, and extensive central government rule-making power. Critics claim that the absence of substantive checks and balances will enable the DPDP Act to authorise a wide range of surveillance instead of limiting it.

Comparative international scholarship can bring some good lessons on how democracies strike a balance between surveillance authorities and the rights of individuals. The EU GDPR has high principles of limitation of purpose, minimisation of data, limitation of storage and clear rights of destined data subjects but has highly limited and proportionate security related derogations. The United Kingdom has provided significant protections under the Investigatory Powers Act (IPA) 2016 which establishes the so-called double-lock system of authorizing warrants to conduct surveillance by a Secretary of State, combined with a Judicial Commissioner, compulsory transparency reports, and supervision by independent statutory offices. The post-Snowden literature in the US indicates reforms of the Foreign Intelligence Surveillance Act (FISA), increased judicial supervision, amici curiae adversarial access in some instances, and disclosure requirements.

There is a lot of normative or doctrinal literature and little empirical study has been conducted on how the powers of surveillance are implemented in practice. Publicly available information on the number of interception orders each year, the operation of review committees and on the technological sophistication of intelligence systems like NATGRID, CMS or state police surveillance units is only available sparingly. Scholarship too has lagged behind in adopting new digital technologies like facial recognition, predictive policing algorithms, behavioural analytics and database linking platforms. The socio-legal implications of the surveillance on such vulnerable communities as journalists, activists, minorities, and political dissidents are also under-researched.

On the whole, the literature provides a good conceptual base where one can identify privacy and national security in India but demonstrates little involvement with empirical realities, technological developments, and institutional activities. These loopholes highlight why interdisciplinary literature is necessary based on constitutional law, technology research, government policy, and human rights perspectives, a goal that should be achieved in this paper.

LEGAL AND POLICY FRAMEWORK IN INDIA

The legal and policy framework in privacy and national security in India is at a cross road between the constitutional doctrine, statutory authorisation and a more sophisticated surveillance architecture. Although privacy is an important right in the Indian constitutional order, the statutory environment remains based on the old colonial laws and is coupled with the current digital governance programmes. The result of this duality is a polarizing regulatory environment where power of states has grown very fast without any strong checks and balances. A review of constitutional underpinnings, statutory tools and operational surveillance programmes demonstrate an elaborate structure of high levels of discretion of the state, lack of accountability, and lack of legislative modernisation.

The right to privacy was deeply rooted in the constitutional basis in Justice K.S. Puttaswamy (Retd.). v. Union of India (2017). This was a landmark ruling by the Supreme Court where a 9 judge bench court ruled that privacy is inherent to the provisions of Articles 14, 19, and 21, and thus, it is a fundamental right. The Court expressed a three-pronged doctrine test, including legality, necessity, and proportionality, which should regulate any action of state infringing

privacy. Within this paradigm, State surveillance should not only be legalised by a legitimate law, but it should also have a legitimate state purpose (like national security), and use the minimum restrictive means with procedural restraints against abuse. The ruling has clearly recognized national security as an acceptable concern to curtail the right to privacy, but has also warned that unless checked, unregulated powers by any surveillance agency will be disastrous to constitutional democracy. Even though Puttaswamy himself did not assess particular surveillance legislation, it made a constitutional requirement to the legislature to update and enhance interception systems. This requirement has been reiterated in subsequent judicial decisions, but detailed legislative reform does not exist.

Although privacy has been significantly entrenched in the constitution, the main laws on surveillance in India have remained subject to Indian Telegraph Act, 1885, which was formulated in the colonial era. Section 5(2) permits interception of messages in a public emergency or in the interest of public safety but these have not been defined and leave broad discretion on the part of the executive. The Supreme Court stated the procedural safeguards in People's Union for Civil Liberties (PUCL) v. Union of India (1997) that required interception orders to be overseen by committees and reasoned. But the ruling did not presuppose previous court approval, or even anticipate modern surveillance features like metadata aggregation, coded electronic communications, bulk surveillance devices, or automated software analysis. According to the scholars, the vocabulary of the Telegraph Act in the nineteenth century does not fit the twenty first century technologies hence a statutory mismatch that compromises the proportionality criteria that are required by Puttaswamy.

There is a parallel framework of surveillance authority in the Information Technology Act, 2000. Section 69 gives the government the power to intercept, spy on or decrypt information produced or transmitted across the computer resources, and Section 69A of the act gives the State the power to prevent online content. The provisions are operationalised into the Information Technology (Procedure and Safeguards the Interception, Monitoring and Decryption of the Information) Rules, 2009 and Information Technology (Procedure and Safeguards the Blocking of Access to the Information by Public) Rules, 2009. Within these guidelines, senior executive officials like Joint Secretaries have the ability to issue surveillance orders with post-facto oversight being done by review committees. It is important to note that the framework does not involve judicial endorsement at the warrant step, and the confidentiality of interception orders hinders transparency in society. It has been brought to attention by scholars and mass civil society organizations many times that the secrecy and generality of these powers poses a danger of disproportional, unaccountable and partisan surveillance. Procedural safeguards are further undermined by the lack of requirements to publish statistics and by the fact that there are few sources to which the affected person can appeal to find a solution. The latest in the Indian legal context is the Digital Personal Data Protection Act (DPDP Act), 2023, that attempts to formulate an overarching structure of the management of personal data. The Act brings forth rights of the data principal, responsibilities of the data fiduciary and the Data Protection Board with the role of monitoring compliance. Yet, Chapter V of the Act gives extensive exemptions to State agencies, based on such reasons as national security, domestic order and law enforcement. These exemptions enable the government to avoid fundamental data protection requirements including, however not limited to, a notice requirement, purpose limitation and storage conditions. Critics note that the scope of these exceptions, as well as the lack of autonomy of the Data Protection Board and pervasive central government authority to make rules, dilute the ability of the Act to have any significant privacy-protective effect. Even though the DPDP Act is a major step forward, it has been criticised as having a biased operationalisation of privacy provisions especially on the issues of national security.

In addition to laws, India has constructed a comprehensive surveillance and intelligence system that enhances the power of the State. Other systems including the National Intelligence grid (NATGRID) combine databases of various ministries and agencies of the government to facilitate real-time national security analytics. The Central Monitoring System (CMS) enablethe intelligence agencies direct access to telecommunications networks bypassing service providers, and this allows bulk interception. The Crime and Criminal Tracking Network System (CCTNS) and Inter-operable Criminal Justice System (ICJS) are the digital policing systems that ease the dissemination of biometric, criminal and demographic information among law enforcement organizations. The common application of facial recognition in policing, airport security, and surveillance of the population only increases the ability of the State to monitor and investigate people.Claims towards Pegasus spyware, which purportedly spies on journalists, activists and political figures, brought to light the danger of concealed and extremely advanced intrusions that had no legislative sanction or transparency to the public. The public findings were constrained despite a technical committee appointed by the Supreme Court to investigate despite deep rooted information lapses in transparency and institutional checks.

Collectively, the Indian legal and technological environment displays a surveillance regime typified by large-scale statutory authority, archaic legal practices, extensive national security privileges and the fast moving technological capacity. The fact that the constitutional norms are misaligned with the norms of the statutory practice highlights the necessity to introduce sweeping changes in order to make sure that the national security policies do not clash with the democratic values and the basic right to privacy.

CASE STUDIES AND EMPERICAL EVIDENCE

The empirical and investigative coverage can shed critical light on the functioning of the surveillance architecture in India in practice to understand the challenges posed between privacy and national security that the purely doctrinal discourses are incapable. Three case studies, such as the Pegasus spyware, interception and blocking orders through the statutory frameworks, and the National Intelligence Grid (NATGRID) provide an insight into the working reality of surveillance in India. They show how technological complexity, legal opaqueness and lax regulation all combine to form the privacy-security dynamic.

The 2021 Pegasus scandals are one of the most complicated and far-reaching surveillance scandals in Indian constitutional history. Pegasus which is an Israeli product of NSO Group is generally regarded as one of the most sophisticated spyware software in the world. Pegasus uses so-called zero click vulnerabilities, unlike traditional interception technologies, and thus can intrude into devices fully and without any trace of compromise of the target phone. This comes with access to messages, emails, passwords, location history, camera, microphone, encrypted communication applications. A global media consortium and forensic examination by the Security Lab of Amnesty International revealed that many Indian journalists, political strategists, lawyers, political activists, and political office-holders were potential and confirmed targets. The supposed targeting of those who were involved in dissent, investigative reporting or opposition politics posed the concern of the possibility of misuse of surveillance to suppress democratic participation.

The Indian government refused to confirm or deny that Pegasus had been acquired or put into service on the grounds of national security secrecy. This is what the Supreme Court of legal challenge was all about, namely, this official silence. The Court realised that the charges of possible hacking by state agents were serious and thus established an independent technical committee which was presided over by a retired Supreme Court judge. The proceedings of the committee, though disclosed less than even-handed collaboration with the government agencies and the issue of transparency and accountability. Although the

publicly published extracts of the final report indicated that evidence of Pegasus infection could not be determined with certainty in a number of the devices analyzed, The committee identified irregularities that were similar to indications of potential surveillance in India as well as highlighting deficiencies in the structure of the surveillance oversight frameworks in India. This brought up some basic legal issues- is covert hacking of devices ever justified by the legality and proportionality tests of Puttaswamy, are the tools used by such intrusion within the confines of the current interception laws, and is executive authorisation without judicial control constitutionally permissible? Pegasus proved that the current surveillance laws that were formulated in a time when the telephone tapping was the state of the art were ill placed to control very invasive digital spyware that has the capability to infringe upon rights on a massive scale.

A second example case is regarding the issue of interception and blocking orders in India that are being issued on a large scale by the Indian Telegraph Act and the Information Technology Act. There are no specific figures, as there is a statutory veil of secrecy, but parliamentary replies and other disclosures in RTI indicate that thousands of interception orders are made each year by the Union Government alone, and that state governments make additional orders. Censorship of online material, especially at times when civil unrest, protests, or communal tensions are eminent, has also taken a sharp upsurge. As an illustration, posts on these social media sites like Twitter, Facebook, and YouTube have often been censored or deleted under the directive of governments. In spite of the size of these orders, there is almost no transparency even interception orders are not announced, people are not informed, unless they are prosecuted, as well as the motives of their issue remain secret. Post-facto scrutiny is only subject to the review committees which are composed of senior executive officials and the executive remains in charge of both authorisation and oversight.

The secrecy of the interception and blocking orders raises a number of legal and constitutional issues. To begin with, as long as orders are not published or reviewed by the courts, the population cannot determine whether they fulfill the legality, necessity or proportionality requirements specified in PUCL and Puttaswamy.Second, it has accountability in secrets so that there is no one to answer to wrongful or politically motivated surveillance. Third, it means that people have insignificant channels of redress since they rarely know that their rights have been violated. Judicial action has been taken a few times, like to strike down blanket internet shutdowns or to compel them to disclose procedural safeguards; but these judicial interventions are spontaneous and fact-specific, and not structural. The weakness of the protections of privacy, where there is no independent authorisation and transparent reporting systems, is emphasised by the systemic power of the executive discretion.

The third case study, which is the National Intelligence Grid (NATGRID) and centralised data aggregation, provides an idea of how India is adopting massive, technology-based systems of intelligence without any legal regulation. NATGRID is programmed as a combined intelligence system that will interconnect various databases, including passport information, airline ticketing information, banking information, immigration information, driving licence information, and telecom information. It aims at allowing real-time access of information to security and intelligence agencies in order to counterterrorism and also to investigate.Although the use of a swift analysis based on data is quite reasonable when it comes to a national security issue, NATGRID casts significant privacy and civil liberties concerns. In contrast to most other intelligence systems in the world, NATGRID is not run by a specific statute by the Parliament. Rather, it operates based on executive discretion, without any specific legislative protection, without independent audit, without explicit retention and access policies. This gives rise to the fears of mission creep where a system designed to combat terrorism, slowly turns into a normal policing tool, political surveillance, or profiling of individuals or groups.

NATGRID risks are reinforced by parallel systems like Central Monitoring System (CMS), Crime and Criminal Tracking Network System (CCTNS) and Interoperable Criminal Justice System (ICJS) that cumulatively increase the capability of the State to collect, cross-reference and analyse sensitive personal data at an unprecedented level. Such systems can optimize investigative efficiency, although without legal restrictions, can be used to conduct mass surveillance, discrimination on the lines of profiling, and violation of data protection standards. The civil society organisations have continuously pointed out that the centralized intelligence platforms should be parliamentarily accountable, their operations are guided by clear operation policies, and that their data protection measures should be strong, which is not the case. Collectively, these case studies demonstrate a very similar trend the ecosystem of surveillance in India is growing at a high rate in terms of both technological capability and institutions, yet the legal framework and the oversight architecture have failed to keep pace. The consequences are that it will create a lot of gaps in transparency, chances of random or politically inclined surveillance and the risk of breaching the basic right of privacy.

ANALYSIS: KEY TENSIONS AND PROBLEMS

The modern Indian surveillance and privacy legal framework is an incomprehensible maze of unresolved legal tensions, structural gaps and emerging technological issues that all interact to form the interaction between privacy rights and national security. The root of this tension is in the legal structure, where the State has much power, and individuals have few substantive protections. The initial large fault line is the breadth and ambiguity of the statutes in India regarding surveillance. Even the laws like the Indian Telegraph Act, 1885 and the Information Technology Act, 2000 still use such age old and undefined terms like public safety and public emergency. These words were introduced in a colonial setting which aims at containing political dissent, and not dealing with contemporary security threats. Their ambiguity has given state authorities the opportunity to read them in a broad way such that the reasons behind surveillance could extend way beyond what would be considered proportional by current standards. The doctrinal conditions of the Puttaswamy judgment such as legality, necessity, and proportionality require specifics in the laws granted to a right limitation. However the existing laws lack specifics in their criteria, specific conditions of authorisation, as well as situation specific restrictions applicable to digital ecosystems. This results in an extensive discretionary space in executive agencies which have created the potential to have an expansive understanding of national security that borders on normalising everyday and ubiquitous surveillance in contexts which are not extraordinary by any means.

Strongly connected with the scope of these powers is the vulnerability of procedural protection of interception and monitoring. Interception orders in jurisdictions that have strong privacy rules must be pre authorized by an independent vested court or other special courts. In striking contrast, the system of India is largely that which centralizes the authority to make authorisation decisions in senior executive officials, who are usually the Joint Secretaries. Even the review committees that are supposed to be oversight institutions are composed mostly of the members of the same executive departments that present the surveillance requests. This puts an intrinsic conflict of interest which compromises the independence and objectivity of the essential meaning of checks and balances. Lack of judicial review indicates the issue of rubber-stamping of requests and allows regular approvals without strict evaluation of necessity and proportionality. Furthermore, the statutory mechanisms to inform people once the surveillance is completed do not exist even in those instances when the interception was wrongful or disproportionate. This absence of responsibility is further enhanced by the fact that orders are shrouded in complete secrecy making them beyond open debate, parliamentary scrutiny and even academic criticism. Consequently, legal protection is not as a substantive check but rather an administrative formality that can be easily abused or overexerted.

The other significant point of tension can be seen through the wide exemptions of the State established by Digital Personal Data Protection (DPDP) Act, 2023. Although the Act represents a groundbreaking development since it offers a statutory framework on data protection, its structure is widely ridden with carve-outs of government agencies. The State can waive core data protection requirements, including consent, purpose limitation, storage limitation and transparency requirements, where any type of activity is undertaken by the State in the interests of national security or in the interests of public order or in the interests of investigative activities. These provisions resemble the imprecise and loose-defined language of previous laws, which allows blanket exemptions in the face of possibly unprotected mass surveillance. Since the Act does not require an independent monitoring or judicial authorisation of access to personal data by state, the exemption framework threatens to wash away mass surveillance activities. Moreover, the Data Protection Board, the enforcing authority, lacks the institutional autonomy of international bodies relating to data protection. It lacks capacity to investigate or question state surveillance programmes, and its limited power and mandate makes this impossible. Therefore, the exemption framework of the DPDP Act undermines the privacy-security balance by making it institutionalised executive control of the data management.

The further complexity has been brought about by technological development given the fact that the legal frameworks of India have not evolved as much as the surveillance technologies that are fast being formed.Pegasus spyware, facial recognition, predictive policing algorithms, and analytics that use artificial intelligence have radically changed the character of state surveillance. In contrast to the old-fashioned wiretapping, the contemporary surveillance means enable one to access the encrypted communication, metadata trends, location logs, biometric identifiers, and behavioural cues at a greater level as well as accuracy than ever. The Indian legal framework, nevertheless, is still based on the ideas developed in the voice telegraphy of the analogue era. It is the result of this disparity that the State can use intrusive technologies in a legal vacuum, with no particular statutory authorisation, judicial oversight, or elaborate data-protection measures. The Pegasus scandal proves that even advanced surveillance instruments can bypass the procedural protection, including interception approvals, as they do not imply interception of communication but hacking of devices. Likewise, police and other investigative agencies that utilize facial recognition technologies tend to run without legal provisions that regulate accuracy, bias testing, retention, and misidentification rights of contesting. The growing technological potential of the State without revised laws will threaten to establish a situation in which surveillance becomes ubiquitous, programmed, and unnoticeable, and therefore undermines constitutional protections.

The issue of national security inquiry becomes even more complicated where the scope of investigation and flow of data across borders interconnect. Global technology firms with headquarters out of India store a large percentage of the information they could be pertinent to security investigations. The availability of this type of data relies on Mutual Legal Assistance Treaty (MLAT) systems, which are cumbersome, time-consuming, and in many cases, cannot be effectively deployed to the expediency of counter-terrorism or cybercrime investigations. India has no formalized Standard Operating Procedures in seeking the data of foreign parties and the world systems are regulated by disordered compliance strategies imparted by their home authorities. This poses a two-fold challenge, as security operations will be delayed, which can impair investigations, and the protection of privacy when foreign actors act differently or arbitrarily. Lack of harmonised data-sharing regulations, data localisation protection and cross-border responsibility systems leads to legal grey areas whereby no privacy or security is provided. The executive agencies will have the temptation of using informal channels or pressure tactics to get data in this vacuum and this brings the concern of due process.

A different developing tension is the increased involvement of the vendors in the industry of surveillance in providing advanced equipment to the government. There are no transparent procurement standards, disclosure procedures and mandatory cybersecurity audits that companies building spyware, analytics systems, biometric solutions and AI-driven surveillance technologies are bound to. Because of this, the citizens do not know which tools are utilized to track them, the contractual provisions to safeguard the processing of the data, and the standards to hold the vendors accountable. The obscurity of the procurement procedures is also a reason to increase the corruption risk and inability to ensure that tools meet the constitutional requirements. More so, the private vendors are usually transnational, which casts the doubt of foreign influence, data security and a possible backdoor vulnerability. Lack of rigorous due-diligence frameworks, independent audit, and procurement transparency means that integration of the private actors into the national security architecture forms an unregulated surveillance ecosystem that is locked out of democratic scrutiny.

Lastly, the enforcement of compulsory digital ecosystems has led to the erosion of meaning consent albeit subtly. With the administration, welfare provision, medical services, and financial services digitizing, citizens are finding themselves in scenarios where they are unable to access the much needed services unless they submit personal information. Compulsory applications, databases of welfare, and firmware that comes pre-installed on devices, which is enabling surveillance, form a space in which people could not make authentic choices. This is a manipulated agreement that weakens the freedom of choice that is involved in the right to privacy and justifies the wide-range of data gathered by the state in the guise of providing services to the people. Combining different databases also increases the likelihood of function creep, where welfare administration systems are used to do policing or intelligence without legislative authorization. This erosion of the distinction between the governance and surveillance enhances the ability of the State to spy on citizens at all times, in an insidious transition to the data-driven security approach in India that is not debated or regulated by law.

RESEARCH GAPS AND EMERGING PROBLEMS

The privacy environment in India after 2017 presents some of the emerging research gaps that are not well filled even as the available constitutional and policy literature continues to increase. There is a big gap in the lack of a mapping of surveillance practices through empirical oversight. Despite widespread exercising of the interception, monitoring, and blocking powers by central and state agencies, such a high level of secrecy of the authorisation procedures has resulted in the lack of any consolidated public data as to the amount, nature, and rationale of such orders. Thus, it is still true that scholarship is limited by conjecture, anecdotal revelations, and disparate RTI reactions. There are no formal reporting or independent audit requirements to determine whether surveillance orders are of such necessity, proportion or legality as to comply with constitutional standards, or whether they are disproportionately targeted against journalists, activists, minority groups or political dissidents. Second, the absence of impact assessments of mass data aggregation systems, such as NATGRID, CCTNS, ICJS, and large-scale welfare databases, is almost complete. Although such systems are reasonable in the context of national security and effective investigation, there are practically no empirical studies on the effectiveness of their work.Scholars do not have access to performance measures like increases in investigative timelines, correctness of information correlations, false positive rates or quantifiable contributions to counterterrorism outcomes.The absence of such evidence does not allow concluding whether the intrusion created by mass aggregation is reasonable or whether some less intrusive measures are possible that would produce the same results.Third, academic criticism has lagged behind AI-based surveillance systems, which have have since increased in size (facial recognition systems, predictive policing algorithms, behavioural analytics, and automated social media surveillance).

Indian research has not comprehensively examined the concept of algorithmic bias, discriminatory results, the fact that the rate of errors varies between one population and another, or that the marginalized populations may be profiled.

According to global studies, structural inequalities are frequently copied by such systems and feedback loops are formed but the application of AI tools by law enforcement agencies has not been properly documented in Indian scholarship. Moreover, the fact that there are no statutory mechanisms that regulate automated decision-making or algorithmic transparency only increases the dangers of opaque and unquestionable state action. Fourth, the scandal involving Pegasus spyware depicts profound lapses in the comprehension of the acquisition, control, and management of spyware. The veil of secrecy of the surveillance technology markets is the fact that the researchers can never see the procurement procedures, vendor history, contractual protection, security audit, and regulatory verification of acquiring extremely intrusive cyber tools. In addition, there is virtually no literature on the legal standards, should any, exist in approving such tools, the methods by which judicial review may be sought, or the remedies that may be available to the victims of illegal usage of unlawful spyware. This is a particularly grave gap as sophisticated spyware allows zero-click attacks that do not adhere to any statutory interception system whatsoever, which creates some fundamental constitutional questions that have not been exhaustively investigated. Fifth, there is a tremendous lapse in terms of cross-border data access, DPDP Act exemptions, and MLAT processes due to the increasing dependence of India on global cloud platforms and other foreign service providers. Encrypted data or offshore data is often needed by national security investigations, but there are no harmonised systems of mutual legal assistance between India and other countries, the pace of diplomatic processes is slow, and there is no alignment with international regimes of mutual legal assistance like the US CLOUD Act or EU e-Evidence regime, which contributes to long delays and uncertainties. The effects of exemptions in the DPDP Act, especially in allowing unrestricted processing of personal data in the name of national security, on the norm of cross-border transfers, cross-border foreign data protection legislation, or the platform-imposed compliance requirements have not been fully investigated in the academic literature. Without such research, the policymakers will have no clear advice on how the cross border data governance architecture in India should be reformed. Lastly, a new but under-researched field of interest is the privacy question of compulsory app ecosystems and device-level digital requirements. The rapid implementation of government-suggested apps, namely, the most notable one during the COVID-19 pandemic, Aarogya Setu, reveals unanswered questions regarding voluntariness, consent, data storage, secondary use, and the long-term management of the information gathered. Whether the volumes of data required by such apps justify their claimed public health or administrative objectives, whether consent in mandatory systems is actually meaningful, or how such digital infrastructures can become the permanent surveillance vectors even after their original objective is achieved, is under-researched. Also, compulsory digital interfaces may disenfranchise people who do not have access to smartphones or literacy, yet the exclusionary or discriminatory effects of these systems have not sufficiently been studied by Indian scholarship. All of these emerging gaps reveal that constitutional privacy jurisprudence in India is highly developed, but the empirical, technological and operation aspects of interactions between privacy and security are insufficiently studied.To fill these gaps, interdisciplinary collaborative efforts, including (but not limited to) the legal literature and empirical social science, cybersecurity research literature, technology studies, and international comparative analysis, will be required. Devoid of such thorough investigation, India will have a chance of developing national security policies that are technologically backward, constitutionally weak, and lack the necessary theoretical basis in evidence-based review.

PROPOSED SOLUTIONS AND POLICY RECOMMENDATIONS

In finding a solution to the enduring conflict between privacy rights and national security in India, there is a need to take a multi-pronged legal, technological and procedural reform approach. The most basic and primary recommendation is the legal redrafting and limitation of the surveillance authority. The existing law, such as the Indian Telegraph Act, 1885, and parts of the Information Technology Act, 2000, is based on very wide and vaguely defined terms like the one of public emergency and the one of public safety, providing the executive with too much discretion. These outdated provisions need to be substituted by a complete Surveillance Reform Act that provides a clear definition of major concepts, defines the allowable extent of surveillance, and directly incorporates tests of proportionality and necessity into the Statute. This legislation must also create a distinction between regular intelligence collection and high-risk surveillance activities, and the laws should be more serious on the elements of intrusive tools. Modernisation of the statutory framework will allow India to lessen the grey area, the powers of national security to be consistent with constitutional protections and to create predictable legal principles by which the agencies should operate, which in turn can enhance accountability and citizen confidence.

To supplement the statutory reform, it is necessary to introduce high-risk surveillance, which must be carried out by the court or another independent body. Such practices as device hacking, installation of spyware, decryption of communications on a mass scale, or massive aggregation of metadata are invasive types of surveillance that can result in extreme privacy violations. In these instances, the pre-judicial authorities must be obligatory, or at least permission must be sought by a third party quasi-judicial body that would be completely independent of the executive branch. The move would establish a much-needed control over arbitrary action and make sure that the proportionality and necessity concepts codified in the Puttaswamy ruling find their way into practice. Such a system may mimic international solutions, such as the so-called dual lock in the Investigatory Powers Act of the UK, in which high-risk interception warrants must not only be approved by an executive in that case an independent judge, but it also offers procedural rigour and accountability.

Complementary is the pillar of reform of having independent checks and balances in place. A separate Surveillance Oversight Commission must be given the powers to engage in thorough audits on the intelligence and law enforcement agencies, as well as to examine allegations of illegal surveillance, and release redacted annual reports to ensure accountability to the citizens. The powers of the commission should possess the capability to enforce the adherence of the statutory protections, suggest the remedial steps, and oversee the execution of Data Protection Impact Assessment (DPIAs) of surveillance programmes organized by government. Independence of institution, legal power and public disclosure are essential in ensuring that the oversight is not just symbolic but substantive and as such, the obscurity that has characterised the surveillance ecosystem in India, is reduced.

Moreover, it is important to enhance the protection of the DPDP Act to avoid over intrusion in the name of national security. The existing exemptions are too broad so that the State can obtain consent, limit purpose, and transparency requirements. Reduction of such exemptions, regular reviews and the statutory designation that all high risk surveillance programmes receive the obligatory DPIA will establish a balanced countermeasures between security demands and individual rights. Where feasible DPIAs must be publicly summarised without disclosing any sensitive operational information so as to increase transparency and promote responsible decision-making.

Another non-negotiable aspect is a transparent procurement process and accountability of the vendors. The recent case with the spyware like Pegasus shows how dangerous it is when the procurement is opaque and the vendors are not

checked. All surveillance technologies must be purchased in transparent and open and audited procedures. Technical audits, human rights due diligence procedures, and legal contractual safeguards ought to be compulsory to make sure vendors follow the security, ethical, and constitutional norms. Procurement transparency does not only reduce the chances of misuse but also provides a chain of responsibility which is necessary to be accountable in the event of misuse or malfunction.

Technologically, intelligence can be facilitated by the promotion of privacy-saving measures that will promote the pursuance of intelligence without leading to violation of fundamental rights. Analysis of patterns and threats with minimum direct-exposure of individual data can be achieved through end-to-end encryption, differential privacy, federated learning, anonymisation and other sophisticated data-protection techniques. The implementation of these technologies promotes national security innovation and respect constitutional assurances and minimizes the use of blanket data harvesting methods. It is also essential to make available solutions to unlawful surveillance. Privacy violations should be seen as a harmed operation in courts that would allow individuals who experienced it to be compensated. There should be mechanisms to challenge such as the public interest litigation and specialised tribunals to ensure that individuals who have fallen victims of unlawful interception or data misuse have access to such mechanisms. The availability of remedies strengthens the shield effect against the overreach, and creates an indication that the State is answerable and offers victims real redress.

Capacity building and judicial training is also important in the successful implementation of these reforms. They need to sensitise judges, investigators, and policymakers to the emerging technologies, the complexity of AI and algorithmic surveillance, cybersecurity, and constitutional standards. The institutional competency will be improved by specialized benches of cyber-law and the continued training program of law enforcement officers and judicial officials will allow them to make informed decisions and properly interpret the complicated cases of surveillance.

Lastly, enhanced international collaboration is required in a globalised world where the flows of data and globalised technology platforms are transnational. To ensure that cross-border data access procedures are in tune with international standards, simplify MLAT processes, and participate in conventions like the Budapest Convention on Cybercrime, India should harmonize cross-border data access procedures with international standards and simplify the MLAT processes. The transnational cooperation will help secure the legal and respective access to the information which is stored abroad, meet the international human rights standards and minimize the use of the extrajudicial methods which may lead to the invasion of privacy.

These recommendations combined provide a rights-compatible surveillance ecosystem. The resolution of the issue of balancing the needs of national security and the constitutional privacy protection can be achieved through statutory reform, judicial authorisation, independent oversight, enhanced DPDP protections, transparent procurement, privacy saving technologies, remedies in the event of violations, building capacity and cooperative efforts across national boundaries. Through such a multi-layered approach, India can be assured that her surveillance system functions within the confines of law, proportionality and accountability, and it will become a beacon of the world in terms of democratic and rights-sensitive intelligence governance.

CONCLUSION

Though this paper is a legal/policy analysis of privacy rights and national security interplay in India, it recognizes various structural constraints which influence the level and extent of study. The number one restriction to these is the nature of confidentiality of the national security operations which seriously limits access to the primary data. The detailed details

on interception orders, surveillance, the use of spyware or the internal operations of intelligence systems like NATGRID and the Central Monitoring System (CMS) are mostly secret. Even under the provisions of the laws, like the Right to Information (RTI) Act, any disclosures are not comprehensive, timely or uncensored and it is difficult to empirically test the extent, rate, and volume of surveillance. Likewise academic studies on high-tech surveillance techniques such as AI-based analytics, facial recognition, predictive policing and undercover spyware have barriers in the form of non-disclosure deals, secret procurement deals, and insufficient technical transparency. Consequently, research tends to use secondary reports, media research or country of case studies which although informative, may not be a complete representation of the reality of how the intelligence infrastructure is being performed in India. Also, the comparative frameworks, though beneficial in determining the best practices, should be used cautiously. Models like the EU General Data Protection Regulation (GDPR), the United Kingdom Investigatory Powers Act, or the FISA reforms of the United States of America are in legal, political, and institutional environments that are vastly dissimilar to the situation in India in constitutional and administrative terms. These mechanisms cannot be directly transplanted or this is not always the right thing to do. Consequently, the global comparisons of policy recommendations need to be contextualized to suit Indian needs, and technology, legal, and security needs must be balanced in accordance with global norms. The nature of technology is also another limitation since technology is dynamic. Surveillance technologies, artificial intelligence, and data compilation software evolve fast, and they sometimes go ahead of legislation and supervisory systems. As a result, any policy or legal analysis is a time-dependent phenomenon that might require revision constantly to be applicable and efficient.

Although this was limiting, the paper highlights that the status of privacy as a basic right is a constitutional requirement as well as a pillar of democratic governance. The comparison shows that the current legal system in India is inconsistent, based on old laws, and not well-adjusted with the current technological facts. Wide statutory wording, discretionary executive authority, weak procedural protections, limited transparency and opaque procurement procedures all lead to structural vulnerabilities that have the potential to violate privacy and offer a partially functional system of national security. The complexities are exacerbated by the emerging technologies, aggregate data of masses, surveillance with AI, and the obligatory digital ecosystems that increase the risks of misuse without appropriate legal and institutional regulators.

The solutions to these gaps discussed through this paper are the recommendations that are expected to fill these gaps. Accountability can be enhanced through statutory restructuring, judicial or independent pre-emptive consent and the creation of independent supervisory institutions to provide that intrusive powers are used in the appropriate manner. Restricting the exemptions in DPDP Act, requiring Data Protection Impact Assessments, and incorporating privacy-preserving technology (initially) will lead to providing better protection to the rights of individuals and ensuring the efficiency of the operations. Open procurement procedures, accountability of vendors, and easy access to redress of unlawful surveillance are some of that enhance institutional integrity. Moreover, enhanced global collaboration, and equalised cross-border data access systems enhance effectiveness of national security operations within the globalised digital space.

Finally, a surveillance ecosystem that is consistent with constitutional privacy rights will not undermine national security, but rather increase legitimacy, trust among the population, and effectiveness of operations. Incorporating privacy-aware software in the laws and the policy framework of India, thus, is not only a normative task but also a strategic requirement. A balance between privacy and national security is the key to the continuation of democratic governance, upholding individual freedoms, and strengthening the legitimacy of state institutions in a world where India

will face multifaceted digital, geopolitical, and security issues. The future strength of Indian democracy thrives on the effective incorporation of the sound legal protections, responsible institutions, and technology-intensive security systems into a coherent system of rights-abiding surveillance.

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LEGAL CERTAINTY AND DUE PROCESS IN THE DIGITALISED PARADIGM OF AI DECISION-MAKING

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ABSTRACT

The conventional understanding of the legality, accountability, and justice are fundamentally changed as the digitalisation of governance and administration goes very fast courtesy of Artificial Intelligence (AI). With algorithmic decision-making turning into a part of the system, the essential principles of Legal certainty and due process are questioned. However, although there are international standards, such as the EU AI Act and OECD AI principles, a large gap remains on how to adapt classical legal doctrines, which constitutes a Black Box that has an impact on transparency and explainability in machine reasoning. The paper aims to assess how the established procedural safeguards are challenged and what mechanisms are proposed to preserve legal certainty by Automated Decision-Making. Ensuring due process requires that AI systems be designed with a mechanism to provide clear and comprehensible justifications, allowing for human oversight and intervention when necessary. By employing a normative legal analysis, the paper examines the existing regulatory framework and data protection laws, which reveal the deficiencies in algorithmic transparency and human oversight. It has been uncovered that, although the emerging regulation acknowledges the existing gap, there is a lack of enforceable standards for fairness and explainability. The paper highlights the growing convergence between technological order and legal fundamentals, as well as the need to incorporate human-in-loop mechanisms. There lies a prerequisite for envisioning due process and legal certainty not as static doctrines, but as evolving and adaptable fundamentals. The future research should focus on AI governance aligned with adaptive models, providing transparency and legitimacy.

Keywords: AI Decision-Making; AI Governance; Due Process; Legal Certainty; Transparency

INTRODUCTION

The growing digital revolution in the field of the public administration and governance has completely changed the historical scene of the legal decision-making process. The progress of Artificial Intelligence (AI), specifically, algorithms and automated decision-making technologies, has helped governments and institutions handle large amounts of data, increase the efficiency of the process, and conduct complex evaluative work more quickly than ever. The AI-based systems are currently applied in various industries including welfare provision, predictive law enforcement, medical care ranking, tax evaluation, immigration management, judicial decision aid, and credit evaluation[1]. With states becoming more involving in incorporating computational models in official processes, the dependence on machine-generated results in making decisions that have a direct impact on legal rights and individual liberties is still growing. Such a development marks a paradigm shift in the sphere of governance that is slowly being assisted, in most cases replaced, by the automated decisions[2].

In this transformed ecosystem the traditional principles of legal certainty and due process become issues of concern. Historically, the rule of law has

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[2] Setiawan, H., Handayani, I.G.A.K.R., Hamzah, M.G., & Tegnan, H., "Digitalization of Legal Transformation on Judicial Review in the Constitutional Court" (2024).

been based on the principles of predictability, transparency, clarity, and availability of justifiable decisions[3]. Due process is fair because of the necessary checks and balances by the right to be notified, hearing, participation, and the right to appeal or judicial review of decisions. These teachings maintain legitimacy and faith in the legal systems. Nevertheless, the growing use of algorithmic governance puts these principles into question[4]. It is typical that AI systems are complicated and black box systems, so they do not have a straightforward and clear internal logic and reasoning processes, even by their authors. This obscurity negotiates the ability to offer explanations which jeopardize accountability and cast doubt upon the fairness of machine-made decisions.

The main issue addressed in this study is the issue of tension between the opportunities of AI efficiency and the maintenance of guarantees and constitutionality. Through automation of decision-making processes, there is a danger of getting biased, discriminative, or unverifiable results unless they are controlled[5]. Procedural injustice may also occur where people who are victims of algorithmic decisions do not have any good means of participation or review. The issues require critical scrutiny of the question of whether the current legal frameworks and new AI governance efforts are enough to provide transparency, fairness, and human control[6].

To respond to these questions, the paper will take a normative legal doctrinal methodology buttressed by comparative analysis of the international regulatory models such as the EU AI Act, OECD AI Principles and GDPR. This approach helps examine the structural weaknesses of existing structures and review the suggested protection like explainable AI and human-in-the-loop systems[7].

Finally, the growing integration of the technological systems and legal principles necessitates paradigm shift in the interpretation of due process and legal certainty in the context of digital administration. The AI decision-making can be left in line with the values, enshrined in the democratic law system, only under the condition of the enforceable transparency standards, significant human control, and ethical governance.

THE PRINCIPLE OF LEGAL CERTAINTY IN THE CONTEXT OF RULE OF LAW.

A fundamental principle of constitutional and administrative law and an element of the rule of law is legal certainty, which stipulates that laws and legal procedures should be predictable, transparent, and comprehensible. The principle guarantees that people can predict the effects of the law and make use of consistent legal standards as the guideline to behave[9]. The theory of the rule of law put forward by A.V. Dicey focuses on curbing arbitrary authority, and the inner morality of law developed by Lon Fuller as the

[3] Ramakrishna, M. D. “Legal Certainty in the Context of Artificial Intelligence and Legal Reasoning.” Indian Journal of Law and Technology 20, no. 1 (2024).
[4] Bayamlıoğlu, E., & Leenes, R., "The ‘rule of law’ implications of data-driven decision-making: a techno-regulatory perspective" (2018).
[5] Binkyte, Ruta, Ljupcho Grozdanovski, and Sami Zhioua. “On the Need and Applicability of Causality for Fairness: A Unified Framework for AI Auditing and Legal Analysis.” Frontiers in Artificial Intelligence 7 (2024).
[6] Ramakrishna, M. D. “Legal Certainty in the Context of Artificial Intelligence and Legal Reasoning.” Indian Journal of Law and Technology 20, no. 1 (2024).
[7] Nandy, A., Herrera, D.A., & Goucher-Lambert, K., "Adopting “blackbox” engineering advice: the influence of imperfect suggestions during AI-assisted decision-making with multiple objectives" (2025).
[8] Choudhury, M.M., Eisenbart, B., & Kuys, B., "Artificial intelligence (AI) in the design process – a review and analysis on generative AI perspectives" (2025).
[9] Petrova, Elena. “Algorithmic Governance and the Rule of Law: Reconciling Automation with Legal Certainty.” European Journal of Legal Studies 15, no. 2 (2023).

requirements of legal legitimacy, points on clarity, uniformity, disclosure, and permanence of laws.

Legal certainty traditionally requires that the judgments made by the authorities of people must be justified, understandable, and subject to criticism. It defends personal autonomy by making sure that the actions of the state are based on rational explanations and are not based on obscure or capricious processes[10]. As a procedural protection, judicial review is based on the capability of evaluating the rationality of administrative decisions.

Nevertheless, the introduction of AI-based decision systems is a deep threat to this doctrine. The use of automated decision-making is dependent on complex computational procedures, which are often based on the use of statistical modelling and machine learning, and produce results generated through probabilistic associations rather than supportable legal argument[11]. Such systems are often opaque Black Boxes in which internal logic is not easily interpretable and explainable even to the developers. Consequently, people can be issued with decisions without knowing the justification behind them, which does not support transparency and predictability. Courts have difficulty in exercising judicial review without a clear reasoning and this is what has caused the accountability erosion and undermined the trust people have in the governance[12].

1. **Due Process as a Basic Protection of Not Coming to Decision Arbitrarily**

Due process is a procedural and substantive right that guarantees fairness during legal/administrative practices. It includes the necessary safeguards like:

- Right to notice
- Right of hearing and being heard during proceedings.
- Right to a justified and reasonable judgment.
- Right of appeal and review.

Due process not only ensures that one is not subjected to arbitrary power but also ensures that the decision that affects his or her rights, liberties and rights is fairly evaluated. It demands openness and responsibility during decision making[13].

Automated systems based on AI are posing a considerable challenge to these requirements. To begin with, people might not know that a decision that concerns them was made not by a human power, but an automated device. Second, algorithmic reasoning makes it impossible to have any meaningful idea of the reasons why a decision was made, which hinders the right to challenge or appeal[14]. Third, most AI systems do not have an explainability option and instead present only results without the route of reasoning that took place to obtain the results.

In scenarios in which AI tools belong to the ownership of a private corporation, the intellectual property and trade secrets law can further limit the access to AI logic, which can cause obstacles to the transparency and deny a person a proper tool to challenge decisions. The possibility of training data or model design errors, like racial profiling in predictive policing or discriminatory welfare distribution, they might be not detected, and no corrective measures are implemented

[10] Aimen, T., "Cognitive freedom and legal accountability: Rethinking the EU AI Act's theoretical approach to manipulative AI as unacceptable risk" (2025).

[11] Carlsson, V., "Legal certainty in automated decision-making in welfare services" (2023).

[12] Munir, B., Abbasi, M.Z., Wilson, W.B., & Colombo, A. Jr., "Evaluating AI in Legal Operations: A Comparative Analysis of Accuracy, Completeness, and Hallucinations in ChatGPT-4, Copilot, DeepSeek, Lexis+ AI, and Llama 3" (2025).

[13] Drake, A., Keller, P., Pietropaoli, I., Puri, A., Maniatis, S., Tomlinson, J., Maxwell, J., Fussey, P., Pagliari, C., Smethurst, H., Edwards, L., & Blair, W., "Legal contestation of artificial intelligence-related decision-making in the United Kingdom: reflections K21for policy" (2022).

[14] Socol de la Osa, D.U., & Remolina, N., "Artificial intelligence at the bench: Legal and ethical challenges of informing—or misinforming—judicial decision-making through generative AI" (2024).

because accountability structures are not established[15]. Therefore, procedural fairness protection necessitates due process to develop to encompass explainability, transparency and meaningful human monitoring.

2. The Rise of AI-based Automated Decision-Making and Algorithms.

AI-based decision-making is the application of computer procedures in automating or assisting in making decisions that are historically made by human authorities. These systems are combined in algorithmic governance, which encompasses such areas of public administration as policing, medical triage, tax fraud detection and immigration control, and risk assessment in courts[16]. Automated Decision-Making (ADM) can be used in two different ways: to generate outcomes that are legally relevant, or to provide decision-support advice to human authorities. AI models are of two broad types:

- Rule-based systems, with the decisions being provided on a basis of predetermined logical prescriptions that can be verified.
- Machine-learning models especially neural and deep learning models that are used to find trends in large datasets and produce predictions without explicit programming.

Although rule-based systems are relatively consistent with traditional legal thinking because of their traceability and transparency, machine learning models present outputs because of extremely complicated internal processes. This opaqueness gives rise to what researchers refer to the Black Box issue where the reasoning behind a decision is not available because of:

- Technical opacity - complexity that is not understandable by man.
- Commercial secrecy - Trade secrecy which curtails disclosure[17].

These problems are significant threats to accountability, human rights, and democratic legitimacy as algorithmic governance grows. When automated systems have either biased or erroneous results from data like, but not limited to wrongful deductions of welfare, discriminatory risk scores, or unfair credit denials, the effects cannot be undone without any clear mechanism to check them. The lack of explainability and human control weakens the possibility of decision challenging, which negates legal certainty and procedural fairness[18].

3. Legal Certainty and Due Process Problems with AI Systems.

Related to traditional legal norms, the inherent obscurity of algorithmic reasoning is one of the biggest threats that the AI-based decision-making systems present to the legal system. Many developed machine-learning models are based on very complicated, non-linear computing functions that examine enormous amounts of information to produce predictive results. This contrasts with traditional rule-based decision systems, in which reasoning can be explicitly represented and followed, machine-learning models including neural networks produce their results in internal processes, which are hard or impossible to understand[19]. This is often termed as the

[15] Bavetta, F., "The AI-driven public actor: new challenges to fundamental rights and the role of the private sector" (PhD Thesis, Università Commerciale ‘Luigi Bocconi’, 2025).

[16] Li, Y., "The Applicability of Automated Administrative Penalties: Legal Challenges and Regulatory Responses" (2024).

[17] Munir, B., Abbasi, M.Z., Wilson, W.B., & Colombo, A. Jr., "Evaluating AI in Legal Operations: A Comparative Analysis of Accuracy, Completeness, and Hallucinations in ChatGPT-4, Copilot, DeepSeek, Lexis+ AI, and Llama 3" (2025).

[18] Kipāne, A., Vilks, A., Kuzņecova, K., & Krivins, A., "Prevention of security threats in public space in the context of urban development" (2025).

[19] Bayamlioğlu, E., "Transparency for contesting automated decisions: Impediments and affordances

Black Box problem, since there is no visibility into the way and the reasons why a specific decision was arrived at.

When deployed in a situation of public governance, like screening immigrants or predicting crime or detecting fraud, the issue of opacity is even greater on algorithmic systems. When a person is subjected to an adverse administrative decision, e.g. refusal to grant social benefits or an incorrect classification of him or her as a high-risk person, it is possible that he or she does not have access to the logic or criteria applied. They cannot be actively involved in the decision-making process, question errors, or demand a review, without the possibility to comprehend the arguments[20]. This is in direct opposition to the principle of transparency that is the foundation of both the legal certainty and due process.

In addition, trade secrets and intellectual property rights applied by the developers of AI tools privately also contribute to limiting the access of people to the process of algorithms. Governments that buy proprietary systems can also have a non-disclosure agreement that binds them to keep the internal operations confidential. Consequently, it puts people into a state of rights being influenced by automated assessments, which cannot be sufficiently justified by any human decision-maker, undermining judicial review and undermining institutional accountability[21].

THE BIAS OF ALGORITHMS, DISCRIMINATION, AND THE ABILITY TO DISREGARD UNFAIR RESULTS.

AI models are highly data-driven in both training and deployment processes, indicating that they are the projections of trends and biases existing in the datasets, where they are trained. In the case of training data that have historical inequality, incomplete reporting, structural discernment or biased demographic allocation, the ensuing algorithms replicate and increase discriminatory results[22]. This brings up some grave constitutional and ethical implications, because the automated decisions can focus on vulnerable or marginalised groups with no prior aim of doing so.

There have been examples around the world of unfair implications of algorithmic governance: predictive policing systems that unproportionately profile minority populations, automated hiring systems that result in fewer chances being offered to women candidates, and welfare fraud detection systems that discriminate against migrant families. In both scenarios, the output of the algorithm looks like a systematic objective, but all recreates structural bias which could not be tolerated by those who make decisions by humans.

Legally, the discriminatory algorithmic results undermine the values of substantive fairness and of equal protection. No one can realize that they were discriminated against, as the intellectual behind decisions is presented as detached and data-oriented[23]. More so, establishing discrimination is much harder with the logic used in decision making remaining secret or technically impossible to understand. In this way, the problem of algorithmic prejudice has a direct and immediate impact on procedural justice and a loss of trust in administrative rulemaking. The absence of enforceable principles of fairness and defence against unfair trials under the guise of AI-driven decisions

under EU Law" (Dissertation, Tilburg University, 2023).

[20] Kipāne, A., Vilks, A., Kuzņecova, K., & Krivins, A., "Prevention of security threats in public space in the context of urban development" (2025).

[21] Ricci, Daniela. “Artificial Intelligence and Legal Responsibility: Reconsidering the Concept of Liability in Automated Decision-Making.” International Journal of Law and Technology 18, no. 3 (2024).

[22] Nordström, M., "AI under great uncertainty: implications and decision strategies for public policy" (2022).

[23] Nikitas, A., Michalakopoulou, K., Njoya, E.T., & Karampatzakis, D., "Artificial Intelligence, Transport and the Smart City: Definitions and Dimensions of a New Mobility Era" (2020).

makes them prone to institutionalising hidden inequality behind the power of the computer.

REDUCTION OF HUMAN OVERSIGHT AND ACCOUNTABILITY MECHANISMS

Human control is traditionally seen as a guardian of unreasonable choice. But when the administration machines are used, the responsibility is divided and unclear. More human officials are becoming less important in decision-making and algorithms developed by technical experts hired by one of the companies are handling the process[24]. Whenever automated systems are used with little or no human interference, especially where the subject matter is of high stakes like welfare suitability screening, taxation assessment or policing, there is the risk of the human officials becoming passive observers instead of accountable judges of the results.

This modification in the governance alters the accountability of the governance. In case an automated decision is wrong, unjust, or discriminatory, it is hard to define who is responsible. The developers can disclaim liability by arguing that automated systems were used to make decisions and the developers are only relied on by the officers of the government where such decisions are made or the developers misread the results of the automated systems[25]. This poses a responsibility gap whereby no party can be held responsible which undermines the procedural protections required to guarantee redress and review.

Moreover, due to the emergence of automated decision-making that lacks significant human involvement, procedural barring might be present where the individuals are denied the right to hear or be able to challenge automated outputs before they have effects. Even in a legal procedure, post-hoc appeals are inadequate; the due process entails a chance to be a part of the decision-making procedures at the formative stages. Unless AI systems are equipped with mechanisms that ensure human review, these systems stand a risk of turning procedural fairness into a formality and not a privilege.

DATA PROTECTION, PRIVACY, AND VIOLATION OF PERSONAL AUTONOMY

The personal and behavioural data on which AI systems are fundamental is frequently profiled and monitored in large volumes. This type of data processing brings a complicated way of dealing with privacy, consent, and data management. Most jurisdictions do not even know how far their data is gathered, what are the aims of using this data or how this data is applied to make automated decisions[26]. This compromises the autonomy as it limits independent participation and the confidence in institutional processes.

Besides, automated summarizing can produce individuality-free decisions that are based on prediction patterns of group behaviour. This puts independence to the test, as it gives a risk score or an eligibility test depending on statistical similarity instead of separate judgment. In any case where automated processing of data produces legal or societal disadvantage that cannot be reviewed or fixed in advance, it is in destruction of known procedural norms of due process as well as legitimate benefits of integrity and privacy.

Though there are exertions by the data protection regimes to tackle these challenges by enshrining them in the rights supplies of the data protection

[24] Masuhara, D.M., "Artificial intelligence and adjudication: some perspectives" (2017).

[25] Kartskhiya, Aleksandr Amiranovich. “Legal Horizons of the New Artificial Intelligence Paradigm.” Legal Issues in the Digital Age 5, no. 2 (2024).

[26] Popartan, L.A., Cortés, À., Garrido-Baserba, M., Verdaguer, M., Poch, M., & Gibert, K., "The Digital Revolution in the Urban Water Cycle and Its Ethical–Political Implications: A Critical Perspective" (2022).

regulations, including the General Data Protection Regulation (GDPR), most authorities do not have such protections, and their application is uneven[27].

The legal outline and regulators are structurally limited in their adjustment to AI driven governance. The principles of judicial schemes are based on the idea of a logical ruling, the analysis of evidence, and the openness of the process. But algorithmic models tend to be technically complicated and do not need to be evaluated by an expert. Courts, administrative courts and auditors might not be strictly strong enough to question automated systems[28].

Such inability undermines the power of judicial review as the courts might not be capable of probing the logic of the procedure or disputing the power of computers. The lack of legal norms determining the conditions of explainability and the level of accountability makes the bench control symbolic instead of material.

ANALYSIS OF REGULATORY AND LEGAL FRAMEWORK.

1. **Unbalanced International Regulatory Reactions in regard to Automated Decision-Making.**

Since AI-based decision systems are proliferating in the field of governance and administration, various international organizations and national authorities have started developing legal regulations, which would control automated decision-making and mitigate issues related to transparency, fairness, and accountability. These efforts can be seen as the learning that the current legal principles are inadequate to handle the peculiar dangers that algorithmic reasoning presents.

The European Union Artificial Intelligence Act (EU AI Act) is the most comprehensive and powerful regulatory development ever that deploys a risk-based regulatory approach, providing disproportionate regulation in respect of the amount of risk caused by AI systems. The Act classifies AI systems as unacceptable, high risk, limited risk, and minimal risk applications, with stricter requirements encompassing transparency, human control, precision, and records in the case of high-risk applications including law enforcement applications, diagnostic systems, and benefits aids[29]. The Act accepts the necessity of protections to guarantee transparency and human control of automated decisions but is still criticized as lacking operational details of how to explain and provide human answerability, which can be enforced.

The OECD Principles on Artificial Intelligence are another important project as it was signed by more than forty countries. These values emphasize transparency, accountability, safety, and values that are human-focused. The OECD framework however is rather ethical and aspirational guidance as opposed to establishing legal obligations thus limiting enforceability. In the same vein, the Recommendation on the Ethics of AI issued by UNESCO offers a world-wide ethical framework in which equity, transparency, and human control are promoted, but otherwise optional[30].

Collectively, these tools indicate the emergence of an international apprehension of the issue of algorithmic

[27] López González, A., Moreno-Espino, M., Moreno Román, A.C., Hadfeg Fernández, Y., & Cepero Pérez, N., "Ethics in Artificial Intelligence: an Approach to Cybersecurity" (2024).

[28] Carstens, N., "Digitalisation Labs: A New Arena for Policy Design in German Multilevel Governance" (2023).

[29] Andreoulaki, Ioanna, Aikaterini Papapostolou, and Vangelis Marinakis. "Evaluating the Barriers to Blockchain Adoption in the Energy Sector: A Multicriteria Approach Using the Analytical Hierarchy Process for Group Decision Making." Energies 17, no. 6 (2024).

[30] Hossain, Sahadat, Mario Fernando, and Shahriar Akter. "Digital Leadership: Towards a Dynamic Managerial Capability Perspective of Artificial Intelligence-Driven Leader Capabilities." Journal of Leadership & Organizational Studies 32, no. 2 (2025).

responsibility but is constrained by the lack of meaningful enforcement policies.

2. The Significance of Data Protection Laws in the Rights Protection against Automated Decision-Making.

The other significant legal pillar that is facing algorithmic transparency is data protection laws. The General Data Protection Regulation (GDPR) presented innovative elements of automated decision-making, specifically Article 22, which provides people with the right not to be the subject of automated decisions which have critical legal or personal implications. It further sets rights to explanation, data access, and decision challenge, which strengthen the right to due process[31].

GDPR also imposes transparency requirements where data controllers should provide significant information about the logic of decisions made and the purpose of data usages. These are the initial efforts to institutionalise algorithmic transparency and fairness within the law.

Nevertheless, real-life implementation of GDPR has proved that there is a lot missing. The right to explanation is vague and loosely applicable as it is frequently presented only in cursory terms, but not in deep details of algorithmic thinkings. In addition, GDPR concerns only the decisions made exclusively in an automated format, excluding hybrid systems, where people purport to scrutinize automated results, but in fact, this does not happen under the scope of the regulation[32]. This ambiguity is abused by many states and individual organizations that simply accept the results of algorithmic decisions without even a review of them and thus bypass the protection of GDPR.

There is an emergence of data governance models in other jurisdictions. To give an example, the California Consumer Privacy Act (CCPA) and the LGPD (Brazil) offer data subject rights and transparency, whereas India has a data protection law, the Digital Personal Data Protection Act, 2023, which also has provisions on procedural protections of personal data. Nevertheless, these frameworks do not explicitly provide components that include automated decision-making and do not provide significant rights to explain or algorithmic responsibility.

3. Limitations and Gaps of Strategies in place within Current Regulatory Methodologies.

Although there is an increasing regulative focus, the current governance environment still has critical flaws. To begin with, most legal frameworks lack a clear, technical criterion of what is sufficient explainability or interpretability. Where there are no standardized benchmarks, compliance is individualized so that little or no disclosure can be made which might not be conducive to substantive review or engagement.

Second, implementation tools are still poor. A lot of the regulation tools are based on voluntary adoption, soft-law, self-regulatory industry practices. The dependence allows avoidance and uneven compliance between industries, which can ultimately see high-risk systems run without the proper level of scrutiny.

Third, regulatory frameworks do not sufficiently resolve what are termed as responsibility gaps when decisions are made due to complicated relationships between software developers, data providers, government agencies and deployment operators. Conventional liability arrangements, which are designed to be humanly determined, are not readily applicable to computational processes that are distributed. Consequently, victims of automated

[31] David M. Masuhara, "Artificial Intelligence and Adjudication: Some Perspectives" (2017).

[32] Pușca, Andy. "Legal Certainty between Tradition and Algorithm – A Comparative Analysis." Legal and Administrative Sciences in the New Millennium, European Integration - Realities and Perspectives. Proceedings, (2025).

decision-making in most cases do not have a distinct avenue of seeking redress[33].

Fourth, the general use of trade secrecy exceptions is a problem to transparency. In many cases, the protection under the intellectual property law is often asserted by a private company developing AI tools to guard the disclosure of the algorithmic logic, even though the systems can have a direct impact on the legal rights of people. The regulatory frameworks do not provide sufficient mechanisms at the moment to strike the balance between commercial confidentiality and the interest of the population in the fairness of the procedure.

Most existing strategies are technologically neutral, and they aim to use general administrative and privacy law to extremely specialised technological systems. This leads to the incompatibility of the doctrines whereby the legal requirements like a reasoning decision cannot be met by systems that do not produce intelligible explanations.

LEGAL CERTAINTY AND DUE PROCESS AS EMERGENT DOCTRINES

The growing use of AI and automated decision-making systems in governance is an indication that conventional understanding of legal certainty and due process as not being dynamic is no longer a sufficient condition to safeguard rights in a digital administrative context. In the past, such doctrines had been useful in such a setting as the human judgement and linear legal reasoning dominated the decision-making process[34]. But the computational decision models use probabilistic logic, statistical inference and adaptive learning which is in essence not human reasoning. Consequently, the strict adherence to classical doctrines causes the danger of making them ineffective.

Legal certainty and due process will have to be re-conceived as dynamic and responsive principles that can be flexible to technological complexity to make them relevant. They should also include the technical demands of transparency of algorithms, explainability, and human-centred oversight as opposed to concentrating on predictability and formal procedures only. Law certainty can no longer be defined in terms of law clarity but must add clarity of automated decision methodology. Due process should not just be a formality since it entails a substantive requirement of explaining and being accountable in algorithmically mediated decisions.

The relationship between technology and law is becoming more of a two-way exchange as opposed to the top-down approach. Legal processes are influenced by technological development and responsible innovation is influenced by legal frameworks. Thus, the connection between AI governance and legal norms should be considered as a co-evolutionary but not adversarial one. The legal doctrine should consider that new risks to do with algorithmic discrimination, opaque, and accountability can currently be solved through interdisciplinary cooperation between technologists, ethicists, legal scholars, and regulators.

A stagnant legal system will create too much dependence on post-hoc correction and an adaptive model of governance will predict risk and build prevention mechanisms in advance[35]. This change demands that the law does not just react to new technologies, but constantly revise interpretive resources, procedural protections, institutional

[33] Ramakrishna, M. D. "Legal Certainty in the Context of Artificial Intelligence and Legal Reasoning." Indian Journal of Law and Technology 20, no. 1 (2024).

[34] Petrova, Elena. "Algorithmic Governance and the Rule of Law: Reconciling Automation with Legal Certainty." European Journal of Legal Studies 15, no. 2 (2023).

[35] Ricci, Daniela. "Artificial Intelligence and Legal Responsibility: Reconsidering the Concept of Liability in Automated Decision-Making." International Journal of Law and Technology 18, no. 3 (2024).

capability. The courts and regulatory authorities should become technologically literate so that they can make meaningful engagement with the algorithmic systems and control the legality of the automated decisions.

The re-evaluation of legal certainty and due process requires the re-establishment of human agency as the centre of the administrative authority. AI cannot substitute human judgement in areas that touch on basic rights, freedoms, or rights and can only support them. Strategic combination of formal human control holds accountability, transparency, and legitimacy in place and upholds the moral and legal principles on which democratic governance is premised.

It is under such reforms that automated decision-making systems can be made legit by openness and human responsibility. Legal systems can be modified to safeguard the rights and permit responsible technological research by modifying fundamental legal principles instead of discarding them.

There is a need to reconceptualise the value of legal certainty and due process as active concept rather than as a static concept to preserve the values of rule-of-law in the era of algorithmic governance. The future of AI regulation will have to introduce the constitutional protections in the technical design of the system and human controls in all levels. It is only by using adaptive, transparent, and rights-centred systems of authority that AI decision-making systems will remain genuine and trusted by the population.

CONCLUSION AND WAY FORWARD

The paper has addressed what AI-driven automated decision-making means to the traditional legal principles of legal certainty and due process. The adoption of algorithmic systems in the day-to-day governance of the populace is causing vast imbalances in the well laid down legal protections that have traditionally guaranteed transparency, accountability, and procedural fairness. The lack of transparency of the algorithmic reasoning, the dangers of discrimination and prejudice, the weakening of human control, the incomprehensiveness of data regulation, and the insufficiency of regulatory frameworks all call the effectiveness of the current legal frameworks to defend the individual rights into question[36]. Although new rules and laws, including the EU AI Act, OECD Principles and the GDPR provisions are important steps in regulating the algorithmic systems, they are still inadequate because of their lack of enforceability, poor transparency and explainability standards, and lack of clear accountability frameworks.

The results show that conservative definitions of legal certainty and due process could not deal with the issues of automated decision-making. Such doctrines need to be reconceptualised as responsive, evolving and technologically in tune as opposed to fixed historical principles. Legal certainty should now go beyond the transparency of the laws to that of the transparency of the algorithmic cognitive, and due process should be transformed to ensure that there is an element of meaningful human oversight, enforceable rights to explanation, and fair possibilities of appeal and redress. In the absence of such change, automated governance will legitimize processes of making opaque and undisputable decisions and weaken societal trust in legal institutions.

The further studies must be aimed at creating adaptive AI governance designs that correspond to democratic legitimacy, establishing homogeneous international regulatory systems, assessing cross-jurisdictional implementation solutions, and incorporating research on computational interpretability definitions into legal practices. The law and technology convergence requires a cooperative investigation by the technical professionals, legal theorists, policy-makers, and actors of the civil society to develop systems that can uphold constitutional values in a digitalized world.

[36] Binkyte, Ruta, Ljupcho Grozdanovski, and Sami Zhioua. “On the Need and Applicability of Causality for Fairness: A Unified Framework for AI Auditing and Legal Analysis.” Frontiers in Artificial Intelligence 7 (2024).

It is one of the most significant changes in the modern government, as AI-informed decisions are applied. To be sure that this alteration empowers and not betrays democratic accountability, it is necessary to reconsider legal certainty and due process as dynamic doctrines that will be incorporated into technological systems. It is only in the case of clear, human-centred, ethically-based regulatory outlines that automated decision-making can obtain their legitimacy and trust, safeguard individual rights and be empowered to innovate.

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CHAINS OF FLESH AND FEAR: UNVEILING THE HIDDEN NETWORKS OF HUMAN TRAFFICKING & SEXUAL EXPLOITATION ACROSS INDIA

A Criminological Study of Sexual Exploitation, Fear, Organized Crime, and Erosion of "Human Dignity"

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ABSTRACT

This mixed-methods criminological study interrogates the architecture and operational modalities of human trafficking networks in India through legal analysis, survivor narratives, and case studies. It reveals how syndicates orchestrate source–transit–destination flows, exploiting entrenched socio-economic vulnerabilities—poverty, caste, gender inequity, and migratory distress, to perpetuate sexual exploitation and forced labour. Traffickers deploy psychological coercion, leveraging trepidation, isolation, and trauma bonding as invisible chains, while digital technologies—social media, encrypted messaging, and the dark web, amplify recruitment, control, and transregional movement. Survivor testimonies highlight poly-victimization, including abduction, confinement, sexual violence, and persistent threats, compounded by secondary victimization within custodial rehabilitation and adversarial legal proceedings. The study critically evaluates India's legislative and institutional responses, including the Immoral Traffic (Prevention) Act, IPC amendments, and Anti-Human Trafficking Units, exposing systemic failures: fragmented enforcement, evidentiary challenges, corruption, and inadequate trauma-informed care. Quantitative indicators from NCRB and qualitative insights from community-based rehabilitation programs underscore chronic underreporting and the marginalization of Dalits, Adivasis, and gender minorities. The analysis foregrounds the gap between legislative intent and implementation, advocating survivor-centric, rights-based justice. It proposes multi- sectoral reforms—trauma-informed mental health services, survivor leadership, digital accountability, and inter-agency coordination, to dismantle trafficking's systemic roots and foster sustainable social transformation.

Keywords: *Human Trafficking Networks; Sexual Exploitation; Psychological Coercion; Survivor-Centric Justice; Trauma-Informed Care.*

I. INTRODUCTION

"Human trafficking is the worst form of violation of human rights. It reduces human beings to mere commodities."

— Smt. Pratibha Patil

Let the story begin once more in the interplay of light and shadow.

Addya, a sixteen-year-old girl whose aspirations far exceeded her situation, bid adieu to her home for the final time. That night, the silence was uncanny. At the gate stood the man who had promised her a "better future"—his presence deceptively comforting, his smile rehearsed, his words warm. They carried the illusion of love, opportunity, hope, and escape. They felt secure, almost fatherly. But optimism, as history has shown, is brittle. As Addya stepped beyond the boundaries of her village, his tone shifted. The smile disappeared. Then came the words that dismantled the very structure of her life:

"Your life belongs to us now."

In that moment, her world did not merely change—it collapsed. Fear wrapped around her like iron chains. Her identity, breath, footsteps, and silence were seized. Her body became a battlefield; her mind, a prison. The first casualty was her dignity. This is how human trafficking begins—not with physical violence, but with psychological seduction; not with metal shackles, but with fear, deceit, and manipulation.

Addya's story is not merely a story. It is a **warning**.

A warning about an unseen empire flourishing in the shadows of this nation—an empire built on stolen futures, shattered childhoods, and wounds that often leave no visible scars. Each year, thousands of girls, boys, adolescents, and women across India are lured, recruited, transported, bought, sold, assaulted, and discarded. The ecosystem of trafficking for sexual exploitation is sustained by poverty, gender inequality, caste hierarchies, porous borders, digital grooming, organized criminal syndicates, and institutional silence.

Once more, welcome to the world of insanity, this research paper seeks to unveil the hidden networks of human trafficking and sexual exploitation in India[1]—a phenomenon that constitutes not just a legal violation, but a form of psychological warfare and gendered violence. It is an industry founded on fear, thriving across villages, cities, borders, digital platforms, and even within households. Understanding it requires exposing the charismatic recruiters, the transportation cartels, the profit-driven exploiters, and the systemic apathy that enables their operations.

Behind every FIR number, there is an Addya.

Behind every "rescued child," lies a story society hesitates to confront.

Behind every brothel door, a human soul waits—for justice, for visibility, and for dignity.

II. CONCEPTUAL FOUNDATIONS

Characterization of Trafficking

In accordance with Section 370 of IPC (now, Section 143 BNS), which was added to the statute by the Act of Criminal Law (Amendment) in 2013, brings out a clear definition of **"trafficking"**. According to this, there are three major components in defining trafficking viz.,

Action	+	ModusOperandi	+	Intention

Action includes any one or more of the following activities:

(i) Recruiting, (ii) Transporting, (iii) Harbouring, (iv) Transferring, and (v) Receiving.

The Modus operandi includes **any one** or more of the following:

Using threat	Using force or any form of coercion	By abduction
By deception or practicing fraud	Abuse of power	By inducement

The purpose of using the above methods is to achieve the consent of any person having control over the trafficked person and therefore the consent is immaterial if the person is a trafficked victim. Even if the victim had consented, it will not be deemed to be informed consent. Accordingly a consenting trafficked victim is also a trafficked victim and is never an offender.[2]

[1] Juanida Suzette Horne, 'A Critical Analysis of Human Trafficking for Sexual Exploitation' (PhD thesis, University of South Africa 2014).

[2] National Human Rights Commission India, 'Home

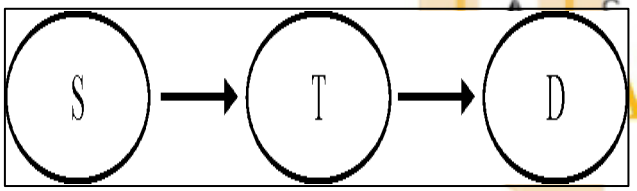
Intent, i.e. the *mens rea* emerges from the purpose of trafficking. Trafficking of a human being can be for any type of exploitation. This would include one or more of the following:

Any act of physical exploitation	Any form of sexual exploitation
Slavery	Practices similar to slavery
Servitude	For removal of organs

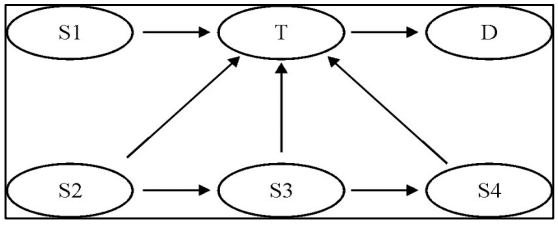
Tracing the Unseen Movements of Human Trade

The routes for trafficking that have been noticed in all Asian Context are of different models as below:

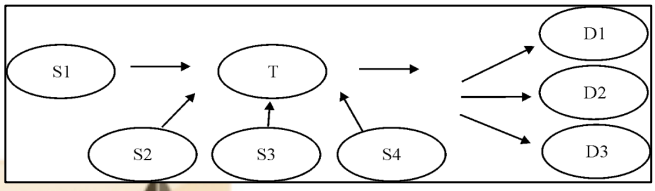
a) **Model 1:** The Linear Route: Trafficking of girls from source S to transit T, where they were joined by other local girls and then moved to destination D, where they were confined for exploitation. This is the commonly observed pattern.



b) **Model 2:** Multi Linear: Girls trafficked from S1 were brought to T1 and were joined by girls trafficked from S2, S3 and S4 etc. and then all were moved to the destination D, where they remained in exploitation.



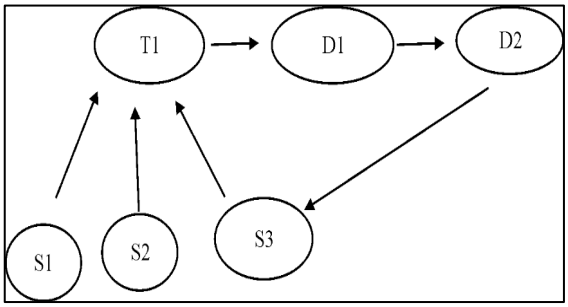
c) **Model 3:** The Matrix: Girls trafficked from S1were brought to T. They were joined by girls trafficked from S2, S3 and S4 etc., and then they were segregated based on body shape, skin colour and such other parameters from the "customer perspective" (the offender perspective, in fact) and were moved accordingly to destinations D1, D2, D3 and/or more.



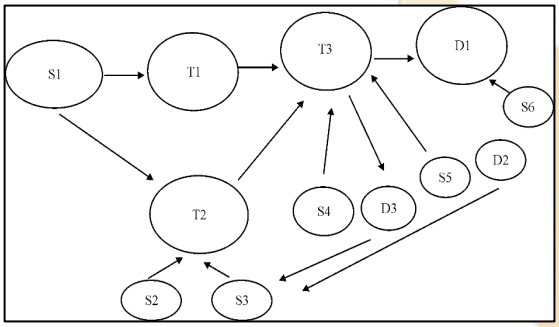
d) **Model 4:** Mega Matrix: Many times, the destinations D1, D2 presented in the model 3 are not the end of the Journey. Many girls brought into these destinations were, after initial exploitation, further transferred to many other places, depending on the demand. Therefore the destination spread to D1 to D6 and more, each destination having been contributed by several sources in addition.

e) **Model 5:** Circular Route: Instances are plenty where the trafficked girls are rescued and sent back home, only to be re-trafficked to the same place or another. The route looks like a closed cycle, but it is not, as re-trafficking opens out the cycle further. The person trafficked from S1, S2 and S3, were brought through transit T to Destination D1 where they were exploited and then moved to D2 where there was more exploitation. The rescue done at D2 was inefficient and inappropriate that the rescued person was sent back to S3 and was re-trafficked. The cycle of exploitation continued.

Page' https://nhrc.nic.in/ accessed 19 December 2025.



f) **Model 6:** The complex Matrix: Research and in-depth investigation of many crimes show that, in reality, several routes are intertwined. This is a common feature in the Asian Context. Sources are many, transits are several and destinations are no less. This applies not only to domestic trafficking but also to trans-border trafficking. The ballooning effect that emerges from a diagrammatic presentation, which often defies logic, remains mostly confined to the mind of the offenders, if not investigated systematically.



The Silent Wounds of Trafficked Lives

In society, prostitution is often perceived as the hiring of a human body—flesh and blood, in exchange for money to engage in sexual activity. Tragically, the majority of those trafficked into this trade are young women and children, coerced into sex work against their will. Human trafficking for sexual exploitation is frequently rooted in poverty, family illness, economic hardship, peer pressure, neglect, and vulnerability during adolescence, particularly between the **ages of 12 and 20**.

Beyond these factors, domestic violence, substance abuse by husbands, forced rape, sexual assault, early marriages, deception by family members or lovers, and outright trafficking further push women into degrading circumstances. Research highlights a disturbing rise in demand for younger girls and virgins, which has led to increasingly organized trafficking networks. These criminal systems expand into new destinations, partly driven by fears of HIV/AIDS, and thrive on exploiting the most vulnerable.

Every individual is born with fundamental freedoms and rights, yet these are grossly violated when children are subjected to organized sexual crimes at such tender ages. Prostitution, in essence, is a brutal form of violence against women. Evidence shows that wherever prostitution is legalized, trafficking escalates to meet the open demand for sex. It is not merely an economic transaction but a violation of human dignity, reinforcing male dominance and perpetuating gender inequality. From ancient times, women have been deprived of both material and emotional entitlements, and behind the facade of *"consensual"* sex-for-money lies a power imbalance where women are forced to surrender their respect and dignity. Stigma, discrimination, and marginalization further strip away their fundamental equality.

It is difficult to accept that most women willingly choose to become socially devalued figures. In reality, many seek protection from being objectified and aspire to secure the rights guaranteed under **Article 17 and Article 23** of the Constitution of India.[3]

A chilling reminder of this reality came in 2017, when Karla Jacinto, a survivor of sex trafficking in Mexico, shared her story. Lured away at the age of

[3] The Constitution of India 1950, arts 17 and 23.

12, she was subjected to unimaginable abuse. Karla estimates that she was raped approximately 43,200 times, enduring assaults by up to 30 men a day, seven days a week, for nearly four years. Her testimony exposes the horrifying depths of human trafficking, an underground world that has destroyed countless lives of young girls like her.[4]

The Marketplace Where Innocence is Sold

The immoral trafficking of women and girls is one of the pellucid examples of how, throughout history, the sexual desires of men have driven countless young girls, often still in their age of innocence into the flesh trade.[5] The methods used to force them into this world are brutal and dehumanizing. Initially coerced, many victims eventually adapt to its harsh realities as if it were inevitable, and some, under pressure, are even compelled to recruit other girls into the same fate. This vicious cycle sustains the so-called "respectable" pimps, while society continues to look down upon the women themselves, branding them as "fallen" even when their entry into prostitution was against their will.

Within this exploitative system, each party gains something, except the victim. The customer, whose demand sustains the entire institution, has his physical desires satisfied. The pimp profits financially by managing the trade. The girl, however, suffers the worst: beatings, starvation, and torture during her initiation, followed by the daily ordeal of serving more than ten men, often at the cost of her health and exposure to deadly diseases.

Trafficking operates as a systematic and organized economic activity, built on the displacement and exploitation of vulnerable individuals. Traffickers work hand-in-hand with customers, preying on victims by transporting them through unfamiliar routes to unknown destinations, cutting them off from their families and communities. Once isolated, the victims are left completely at the mercy of their exploiters. The trade is highly profitable, with little risk of declining demand, as the appetite for young girls and children continues to grow. With minimal investment and quick returns, traffickers reap enormous profits.

Some traffickers act alone, seeking both money and personal sexual gratification, while others function within larger organized networks. Their strategies often involve deceiving families with promises of employment in big cities or marriage to wealthy men. In many cases, families themselves—sometimes parents, relatives, or supposed well-wishers, become complicit. They are persuaded by traffickers who flaunt wealth, pose as grooms, and even marry unsuspecting girls, only to abandon them in brothels. Parents, blinded by illusions of luxury or tempted by advance payments, often rush into such arrangements without questioning the reality. Later, they justify their decisions by citing poverty or ignorance, though in truth they knowingly participated in the transaction.

In regions plagued by poverty and large families, selling daughters for money is tragically seen as an acceptable solution. This normalization of exploitation reveals how deeply entrenched trafficking has become, turning human lives into commodities in the marketplace of greed.

[4] Noelle Devoe, 'Human Trafficking Survivor Was Raped 43,200 Times as a Teen, Now She's Telling Her Story to Congress and the Pope' (*Seventeen*, 12 November 2015) https://www.seventeen.com/life/real-girl-stories/news/a35655/human-trafficking- survivor-was-raped-43200-times-as-a-teen-now-shes-telling-her-story-to-congress-and-the-pope/ accessed 19 December 2025.

[5] Geeta Sekhon, *Training Manual for Judicial Officers and Prosecutors on Victim Friendly Justice System in Trafficking of Persons Related Crimes* (Prajwala 2018) https://prajwalaindia.com/theme/web/pdf/manual/Judicial%20Manual.pdf accessed 24 December 2025.

Where Innocence is Bought and Sold Daily

The inability to curb trafficking remains a grim reality, and instead of declining, it continues to rise each day. In India, prostitution has grown into an industry worth nearly ₹40,000 crore annually. Shockingly, around 30 percent of sex workers are children, and their exploitation alone generates profits of about ₹11,000 crore. The appalling conditions inside brothels, the tender age of the victims, and the brutal methods used to force them into the trade stand as a shameful truth the nation must confront.

India functions simultaneously as a source, destination, and transit country for trafficking. One of the most notorious centres is **Falkland Road in Kamathipura, Mumbai**[6], often described as the largest red-light district in India, if not the world. In Kamathipura alone, more than 70,000 women and girls are purchased daily by thousands of men.[7] Many of these victims are deceitfully trafficked from Nepal and Bangladesh, later forced into brothels across India and even sent to the **Middle East**.[8]

Surveys estimate that India has nearly 10 million sex workers, with about 100,000 concentrated in Mumbai, making it Asia's largest hub of the sex trade.[9] Alarmingly, 90 percent of them live as bonded slaves.[10] Each day, approximately 200 women and girls are pushed into prostitution, and 80 percent of them enter against their will.[11] Of the total, about 2.5 percent are Nepalese and 2.7 percent are Bangladeshi.[12]

The plight of trafficked women and children extends beyond brothels. Hundreds of Bangladeshi victims remain trapped in foreign prisons, shelters, and detention centres, awaiting repatriation, many for years. Records show women, girls, boys, and even children of unknown identity being held in facilities such as **Lilua Shelter and Sheha Shelter in Kolkata, Anando Ashram in Kolkata, Alipur Children's Home in Delhi, Nirmal Chaya in Delhi, Prayas Observation House for Boys in Delhi, Tihar Jail in Delhi, Udavam Kalanger and Umar Khaiyam in Bangalore, Kishalay in West Bengal, Cooch Behar in West Bengal, and Berhampore in West Bengal.**[13]

The numbers are staggering. Around **160,000 Nepalese women are believed to be confined in Indian brothels, with Mumbai alone housing nearly 50,000 and Kolkata accounting for another 40,000.**[14] These figures reveal the scale of exploitation and the entrenched nature of trafficking networks that continue to thrive despite the immense human suffering they cause.

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[6] *The Selling of Innocents*, dir William Cobban and Ruchira Gupta (Malofilm Video 1997).

[7] Tim McGirk, 'Nepal's Lost Daughters, India's Soiled Goods' (27 January 1997), quoted in Donna M Hughes and others, 'Coalition Against Trafficking in Women' in *The Factbook on Global Sexual Exploitation* (1999) http://uri.edu/artsci/wms/huhei/catw/factbook.htm accessed 19 December 2025.

[8] Robert I Friedman, 'India's Shame: Sexual Slavery and Political Corruption Are Leading to An AIDS Catastrophe' (*The Nation*, 8 April 1996).

[9] ibid.

[10] Centre for Development and Population Activities and Planning Rural-Urban Integrated Development through Education, 'Devadasi System Continues to Legitimate Prostitution: The Devadasi Tradition and Prostitution' (*The Times of India*, 4 December 1997).

[11] Indrani Sinha, 'Paper on Globalization and Human Rights' (SANLAAP India), quoted in *Factbook on Global Sexual Exploitation.*

[12] CEDPA and PRIDE (n 10).

[13] Fawzia Karim Firoze and Salma Ali, 'Bangladesh Country Paper: Law and Legislation' (Bangladesh National Women Lawyers' Association) https://apneaap.org/wp-content/uploads/12/FAQ-on-Demand-for-Sex-in-India.pdf accessed 19 December 2025.

[14] Friedman (n 8).

Hidden Pathways that Sustain Human Trafficking

In Mumbai, certain brothels are known to house only Nepalese girls, chosen by men for their fair skin and submissive demeanour.[15] **During major raids in 1996, more than 40 percent of the 484 girls rescued from Mumbai's brothels were of Nepalese origin.[16]** Kolkata has long served as a crucial transit hub for traffickers moving women toward Mumbai and even Pakistan. From Bangladesh, nearly all trafficked women—**about 99 percent**, are smuggled through land routes along border areas such as **Jessore**.[17]

The trade is not confined to big cities alone. Along **Goa's Baina beach**, at least 2,000 women are engaged in prostitution.[18] States like **Karnataka, Andhra Pradesh, Maharashtra, and Tamil Nadu** are considered major **"supply zones"** for women entering the sex trade.[19] Districts such as **Bijapur, Belgaum, and Kolhapur** frequently see women migrating to larger cities, either through organized trafficking networks or under the pressure of socioeconomic hardship.[20]

Highways across India have also become notorious for small-scale brothels. Many *dhabas* along the **Solapur– Hyderabad highway** offers women as an "extra service" to truck drivers and travellers. One such establishment is run by a woman who herself was once in the trade; with just a shed, two cots, and a few girls from nearby villages, she now operates her own brothel.[21]

Entire communities have also been drawn into this cycle. **Sagargram**, a village off National Highway **(NH- 59)** connecting Delhi and Mumbai, is largely inhabited by the **Banchharas community**, where prostitution is practiced openly, catering mainly to truck drivers.[22] Similarly, the **Basai tribe** on the outskirts of **Agra in Uttar Pradesh** became so notorious for prostitution that families outside the community refused to marry their daughters into it.[23]

Other highways, such as **NH-5** stretching from **West Bengal to Tamil Nadu[24]** and **NH-2** passing through **Beda in Bihar's Rohtas district**, are infamous for the flesh trade. Here, **women of the Nutt caste** have been engaged in prostitution for nearly seventy years, supported and protected by local police, musclemen, and *dhaba* owners.[25] These entrenched practices reveal how deeply trafficking and exploitation are woven into certain regions and communities, sustained by demand and systemic complicity.

When Childhood Becomes the Currency of Exploitation

The average age of girls entering the sex trade has been steadily declining. Over the past decade, it has dropped from **14–16 years to as young as 10–14**.[26] In India, an estimated 300,000 to 500,000 children are trapped in prostitution.[27] Disturbingly, girls as young as nine are forced into the trade, driven by the

[15] ibid.
[16] Masako Iijima, 'S. Asia Urged to Unite Against Child Prostitution' (*Reuters*, 19 June 1998).
[17] UBINIG, 'Trafficking in Women and Children: Cases of Bangladesh' (1995) 18–19, quoted in *The Factbook on Global Sexual Exploitation* (n 7).
[18] Frederick Noronha, 'India Abroad News Service' (9 August 1997), quoted in *The Factbook on Global Sexual Exploitation* (n 7).
[19] Meena Menon, 'The Unknown Faces' (Central Social Welfare Board 1998), quoted in *The Factbook on Global Sexual Exploitation* (n 7).
[20] ibid.
[21] Meena Menon, 'The Twilight Zone' (Central Social Welfare Board 1998), quoted in *The Factbook on Global Sexual Exploitation*
(n 7).
[22] Deepak Tiwari, 'Sex-Stops on the Highway' (*The Week*, 24 June 2001).
[23] ibid.
[24] ibid.
[25] ibid.
[26] Menon (n 21).
[27] McGirk (n 7).

false belief that **sex with a virgin** can cure sexually transmitted diseases such as **gonorrhoea and syphilis**. Even seven-year-old victims are not unheard of. In Mumbai alone, nearly 20,000 women in prostitution—**about 20 percent**, are **under the age of 18**.[28]

Bangalore is among the five major cities that together account for 80 percent of child prostitutes in the country.[29] Investigations by the **Karnataka State Commission for Women (KSCW)** uncovered a trafficking network smuggling girls **aged 12–18** from impoverished districts to brothels in Goa.[30] Many of these girls are sold by poor parents, deceived into sham marriages, or lured with false promises of employment, only to end up imprisoned in brothels. Once trapped, they are subjected to brutal **"training"** that includes beatings, starvation, cigarette burns, exposure to pornography, forced lessons in pleasing customers, and repeated rapes, **until they can service up to 25 men a day**.[31]

The exploitation extends beyond India's borders. Women and children are trafficked daily to countries in the **Middle East**, where they are held in near-total captivity, tortured, sexually abused, and raped.[32] Across India's 1,000 red-light districts, **"cage prostitutes"** are often minors, many trafficked from **Nepal and Bangladesh**.[33]

In 1992, Mumbai police intercepted 25 Bangladeshi children aged just **5 to 8**.[34] By 1998, around 200 Bangladeshi women and children were awaiting repatriation in Indian shelters.[35]

The cycle of abuse continues with the children of sex workers, who themselves often become victims of sexual exploitation. Many are forced to dance, sing, or even provide sexual services to buyers.[36] In Mumbai, it is reported that 95 percent of sex workers' children eventually enter prostitution. One child, repeatedly sodomized by men who purchased his mother, chose to become a eunuch and underwent ritual castration.[37]

The scale of child prostitution is staggering. In **Delhi's red-light district**, about 60 percent of commercial sex workers are minors. Despite amendments to the **Immoral Trafficking Prevention Act of 1986**, the average age of trafficked or abducted girls has fallen **from 14 to 13** in recent years.[38] A rescue operation in July 2001 at **GB Road, Delhi**, revealed the extent of the crisis—**ten girls were freed from a single brothel, all of them minors**.[39]

SITUATIONAL ANALYSIS OF HUMAN TRAFFICKING IN INDIA

Trafficking in human beings, especially in women and children, has become a matter of grave concern in India. Trafficking is an organised crime which thrives on human misery. Despite strong steps taken by the Government of India, the **trafficking rackets and syndicates** have become more organised and expanded into newer forms of trafficking. The crime has expanded in such a way that today almost every state is affected with this social and criminal menace. Though trafficking for commercial sexual

[28] Rahul Bedi, 'Bid to Protect Children as Sex Tourism Spreads' *London's Daily Telegraph* (London, 23 August 1997).
[29] Friedman (n 8).
[30] Seethalakshmi, 'Karnataka Girls Being Sold to Goa Brothels' (*The Times of India*, 28 May 1998).
[31] ibid.
[32] Soma Wadhwa, 'For Sale: Childhood' (*Outlook*, 20 July 1998), quoted in *The Factbook on Global Sexual Exploitation* (n 7).
[33] Indrani Sinha, 'Paper on Globalization and Human Rights' (SANLAAP India 1998), quoted in *The Factbook on Global Sexual Exploitation* (n 7).
[34] McGirk (n 7).
[35] Firoze and Ali (n 13).
[36] 'Boys Rescued in India While Being Smuggled to Become Jockeys in Camel Races' (*El Siglo*, 19 February 1998) www.elsiglo.com accessed 20 December 2025.
[37] S Sridevi Goel, 'Girl Child Prostitution, Society's Responsibility: Indian Scenario' (1999) VII(4) CBI Bulletin 14.
[38] Menon (n 21).
[39] *The Hindustan Times* (22 July 2001) 2.

exploitation continues to be an area of distress, lately, there has been an increase in trafficking of women and children for **forced marriages, bondage and slavery**. The situational analysis of the dimensions of human trafficking in India is as follows:[40]

Trafficking for Forced Marriages

Every year, thousands of young women and girls in Punjab and Haryana are seduced by the prospect of a happy married life with a wealthy guy, which is frequently presented as a choice of union.[41] The majority of "purchased brides" are repeated as maids, mistreated, denied fundamental rights, and ultimately abandoned. Finding a bride for every man is unfeasible due to skewed sex ratios **[Punjab: 893, Haryana: 877 females per 1,000 males]**[42], and "importing a bride" has become the sole option. It will take many years for the demographic situation in these states to stabilise since it has grown so distorted. Due to the high demand for "marriageable age" girls, organised trafficking networks have begun to operate in **Uttar Pradesh, Punjab, and Haryana**.[43] Over 9,000 married women in Haryana were purchased from other states[44], according to a **Drishti Stree Adhyayan Prabodhan Kendra NGO** field study on the effect of sex ratio on the pattern of marriages in the state that covered over 10,000 homes.[45]

According to the survey, which looked at 92 villages in the districts of **Mahendragarh, Sirsa, Karnal, Sonepat, and Mewat**[46], the majority of individuals acknowledged it as a prevalent practice, but denied having purchased a bride for their family.[47] Due to their families' need for money, the majority of women and girls who are coerced into marriages originate from impoverished communities in **Assam, West Bengal, Jharkhand, Bihar, and Odisha**. As a result, they become victims of human trafficking. The majority are either **untraceable, exploited, or replicated** as domestic help by the men or agents who purchase or marry them.

After being married for a few years, there are also cases of girls being sold to other people. There have also been reports of forced marriage trafficking from **Gujarat's Kutch region**.[48] Due to the regions' skewed sex ratio and single men's frantic search for marriages, hundreds of **Bengali-speaking Muslim women are being trafficked from West Bengal and Bangladesh to Kutch**, where they are sold off as brides. Many of these women are even forced into the flesh trade.[49]

Trafficking for Commercial Sexual Exploitation

There is a rise in trafficking for commercial sexual exploitation. **West Bengal, Andhra Pradesh, Karnataka, Maharashtra, and Odisha**[50] remain

[40] UNODC, *Regional Profile: South Asia* (2003) https://www.unodc.org/documents/india/regional_profile_south_asia.pdf accessed 22 December 2025.
[41] Margaret Alston (ed), *Women, Political Struggles and Gender Equality in South Asia* (Palgrave Macmillan 2014).
[42] UNODC, *Current Status of Victim Service Providers and Criminal Justice Actors in India on Anti Human Trafficking* (2013) https://www.unodc.org/documents/southasia/reports/Human_Trafficking-10-05-13.pdf accessed 24 December 2025.
[43] ibid.
[44] UNODC (n 40).
[45] Mohd Irshad, 'A Review of Bride Trafficking in India' (2021) 5(2) *Antyajaa: Indian Journal of Women and Social Change* 109.
[46] UNODC (n 40).
[47] NHRC (n 2).
[48] UNODC (n 40).
[49] Farhana Ibrahim, 'Policing Muslim Marriage: The Specter of the "Bengali" Wife' in *From Family to Police Force: Security and Belonging on a South Asian Border* (Cornell University Press 2021).
[50] LBSNAA, *Case Study-Compendium of Teaching Cases & Pedagogical Tools* (National Gender and Child Centre 2025) https://www.lbsnaa.gov.in/storage/uploads/pdf_data/1740378913_Case%20Study%20(NGCC).pdf accessed 20 December 2025.

India's top source regions for trafficking to the country's red-light districts. There are still a lot of missing girls in these states. The commercial sexual exploitation of women and children for prostitution has changed as a result of modernisation.[51]

Prostitution dens have persisted in the red-right districts, but, by offering services on demand, the industry has grown beyond these areas and become much more organised. **In the guise of friendship clubs, escort services, massage parlours, spas, dance bars, beer bars, etc., the sex trade's operators have grown and begun operating out of residential colonies, marketplaces, shopping centres, etc.**[52] This has enabled the traffickers to access high-paying clients and make the most money possible.

They have even begun using the internet and media to promote their services. Deals are made over the phone, and online transactions take place. Even though there has been a lot of police activity through the AHTUs[53], these agencies have proliferated around the nation, and the industry is still growing. Leading news aperture, India Today, **revealed how women and girls are being transported from Ukraine, Georgia, Kazakhstan, Uzbekistan, Azerbaijan, Chechnya, and Kyrgyzstan**—all of which are members of the **Commonwealth of Independent States (CIS)**.[54]

Additionally, **the rackets are procuring victims from Malaysia, Thailand, Nepal, and other countries**.[55] The year 2012 saw the authorities bust sex networks that supplied women and girls from Thailand to Pune and Goa. The majority of the dealing is done online and has turned into a money-making venture.

. Kidnapping Rackets and Denotified Tribes (DNTs)

Police investigations in Delhi, Agra, Madhya Pradesh, and Rajasthan have revealed that criminal tribes, also known as *Denotified tribes*, such as **the Bedia, Nat, Khanjar, Banjara**[56], and others, who practise prostitution as a family custom, are responsible for the kidnapping of young girls from all over the parts of Northern India. They take hostage of young girls and raise them as if they were their own. The young females are given hormones like oxytocin to make them appear older.

The victims are subsequently used as dancers in Mumbai's bars and are then supplied to prostitution rings in Dubai and other Middle Eastern nations. Women from a village in Rajasthan's Alwar district have a lot of passports, according to police investigations. Similar behaviour has also been discovered in the Mandsaur district by Madhya Pradesh police investigations.

Trafficking and Adoption Rackets

The trafficking of minors for adoption has increased. By paying them money, the traffickers procure children from low-income families and then sell them for adoption overseas. These felonies are widespread, according to police investigations in Delhi and many other parts of the nation.[57] There have been reports of illicit adoption companies selling children for adoption in **Jharkhand, Andhra Pradesh, Maharashtra, and Delhi**.[58] The practice of acquiring children for adoption through the exchange of money has augmented, despite the Government of India designating a Central Agency to oversee adoptions.[59]

A sting operation conducted by CNN-IBN and Cobrapost (print and electronic media channels) in April 2012 revealed a "baby bazaar" in a

[51] UNODC (n 40).
[52] ibid.
[53] ibid.
[54] ibid.
[55] ibid.
[56] UNODC (n 42).
[57] UNODC (n 40).
[58] LBSNAA (n 50).
[59] UNODC (n 40).

government hospital in Amroha, Uttar Pradesh where infants were being taken from impoverished parents and sold to the highest bidders in a startling fable of child trafficking and exploitation of the poor.[60]

Missing Children and Human Trafficking

The connections between human trafficking and missing individuals were made abundantly evident in the **NHRC Action Research 2004**. Since then, the NCRB's missing people statistics have been meticulously examined in relation to the quantity of women and children being trafficked in India. The number of children that are still unfathomable in India's missing child data is alarming. According to a report on missing children by **Bachpan Bachao Andolan (NGO)**, there were **1,17,480 missing children in 2010–11, but the NHRC Report anticipated 44,000 lost children between 1996 and 2001**.[61]

According to **NCRB data from 2009 to 2011, 1,776,60 children were reported missing; of these, 1,22,190 were found, and 55,470 are still unfathomed. 35,615 (64%) of the children that are still incalculable are young girls. A total of 1,59,418 women were reported missing between 2009 and 2011. 1,03,468 of these women were located, but 55,950 were still unfathomable.**[62]

STATE RESPONSE TO COMBAT HUMAN TRAFFICKING

(In Connection with India's Country Assessment Report)

Legislations

The Government of India has shown its commitment to combating human trafficking and strengthening various legislations for victim protection by ratifying the **United Nations Convention against Transnational Organised Crime (UNTOC)** and its three Protocols supplementing the convention which includes the Protocol **to Prevent, Suppress and Punish Trafficking in persons, especially Women and Children**. The UNTOC along with the Trafficking Protocol came into force in India **w.e.f. 4th June 2011**.[63]

The Government of India has constituted an Inter Ministerial Group to consider and recommend proposals for the amendment to the special legislation in India titled the **"Immoral Traffic Prevention Act, 1956"**.[64]

The Ministry of Women and Child has notified the **Protection of Children from Sexual Offences Act, 2012** to strengthen the legal provisions for the protection of children from sexual abuse and exploitation. For the first time, a special law has been passed to address the issue of sexual offences against children. Sexual offences are currently covered under different sections of IPC (now, BNS). The IPC or BNS does not providefor all types of sexual offences against children and, more importantly, does not distinguish between adult and child victims.[65]

The Union Cabinet has in **August 2012** recommended the **amendment of the Child Labour (Prohibition & Regulation) Act 1986** to bring it in conformity with the **Right to Education as mandated in Article 21-A of the Constitution of India**.[66]

The Government of India has also notified rules for the **Juvenile Justice (Care and Protection) Act 2000**

and almost all states have adopted the model rules in their State horizon.[67]

[60] ibid.
[61] ibid.
[62] ibid.
[63] UNODC (n 42).
[64] ibid.
[65] ibid.
[66] ibid.
[67] ibid.

The Government of India has strengthened the application and enforcement of the **Emigration Act, 1983** to regulate the recruitment agencies.[68]

The Government of India has amended the **Code of Criminal Procedure in 2009 and included Section 357- A (now, Section 396 BNSS) relating to victim compensation**, thus making victim compensation a reality in India. Compensation for victims of human trafficking and grave sexual offences has been included as a special category by almost all the states who have notified the scheme.[69]

Judicial Interventions

The Supreme Court of India has **nominated the National Legal Services Authority and the State Legal Services Authority** to conduct training and sensitization programmes for all **Juvenile Police Units** across the country. In the case of ***Sampurna Behrua v. Union of India* (2018) 4 SCC 433**[70], the Court has been monitoring the implementation of the Juvenile Justice (Care and Protection) of Children Act 2000.[71]

The Apex Court in the case of ***Re: Exploitation of Children in Orphanages in State of Tamil Nadu v. Union of India & Others* (2017) 7 SCC 578**[72] has **appointed the National Commission for Protection of Child Rights (NCPCR)** to monitor the implementation of the Juvenile Justice (Care and Protection) of Children Act 2000.[73]

The Supreme Court also in the case of ***Bachpan Bachao Andolan v. Union of India (*2011) 5 SCC 1**[74] has laid down detailed guidelines for combating human trafficking in India.[75]

It was further observed in the case of ***Buddhadev Karmakar v. State of West Bengal* (2011) 11 SCC 538**[76] that **a panel was constituted to examine the issue of rehabilitation of sex workers and trafficked victims**. The committee has been holding various meetings and consultations with various state governments to suggest solutions for strengthening of the rehabilitation mechanism.[77]

The Supreme Court in 2012 has issued notice to all states on the issue of missing children. Following the notice, the High Courts of Delhi, Punjab and Haryana have passed detailed orders to register FIR in cases of missing children.[78]

A. Ministry of Home Affairs, Government of India

The Ministry of Home Affairs' initiative of creating an **Anti-Trafficking Cell** has led to the strengthening of the law enforcement response to the organised crime of human trafficking. The Ministry has **initiated 225 AHTUs across the country (as of August 2012)** which has led to the increase in registration of cases and strengthening of prosecutions.[79]

The nodal officers meeting being conducted by the Ministry has led to strengthening of inter-state police cooperation which was a contentious issue in the fight against human trafficking. **During 2010-12, in most cases of human trafficking, police investigations have started to cover the**

[68] ibid.
[69] UNODC (n 40).
[70] *Sampurna Behrua v Union of India* (2018) 4 SCC 433.
[71] ibid.
[72] *Re: Exploitation of Children in Orphanages in State of Tamil Nadu v Union of India & Others* (2017) 7 SCC 578.
[73] UNODC (n 42).
[74] *Bachpan Bachao Andolan v. Union of India (*2011) 5 SCC 1.
[75] UNODC (n 40).
[76] *Buddhadev Karmakar v. State of West Bengal* (2011) 11 SCC 538.
[77] ibid.
[78] UNODC (n 42).
[79] ibid.

traffickers at the source, transit and destination.[80]

The advisories issued by the MHA has led to the strengthening of various legal procedures and investigations of cases of human trafficking. The advisories have brought clarity on many of the issues concerning enforcement of laws on human trafficking in India. The State Governments have been asked to implement the advisories and send action taken reports. With the various proactive advisories, the State Governments have started capacity building of the various law enforcement agencies in their states. The advisories have also created a mandate for the State Governments to ensure convergence among all stakeholders in the state.[81]

The training and capacity building of law enforcement agencies including the prosecutors have created an immense difference in defying human trafficking. The law enforcement machinery has become responsive and aware of the complexities of the crime of human trafficking. The need of multi stakeholder participation in each case of trafficking is being ensured.[82]

The capacity building and training of prosecutors has also created decent results in terms of the prosecutors devoting time with the victims and understanding their case history. The very fact that victims and prosecutors

are having an interview in the presence of the NGOs lead to the prosecutors' getting clarity in the case. Also the instructions have been provided to the prosecutors to get help from NGO's counsels in this regard.[83]

The Judicial Colloquiums being held at the High Court level is creating a positive impact in the trial of cases of human trafficking. A mandate is being created by the high courts to ensure swift trials of cases of human trafficking and dealing with victims in a scrupulous way. The Colloquiums have led to the capacity building of trial court magistrates.[84]

The Ministry has created **a set of 12 Manuals for the training of law enforcement agencies in collaboration with UNODC**. The number of arrests of women under the Immoral Traffic Prevention Act 1956 has gone down indicating that the police are not arresting the victims under **Section 8 of ITPA**.[85]

Ministry of Women and Child, Government of India

The Ministry regularly holds Central Advisory Committee meetings to review the various issues in thwarting human trafficking. Almost all the states and the nodal NGOs are part of the Central Advisory Committee.[86]

The Ministry has launched an ambitious comprehensive scheme called the "Integrated Child Protection Scheme". The scheme is to **implement the provisions of the Juvenile Justice (Care and Protection of Children) Act 2000**. As a part of the scheme, all State Governments have initiated the **State Child Protection Societies**. The scheme has led to the formation of country wide network of **District Child Protection Societies, Child Protection Homes and the creation of Child Welfare Committees**. This scheme has led to the creation of institutional bodies to ensure child protection at the district level and also to create convergence among various stakeholders. To combat human trafficking and to ensure victim protection, the presence of these institutions is very crucial. Besides creating the institutions, the Ministry has also initiated steps to build their capacities. This scheme is making an enormous divergence in offsetting human trafficking as the

[80] ibid.
[81] ibid.
[82] ibid.
[83] ibid.
[84] ibid.
[85] ibid.
[86] ibid.

agencies have been created across the country and are instrumental in conducting home investigation reports and also to oversee repatriation and rehabilitation of victims of human trafficking.[87]

The Ministry has expanded the CHILDLINE network to 211 cities under the Integrated Child Protection Scheme. The Ministry has increased budgetary allocation for its flagship schemes for rehabilitation which includes **Swadhar and Ujjwala Scheme**. Proposals are being reviewed in consultation with the State Government responses and recommendations. The Ministry of Home Affairs has also been made part of the project sanction committee. The Ministry is also taking steps to bring a monitoring mechanism for the shelter homes. **The Ministry has in principle taken a decision to sanction one Swadhar home in each district of the country**. The Ujjwala project has a very strong component of prevention of human trafficking at the source areas.[88]

National Commission for Protection of Child Rights (NCPCR)

The NCPCR has been inter-alia involved in the implementation of the Juvenile Justice (Care and Protection) of Children Act 2000. It has been assisting the Supreme Court and the various High Courts in the implementation of legislations related to children. It has done extensive case reports on the **issue of child labour in BT cotton fields in Gujarat and Rajasthan**. It has done extensive case reports on **brick kilns in Rajasthan and Odisha**. NCPCR has assisted the Supreme Court in providing a situational report in case of trafficking of children from the **North East by shelter homes in South India**.[89]

It has undertaken reports on the **trafficking of child labour in the rat hole coal mines of Meghalaya and trafficking of children from Jharkhand**. On the directions of the Delhi High Court, the **NCPCR has drafted an action plan for combating child labour in Delhi**. It has undertaken investigation of shelter homes in **Haryana, Uttar Pradesh, Kerala and Delhi** where cases of sexual exploitation have been reported. NCPCR has been undertaking visits to various states to monitor the implementation of **Right to Education and Integrated Child Protection Schemes**.[90]

State Governments

Many of the states have been proactively addressing human trafficking issues and taking measures to strengthen the law enforcement and institutional machineries. The State of **Andhra Pradesh, Kerala, Karnataka, Bihar and Goa** have created a State Action Plan to combat human trafficking. **Bihar Government has notified a scheme for combating child labour in the state**. The State of **Delhi, Andhra Pradesh, Meghalaya, Mizoram, Bihar, Rajasthan, West Bengal, Kerala, Manipur, Karnataka, Maharashtra, Odisha, Tamil Nadu, and Punjab have initiated the Victim Compensation scheme**. **Andhra Pradesh, Karnataka, Tamil Nadu, Kerala, Odisha, Meghalaya, and Mizoram have proactive State Advisory Committees to coordinate convergence among various stakeholders**.[91]

[87] UNODC (n 40).
[88] ibid.
[89] ibid.
[90] ibid.
[91] ibid.

The State of Andhra Pradesh has put in place Minimum Standards of Care in shelter homes of victims of trafficking. These standards for shelters for victims of commercial sexual exploitation or survivors of sex trafficking are those non-negotiable care components that should be integrated in any home managed either by the government or the civil society to ensure that facilities for rehabilitation are in place as a matter of right of the victim. These standards ensure that the **safety, dignity and well-being of each victim are provided** for. Maharashtra Government is the first state government to create a SOP for the Child Welfare Committees.[92]

In view of the rising cases of trafficking of children from **Jharkhand, the State Government has sanctioned a shelter home in Delhi for coordinating the rescue and repatriation of children**. **Andhra Pradesh, Maharashtra and Delhi Police have taken proactive steps to trace missing children and women.** In these states the percentage of recovery of missing children and women has increased considerably. **Andhra Pradesh, Delhi, Haryana, and Punjab are registering FIR in cases of missing children**. Delhi Police has created a "zip net" network of ten states for profiling missing children and missing persons. **The West Bengal Police has created a website for profiling missing children (www.trackthemissingchild.gov.in) now, (https://missionvatsalya.wcd.gov.in/).** AHTUs across the country have initiated a database of traffickers.[93]

SCHEMES

A trafficking victim's **urgent care and protection, long-term rehabilitation, repatriation, and reintegration** are all included in the care and protection. The Ministry of Women and Children, Government of India, is required by laws such as the **Juvenile Justice (Care and Protection) of Children Act, 2000 and the Immoral Traffic Prevention Act, 1956** to establish such institutional mechanisms and develop programmes and schemes for the welfare of women and children who require care and protection. The following are a few of the Ministry of Women and Children's numerous programmes that directly affect the protection and care of victims of human trafficking:[94]

UJJAWALA:

A comprehensive scheme for prevention of trafficking and rescue, rehabilitation and re-integration of victims of trafficking and commercial sexual exploitation. One organised crime that violates fundamental human rights is the trafficking of women and children for commercial sexual exploitation.[95] For both domestic and international trafficking, **India has become a source, destination, and transit country.** Because of its many facets and complexity, the issue of trafficking women and children for commercial sexual exploitation is particularly difficult. Some of the factors that contribute to human trafficking include **poverty, women's low status, the absence of a safe environment, etc.** In order to combat trafficking, particularly in susceptible areas and demographics, and to facilitate the rescue, rehabilitation, and reintegration of trafficked victims, a multisectoral approach is required. The Ministry has developed a central program called "UJJAWALA," which is a **comprehensive program for preventing trafficking as well as rescue, rehabilitation, and reintegration of victims of trafficking for commercial sexual exploitation, keeping in mind the aforementioned problems and gaps.**[96] The program, which was introduced in **2007**, was primarily designed to prevent human trafficking while simultaneously rescuing and rehabilitating

[92] ibid.
[93] ibid.
[94] ibid.
[95] Tom Lantos Human Rights Commission, 'Home' https://humanrightscommission.house.gov/ accessed 20 December 2025.
[96] UNODC (n 40).

victims.[97] According to the most recent data available, the Ministry is supporting **228 initiatives in 21 states, 117 of which are protective and rehabilitative homes.[98]**

Non-Governmental Organisations (NGOs) are primarily responsible for the scheme's implementation. The programme is open to eligible implementing agencies from every State and Union Territory. Project proposals under the initiative must be submitted through the relevant Union Territory Administrations or State Governments.[99] Women and children who are both victims of and at risk of being trafficked for commercial sexual exploitation are the beneficiaries of the Ujjawala scheme.[100] The states have been asked to include officials at the district level for routine monitoring, among other things, while a monitoring framework is being developed. **The Planning Commission's Programme Assessment Organisation has been tasked with conducting an assessment study for Ujjawala, which will include reviewing the components.**

SWADHAR GREH: A Scheme for Women in Distress

The Department of Women and Child Development introduced the SWADHAR GREH in **2001–02**. Another program called the "Short Stay Home Scheme" was designed to give homeless women and girls temporary housing and rehabilitation assistance. The program seeks to **rehabilitate these women in challenging situations by offering them food, clothing, shelter, counselling, training, clinical, and legal assistance.[101]** In order to evaluate the effectiveness of both programs, **the Centre for Market Research and Social Development in New Delhi carried out an assessment in 2007.[102]** While highlighting the efficacy and beneficial effects of the measures implemented under the counselling and rehabilitation schemes, the evaluation report discovered that the resident profile and category, admission process, counselling, quality of service, vocational training, rehabilitation, and follow-up procedure are nearly identical in both schemes.[103] As a result, it suggested combining these two programs for improved performance and results with less administrative hassles and processes. Additionally, it suggested that the new plan concentrate on creating one of these homes in each district. The Ministry's preparation of this new program, which would allow women victims of tragic situations who require institutional support for rehabilitation to live with dignity, was prompted by the evaluation study's excellent findings.[104]

The program **aims to provide women who are victims of challenging situations with a supportive institutional framework so they can live their lives with conviction and dignity.** It envisions providing such women with economic and social security as well as housing, food, clothes, and health care. Additionally,

it anticipates that these women's unique needs are appropriately met and that they should never be neglected or abandoned, since this could result in their exploitation and desolation.

Under the planned plan, "Swadhar Homes" with a capacity of thirty women will be established in each

[97] Renu and others, 'Safeguarding women in the workplace: Comprehensive strategies for enhancing safety and wellbeing' (2025)
[98] UNODC (n 40).
[99] UNODC (n 42).
[100] Thippeswamy S, 'A Critical Analysis of India's Child Domestic Workers' (2024) 6(1) *Indian Journal of Law and Legal Research* 5170.
[101] Renu and others (n 93).
[102] UNODC (n 40).
[103] Jagori, 'Home' https://www.jagori.org/ accessed 20 December 2025.
[104] UNODC (n 40).

district to meet the basic requirements of distressed women who lack social and financial assistance, including food, clothes, housing, and medical care. Additionally, it would help them rebuild the emotional resilience that has been weakened by their woeful experiences, and it would give them legal support and direction so they may take action to reintegrate into their families and communities. The programme aims to rehabilitate economically and emotionally distressed women and serve as a support system that recognises and fulfils their needs so they can begin their lives again with persuasion and dignity.

For big cities and other districts having more than 4 million population or those districts where there is a need for additional support to the women, more than one "Swadhar Home" could be established. **The capacity of "Swadhar Homes" could be expanded up to 50 or 100 on the basis of need assessment and other important parameters.**[105]

INTEGRATED CHILD PROTECTION SCHEME:

The Indian government introduced the **Integrated Child Protection Scheme (ICPS) in 2009 to guarantee high-quality child protection systems throughout the nation and to foster convergence.** The realisation of the duty of the government or state for developing a system that will effectively and efficiently protect children has been greatly aided by the ICPS.[106] It is founded on the fundamental ideas of safeguarding children's rights and looking out for their best interests.

In a nutshell, the goals of ICPS are to diminish vulnerabilities to circumstances and behaviours that result in **child abuse, neglect, exploitation, abandonment, and separation, as well as to increase the wellbeing of children in challenging settings.** The MWCD is implementing the ICPS to create and manage the human resources and infrastructure required to create a safe and secure environment for children, particularly those in challenging situations. State governments and UT administrations get funding to improve, establish, and maintain homes, open shelters for children in need of care and protection, and Specialised Adoption Agencies (SAAs).[107] Additionally, funding is given for the establishment of specialised service delivery structures at the state and district levels, with personnel hired specifically to **provide services to children, such as need assessment, training and sensitisation, awareness-raising, etc.** Additionally, the program emphasises non- institutional care via foster care, adoption, and aftercare.[108]

The Memorandum of Understanding (MoU) for the scheme's implementation has been signed by all states, with the exception of Jammu & Kashmir. The State Governments and UT Administrations are primarily responsible for implementing the government sponsored system, and they receive funding.[109] The scheme's many components are being implemented by the State Governments and UT Administrations, either independently or through non-governmental organisations. However, **as part of a Government-Civil Society Partnership, the MWCD has teamed with the Childline India Foundation (CIF), Mumbai, to deliver the**

[105] ibid.
[106] ibid.
[107] Paromita Chattoraj (ed), *Child Protection in India: Trends, Issues and Challenges* (Routledge 2025).
[108] Partners for Law in Development, *Desk Review of News Reports on Human Trafficking* (November 2020) https://www.fighttrafficking.org/wp-content/uploads/2023/06/COVID-News.pdf accessed 21 December 2025.
[109] Scheduled Caste and Scheduled Tribe Research and Training Institute (SCSTRTI), *Resource Envelop and Convergence Prospects under various Government Schemes: Compilation of 388 Government Schemes* (SCSTRTI 2017) https://repository.tribal.gov.in/bitstream/123456789/73918/1/SCST_2017_research_0085.pdf accessed 21 December 2025.

Childline services, a 24×7 phone helpline for children in distress.[110]

JUDICIAL PRONOUNCEMENTS

Cases pertaining to the strengthening of the institutional machinery and other statutory agencies mandated by various laws have been considered by the Supreme Court and the various High Courts.[111] In carrying out its mandate to uphold fundamental rights, the Court has rendered a number of significant rulings to bolster government action. In preventing human trafficking. **The Supreme Court has also established a number of committees and panels to guarantee that the law is implemented and that different monitoring systems are in place for the protection of victims of human trafficking.**[112]

a) *Vishal Jeet v. Union of India* (1990) 3 SCC 318

The Apex Court in this case ordered the formation of Advisory Committee for all States and Union Government to combat trafficking. The Advisory Committee to make suggestions for the measures to be taken in eradicating child prostitution, and the social welfare programmes to be implemented for the care, protection, treatment, development and rehabilitation of trafficked victims of commercial sexual exploitation.[113]

b) *Gaurav Jain v. Union of India* (1997) 8 SCC 114

While clearly stating the violation of Right to Life of trafficked victims, the Supreme Court ordered the Union Government to form a Committee to frame the Action Plan for the Nation and to conduct an in-depth study into these problems and develop such suitable schemes for rehabilitation of trafficked women and children.[114]

***Prerna v. State of Maharashtra* 2003 (2) Mah.L. J. 105**

The Bombay High Court in this case lays down process for care and protection of trafficked children. It stated that Advocates cannot appear before the Child Welfare Committee to take custody of trafficked child.[115]

c) *State of A.P. v. Bodem Sundara Rao* (1995) 6 SCC 230

The Supreme Court reiterated that courts should grant stricter punishment for crimes of sexual offences. It stated that courts have an obligation while awarding punishment to impose appropriate punishment so as to respond to the society's cry for justice against such miscreants. Public abhorrence of the crime needs a reflection through the court's verdict in the measure of punishment.[116]

d) *State of Punjab v. Gurmit Singh* (1996) 2 SCC 384

It was observed that sexual offenders should not be shown leniency. Examination of the victim should be conducted in camera and anonymity of the victim should be maintained. No questions should be asked on a victims character.[117]

e) *Bachpan Bachao Andolan v. Union of India* (2011) 5 SCC 1

[110] UNODC (n 40).
[111] National Legal Research Desk, 'Landmark Rulings of the Courts in India on Combatting Human Trafficking' (15 October 2013) https://nlrd.org/Landmark-Rulings-of-the-Courts-in-India-on-Combatting-Human-Trafficking-Trafficking/ accessed 21 December 2025.
[112] UNODC (n 40).
[113] *Vishal Jeet v Union of India* (1990) 3 SCC 318.
[114] *Gaurav Jain v Union of India* (1997) 8 SCC 114.
[115] *Prerna v State of Maharashtra* 2003 (2) Mah LJ 105.
[116] *State of AP v Bodem Sundara Rao* (1995) 6 SCC 230.
[117] *State of Punjab v Gurmit Singh* (1996) 2 SCC 384.

This is the major judgment where the Supreme Court dealt with child labour and trafficking, making the National Commission for Protection of Child Rights (NCPCR) the nodal agency for Juvenile Justice Act implementation.[118]

f) *Budhadev Karmakar v. State of West Bengal* (2011) 11 SCC 538

Supreme Court appoints a Panel to monitor and suggest rehabilitation scheme for trafficked sex workers and trafficked victims.[119]

g) *Bachpan Bachao Andolan v. Union of India and Ors.* (2013) 4 SCC 152

Supreme Court orders for mandatory registration of First Information Report (FIR) in cases of missing children and appropriate steps should be taken to see that follow up investigation is taken up immediately thereafter.[120]

PROSPECTIVE MEASURES

a. The **National Plan of Action 1998** needs to be reviewed and the same needs to be notified. State Governments should also draft their Action Plan to Combat Human Trafficking.[121]

b. Standard Operating Protocols need to be notified for interstate police investigations.[122]

c. Ensuring regular meetings of the State Advisory Committees since they have a great potential to create convergence among all stakeholders at the state level. [123]

d. Strengthening **Police–NGO partnership** and rescue efforts in the states, form advisory board of social workers **u/s. 13(b) of the ITPA**.[124]

e. Framing model minimum standards of victim care for shelter homes, enabling State Governments to adopt them and thereby ensuring improved victim care and protection.[125]

f. Funds for the shelter homes need to be sanctioned on time to avoid mishandling of the shelter homes.

The present system of sanction of instalments continues to be time consuming. [126]

g. The ICPS has created various institutional mechanisms at the District level like the Child Protection Units and the Child Welfare Committees. There is a need for capacity building and strengthening of institutions in addition to adequate funding and infrastructural support so that these agencies can function properly and ensure documentation of each and every case.[127]

h. Emphasis should be laid on prevention of trafficking from **source and transit areas. Panchayati Raj institutions should be strengthened and these can be facilitated to act as vigilance mechanism for prevention of trafficking.** Role of community in this exercise should be explored. Moreover, **institutions like Anganwadi etc.** can be used as vehicles for carrying information and awareness.[128]

i. Missing Children is an area of concern and requires urgent attention.[129]

j. The **Missing Children Advisory Committee** requires all State Governments to nominate a State Nodal Officer on Missing Persons. Similarly, a District level nodal officer should be appointed to monitor cases of missing children and women at the district levels.[130]

k. The AHTUs and the Police need to ensure scientific

[118] *Bachpan Bachao Andolan v Union of India* (2011) 5 SCC 1.
[119] *Budhadev Karmakar v State of West Bengal* (2011) 11 SCC 538.
[120] *Bachpan Bachao Andolan v Union of India and Ors* (2013) 4 SCC 152.
[121] UNODC (n 40).
[122] ibid.
[123] ibid.
[124] ibid.
[125] ibid.
[126] ibid.
[127] ibid.
[128] ibid.
[129] ibid.
[130] ibid.

and efficient investigations into the cases of crimes against children and women. **The present rate of conviction stands at 25–30%.** With multi stakeholder participation and partnerships, the police can ensure better investigation of cases and also ensure strong prosecution witnesses in order to get conviction of cases. All State Nodal Anti Human Trafficking Units should monitor the conviction rates of human trafficking cases.[131]

l. Training manuals prepared by the MHA in collaboration with UNODC need to be translated into regional languages.[132]

m. Constitution of special courts for speedy trial in trafficking cases need to be established in all states as per the provision of **Immoral Traffic (Prevention) Act, 1956.**[133]

n. Need for video conferencing facilities at district levels in order to ensure that trafficked victims don't have to personally appear for testifying and cross examination.[134]

CONCLUSION

Human trafficking in India stands as one of the gravest assaults on human dignity, freedom, and constitutional morality. Trafficking for sexual exploitation is not an isolated criminal activity but a highly organized, profit- driven system sustained by poverty, gender inequality, social complicity, and institutional inertia.[135] Essentially, it is the destruction of human dignity whereby persons are deprived of their identity, autonomy, and bodily integrity and reduced to goods in an underworld market.

Addya walked away once believing in a promise. She never came back the same way. That is how trafficking thrives—not just through force and fear, but through the power of hope turned into a weapon. As evident through this research, human trafficking is a crime that silently thrives in fear instead of through chains and in silence instead of in justice. It starts in trust, passes through deception, and reaches a point where dignity is lost but voices aren't.

Laws exist, Courts speak, Schemes continue anyway. Still, trafficking persists because of the hesitation of those in authority to enforce the laws and the **Turning A Blind Eye** of the community in general. Removing the trafficked and rehabbing them is merely the beginning of the end; it is not the end itself.

But every story has a turning point.

Human trafficking is an object of human design, a function of systems, which means it can also be unraveled by will. Protection instead of fear, rights holders instead of evidence, a community that will not remain silent— that ends the cycle.

The end of trafficking will not come with louder laws, but with deeper consciences. Until then, innumerable feet will vanish into darkness, carrying stories like Addya's—awaiting not sympathy, but justice.

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[131] ibid.
[132] ibid.
[133] ibid.
[134] ibid.
[135] Danielle Kraaijvanger, 'Prevention and Education: A Case Study of an Anti-Human Trafficking Nongovernmental Organization in Mumbai, India' (Doctoral dissertation, University of San Francisco 2020) https://repository.usfca.edu/diss/525 accessed 24 December 2025.

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REVOLUTIONISING WOMEN EMPOWERMENT THROUGH LEGAL REFORMS AND SOCIAL CHANGE: A PARADIGM SHIFT IN INDIAN KNOWLEDGE SYSTEMS

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Abstract

The empowerment of women in India has been radically changed within the last several decades, and it was influenced by the combination of legal changes, social development, and changing perceptions of Indian Knowledge Systems (IKS). In this paper, women empowerment is discussed as a capacity as well as a right since sustainable empowerment is possible where individual agency is reinforced by legally binding rights and responsive institutions. Based on the capability approach and the rights-based paradigm, the paper examines significant legal changes surrounding equality, protections against violence, dignity in the workplace, property rights, political representation and protection of reproductive and labour rights. The paper also emphasises that, even legal reforms cannot result in substantive empowerment without other more sweeping social change processes, such as social norm changes, movements in legal consciousness, community organisation and institutional responsibility. In this regard, IKS is analysed as not only a cultural heritage but as a framework of ethics of justice based on the values of dharma (responsibility), nyaya (realised justice), and agency. Another important result of the critical reinterpretation of IKS is to enhance the ethical validity and societal approval of gender-just governance without contradicting with the constitutional values and human rights norms. Through a legal perspective and social and ethical lens, the paper presents a rights- and IKS-based governance framework that focuses on capacity building, enforceable rights, institutional performance and quantifiable results. The paper finds that the present stage is a paradigm change in Indian women empowerment as it is characterized by shift towards welfare based practices to rights instead of accountability based and ethical in governance.

Keywords: Women empowerment, legal reforms, social change, Indian Knowledge Systems, Gender justice, Capability approach, rights based government.

1. Introduction

Empowerment of women has become an issue of focus of modern legal, social and developmental discourse in India. It is not considered only as a welfare producing goal, but as a right socially necessitated demand associated with equality, dignity and social justice. In this context, empowerment can be defined as the process by which women can obtain powers to make strategic life decisions, agency, and even gain access to resources and become active in social, economic, and political institutions (Kabeer, 1999). This has taken place in the Indian context because of a complicated interplay of constitutional requirements, statutory reforms, judicial interpretation and changing social norms.

The Indian constitution offers a sound normative base in the empowerment of women because it ensures equality under the law and it forbids discrimination based on sex (Constitution of India, 1950). These constitutional principles over the years have been translated into a broad number of legal reforms that deal with gender based violence, discrimination in the workplace, political representation, property rights, reproductive and labour related protection. The replacement of protectionist laws by rights and entitlement laws signifies a tremendous change in the perception of the role of women in the society (Agnes, 2011). Laws like the domestic violence laws, sexual harassment in the workplace, and inheritance rights are some of the signs that the state perceives private and public spaces as places of gendered power relations.

Nevertheless, the legal reform alone does not necessarily lead to empowerment. Social approval, organizational ability, and individual disposition to rise and implement their rights are critical in law effectiveness. Patriarchal norms, social stigma, economic dependency, and the absence of legal literacy usually restrict the transformative potential of progressive legislation (Baxi, 2014). Consequently, social change processes like education, community mobilisation, political participation and cultural reorientation become very instrumental in shifting legal right to lived reality.

Indian Knowledge Systems (IKS) in this respect provide a valuable yet under-researched model of the empowerment concept. IKS, which are based on indigenous philosophical, ethical and social practices, focus on the ideas of dharma (duty and moral order), nyaya (justice), and shakti (agency or power). Although the traditional practices have sometimes strengthened the gender hierarchies, the underlying concepts even carry normative engagement towards dignity, balance, and social accountability (Sharma, 2006). Critical and contextual reinterpretation of IKS can lead to the alignment of constitutional values and native ethical systems, which will enhance the effectiveness of the legitimacy and social acceptance of gender-just reforms.

The current stage of female empowerment in India can hence be interpreted as paradigm shift. This transition is marked by the intersection of legal changes, institutional policies, and a social-based redefinition of knowledge systems that are based on justice and agency and not subordination. This paper will attempt to explore the impact of modern reforms in transforming gender relations and defining empowerment in contemporary socio-legal space of India by placing the feminine empowerment at the convergence of law, social change, and Indian Knowledge Systems.

2. Conceptual Framework: Empowerment, Law, and Indian Knowledge Systems (IKS)

2.1 Women's Empowerment as Capability and Entitlement

The conceptualization of women empowerment presented in this study is the capability and entitlement. Empowerment as a capability is what women can actually do and actually be in their contexts of living. Relying on the capability approach formulated by Sen (1999), development and well-being is conceptualized as real freedoms and substantive opportunities or not solely on the basis of formal equality, income growth, and symbolic inclusion. In that regard, the empowerment broadens as the capability set of women increases, and they can look realistically at the education, a decent work, control over the body, attendance at the society and personal security.

One of the most acceptable operational frameworks of comprehending the issue of empowerment is presented by Kabeer (1999), who introduces the concept of empowerment as the process whereby such people who were denied the right to make strategic life choices obtain such right. Her model is based on three dimensions that are linked to each other:

- Resources, material, social and human resources that increase the ability to exercise choice;
- Agency, which means the power of the decision-making; negotiation, resistance, and voice;
- Achievements, also known as the results that can be used to measure the manifestation of enlarged choices in daily life (Kabeer, 1999).

Although the capability approach is able to represent the substantive aspect of empowerment, this paper provides a rights-based clarification by means of highlighting the concept of empowerment as entitlement. The capabilities stay loose unless they are backed with legal rights that help to turn social aspirations into legal rights. Due to the fact that legal entitlements characterize the responsibilities of the

state and other participants, complete procedures, and remedies, the rights may be obtained and implemented. More specifically, the institutional channels entailed by entitlement-based empowerment would be institutional redress of grievances, protection and representation provisions that would allow women to pursue their rights without being disproportionately costly to the social and economic fabric.

This combined knowledge is compatible with the policy based methods to empowerment, which sees political participation, economic participation and control of productive resources as the major indicators (UNDP, 2009). In this connection, the working definition used in the current paper is the following: Women Empowerment refers to the growth of women capabilities and agency ensured by enforceable rights and institutions that provide the access to rights in the real life (Kabeer, 1999; Robeyns, 2011; Sen, 1999).

2.2 Why a "Paradigm Shift"?

The paradigm shift in this paper is to refer to a change in the understanding and governance in women empowerment in India, and not an increment in schemes, policies or rhetoric promises. There are three conceptual markers to justify the application of this term.

The first one is the transition to a rights-and-institutions logic, or the abandonment of a welfare logic.

The previous ways of addressing women issues were in many ways showing women as recipients of protection or welfare. It has become common in modern regimes to see women being viewed as right-bearing citizens whose equality and dignity are not only legitimate claims to be upheld by an institution. This shift can be seen in the overall increase in the focus on formal grievance redressal mechanisms, due-process procedures, and accountability requirements, which re-brand empowerment as a discretionary act of assistance as opposed to a legally enforceable right.

Second, the change of formal equality to capability realization.

One of the key findings of the capability approach claims that equal rules do not necessarily imply equal freedoms (Sen, 1999; Robeyns, 2011). A paradigm shift would take place when approach to law and policy is based on actual access to safety, asset, voice and opportunity as opposed to reliance on declaratory equality only. Empirical research has shown, as an example, that, land and property rights of women are a significant source of bargaining power, economic security and resistance to violence, which empowers women through actual control of the resources and less as such related to legal status (Agarwal, 2003).

Third, the transformation of empowerment as a result to empowerment as a process.

Kabeer approach is explicit in considering empowerment as a process which can be measured in resource, agency and achievement change over time (Kabeer, 1999). After conceptualizing empowerment in this manner, an analytical focus is placed on the actual modifications in the lives of women including reporting capabilities, personal mobility, power of decision making, property ownership, and institutional sensitivity. The Gender Empowerment Measure policy instruments are indicative of this shift toward tracing participation and control as opposed to using abstract indicators (UNDP, 2009).

Therefore, this so-called paradigm shift, which is argued in this paper, does not imply that gender injustice has been addressed. Instead, it points out an governance paradigm that is gradually influenced by the interplay of capability building, enforceable rights, institutionalization, and quantifiable responsibility.

2.3 Indian Knowledge Systems (IKS) as a Justice-Oriented Interpretive Lens

Indian Knowledge Systems (IKS) are often talked about as cultural heritage, though can be also analytically used as a normative and interpretive tool

of assessing justice, government, and institutional action. IKS is broadly described as traditions of jnan (Knowledge), vijnan (Systematic understanding) and jeevan darshan (Philosophy of life) by policy statements that relate to the National Education Policy (NEP), which are based on observation, experience, and inquiry (Ministry of Education, 2020).

To prevent a symbolic and mindless application of tradition, the paper will utilise a justice-focused lens of IKS, organised in three interpretive moves.

To begin with, dharma as responsibility and not social order.

Rather than viewing dharma as an excuse of rigid or stratified gender roles, a justice-focused reading talks of the accountability, moral duty, and social order based on dignity and equity. Modern institutional expressions of IKS emphasize its pragmatic applicability to government and societal welfare as well, and advocate an understanding of dharma as responsibility of the mighty, as opposed to obedience of the weak (IKS Division, Ministry of Education/AICTE).

Second, enact justice, as opposed to procedural correctness, in itself.

The difference between niti (what is right in terms of rules and institutions) and nyaya (what justice is in the real social life) that is distinguished by Sen is especially pertinent to the analysis of empowerment (Sen, 2009). This difference converts the question of evaluations into the form of whether laws are formally sound or whether the institutions actually minimize injustice, deprivation and vulnerability. To empower women, this implies evaluation of the outcomes of the implementation as opposed to evaluating the intent of the legislation.

Third, IKS as a vital asset of gender equity.

Recent scholarship holds that IKS might be recruited to challenge patriarchal regimes, and reclaim ethical discourse that helps endorse gender justice, as long as it is done critically and contextually and not as a fixed tradition. This kind of reading places IKS in a position of being even with constitutional morality and rights-based government, as opposed to being an alternative to the latter.

Application in this study.

In this context, laws are not measured based on what they contain in the text (niti), but on what they attempt to produce in practice in terms of access, safety and institutional outcomes (nyaya) (Sen, 2009). Social processes of change are seen as the mediator in bringing legal rights into the expansion of lived capabilities (Kabeer, 1999; Sen, 1999). Lastly, IKS is used to reinforce the ethical foundation and social validity of gender-just reforms and does not contradict the constitutional values and accountability benchmarks in the expressions of modern policy.

3. Legal Reforms Driving Women's Empowerment in India

The reformation of Indian law has been at the center stage in the reform of structures that have been limiting the access of women to justice, economic participation and autonomy of self-determination. In recent decades, the legislature and the judiciary in India have come up with and reinforced laws dealing with gender inequality, safety in the workplace, discrimination in family laws, and violence against women. These reforms also mark a change in the symbolic legal provisions being more in-depth frameworks that establish enforceable entitlements and institutional duty.

Among the reforms, one focuses on violence and safety guarantees. Protection of Women from Domestic Violence Act, 2005 was the first legislation that formally recognized domestic violence as extending further than physical abuse to include emotional, verbal, sexual, and economic abuse and also offered civil remedies in the form of protection orders and rights to reside (Protection of Women from

Domestic Violence Act, 2005). On the same note, criminal law (amendment) act of 2013 (the Nirbhaya Act) enhanced criminal law provisions concerning sexual offences, which is in line with societal demands of more stringent legal actions against gender-based violence (Criminal Law (Amendment) Act, 2013).

Reforms at the workplace have been relevant as well. The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 formalised the mechanism of prevention and redress of sexual harassment in the workplace, as an extension of the Vishakha guidelines of the Supreme Court, which identified sexual harassment as a fundamental right and offered interim protection before it became law (Vishakha and Others v.). Sexual harassment of Women at Workplace Act, 2013; State of Rajasthan, 1997.

Along with safety and work, legal reforms have increased the economic and civil rights. The introduction of reforms in the inheritance legislation like Hindu Succession (Amendment) Act, 2005 was designed to balance the rights of daughters in coparcenary property which had been a long-standing cause of economic disenfranchisement though the implementation and social acceptance of the law remains a problem (Realizing Women's Property Rights..., 2025). The other legal mechanisms in the fields of marriage, divorce, and personal status still determine the civil rights of women (Gender Equality and Women Empowerment in law, in India, 2023).

It is the collective impact of those reforms that have resulted in a legal structure that does not only acknowledge the rights of women, but also brings them to life through processes, redress, and responsibility of institutions. Although loopholes remain in implementation and availability, the scope of such changes is symptomatic of a critical enlargement of the rights of women across the Indian legal framework.

4. The Implementation Engine of Social Change.

Reforms in law will not ensure the empowerment of women, unless accompanied by the wider social transformation that changes norms, the level of awareness on rights, and institutional responsiveness. The process of social transformation in India is taking the form of the social education of the masses, mobilisation of the people and the change in the cultural values that are making women able to claim their legal rights and fully engage themselves in the social life.

Empowerment and social norms have always been outlined as intertwined in scholarly works. Empowered women can make withstand wider social transformation, disrupting any discriminative gender roles and promoting justice, which can lead to the reduction of negative practices such as child marriage and dowry -related demands (Khatri et al., 2020). The higher the women are involved in education and politics, the more inclusive the decision-making and policy results are, which supports accountability and representation at various governance tiers (Khatri et al., 2020).

Implementation is also influenced by community-based interventions, mass awareness campaigns and civil society movements. Nationwide campaigns against violence and discrimination are some of the initiatives aimed at normalising reporting crimes committed against women and cultural acceptance of the legal protection (Honour for Women National Campaign, 2009). On the local front, the channels through which women can receive information, legal literacy, and collective bargaining power are self-help groups, community leaders and women organisations that allow women to demand their rights in the real-life situations (Impact of Social Norms on Women Economic Empowerment..., 2025).

Another important component is institutional responsiveness. Enforcing the law, the courts, and the administrations should be able and willing to turn the legal text into the relief available in due time and in a

just manner. These entail training of police and courts to be gender-sensitive, have easy complaint systems, as well as elimination of socio-economic obstacles to justice access. This has been facilitated in most areas by supplementary programmes which have integrated legal rights with economic, educational and health services which are aimed at a holistic approach on empowerment.

In short, social change is the vehicle of implementing legal change: its legal stipulations establish the framework, but social norms should be adjusted, the level of awareness of people in the society raised and institutions fortified to turn the legal entitlements into practicable abilities in the lives of women.

5. IKS and Gender Justice: From Symbolic Culture to Ethical Governance

Indian Knowledge Systems (IKS) are frequently referenced in contemporary policy and academic discourse as repositories of cultural heritage and civilizational values. However, when invoked only symbolically, IKS risks reinforcing selective traditions without addressing structural inequalities. A gender-justice perspective requires repositioning IKS as a framework for **ethical governance**, where social practices and institutions are evaluated against principles of justice, dignity, and accountability rather than cultural continuity alone.

The National Education Policy (NEP) 2020 conceptualizes IKS as a body of *jnan* (knowledge), *vijnan* (systematic understanding), and *jeevan darshan* (philosophy of life), grounded in observation, reasoning, and experiential learning, with relevance across governance, law, ethics, and social organization (Ministry of Education, 2020). When interpreted through this lens, IKS can complement constitutional values by offering ethical foundations for justice-oriented institutions rather than functioning as a parallel or oppositional system.

5.1 Dharma as duty-bound accountability

In a justice-oriented interpretation, *dharma* is understood not as a justification for rigid gender roles but as a principle of responsibility and moral obligation. Classical philosophical interpretations emphasize *dharma* as sustaining social order through ethical conduct and accountability, particularly of those who exercise power (Sharma, 2006). Applied to gender justice, this implies a duty on families, employers, institutions, and the state to prevent harm, protect dignity, and ensure fair treatment. Such an understanding aligns with contemporary legal frameworks that impose affirmative obligations on institutions to safeguard women's rights rather than placing the burden of adjustment on women themselves.

5.2 Nyaya as realised justice

Amartya Sen's distinction between *niti* (the correctness of rules and institutions) and *nyaya* (justice as it is actually realised in social life) provides a crucial bridge between IKS and modern rights-based governance (Sen, 2009). From a *nyaya* perspective, the ethical validity of law is assessed not by formal compliance alone but by outcomes such as safety, accessibility, and reduction of injustice. For women's empowerment, this means evaluating whether legal reforms translate into timely relief, institutional responsiveness, and reduced vulnerability in everyday life.

5.3 From cultural symbolism to governance ethics

A gender-just application of IKS thus requires moving from cultural symbolism to governance ethics. Concepts such as dignity, non-violence, fairness, and duty of care must inform institutional behaviour, administrative practices, and social norms. When IKS is used as an ethical lens rather than a cultural ornament, it strengthens the legitimacy of gender-just reforms while remaining compatible with constitutional morality and universal human rights principles (Sen, 2009; Ministry of Education, 2020).

6. Challenges and Gaps

Despite significant legal and policy advances, women's empowerment in India remains constrained by persistent social, institutional, and structural barriers. One of the most critical challenges is under-reporting of violations, driven by fear of stigma, retaliation, family pressure, and economic dependence. Crime statistics indicate that violence against women continues to be widespread, underscoring the gap between legal protection and lived security (National Crime Records Bureau [NCRB], 2022).

Institutional capacity and uneven compliance further weaken implementation. Many empowerment-oriented laws depend on the effective functioning of local-level institutions, committees, and officers. Where such bodies lack training, independence, or resources, legal entitlements fail to translate into real capabilities. Delays in courts, limited access to legal aid, and procedural complexity disproportionately affect rural women, informal-sector workers, and those facing intersecting forms of disadvantage.

Economic dependency remains a major constraint on the exercise of rights. Even when remedies exist, women may be unable to exit unsafe workplaces or households due to lack of income, housing insecurity, or caregiving responsibilities. Without integrated economic and social support, legal empowerment risks becoming formal rather than substantive (Agarwal, 2003).

Finally, the selective invocation of tradition poses a normative challenge. When IKS is used without a critical, justice-oriented interpretation, it can inadvertently reinforce hierarchy and exclusion. The absence of gender-sensitive reinterpretation creates a gap between ethical ideals and governance outcomes (Sharma, 2006).

7. The Way Forward: A Rights + IKS-Informed Governance Model

A sustainable model of women's empowerment requires integrating legal rights, institutional accountability, and justice-oriented interpretations of IKS. Rather than treating law and culture as separate domains, governance frameworks should align enforceable entitlements with ethical commitments to dignity, fairness, and responsibility.

- First, the entitlement-to-capability pipeline must be strengthened. Every right should be accompanied by accessible information, clear access points, survivor-sensitive procedures, and time-bound remedies. Simplified processes and legal literacy are essential to reduce the social and psychological costs of claiming rights.
- Second, institutional accountability should be treated as a core governance norm. Regular training, audits, and performance monitoring of implementing bodies can shift the focus from mere legal existence to institutional effectiveness. Accountability mechanisms should prioritise outcomes such as timeliness, protection from retaliation, and user trust.
- Third, IKS should be operationalised as civic ethics, not symbolism. Education, professional training, and public discourse can draw on justice-oriented interpretations of *dharma* and *nyaya* to reinforce norms of duty of care, non-violence, and institutional responsibility, consistent with constitutional values (Ministry of Education, 2020; Sen, 2009).
- Fourth, economic and social supports must be integrated with legal remedies. Livelihood access, shelter services, childcare support, and social security linkages reduce dependency and enable women to exercise rights without disproportionate risk.
- Finally, measurement and evaluation should focus on realised justice rather than formal compliance. Indicators such as access equity, quality of institutional response, and reduction in repeat harm

better reflect empowerment outcomes aligned with *nyaya* (UNDP, 2009).

8. Conclusion

Women's empowerment in India is increasingly being "revolutionised" through the interaction of law and social change. The most significant shift is the movement from welfare thinking to enforceable rights backed by institutional mechanisms: workplace committees, domestic violence remedies, strengthened property rights interpretations, maternity protections, and constitutional steps toward political representation.

This is also a paradigm shift in Indian Knowledge Systems, if IKS is read as a justice-centred ethical framework rather than as mere tradition. When *dharma* is understood as accountability, *nyaya* as institutional fairness, and *shakti* as agency, legal reforms become culturally resonant without compromising constitutional morality. The future of empowerment, therefore, lies not in choosing between "modern law" and "tradition," but in aligning institutions and social norms with a gender-just interpretation of India's deepest ethical commitments.

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DOCTRINE OF PROPORTIONALITY IN INDIAN CONSTITUTIONAL JURISPRUDENCE: EXPANDING OR DILUTING RIGHTS?

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ABSTRACT

When the government says wide limits on freedom are needed for security, what path should a constitutional court take. In cases ranging from long term web blackouts in Kashmir to countrywide fingerprint tracking systems, courts now face choices about not just legality, but balance. One by one, these rulings show how proportionality has seeped into India's legal thinking. Yet beneath the surface grows a sharper doubt does this idea truly guard basic freedoms, or slowly fold them into routine acceptance of state power.

Years went by before Indian judges moved beyond a soft touch approach, stepping in solely if government moves seemed wildly unjustified. Only after the 2016 ruling in Modern Dental College did things truly start changing. That change took clear shape later in K.S. Puttaswamy v. Union of India, when top court justices adopted proportionality as their guiding method. From that point onward, how fairness is weighed now shapes rulings on matters like personal data, expression rights, commerce rules, along with openness in voting systems. Just on paper, it sounds strict. Though aiming at something real, its path must make sense. Because less intrusion is better, extremes get cut. When trade offs happen, weight shifts between sides. Lately, added layers try to keep things in check.

INTRODUCTION

Suppose the state mandates a nationwide internet shutdown or launches a comprehensive surveillance system and labels the restrictions as reasonable, citing public security. Though the state may assert the necessity and validity of the action as serving public safety objectives, the fundamental rights to freedom of speech, privacy and liberty would inevitably stand infringed. Thus, a constitutional dilemma: how are the restrictions to be adjudicated reasonable and fair?

This adjudication, in present day constitutional democracies is guided by the doctrine of proportionality. Proportionality requires the courts to test if the aim pursued by the state is permissible, if the means adopted are rationally linked to the objective, if there is a less restrictive means to achieving the objective and if the benefits of the restriction outweigh the harms.[1] The proportionality doctrine thus differs from the reasonableness doctrine by demanding that a balance be structrured between rights and state interests.

Indeed, comparative constitutionalists have described proportionality as an "almost ubiquitous fixture of contemporary rights adjudication", and at times, as the common 'constitutional grammar[2] India was, however, tardy in adopting proportionality. For years, Indian courts used the Wednesbury rule of reasonableness of administrative decisions (derived from English law, which requires only for a decision to be outrageously unreasonable to be struck down) as the threshold for invalidating an action; a criterion that provided a rather limited check on rights- restrictive measures[3] [4] .

[1] Aharon Barak, *Proportionality: Constitutional Rights and Their Limitations* 3–4 (2012).
[2] Moshe Cohen-Eliya & Iddo Porat, Proportionality and Constitutional Culture, 59 Am. J. Comp. L. 463, 465 (2011).
[3] Associated Provincial Picture Houses Ltd. v. Wednesbury Corp., [1948] 1 K.B. 223 (C.A.).
[4] Om Kumar v. Union of India, (2001) 2 S.C.C. 386 (India).

A significant change came in K.S. Puttaswamy v. Union of India (2017) wherein the court affirmed privacy as a fundamental right and formally laid down a structural proportionality test that has now been accepted by Indian courts as a tool for testing infringements on constitutional freedoms[5]. Proportionality is, now a standard tool of constitutional analysis[6]. The doctrinal transformation raises, however, a fundamental concern. Is the promise of stronger rights enforcement under proportionality, through judicial oversight really attained, or rather will the balancing of rights and state interests inherent in proportionality tend to dilute them further by giving the court enormous discretionary power?

HISTORICAL DEVELOPMENT IN INDIA

For years, Indian judges wrestled with fitting personal freedoms into broader legal aims. At first, rulings insisted any law taking away life or freedom must follow a process that felt right, fair, actually worked seen clearly when Maneka Gandhi challenged the Union of India in 1978. That moment hinted at weighing costs versus gains, though the exact method known as proportionality stayed unnamed for ages. What emerged instead were ideas such as reasonable limits under Article 19, demanding each situation be judged on its own ground, never by fixed rules. A single study points out how, back in its earliest days, the Supreme Court saw that rules restricting rights needed to match those rights in scale. Still, it remained just a broad idea.

Things changed in India when judges looked at freedom rules through fresh eyes in 2016, during a case about a dental college. That ruling came from five top justices who pulled in ideas from foreign courts like Canada's Oakes method and thoughts by Aharon Barak to shape how limits on rights should be judged. Instead of just accepting any rule, they insisted it must aim at a fair goal, link clearly to that goal, do no more than needed, while still balancing impact versus benefit. By then, even freedoms listed in Article 19 had to pass these layered checks before being restricted. Despite introducing a detailed test, the court stayed hesitant to apply it broadly. Right from the start, lawmakers were trusted to grasp what citizens actually require. Still, the idea of balance already hid within the concept of reasonableness under Article 19. That trust meant those questioning laws had to prove harm beyond doubt. One study points out how the judiciary repeated its faith in legislative insight during the Modern Dental case. Only when rights breaches stand obvious would courts step in to remove legal rules.

From the time of Modern Dental, ideas about balance have slowly taken clearer shape in India's constitutional rulings. During 2016 to 2018, judges brought up the principle in multiple major decisions, hinting at a move toward more organized scrutiny of rights. Still, certain observers note that today its use can feel loose, handled like a broad check on reasonableness instead of a careful step by step method. What follows looks closely at how the top court has put this idea into practice across pivotal cases.

Review of literature

The literature in the Indian constitutional space, surrounding the doctrine of proportionality is characterized by its praise, but also its reservations. For many scholars, it provides a rational and structured means of deciding cases in relation to fundamental rights, and has been a feature of all constitutional democracies. The decision to accept the doctrine formally in India was with Modern Dental College (2016) and has been solidified in K.S. Puttaswamy (2017). This has led to a formal transition in the doctrinal space of reasonableness to a formalized doctrine of balancing.

Proponents suggest that proportionality ensures a 'culture of justification', whereby the burden is placed

[5] K.S. Puttaswamy v. Union of India, (2017) 10 S.C.C. 1 (India).

[6] Gautam Bhatia, The Transformative Constitution and Proportionality, 9 NUJS L. Rev. 1 (2016).

upon the state to prove its restrictions on rights through rational arguments and concrete evidence. The experiences of other countries like Germany and South Africa confirm that the doctrine can indeed ensure the protection of fundamental rights.

Criticisms of the application of the doctrine in India, on the other hand, point to the highly deference the court has given to the State particularly on issues of national security and economic regulation. Some refer to the application as a 'hollow promise', whereby the doctrine is clearly set forth, yet never rigidly applied.

KEY SUPREME COURT DECISIONS

Modern Dental College v. Madhya Pradesh (2016)[7]

At Modern Dental College in 2016, a top court reshaped how limits on Article 19 freedoms are judged. Justice A.K. Sikri, writing for most judges, broke down proportionality into four parts valid goal, logical link, minimal intrusion, fair weight. That year marked a turning point: reasonableness under Article 19 now meant weighing proportionality. Yet despite embracing the framework fully, real scrutiny of every element stayed light. That ruling simply found the challenged limits on schooling matched the goal of regulation. Still, judges admitted they would not override lawmakers unless a rule clearly broke constitutional bounds[5]. So while Modern Dental brought in the standard, it also showed courts preferred to back down when laws stood firm.

Swamy against the nation's government[8]

What matters here is how the court handled criticism of India's old defamation law. Though some argued it clashed with free expression, judges looked back at earlier rulings like Modern Dental. Reputation counts, they noted not just what people say. Because shielding someone's name serves a real purpose, jail for slander stayed lawful. One point stood out: saying harmful things about others isn't protected talk. So Section 499 fits within fair limits, even if words carry weight. Still, the analysis skipped some key parts of proportionality failing to say why civil options for defamation wouldn't work just as well[8]. Basically, even though Subramanian Swamy mentioned the standard, the ruling supported the law while skipping close scrutiny of milder choices.

Justice K.S. Puttaswamy (I) v. Union of India (2017)[9]

One day, nine judges together said privacy is protected by India's Constitution. While digging into where exactly that protection lives in legal text, they laid down rules future laws would have to follow. Not every judge wrote the exact same thing, but five of them guided by Judge D.Y. Chandrachud shared a clear view. When government limits someone's private life, one rule applies only if there's actual law backing it up. Another point matters too: such actions should serve fair goals found in open societies. The weight of what gets taken away must match what's being fixed. So the Court took hold of proportionality as its main guide. Still, what most judges did was keep things narrow they just linked proportionality to the old "rational nexus" idea[10]. Then there's Justice Chandrachud's view, which gave space to lawmakers on goals, saying courts ought not challenge social choices, making the bar seem lighter. Another voice, Justice Kaul, agreed with the petitioners' three step method close to Canada's Oakes rule yet didn't spell out how it really changes anything[10]. Truth is, Puttaswamy (I) made reasoning matter more, demanding legality and balance, though in real terms, the approach stayed quite measured.

[7] *Modern Dental College & Research Centre v. State of Madhya Pradesh*, (2016) 7 S.C.C. 353 (India).
[8] *Subramanian Swamy v. Union of India*, (2016) 7 S.C.C. 221 (India).
[9] *Justice K.S. Puttaswamy (Retd.) v. Union of India*, (2017) 10 S.C.C. 1 (India).

Justice K.S. Puttaswamy (II) / Aadhaar (2018)[10]

One way to see it the Aadhaar rulings questioned whether forcing people to give fingerprints and iris scans fits within basic rights. Four judges said yes, one judge firmly did not agree. Sitting together in 2018, they divided clearly along those lines. What stood out Justice Sikri backed parts of the law but trimmed certain pieces away. On another path entirely, Chandrachud rejected core elements outright. His reasoning? Simple. When power reaches deep into personal life, it must have strong justification. That bar wasn't met. Two sections fell under his scrutiny ones tying aid programs strictly to Aadhaar numbers. Why bring them down? Because requiring such data didn't pass fairness tests when simpler fixes could work just as well. Proof mattered here. Leaks in welfare systems often happened through fake records or false names, not missing IDs. So demanding biometrics made little sense as a fix all tool. Yet the main group, guided by Sikri, leaned toward restraint. He clearly laid out a four step check valid purpose, logical link, need, balance and noted doubts about such tests. Still, linking Aadhaar to state benefits stayed allowed because helping people live better counted as strong enough reason; using it in schools or shops did not fit within legal boundaries. Bhushan agreed, seeing proper logic behind the law. So across this long dispute, views split sharply: Chandrachud demanded tight scrutiny and cut back pieces, while others applied similar rules yet mostly backed what lawmakers had done, trimming only at edges.

Other Significant Cases

Some time after Puttaswamy, judges began using proportionality in many different cases. Take Anuradha Bhasin versus Union of India in 2020[11] there, courts looked at internet blackouts through the lens laid out in Puttaswamy, saying national security might justify limits, yet endless, sweeping cuts in Jammu crossed a line[16]. Later, during proceedings involving the Internet and Mobile Association of India against. In 2020[12], the RBI case saw the court weigh pandemic finance rules through proportionality.[17] A later ruling in 2023 scrapped electoral bonds because hidden donations clashed with voters' need to know who funds parties,[18][19] even if fighting black money was the goal. Yet in Noel Harper v. Union of India (2021)[13], changes to foreign funding laws for NGOs stayed largely intact after partial legal trimming; observers noted the full proportionality check wasn't fully applied, leaning heavily on government reasoning instead.[20] From privacy to free speech, election norms to security demands, courts now touch many issues using this lens though results shift based on how each judge weighs personal freedoms against official intent.

DEFINING PROPORTIONALITY

Proportionality is best understood as a two part concept one part about balancing and one about necessity. In the fundamental rights context, courts typically ask: first, does the law serve a *legitimate public purpose*; and second, is it the *least restrictive* means of achieving that purpose. One Indian commentator explains that proportionality involves a "balancing test" (scrutinizing whether a law imposes excessive burdens or penalties) and a "necessity test" (requiring that any rights infringement be by the least restrictive alternative)[4]. In practical terms, modern Indian jurisprudence has broken this into a five prong framework[5]: Legitimate Aim: The restriction must pursue a genuine public interest (e.g., national security, public health)[5]. Suitability: The means chosen must actually help achieve that goal[5]. Necessity (Least Restrictive Means): If a different law or policy could achieve the same end while harming rights less, the chosen law fails this test[5]. Balance (No Disproportionate Impact): The benefits

[10] *Justice K.S. Puttaswamy (Aadhaar-5J.) v. Union of India*, (2019) 1 S.C.C. 1 (India).
[11] *Anuradha Bhasin v. Union of India*, (2020) 3 S.C.C. 637 (India).
[12] *Internet & Mobile Ass'n of India v. Reserve Bank of India*, (2020) 10 S.C.C. 274 (India).
[13] *Noel Harper v. Union of India*, (2022) 10 S.C.C. 1 (India).

of the law must outweigh its cost to rights a law that does far more harm than good is unconstitutional[5]. Safeguards: Adequate checks (like judicial review or reporting requirements) should exist to prevent misuse of the law[5].

Put simply, proportionality demands that government not use a sledgehammer to kill a fly. As one Indian commentator puts it, it aims to ensure authorities do not "kill a swallow with a cannon" that is, to "maintain a sense of proportion" so no "excessive limits on individual liberty" occur[6]. When applied rigorously, it forces laws to be tailored and justified. For example, after *Anuradha Bhasin* (2020) recognized internet access as part of free speech and trade, the Court held each shutdown order *must satisfy each element* of the five prong test to be constitutional[7]. In theory, this can expand rights protection by making courts look closely at the evidence, inquire whether less drastic options exist, and require governments to explain themselves in public.

EVOLUTION IN INDIAN COURTS

Historically, Indian courts never explicitly used the modern proportionality analysis. But echoes of the idea appeared occasionally for instance, the Court long insisted any right limiting law must "bear a proportionate relationship to the right" infringed[8]. Only recently did the Supreme Court articulate the full test. In *Modern Dental College v. Madhya Pradesh* (2016), the Court (while reviewing college fee regulations under Article 19) outlined a four part test. A five judge bench in *Puttaswamy II* (2018, the Aadhaar case) then picked the version of the test proposed by South African scholar Bilchitz, explicitly adopting proportionality as India's standard procedure. By 2020 2023, the Court had formally included a fifth prong on safeguards[5]. Thus, the doctrine moved from the margins of case law to center stage in a few short years.

In practice, proportionality has been invoked in cases ranging from free speech and assembly to privacy and trade. For example, in *Bhasin v. Union of India* the Court not only read the internet into Articles 19 and 21, but also declared that each subsequent internet shutdown must pass every step of the proportionality test[7]. Even public health and security measures have been scrutinized courts have at times applied proportionality in cases like COVID 19 lockdown rules or electoral bans. When challenges arise, both High Courts and the Supreme Court now routinely demand that governments justify restrictions in terms of all five prongs. This framework has the potential to raise scrutiny on the state's part.

Analytical viewpoints

United Kingdom (and ECHR) Wednesbury , where only wild illogic could undo a decision. Then came 1998. The Human Rights Act wove Europe's standards into national law. Now constraints on freedom must answer to democracy's demands, tied firmly to valid goals. They also have to match the problem they tackle, nothing more than what fits. Strasbourg judges had already drawn lines: any curb needs strong cause, grounded in real societal urgency. Reasons offered must hold weight, connect directly, scale no higher than needed. Across recent rulings inside Britain, balance tests show up again and again even if cloaked sometimes in older words about democratic necessity. In the European Union, limits on rights need legal backing. They also have to fit within what is fair and balanced. Rules restricting freedoms should serve real public goals. When such rules exist, they ought to match those aims well. A restriction cannot go further than needed. It must not wipe out the core of the right it touches. Weighing outcomes matters gains shouldn't bury personal freedoms. National laws aren't free to ignore these boundaries. Courts check if measures stay within proper bounds. This scrutiny appears in rulings about basic rights. Lawmakers at the EU level face the same checks. The Court of Justice watches how far powers stretch. Balance isn't optional it's built into the system. Each limit gets tested, not assumed valid. What looks like protection might still cross a line. Even urgent interests can't justify hollowing out rights completely.

What stands behind Germany's legal limits on rights? A deep rooted rule called proportionality shapes decisions. Not just any goal will do authorities must show their aim matters. They also need a method allowed by the Constitution. That method should actually help reach the stated goal. If milder options exist, stronger ones won't pass. Even if everything else fits, the cost to personal freedom can't outweigh public benefit. Judges weigh each part carefully. Over time, they've struck down several laws failing this test.

It starts with the U.S. Constitution nowhere does it name a proportionality test outright. Courts step in differently each time, shifting how closely they examine laws. At the top level, called strict scrutiny, what the government does needs a vital reason and has to fit precisely like a custom cut key. That part feels familiar to the idea of using only the least limiting way possible, which matters deeply in proportionality[24]. Mid level review, like what happens with gender rules, needs a solid reason plus methods that clearly connect to it. Instead of calling everything proportional, U.S. legal thinking still shows signs of weighing limits carefully just without saying so outright. Regular basic checks care less about fit; they accept any believable goal someone might claim. You can spot this balancing act hiding inside things like "narrow tailoring," which acts like a lighter version of full proportionality. That idea, tied to tough standards, means laws must not go beyond what's needed. As one observer points out, the system already avoids excessive harm through such tools even though judges skip formal cost and effect math found elsewhere.

ACADEMIC DEBATE: GUARDRAIL OR RUBBER STAMP?

The academic literature on proportionality is divided, and much of that debate is now entering the Indian context. One school of thought treats proportionality as a descriptive tool: it shows how judges can break a complex question ("is this law fair?") into structured sub questions. Scholars like Robert Alexy argue that in theory, the test leads to reasoned decisions judges must publicly justify each step of the analysis. Another view is normative: proportionality is seen as an embedding of constitutional values (like human dignity and democratic dialogue) into adjudication. Proponents claim it can guard against abuses of power: for instance, it requires lawmakers to explain themselves and to consider marginalized voices, thus acting as a bulwark against tyranny of the majority. In India, as commentators point out, the idea is that proportionality could foster a "culture of justification" in the judiciary[9], forcing courts to justify restrictions rather than rubber stamping them.

Critics of proportionality, however, are worried it might dilute rights if applied weakly. Some argue that adding another layer of scrutiny can allow judges to defer more easily. In India, many analysts observe, the courts still start with the premise that they are not evaluating policy wisdom but only legality. In *Directorate of Film Festivals v. Cine Lovers* (2007) the Supreme Court famously said it would not "act as [an] appellate authority examining the correctness, suitability and appropriateness of a policy," focusing only on its legality[10]. If that deferential attitude persists, proportionality might become window dressing. Indeed, one commentator notes the Court often acts as if proportionality "has always existed in Indian constitutional jurisprudence," so adopting a formal test means doing "nothing very different"[11]. Empirical studies suggest that's not just theoretical pessimism. A recent law review paper calls proportionality a "hollow promise" in India, finding that judges frequently apply it in form but not in substance[12]. For example, in *Modern Dental College*, the Court on paper went through the balancing inquiry but then bluntly held the state's fee policy was "warranted in the larger public interest" without any data to show alternative measures were considered[13]. Similarly, in the Aadhaar case the Court claimed to follow a detailed test but simply accepted the government's claim that no less intrusive method was available essentially taking the executive's word for it and "defeating the very rationale" of the inquiry[14]. Such criticism points out that if courts do not diligently check each prong,

proportionality can easily collapse into the old, highly deferential standard.

On the flip side, advocates argue proportionality *could* sharpen rights protection. For instance, the very existence of the test means governments must at least articulate legitimate aims and consider alternatives. In principle, it can ensure *transparency* in lawmaking. As one analysis puts it, the whole point of proportionality is to prevent authorities from choosing extreme means: it "ensures administrative action does not put excessive limits on individual liberty"[6]. In other jurisdictions, proportionality has indeed led to invalidation of overbroad laws (in Germany and South Africa, say) or more robust remedies for constitutional rights. Indian scholars suggest it could similarly compel attention to social context for example, ensuring that restrictions on speech include hearing affected communities or that surveillance laws incorporate privacy safeguards.

The reality so far is mixed. There are instances where courts have struck down restrictions as disproportionate, especially in recent years for example, some internet shutdown orders have been curtailed. But there are also glaring examples where proportionality has shrugged and restrictions stood. The literature notes that the Court's attitude often remains one of deference. In the words of one commentator, the pre existing framework in India "is highly deferential to the state," and proportionality has so far been "assimilated" into that framework[11][10]. In other words, the revolutionary potential of proportionality to reshape relations between citizen and state has been "limited" by how the courts treat it[11].

Comparative studies reinforce this caution. In many Western countries, proportionality is indeed central and has engendered debates about democracy, dignity, and justice. A South African scholar notes that in his country's Bill of Rights, proportionality is now a "prominent feature" of limitation clauses[15]. The point is that proportionality's spread is global it appears in case law around the world as an almost universal test[1]. How it works out depends heavily on local legal culture. Indian courts, like some others, have inherited a tradition of deference; unless that changes, proportionality may not automatically give citizens more protection.

CONCLUSION

Proportionality in Indian law is a sword whose edge has yet to be fully sharpened. On one hand, it marks a shift toward a more reasoned, value driven analysis of rights. In theory, every law limiting rights now must justify itself step by step, which could expand and entrench rights by demanding accountability. On the other hand, early signs suggest the test often ends up a formality: courts still say they won't re weigh policy wisdom, and empirical research finds many restrictions slipping through on shaky justifications. As one critique puts it, with inconsistent application the doctrine risks becoming "only in form" rather than substance[12].

So does proportionality expand or dilute rights in India? The answer seems to be: it has the *potential* to expand rights, but that potential will be wasted unless courts use the test meaningfully. Right now, many analysts worry it has been more diluting than empowering a new label on the same deferential review. To avoid that, judges will need to transform their approach, not merely add a step by step ritual. In short, the "culture of justification" must eventually take root if proportionality is to truly reshape Indian constitutional law; otherwise it may remain a hollow promise rather than a bulwark of fundamental rights[12][11].

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FIDUCIARY DUTIES, ESG, AND CLIMATE GOVERNANCE IN INDIAN AIFS: A CORPORATE LAW PERSPECTIVE ON PRIVATE EQUITY REFORM

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Abstract

This paper examines the confluence between rather distinct fields of study which includes Environmental, Social and Governance (ESG) principles, climate governance and contextualises in terms of understanding the regulatory framework governing Indian Alternative Investment Funds (AIFs). It explores the possibility of purposive interpretation of fiduciary obligations under Indian corporate and securities law particularly the SEBI (AIF) Regulations,2012 and Section 166 of the Companies Act, 2013 to incorporate ESG and sustainability-aligned considerations into investment decision-making. It remains undisputed that global scholarship identifies the importance of ESG integration in private equity, however existing studies remain limited in their analysis and rather does not contextualise it in terms of the specific legal and institutional context governing Indian AIFs. Using a doctrinal methodology, the paper analyses the regulatory frameworks including the Stewardship Code, BRSR architecture, and emerging climate-risk disclosure standards to understand how fiduciary duties can evolve to address sustainability and climate-related risks. The paper puts forth a central argument that climate risks and sustainability dimensions are quintessential material considerations affecting investor interest and not just mere externalities. Consequently, Alternative Investment Fund managers face looming legal, financial, and reputational exposure if they fail to integrate ESG and sustainability factors. The findings suggest that the fragmented Indian fiduciary standards possess immense potential for expansion through purposive interpretation, regulatory nudges, and comparative international guidance. To operationalize this paradigm shift, the paper recommends statutory clarification of sustainability-linked fiduciary duties, mandatory ESG disclosure requirements for AIFs and the development of a context-specific Indian ESG taxonomy.

By integrating AIF regulatory framework with sustainable development, the paper concludes that fiduciary duties, ESG integration hold the potential to be interconnected domains which mutually reinforce investor confidence essential to create robust capital markets and long-term societal value.

Keywords: *Alternative Investment Funds, Climate Governance, Corporate Law, ESG Integration, Fiduciary Duties, Sustainability*

Introduction

Environmental, Social, and Governance (ESG) investment has moved from the periphery of ethical finance to the core of risk assessment and value creation in international capital markets.[1] By 2020, ESG-aligned investments accounted for nearly one-third of global assets under management, exceeding USD 35 trillion.[2] CEOs in India and around the world are adopting a long-term perspective on ESG investments, with many anticipating notable returns in the next five to 10 years, according to KPMG's 2024 India CEO Outlook.[3] The European Union's

[1] Georgios Zairis, Panagiotis Liargovas and Nikolaos Apostolopoulos, 'Sustainable Finance and ESG Importance: A Systematic Literature Review and Research Agenda', Sustainability 2024, 16(7), 2878,1

[2] Global Sustainable Investment Alliance,'Global Sustainable Investment Review 2020',(GSIR), <https://www.gsi-alliance.org/wp-content/uploads/2021/08/GSIR-20201.pdf> accessed on 17 September 2025

[3] Namrata Rana,'ESG and the Growth Imperative - For Indian companies', (*KPMG*, 21 January 2025),

Sustainable Finance Disclosure Regulation (SFDR) and the U.S. Securities and Exchange Commission (SEC) have expedited mandatory ESG disclosures and further formalized ESG requirements.[4]

India's adoption of ESG norms has been shaped by the combined influence of market expectations and evolving regulatory mandates.[5] The Securities and Exchange Board of India (SEBI) required the top 1,000 listed businesses to file Business Responsibility and Sustainability Reports (BRSR) in order to integrate ESG disclosures into compliance frameworks.[6] These disclosure requirements build upon earlier statutory interventions under the Companies Act, 2013, which formally linked corporate governance with social responsibility through mandatory CSR obligations.[7]

A critical gap in existing scholarship lies in the treatment of ESG integration within Indian Alternative Investment Funds (AIFs), where regulatory guidance remains fragmented and under-theorised. Current practice indicates that only a limited number of AIFs explicitly incorporate ESG principles, and where they do, disclosure and implementation standards vary significantly.[8] Regulatory attention to ESG in India has been concentrated on listed companies through Business Responsibility and Sustainability Reporting (BRSR), leaving AIFs with weaker obligations to comply with. This regulatory silence is particularly consequential given the growing role of AIFs in India's private capital markets and their increasing exposure to long-term environmental and governance risks.

The Securities and Exchange Board of India (SEBI) imposes obligations on AIF managers to act in the best interest of investors, but there is uncertainty whether this includes long-term ESG considerations.[9] Globally, fiduciary duty has been interpreted in light of sustainability, as seen in OECD and UN reports, but Indian jurisprudence on this dimension is still embryonic and whether India will adopt such a purposive interpretation is yet to be seen.[10] This critical gap poses an imminent need for the doctrinal and policy analysis of fiduciary duties in the context of ESG integration in AIFs.

Key questions include: (i) How are ESG principles currently reflected in Indian AIF practice? (ii) To what extent do regulatory frameworks incentivize or mandate ESG adoption? (iii) Can fiduciary duty in fund law be reinterpreted to encompass ESG integration?

This paper argues that ESG and climate governance considerations must be understood as integral to

<https://kpmg.com/in/en/blogs/2025/01/esg-and-the-growth-imperative-for-indian-companies.html> accessed on 17 September 2025

[4] European Commission, Regulation (EU) 2019/2088 on Sustainability-Related Disclosures in the Financial Services Sector [2019] OJ L317/1; US SEC, Enhanced Disclosures by Certain Investment Advisers and Investment Companies about ESG Investment Practices (Proposed Rule, 2022).

[5] Gaurav Bhatia, 'Navigating ESG in India: Current Regulations and Future Outlook', (*ET LegalWorld*, May 07, 2025), <https://legal.economictimes.indiatimes.com/news/opinions/navigating-esg-in-india-current-regulations-and-future-outlook/120963366>accessed on 17 September 2025

[6] Securities and Exchange Board of India, Circular SEBI/HO/CFD/CMD-2/P/CIR/2021/562 dated May 10,2021, <https://www.sebi.gov.in/legal/circulars/may-2021/business-responsibility-and-sustainability-reporting-by-listed- entities_50096.html> accessed on 17 September 2025

[7] The Companies Act 2013, s 135

[8] Rachna Balyan, Anmol Kumar,'The Role of Alternate Investment Funds in Sustainable Investing: Opportunities and Challenges', (2023) 5 IJAEM 6,307

[9] SEBI (Alternative Investment Funds) Regulations 2012, reg 20.

[10] OECD Report, 'Investment governance and the integration of environmental, social and governance factors', (*OECD,* 01 January 2017) <https://www.oecd.org/en/publications/investment-governance-and-the-integration-of-environmental-social-and-governance-factors_40a1430a-en.html> accessed on September 17, 2025

fiduciary decision-making within Indian AIFs, rather than as discretionary ethical preferences. The paper will evaluate the extent of ESG integration and adoption into the Indian AIF ecosystem in light of SEBI Guidelines and market pressures including foreign Limited Partners (LPs). The study will also assess the fiduciary obligations of AIF managers and sponsors in embedding ESG within investment decision-making.

I. Environmental, Social and Governance in Private Equity

ESG which stands for Environmental, Social, and Governance has emerged as one of the most notable trends in corporate governance in the past two decades.[11] ESG is a collection of criteria used to assess the social and environmental effect of a business.[12] Sustainable investing, responsible investing, impact investing, and socially responsible investing (SRI) are other names for ESG investing.[13] In the AIF or Private Equity context, the INSEAD report explains how investment committee decisions are increasingly including ESG considerations beyond compliance.[14] PE firms with higher voluntary ESG disclosures tend to see better ESG performance in their portfolio companies.[15]

It is imperative to analyse the nexus between ESG in the Private Equity space considering the role of PE/VC role in India's capital markets. With an average yearly investment volume of almost $40 billion over the previous five years, the private equity sector in India has experienced impressive expansion in recent years.[16] With around 20% of all investments, India solidified its position as the second-largest PE-VC destination in the Asia-Pacific area, demonstrating increased investor trust in the macroeconomic stability of the nation.[17] India's fast growing startup ecosystem and advantageous regulatory environment have made it a popular and sought-after location for venture capital (VC) and private equity (PE) investments globally in recent years.[18]

The ESG considerations have become increasingly relevant in light of risk management and creation of long-term value. PE firms are realizing the importance of ESG due diligence in their deal-making, especially in light of this regulatory backdrop and the growing prevalence of climate- related hazards, as well as issues with employee and community relations and occupational health and safety concerns.[19] ESG has emerged as a crucial factor in decision-making as investors come under growing pressure from

[11] Elizabeth Pollman, 'The Making and Meaning of ESG' (2024) 14 Harv Bus L Rev 403, 403

[12] Tom Krantz, Alexandra Jonker,'What is ESG?', (*IBM*, 24 January 2024), <https://www.ibm.com/think/topics/environmental-social-and-governance> accessed 17 September 2025

[13] The Investopedia Team,"Environmental,Social, and Governance (ESG) Investing: What It Is & How It Works', (*Investopedia,* 19 August 2025), <https://www.investopedia.com/terms/e/environmental-social-and-governance-esg-criteria.asp> accessed 17 September 2025

[14] White B., Zeisberger.C.,'ESG in Private Equity:A Fast-Evolving Standard', (*INSEAD,*May 2014), <https://www.insead.edu/faculty-research/publications/reports/esg-private-equity-a-fast-evolving-standard> accessed 17 September 2025

[15] Abraham et. al,'ESG Disclosures in the Private Equity Industry',Journal of Accounting Research,Vol. 62 No. 5 December 2024

[16] Nils Rode et. al.,'The India growth story – the role of private equity and the 3D reset', (*Schroders*,18 January 2024), <https://www.schroders.com/en-ca/ca/professional/insights/the-india-growth-story-the-role-of-private-equity-and-the-3d-reset/> accessed 17 September 2025

[17] Arpan Sheth et. al, 'India Private Equity Report 2025', (*Bain & Company*), <https://www.bain.com/globalassets/noindex/2025/bain_report_india_private_equity_2025.pdf> accessed 17 September 2025

[18] Dominic, James, and Anto Joseph, 'Dynamics of Venture Capital and Private Equity Investments in India: An Empirical Analysis', J. Risk Financial Manag. 2023, 16(11), 475,1

[19] EY India, 'How ESG Due Diligence is influencing Private-Equity Deal Making?' (*EY,* 05 September 2025),

international stakeholders to make sure their portfolios support ethical and sustainable practices.[20]

Rise of ESG regulation

To increase openness on ESG-related risks, policies, and actions by listed businesses, SEBI launched the Business Responsibility Report (BRR) in its August 2012 circular.[21] At first, it applied to the top 100 listed businesses based on market capitalisation.[22] The BRR required disclosures aligned with the National Voluntary Guidelines (NVGs) on Social, Environmental and Economic Responsibilities of Business.[23] The BRR was based on the NVGs (2011) issued by the Ministry of Corporate Affairs (MCA), promoting responsible business conduct across 9 core principles such as environmental protection, human rights, and employee welfare.[24]

In May 2021, SEBI issued a circular mandating a shift from BRR to BRSR for the top 1000 listed companies (by market capitalization), starting from FY 2022–23.[25] The BRSR introduced quantitative key performance indicators (KPIs) for environmental (e.g. GHG emissions, energy usage), social (e.g. gender diversity, employee training), and governance metrics.Starting FY25-26, the top 250 listed entities will need to report on their value chain, covering upstream and downstream partners that make up at least 2% of their purchases and sales.[26]

In 2021, SEBI introduced ESG disclosure and categorization norms for mutual funds, requiring schemes to classify as ESG, Social, or Sustainable funds. SEBI mandated mutual funds to classify schemes under "ESG funds," "Socially Responsible Funds," or "Sustainable Funds" categories. The 2023 amendments require mutual funds to provide detailed disclosures on ESG scoring methodology, data sources, and independent third-party verification to prevent misleading claims and improve comparability among ESG funds.[27]

<https://www.ey.com/en_in/insights/private-equity/how-esg-due-diligence-is-influencing-private-equity-deal- making> accessed 17 September 2025

[20] Green Buoy Consulting,'Why Private Equity is Prioritizing ESG in 2025', (*Green Buoy Consulting,* 28 January 2025),<https://www.greenbuoyconsulting.com/blog/why-private-equity-is-prioritizing-esg-in-2025> accessed 17 September 2025

[21] Securities and Exchange Board of India, Circular CIR/CFD/DIL/8/2012 dated August 13, 2012, <https://www.sebi.gov.in/sebi_data/attachdocs/1344915990072.pdf> accessed 17 September 2025

[22] EY India, 'BRSR reporting and the evolving ESG landscape in India', (*EY*, 21 April 2023), <https://www.ey.com/en_in/insights/climate-change-sustainability-services/brsr-reporting-and-the-evolving-esg- landscape-in-india> accessed 17 September 2025

[23] Ministry of Corporate Affairs, 'National Voluntary Guidelines (NVGs) on Social, Environmental and Economic Responsibilities of Business', (MCA,July 2011), <https://www.mca.gov.in/Ministry/latestnews/National_Voluntary_Guidelines_2011_12jul2011.pdf> accessed 17 September 2025

[24] Press Information Bureau, 'MCA releases national guidelines on responsible business conduct', (PIB, 13 March, 2019), <https://www.pib.gov.in/Pressreleaseshare.aspx?PRID=1568750> accessed 17 September 2025

[25] Securities and Exchange Board of India, Circular SEBI/HO/CFD/CMD-2/P/CIR/2021/562 dated May 10,2021, <https://www.sebi.gov.in/legal/circulars/may-2021/business-responsibility-and-sustainability-reporting-by-listed- entities_50096.html> accessed 17 September 2025

[26] S&R Associates, 'Regulatory Initiatives on ESG Disclosure Requirements in India',(*S&R Associates,* May 21, 2025) <https://www.snrlaw.in/regulatory-initiatives-on-esg-disclosure-requirements-in-india/> accessed 17 September 2025

[27] Securities and Exchange Board of India, Circular SEBI/HO/IMD/IMD-I –PoD1/P/CIR/2023/125 dated July 20, 2023, <https://www.sebi.gov.in/legal/circulars/jul-2023/new-category-of-mutual-fund-schemes-for-environmental- social-and-governance-esg-investing-and-related-disclosures-by-mutual-funds_74186.html> accessed 17 September 2025

In 2023, Securities and Exchange Board of India (SEBI) issued a circular to the issuers of Green Debt Securities to disclose the decision-making process used to determine project eligibility, include a statement of the issue's environmental sustainability objectives in the offer document, and explain the system or procedures for tracking the deployment of proceeds to avoid greenwashing.[28] The same circular mandates that issuers of Green Debt Securities make continuous disclosures to avoid misrepresentation. These disclosures include (i) the use of proceeds in line with the tracking method revealed in the offer document and verified by an external auditor; (ii) details regarding proceeds that have not been used; (iii) a list of the projects and assets to which proceeds have been allocated with disbursement amounts; and (iv) qualitative performance indicators and, when feasible, quantitative environmental impact metrics.[29] The rules which came into effect on April 1, 2023, were developed to align the framework for green debt securities with the Green Bond Principles (GBP) authorized by IOSCO in response to the growing interest in sustainable finance in India and around the world.[30]

In order to manage the use of the proceeds from a green debt security after it is issued and to verify internal tracking and impact reporting, the issuer must also choose a third-party reviewer.[31] In light of this, it is pertinent to examine SEBI's definition of "greenwashing" in its February 2023 circular. SEBI defines greenwashing as "making false, misleading, unsubstantiated, or otherwise incomplete claims about the sustainability of a product, service, or business operation", with the circular requiring issuers to avoid such claims.[32]

In August 2025, SEBI proposed revised norms for appointment of independent third-party reviewers/certifiers for Green Debt Securities which requires that the reviewer must be independent of the issuer, its directors, senior management, key managerial personnel and must possess specific expertise in assessing ESG debt securities.[33] While this is a draft circular and has not come into effect, it reflects the importance that SEBI gives to the issuance of Green Debt Securities and the ESG component of it.

It is pertinent to note that SEBI through its SEBI AIF regulations, 2012 does not explicitly incorporate ESG or any Green Debt disclosure or assurance requirement akin to SEBI's ESG debt securities framework. This is a clear regulatory gap considering the growing importance of AIF's that will be examined in the section below.

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[28] Securities and Exchange Board of India, Circular SEBI/HO/DDHS/DDHS-RACPOD1/P/CIR/2023/023 dated Febraury 06, 2023, <https://www.sebi.gov.in/legal/circulars/feb-2023/revised-disclosure-requirements-for-issuance-and-listing-of-green-debt-securities_67837.html> accessed 17 September 2025

[29] *Id.* paragraph 2 and continuous disclosure requirement

[30] PTI,'Sebi puts in place operational guidelines on green bonds', (*The Economic Times*,06 February 2023), <https://economictimes.indiatimes.com/markets/bonds/sebi-puts-in-place-operational-guidelines-on-green-bonds/> accessed 17 September 2025

[31] PTI, 'Sebi asks issuers for additional disclosure in guidelines on green bonds', (*Business Standard,* 06 February 2023), <https://www.business-standard.com/article/markets/sebi-asks-issuers-for-additional-disclosure-in-guidelines-on-green-bonds-123020601146_1.html>accessed 17 September 2025

[32] 'Greenwashing: SEBI February 3 Circular', (*Verist Law*), <https://www.veristlaw.in/post/sebi-circular-on-greenwashing> accessed 17 September 2025

[33] Securities and Exchange Board of India, Draft Circular for Public Comments dated August 01,2025,'Revised Norms for appointment of an independent third-party reviewer/ certifier for green debt security', <https://www.sebi.gov.in/reports-and-statistics/reports/aug-2025/revised-norms-for-appointment-of-an-independent- third-party-reviewer-certifier-for-green-debt-security_95767.html> accessed on 17 September 2025

Overview of Indian AIF Landscape

Growth and statutory recognition of Alternative Investment Funds (AIFs) in India

Alternative Investment funds (AIF's) are privately pooled investment vehicles that collect funds from sophisticated investors and invest based on a definitive policy for the investors' benefit.[34] Indian alternative investments are likely to see a more than five-fold growth to $ 2 trillion over the next decade.[35] Over the last five years (ending September 30, 2024), the industry has expanded at a compound annual growth rate (CAGR) of 31.44%, indicating its increasing integration into India's larger financial ecosystem.[36] Given that a sizable portion of these investments come from overseas investors or India-focused offshore funds as foreign direct investment (or "FDI"), AIFs are becoming a more alluring investment option for both foreign and non-resident Indian investors.[37]

India's regulatory framework for AIF's was established by the Securities and Exchange Board of India (Alternative Investment Funds) Regulations, 2012, which classifies AIFs into Category I (developmental/impact), Category II (private equity, debt funds, funds of funds), and Category III (hedge fund-style, employing complex or leverage strategies).[38]

AIF's were introduced with an aim to encourage capital influx into areas that were not easily accessible through traditional investment channels such as early-stage startups, emerging markets or real estate which were not sufficiently encouraged by the erstwhile SEBI (Venture Capital Funds) Regulations, 1996.[39] According to the SEBI AIF Regulations, 2012 an AIF is defined as a privately pooled investment vehicle that is created or incorporated in India as a trust, corporation, limited liability partnership (LLP), or body corporate.[40] Under Regulation 2(1)(b), an AIF is defined as a "privately pooled investment vehicle which collects funds from investors (Indian or foreign)" for investing in accordance with a defined investment policy for the benefit of its investors.[41]

According to Regulation 3 of the Regulation, AIF in India can be registered under three categories:

a) Category I: This category includes infrastructure funds, Small and Medium Enterprise Funds (SME), venture capital funds, social venture funds, and such other AIFs that the Government may cite.[42] The government offers incentives and concessions for this money because of their "positive spill over effect" on the economy.[43] Category II: This category includes AIFs

[34] Repaka Pavan Aditya, 'Alternate Investment Funds (AIFs): An Overview',(*ClearTax*, 06 May 2025) <https://cleartax.in/s/alternate-investment-funds>accessed on 17 September 2025

[35] Khushi Keswani, 'India's Alternative Investment market to grow five-fold in next decade', (*MoneyControl,* 17 December, 2024)<https://www.moneycontrol.com/news/business/markets/india-s-alternative-investment-market-to-grow-five-fold-in-next-decade-12891516.html> accessed 17 September 2025

[36] BW Online Bureau, 'India's Private Equity And Venture Capital Markets: A Key Pillar For Long-term Investors', (*BusinessWorld,* 21 March 2025), <https://www.businessworld.in/article/indias-private-equity-and-venture-capital-markets-a-key-pillar-for-long-term-investors-551281> accessed 17 September 2025

[37] Sai Krishna Bharathan & Ganesh Rao, 'Alternative Investment Funds in India: Unlocking Sophisticated Investment' (2017) 3 NLS Bus L Rev 1,5

[38] Securities and Exchange Board of India (Alternative Investment Funds) Regulations, 2012

[39] Sakshi Bagdi & R. R. Pragnyath, 'Unlocking the Potential of the Indian AIF Regime and SEBI's Role in It' (2023) 3 Indian J Integrated Rsch L 1,5

[40] The Securities and Exchange Board of India (Alternative Investment Funds) Regulations, Regulation 2(b), Gazette of India, pt. III sec. 4, (2012)

[41] SEBI (Alternative Investment Funds) Regulations, 2012, Reg 2(1)(b).

[42] Regulation 3(4) (a), Securities and Exchange Board of India (Alternative Investment Funds) Regulations, Gazette of India, pt. III sec. 4, (2012)

[43] Ananya Shruti & Shashank Saurabh, 'Alternative Investments: Analysing Its Practical Application in

such as private equity funds or debt funds that engage in borrowing to meet the everyday practical functions. The Government does not provide incentives and concessions for this category of funds.[44] Category III: This category includes hedge funds, funds that trade to gain short term returns or open ended funds. These involve complex and diverse trading approaches. The government does not provide incentives and concessions for this category of funds.[45] According to the regulations, an AIF cannot accept an investment from an investor for less than ₹1 crore (one crore rupees), suggesting that investors must have substantial financial resources (e.g. HNWIs, institutional investors etc.).[46]

II. The Role of Regulation in ESG Uptake

Current SEBI Regulatory Framework

SEBI (AIF) Regulations, 2012

As mentioned above, a clear regulatory gap exists as there is no explicit clause that requires AIFs or their managers to incorporate ESG criteria when making investment decisions or reporting performance. Although the Regulations do include Category I AIFs, like "Social Venture Funds" and "Infrastructure Funds," under categories deemed to have positive economic spillover effects, which may imply investment in socially or environmentally relevant sectors, the law does not impose any sustainability-related obligations, impact metrics, or ESG-due diligence on those AIFs. The regulatory text does not impose any explicit ESG mandates as of its 2012 framing, even though there are implicit overlaps (such as social venture funds, infrastructure, and risk disclosures). Additionally, no amendment has added a legally binding ESG requirement to the core AIF Regulations until 2025. ESG principles may be introduced by investor demand rather than regulatory mandate if specific Limited Partners in AIFs, such as Development Finance Institutions or institutional investors with ESG mandates, voluntarily demand ESG considerations in investment decisions and reporting.[47]

SEBI Stewardship Code,2020

Effective from July 01,2020, SEBI introduced a Stewardship Code applying to Mutual Funds (MFs) and Alternative Investment Funds (AIFs) investing in listed equities.[48] This was done to ienhance corporate governance in India and align institutional investor behavior with global sustainability best practices.[49] SEBI Stewardship code is recognised as an instrument for strengthening ESG engagement by institutional investors, aligning with global investor trends and regulatory expectations.[50] SEBI's stewardship code has aided institutional investors in integrating and interacting with ESG by fostering greater transparency and better ESG practices among Indian firms.[51]

India' (2020) 7 RGNUL Fin & Mercantile L Rev 139,150

[44] Regulation 3(4) (b), Securities and Exchange Board of India (Alternative Investment Funds) Regulations, Gazette of India, pt. III sec. 4, (2012).

[45] Regulation 3(4)(c), The Securities and Exchange Board of India (Alternative Investment Funds) Regulations, Gazette of India, pt. III sec. 4, (2012).

[46] SEBI (Alternative Investment Funds) Regulations, 2012, Salient Features; also Reg 2(1)(b) read with the clause on minimum investment

[47] Divya Arvind Mahadule,'Sustainable Finance: The Integration of ESG Criteria in Investment Strategies', IPE Journal of Management, Vol. 15, No 1,146

[48] Securities and Exchange Board of India, Circular No.: CIR/CFD/CMD1/168 /2019 dated December 24, 2019, <https://www.sebi.gov.in/legal/circulars/dec-2019/stewardship-code-for-all-mutual-funds-and-all-categories-of-aifs- in-relation-to-their-investment-in-listed-equities_45451.html> accessed 17 September 2025

[49] Securities and Exchange Board of India, 'Stewardship Code for Institutional Investors' (2020) <https://www.sebi.gov.in/sebi_data/attachdocs/1599489795960.pdf> accessed 17 September 2025

[50] 'SBI Funds Management adopts stewardship code as mandated by SEBI', The Economic Times (4 March 2020) <https://economictimes.com/markets/stocks/news/sbi-funds-management-adopts-stewardship-code-as-mandated-by- sebi/articleshow/74672530.cms> accessed 20 September 2025

[51] Pandey A & Sharma B, 'Does a Stewardship Code Improve the Firm Valuation and ESG Scores? Evidence from India' (2024) 18(3) Australasian Accounting, Business and Finance Journal 146

Business Responsibility and Sustainability Reporting (BRSR)

The Securities and Exchange Board of India (SEBI) established the Business Responsibility and Sustainability Reporting (BRSR) framework, which requires listed companies to report on their environmental, social, and governance (ESG) practices.[52] Although AIFs are not directly governed by BRSR, their investment strategies and due diligence procedures are indirectly impacted by the framework's relevance to listed investee companies.

In 2025, SEBI included Green Credit Program under BRSR framework wherein principle 6 of BRSR states that companies should respect and make efforts to protect and restore the environment, green credits produced by the listed company and their top ten value chain partners can be added as a leadership indicator.[53] This is in line with the Environment Audit Rules,2025 issued by the Ministry of Environment, Forests, and Climate Change, which aims to incorporate environmental factors into corporate reporting.[54]

ESG Policy Instruments

Corporate Social Responsibility Mandate under Companies Act

According to Section 135 of the Companies Act of 2013, any company that meets any of the following thresholds in the previous fiscal year—net worth of at least ₹500 crore, turnover of at least ₹1,000 crore, or net profit of at least ₹5 crore—must allocate at least 2% of its average net profits (calculated over the three fiscal years prior) to Corporate Social Responsibility (CSR) initiatives.[55]

RBI's climate-related disclosure guidelines – implications for lenders to AIF-backed entities

According to RBI's Draft Disclosure Framework on Climate-Related Financial Risks, 2024, Regulated Entities (REs), such as Scheduled Commercial Banks (SCBs), All-India Financial Institutions (AIFIs), and major non-bank financial companies (NBFCs), must reveal information in the "Governance; Strategy; Risk Management; Metrics & Targets" pillars, which includes the financed emissions of counterparties and investees.[56] Under the metrics & targets disclosure regime, any exposure by lenders to AIFs or downstream exposure of an AIF to a company, may be relevant because many AIF-backed companies are among those

<https://www.uowoajournals.org/aabfj/article/id/1040/download/pdf/>,accessed 20 September 2025

[52] Securities and Exchange Board of India, Circular No.: SEBI/HO/CFD/CFD-SEC-2/P/CIR/2023/122 dated July 12, 2023, <https://www.sebi.gov.in/legal/circulars/jul-2023/brsr-core-framework-for-assurance-and-esg-disclosures-for-value-chain_73854.html> accessed 17 September 2025

[53] PTI,'Sebi includes Green Credit Program under BRSR framework', (*Business Standard*, 28 March 2025), <https://www.business-standard.com/markets/news/sebi-includes-green-credit-program-under-brsr-framework-125032801374_1.html> accessed 17 September 2025

[54] Shreya Verma,'India notifies Environment Audit Rules, 2025 to bolster environmental compliance & governance', (*Down To Earth,*08 Septmber 2025)<https://www.downtoearth.org.in/environment/india-notifies- environment-audit-rules-2025-to-bolster-environmental-compliance-governance> accessed 17 September 2025

[55] The Companies Act, 2013, s 135(1)–(2), Schedule VII

[56] Reserve Bank of India, 'Draft Disclosure framework on Climate-related Financial Risks, 2024', RBI/2023-24/DOR.SFG.REC./30.01.021/2023-24 dated 28 Febraury 2024, <https://www.rbi.org.in/Scripts/bs_viewcontent.aspx?Id=4393> accessed 17 September 2025

investees/counterparties.[57] This is because such exposure may need to be measured and reported. The RBI changed the rules in March 2024 to require REs to make provisions only for the part of their investment in an AIF scheme that the AIF then invests in the RE's debtor company.[58]

MCA National Guidelines on Responsible Business Conduct (NGRBC)

The Ministry of Corporate Affairs (MCA) updated the 2011 National Voluntary Guidelines (NVGs) in March 2019 with the National Guidelines on Responsible Business Conduct (NGRBC), which is in line with the Sustainable Development Goals (SDGs), the UN Guiding Principles on Business & Human Rights, and other international standards.[59] The NGRBC set out nine principles, including that "businesses should conduct and govern themselves with integrity, and in a manner that is ethical, transparent and accountable", "provide goods and services in a manner that is sustainable and safe", "respect and make efforts to protect and restore the environment", and "promote inclusive growth and equitable development".[60]

Regulatory or governmental incentives for ESG for green-aligned AIFs in India

The government amended Section 2(14) of the Income Tax Act in the 2025 Indian Budget to guarantee that income from AIF investments in securities will be treated as capital gains (rather than possibly being treated as business income) for investors.[61] In terms of tax rate expectations, this gives investors more certainty and is advantageous for them, especially in ESG/green AIFs.Certain tax and regulatory benefits are available to AIFs established in the International Financial Services Centre (IFSC), such as GIFT City. For instance, Category I and II AIFs in the IFSC have tax pass-through status for Indian income tax purposes (with the exception of business income), and in certain situations, business income is eligible for a 100% tax holiday for [illegible] of the fifteen years.[62] For ESG-aligned funds that domicile or structure through IFSC, this can be leveraged. However, there are no explicit tax incentives for ESG / green-aligned AIF's in terms of tax deductions, lower tax rates, accelerated depreciation, or subsidies. While the 2015 Budget clarifies the tax treatment of AIF's, there is no specificity with respect to ESG.

[57] Saptaparno Ghosh, 'RBI's proposal for a disclosure framework to ascertain climate-related financial risks | Explained',(*The Hindu*, 12 March 2024), <https://www.thehindu.com/business/Economy/rbis-proposal-for-a-disclosure-framework-to-ascertain-climate-related-financial-risks-explained/article67938041> accessed 17, September 2025

[58] The Hindu Bureau,'RBI modifies norms for lendershaving exposure into AIF's', (*The Hindu,* 27 March 2024), <https://www.thehindu.com/business/rbi-modifies-norms-for-lenders-having-exposure-into-aifs/article67998937> accessed 17 September 2025

[59] Press Information Bureau, 'MCA releases national guidelines on responsible business conduct', (*PIB,* 13 March 2019),<https://www.pib.gov.in/Pressreleaseshare.aspx>accessed 17 September 2025

[60] Lexplosion, 'MCA releases National Guidelines on Responsible Business Conduct to assist businesses in complying with requirements of regulatory compliance', (*Lexplosion,* 20 March 2019), <https://lexplosion.in/mca- releases-national-guidelines-on-responsible-business-conduct-to-assist-businesses-in-complying-with-requirements- of-regulatory-compliance/> accessed 17 September 2025

[61] Sneha Shah, Ranjani Raghavan, 'Budget 2025 I Tax clarity for AIF's as income will now be treated as capital gains', (*Mint Markets,* 01 Febraury 2025), <https://www.livemint.com/market/budget-2025-tax-relief-for-aifs-as- income-will-now-be-treated-as-capital-gains-11738407920343.html> accessed 17 September 2025

[62] GIFT CFO, 'Alternative Investment Funds (AIFs) in GIFT City IFSCA', (*GIFT CFO,*03 January 2025),<https://www.giftcfo.com/post/unlocking-opportunities-in-investment-funds-a-guide-to-ifsca-fund- management-regulations-2022> accessed 17 September 2025

Limitations of the Current Framework

As of now, AIFs are not required by the SEBI (AIF) Regulations, 2012 to include environmental, social, or governance considerations in their investment strategies, disclosures, or reporting requirements.[63] Even for large AIFs with substantial institutional or foreign LP exposure, there is no comparable ESG-specific disclosure, screening, or reporting framework for AIFs, despite SEBI having released ESG-related guidelines for mutual funds and listed companies.[64] This regulatory void exists even though SEBI encourages "institutional investors like AIFs" to encourage ESG practices among their investee companies, especially in the unlisted sector.[65]

India is yet to formally adopt a sustainable finance taxonomy that applies to private capital vehicles such as AIFs.[66] AIFs are not currently required to publish sustainability-related disclosures in the same manner as listed entities, nor does SEBI run a centralized ESG monitoring framework for them.[67] In contrast to listed companies that are required to disclose BRSR Core information and obtain third-party assurance from FY 2023–2024, AIFs are exempt from the ESG compliance certification, audit, and assurance requirements under Indian law.[68] As a necessary consequence, enforcement risks for ESG violations or misstatements by AIFs remain low and ESG mislabelling is not subject to specific penal provisions under SEBI AIF regulations.[69] It is pertinent to note that the SEBI (Alternative Investment Funds) Regulations, 2012,do not contain any explicit ESG mandates, nor do they require ESG-related disclosures which makes the regulatory landscape nascent for ESG integration in AIF's. Since SEBI's Business Responsibility and Sustainability Reporting (BRSR) framework applies to the top 1,000 listed entities, ESG expectations in the AIF space are primarily shaped by indirect regulatory nudges and soft law tools.[70] Despite this disjointed structure, India's ESG regulatory environment seems to be heading towards harmonisation with global sustainable finance taxonomies, and enhanced supervisory frameworks with AIF's role in spearheading ESG in unlisted firms.[71]

III. Theoretical Foundations of Fiduciary Duty and Fiduciary Duties in Indian Fund Law

The traditional legal underpinnings of fiduciary duty are based on the duties of loyalty, caution, financial prudence and care, especially as they relate to fund managers and general partners (GPs) in private capital

[63] SEBI (Alternative Investment Funds) Regulations 2012, *see also* Schedule IV (no ESG clause).

[64] Securities and Exchange Board of India, 'New category of Mutual Fund schemes for Environmental, Social and Governance ("ESG") Investing and related disclosures by Mutual Funds',Circular no. SEBI/HO/IMD/IMD-I – PoD1/P/CIR/2023/125 dated 20 July 2023, <https://www.sebi.gov.in/legal/circulars/jul-2023/new-category-of- mutual-fund-schemes-for-environmental-social-and-governance-esg-investing-and-related-disclosures-by-mutual- funds_74186.html>

[65] Riddhima Bhatnagar, 'SEBI encourages AIFs to push ESG compliance among their investee companies',(*Business Today,* 15 July 2025), <https://www.businesstoday.in/latest/corporate/story/sebi-encourages-aifs-to-push-esg-compliance-among-their-investee-companies-484787-2025-07-15> accessed 17 September 2025

[66] Sarthak Shukla,'Sustainable Finance Taxonomy for India: Just another taxonomy or a 'just' taxonomy?', (*Heinrich-Böll-Stiftung,* 01 August 2024), <https://in.boell.org/en/sustainable-finance-taxonomy> accessed 17, September 2025

[67] SEBI (Alternative Investment Funds) Regulations 2012, *see also* SEBI (LODR) Regulations 2015, which mandate ESG/BRSR disclosures for top 1,000 listed entities.

[68] *Supra* note 52

[69] SEBI Act 1992 s 15HB (general penalty for contravention with no specific penalty).

[70] *Supra* note 52.

[71] BS reporter, 'AIFs must lead ESG push in unlisted firms, says Sebi's Ruchi Chojer', (*Business Standard,* 15 July 2025), <https://www.business-standard.com/markets/news/aifs-must-lead-esg-adoption-in-unlisted-space-says-sebi-official-125071501185_1.html> accessed on 17 September 2025

structures like Alternative Investment Funds (AIFs).[72] When taken as a whole, these responsibilities create a fundamental goal: to maximize risk-adjusted financial returns for the beneficiaries, guaranteeing that capital is allocated effectively and without jeopardizing LPs' financial interests.[73]

In countries like India, where fund agreements, SEBI regulations, and common law principles all influence fiduciary standards in private funds, the question of whether fiduciaries have the right to incorporate non-financial considerations like ESG emerges.[74] However, the treatment of ESG under fiduciary norms for AIFs remains a theoretically contentious and practically cautious area in India due to the lack of clear legal clarification or regulatory guidance.[75]

Companies Act, 2013 – Section 166: Directors as Fiduciaries

The fiduciary duties of company directors are codified in Section 166 of the Companies behave, 2013, which mandates that they behave in the best interests of the business, shareholders, employees, the community, and the environment.[76] Using independent judgement, avoiding conflicts of interest, avoiding undue benefits or advantages, and operating in good faith are some of these obligations.[77]

When Alternative Investment Funds (AIFs) purchase substantial or controlling shares in portfolio companies, usually through private equity or venture capital strategies under Category I or II AIFs, Section 166 becomes relevant. In these situations, the AIF may nominate directors to the investee company's board or obtain board representation, establishing a dual role whereby the nominee director must act in the AIF's (and its investors') best interests while also adhering to Section 166.[78] SEBI guidelines and Indian jurisprudence confirm that nominee directors are required to act as the company's fiduciaries and are not merely representatives of their appointing shareholders.[79] When the long-term interests of the business or its wider stakeholders clash with the AIF's investment objectives, like exit-driven returns, this could lead to conflict.[80]

Furthermore, Section 166(2) is frequently read to allow, directors to take into account interests other than shareholders, like the effects on the environment and society.[81] This is conceptually consistent with ESG integration. However, the fiduciary balancing act faced by AIF-linked directors is still unclear, though, as there is still a lack of judicial guidance in India regarding how to balance ESG priorities with the requirement to maximize returns for AIF beneficiaries (LPs).[82]

[72] Stephen Cork, 'Understanding the Role of a Fiduciary in Fund Management', (*Cork Gully*,16 March 2024), <https://corkgullyassetmanagers.com/understanding-the-role-of-a-fiduciary-in-fund-management-3/> accessed on 17 September 2025

[73] Benjamin J Richardson, 'Fiduciary Law and Responsible Investing' (2013) 36(2) University of British Columbia Law Review 205, 207

[74] SEBI (Alternative Investment Funds) Regulations 2012, *see also* Regulation 21; Limited Partnership Agreements (LPAs) govern fiduciary obligations contractually

[75] Tanvi Soni and Umakanth Varottil, 'Fiduciary Duty and ESG Integration in India's Investment Funds' (2023) 15 NUJS Law Review 45, 49.

[76] The Companies Act 2013, s 166.

[77] The Companies Act 2013, s 166(3)–(6).

[78] V Umakanth, 'Nominee Directors and Corporate Governance' (2010) 22(2) National Law School of India Review 28, 32.

[79] *LIC of India v Escorts Ltd* (1986) AIR 1370 (SC); *see also* SEBI, 'Corporate Governance for Listed Entities' (LODR Regulations 2015) reg 25

[80] Vikramaditya Khanna, 'Nominee Directors and Corporate Governance: Managing the Dual Role Dilemma' (2017) 9 NUJS Law Review 89, 91

[81] The Companies Act 2013, s 166(2)

[82] Risham Garg, 'ESG and Directors' Duties: India's Emerging Framework' (2023) 4(1) Journal of Business Law and Policy 15, 22

SEBI (AIF) Regulations, 2012: Duties of investment managers and trustees

The SEBI (Alternative Investment Funds) Regulations, 2012, place a fiduciary duty on the investment managers and trustees (or sponsors) of AIFs who "shall act in a fiduciary capacity towards its investors and shall disclose to the investors all conflicts of interest as and when they arise or seem likely to arise."[83] The duty of loyalty is encapsulated in this provision, which mandates that the manager actively manage or disclose any potential conflicts of interest and put the interests of investors, usually limited partners,above its own or related parties.[84]

According to Regulation 2(1)(w), the trustee or sponsor is principally in charge of supervision and governance, which includes making sure the AIF is run in accordance with fund documents and relevant laws.[85] Regulation 4(g) imposes a duty of competence and diligence on the sponsor or manager by requiring them to have the infrastructure and personnel needed to carry out an AIF's operations.[86] Regulation 20 establishes a duty of consistency and transparency by requiring the manager to make sure that the AIF's investments are made in line with its declared investment strategy and restrictions as communicated to investors.[87] The regulations clearly lay down the fiduciary duties of managers or sponsor in the context of AIFs.

Private Placement Memorandums and Limited Partneship Agreements

The Limited Partnership Agreement (LPA) and the Private Placement Memorandum (PPM) are the main contractual tools used in the Indian AIF ecosystem to operationalize fiduciary duties and, frequently, to customize them above and beyond the SEBI-mandated minimum.[88] At the time of registration, all AIFs are required by the SEBI (Alternative Investment Funds) Regulations, 2012, to submit a PPM that includes information on their investment strategy, governance structure, fee arrangements, conflict-of-interest policies, and risk factors.[89]

Regulation 11(2)(a) incorporates a duty of transparency and informed consent into the PPM itself by requiring investors' consent for any significant changes to the fund's strategy or governance.[90]

Fiduciary duties: Tension or Compatibility with ESG?

Particularly in the context of private capital structures like Alternative Investment Funds (AIFs), the question of whether Environmental, Social, and Governance (ESG) integration is compatible with fiduciary duty has generated an ongoing legal and financial debate.[91] While the fiduciary duties have been traditionally viewed only in the financial sense, some commentators view ESG as a diversion from the financial mandate, particularly when ESG initiatives have immediate financial consequences or are seen as ideologically aligned.[92]

[83] The SEBI (Alternative Investment Funds) Regulations, 2012, Reg 21

[84] Umakanth Varottil, 'Fiduciary Duties of Investment Managers in India: A Functional Approach' (2021) 14(2) NUJS Law Review 115, 118.

[85] SEBI (Alternative Investment Funds) Regulations 2012, reg 2(1)(w); *see also* reg 4(b).

[86] *Id.* reg 2 (g)

[87] *Id.* reg 20

[88] Umakanth Varottil, 'Private Equity and Fiduciary Governance in India' (2020) 13(1) Indian Journal of Law and Technology 42, 45.

[89] SEBI (Alternative Investment Funds) Regulations 2012, reg 3(4); Vinod Kothari Consultants, 'SEBI introduces enhanced disclosure and standardized reporting for AIFs', (*Vinod Kothafri Consultants,* 24 Febraury,2020), <https://vinodkothari.com/2020/02/standard-reporting-for-aifs/#_ftn3> accessed 17 September 2025

[90] SEBI (Alternative Investment Funds) Regulations 2012, reg 11(2)(a)

[91] *Supra* note 84 at 81.

[92] Stephen Bainbridge, 'The Case Against Fiduciary ESG' (2020) 87(1) University of Chicago L Rev 45, 48.

However, a growing corpus of legal and economic literature acknowledges that because ESG factors impact portfolio risk, valuation, and long-term performance, they are clearly within the purview of fiduciary duty when they are financially material.[93]

Global Legal Approaches to the nexus between ESG and fiduciary duties

United Kingdom, United States and European Union

Fiduciaries are not only allowed but also required, when financially significant, to take ESG factors, particularly climate-related risks, into account when performing their duties, according to the Law Commission's 2014 report.[94] The report made it clear that trustees must act sensibly and in the best long-term interests of their beneficiaries, which may include considering environmental and social risks when financially relevant, rather than trying to maximize returns at all costs.[95] Crucially, the Commission confirmed that systemic risks, including climate change, can be considered fiduciary concerns if they have the potential to impact long-term investment results.[96] For institutional investors who incorporate ESG into their investment decisions as part of risk management and value preservation strategies rather than as a matter of moral preference, this nuanced interpretation offers legal comfort.[97]

Due to divergent interpretations of the Employee Retirement Income Security Act (ERISA), the discussion surrounding ESG and fiduciary duty has become more heated in the US.[98] Under various administrations, the Department of Labor (DOL) has issued varying regulations, first prohibiting ESG unless it was financially justified and then, more recently, in 2022, confirming that ESG could be taken into account when it aligned with fiduciary principles.[99] The Securities and Exchange Commission (SEC) announced on June 12, 2025, that it was rescinding a number of proposed rulemakings with respect to the Commission's 2022 proposal, "Enhanced Disclosures by Certain Investment Advisers and Investment Companies About Environmental, Social, and Governance Investment Practices," where business development companies, registered investment companies, registered investment advisers, and some exempt advisers would have had to submit more details about how ESG considerations affect their investment choices.[100]

Legislation in the European Union has strengthened the fiduciary integration of ESG. Treating ESG as a crucial part of responsible risk management, the Sustainable Finance Disclosure Regulation (SFDR) requires asset managers and institutional investors to reveal how they

[93] Max M Schanzenbach and Robert H Sitkoff, 'Reconciling Fiduciary Duty and Social Conscience: The Law and Economics of ESG Investing by a Trustee' (2020) 72 Stanford L Rev 381, 412

[94] Law Commission (England and Wales), 'Fiduciary Duties of Investment Intermediaries' (Law Com No 350, 2014) paras 6.69–6.81

[95] *Id.* paras 6.80–6.81

[96] *Id.* para 6.79

[97] Benjamin J Richardson, 'Fiduciary Law and Responsible Investing' (2013) 36(2) UBC L Rev 205, 213

[98] Jed S Rakoff, 'Fiduciary Duty in the Age of ESG: ERISA's Evolving Boundaries' (2022) 45(3) Harvard Journal on Legislation 341, 343

[99] U.S Department of Labour, 'Final Rule on Prudence and Loyalty in Selecting Plan Investments and Exercising Shareholder Rights', (U.S DoL, 22 November 2022) ,<https://www.dol.gov/agencies/ebsa/about-ebsa/our-activities/resource-center/fact-sheets/final-rule-on-prudence-and-loyalty-in-selecting-plan-investments-and- exercising-shareholder-rights> access 17 September 2025

[100] Latham & Watkins LLP, 'SEC Withdraws Proposed Rule on ESG Disclosures for Investment Advisers and Investment Companies', (*Latham & Watkins LLP,* 26 June 2025), <https://www.lw.com/en/insights/sec-withdraws- proposed-rule-on-esg-disclosures-for-investment-advisers-and-investment-companies> accessed 17 Septmber 2025

incorporate sustainability risks into investment decision.[101]

When combined, these global trends show a growing understanding that fiduciary duty and ESG are not mutually exclusive, but rather that they are increasingly required, especially in cases where ESG risks are systemically or financially significant.For countries like India, where institutional investing and AIF fiduciary standards are still developing, these precedents are persuasively relevant.

Arguments for Reinterpreting Indian Fiduciary Law

A purposive interpretation of Section 166 of the Companies Act, 2013 provides a coherent doctrinal basis for incorporating ESG considerations within Indian fiduciary law.[102] Section 166(2) of the statute requires directors to act "in good faith in order to promote the objects of the company for the benefit of its members as a whole, and in the best interests of the company, its employees, the shareholders, the community, and for the protection of environment."[103] This clear mention of environmental and community protection already establishes a legal framework for integrating ESG principles into corporate governance, setting Indian law apart from models that are solely focused on shareholders.

Climate-related risks are therefore best understood as financially material investment risks, rather than externalities lying outside the scope of fiduciary concern.[104] The idea that ESG falls within, not outside, fiduciary boundaries has been further supported by the growing reference to sustainability by Indian courts and regulators when interpreting corporate responsibility, such as in relation to Business Responsibility and Sustainability Reporting (BRSR) and CSR obligations.[105]

Investment managers, directors, and trustees—particularly those operating within the AIF ecosystem—face increasing legal, financial, and reputational exposure where foreseeable ESG risks are excluded from fiduciary decision-making.[106] The legal risk of omission, which holds fiduciaries accountable in future lawsuits for neglecting to take into account or take action on predictable ESG-related risks, especially those related to climate change, is one of the most significant new threats.[107] Therefore, failing to develop fiduciary standards not only erodes the legitimacy of governance but also goes against the fundamental fiduciary duty principle outlined in Section 166 of the Companies Act, 2013: acting in the long-term interests of beneficiaries.[108]

Conclusion and Suggestions

This analysis demonstrates that incorporating Environmental, Social, and Governance (ESG) considerations into the regulation of Indian Alternative Investment Funds is not merely permissible, but fiduciary-consistent. ESG integration has become indispensable to AIF regulation due to its direct impact on financial risk, regulatory compliance, and long-term investor value.ESG factors, especially those related to climate change, can and should be regarded as financially significant and, as such, fall within the purview of a fiduciary's duties to act in the long-term interests of beneficiaries, according to a purposive interpretation of fiduciary duties under Section 166 of

[101] Regulation (EU) 2019/2088 on sustainability-related disclosures in the financial services sector [2019] OJ L317/1 (SFDR), arts 3–7
[102] The Companies Act 2013, s 166.
[103] *Id.* s 166 (2)
[104] Umakanth Varottil and Vikramaditya Khanna, 'Climate Governance and Corporate Law in India' (2023) 14 Indian Journal of Corporate Law 21, 30
[105] *Supra* note 6; see also The Companies Act, 2013, s 125
[106] *Supra* note 84 at 85
[107] Sarah Barker, 'Directors' Duties and Climate Risk: Australia's Emerging Legal Framework' (2020) 39 Environmental and Planning Law Journal 12, 15
[108] The Companies Act 2013, s 166(2)

the Companies Act, 2013 and the SEBI (AIF) Regulations, 2012.[109]

In terms of ESG, the Indian legal system that oversees AIFs is still disjointed and undeveloped. Private fund managers are not subject to legally binding ESG requirements, and relevant soft-law tools (like the SEBI Stewardship Codes) are still optional and only partially enforced. Accordingly, fiduciary duties and ESG integration should be understood as mutually reinforcing mechanisms for investor protection and sustainable capital formation.

The paper broadly proposes four major suggestions and policy recommendations:

(a) **Legal Clarification of Fiduciary Duty to Include ESG**

Financially material ESG risks, especially those with systemic or long-term relevance, are explicitly included in fiduciary obligations under Section 166 of the Companies Act and SEBI regulations, according to interpretive guidance issued by Parliament or SEBI.

(b) **Mandate ESG Disclosure for AIF Managers**

In accordance with developing international standards like TCFD and SFDR, tha paper proposes that SEBI should provide unlisted investee companies and AIF managers with Business Responsibility and Sustainability Reporting (BRSR) or a customized ESG disclosure regime.

(c) **Develop an India-Specific ESG Taxonomy**

To direct fund-level ESG alignment, India requires a standardized, legally binding ESG taxonomy that is in line with global best practices but customized to national development priorities

(d) **Create Stewardship Responsibilities for Private Fund Managers**

The SEBI Stewardship Code for Mutual Funds and Insurers should serve as the model for a mandatory stewardship code for AIF managers that calls for accountability to LPs, transparency in voting, and involvement on ESG issues.

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[109] The Companies Act 2013, s 166(2); SEBI (Alternative Investment Funds) Regulations 2012, reg 21.

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MODERN SLAVERY BY DESIGN: CASTE, LAW, AND MANUAL SCAVENGING IN INDIA

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ABSTRACT

Manual scavenging is a legally sanctioned form of caste-based slavery that persists in India under the pretext of sanitation work. This paper argues that manual scavenging, as it exists today in India, qualifies as modern slavery under international law. Despite legal protections such as the Prohibition of Employment as Manual Scavengers and Their Rehabilitation Act of 2013, the 1956 Supplementary Convention on the Abolition of Slavery, and ILO Conventions, along with constitutional guarantees under Articles 17 and 23, the practice continues due to institutional apathy and legal denial.

Using a qualitative doctrinal approach, this paper thoroughly analyses the gap between legal bans and ground realities, situating manual scavenging within international frameworks governing slavery, servitude, and forced labour, while advocating structural reforms for its eradication.

Manual scavenging persists because of ongoing caste-driven exploitation. Comparative insights from successful abolitionist efforts in countries such as Mauritania, Nepal, Brazil, the United Kingdom, and South Africa highlight the importance of dismantling ingrained social hierarchies, ensuring transparent legal accountability, and fostering genuine inclusion for eradication. Reforms need to go beyond statutory amendments by addressing vote-driven politics, the informal and precarious nature of this work, and ongoing bureaucratic inertia. The research maintains that only strong enforcement, societal change, and resistance to superficial compliance can challenge the systemic denial that sustains caste-based slavery. By framing manual scavenging as a breach of both domestic and international human rights standards, the paper urges urgent, structural interventions based on accountability and social justice to secure true liberation for those enduring this long-standing oppression.

Keywords: Manual scavenging, modern slavery, international legislation, comparative analysis, Barriers.

1. INTRODUCTION

India abolished untouchability in 1950 and outlawed manual scavenging in 1993; however, the practice endures in every village, town and city of India. Dalit communities and similar lower-caste strata are routinely forced to clean dry latrines, unclog drains, and enter sewers without protective equipment. These are not isolated incidents or administrative lapses; they are symptoms of structural casteism reinforced by legal denial, policy fragmentation, and institutional indifference.

To truly understand this malpractice, one must situate it not only in the post-colonial and constitutional framework but also within the deeper historical and societal consciousness of the country. It is a tragic irony that a civilisation which reveres the spiritual devotion of *Shabari*—an old *Adivasi* woman from the Ramayana who offered berries to Lord Ram with utmost humility—is the same civilisation that later constructed an unyielding social order where women like Shabari's descendants would be condemned to clean human waste. Even her symbolic inclusion did not translate into social emancipation for those like her. Instead, the caste system evolved to institutionalise humiliation as a duty, divinity as a monopoly, and cleanliness as a curse borne by the lowest caste. Centuries before the Indian Constitution, even Gautama Buddha rejected the caste hierarchy and invited untouchables and manual workers into his Sangha. He famously accepted food from *Sopaka*, the so-called "untouchable" youth and publicly declared that purity lies not in birth but in conduct. However, today also, India's sanitation workers remain outside

the bounds of social and legal dignity—trapped in roles that replicate caste-based bondage under modern garb.

This paper makes a straightforward but radical claim: *manual scavenging, as it exists in India today, constitutes a form of modern slavery under international law*. It is neither a "sanitation issue" nor a simple "implementation failure." It is an organised caste-based denial of human dignity through labour imposed by descent—a form of social death repackaged as public service. Their caste continues to make them salves of the system from birth.[1] This paper refuses to treat manual scavenging as an outdated tradition or a bureaucratic shortfall. Instead, it frames the practice within the legal architecture of slavery and servitude, as defined by international human rights instruments. This paper starts by providing a sociological and historical overview of caste and untouchability in relation to sanitation work. Thereafter, it outlines the Indian & International legal frameworks, and then evaluates the gap between India's legal commitments and ground-level realities, conducting a comparative legal analysis to examine institutional and structural failures and suggest reform strategies.

2. Caste, Untouchability, and the Persistence of Manual Scavenging

The persistent existence of manual scavenging in India is not simply a product of poverty, poor governance, or urban-rural disparities but is the direct outcome of the caste system mandating the assignment of sanitation work to the lowest strata of society. This arrangement has now been so deeply entrenched in the social order that it necessitates the degradation of some as a cost of the purity of others. Although Article 17 abolishes untouchability, Article 23 prohibits forced labour. The social contract envisioned by the framers remains fractured, as for the *Valmikis* in North India, *Madigas* in the South, and the *Paraiyars* and *Arundhathiyars* in Tamil Nadu, being sanitation labour is not a job; it is an inheritance passed down across generations.

The *Manusmriti*, the ancient Hindu text often cited as the ideological bedrock of the varna system in India, explicitly prescribes humiliating and dehumanising occupations for Shudras. It declares that "*a Shudra shall serve the Brahmana...removing excreta, sweeping, and cleaning*". Such moral scaffolding of caste continues to shape the Indian subconscious, legitimising the social exclusion of sanitation workers while obscuring the violence embedded in their labour. The social reality of India's modern caste economy is that those born into the "lowest" castes are systematically denied access to land, education, or secure employment, leaving sanitation work as one of the few options available. The illusion of choice collapses when structural coercion becomes the only pathway to survival. A 2023 field investigation by the Human Rights Law Network (HRLN) revealed that in Bihar and Uttar Pradesh, young Dalit boys were recruited to clean sewers in exchange for daily meals or meager wages—often without safety gear or contracts. In many cases, municipal authorities collude with private contractors to outsource such work, thereby avoiding accountability while perpetuating caste-based servitude under the guise of informal employment.[2] A 2022 report by the Centre for Equity Studies noted that nearly 80% of female manual scavengers were engaged in cleaning dry latrines in rural households. Their labour is not only physically toxic but socially stigmatized; they are barred from entering temples, segregated at community events and denied basic dignity in death as in life.[3]

The Indian Judiciary has also acknowledged this link between caste and sanitation work. In *Safai Karamchari Andolan v. Union of India*, the Supreme

[1] *The Manusmriti (Laws of Manu)*, ch 10, verses 121–123 (c 2nd century BCE–2nd century CE).

[2] Human Rights Law Network, *Field Investigation Report on Manual Scavenging in Bihar and Uttar Pradesh* (2023).

[3] Centre for Equity Studies, *Women Manual Scavengers: A Study of Gender and Caste-based Exclusion* (2022).

Court unequivocally stated that the practice of manual scavenging is a "denial of constitutional guarantees" and directed all states to identify and rehabilitate affected workers.[4] However, implementation of the Apex Court orders remains elusive. States routinely underreport figures, and even fewer prosecutions are made under the Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013. For instance, 32-year-old Suresh Kumar died in 2023 while cleaning a septic tank in Ghaziabad, Uttar Pradesh, despite clear Supreme Court orders mandating ₹10 lakh compensation for such deaths, his family received only partial payment after more than a year of legal wrangling. His widow told rights groups, "*Yeh kaam humare kismat mein likha hai*" (This work is written in our fate)—a chilling testament to the fatalism caste inscribes into social reality.[5] Meanwhile, State narratives increasingly claim that manual scavenging has been "eliminated." This deliberate erasure is not only bureaucratic—it is ideological. It allows the Indian State to present itself as progressive while concealing ongoing caste atrocities beneath the rhetoric of cleanliness and development. Dr. Ambedkar warned in his 1936 speech, Annihilation of Caste, that social reform must precede political reform. "*You cannot build anything on the foundation of caste. You cannot build up a nation, you cannot build up a morality.*"[6] The continued existence of manual scavenging, therefore, is not just a failure of law; it is a betrayal of the republic's founding ethos.

3. LEGISLATIVE FRAMEWORK, JUDICIAL INTERPRETATION AND GAP IDENTIFICATION.

India's legal and constitutional structure explicitly pledges to eradicate caste-based labour and untouchability, but the reality of manual scavenging underscores the ongoing disconnect between the promise and the actual application of the law. This failure is jurisprudential in nature rather than just administrative.

Despite layered legal protections, the State machinery has failed to operationalise them in a manner that dismantles the structural underpinnings of caste-based labour exploitation. The Indian Constitution's unwavering commitment to human dignity is expressed in Article 17, which outlaw's untouchability "in any form." "Traffic in human beings and beggars, and other similar forms of forced labour" is forbidden under Article 23. Furthermore, protection from humiliating labour has been read broadly under Article 21, which provides the right to life with dignity. The Supreme Court ruled in *Bandhua Mukti Morcha v. Union of India* that, even in cases where there is no physical coercion, forced labour violates the right to life and liberty under Article 21 since consent is vitiated by social or economic pressure.[7]

3.1 LEGISLATIVE FRAMEWORK

India's statutory response to manual scavenging has evolved over the decades but has remained fragmented, weakly enforced, and largely symbolic. The first formal attempt to implement Article 17 was the Protection of Civil Rights Act of 1955; nevertheless, its implementation has traditionally been subpar, with relatively low conviction rates and little deterrent impact. The first law to specifically address manual scavenging was the Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993. It prohibited the construction of dry latrines and the employment of persons for their manual cleaning; however, as the Act failed to define "manual scavenging" comprehensively, it did not mandate rehabilitation, and was poorly enforced by States, as in many States the Act was not notified altogether, hence, the 1993 Act was rendered legally

[4] *Safai Karamchari Andolan v Union of India* (2014) 11 SCC 224 (India).

[5] Field Interview with Widow of Suresh Kumar, Ghaziabad (2023) (on file with authors).

[6] BR Ambedkar, *Annihilation of Caste* (1936).

[7] *Bandhua Mukti Morcha v Union of India* (1984) 3 SCC 161 (India).

inert.[8] Last but not least, the 1993 Act was abolished, and the Prohibition of Employment as Manual Scavengers and Their Rehabilitation Act, 2013 was passed in response to local and international criticism. The Act defined the term "manual scavenger" legally and forbade hiring someone to manually clean septic tanks, open drains, or dry latrines without safety equipment and mandates comprehensive rehabilitation, including cash assistance, skill training, and alternative employment, however, still the new Act suffered from limitation of (1) weak enforcement mechanism due to absence of independent body with prosecutorial powers or establishment of special courts. (2) non-criminalisation of Act violations because offences under the 2013 Act are punishable by bail and compound interest, which undermines deterrence, and (3) Implementation at the state and municipal levels is inconsistent since many governments have not set up the necessary vigilance committees or finished identification surveys. According to the Ministry of Social Justice and Empowerment data, just 47% of urban local authorities had completely complied with the 2013 Act's requirements as of 2024.[9] The lack of an explicit mention of caste in the 2013 Act is a conspicuous omission. Instead of being viewed as a caste-based infringement, manual scavenging is still considered a "public health hazard" or a "sanitation problem" under the Act's framework. This causes the problem to become politicised and merely provides technical fixes, such as awareness campaigns, while neglecting the problem's profoundly social roots. Moreover, the absence of command responsibility on Municipal Commissioners, senior bureaucrats or elected representatives and no provision of accountability. The institutional impunity flourishes, and victims are left without legal standing, as there is no public defender system or *pro bono* scheme.

3.2 JUDICIAL INTERPRETATION

The Supreme Court of India imposed strict guidelines in *Safai Karamchari Andolan v. Union of India (2014)* to end manual scavenging. These guidelines include: (1) promptly identifying manual scavengers, (2) compensation of ₹10 lakhs to the families of sewer and septic tank victims, (3) prosecution of responsible officials, and strict monitoring of municipal corporations and railways. Despite a clear mandate, most State governments still fail to act decisively. As of 2023, the National Commission for Safai Karamcharis (NCSK) confirmed that fewer than 60% of sewer deaths had led to full compensation, and only 31 FIRs had been registered under the 2013 Act in the past five years.[10] While the judiciary has occasionally intervened in the sorry state of affairs but due to a lack of legislative political will, no direct structural reforms have happened.

4. INTERNATIONAL LEGAL FRAMEWORK ON MODERN SLAVERY

Manual scavenging also violates the well-established jus cogens (prohibition of slavery, servitude, and forced labour) norms of international human rights law. Slavery was defined as "the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised" in the 1926 Slavery Convention, which was accepted by India and endorsed by the League of Nations, the forerunner of the United Nations."[11] The definition is expanded to encompass organizations and behaviours "similar to slavery" by the 1956 Supplementary Convention on the Abolition of Slavery."[12] Slavery was defined as any "institution or practice whereby a person is born into a status… and is compelled to render services to another" in Article 1(d) of the 1956 Convention. This Convention specifically targets hereditary, caste-based labour regimes, including bonded labour, feudal

[8] Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act 1993, No 46, Acts of Parliament, 1993 (India)

[9] Ministry of Social Justice and Empowerment, *Implementation Status Report* (2024) (India).

[10] National Commission for Safai Karamcharis, *Annual Report 2023* (India).

[11] Slavery Convention art 1, 25 September 1926, 60 LNTS 253.

[12] Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, 7 September 1956, 266 UNTS 3

duties, and slavery based on ancestry. Manual scavenging is a good example of this. In addition to violating these Conventions, India is undermining the fundamental principles of equality and human dignity that form the foundation of international law by failing to end this type of descent-based labour.

4.1 ILO CONVENTIONS: FORCED LABOUR AND STRUCTURAL COERCION

The International Labour Organisation's Agreement 29th (1930), which India signed in 1954, defines forced labour as "any work or service which is exacted from any person under the threat of any penalty and for which the said person has not offered himself voluntarily."[13] The ILO's Operational Indicators of Forced Labour (2012) include the following criteria: (1) abuse of vulnerability, (2) restriction of mobility, (3) deception, (4) isolation, (5) intimidation and threats, (6) retention of identification papers, (7) withholding of earnings, and (8) debt bondage. All of these markers exist in manual scavenging cultures. The ILO Protocol to Convention No. 29 (2014) urges member states to improve victims' prevention, protection, and access to justice. Despite being a signatory to India's own periodic reports to the ILO, the execution of these obligations is fragmented, with little or no coordination between the labour, sanitation, and social justice ministries.[14]

4.2 UNITED NATIONS PROTOCOL AND CONVENTIONS

The Palermo Protocol, also known as the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (2000), mandates that States Parties make slave labour trafficking illegal, particularly when consent is tainted by "abuse of power or of a position of vulnerability."[15] Caste-based sanitation worker meets these criteria. India ratified this Protocol[16] in 2011, but the domestic legislation, *the Trafficking in Persons (Prevention, Care and Rehabilitation) Bill*[17], though repeatedly introduced, has not been enacted to date; further, the Bill lacks caste-specific language. By failing to recognise caste-based coercion as trafficking, India weakens its own legal architecture and violates the principle of effect utile, i.e., the obligation to give meaningful effect to treaty obligations.

Under Article 8 of the International Covenant on Civil and Political Rights (ICCPR), to which India has been a member since 1979, slavery, servitude, and forced labour are forbidden. The Human Rights Committee[18] highlighted in its General Comment No. 28 that caste and other forms of discrimination based on ancestry were incompatible with human dignity and needed to be addressed under Articles 2 and 26 as well.[19] Notably, in 2009 Concluding Observations[20], the Committee encouraged India to take decisive action to end manual scavenging and voiced worry about its widespread occurrence. These include prosecuting

[13] Convention Concerning Forced or Compulsory Labour art 2, 28 June 1930, 39 UNTS 55.

[14] Government of India, *Periodic Report to the ILO on Convention No 29* (2020).

[15] Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children art 3, 15 November 2000, 2237 UNTS 319.

[16] India, Ratification of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (5 May 2011).

[17] The Trafficking in Persons (Prevention, Care and Rehabilitation) Bill (India) (various years, not enacted).

[18] UN Human Rights Committee, *General Comment No 28: The Equality of Rights Between Men and Women (Article 3)*, UN Doc CCPR/C/21/Rev.1/Add.10 (29 March 2000).

[19] UN Human Rights Committee, *Concluding Observations: India*, UN Doc CCPR/C/IND/CO/4 (4 August 2009).

[20] UN Special Rapporteur on Contemporary Forms of Slavery, *Report*, UN Doc A/HRC/33/46, para 47 (5 August 2016).

those who employ manual scavengers, ensuring access to justice for victims, and introducing caste-sensitive protection in law and policy.[21] Still, even after 15 years, the situation remains largely unchanged, indicating systemic non-compliance with ICCPR mandates. India has also not yet allowed the Optional Protocol to the ICCPR, which would allow individual Dalit sanitation workers to approach the UN Human Rights Committee directly. This refusal limits accountability and denies victims of caste-based slavery access to international redress.

A major contributing factor to bonded labour and servitude in South Asia is caste-based discrimination, according to the Special Rapporteur on Contemporary Forms of Slavery's 2016 report. Entire families are born into systems of exploitation and held there by threat, stigma, and the absence of state protection."[22] In the same way, governments must guard against forced labour resulting from 'traditional or cultural practices' that infringe upon equality and dignity, according to the Committee on Economic, Social, and Cultural Rights (CESCR).

All nations are expressly urged to "take immediate and effective measures to eradicate forced labour, end modern slavery, and human trafficking" as part of the ambitious Sustainable Development Goals (SDGs) Target 8.7."[23] Caste, sewer mortality, and the continued practice of manual scavenging are not included in India's Voluntary National Reviews (VNRs) presented to the UN High-Level Political Forum, despite the country's frequent claims of progress on SDGs 6 (clean water and sanitation) and 8 (decent employment). India's progress narrative loses credibility as a result of this erasure, which might also draw attention from other countries through the Universal Periodic Review (UPR) process. Moreover, India's inability to eradicate manual scavenging was noted as a significant barrier to reaching Target 8.7 in the UN Special Rapporteur on Contemporary Forms of Slavery 2019 report on caste-based slavery.[24]

4.3 INTERNATIONAL JUDICIAL PRECEDENT

In the *Barcelona Traction Case*, the ICJ identified slavery as a matter of *erga omnes* obligation, binding all states regardless of consent.[25] This implies that India's failure to prevent caste-based slavery is not merely a domestic issue; it has global legal implications, potentially inviting universal jurisdiction or diplomatic censure. In *Siliadin v. France*[26], the European Court of Human Rights (2005) held that a 15-year-old Togolese girl, who worked unpaid and under threat, had been held in servitude even though she was not physically confined. The Court determined that a breach of Article 4 of the European Convention on Human Rights might be established by "an obligation to provide services under coercion and the impossibility of changing one's condition." Siliadin and other manual scavengers in India are not chained; instead, they are forced by their ancestry, hardship, and fear of famine.

5. COMPARATIVE INTERNATIONAL ANALYSIS

It needs both a comparative international perspective and a domestic legal lens to comprehend manual scavenging as contemporary slavery. This comparative study shows that the state's persistent failure to recognise caste-based sanitation labour as a systemic human rights violation, rather than the practice's uniqueness, is India's problem.

[21] I bid.

[22] GA Res 70/1, *Transforming Our World: The 2030 Agenda for Sustainable Development*, Target 8.7 (25 September 2015).

[23] I bid

[24] UN Special Rapporteur on Contemporary Forms of Slavery, *Report on Caste-based Slavery*, UN Doc A/HRC/42/44 (11 July 2019).

[25] *Barcelona Traction, Light and Power Company, Limited (Belgium v Spain)* (Judgment) [1970] ICJ Rep 3, para 33 (5 February).

[26] *Siliadin v France* App no 73316/01 (2005) VII ECHR 333.

5.1 MAURITANIA: FROM CULTURAL PRACTICE TO CRIME AGAINST HUMANITY

Mauritania, located in West Africa, has long grappled with the legacy of hereditary slavery, particularly among the *Haratin* people, who were historically enslaved by Arab-Berber elites. Although slavery was formally abolished in 1981, the persistence of descent-based bondage necessitated further legal reforms. In 2007, Mauritania enacted *Law No. 2007-048*, which criminalised slavery and prescribed penalties for slaveholders[27]. The turning point came in 2015, when the nation passed a constitutional amendment declaring slavery a crime against humanity, followed by *Law No. 2015-031*, which created special anti-slavery courts with jurisdiction over such cases.[28]

5.2 NEPAL: REHABILITATING THE KAMAIYAS

Nepal's *Kamaiya* system trapped generations of landless labourers, predominantly Dalits and ethnic Tharus, into bonded agricultural servitude. This system, normalized over centuries, combined debt, caste, and landlessness to produce conditions strikingly similar to India's manual scavenging networks. Nepal abolished the Kamaiya system in 2000, followed by the *Bonded Labour (Abolition) Act, 2002*.[29] The state implemented a Kamaiya Rehabilitation Program, which offered land titles and housing, cash grants and vocational training, free education for Kamaiya children and skill development linked to caste-sensitive job placement. Thereafter, Nepal's Supreme Court in *Gauri Shankar Chaudhary v. Government of Nepal (2008)* upheld these rehabilitation schemes as a constitutional obligation under the right to dignity and equality.

5.3 BRAZIL: REDEFINING SLAVERY FOR THE MODERN ERA

Brazil has historically used legal tools not only to criminalise slavery but to expand its legal definition in line with present-day realities. Article 149[30] of Brazil's Penal Code defines slavery to include forced labour, Degrading working conditions, Exhaustive working hours, and Restriction of movement. This broader framing allows Brazil to criminalise exploitative practices that fall outside the classical model of physical bondage. Brazil put this legal concept into practice in the early 2000s by creating the *Group Especial de Fiscalização Móvel* (GEFM), a Special Mobile Inspection Group made up of police officers, prosecutors, and labour inspectors. Under these mobile units, more than 54,000 personnel were saved between 20[illegible] and 2020.[31] This enforcement model has won international praise and is replicated in other Latin American countries.

5.4 UNITED KINGDOM: CORPORATE ACCOUNTABILITY AND OVERSIGHT

While the UK does not face caste-based labour exploitation, its *Modern Slavery Act 2015* provides a sophisticated framework for addressing exploitative labour through both criminal and corporate mechanisms. The Act requires business supply chain audits by requiring the publication of yearly reports and defines contemporary slavery to include forced labour, servitude, and human trafficking. "Slaveryand Human Trafficking Statements" and the Act also create a Modern Slavery Commissioner, empowered to review policy, coordinate enforcement, and engage with victims.

[27] Mauritania, Law No 2007-048 on the Criminalization of Slavery (9 August 2007).

[28] Mauritania, Law No 2015-031 on the Creation of Anti-Slavery Courts (10 September 2015).

[29] Nepal, Bonded Labour (Abolition) Act 2002, No 8 (2002).

[30] Código Penal [Criminal Code] (Brazil) art 149.

[31] Brazil Ministry of Labour and Employment, *Report on Rescued Workers (2003–2020)*.

5.5 SOUTH AFRICA: CONSTITUTIONAL PROTECTIONS AND STRUCTURAL REDRESS

Post-apartheid South Africa offers a robust model for linking historical injustices with modern legal remedies. The South African Constitution explicitly prohibits slavery, servitude, and forced labour (Section 13)[32], and mandates redress for "past patterns of disadvantage" (Section 9(2))[33]. Programs like the Expanded Public Works Programme (EPWP) aimed to provide dignified employment for historically disadvantaged groups, including former domestic workers and sanitation labourers.

Country	Legal Recognition	Enforcement Model	Rehabilitation Approach	Relevance to India
Mauritania	Slavery as a crime against humanity	Anti-slavery tribunals, NGOs	Legal aid and housing	Criminal classification, command responsibility
Nepal	Bonded labour by caste	Court oversight, land distribution	Land, cash, education	Structural rehabilitation, caste-sensitive planning
Brazil	"Slavery-like" conditions	Mobile inspection squads (GEFM)	Immediate relief + blacklisting	Broad legal definition + aggressive enforcement
UK	Modern slavery	Corporate reporting, commissioner	N/A (market regulation focus)	Municipal and corporate accountability
South Africa	Forced labour as a constitutional wrong	Employment equity, public schemes	Dignified work programs	Rights-based economic redress

Table 1: Comparative table of countries mentioning the enforcement model, rehabilitation approach compared to India.

[32] Constitution of the Republic of South Africa, 1996, s 13

[33] Constitution of the Republic of South Africa, 1996, s 9(2).

6. STRUCTURAL AND INSTITUTIONAL BARRIERS TO ERADICATION

Despite more than a decade of constitutional protections and three decades of statutory prohibition, manual scavenging persists in plain sight, enabled by a dense web of structural inequality, institutional indifference, and policy myopia that forms a self-perpetuating system of caste-based labour exploitation. These barriers subsist across five major domains: (1) caste hierarchies, (2) informal labour dynamics, (3) symbolic statecraft, (4) bureaucratic inertia, and (5) intersectional invisibility.

6.1 CASTE AND THE POLITICAL ECONOMY OF SANITATION

India's sanitation infrastructure is built on the backs of *Dalits*, even in cities which are equipped with mechanised cleaning systems. Municipalities overwhelmingly recruit Dalits for sewer and latrine work, reinforcing caste as the default structural criteria for sanitation labour. Sociologist Gopal Guru notes, "the Indian state has modernised its cities without modernising its caste consciousness."[34] Policies like the *Swachh Bharat Abhiyan* (Clean India Mission) speak of toilets but not of the people forced to clean them. A 2022 survey of sanitation workers in Uttar Pradesh revealed that over 89% of respondents came from the Scheduled Castes, and only 3% had ever worked outside sanitation in their lifetime.[35]

6.2 INFORMALIZATION AND THE CRISIS OF ACCOUNTABILITY

Outsourcing and informal labour models have become the most effective ways by which the state has avoided accountability. Increase in subcontracting the services of sewer and septic work to private contractors, who, to cut costs, make them work without legal contracts, safety gear, or insurance, thereby bypassing labour laws and criminal liability. When deaths occur in sewers, officials claim that the deceased was "not a government employee," therefore evading the restitution that the Supreme Court ordered in the matter of Safai Karamchari Andolan.[36] Contractors frequently move employees between locations, which makes it almost hard to track down labour infractions or enforce minimum wage regulations, according to the National Commission for Safai Karamcharis (NCSK).

6.3 SYMBOLIC INCLUSION, SUBSTANTIVE EXCLUSION

Gestures toward sanitation workers, like felicitating them on national holidays, featuring them in media campaigns, or showcasing toilet construction milestones, only remain symbolic. For instance, Swachh Bharat posters often show Dalit sanitation workers with brooms under slogans like "Cleanliness is Godliness." Yet, the same program refuses to acknowledge that these workers are forced into this labour by birth, social stigma, and economic exclusion. According to Safai Karamchari Andolan founder Bezwada Wilson: "They show us as proud workers with brooms, but they don't ask why our children must carry them too."[37] Internationally, India showcases toilet coverage statistics; domestically, it suppresses reports of sewer deaths.

6.4 BUREAUCRATIC APATHY AND INSTITUTIONAL WEAKNESS

The accountable organisations, which include the NSKFDC, the Ministry of Social Justice and Empowerment, and state-level nodal offices, frequently lack adequate funding, personnel, and priorities. A 2023 audit by the Comptroller and Auditor General (CAG) revealed that less than 60% of allocated funds for the rehabilitation of manual scavengers were spent across five states.[38] Surveys mandated under Section 11 of the 2013 Act were

[34] Gopal Guru, 'The Language of Dalit-Bahujan Political Discourse' in Ghanshyam Shah (ed), *Dalit Identity and Politics* (Sage 2001).

[35] Survey of Sanitation Workers in Uttar Pradesh (2022).

[36] *Safai Karamchari Andolan v Union of India* (2014) 11 SCC 224 (India).

[37] Interview with Bezwada Wilson, Founder, Safai Karamchari Andolan (2023) (on file with authors).

[38] Comptroller and Auditor General of India, *Performance Audit Report on Manual Scavengers Rehabilitation* (2023).

either not conducted or grossly underreported affected populations. Furthermore, key institutions like the National Commission for Safai Karamcharis (NCSK) function merely as advisory bodies without enforcement powers. In 2023, the Madras High Court ordered the arrest of officials responsible for sewer deaths in Tamil Nadu; however, none were prosecuted; instead, internal transfers were used to diffuse accountability.[39]

6.5 INTERSECTIONAL INVISIBILITY: GENDER, DISABILITY, AND GEOGRAPHY

Dalit women, especially in rural India, are doubly burdened; stigmatised not only by caste but also by gender. A 2021 study by the Centre for Equity Studies revealed that 71% of women engaged in manual scavenging reported sexual harassment at work, and over 80% had no access to toilets or bathing facilities during work hours. Their status as informal workers means they lack even the minimal safeguards under the Sexual Harassment at Workplace Act, 2013.[40] Additionally, manual scavengers with disabilities receive no specific recognition in rehabilitation schemes. Urban migrants from scavenging communities face documentation barriers, leading to their exclusion from activities such as the Self-Employment Scheme for Manual Scavengers (SRMS).

6.6 THE CASTE OF THE STATE

By refusing to name caste as the root cause, policies remain reactive rather than transformative. In his seminal work, Annihilation of Caste, Dr. B.R. Ambedkar warned that "those who suffer inequality must frame the laws of equality." Yet the laws around sanitation labour are rarely shaped by those who suffer its consequences. Dalits remain structurally underrepresented in policymaking, the judiciary, and senior bureaucracy. As a result, even well-intentioned reforms are filtered through a lens that refuses to see caste as coercion. The persistence of manual scavenging is not the failure of a few policies or the indifference of a few officials. It is the consequence of a structural system that distributes risk by caste, renders labour invisible, and rewards silence. Unless caste is explicitly addressed, the informal economy is regulated, and institutions are restructured for accountability, the practice will persist.

7. REIMAGINING ACCOUNTABILITY AND LEGAL REFORM

To align Indian law with its international obligations, manual scavenging must be explicitly defined and prosecuted as a form of modern slavery. Manual scavenging shall be described in terms of forced labour and descent-based servitude. Further, classifying such an offence as non-bailable and non-compoundable with a minimum sentence of five years. India must draw from international criminal jurisprudence, especially the doctrine of command responsibility, to hold superiors liable for crimes committed by subordinates.

Current organizations like the NSKFDC and the National Commission for Safai Karamcharis (NCSK) are weak, underfunded, and nondependent; they must be given power to summon officials, initiate prosecutions or recommend departmental action, conduct binding performance audits of ULBs and ministries, and create a Special Task Force on Caste-Based Labour Exploitation under the NHRC or the Ministry of Social Justice with prosecutorial powers and use of technology to establish a national manual scavenging data dashboard—linked to real-time updates from all ULBs—capturing the number of sanitation workers engaged, incidents of sewer deaths, rehabilitation status, compensation disbursed. Rehabilitation steps to include employment guarantees (akin to reservation), education Quotas, mental health support, and Legal Aid cells, and a Manual Scavengers Reparations Fund modelled on international transitional justice funds (e.g., South

[39] Madras High Court Orders and Subsequent Government Response (2023) (on file with authors).

[40] The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013, No 14, Acts of Parliament, 2013 (India).

Africa's TRC Fund, Rwanda's Gacaca Compensation Program).

India has ratified key international treaties prohibiting forced labour and slavery, yet compliance reporting remains irregular; therefore, India must invite the UN Special Rapporteur to conduct a country visit focused on manual scavenging. Civil society organisations such as Safai Karamchari Andolan, Jan Sahas, and Dalit Human Rights Forum must be empowered by giving them statutory recognition as "human rights monitors" under the 2013 Act, with added power to do investigation, reporting and filing complaints directly with oversight bodies, access sewer death and employment data and make recommendations for action to state governments. To truly dismantle manual scavenging, legal reform must become a vehicle for redistributive justice. Establishing fast-track courts for sewer-related death cases with clear timelines for compensation and prosecution, and mandatory PIL hearings every quarter in the High Courts to monitor state compliance, is equally necessary.

8. CONCLUSION: FROM ERASURE TO EMANCIPATION

Manual scavenging is more than simply a social wrong; it is a structurally sanctioned type of caste-based slavery that exists in the world's greatest democracy, disguised as sanitation work. Manual scavenging has persisted not because it is hidden, but because it is institutionally invisible.

It is evident throughout this paper that this practice satisfies every legal threshold of modern slavery, persisting through intergenerational transmission, contractual camouflage, and administrative denial. The comparative legal analysis has shown that countries such as Mauritania, Nepal, and Brazil, despite being economically challenged, have developed frameworks that have successfully recognized factors promoting manual scavenging and have created special courts and task forces for enforcement and have embedded anti-slavery principles into national action plans and budgeting frameworks but due to political and moral failure India remains unwilling to adopt a similar model.

Thus, it is recommended that manual scavenging be legally reclassified as modern slavery, accountability must move upward, and justice must be reparative, not just regulatory. Unless manual scavenging is confronted as a caste atrocity and a legal crime, the society will continue to pretend that "abolition" means deletion from law books, rather than actual transformation of society. As Ambedkar warned, "Justice has always evoked ideas of equality... Law is the mechanism by which justice is delivered. But when law becomes silent to suffering, it becomes a tool of oppression." India must choose: continue its tradition of dignified declarations and undignified realities—or act decisively to dismantle the world's most ancient form of institutional slavery.

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THE WAQF (AMENDMENT) ACT, 2025: A CRITICAL LEGAL AND POLITICAL INQUIRY INTO RELIGIOUS ENDOWMENT REFORMS AND MINORITY GOVERNANCE IN INDIA

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Abstract

The paper is a critical overview of the Waqf (Amendment) Act, 2025 (Unified Waqf Management, Empowerment, Efficiency and Development Act--UMEED), which is the most significant reform in the Indian management of Islamic religious endowments. The research method is based on a doctrinal and comparative legal study of the development of legislation of waqf since the colonial period to the current level of governance, which examining the Bill as transformative in its provisions and with compulsory presence of women and non-Muslims on waqf boards, computerization of property records, abolition of waqf-by-user , and mandates registration and audit limitations to be made time-barred . The study puts into question the constitutional implications in relation to the Articles 14, 25, 26, and 30 between the transparency and accountability pressures on the one hand and minority religious autonomy on the other. It is a critical thinking on federalism, judicial review, minority rights and the clash of reformist state intervention with religious self-governed institutions . The investigation sums up the recent judicial ruling and political opposition, noting the positive aspects of the Bill, namely, modernization and inclusivity, as well as the supposed danger of the Bill to the minority and trust in the community. Empirical information gaps in the processes of ground-level effects and community willingness, along regional differences, are also found, and the future interdisciplinary and field-based studies of implementation outcomes, comparative international models, and stakeholder experience are required. Finally, this paper contends that the 2025 reforms in waqf should be seen as a trial case of legislation when it comes to the area of minority religious control, as it reflects on the promise and dangers of intervention into the matter, and is an indication of the constitutional dedication of India to secularism, democracy and pluralism.

Keywords: Waqf (Amendment) Act, 2025, Minority rights ,Constitutional implications, Transparency and accountability ,Reformist state intervention ,Secularism

Introduction

Waqf is an irrevocable Islamic gift, by which a waqf irrevocably donates property to be used in some religious, charitable or community benefit purpose whereby the waqif partakes with the property and the income thereon forever[1]. It is based on the concept of sadaqah jariyah and it captures the idea of perpetual charity that nourishes the religious activities and social provisions and offers the donor the perennial spiritual benefit[2]. Waqf has been acknowledged as a specific legal institution under statutory regimes that govern establishment, management and safeguarding of endowed property, and hence providing it a specific juridical personality in the greater context of religious endowments. In effect, waqf also funds a vast system of mosques, madrasas, graveyards and welfare structures, as a non-state social security system of Muslim minorities, and directly to both socio-economic well-being and minority rights protection. The facts on the ground refer to the fact that the current size of Indian waqf includes over 8.72 lakh properties on an approximate area of 38 lakh acres in

[1]Vandana Kumari, "WAQF (Amendment) Act, 2025: A Constitutional Analysis of Religious Freedom and Minority Rights" 5(3) Int'l J. Indian L. Rev. 1-58 (2025)

[2]Somya Singh & Siddhant Joshi, "Reforming Faith: A Critical Appraisal of the Waqf (Amendment) Act, 2025" 13(6) Int'l J. Creative Research Thoughts j893-j901 (2025)

30 States and Union Territories, which is a material proportion[3]. Recent amendments in Waqf Amendment Act, 2025 are intended to benefit transparency, accountability and inclusiveness in the waqf management, which also resulted in constitutional arguments about the freedom of religion and federal balance.

History of waqf in India

Under the unification of Islamic rule in India waqf came into existence, with sultans, nobles and merchants transferring immovable properties to mosques, madrasas, khanqahs, graveyards and poor-relief as inalienable charitable endowments under Islamic law[4]. These endowments were not codified, but implemented through qazis and local religious elites during the Delhi Sultans and Mughal periods, and made waqf part of the socio-religious pay traditional fabric of INDO-islamic society as a permanent source of religious education funding, Sufi networks and locally based charity[5]. The British rule In the case of the British rule, there was a decisive juridical change as the colonial courts also questioned the legality of the family-oriented waqf-al-aulad in matters of inheritance and enacted laws, including: the Mussalman Wakf Validating Act, 1913, the Mussalman Wakf Act, 1923 and the 1930 Validating Act [6].[7]These laws recognised the authority of the establishment of family-cum-charitable waqf and formalised accounting and supervisory standards, transforming waqf into an endowment under the law, liable to state supervision and judicial review[8]. Following Independence, State Waqf Boards were established through Wakf Act, 1954 and on its amendments in 1959, 1964, 1969 and 1984 & required survey and notification of waqf property to prevent encroachment and mismanagement[9]. This led to the Waqf Act, 1995, which codified the earlier statutes, made the Central Waqf council more powerful and established Waqf Tribunals, which got refined by the 2013 amendment to include three-member tribunals with a Muslim law expert, mandatory women representation and extension of lease to professionalize the waqf governance. Modern academic and governmental evaluation demonstrates that the waqf sector includes a number of lakh notified properties and millions of acres of land in most States and Union Territories, and has huge potential in terms of financing education, health, housing and livelihoods of the disadvantaged Muslim community. However, long-term encroachment, corruption, incomplete surveys, politicisation of board nomination and record-keeping deficiencies have fuelled reform agendas based on digitisation, increased audits, better survey protocols and capacity-building, which has created a long-running conflict between transparency and religious-charitable freedom. The newest step is the Waqf Amendment Act, 2025 (UMEED) that suggests that written waqf deeds, centralised and time-bound registration, broader board composition including women and non-Muslims, enhanced audit and enforcement

[3]Santosh Kumar, Ritu Kataria & Kritika Rane, "Waqf Amendment Bill, 2025: The History of Waqf in India" Press Information Bureau, Government of India (2025)

[4]Ashima Phougat, Arkaja Mishra & Rameshwori Oinam, “Waqf Law in India: A Critical Analysis of Estate Management Powers and Socio-Legal Impact” (2025) 3(2) International Journal of Legal Studies and Social Sciences 86 (Research Team)

[5]PRS Legislative Research, "The Waqf (Amendment) Bill, 2024 - Complete Legislative Timeline" (2025)

[6]Santosh Kumar, Ritu Kataria & Kritika Rane, "The Waqf (Amendment) Bill, 2025 Explained" Press Information Bureau, Government of India (20250.

[7]Santosh Kumar, Ritu Kataria & Kritika Rane, "Waqf Amendment Bill, 2025: The History of Waqf in India" Press Information Bureau, Government of India (2025)

[8]Apoorva, “Waqf Amendment Act 2025: Supreme Court’s Landmark Verdict” (2025) Supreme Court Online (Legal Analysis Team)

[9]Santosh Kumar, Ritu Kataria & Kritika Rane, "Waqf Amendment Bill, 2025: The History of Waqf in India" Press Information Bureau, Government of India (2025)

capabilities, and a national online portal and that regulates waqf-by-user and government-property claims[10]. These are aimed at modernising the way that governance is performed and also at decreasing litigation, but at the same time raise constitutional and political issues of Articles 25-26, minority self-governance, and federalism and the extent of state control over a centuries old religious endowment institution[11].

Research objectives

The paper will examine the fundamental legal amendment brought about by the Waqf Amendment Act, 2025 (UMEED), such as re-naming of the 1995 framework, revised conditions of formation of waqf, abolition of waqf by user, the mandatory inclusion of non-Muslims and different sects in waqf boards and tightening of registration, disclosure and audit regimes. It puts these reforms into the context of the extended legislative tradition of the colonial validating Acts, 1954 and 1995, in order to determine whether the 2025 action amounts to administrative rationalisation or to a qualitative change in the approach to regulating Muslim religious endowments . Second, this paper will set out to question the significant controversies and constitutional issues that the 2025 amendments will pose, especially: the omission of oral or usage-based waqf, the five year practice-of-Islam prerequisite on waqif, the de-waqfisation of government property, mandatory non-Muslim representation on boards and councils, and transfer of the key powers of specialised tribunals to the executive. By doing so, it examines how these provisions conflict with Articles 14, 25, 26, 29 and 30, and has implications in the current judicial review processes and current challenges before the higher judiciary. Third, the study considers the wider politics of the 2025 reforms through research on parliamentary discussions, state rationales, critiques of opposition and media-policy-international analysis of the passing and implementation of the Bill . In this perspective, it examines the way the UMEED structure restructures the associations between the Indian state and Muslim endowments, how it correlates with the discourses of transparency and anti-encroachment and majoritarian overreach, and what it discloses about the current trends of minority government in the Indian constitutional democracy.

Waqf Amendment Act, 2025 overview.

A total revision of the 1995 Waqf Act[12] is the Waqf Amendment Bill, 2025 (UMEED Act), which constrains the establishment of waqf to written deeds, reorganizes the governance institutions, and reassigns the authority between the tribunal and executives to improve transparency and prevent encroachment and address the problem of poor record-keeping[13]. Among the important provisions is that declarants must serve five years of practicing Islamic faith, waqf-by-user is eliminated, government properties are not waqf with review provisions and there are the provisions of direct High Court appeal.

Reforms of Institutional and Administrative Change.

Central Waqf Council and State Waqf Boards have to have non-Muslim, two women at minimum (one must be a Muslim), and various Muslim sects, whereas Survey Commissioners are substituted with District

[10]Santosh Kumar, Ritu Kataria & Kritika Rane, "The Waqf (Amendment) Bill, 2025 Explained" Press Information Bureau, Government of India (2025)

[11]Dr Bhaskara Raju Muppala & Mr Ravi Kiran R, “From Community Trust to State Oversight – The Evolution of Waqf Legislation in India” (2025) 7(2) International Journal for Multidisciplinary Research 28

[12]Santosh Kumar, Ritu Kataria & Kritika Rane, "The Waqf (Amendment) Bill, 2025 Explained" Press Information Bureau, Government of India (2025)

[13]Ranvijay Singh, "Legal Frame Work and Constitutionalism of Wakf (Amendment) Act, 2025" 10(5) Int'l J. for Research Trends & Innovation b650-b652 (2025)

Collectors when conducting property surveys . Tribunals are reassigned to two members (without requisite Muslim law experts), and centralized digitization through a national portal, increased audit (7% to 5%), and application of Limitation Act, 1963[14] on waqf disputes. This is because transitional clauses ratify preceding acts, establish re-survey schedules and reconstitution of bodies.

Changes:

1. [15]Waqf-by-User Removal: Unifies possession-based and pious-use informal endowments, but opens customary beneficiaries to disenfranchisement.
2. [16]Inclusion of Non-Muslims and Women: Requires diversity in the board membership in terms of inclusivity and accountability, however, generates Article 25-26 religious autonomy issues.
3. [17]Board Governance Reforms: Shifts moves to Collectors, implements digital records and audits to make it efficient, because of worries about state capacity differences[18].
4. Reorganization of tribunal: Scaled down to two without the Muslim law specialists to allow faster disposal at the cost of jurisprudential experience[19].

Comparison with Prior Legislation

Aspect	Waqf Act, 1995 & 2013 Amendments	Waqf Amendment Act, 2025
Board Composition	Muslim-majority; women seats added in 2013	Mandatory non-Muslims, two women, diverse sects [20]
Waqf Creation	Allowed waqf-by-user; decentralized registration	Abolishes waqf-by-user; written deeds, 5-year practice proof, centralized portal[21]
Surveys	Survey Commissioners	District Collectors[22]
Tribunals	Three members with Muslim law expert	Two members, optional experts[23]
Disputes & Audits	No Limitation Act; limited audits	Applies Limitation Act, 1963; mandatory disclosures/audits[24]

These changes underline the state control, digitization and standardization instead of the previous community independence, which drives the discussion of minority rights and federalism.

[14]Santosh Kumar, Ritu Kataria & Kritika Rane, "The Waqf (Amendment) Bill, 2025 Explained" Press Information Bureau, Government of India (2025).
[15]PRS Legislative Research, "Joint Committee Report Summary: The Waqf (Amendment) Bill, 2024" (March 18, 2025)
[16]Santosh Kumar, Ritu Kataria & Kritika Rane, "The Waqf (Amendment) Bill, 2025 Explained" Press Information Bureau, Government of India (2025)
[17]Santosh Kumar, Ritu Kataria & Kritika Rane, "The Waqf (Amendment) Bill, 2025 Explained" Press Information Bureau, Government of India (2025)
[18]PRS Legislative Research, "The Waqf (Amendment) Bill, 2024 - Complete Legislative Timeline" (2025)
[19] Santosh Kumar, Ritu Kataria & Kritika Rane, "Waqf Amendment Bill, 2025: The History of Waqf in India" Press Information Bureau, Government of India (2025)
[20]Somya Singh & Siddhant Joshi, "Reforming Faith: A Critical Appraisal of the Waqf (Amendment) Act, 2025" 13(6) Int'l J. Creative Research Thoughts j893-j901 (2025)
[21]Santosh Kumar, Ritu Kataria & Kritika Rane, "The Waqf (Amendment) Bill, 2025 Explained" Press Information Bureau, Government of India (2025)
[22]Santosh Kumar, Ritu Kataria & Kritika Rane, "The Waqf (Amendment) Bill, 2025 Explained" Press Information Bureau, Government of India (2025)
[23]Vandana Kumari, "WAQF (Amendment) Act, 2025: A Constitutional Analysis of Religious Freedom and Minority Rights" 5(3) Int'l J. Indian L. Rev. 1-58 (2025)
[24]2025 SCC OnLine SC 1978

Articles 25 and 26 Constitutional Validity.

Waqf (Amendment) Act, 2025 presents a great constitutional issue in Article 25[25] (freedom of conscience and religious practice) and Article 26[26](religious denominations-right of managing institutions) because it may impose on the autonomy of Muslim communities in endowments. It is condemned as a State intrusion in internal religious governance of Muslim faith to enforce non-Muslims on State Waqf Boards and Central Waqf Council as against denominational self-management. Article 25 is restricted by Abolition of waqf-by-user, which takes 5 years of Islamic practice to be created and Limitation Act, 1963 by blocking the old practice of endowment . The judicial precedents strike a balance between freedom of religion and state order, however reforms run the risk that the minority rights may be invaded disproportionately provoking severe scrutiny[27].

The Bill enhances transparency by centralizing digitization of records of all waqf to discourage encroachments and facilitated real time tracking as opposed to incoherent paper records. The mandatory registration within six months (renewable by courts) guarantees the legal certainty and provides beneficiaries with the opportunities, not to be abused. Surveys are replaced by District Collectors who combine waqf with land books as well as increase audits. Critics cite that this increases the surveillance of the state and may require a small waqf to comply.

Encroachments (which affect 58,000+ properties[28]) are reformed, prospectively ending waqf-by-user, with 12 year limitation periods and giving powers to the Collectors to de-notify invalid claims. Change in dispute resolution: two-member Tribunals (exempt of Muslim law expert), direct High court appeals, and civil court jurisdiction over titles, and should clear 50,000+ backlogs through digitization[29]. Administrative changes include boards including women, sects and non-Muslims up to 30 percent, donation income limit of 5 percent and auditing every year. The challenges use Article 14, 25-26 and 300A against executive transgression and the diminishing of freedom.

Practical Problems: Intrusion, Controversies, Reforms.

Anti-encroachment regulations prospectively abolish waqf-by-user, the Limitation Act bars, the written deeds and five years proof of practice and allow the de-notification of 38 lakh acres of disputed property under the Collector. The dispute mechanisms are made leaner through the use of the two-member Tribunal, High Court appeal, digital records, and six-month registration, cutting down on litigation time. Reforms introduce inclusive boards (2 females, sects, non-Muslims), Aadhaar based registration, Collector surveys, and real-time portals on 8.72 lakh properties, increasing the efficiency but addressing digital divide, autonomy and federalism issues.

Political Aspects

The politics surrounding the Waqf Amendment Act 2025 have been very polarised. The governing Bharatiya Janata Party (BJP) and its supporters argue that the UMEED Act is a necessary reform in the governance system that enhances transparency, digitization and security of the poor Muslim beneficiaries. Provisions such as digital registration, stricter auditing, more board representation and restricting waqf-by-user have been defended by ministers such as Amit Shah and Kiren Rijiju as combating encroachments and mismanagement and making the Act more consistent with secular governance and accountability imperatives . On the other hand, the UMEED Act is opposed by the opposition parties such as Congress, DMK, TMC,

[25]INDIA CONST. Art. 25.
[26]INDIA CONST. Art. 26.
[27]2025 SCC OnLine 1978.

[28]Varun Pandey, "The Unconstitutionality of the Waqf Amendment Act, 2025 and the Erosion of Minority Rights" (2025) NUALS Law Journal
[29]2025 SCC OnLine 1978

AAP, and RJD who criticize the UMEED Act over abolition of waqf-by-user, the five-year Islamic practice prerequisites, giving District Collectors power over property disputes, and obligatory non-Muslim representation in Waqf Boards as anti-secular and unconstitutional and is against the constitutional provisions of Articles 25 and 26.

Outside the Parliament, Muslim groups like All India Muslim personal law board (AIMPLB) and Muslim leaders like Asaduddin Owaisi have organized protests as well as submitted more than 60+ constitutional petitions. However, seven state governments support the Act to be necessary in modernizing administration of 8.7 lakh plus of more than 8.7 lakh waqf properties[30]. The international media and the human rights forums frame the controversy in a clash between the majority state policies and the minority religious autonomy, efficiency in the government and potential loss of community confidence.

The compulsory representation of non-Muslims on Waqf Boards is harshly criticized by the Muslim communities because religious autonomy and control over the communities as guaranteed under Article 26 , are deemed to be undermined by ideological secularization. Waqf-by-user abolishment and the 5-year eligibility period of the Islamic practice of various practices are feared to result in a disenfranchised grassroots beneficiary as well as annihilate the traditional social welfare purpose of waqf . Besides, the devolution of adjudicatory authority of specialized Waqf Tribunals by Dodane executive officers, such as District Collectors, is an issue that encourages politicization and administrative favoritism, at the peril of judicial independence in religious property disputes[31]. Such issues are driving overall political rhetoric that views the Act as a majoritarian approach that violates the rights of minorities and provokes communal anxiety; opposition parties threaten that the Act would make the Muslim community lose its trust in any legal endeavor .

Another significant aspect of the Act is that it strengthens bureaucracy by shifting much of the functions of administration of waqf, such as surveys, regulation, adjudication, to executive officers such as the District Collectors, which undermines the community management at the grassroots and increases the chances of politicization into religious endowment. The critics state that this bureaucratic superiority undermines constitutional rights in Articles 25 and 26 of the minority rights to religious freedom and self-rule, and endangers secular pluralism by bringing the state into the realm of religious matters. Though advocates argue that the greater supervision reduces corruption and encroachments which the community has been unable to limit, the opponents fear more mistrust, social alienation, and systemic majoritarian usurp of minority rights. Even now, these tensions still serve as legal wrangles at the Supreme Court that defines the future of waqf governance and minority-state relations in India .

The Act has become an issue of massive revolts, petitions, and polarizing public opinion. The Act is recast by Muslim organizations and opposition parties as an intrusion that is prohibited by Article 25 and 26 of the Constitution of Bharat that protects the religious and charitable character of waqf. The petitions presented to the Constitution are against the five-year practice clause of religion and the exclusion of Muslim law experts by the tribunals arguing that these measures would undermine the welfare of the community and adjudication quality Sr. No. 39). The passage of the Bill has been the subject of wider discussion on the minority rights, secularism and state intervention, with proponents of government intervention charged with the aspect of curbing misappropriation and better management of assets and opponents claiming to be marginalized and the

[30]Srishti Ojha & Ajmal Abbas, "Seven States Back Waqf Act in Supreme Court: What Are Their Arguments?" (2025) India Today Legal News Analysis (Legal Correspondent).

[31]2025 SCC OnLine 1978.

community spirit eroded . Millions of memorandas, multi-city consultations, parliamentary debates indicate its high political timbers even in view of fears of Muslim marginalization .

To the international observers, the reforms have been placed in the context of the global religious endowment governance debates, which has highlighted a need to balance accountability and autonomy to avoid the alienation of minorities. The current review of the Supreme Court reveals the long-lasting struggle of religious freedom, state authority, and identity politics of Indian constitutionalism[32].

This polarization is reflected in the media. Modernization, transparency, and anti-corruption initiatives in terms of digitization and improved governance are promoted by the pro-government sources as reform requirements to safeguard the waqf assets and improve socio-economic development within the Muslim communities[33]. Conservatives warn that forced integration of non-Muslims, administrative dominance over religious institutions, and waqf-by-user elimination is a threat to religious autonomy and a majoritarian political initiative that will compromise constitutional minority rights. These cleavages are mirrored in social media and popular opinion, with some looking forward to prospective reforms to open the potential in the development of the waqf, and others are looking at the possible loss of the ability to control the community and increase the degree of politicization .

These claims clash in parliamentary discussions and in judicial proceedings with opposition parties lamenting about threats on minority rights versus government emphasizing the need to include, be efficient and accountable. The future decision of the Supreme Court will decisively determine the scope of state intervention in religious matters and determine the direction of administration of waqf in India[34]

Social-Economic and Administrative Implications.

The Waqf Amendment Bill, 2025, is focused on enhancing the socio-economic potential of the waqf properties by enhancing the management of the property, encouraging transparency and accountability. It deals with the pre-existing problems such as misuse, encroachment, and inefficiency that limit the revenue generation that are essential in financing welfare, educational, medical, and housing services to marginalized Muslim communities. Its effective implementation can result in a significant increase in resources to serve the community and reduce poverty[35].

The Act, in administrative terms, brings women and non-Muslims to the waqf boards, and transfers the survey responsibility to the District Collectors, as well as reorganizing the tribunals. Other changes, however, concern the issue of bureaucratic politicization, administrative preparedness, particularly in terms of digitization projects, and the differences between regions in terms of governance capabilities. The restructuring can lead to the diminished autonomy of the waqf institutions, which can lead to increased mistrust of the community and also to the impediment of the cooperation necessary to facilitate the management of assets . Additionally, the abolishment of waqf by user and the strict eligibility can derail the existing beneficiary schemes, which will lead to the socio-economic dislocation[36].

[32]2025 SCC OnLine 1978.

[33]Amit Shah, “Participation in Lok Sabha Discussion on the Waqf (Amendment) Bill, 2025 and the Mussalman Wakf (Repeal) Bill, 2024” (2025) Parliamentary Debate Transcript (Union Home Minister and Minister of Cooperation)

[34]2025 SCC OnLine 1978.

[35]Ranvijay Singh, "Legal Frame Work and Constitutionalism of Wakf (Amendment) Act, 2025" 10(5) Int'l J. for Research Trends & Innovation b650-b652 (2025).

[36]Grasim Soni and Sweety Gautam, "Weaponising Reform: The Waqf (Amendment) Act, 2025 and Its Assault on Religious Freedom" Oxford Human Rights Hub (2025).

The effect of the Bill on the welfare of minorities, educational institutions, and charitable activities will depend on the fact that resources should be managed and predicted to improve due to the digitalization of information and audits. However, restrictions on creating informal waqf and raising the number of non-Muslim members on boards are concerned with weakening the community control as well as a distortion of the priorities that have been prioritized in charitable projects. That Survey and adjudicatory powers should be transferred to district authorities, and this would ensure improved property records and resolution of encroachment, however, bureaucratic inefficiencies and political influence can still play out.

Digitization of registers, central portal, mixed community boards, and improved audits are some of the measures to help reduce corruption and mismanagement to enable more funds to be available to support socio-economic upliftment. Nonetheless, differences in infrastructure, staffing, and political goodwill by the region, as well as socio-economic consequences of eligibility restrictions are challenges to implementation that may undercut benefits unless suitably handled[37].

The Bill also has a potential on communal harmony such as releasing the huge base of waqf assets (8.72 lakh properties out of 38 lakh acres[38]) to fund specific welfare.The administrative changes such as centralized online portals and district surveys simplify administration and conflict management but pose a threat of bureaucratization and IT in-infrastructure discontinuities. Inclusive board representation, although targeting accountability, concerns with minority autonomy watering down, legal opposition to constitutionality (Articles 25 and 26), and politicization remain.

Communal harmony benefits can be achieved by reclaiming encroached waqf lands and promotion of secular governing and this will help to reduce inter-communal conflicts . On the other hand, such measures as the appointment of non-Muslim members of the boards and the limitation of the criteria of the creation of the waqf has caused protesters and legal disputes, which threaten to alienate and create tension in polarized regions. There is limited empirical evidence to support the idea that these reforms are generating cohesion or increasing the dominance of the majority and consensual implementation at a gradual pace is extremely crucial to prevent social friction.

Comparative Perspectives

International experience on comparative reform of waqf institutions can be useful to the UWMEED Act, 2025 of India. The model adopted by Malaysia, based on the centralized state through the State Islamic Religious Councils (MAIN) through the 2015 Waqf Institutions Act, is one which is open to corporatisation and financialisation. MAIN is limited to Muslim members with Sharia courts, and registration and digitisation using the e-Wakaf portal, and commercial leasing and securitisation of waqf assets using subsidiaries. This has brought a lot of revenues, as it increased its real estate funds and sukuk bonds standing at more than RM 500 million by 2023 yet it has not abolished waqf-by-user. By contrast, the UWMEED in India requires the representation of non-Muslims on boards and moves surveys to District Collectors, which concern recreating the success of Malaysia in the face of disruptions to this success locally[39].

The example of the waqf reforms in Turkey with the 1935 Vakiflar Kanunu and 1976 amendments is that

[37]PRS Legislative Research, "Joint Committee Report Summary: The Waqf (Amendment) Bill, 2024" (March 18, 2025)

[38]Santosh Kumar, Ritu Kataria & Kritika Rane, "Waqf Amendment Bill, 2025: The History of Waqf in India" Press Information Bureau, Government of India (2025)

[39]Vandana Kumari, "WAQF (Amendment) Act, 2025: A Constitutional Analysis of Religious Freedom and Minority Rights" 5(3) Int'l J. Indian L. Rev. 1-58 (2025)

vakif properties are tightly controlled by the Directorate General of Foundations (VGM). The Ottoman Empire was abolished and independent mutawallis were abolished. Turkey needs registration, yearly examination by the state and transforms unused properties into commercial enterprises with approximately 85 per cent occupancy as compared to India estimated 30 per cent. In contrast to India, where specialised Waqf Tribunals continued to exist, in Turkey religious tribunals were abolished, with disputes then considered in civil courts and the formation of waqf by user being outlawed, just as the waqf-by-user had been abolished in India. The combination of tribunalization and digitization appears to be a hybrid that India has adopted over time and appears to be a blend of Turkish centralization and selective autonomy[40].

[41]Saudi Arabia has a theocratic top-down waqf system, where the General Authority of Awqaf (GAA) under the Ministry of Islamic Affairs is mandated to digitalize waqfs through the Ehsan system, mandate sharia compliant investments, and eliminate perpetual family waqf to benefit the population. There is complete exclusion of non-Muslims and the King has the power to deregister disputed waqf property, similar to deregistration of government properties in India as waqf. Saudi model is to be included in the economic diversification of Vision 2030 through REITs as a part of waqf management with achieving operational efficiency without federal fragmentation, unlike the federated Waqf Boards in India.

Singapore already has a law, the Administration of Muslim Law Act of 1968, which makes the Islamic Religious Council of Singapore (MUIS) the sole trustee and empowers the Islamic Religious Council of Singapore (MUIS) to corporatise and administer waqfs digitally. MUIS disenfranchises non-Muslims, prohibits waqf-by-user and demands sharia audits. It introduces an image of economic empowerment, digitisation and simplified governance in the absence of constitutional complications of inclusion of boards and decentralised survey power in India[42].

These analogies have indicated the special role of UWMEED Act in a secular democracy with the inclusion of non-Muslims, and with federalism against the financial innovation of the Malaysian economy and centralisation of the Turkish system, but with specific political and constitutional issues.

Indian lessons are to embrace the holistic digital registries [illegible] Malaysia, professional training of mutawallis [illegible]d the management in a corporate manner which enhance transparency and revenue without completely eroding the autonomy of communities. In Malaysia, financial innovations have boosted the yield of waqf by more than 20 percent and it is a possibility that India will gain through the hybrid approaches of the public-private that uphold the Article 26 protections[43]. Premature pilot digitisation in urban waqfs and effective consultation of stakeholders contributed to the development of trust and the elimination of litigations.

The secular statist framework of Turkey whose yearly audits and commercial renting contribute a lot to social welfare raises the eyebrows of conservative communities. The introduction of the GIS-mapped surveys and the involvement of the District Collector in India is similar to the Turkish experience, which may be successful in case of the additional support with independent tribunals having the expertise of

[40]Vandana Kumari, "WAQF (Amendment) Act, 2025: A Constitutional Analysis of Religious Freedom and Minority Rights" 5(3) Int'l J. Indian L. Rev. 1-58 (2025).

[41] Vandana Kumari, "WAQF (Amendment) Act, 2025: A Constitutional Analysis of Religious Freedom and Minority Rights" 5(3) Int'l J. Indian L. Rev. 1-58 (2025).

[42]Vandana Kumari, "WAQF (Amendment) Act, 2025: A Constitutional Analysis of Religious Freedom and Minority Rights" 5(3) Int'l J. Indian L. Rev. 1-58 (2025).

[43]Vandana Kumari, "WAQF (Amendment) Act, 2025: A Constitutional Analysis of Religious Freedom and Minority Rights" 5(3) Int'l J. Indian L. Rev. 1-58 (2025)

Muslim law to restrain executive discretion and disputes. Reinvestment of waqf funds into education and poverty reduction in Turkey can be a model to realize the potential in India where 38 lakh acres are reorganized in case the heterogeneity is recognized at state level.

The strict top-down control by Saudi Arabia that led to high returns and almost full registration of the country as a measure of national development is a caution to India that it should not homogenize its cultures. The Saudi-style waqf corporatisation, selective adaptation centered on commercial assets, may serve as an informational source to inform the audit and digital transparency model in India, and the pluralistic features of the protection of women and sect representation in India prevent the extreme centralisation. The necessity of pre-reform impact assessment to prevent backlash, which partially takes place in the Joint Parliamentary Committee process in India, argues in favor of expanding pilot implementations before going nationwide[44].

Conclusion

The Waqf Amendment Act, 2025 (UWMEED Act) brings about major legal virtues by filling the gaps in the governance of the waqf properties, especially bringing about the obligatory digitisation of the property records in a central national portal, time-bound written registration of waqfs, and applying the Limitation Act, 1963 to check historic litigation. Power to audit by state bodies and quasi-judicial functions of the District Collectors in surveys would foster transparency and accountability of 8.72 lakh waqf properties that comprise 38 lakh acres . By eliminating waqf-by-user and excluding government land as waqf, the preservation of equality and the common good is achieved which prevents fraudulent claims for the property.

There are however severe constitutional challenges with the new Act. The compulsory membership of non-Muslims of Waqf Boards may be considered so as to infringe Article 26(1) which assures religious denominations the freedom of managing their affairs. The sense of practice of five years of Islamic knowledge is subject to questions under Article 14 and 15, and the replacement of Muslim law experts in Waqf Tribunals with executive ones endangers the separation of powers because of the importance of fair adjudication according to the Islamic legal norms. Instead, retrospective de-notification of waqf properties and centralisation without sufficient federal consultation is a threat to constitutional federalism in List III of the Seventh Schedule that a state can be encroached upon by minorities on their endowments .

Although procedural reforms support the efficiency of governance, the substantive foray and infringement of the freedom of denominations and procedural protection can raise some constitutional issues, like in the case of Asaduddin Owaisi v. Union of India[45]. To achieve a good reform, there must be a balance between efficiency of governance and constitutional safeguards by way of consultation of the stakeholders, pilot programs and judicial checks as a way of maintaining the pluralistic fabric of India.

Politically, the modernization and digitization of the UMEED Act give the majoritarian control of the state over the minoritarian community control (by requiring non-Muslim representation), and curtailing waqf-by-user claims. This has divided parliament; the government justifies the reforms as a way of fighting against encroachments as anti-corruption, opposition groups are protesting and even challenging them in the Apex court of India. The consultations of the Joint Parliamentary Committee, with more than 97 lakh memoranda, point at the electoral consolidation of the Hindu majority votes around anti-corruption, but at the expense of the Muslim alliances in such states as

[44]PRS Legislative Research, "Joint Committee Report Summary: The Waqf (Amendment) Bill, 2024" (March 18, 2020).

[45]2025 Supreme(Online) (SC) 2378.

Uttar Pradesh ,West Bengal, Rajasthan, Andhra Pradesh and Bihar . The controversy over the de-notification of the thousands of government marked waqf land and over the five-year Islamic practice experiment bring about federal conflicts as there are implementation differences on the state level and with boards also they have different sects.

The reform is an indication of secularization and nationalization of waqf, reminiscent of colonial juridification , & replaces the nature of waqf as a faith-based and community-driven institution along with administrative efficiency and developmental utilization. Whether constitutional secularism is well capable of accommodating such aggressive reforms with the potential mistrust and federalism issues surrounding minority rights will be determined by the faithfulness in its execution, judicial adjudication, and consultations at large with the stakeholders.

The recommendations are made to balance between the advancement in governance and safeguarding minority rights in India, phased through digitisation at national portal that has a state-specific capacity building, mandatory training of mutawallis, managers and board members, and verification of beneficiaries through Aadhaar to enhance proper governance without impairing on the community management of assets . The composition of Waqf Boards must be in terms of a Muslim majority with non-Muslims acting in the advisory capacity, the grandfathered waqf-by-user properties and three-member tribunals with Muslim law experts to uphold the denominational rights. The creation of a Waqf Regulatory Authority, the members of which are the courts, the administrative, and the community would lead to the increase in transparency and accountability due to the audits, mediation, the disclosure of the revenue in the form of the list, and the control over the quality of the performance which will help in advancement of minority .

Moreover, empowering State Waqf Boards to have flexibility in implementing their plans regionally and special waqf revenue funds to support the legal aid, women beneficiaries and skills development that will honor the federalism and serve the needs of the locals. Continued reform changes must be directed by regular checks and reviews with stakeholders, empirical evaluations of impacts of litigation reduction, recovery of assets and community satisfaction[46]. To be applied in conjunction with the judicial review, as it is expected in such cases as Asaduddin Owaisi v. Union of India[47] This is the judicious method, which may turn waqf to be an example of accountable minority empowerment in India's secular framework.

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[46]PRS Legislative Research, "The Waqf (Amendment) Bill, 2024 - Complete Legislative Timeline" (2025)

[47]2025 Supreme(Online)(SC) 2378.

ARBITRABILITY OF CONTEMPORARY COMMERCIAL DISPUTES ARISING FROM UPMOST REVENUE GENERATING SECTORS: EXAMINING THE POSITION IN INDIA

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Abstract

The research paper explores the analytical research carried out to test the hypothesis formulated and finds out the result of the test. In order to carry out the test, the objective has been set to analyse in details about the commercial nature of disputes arising in India in present times from various sectors engaged in international trade and commerce through commercial contracts. This research investigation has taken into account the diverse commercial disputes arising from different sectors of the nation engaged in commercial activities within and outside the territory of the nation. Each of the diverse kind of disputes has been examined in details ranging from the kind of contracts entered into, role of Indian judiciary in adjudicating the disputes, applicability of the Arbitration & Conciliation Act, 1996, and overall, the present scenario in India. Therefore, the analytical study finds out that the Arbitrability scope of resolving contemporary commercial disputes of diverse nature arising out of international trade and commerce is narrow and underdeveloped in India; imposing hindrance to make India- a global hub of arbitration and the most preferred seat of arbitration.

Keywords: Commercial, Disputes, Arbitrability, India, diverse nature, global hub of arbitration.

1. INTRODUCTION

The conceptual philosophy upon which 'Arbitrability of disputes' is based upon is well explained by Professor Loukas A. Mistelis, who stated that 'the issue of arbitrability involves the simple question of what types of issues can and cannot be submitted to arbitration and whether any specific classes of disputes are exempt from arbitration proceedings.'[1] The concept of Arbitrability as enshrined in Article 34(2) of the UNCITRAL Model law which permits the court to set aside arbitral awards for the reason that the subject matter of the dispute is not capable of resolution under arbitration. The New York Convention also elaborated the concept of arbitrability vide Article II(1) which states that each Contracting state shall recognize an agreement in writing under which the parties undertake to submit to arbitration all or any difference in opinion which have arisen or which may arise between them in respect of a defined Legal relationship, whether contractual or not, concerning a subject matter capable of settlement by arbitration', and "Article V (2) (a) states that the subject matter of the dispute is not capable of settlement by arbitration under the Law of that Country."[2]

In the Booz Allen & Hamilton Inc. vs. SBI Home Finance Ltd & Ors decision, the Supreme Court discussed a number of arbitrability-related topics and established three different types of tests to decide

[1] Loukas A. Mistelis and Starvos L. Brekoulakis, Arbitrability: International and Comparative Perspectives (Netherlands: Kluwer Law International, 2009).

[2] Convention on the Recognition and Enforcement of Foreign Arbitral Awards art. V(2)(a), June 10, 1958, 330 U.N.T.S. 3, available at New York Convention 1958, https://newyorkconvention1958.org/index.php?lvl=cmspage&pageid=10&menu=727&opac_view=-1

whether a dispute can be arbitrated. These Tests are as follows:

- Nature of disagreement-

These tests are recommended to assess if a disagreement should be resolved in a private setting, such as arbitration, or in a public one, such as a court of law. The Court declared that a dispute would be deemed arbitrable in both situations if it concerned "right in personam" and if it concerned subordinate rights in personam that resulted from rights in rem.

- Remedy test-

The second type of test established by the highest court focuses on whether the parties requested relief can be granted by an arbitrator. The court said in this regard that 'the type of remedies which the arbitrator can award are limited by considerations of issues like public policy and by the fact that he is appointed by the parties and not by the state. For example, an arbitrator cannot impose a fine or a term of imprisonment, commit a person for contempt or issue a public order; nor can make an award which is binding on third parties or affects the public at large, such as a judgement in rem likes an assessment of the rateable value of land, a divorce decree, a winding-up order.

- Jurisdiction test-

The third test laid down is to determine whether an exclusive jurisdiction has been vested by the statute upon a tribunal to deal with the adjudication of such disputes brought before arbitration. If any specific jurisdiction is bestowed upon a tribunal, then such disputes are also not arbitrable. Thus, it can be said that Booz Allen case does not recognises only 'nature of rights test'.

In case of Vidya Drolia & others v Durga trading Corporation[3], the Supreme court of India aimed to make legal system a Pro-arbitration system in order to deal with position of arbitrability of IP disputes. In this case the Supreme Court propounded a four-fold test for determining the circumstances of Non arbitrability of IP disputes although subject matter mentioned in arbitration agreement:

- In case the cause of action and subject-matter of the IP dispute relates to 'right in rem'. A right in rem is a right exercisable against the world at large[4]. Any judicial decision related to action in rem determines the status of a person or thing as a whole applicable upon all whether parties, privies or strangers of the matter actually decided[5]. This kind of judgement decides the fate for public at large and binds them in spite of their absence[6]. But in case of right in personam, an arbitrator whose powers are derived from a private agreement between the two disputing parties has no jurisdiction to bind anyone else apart from the disputing parties by a decision, for no-one else has mandated him to make such a decision, and a decision which attempted to do so would be useless. In Suresh Dhanuka v. Sunita Mohapatra[7], it was held that a dispute concerning a right in rem shall be incapable of being arbitrated upon and shall lie under the exclusive jurisdiction of the courts of the land. The Supreme Court has pronounced that the right in rem comprises right in patent and copyright. In the case of Emaar MGF Land Ltd. v. Aftab Singh[8] categorically stated that disputes related to patents, copyright and other Intellectual Properties are beyond the scope of arbitration.

[3] *Vidya Drolia v. Durga Trading Corp.*, 2020 SCC OnLine SC 10 (India).
[4] Ramanathan Aiyar, *Advanced Law Lexicon* (3d ed.).
[5] *Booz Allen & Hamilton Inc. v. SBI Home Fin. Ltd.*, MANU/SC/0533/2011 (India).
[6] G.C. Cheshire & P.M. North, *Private International Law* 362 (12th ed. Butterworths 1992).
[7] *Suresh Dhanuka v. Sunita Mohapatra*, (2012) 1 S.C.C. 578 (India).
[8] *Emaar MGF Land Ltd. v. Aftab Singh*, (2019) 12 S.C.C. 751 (India).

- In Eros International v. Telemax[9] the issue appertained copyright infringement, the Court opined that where there are matters of commercial disputes and parties have consciously decided to refer these disputes arising from that agreement to a private adjudication forum like arbitration, no doubt shall be there regarding non-arbitrability of such disputes. Such actions shall get treatment of actions in personam, wherein one party is supposed to be seeking a specific relief against his opposite party only and not against the world at large.

- In case the cause of action and subject-matter of the IP dispute have erga omnes effect. The approach towards international commercial arbitration for resolving IP disputes shall not be admitted when the subject matter to the dispute has erga omnes effect as it affects the rights and liabilities of persons not related to that arbitration and its award. However, the Court observed that certain areas of intellectual property rights such as grant and issues of patents, registration of trademarks falls under interest of governmental functions and had an erga omnes effect. Since the grant of such rights conferred monopoly rights, they were non-arbitrable[10], and thus it requires centralised adjudication mechanism and any sort of mutual adjudication like Arbitration would not be appropriate and enforceable.

- In case the cause of action and subject-matter of the dispute relates to inalienable sovereign and public interest functions of the State and hence mutual adjudication would be unenforceable.

- In case the subject-matter of the dispute is expressly or by necessary implication non-arbitrable as per mandatory statute(s).

1.1. Research Problem

Deficiency in Adoption of Arbitration Practices Related to Modern-Day Perspectives:

Modern commercial activities generate complex disputes that often transcend traditional contractual claims. However, arbitration practices in India and several other jurisdictions exhibit deficiencies in adequately addressing these contemporary disputes:

- Construction & Infrastructure Disputes – Large-scale infrastructure projects involve multi-party, multi-jurisdictional agreements, yet standard arbitration frameworks sometimes fail to address evolving contractual complexities, including delay claims, force majeure, and liability allocation.
- Investment Treaty Disputes – Disputes under Bilateral Investment Treaties (BITs) and multilateral investment frameworks may involve state immunity or public law considerations, limiting their arbitrability.
- Insolvency Disputes – The Insolvency and Bankruptcy Code (IBC) prioritize statutory processes; disputes relating to corporate insolvency may not always be suitable for private arbitration.
- Intellectual Property (IPR) Disputes – While IP disputes can be arbitrated, certain disputes involving patents, trademarks, and copyright require statutory filings or enforcement through courts.
- Maritime Disputes – Modern shipping and maritime commerce generate disputes under international conventions, insurance claims, and environmental regulations, some of which courts have classified as non-arbitrable.
- Sports Disputes – Regulatory and disciplinary matters in sports often involve statutory bodies or federations, restricting arbitration under purely private rules.

[9] *Eros Int'l v. Telemax,* 2016 SCC OnLine Bom 2179 (India).

[10] *Vidya Drolia v. Durga Trading Corp.*, MANU/SC/0939/2020 (India).

- Art & Cultural Property Disputes – Disputes involving heritage, cultural property, and art transactions frequently touch on public interest, provenance laws, or governmental restrictions, impacting their arbitrability.

1.2. Hypotheses

a. Arbitrability purview in adopting modern day concepts is narrow and underprovided in International Commercial Arbitration landscape in India.

b. The existing scenario of 'International commercial arbitration' in India requires major developments to emerge as the most favoured arbitration nation worldwide.

1.3. Objectives

a. To analyse the scope of resolution of the commercial disputes in India arising out international trade & commerce in modern times which are diverse and dynamic in nature.

b. This analytical study shall aim to verify the deficiencies persisting in the practicality of International commercial arbitration redressal mechanism in India and recommend suitable suggestions to overcome the shortcomings.'

1.4. Methodology

The methodology adopted in the entire research work to develop and test theories and hypotheses is basically classified as 'Theoretical Legal Research' as it involves the development of models, frameworks and theories based on 'Doctrinal approach' of existing knowledge, data and assumptions. The researcher has followed Bluebook (21st Edition) Citation mode to maintain uniformity throughout the work.

The primary data collected for doctrinal study is based on a thorough study on existing national and international instruments, statutes, reports, Case Laws, News, interviews. Whereas, for doctrinal study, the secondary data have also been very beneficial which includes publication of various reports and notifications, Legal research articles, unpublished dissertation and unpublished thesis having relevance to the topic of study through both online and offline platforms.

2. DISPUTES RELATED TO CONSTRUCTION AND INFRASTRUCTURE ACTIVITY

The real estate sector in India is one of the major developing sectors contributing enormously to the development of India's economy as a large number of infrastructure related activities are being undertaken by the government and private sector as well. As per information the current economic position of India's real estate market is $ 120 billion and the nation will be heading towards for achieving the position of the third-largest construction market in the world by 2030 and to uplift the economic position to $ 650 billion by 2040.[11]

In this large and dynamic sector disputes would be arising undoubtedly as they are inevitable. The disputes in this sector generally arises from violations of the terms of the agreement, defaults in payment to the contractor/ employer, stipulations for materials and workmanship, etc. The disputes related to construction and infrastructure are quite unique in nature due to involvement of multiple parties among which some of them are not even closely related to the disputes but are being affected by the dispute. The variations of parties' involvement may range from infrastructure, residential and commercial construction sectors.[12]

[11] Press Trust of India, *Size of the Real Estate Market to Grow to USD 650 Billion by 2040: NITI Aayog*, ECON. TIMES (Feb. 22, 2019), https://realty.economictimes.indiatimes.com/news/industry/size-of-the-real-estate-market-to-grow-to-usd-650-billion-by-2040-niti-aayog/68114021

[12] Nancy Patel, Construction arbitration: How is it different from generic arbitration, IPleaders (31 July 2019), available at https://blog.ipleaders.in/construction-arbitration-

2.1. Engineering and Procurement Contracts (EPC)

As per the meaning of Accounting Standard (AS) 7, construction contracts mean any contract made for construction of an asset or a combination of assets that are closely interlinked or interdependent with respect to their technology/design/ function or the nature of their ultimate purpose or use.[13] This construction contracts includes in it a special form of contracting agreement known as 'Engineering and Procurement Contracts' which mainly involves an employer, a project consultant, a designer and multiple contractors. Among all these parties the contractor primarily carries out engineering design of the project with limited assistance by the subcontractor and the designer and thereafter the supplier helps in procuring equipment and all the raw materials necessary to deliver a functioning facility. These EPC in India is governed by the Indian Contract Act, 1872 and thus the contracts must satisfy the essentialities of the Act to make it valid and enforceable.[14]

2.2. Nature of Disputes Arising Out of EPC:

The work of construction and infrastructure are considered as nation-building tasks which are generally complex, lengthy and continuous process and thus giving birth to several kinds of disputes from the beginning of the formation of contracts. The various forms of disputes generally take place between contracting parties due to several activities which are identified as:

a. Unjustified construction delays
b. Non-payments
c. Fraud tenders and bank guarantees
d. Fuzzy milestones and payment schedules
e. Interpretation of key provisions of contract
f. Battle of documents, project plans and specifications.[15]

The disputes mainly arise from the delays specially during the engineering stage, procurement/ sub-contracting phase as well as during the erection and commission of projects. The disputes when arises due to delays they are being assessed by way of preparing a report known as 'Delay Analysis Report' (DAR) wherein all the evidences and activities of the parties involved are noted and finally this report becomes the ultimate document for the basis of all claims, damages and penalties regarding the project. The Indian Contract Act, 1872 comes into scenario when such kind of delay arises resulting to disputes between the parties. "The period of time is usually fixed by the parties and when such promise is not fulfilled the contract or so much of it has not been performed, becomes voidable at the option of the promise, if the intention of the parties was that time should be of essence of the Contract."[16] However, if the scope of the project is undefined and time is not explicitly fixed, even then sections 46 to 50, specifying rules regarding reasonable time and place of performance of the contract are attracted.[17]

2.3. Arbitrability of Construction and Infrastructure Disputes:

In general, the construction contracts include a dispute resolution clause to address for various kinds of disputes which may arise. The dispute resolution mechanisms must not be multiple in accordance to the different stages of construction as it may provide non

genetic-arbitration/.

[13] Accounting Standard (AS) 7, available at https://www.mca.gov.in/Ministry/notification/pdf/AS_7.pdf.

[14] Sumeet Kachwaha and Dharmendra Rautray, India: Construction & engineering law, Mondaq (05 September 2017), available at https://www.mondaq.com/India/construction-planning/616518/ construction-engineering-law.

[15] Hilal Itani, Construction and Contract disputes-Reasons, Avoidance and Resolution, Corporate Live Wire (11 January 2018), available at https://www.corporatelivewire.com/top-story.html?id.

[16] Indian Contract Act, 1872, S.55, No. 9, Acts of Parliament, 1872.

[17] Srishti Chawla, Time and Performance of Contract, IPleaders (22 March 2019), available at https://blog.ipleaders.in/importance-of-time-in-the-performance-of-a-contract/.

flexible framework for dispute resolution.[18] Therefore the contract drafted must be clear and unambiguous. To minimise the burden of litigation the use of ADR techniques like Arbitration, mediation, negotiation, dispute review boards are boards are prevalent in construction dispute adjudication. However, among all these techniques arbitration seems to allows the best flexible method and party autonomy in the adjudication process and takes into consideration the technical expertise required in construction disputes and as such Arbitration is highly valued in the construction industry.

3. DISPUTES RELATED TO INVESTMENT TREATY

3.1. Model BITs

Whereas India has decided not to become a party to the ICSID convention due to several factors like the Convention's leaning towards the developed countries and lack of scope prevailing for reviewing award by Indian Courts on ground of public policy violations. "India became the first signatory of BITs with England in 1994 and signed a total of 86 BITs but as per source lastly on November, 2021 India remains with only 12 active BITs."[19] The governmental measures of India have been challenged several times since 2011 and as of now, India is the respondent in fifteen BIT arbitrations and as such India has considered to analyse the Investment arbitration landscape of the country with a revised vision.

In view of the increasing numbers of Investor-state dispute settlement (ISDS) claims filed against India, an adoption of a Model BIT has been unveiled in January 2016 considering it to be the base model for the future international investment agreements (IIAs') replacing the old 2003 BIT. Herein, an analysis has been made of some of the key aspects of the 2016 Model BIT, which are as follows:

i. 'Investment' definition- "following the criteria set in the case of Salini, the term investment included the commitment of capital or other resources, certain duration, the expectation of gain or profit, the assumption of risk and a significance of development and also excluded the pre investment activities from the scope of investment."[20]

ii. Fair and equal treatment- Article 3.1 of the model BIT has aimed to bring customary international Law in place of autonomous standard wherein the investors protection would be limited to the breach of customary international Law.

iii. Most-favoured nation- this clause has been inserted to protect the foreign investors against any discrimination by the host states through Article 4.2 whereby level-playing field for foreign investors has been assured at state government level in India and that too with equal treatment accordingly.

iv. Transparency- Article 10 has been inserted mainly to focus on investor's protection from the cases of corruption and bribery to ensure a transparent treatment for ensuring investor's confidence.

v. Local remedy vis-à-vis Arbitration- It is considered to be the most important clause in the Model BIT where the spirit of arbitration for resolving investment disputes has been tried to upheld. As the Indian Courts are stuck with backlogs and delays it caused harm to investor's protection within a reasonable time period which

[18] Nicolas Bremer Rechtsanwalt, Dispute resolution in construction contracts, Alexander & Partner (2015), available at https://www.alexander-partner.com/fileadmin/downloads/alexander-partner_ag_yearbook_2015.pdf.

[19] Ministry of Finance, Department of Economic Affairs, Government of India, Bilateral Investment Treaties, Department of Economic Affairs (MoF India), https://www.dea.gov.in/index.php/documents-bilateral-investment-treaties

[20] *Salini Costruttori S.p.A. & Italstrade S.p.A. v. Kingdom of Morocco*, ICSID Case No. ARB/00/4, Decision on Jurisdiction ¶¶ 52–58 (July 23, 2001).

has been proved from the case of White Industries Australia Ltd. v. India.[21] Article 15.2 has restricted the delay period to maximum 5 years after which the investor may initiate International Commercial Arbitration upon serving a notice of dispute to the defending party. The maximum period of 5 years to exhaust local remedies is oppressive and backwards as it differs from the thirteenth to eighteenth month worldwide standard period. More importantly in absence of any local remedy that can give relief to dispute, the obligation to exhaust local remedies does not apply and as such, it imposes a burden on the foreign investors to prove the lack of an adequate domestic remedy.

3.2. Role of Indian Judiciary in BIT -Arbitrations

In this context the role of Indian Courts in the matter of BIT Arbitrations has been analysed in the light of three landmark cases discussed below:

i. In the case of Board of Trustees of the Port of Kolkata v. Louis Dreyfus Armatures[22]:

It is the first Investment treaty Arbitration in India where the Calcutta High Court decided in favour of the plaintiff with an ani-arbitration injunction application involving the 1997 India-France BIT. According to the High Court, it had a jurisdiction over International Investments agreements (IIAs) which was authorized by the Arbitration and Conciliation Act, 1996, but it has not reviewed whether the Act had afforded it the authority to interfere with the BIT arbitration. The court ruled that no arbitration proceedings can be invoked against the Port of Kolkata because Port Trust is one of the bodies of the State.

ii. In the case of Union of India v. Vodafone Group Plc[23]:

UPA government has made an amendment on the Income Tax Act, 1961 to tax the indirect transfers against the order of the 2012 Supreme Court in the case of Vodafone International Holdings B.V v. Union of India, and during the period the case was pending, the Holding company of Vodafone (Vodafone Plc) filed request of Arbitration in accordance with the India-UK BIT. Later, the Union of India went to the Delhi High Court to challenge the invocation of arbitration but the Court permitted the Counsels to appoint a presiding arbitrator under the India-U.K. BIT. The Indian government petitioned in front of the Supreme Court once again to no avail and eventually, in 2018, the Delhi High Court denied the application of anti-arbitration injunction against Vodafone to proceed with the case under the India-U.K. BIT. Nevertheless, the subsequent judgement of the Court was overridden by the Amendment in the Income Tax Act, 1961 to reimburse tax liability of the Vodafone, thereby initiating an international arbitration proceeding on the breach of the provisions as stipulated in Article 4(1) of the India Netherlands BIT. Vodafone Group Plc won the case against its long pending demand on paying taxes on a sum of Rs. 22,100 Crore in its case against the Permanent Court of Arbitration.

iii. Union of India v. Khaitan Holdings (Mauritius) Ltd.[24]

"In this case the Khaitan Holdings of Mauritius issued a notice of arbitration to India under the India-Mauritius BIT in lieu of losses suffered due to cancellation of 2G telecom spectrum licenses made by Supreme Court in reference to judgement given in the case of Centre for PIL v. UOI."[25] Union of India raised

[21] White Industries Australia Ltd. v. Republic of India, UNCITRAL, Final Award, IIC 529 (Nov. 30, 2011).
[22] Bd. of Trs. of the Port of Kolkata v. Louis Dreyfus Armatures SAS, G.A. No. 1997 of 2014 in C.S. No. 220 of 2014 (Cal. H.C.).
[23] *Union of India v. Vodafone Group PLC United Kingdom & Anr.*, CS (OS) 383/2017 & I.A. No. 9460/2017 (Del. H.C.).
[24] *Union of India v. Khaitan Holdings (Mauritius) Ltd. & Ors.*, CS (OS) 46/2019 & AS 1238/2019 (Del. H.C.).
[25] *Centre for Pub. Interest Litig. v. Union of India*, (2012) 3 S.C.C. 1 (India).

objections regarding commencement of arbitration under India-Mauritius BIT and the Delhi High Court opined that BIT arbitrations are totally different from commercial arbitrations and thus not governed by the Arb & Conc. Act, 1996 and also stated that except for compelling circumstances the Court would not interfere and pass anti-arbitration injunctions.

3.2.1. Whether the Indian Courts have Jurisdiction in International BIT Arbitrations?

The scenario regarding the jurisdiction of Indian Courts has been different in the cases regarding this important issue of BIT arbitrations. The above discussed case of Vodafone showed that Delhi High Court applied the 'doctrine of single economic entity' and declared that there is no inherent jurisdiction to adjudicate upon Investor-state arbitrations as India has not ratified ICSID conventions which restricts the role of domestic Courts and as such the domestic Courts would not have power to execute an award applied by a foreign investor against the state.

Later, in Khaitan Holdings, as has been mentioned above, the Delhi High Court held its jurisdiction based on the argument that the case concerned the economic transactions of the Indian company which was owned by the Indian nationals. In a different case the courts had gone against the stand of McDonald India v. Delhi High Court where the court previously ruled that a domestic court had a jurisdiction to grant anti-arbitration injunction even in international arbitration. Such a supervisory or suppressed jurisdiction by the domestic courts is of great concern to be exercised anymore. It runs the risk of endowing the excessive powers to national courts in BIT arbitration, which is contrary to the Arbitration and Conciliation Act, 1996, under which BIT arbitrations are not addressed. Also, as observed in the Port of Kolkata case above, the assumption that Part I of the 1996 Act would apply to arbitrations seated in India and Part II would apply to arbitrations seated outside India has caused a doctrinal confusion. This judicial practice is further and more undermined by the statutory restrictions placed by the 1996 Act on the authority of domestic courts.

3.2.2. Whether the provisions of Arbitration & Conciliation Act, 1996, applies to BIT Arbitrations?

In reference to the above discussed case of Port of Kolkata, the Court presumed the application of 1996 Act on 'Investor-State arbitration'[26]. In the subsequent case of Khaitan Holdings, the Delhi High Court denied the notion of the Calcutta High Court regarding the applicability of section 45 of the Arbitration & Conciliation Act, 1996 in 'BIT arbitrations' for granting anti-arbitration injunction. Moreover, the Delhi High Court again stood on same understanding even in the case of Khaitan Holdings affirming the non-application of Arbitration & Conciliation Act, 1996 in Investor-State arbitrations on the ground of nature of disputes without examining the prevalence of 'commercial relationship' between the disputant parties and in this manner differentiated the BIT arbitrations and International Commercial Arbitrations. However, it is to be noted that the UNCITRAL Model Law, based upon which the 1996 Act has been enacted, involves 'Investment disputes' as commercial in nature between the two parties.

4. DISPUTES RELATED TO INTELLECTUAL PROPERTY RIGHTS (IPR)

In this present day we are witnessing the phenomenal growth of globalisation which is leading the world into an integrated marketplace yielding a cut-throat competition among the market players. The time when India adopted new economic policy in 1991, it gradually removed the trade barriers and opened its market for foreign business enterprises in order to flourish international trade in India. To keep up to the shifting trends in the world economy, the commercial and business laws of India were forced to assume new terrain and hence the emerging scenario of Intellectual property slowly started casting doubts on the aspect of

[26] *The Board of Trustees of the Port of Kolkata v. Louis Dreyfus Armatures SAS & Ors.*, G.A. No. 1997 of 2014 & C.S. No. 220 of 2014 (Cal. H.C. Sept. 29, 2014) (injunction restraining BIT arbitration).

settling international IP disputes. In this situation a dispute resolution mechanism for resolving commercial disputes became very popular worldwide among the corporate and business sectors. It is International commercial arbitration which became widely accepted in almost every aspect of business, commerce and investments as it has evolved as a convenient method for resolving international commercial disputes.

4.1. Legislative Framework Regarding Arbitrability of IP Dispute

Arbitrability scope of IP disputes in India can be ascertained through observing legislative approach towards it:

i. 'Section 2(3) of the Arbitration and Conciliation Act, 1996 provides that certain disputes may not be submitted to arbitration'[27]

ii. 'Section 34(2)(b)(i) provides that courts may set aside arbitral awards where the subject matter of the dispute was not capable of settlement by arbitration.'[28]

iii. 'Section 10 of the Commercial Courts Act provides for arbitration of commercial dispute without specifically ejecting arbitration of IPR disputes from its purview.'[29]

4.2. Judicial Interpretation:

"In the case of Vidya Drolia, the Indian court reinforced its adherence to a pro-arbitration legal system especially in elucidating the arbitrability of intellectual property cases. In this precedent case, the Supreme Court established a four-pronged test that would be applied to decide whether a matter not previously subject to arbitration by an agreement would be non-arbitrable"[30]:

Sl. No.	Ground of non-Arbitrability	Explanation
i.	Rights in Rem	'The cause of action' or 'subject matter' involves rights enforceable against the world at large, rather than between specific parties.
ii.	Erga omnes effect	The dispute affects the rights and obligations of the public or third parties beyond the disputing parties.
iii.	Sovereign or public interest functions	The dispute relates to inalienable sovereign powers or matters of public interest of the State, making private adjudication unenforceable.
iv.	Statutory non-arbitrability	The subject matter is either expressly or by necessary implication declared to be non-arbitrable under

[27] Arbitration and Conciliation Act, 1996, § 2(3), No. 26 of 1996, India.
[28] Arbitration and Conciliation Act, 1996, § 34(2)(b)(i), No. 26 of 1996, India.
[29] Commercial Courts Act, 2015, § 10, No. 4 of 2016, India.
[30] Vikash Kumar Jha & Ena Kapur, *Arbitrability of Disputes: Indian Jurisprudence (Part 2)*, Cyril Amarchand Mangaldas Dispute Resolution Blog (June 27, 2024), https://disputeresolution.cyrilamarchandblogs.com/2024/06/arbitrability-of-disputes-indian-jurisprudence/

		mandatory statutory provisions.

Table 1.1.

4.3. International Perspective:

a. In International arena both the 'New York Convention, 1958' and the 'UNCITRAL Model Law (International Commercial Arbitration), 1985' provides for settlement of international IP disputes by way of Arbitration.

b. World Intellectual Property Organisation (WIPO) initiated major steps to institutionalize the arbitration of IPR disputes by establishing WIPO Arbitration and Mediation Centre.

c. The Countries which have adopted UNCITRAL law like Australia, Germany, Japan, Canada have all validated arbitration of patent infringement and some even of patent validity.

d. The ICC Commission has stated arbitration to be the "most desirable method for settling disputes arising out of intellectual property transactions." The ICC Final Report on Intellectual Property Disputes and Arbitration even states that "There are no substantive differences in arbitrations arising from intellectual property disputes as from other areas.

4.4. Advantages Of Using Arbitration in Resolving IP Disputes

i. A single procedure system through which parties can agree to resolve IP dispute whereas a Court litigation can involve a multitude of procedures especially in case of dispute arising from different jurisdictions with a risk of inconsistent results.

ii. Party autonomy feature of arbitration can help Parties to decide between themselves how they want their dispute to be resolved and they do not require to follow the conventional way of litigation.

iii. Neutrality exists in arbitration procedure as neither of the party can enjoy its home litigation advantages.

iv. Expertise facility is the best part of this untraditional way of resolving disputes is that the parties can choose the arbitrator who are expert in their field.

v. Confidentiality: The best and most secure way to maintain the confidentiality is to resolve the disputes through ADRs. Being parties centric it gives immense importance to secrecy and confidentiality.

vi. Finality and enforceability of arbitral awards: Generally arbitral awards are not normally subject to appeal. They can be enforced immediately without and undue delay.

In consideration of the above-mentioned facts and cases, it can be ascertained that this paper aims to analyse the scope of resolving IP disputes through International Commercial Arbitration in India and thus the question regarding the present scenario of settlement of IP disputes through International Commercial Arbitration has been raised. In order to enhance the economic stability of Nation through trade and commerce it is desirable that the disputes related to Intellectual property rights must be solved by the arbitration just like any other private rights that can be solved through settlement under the arbitration. As per the "consensual nature of the arbitration", the arbitral award would be applicable on the disputed parties (parties involved) only and will not affect the third party.

The successful implementation of arbitration mechanism in resolving IPR disputes is surely going

to be a great success for the disputed parties of IPR and help the business community as a whole. As our nation India has an aim of becoming a global-hub of international commercial arbitration so the scope of arbitration has also to be widened, the scheme of arbitrability of IP disputes has to be implemented efficiently. The position on arbitrability have to make sure that a balance of rights between inventor/ author and the general public will be maintained, with inventor/ author retaining the right to arbitrate contractual rights and courts keeping mind jurisdiction over matters where the public's right to use copyrighted works and patented inventions affected, would also ensure a vigorous public domain, and safeguard the public interest.

5. DISPUTES RELATED TO INSOLVENCY

India has been witnessing a tremendous rise in liquidation cases specially from December 2019 with a surge of 30.29% and as per reports there are total 4541 corporate insolvency cases were admitted by courts until July 2021.[31] In India the legislation that provides the provisions for resolution of delay in debt resolution and insolvency of companies, limited liability partnerships, individuals or partnerships is the Insolvency and Bankruptcy Code (IBC), 2016. IBC provides for the effective resolution and maximisation of value of assets and thus time is being considered as one of the essences under the legislation and in case of default in payment the Insolvency Resolution Process (IRP) has to be completed within 330 days from the insolvency commencement date.[32] The growing numbers of insolvency applications creating a possibility of confluence between the IBC and Arbitration & Conciliation Act, 1996 in the coming time in India due to the constant development of both the legislations.

5.1. Arbitrability of Insolvency Disputes in India: Judicial Interpretation

The issue of arbitrability of Insolvency dispute matters has been settled by Supreme Court of India firstly in a case of Booz Allen and Hamilton Inc. v. SBI Home Finance Ltd.[33], wherein the Supreme Court upheld the existence of Judicial authority like National Company Law Tribunal which can declare the dispute between the parties are non-arbitrable in nature irrespective of prior arbitration agreement made between the parties and as such the insolvency disputes are held as non-arbitrable disputes. In this case the Court considered the overriding effect of Insolvency and Bankruptcy Code (IBC) in pursuance of Section 238 of IBC and held that IBC being implemented later to Act of 1996 shall prevail over it.

5.1. 1. Initiation of Corporate Insolvency Resolution Process (CIRP) by a Financial Creditor

The Insolvency & Bankruptcy Code, 2016 (IBC), included a provision in section 7 dealing with the requirement and process for initiation of corporate insolvency resolution process by a Financial Creditor against a corporate debtor. Firstly, it is essential to understand about the financial creditor which has been explained under IBC as "a person to whom a financial debt is owed and includes a person to whom such debt has been legally assigned or transferred to".[34] The explanation of a financial debt has also been included under the code as "a debt along with interest which is disbursed against the consideration for time and value for money"[35].

Section 7(1) of IBC contains two important terms which needs clarification before dwelling with this part. Firstly, 'Adjudicating Authority' herein resembles the National Company Law Tribunal (NCLT) as constituted under Section 408 of the Companies Act, 2013, and secondly, the term

[31] Gireesh Chandra Prasad, *No big jump in bankruptcy admissions in June quarter*, Livemint (06 September 2021), available at http://www.livemint.com/companies/news.html.
[32] Insolvency and Bankruptcy Code, 2016, Sec.12, No. 31, Acts of Parliament, 2016 (India).
[33] Booz Allen and Hamilton Inc. v. SBI Home Finance Limited & Ors., 2 (2011) 5 SCC 532.
[34] Insolvency and Bankruptcy Code, 2016, S 5(7), No. 31, Acts of Parliament, 2016 (India).
[35] Id. S 5(8).

'default' has to be interpretated under the proviso of Section 4 of IBC wherein it expresses that 'the minimum amount of default has to be 1 crore rupees' for initiating corporate insolvency resolution process. Therefore, the existence of 'debt' and 'default' on the part of corporate debtor has to be satisfied and merely the existence of a dispute shall not apply for an application under Section 7 before the adjudicating authority i.e. NCLT.

The matter regarding the arbitrability of default under Section 7 has been dealt in the case of Indus Biotech Pvt. Ltd. v. Kotak India Venture Fund-I[36] by the National Company Law Tribunal, Mumbai. In this case Kotak India filed an application u/s 7 on contrary Indus Biotech filed an application u/s 8 of IBC for transferring the dispute to the arbitral tribunal. The NCLT being the adjudicating authority clarified that it has the authority to hear application u/s 8 of IBC while entertaining an application u/s 7 of IBC and as such discovered that the essential element 'default' is not satisfied in this case giving rise to rights in personam and allowed the matter to be transferred to arbitral tribunal.

5.1.2. Initiation of Corporate Insolvency Resolution Process (CIRP) by an Operational Creditor

The Insolvency & Bankruptcy Code, 2016 (IBC), included a provision in Section 9 dealing with the requirement and process for initiation of corporate insolvency resolution process by an Operational Creditor against a corporate debtor.[37] Firstly it is essential to understand about Operational Creditor which has been explained under IBC as "any person to whom an operational debt is owed and includes any person to whom such debt has been legally assigned or transferred"[38], and the meaning of an operational debt has been explained as "a claim in respect of the provisions of goods or services including employment or a debt in respect of the repayment of dues arising under any law for the time being in force and payable to the Central Government, any State Government or any local authority"[39].

The main element underlying this provision is the 'existence of Dispute' for making an application u/s 9 and thus to mention the provision of Section 5 (6) it states that a dispute may be a suit or arbitration proceedings which is related to the existence or amount of debt, the quality of goods or service or the breach of representation or warranty. The Supreme Court held that if there are pending arbitral proceedings before the tribunal then as a consequence the application filed by the operational creditor u/s 9 of IBC would be rejected due to the presence of a 'pre-existence of dispute' as to the debt. However, this position of the Court can also be clarified from the judgement in the case of Agrocorp International Pvt. Ltd. v. National steel and Agro Industries Ltd.[40], wherein the NCLT, clarified that in case of pending arbitral proceedings, initiation of CIRP would be barred under Section 9 of the IBC due to existence of a 'pre-existing dispute'.

5.1.3. Enforcement of Foreign arbitral award

The main question that arises in this perspective is that whether a foreign arbitral award can be enforced against a corporate debtor. In the case of Power Grid Corporation of India Ltd. v. Jyoti Structures Ltd.[41], the Delhi High Court held that only awards against the corporate debtor related to debt recovery shall be prohibited whereas, other proceedings would continue though moratorium period has been imposed u/s 14 of IBC[42]. This statement signifies that a foreign arbitral award cannot be enforced against a corporate debtor

[36] *Indus Biotech Pvt. Ltd. v. Kotak India Venture (Offshore) Fund*, (2021) 6 SCC 436 (India).
[37] Insolvency and Bankruptcy Code, 2016, S 9, No. 31, Acts of Parliament, 2016 (India).
[38] Id. S 5(20).
[39] Id. S 5(21).
[40] Agrocorp International Pvt Ltd. v. National Steel and Agro Industries Ltd., CP(IB) No. 798/MB/C-IV/2019.
[41] Power Grid Corporation of India Ltd. v. Jyoti Structures Ltd. (2018) 246 DLT 485.
[42] Insolvency and Bankruptcy Code, 2016, S 14, No. 31, Acts of Parliament, 2016 (India).

once the insolvency proceedings are initiated and moratorium is imposed under Section 14.

5.2. Position in India

India has not yet adopted the UNCITRAL Model Law in the matter of international insolvency disputes as well as the moratorium seemed to be incapable of extending to foreign seated arbitrations. In addition to this issue there are several common problems existing in this scenario such as contradiction of multiple laws, overlapping interests, attachment of assets outside India, accessibility to domestic insolvency proceedings by foreign creditors, enforcement of foreign debt, and stay of international arbitrations involving corporate debtor as a party. There is an urgent requirement for a universal approach of insolvency arbitration and this would have been possible if India decides to adopt UNCITRAL Model Law on international insolvency disputes to pave way for harmonious conjunction of insolvency and Arbitration disputes by balancing the best interest of both the Laws.

6. DISPUTES RELATED TO MARITIME

In recent times arbitration has become a popular method for resolving disputes related to maritime such as shipping contracts, cargo claims, and vessels around the world. The meaning of the term 'maritime' has been stated as 'of or relating to navigation or commerce on the sea',[43] which presents it as a highly technical and specialised.

The major growth of shipping industry in India due to its geographic location has made India as a major hub for international shipping trade and as such there is a highly requirement of robust maritime arbitration landscape in India. Earlier maritime disputes were resolved through the Courts but the present rise of international shipping trade activities demands the resolution process to be solved by a special method like arbitration. In this part a comprehensive analysis of maritime arbitration in India shall be done by examining its legal framework, practical application and existing challenges.

6.1. Maritime Contracts

6.1.1. Charter Party Contract

This is a type of contract which is entered between a shipowner and a charterer wherein the shipowner agrees to lease the vessels owned by him and the charterer agrees to hire a ship or all the cargo space, or a part of it, as per terms and conditions stipulated in the charter party.[44] There are mainly three types of Charter Party Contracts which have been discussed below:

a. Time Charter contract:

In this category of contract, the charterer party hires the vessel in respect of a particular period limited by time. The charterer party agrees to bear the fuel costs, port dues and payments to agents appointed at port, and the shipowner remains liable for ship management, ship maintenance costs and payments to the crew.

b. Voyage Charter contract:

In this category of contract, the charterer part agrees to hire the vessel or cargo for making a particular voyage specifically between the ports by making payment of a specific rate per ton and takes responsibility limited to the onloading and offloading of goods.

c. Bareboat Charter contract:

Unlike the above two categories, the shipowner here confers full control of the vessel to the charterer for a specified period stipulated in the charter party and so the charterer takes liability of for all payments

[43] Merriam-Webster, 'Maritime', in Merriam-Webster.com Dictionary (n.d.) available at https://www.merriam-webster.com/dictionary/maritime.

[44] Tariq Khan, 'Everything you need to know about Arbitration in India', pg. 349, Thomson Reuters, 2022.

including fuel, crew, pilotage, port charges and safety of the vessel hired.[45]

6.1.2. Carriage and Bill of Lading Contract

In this kind of contract, the shipper or the cargo owner forms one side and the carrier on the other side. The carrier makes transportation of goods from one place to another against the payment, and issues an acknowledgement of receipt of cargo for shipment known as a bill of lading. The bill of lading also serves as evidence of the contract of carriage and document of title.[46]

6.2. Laws Regulating Maritime Arbitration in India

The legislative framework governing the adjudication mechanism of Maritime Arbitration in India is a mix-match of international conventions, domestic statutes and judicial interpretations which are discussed below:

6.2.1. International regulations

a. New York Convention (1958)

India has been a signatory member to the New York Convention in the matter of recognition and enforcement of foreign arbitral award. This convention generally simplifies the procedure of the recognition and enforcement of foreign arbitral award in member states by establishing a uniformity in the standard of enforcement of foreign award passed by another signatory jurisdiction. The convention aims to secure that arbitral awards rendered in International maritime arbitration are respected in India through recognition and enforcement.

b. Hague-Visby Rules (1978)

The international convention governing the carriage of goods by Sea known as the Hague-Visby Rules. The main objective set out in this international rule is to provide uniformity in the matters of the carrier's liability, cargo handling and the legal remedies available in case of loss or damage sustained by the carriers and shippers. The international convention through its standardized rules provokes for a consistent approach to resolve such disputes through arbitration by harmonising the national and international arbitration practice in light of fairness, transparency and accuracy.

6.2.2. Domestic regulations

a. Arbitration & Conciliation Act, 1996

The principal legislation based on UNCITRAL model law governing both domestic and international arbitration in India is the Arbitration & Conciliation Act, 1996. This Act provides the legal foundation for maritime arbitration in India both of domestic and international in nature and to ensure the maritime arbitration is conducted maintaining the global best practices along with recognition and enforcement of foreign arbitral awards.

b. Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017

This Act has evolved as a reform to the legal provision concerning the admiralty jurisdiction and settlement of maritime disputes in India. Several types of maritime disputes arising from shipping contracts, cargo claims and vessel related disputes has been comprehensively covered under the Act of 2017. The Act laid emphasis on settlement of maritime disputes of several kinds ranging from arresting vessels, obtaining security for claims, and other disputes by the method of Arbitration. This Act has been upholding the importance of Maritime Arbitration by providing a clear clarification regarding

[45] Adv Digvijay Palande, 'Maritime Arbitration in India: Evolution, Legal Framework, and Future Prospects', TIJER, ISSN 2349-9249, Vol 11, Issue 12.

[46] Id.

jurisdictional issues and procedural requirements for a more efficient and structured approach for maritime claims and disputes.

6.3. Judicial Decisions in India

In this context few judgements of the Court have been studied to analyse how the Indian judiciary have contributed in shaping and developing the practice of maritime arbitration in India. The landmark judgements regarding several issues in maritime arbitration are discussed below:

a. Enforceability of Arbitration agreement

- The Union of India v. The Indian Oil Corporation Ltd.[47]

In this matter the Supreme Court upheld the principle of separability and advocated for the enforceability of an arbitration agreement by considering the necessity to assess the arbitration agreement as an independent one other than main contract but has to be valid and enforceable.

- Duro Felguera S.A. v. Gangavaram Port Ltd.[48]

In this case the Supreme Court presented the intension of judicial body to uphold arbitration agreements as a fundamental aspect of resolving disputes. It further stated that unless the agreement is clearly invalid the dispute if covered within arbitration clause must be referred to arbitration.

- Indian Oil Corporation Ltd. v. Amritsar Gas Service[49]

The scope of arbitration has been highlighted in this case which the parties must abide by as any decision made outside the scope of arbitration agreement could be held as overriding the authority.

b. Jurisdiction of Arbitral Tribunal

- National Highways Authority of India v. M. Hakeem[50]

The Supreme Court stated that the courts must give recognition to the jurisdiction of arbitral tribunal if it is exercised within the scope of arbitration agreement.

- Societe Generale v. Dalal Street[51]

The Supreme Court highlighted to give effect to international norms and recognising foreign arbitral awards under the provision of the New York Convention.

6.4. Challenges in India

The presence of a well-structured legal framework couldn't help maritime arbitration to develop in large scale practice in India due to several constraints facing in recent times. Though the judicial and legislative reforms have aimed to address several issues to enhance transparency and efficiency within the system, amongst which some issues are:

a. Procedural delays and efficiency- Some of the factors like complex procedures, availability of arbitrators and administrative bottlenecks are responsible for making delay in maritime arbitration and inefficient.

b. Lack of expertise and Specialisation- India highly requires arbitrators with specialised knowledge in Maritime Law to improve the quality of arbitration and resolve complex disputes effectively.

c. Enforcement issues- The procedure for enforcement of arbitral awards is complex in India due Court procedural hurdles and delays in

[47] Union of India v Indian Oil Corporation Ltd (2001) 6 SCC 324 (SC).
[48] Duro Felguera S.A v Gangavaram Port Ltd (2017) 9 SCC 729 (SC).
[49] Indian Oil Corporation Ltd. v. Amritsar Gas Service (1991) 1 SCC 533 (SC).
[50] National Highways Authority of India v. M. Hakeem (2021) 6 SCC 637 (SC).
[51] Societe Generale v. Dalal Street (2014) 12 SCC 161 (SC).

the judicial system resulting in the ineffectiveness of maritime arbitration in India.

6.5. Position in India

The future of maritime arbitration in India is supposed to be promising with the establishment of specialized institutions, incorporation of technology and increasing the numbers of specialised arbitrators which would play a crucial role for further improving the arbitration process and maintaining the position as a major hub for international shipping and trade. In the world scenario London has succeeded to be the preferred seat for the 80% of the recognised maritime arbitrations conducted followed by Singapore and Hong Kong in recent times.

7. DISPUTES RELATED TO SPORTS

7.1. Arbitrability of Sports Disputes

The rapid growth of sports sectors has been witnessed in the 20th century in all over the world including India. The development of the world of sports has been accompanied by high rise in disputes of commercial as well as disciplinary in nature. In realisation of the large number of disputes especially commercial disputes arising from the sports sectors has made it to think for a specialised authority dedicated to sports disputes. Therefore, in absence of any specialised institute conferred with authority to deliver binding judgements gave rise to the requirement of an Arbitral institution which would be able to deal into the subject matter of Sports disputes of commercial in nature and thus evolving the practice of sports Arbitration and arbitrability of sports disputes.

In 1983, the International Olympic Committee (IOC) officially sanctioned for the formation of the Centre for Sports Arbitration (CAS) statutes.[52] The statutes came into effective in 1984 and the CAS was established in Lausanne, Switzerland for resolving the disputes arising out of Sports sectors with an expectation of delivering quick and cost-efficient procedures, flexibility and binding decisions.

7.2. Scope for Institutional Sports Arbitration

The establishment of Centre for sports Arbitration (CAS) is governed by the Code of Sports-related Arbitration.[53] The Code consists of seventy Articles, further divided into two parts namely the Statute of bodies and the Procedural rules. However, since the signing of the Paris Agreement, the jurisdiction of the CAS has been widely recognized.[54] Thereafter, all the international federations of Olympic and National committees started to include an arbitration clause in their statutes referring to all the sports related disputes to CAS.[55]

The Paris agreement also resulted in the establishment of the International Council for Arbitration in Sports (ICAS), considered to be the 'supreme organ' of the CAS. The ICAS is broadly responsible for funding, maintaining independence, autonomy and rights of the parties, of the CAS.[56]

7.3. Position in India

The scenario of Sports sector is seen to be regulated by several organisations such as the Sports Authority

[52] Court of Arbitration for Sport, **History of the CAS**, https://www.tas-cas.org/en/general-information/histor.

[53] *Code of Sports-related Arbitration*, art. R57, Court of Arbitration for Sport (CAS), Lausanne, Switz. (in force Jan. 1, 2019).

[54] *Code of Sports-related Arbitration*, court of Arbitration for Sport (CAS), Lausanne, Switz., in force Jan. 1, 2019, available at https://law.unimelb.edu.au/__data/assets/pdf_file/0003/1

[55] *Code of Sports-related Arbitration*, Court of Arbitration for Sport (CAS), Lausanne, Switzerland, in force Jan. 1, 2019, available at https://www.changing-perspectives.legal/arbitration/arbitral-institutions/cas/

[56] Giuseppe Mancini, *Sports Arbitration: Certain Unique Features and the Court of Arbitration for Sport (the "CAS")*, Aceris Law (Mar. 22, 2021), https://www.acerislaw.com/sports-arbitration-certain-unique-features-and-the-court-of-arbitration-for-sport-the-cas/

of India, Sports Law and Welfare Association of India, which are being established to deal with Sports regarding issues. But, when any kind of dispute arises from the sports sector, it is required to reach before the overburdened judiciary which makes the stakeholders and sportsperson losing time which is main essence of their career.

Thereafter upon realising the above issue, the International Olympic committee (IOC) issued directives to the Indian Olympic Association (IOA) for the constitution of the Indian Court for Arbitration of Sports (ICAS) in 2011.[57] The Court for Arbitration of Sports is comprised of eight retired Judges as the members who shall decide all the sports-related disputed under the Indian Olympic Association.

Amongst the several disputes that has been referred to CAS, a landmark one is the case of International Association of Athletics Federations (IAAF) vs. Athletics Federation of India (AFI) & Akkunji Ashwini, Priyanka Panwar, Tiana Mary Thomas and Sini Jose,[58] wherein the accused athletes were held to be involved in a charge for doping. When an appeal was filed by the IAAF against the decision of the Indian Anti-Doping Disciplinary Panel, a sole arbitrator appointed had upheld the appeal and declared the players to be ineligible for a period of two years as because reportedly the athletes had failed to establish 'no significant fault or negligence' and no steps were taken to prove that the pills were safely consumed.

However, several changes have been bought in the Arbitrability of sports disputes in India but it is still unknown to many because of lack of extensive promotion in the sports sector in the country. As the Sports industry of India is becoming more professional, globalised and revenue generating sector, it is very much essential to resolve the disputes arising from such sectors by the process of Arbitration for a speedy remedial and in a confidential manner.[59]

8. DISPUTES RELATED TO ART

8.1. Arbitrability of Art Disputes

There are several laws that has been in enforcement for resolving disputes arising from Art sectors such as copyright law principles, ownership issues, operation of contractual obligations, theft, misappropriation, forgery, and so on.[60] As the Art sectors have huge monetary and reputational stakes involved it is considered as an important revenue generating sector of the nation especially in countries of economic liberalization like India. Therefore, to resolve the commercial disputes arising from the Sports industry, it is essential to adopt the method of Arbitration as an alternative method of dispute resolution out of the traditional courtroom process.

8.2. Scope for Institutional Arbitration in Art Disputes

In realisation of the need for a specialised institute to deal in art disputes, the Court of Arbitration for Art ('CAfA') was established in 2018. The Court was established as a joint initiative of the Netherlands Arbitration Institute (NIA) and Authentication in Art (Aia).[61] The main aim of the creation of 'CAfA' is to bring together a pool of highly qualified international arbitration professionals and experts in forensic

[57] Shivani Panda, *The Current Position of India in Sports Dispute Resolution*, IPleaders (Dec. 22, 2020), https://blog.ipleaders.in/current-position-india-sports-dispute-resolution

[58] International Association of Athletics Federations v. Athletics Federation of India & Ors. (Akkunji Ashwini, Priyanka Panwar, Tiana Mary Thomas & Sini Jose), CAS, Lausanne (2014).

[59] International Association of Athletics Federations v. Athletics Federation of India & Akkunji Ashwini, Priyanka Panwar, Tiana Mary Thomas & Sini Jose, CAS 2012/A/2763, award (30 Nov. 2012) (operative part 17 July 2012).

[60] R.G. Anand v. M/S Deluxe Films & Ors., AIR 1978 SC 1613, 1978 4 SCC 118 (India).

[61] Subhash Bhutoria, Sima Ghaffari & Amin Motamedi, *Art Disputes and the Court of Arbitration for Art: Evolution or Revolution? Am. Rev. Int'l Arb.* (Blog Post, Jan. 21, 2021), https://aria.law.columbia.edu/art-disputes-and-the-court-of-arbitration-for-art-evolution-or-revolution/

science provenance research to deal in the wide range of commercial disputes involving international collectors, art historians, art-market professionals, financial institutions and other stakeholders in the art market.[62]

The arbitration rules laid down by the 'CAfA' mandates for the requirement of three arbitrators in the arbitration tribunal and if the pecuniary value remains less than Euro 1,500,000 or the parties have agreed otherwise, then there can be a sole arbitrator for the arbitration proceedings and the panel of arbitration must also consist of pool of eligible lawyers belonging around the world.[63]

8.3. Position in India

The Indian Art industry is presently considered as one the most revenue generating sectors of the nation because of its strong prospects as an investment opportunity and it is expected to have a turnover of USD 223 million in the recent coming years.[64] The matter regarding the arbitrability of Art disputes in India has still remains in complexity, inadequacy and vagueness due to several contrary judicial precedents. One of such case is Bid and Hammer Auctioneers vs. SKN investments (Chennai) Pvt. Ltd.,[65] wherein the respondent had reportedly made an Rs. 1.6 Crore bid for Raja Ravi Varma's classic painting Jatayu Vadha, at the 'Significant Indian Paintings' auctioned by the petitioner. This case upheld the issues of authenticity of the art and claims of forgery and emerged as a landmark case in the history of Art arbitration disputes in India.

9. CONCLUSION

The research paper undertakes a comprehensive analytical examination to test *Hypothesis* and to determine the outcome of the empirical and doctrinal inquiry undertaken therein. For the purpose of conducting this test, the chapter sets out a clearly defined objective—namely, to critically analyse the commercial nature and arbitrability of disputes arising in contemporary India across diverse sectors engaged in international trade and commerce, primarily governed through complex commercial contracts.

The chapter extensively examines a wide range of commercial disputes emanating from multiple sectors such as Construction & infrastructure, Investment treaties, Maritime trade, Intellectual property matters, Insolvency & credit matters, Sports, Artistic subjects and other emerging commercial domains that increasingly form part of cross-border economic activity. In doing so, the analysis takes into account the evolving nature of commercial relationships, the sophistication of contractual frameworks, and the growing involvement of foreign parties in Indian commercial transactions.

The analytical research reveals that despite the increasing complexity and volume of international commercial disputes involving Indian entities, the scope of arbitrability of such contemporary commercial disputes in India remains narrow, inconsistent, and underdeveloped. Judicial reluctance in certain sectors, expansive interpretations of non-arbitrability, excessive court intervention, and the lack of sector-specific arbitration expertise have collectively restricted the effective resolution of disputes through arbitration. This limitation is particularly evident in disputes involving public

[62] Provenance and Forensic Experts, Court of Arbitration for Art, https://www.cafa.world/arbitration/provenance_and_forensic_experts/

[63] CAfA Arbitration Rules (in force Jan. 1, 2019), CAfA. world, https://www.cafa.world/docs/CAfA%20Arbitration%20Rules.1.pdf

[64] Menaka Doshi, India's Art Market Surges as Rising Wealth Spurs Investment Interest, Bloomberg (Dec. 18, 2025), https://www.bloomberg.com/news/newsletters/2025-12-18/india-s-art-market-surges-as-rising-wealth-spurs-investment-interest.

[65] Bid & Hammer Auctioneers v. SKN Invs. (Chennai) Pvt. Ltd., Arbitration Award (Dec. 2014) (India).

interest elements, statutory rights, regulatory oversight, and emerging commercial sectors, where arbitration is either discouraged or rendered ineffective.

As a result, the study establishes that the existing arbitration framework in India has not yet fully adapted to the demands of modern international trade and commerce. This underdevelopment acts as a significant impediment to India's aspiration of emerging as a global hub for international commercial arbitration, despite legislative reforms and policy initiatives undertaken in recent years.

Accordingly, based on the findings derived from this detailed analytical examination, ***Hypothesis stand conclusively tested and validated positively***, confirming that the restricted arbitrability of contemporary commercial disputes continues to undermine the growth and global competitiveness of arbitration in India.

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REFORMS IN OFFENCES AGAINST WOMEN AND CHILDREN

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Abstract
The status of women and children in India has changed over time, with the Constitution of India providing special protection for them. Article 15(3) of the constitution of India, allows the state to make specific provisions for women and children. Numerous laws have been enacted to safeguard their rights and welfare, with one of the most significant being the Bharatiya Nyaya Sanhita. This landmark criminal law, which took effect in 2024, replaced the colonial-era penal code and introduced crucial reforms to India's criminal justice system, responding to the need for comprehensive changes in criminal laws.

The Bharatiya Nyaya Sanhita has led significant reforms in addressing offences against women and children by dedicating a separate chapter to these offences. This chapter covers a wide range of crimes, including sexual offences, criminal force and assault, crimes related to marriage, miscarriage, and offences against children. By categorizing these offences under a single heading, the BNS demonstrates a special concern for two of society's most vulnerable groups. The Sanhita has emerged as a beacon of hope for protecting the rights of women and children by consolidating such offences. It introduces new provisions, such as criminalizing deceitful promises of marriage, and includes strict penalties for gang rape on minors. Additionally, the definition of rape has been broadened to include a wider range of consensual acts, with enhanced penalties and stricter punishments. Another key reform is the punishment for hiring or employing a child to commit an offence, aligning with the recommendations of the Justice Verma Committee. Furthermore, the BNS has adopted gender-neutral language for both perpetrators and victims, ensuring greater inclusivity and fairness in the criminal justice system.

Despite several significant reforms, the BNS has certain shortcomings that need to be addressed. This paper explores the Sanhita as a safeguard for protecting the rights of women and children. It examines the offences against women and children under the BNS and provides an analytical perspective on these offences. Additionally, it discusses various provisions omitted by the Sanhita in comparison to the IPC, concluding with suggestions for further reforms to enhance the effectiveness of the Sanhita.

Keywords - Bharatiya Nyaya Sanhita**,** Women and Children Protection**,** Criminal Justice Reforms**, Offences** against Women and Children**,** Gender-Neutral Criminal Law.

Introducti

The founda on of India's ancient legal system was rooted in texts like the *Manusmriti* and *Arthashastra*, which outlined the principles of governance, administration, and justice. The Indian Penal Code (IPC), enacted 164 years ago during the colonial era, served as the primary criminal code, reflecting the socio-political realities of that time. However, the IPC has struggled to meet the demands of modern India. Despite numerous amendments over the years, there was a growing need to revamp and restructure the law to make it more relevant and effective in contemporary times.

In recent years, India has witnessed a surge in crimes against women and children, highlighting the urgent need to reform penal statutes with stricter punishments for such offences. The increasing prevalence of incidents like sexual assault, domestic violence, dowry deaths, and child trafficking has drawn widespread condemnation, prompting legislative reforms to address these grave issues. Additionally, the rapid advancement of technology has necessitated comprehensive reforms to tackle contemporary crimes such as cybercrime, white-collar crime, and offences against vulnerable and marginalized groups.

These reforms have been crucial in addressing long-standing issues related to safety, empowerment,

equality, and justice for vulnerable sections of society. The recent reforms introduced by the *Bharatiya Nyaya Sanhita* (BNS) have prioritized crimes against women and children by consolidating all related offences previously scattered across different sections of the IPC into a single chapter, Chapter 5 of the BNS. This consolidation has brought a structural change, simplifying the legal framework and making it more accessible. It also ensures that crimes against women and children receive focused attention in legal proceedings.

As a reformative measure, the BNS has enhanced punishments for offences against women and children. It represents a significant step forward in strengthening legal protections for these vulnerable groups, reflecting a renewed commitment to justice, safety, and equality.

Offences against women under BNS and reforms in such offences

Women, once revered as goddesses in Indian society, have long endured chronic discrimination and violence, often overlooked due to the deeply entrenched patriarchal mindset prevalent in the country. Chapter 5 of the *Bharatiya Nyaya Sanhita* (BNS) addresses offences against women under Sections 63 to 90, covering a range of crimes such as sexual offences, criminal assault, and offences related to marriage and miscarriage. These provisions establish a comprehensive legal framework aimed at safeguarding women's rights, ensuring their safety, and upholding their dignity.

The BNS introduces a new offence for engaging in sexual intercourse under false pretences, including deceit related to marriage promises, employment, promotions, or concealing one's identity. Additionally, the Sanhita prescribes stringent punishments for repeat offenders of rape. It also mandates death penalties for cases of gang rape, particularly when the victim is under 18 years of age or when the victim dies because of the rape. These reforms reflect a strong commitment to protecting women from violence and ensuring justice for survivors.

The offences against women as dealt under BNS are discussed as under

1. Sexual offences.
2. Criminal force and assault.
3. Offences relating to marriage
4. Offences relating to miscarriage

1. Sexual offences.

Section 63[1] of the BNS redefines and broadens the understanding of rape to include various forms of non-

[1] **Section 63 – Rape**
A man is said to commit "rape" if he---
(a) penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a woman or makes her to do so with him or any other person; or
(b) inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of a woman or makes her to do so with him or any other person; or
(c) manipulates any part of the body of a woman so as to cause penetration into the vagina, urethra, anus or any part of body of such woman or makes her to do so with him or any other person; or
(d) applies his mouth to the vagina, anus, urethra of a woman or makes her to do so with him or any other person, under the circumstances falling under any of the following seven descriptions:
(i) against her will.
(ii) without her consent.
(iii) with her consent, when her consent has been obtained by putting her or any person in whom she is interested, in fear of death or of hurt.
(iv) with her consent, when the man knows that he is not her husband and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married;
(v) with her consent when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome

consensual sexual acts. It marks a significant legal advancement by explicitly addressing marital rape, a concept that was not recognized as a criminal offence under the IPC, which previously excluded non-consensual sexual intercourse between spouses. However, the BNS does not classify sexual assault within marriage as rape, specifying that sexual intercourse or sexual acts performed by a man with his wife, who is not under 18 years of age, do not constitute rape. This shift represents a crucial step toward acknowledging women's autonomy and bodily integrity, regardless of their connubial status. Additionally, Section 63 clarifies that medical procedures or interventions do not constitute rape.

The BNS prescribes rigorous imprisonment for a term of no less than 10 years, extendable to life imprisonment, along with a fine for the offence of rape. If the victim is under 16 years of age, the punishment is imprisonment for at least 20 years, extendable to life imprisonment, with a reasonable fine to be paid to the victim for rehabilitation.[2]

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substance, she is unable to understand the nature and consequences of that to which she gives consent.
(vi) with or without her consent, when she is under eighteen years of age.
(vii) when she is unable to communicate consent.
Explanation 1.-For the purposes of this section, "vagina" shall also include *labia majora.*
Explanation 2.-Consent means an unequivocal voluntary agreement when the woman by words, gestures or any form of verbal or non-verbal communication, communicates willingness to participate in the specific sexual act:
Provided that a woman who does not physically resist to the act of penetration shall not by the reason only of that fact, be regarded as consenting to the sexual activity.
Exception 1.-A medical procedure or intervention shall not constitute rape.
Exception 2.-Sexual intercourse or sexual acts by a man with his own wife, the wife not being under eighteen years of age, is not rape.

[2] **Section 64 -Punishment for rape -** (1) Whoever, except in the cases provided for in sub-section (2), commits rape, shall be punished with rigorous imprisonment of either description for a term which shall not be less than ten years, but which may extend to imprisonment for life, and shall also be liable to fine.
(2) Whoever,-
(a) being a police officer, commits rape,-
(i) within the limits of the police station to which such police officer is appointed; or
(ii) in the premises of any station house; or
(iii) on a woman in such police officer's custody or in the custody of a police officer subordinate to such police officer;
(b) being a public servant, commits rape on a woman in such public servant's custody or in the custody of a public servant subordinate to such public servant; or
(c) being a member of the armed forces deployed in an area by the Central Government, or a State Government commits rape in such area; or
(d) being on the management or on the staff of a jail, remand home or other place of custody established by or under any law for the time being in force or of a women's or children's institution, commits rape on any inmate of such jail, remand home, place or institution; or
(e) being on the management or on the staff of a hospital, commits rape on a woman in that hospital; or
(f) being a relative, guardian or teacher of, or a person in a position of trust or authority towards the woman, commits rape on such woman; or (g) commits rape during communal or sectarian violence; or
(h) commits rape on a woman knowing her to be pregnant; or
(i) commits rape, on a woman incapable of giving consent; or
(j) being in a position of control or dominance over a woman, commits rape on such woman; or
(k) commits rape on a woman suffering from mental or physical disability;
(l) while committing rape causes grievous bodily harm or maims or disfigures or endangers the life of a woman; or
(m) commits rape repeatedly on the same woman,
shall be punished with rigorous imprisonment for a term which shall not be less than ten years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and shall also be liable to fine.
Explanation.-For the purposes of this sub-section (a) "armed forces" means the naval, army and air forces and includes any member of the Armed Forces

Furthermore, it advocates for the death penalty in cases where rape is committed against a woman under 12 years of age[3], or where the offence results in the victim's death or causes her to be in a persistent vegetative state.[4] Moreover, non-consensual sexual intercourse by a husband with his wife during separation is also punishable under the BNS, with no changes or deviations from the provisions of the IPC.[5]

In parity with IPC, section 68 of BNS also punishes a sexual intercourse by a person in Authority . ***Section 69[6] of BNS introduces a new legal provision*** aimed at addressing sexual intercourse obtained through deceitful means. This includes situations where an individual engages in sexual relations based on false promises of marriage, employment, or promotion, or by hiding their identity with no intention of fulfilling such promises. Even if the sexual act is consensual, if

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constituted under any law for the time being in force, including the paramilitary forces and any auxiliary forces that are under the control of the Central Government or the State Government;

(b) "hospital" means the precincts of the hospital and includes the precincts of any institution for the reception and treatment of persons during convalescence or of persons requiring medical attention or rehabilitation.

(c) "police officer" shall have the same meaning as assigned to the expression "police" under the Police Act, 1861 (5 of 1861);

(d) "women's or children's institution" means an institution, whether called an orphanage or a home for neglected women or children or a widow's home or an institution called by any other name, which is established and maintained for the reception and care of women or children.

[3]**Section 65- Punishment for rape in certain cases.** (1) Whoever, commits rape on a woman under sixteen years of age shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and shall also be liable to fine:

Provided that such fine shall be just and reasonable to meet the medical expenses and rehabilitation of the victim:

Provided further that any fine imposed under this sub-section shall be paid to the victim.

(2) Whoever, commits rape on a woman under twelve years of age shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that persons natural life, and with fine or with death:

Provided that such fine shall be just and reasonable to meet the medical expenses and rehabilitation of the victim:

Provided further that any fine imposed under this sub-section shall be paid to the victim.

[4] **Section 66 -Punishment for causing death or resulting in persistent vegetative state of victim.** Whoever, commits an offence punishable under sub-section (1) or sub-section (2) of section 64 and in the course of such commission inflicts an injury which causes the death of the woman or causes the woman to be in a persistent vegetative state, shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, or with death.

[5] **Section 67 -Sexual intercourse by husband upon his wife during separation.** Whoever has sexual intercourse with his own wife, who is living separately, whether under a decree of separation or otherwise, without her consent, shall be punished with imprisonment of either description for a term which shall not be less than two years but which may extend to seven years, and shall also be liable to fine.

Explanation.—In this section, "sexual intercourse" shall mean any of the acts mentioned in clauses (a) to (d) of section 63.

[6] **Section 69 -Sexual intercourse by employing deceitful means, etc.**

Whoever, by deceitful means or by making promise to marry to a woman without any intention of fulfilling the same, has sexual intercourse with her, such sexual intercourse not amounting to the offence of rape, shall be punished with imprisonment of either description for a term which may extend to ten years and shall also be liable to fine.

Explanation. - "deceitful means" shall include inducement for, or false promise of employment or promotion, or marrying by suppressing identity.

the consent was secured through deceit, it is considered a criminal offence under this section. However, it does not qualify as rape under traditional definitions, as the offence is based on deceit rather than physical force or absence of consent. The punishment for this offence can extend up to 10 years of imprisonment along with a fine. The core elements of Section 69 focus on the use of deceitful means, such as making false promises or misrepresenting oneself. Consent obtained through such deceptive means is considered invalid because it is not truly free and voluntary. This section seeks to safeguard individuals from exploitation where manipulation undermines the authenticity of consent. It underscores the principle that consent should be based on honesty and truthful representations, and any sexual act procured through deceit is subject to legal punishment.

In ***Mahesh Danu Khare versus state of Maharashtra***[7] the Hon'ble Supreme Court clarified the law on consent, misconception of facts and criminal liability attached to false promise. The apex court has asserted that for an act to be an offence of sexual intercourse on false promise to marry, the alleged relationship or intercourse must be proved to be only based on and carried on the faith of such a false promise to marry. Adding to this the duration has to be factored, as the court opined that the longer duration of physical relationship without protest and insistence by the female partner for marriage indicated consensual relationship rather than a relationship based on false promise of marriage by the male partner and thus based on misconception of facts.

Gang rape is one of the most heinous crimes, involving the sexual assault of a victim by one or more individuals. This offence is characterized by the participation of multiple perpetrators, where each individual can be held accountable, whether they were actively involved in the assault or played a passive role in facilitating the crime. The severity of gang rape is reflected in the stringent legal consequences imposed on the offenders.

Section 70[8] of BNS deals with the offence of gang rape, under the law, anyone found guilty of gang rape faces a minimum imprisonment for twenty years. However, this sentence is not absolute and can be extended to life imprisonment, depending on the circumstances of the case. In the most extreme situations, the offenders may even be sentenced to the death penalty, especially when the crime results in the victim's death or involves particularly brutal acts. In addition to imprisonment, the court may also impose a fine on the offenders. This fine is specifically intended to support the victim through rehabilitation programs, cover medical expenses, and provide for other forms of compensation to aid in the victim's recovery.

BNS has made **significant legal reform has been made regarding the age of minor victims in cases**

[7] SLP (CRL.) NO. 4326/2018, 2024 INSC 897.

[8] **Section 70 -Gang rape .**

(1) Where a woman is raped by one or more persons constituting a group or acting in furtherance of a common intention, each of those persons shall be deemed to have committed the offence of rape and shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life which shall mean imprisonment for the remainder of that person's natural life, and with fine

Provided that such fine shall be just and reasonable to meet the medical expenses and rehabilitation of the victim:

Provided further that any fine imposed under this sub-section shall be paid to the victim.

(2) Where a woman under eighteen years of age is raped by one or more persons constituting a group or acting in furtherance of a common intention, each of those persons shall be deemed to have committed the offence of rape and shall be punished with imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and with fine, or with death: Provided that such fine shall be just and reasonable to meet the medical expenses and rehabilitation of the victim:

Provided further that any fine imposed under this sub-section shall be paid to the victim.

of gang rape. Previously, under Section 376DB of the Indian Penal Code (IPC), the law distinguished between minors under the age of 12 and those between 12 and 18 years, with different legal provisions for each. However, the **BNS** has abolished this distinction, raising the age of a minor victim to 18 years. This means that any gang rape involving a female under the age of 18 is now considered an aggravated offence, punishable with life imprisonment or the death penalty, regardless of the victim's exact age. This legal change underscores the seriousness with which the justice system treats crimes against women, reflecting a strong commitment to ensuring the safety, dignity, and protection of all individuals, especially vulnerable young women. It also serves as a deterrent to potential offenders, emphasizing that such crimes will not be tolerated and will be met with the harshest possible penalties.

Section 71 of BNS deals with people who are repeatedly convicted of serious sexual crimes, like rape. If someone has a history of such crimes, they can face severe punishments, including life imprisonment or even the death penalty. The prosecution must prove past convictions with official documents like court orders or verdict copies. The court also considers the nature of previous crimes, if they were especially brutal, the punishment may be strictest. In some cases, the court may order the offender to attend rehabilitation programs or therapy to address underlying issues. BNS also prohibits the disclosure of identity of the victim in certain cases by virtue of Section 72 by making it illegal to reveal the identity of victims in sensitive cases, such as sexual offences. Infringing the provision prescribed under said section can result in a fine and imprisonment up to two years. There are exceptions, like if the victim gives written consent, if their next of kin agrees, or if the police investigating the case approve the disclosure, this helps protect the privacy and dignity of the victims.

2. Criminal force and assault

The provisions concerning the use of criminal force and assault against women under the BNS are largely in line with those in the IPC, with a few significant and noteworthy changes. Section 74[9] of the Bharatiya Nyaya Sanhita stipulates that any individual who uses criminal force or assaults a woman with the intention of outraging her modesty, or knowing that such an act is likely to do so, shall be punished with imprisonment of either description for a term not less than one year, which may extend up to five years, along with a fine. In contrast, Section 75[10] addresses the offence of sexual harassment, providing protection to women against unwanted sexual advances and reinforcing their fundamental right to work and live with dignity.

The BNS has ***introduced gender-neutral provisions*** concerning offences related to assault, the use of criminal force, and voyeurism. This shift is evident in

[9]**Section 74- Assault or use of criminal force to woman with intent to outrage her modesty**
Whoever assaults or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will thereby outrage her modesty, shall be punished with imprisonment of either description for a term which shall not be less than one year but which may extend to five years, and shall also be liable to fine.

[10] **Section 75 -Sexual harassment** - (1) A man committing any of the following acts:-
(i) physical contact and advances involving unwelcome and explicit sexual overtures; or
(ii) a demand or request for sexual favours; or
(iii) showing pornography against the will of a woman; or
(iv) making sexually coloured remarks,
shall be guilty of the offence of sexual harassment.
(2) Any man who commits the offence specified in clause *(i)* or clause *(ii)* or clause *(iii)* of sub-section *(1)* shall be punished with rigorous imprisonment for a term which may extend to three years, or with fine, or with both.
(3) Any man who commits the offence specified in clause *(iv)* of sub-section *(1)* shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Sections 76[11] and 77[12], where the phrase **"**any man who" has been replaced with "whoever**"** when referring to offenders or perpetrators. This change broadens the legal framework to include individuals of all genders as potential accused in cases of these specific offences, thereby promoting inclusivity and fairness in the application of the law. These sections prescribe stringent punishments for acts that seek to undermine a woman's dignity, such as physical assault or the non-consensual capture and dissemination of images of a woman engaged in private acts. Importantly, the Sanhita criminalizes the act of voyeurism, ensuring that individuals cannot exploit others' privacy for personal gratification or gain. Additionally, Section 77 specifically addresses digital crimes against women, making it an offence to misuse technology to infringe upon a woman's privacy, such as through unauthorized surveillance, data breaches, or the distribution of intimate content without consent. This provision reflects the growing recognition of the need to protect women from evolving forms of abuse in the digital age.

Section 78 of BNS addresses the offence of stalking, stating that any man who follows a woman and repeatedly tries to engage with her despite her clear disinterest, or who monitors her internet usage, emails, or other electronic communications, is guilty of stalking. However, this behaviour does not constitute stalking if the man can demonstrate that it was carried out to prevent or detect crime, and he was officially assigned this duty by the State, or if it was conducted in accordance with the law or to fulfil a legal obligation, or if the actions were reasonable and justified under the specific circumstances.

3. Offences relating to marriage

Dowry death remains a serious social issue in society, persisting despite various advancements in innovation, economic growth, and women's empowerment. Section 80[13] of BNS addresses this

[11] **Section 76 -Assault or use of criminal force to woman with intent to disrobe. -** Whoever assaults or uses criminal force to any woman or abets such act with the intention of disrobing or compelling her to be naked, shall be punished with imprisonment of either description for a term which shall not be less than three years but which may extend to seven years, and shall also be liable to fine.

[12] **Section 77 - Voyeurism -** Whoever watches, or captures the image of a woman engaging in a private act in circumstances where she would usually have the expectation of not being observed either by the perpetrator or by any other person at the behest of the perpetrator or disseminates such image shall be punished on first conviction with imprisonment of either description for a term which shall not be less than one year, but which may extend to three years, and shall also be liable to fine, and be punished on a second or subsequent conviction, with imprisonment of either description for a term which shall not be less than three years, but which may extend to seven years, and shall also be liable to fine.

Explanation 1.—For the purposes of this section, "private act" includes an act of watching carried out in a place which, in the circumstances, would reasonably be expected to provide privacy and where the victim's genitals, posterior or breasts are exposed or covered only in underwear; or the victim is using a lavatory; or the victim is doing a sexual act that is not of a kind ordinarily done in public.

Explanation 2.—Where the victim consents to the capture of the images or any act, but not to their dissemination to third persons and where such image or act is disseminated, such dissemination shall be considered an offence under this section.

[13] **Section 80 - Dowry death.—(**1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called "dowry death", and such husband or relative shall be deemed to have caused her death. Explanation.—For the purposes of this sub-section, "dowry" shall have the same meaning as in section 2 of the Dowry Prohibition Act, 1961 (28 of 1961).

(2) Whoever commits dowry death shall be punished

grave concern, defining a dowry death as the death of a woman resulting from burns, bodily harm, or under suspicious circumstances within seven years of marriage, where the death is connected to dowry-related demands. This section also penalises the act of dowry death.

The legislative framework addressing domestic violence is primarily rooted in specific statutes, yet the BNS enhances the criminal provisions related to domestic violence by refining and expanding existing laws. It does so by reworking certain established provisions in greater detail, thereby strengthening the protective measures.

Notably, Sections 85[14] and 86[15] of the BNS specifically address the offence of cruelty, with the clear objective of safeguarding women from domestic abuse and harassment within the institution of marriage. Unlike the Indian Penal Code where cruelty is embedded within broader sections, the BNS assigns it a dedicated section**.** This not only provides greater clarity but also ensures a more comprehensive approach to women's protection against abuse.

While the BNS introduces more elaborate definitions, it retains the core elements of cruelty as defined under the IPC. These elements remain unchanged i.e. conduct that may drive a woman to suicide, cause her serious physical or mental harm, or involve harassment aimed at coercing dowry or pressuring her for the fulfilment of such demands. This continuity, coupled with the enhanced legislative framework, underscores a stronger commitment to women's safety and justice.

4. Offences relating to miscarriage

Offences related to miscarriage under the BNS are distinctly framed to address the unique concerns surrounding the rights and well-being of pregnant women, offering a more comprehensive protective layer than what is provided under the Indian Penal Code . While the IPC deals with miscarriage-related offences within the broader context of bodily harm, the BNS is specifically designed to safeguard the autonomy and health of pregnant women, ensuring that their rights are not compromised under any circumstances. The BNS firmly protects women from forced miscarriages, unequivocally criminalizing any act that seeks to terminate a pregnancy without the woman's informed consent. This protection extends beyond just physical acts of coercion, encompassing a range of actions that could endanger the woman's health or violate her bodily autonomy. Importantly, the Sanhita (the codified legal framework) maintains a balanced approach by allowing for legal abortion under medically necessary circumstances, thus acknowledging the complexity of reproductive health decisions while simultaneously upholding the woman's right to choose.

Furthermore, the BNS takes a progressive stance by strictly penalizing not only the act of forced miscarriage but also any act intended to cause a miscarriage that results in the death of the woman. This provision underscores the law's zero-tolerance policy towards reckless or malicious practices that

with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life.

[14] **Section 85 -Husband or relative of husband of a woman subjecting her to cruelty.—**Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

[15] **Section 86. - Cruelty defined.—**For the purposes of section 85, "cruelty" means— (a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or (b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.

jeopardize both the life of the mother and the unborn child. The Sanhita serves as a critical deterrent against unsafe, unlawful, or coercive abortion practices. By imposing stringent penalties for such offences, it discourages individuals and entities from engaging in actions that could endanger a woman's life. This legal framework not only reinforces the commitment to protecting women's health but also strengthens the broader societal recognition of reproductive rights as an integral aspect of human dignity and autonomy

Offences against children under BNS

The BNS represents a landmark step forward in the quest to safeguard the rights and well-being of children. Recognizing the unique vulnerabilities of minors, it has taken a bold stance by establishing a dedicated chapter exclusively focused on offences against children. This pivotal move underscores the nation's commitment to not just protecting but actively championing the dignity and safety of its youngest citizens.

At the heart of this transformative legislation lies Chapter V (Sections 93 to 99), a robust framework meticulously crafted to address the multifaceted threats faced by children. This chapter serves as a shield, offering enhanced legal protection against heinous crimes such as abandonment, concealment, sexual assault, exploitation, trafficking, and the engagement of children in the commission of offences. The provisions are not merely punitive but are designed to act as a deterrent, ensuring that perpetrators face harsher punishments that reflect the gravity of their crimes. Moreover, the Sanhita's approach transcends traditional legal boundaries by weaving in comprehensive measures that address both the prevention and prosecution of child-related offences. This proactive step ensures that children are not just protected from immediate harm but are also shielded from systemic risks that could jeopardize their future. In essence, the BNS doesn't just amend laws rather it redefines justice for children. It acknowledges their fragility, fortifies their legal standing, and sends an unequivocal message: India stands united in its resolve to protect, nurture, and uphold the rights of every child**.**

The offences against children dealt in BNS are discussed as under:-

1. ***Abandonment of child***

   Section 93[16] of the BNS holds parents or guardians accountable for abandoning a child under the age of 12, prescribing a penalty of up to seven years of imprisonment or a fine. This provision is designed to ensure that children are not left in vulnerable, life-threatening situations due to the negligence or irresponsibility of those entrusted with their care. It reinforces the fundamental duty of parents and guardians to provide a safe and nurturing environment, safeguarding children from harm and neglect.

2. ***Concealment of birth by secret disposal of dead body***

   Section 94[17] of the BNS criminalizes the act of secretly burying or disposing of a child's body to

[16] **Section 93 – Exposure and abandonment of child under twelve years of age, by parent or person having care of it**- Whoever being the father or mother of a child under the age of twelve years, or having the care of suchchild, shall expose or leave such child in any place with the intention of wholly abandoning such child, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.
Explanation.—This section is not intended to prevent the trial of the offender for murder or culpable homicide, as the case may be , if the child die in the consequence oof the exposure.

[17] **Section 94 – Concealment of birth by secret disposal of dead body** -Whoever, by secretly burying or otherwise disposing of the dead body of a child whether such child die before or after or during its birth, intentionally conceals or endeavours to conceal the birth of such child, shall be punished with imprisonment of either description for a term which

conceal the fact of the birth. This provision serves as a powerful deterrent against the unlawful concealment of births, ensuring that infant deaths are handled with the dignity, transparency, and legal oversight they deserve.

3. Hiring, employing child to commit offence

BNS has introduced the ***new provision*** criminalising the hiring or employing of children to commit the offence with severe punishment. Section 95[18] imposes strict penalties on individuals who hire, employ, or exploit children to commit any offense, including those related to sexual exploitation and pornography. This provision serves as a critical safeguard, reinforcing the legal imperative to protect children from being manipulated or coerced into criminal activities. By imposing severe consequences on offenders, Section 95 not only deters the exploitation of vulnerable children but also upholds the fundamental principles of justice, child welfare, and human dignity. It recognizes the inherent vulnerability of children and the need for robust legal measures to prevent their abuse in any form.

4. Procuration of child

Section 96 [19] of BNS plays a crucial role in the legal framework designed to protect children from sexual exploitation, trafficking, and other forms of abuse. This section criminalizes any act that involves inducing a child to move from one location to another, or to perform specific acts, with the intention that such actions will result in the child being subjected to forced or seduced illicit intercourse. The provision is a significant legal safeguard aimed at preventing the exploitation of children in various forms, including sexual trafficking, coercion, and abuse. The introduction of Section 96 represents an evolution in the legal recognition of children's vulnerabilities. Previously, the IPC contained **Section 366A**, which specifically addressed the procurement of a minor girl for illicit intercourse. While this section provided a measure of protection, its scope was limited to minor girls and did not encompass all children, irrespective of gender. This gap meant that boys, transgender children, and other non-binary individuals were left without adequate legal recourse under the same provisions.

The broader language of Section 96 remedies this limitation by extending protection to all children, regardless of gender. It acknowledges the diverse ways in which children can be subjected to exploitation and trafficking, recognizing that the risk is not confined to a specific demographic. By criminalizing not just the act of illicit intercourse but the inducement and transportation that facilitate such acts, Section 96 strengthens the legal framework against child trafficking and sexual exploitation. Furthermore, Section 96 emphasizes the intent behind the act, focusing on the inducement of children, which includes coercion, manipulation, or deceit used to facilitate the movement or actions leading to exploitation. This provision also implicitly recognizes the role of traffickers, recruiters, and abusers who exploit legal loopholes to target vulnerable children.

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may extend to two years, or with fine, or with both.

[18] **Section 95- Hiring, employing or engaging a child to commit an offence-** Whoever hires, employs or engages any child to commit an offence shall be punished with imprisonment of either description which shall not be less than three years but which may extend to ten years, and with fine; and if the offence be committed shall also be punished with the punishment provided for that offence as if the offence has been committed by such person himself.

Explanation. —Hiring, employing, engaging or using a child for sexual exploitation or pornography is covered within the meaning of this section.

[19] **Section 96 – Procuration of child** - Whoever, by any means whatsoever, induces any child to go from any place or to do any act with intent that such child may be, or knowing that it is likely that such child will be, forced or seduced to illicit intercourse with another person shall be punishable with imprisonment which may extend to ten years, and shall also be liable to fine.

5. *Kidnapping or abduction of child*

Section 97[20] prohibits the kidnapping or abduction of a child under ten years old with the intent to steal from them. This provision aims to protect children from financially motivated crimes and imposes severe penalties on those who violate it.

6. *Selling child for prostitution purpose*

Section 98[21] establishes severe penalties for individuals who engage in the sale, hire, or disposal of a child for prostitution or other immoral purposes. This provision acts as a formidable deterrent against child trafficking and exploitation, sending a clear message that such heinous acts will not be tolerated. In a significant legislative update, the BNS has replaced the term "minor," as previously used in Section 372 of the IPC, with the more precise and protective term "child" in both the heading and the provision itself. Additionally, the phrase "any person under the age of eighteen years" has been substituted with the word "child," reinforcing the legal commitment to safeguarding individuals under 18 from all forms of exploitation and abuse. This change underscores a stronger, child-centric approach in the legal framework, highlighting the importance of protecting the rights and dignity of every child.

7. *Buying child for prostitution purpose*

Section 99[22] makes it a criminal offense to buy, hire, or acquire possession of a child for the purpose of prostitution. This provision strengthens the legal framework against child trafficking, acting as a robust barrier to prevent the exploitation of vulnerable children. By stipulating stringent punishments for offenders, Section 99 not only serves as a strong deterrent but also underscores the unwavering commitment of the law to protect the rights, dignity, and well-being of every child. It reinforces the principle that children must be shielded from all forms

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[20] **Section 97 - Kidnapping or abducting child under ten years with intent to steal from its person** - Whoever kidnaps or abducts any child under the age of ten years with the intention of taking dishonestly any movable property from the person of such child, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

[21] **Section 98 – Selling child for purpose of prostitution, etc. -** Whoever sells, lets to hire, or otherwise disposes of any child with intent that such child shall at any age be employed or used for the purpose of prostitution or illicit intercourse with any person or for any unlawful and immoral purpose ,or knowing it to be likely that such child will at any age be employed or used for any such purpose, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine. Explanation 1.—When a female under the age of eighteen years is sold, let for hire, or otherwise disposed of to a prostitute or to any person who keeps or manages a brothel, the person so disposing of such female shall, until the contrary is proved, be presumed to have disposed of her with the intent that she shall be used for the purpose of prostitution. Explanation 2.—For the purposes of this section “illicit intercourse” means sexual intercourse between persons not united by marriage or by any union or tie which, though not amounting to a marriage, is recognised by the personal law or custom of the community to which they belong or, where they belong to different communities, of both such communities, as constituting between them a quasi-marital relation

[22] **Section 99 – Buying child for the purpose of prostitution , etc.** - Whoever buys, hires or otherwise obtains possession of any child with intent that such child shall at any age be employed or used for the purpose of prostitution or illicit intercourse with any person or for any unlawful and immoral purpose, or knowing it to be likely that such child will at any age be employed or used for any such purpose, shall be punished with imprisonment of either description for a term which shall not be less than seven years but which may extend to fourteen years, and shall also be liable to fine. Explanation 1.—Any prostitute or any person keeping or managing a brothel, who buys, hires or otherwise obtains possession of a female under the age of eighteen years shall, until the contrary is proved, be presumed to have obtained possession of such female with the intent that she shall be used for the purpose of prostitution. Explanation 2.—“Illicit intercourse” has the same meaning as in section 98

of abuse and exploitation, ensuring that those who seek to profit from their vulnerability face serious legal consequences. BNS has introduced minimum mandatory punishment as seven years, and the upper limit of imprisonment is extended up to fourteen years for the said offence and the word s"any person under the age of eighteen years" are replaced by the word "child"

Reforms in offences against women and children under BNS

The Bharatiya Nyaya Sanhita 2023 marks a monumental shift in India's criminal justice landscape, bringing with it a wave of transformative changes that reflect the evolving needs of society. It doesn't just tweak existing laws rather redefines the very structure of the legal framework, introducing new provisions while amending outdated sections of the penal code. This isn't mere legal reform but a bold step towards creating a more just, responsive, and effective system that prioritizes the rights and dignity of every citizen. At its core, the BNS seeks to streamline the criminal justice process, eliminating unnecessary complexities and ensuring that justice is not just done but is seen to be done with greater efficiency. It aims to reduce delays, enhance clarity in legal procedures, and strengthen the foundation of fairness and accountability within the justice system.

One of the most noteworthy aspects of the BNS is its focused reform on offences against women and children , these two groups represent both the vulnerability and the future of society. Recognizing the urgent need to address the rising incidents of crimes targeting these vulnerable populations, the BNS introduces a committed chapter specifically designed to tackle such offences with greater sensitivity and severity. This distinct chapter is more than just a legal provision and is a powerful statement that the law stands firmly against gender-based violence and child exploitation. It not only enhances punitive measures but also ensures that the legal system is trauma-informed, offering better protection, support, and justice for survivors. The provisions are crafted with the understanding that crimes against women and children require not just punitive action but a holistic approach that encompasses prevention, support, and rehabilitation.

Some major reforms in offences against women and children are as follows: -

1. **Section 69** of the BNS introduces a groundbreaking provision that criminalizes sexual intercourse obtained through deceitful means, an offence that previously found no recognition under the Indian Penal Code. This section acknowledges the nuanced nature of sexual violence, extending legal protection beyond physical force to include instances where manipulation, fraud, or coercion is used to exploit individuals. It reflects a more comprehensive understanding of consent, emphasizing that true consent cannot be obtained through deception, thereby strengthening the legal framework against sexual exploitation.
2. **Section 95** of the BNS marks a landmark reform by criminalizing the hiring and employing of children to commit offences. This provision is a game-changer in the realm of juvenile justice, addressing the critical issue of children being exploited by criminal networks, gangs, and notorious offenders. Often, these young individuals, driven by coercion, poverty, or manipulation become unwilling participants in crimes, only to be trapped in a vicious cycle of recidivism. By recognizing this reality, Section 95 not only seeks to protect the innocent but also to break the cycle of exploitation, ensuring that children are not treated as criminals but as victims in need of protection, rehabilitation, and support. This forward-thinking approach is a testament to the BNS's commitment to safeguarding the rights and futures of vulnerable children, especially those in conflict with the law.
3. BNS has introduced a uniform definition of a **"child"** as any person below the age of eighteen years. It is a significant reform that harmonizes the legal understanding of childhood across

various statutes. This consistent age threshold is more than just a technical adjustment and it's a strategic move to strengthen the implementation and enforcement of child protection measures across the legal landscape. This uniformity ensures that no child falls through the cracks due to legal ambiguities, making it easier for authorities to apply child protection laws effectively. Moreover, this clarity fosters better coordination among law enforcement agencies, judicial bodies, and child welfare organizations, enabling a more cohesive approach to addressing issues related to child rights, welfare, and justice. In essence, the BNS's definition of a child is not just a legal formality but is a powerful tool to create a safer, more just society where the rights of every child are recognized, respected, and vigorously protected.

4. The offences of voyeurism and disrobing a woman have been made **gender neutral** in reference to perpetrator.
5. Death penalty has been mandated for the offence of gang rape with a minor.
6. BNS introduces a significant and progressive change by replacing the term "procuration of minor girl" with "procuration of child". This shift reflects a more inclusive and **child-centric approach**, acknowledging that the exploitation of children is not limited by gender. By broadening the scope to cover all children, regardless of gender, the BNS recognizes the reality that both boys and girls can be victims of exploitation, trafficking, and abuse. This change is crucial because it ensures that the legal framework is gender-neutral, providing equal protection to every child against the heinous crime of procuration, which involves inducing, procuring, or facilitating a child's involvement in illegal activities like forced labour, prostitution, or trafficking. This reform not only strengthens the safeguards for vulnerable children but also aligns India's legal standards with international child protection norms. It sends a clear and powerful message that no child, regardless of gender, should ever be subjected to exploitation or abuse, and the law will stand firm in defending their rights and dignity.
7. BNS has abolished this distinction of age by raising the age of a minor victim of sexual offence to 18 years.
8. Age of consent in Section 63 in exception 2 is also replaced by 18 years which was 15 years in IPC in section 375.
9. BNS has taken a significant step forward by assigning cruelty a separate section, highlighting the serious nature of this offence and the urgent need for distinct legal provisions to address it. This move is not just about legal classification but is powerful acknowledgment of the profound physical, emotional, and psychological harm that cruelty can inflict on victims, especially women and children. By creating a standalone section, the BNS ensures that cruelty is given the attention it deserves within the criminal justice system. It covers a broad spectrum of abusive behaviours, including physical violence, mental harassment, emotional abuse, and neglect, thereby recognizing that cruelty extends beyond overt violence to include subtler forms of harm that can be equally devastating. This reform also reflects a shift towards a more **victim-centric approach**, where the law is sensitive to the experiences of those who suffer from cruelty. It facilitates clearer legal procedures, stronger punitive measures, and more effective enforcement, ensuring that perpetrators are held accountable for their action.

In essence, the BNS is a revolution in legal thought with a bold assertion that justice must be dynamic, inclusive, and deeply rooted in the principles of equality and human dignity. It's not just about laws, it is about building a society where justice is accessible, protective, and transformative for all, especially for those who need it the most.

Shortcomings in BNS while dealing with the offences against women and children

While the BNS represents a significant stride in reforming India's criminal justice system, particularly

through its robust measures for the protection of women and children, it is not without its limitations and gaps. Despite its ambition to be a comprehensive legal code, the BNS falls short in several critical areas, leaving certain offences unaddressed and failing to reflect the evolving complexities of modern society.

One of the most glaring omissions is the ***lack of provisions addressing sexual crimes against men***. The code's narrow focus on female victims overlooks the reality that sexual violence affects individuals of all genders. This exclusion not only denies justice to male survivors but also perpetuates a culture where the experiences of men are marginalized in legal discourse, contradicting the principles of equality and non-discrimination enshrined in the Constitution.

Furthermore, the BNS ***retains the colonial-era approach to marital rape, treating it as a non-offence***. This outdated perspective undermines the principle that consent is the cornerstone of any relationship, irrespective of marital status. By not criminalizing marital rape, the BNS essentially normalizes sexual violence within marriage, disregarding the autonomy and dignity of countless individuals trapped in abusive domestic environments.

The **deletion of Section 377 from the IPC**, while a progressive step towards decriminalizing consensual same-sex relationships, inadvertently creates a legal vacuum regarding the rape of an adult man. Without explicit provisions, cases of non-consensual acts involving adult men may fall through the cracks, leaving victims without legal recourse. This omission reflects a failure to acknowledge the diverse realities of sexual violence in contemporary society.

Moreover, the newly introduced laws concerning ***consensual relationships raise concerns about potential misuse***. While the intent may be to protect individual freedoms, the lack of clear safeguards opens the door to false accusations or legal harassment, particularly in cases where personal relationships become entangled in legal disputes.

The BNS also struggles to address the ***complexities of the digital age***. Despite the rise of cybercrimes, online harassment, and digital exploitation, the code's provisions are insufficiently equipped to tackle these modern challenges. The absence of comprehensive cyber laws within the BNS leaves a critical gap in protecting individuals from the ever-evolving threats in the digital space.

Lastly, one of the most glaring oversights is the failure to establish **specific offences for transgender individuals**. In an era where gender inclusivity and equality are globally recognized as fundamental human rights, the BNS's silence on this front is both disheartening and unacceptable. Transgender individuals face heightened risks of violence, discrimination, and exploitation, and the law must explicitly protect them, acknowledging their right to dignity, safety, and justice.

Conclusion

While the Bharatiya Nyaya Sanhita represents a significant move towards legal reform, it falls short of being truly inclusive, comprehensive, and progressive. Its existing gaps highlight the urgent need for further changes that reflect the diversity of human experiences, adapt to shifting societal norms, and ensure that justice remains impartial, irrespective of gender, orientation, or identity.

To transform the BNS into a more inclusive and forward-thinking legal framework, several key reforms are necessary. Firstly, the definition of sexual offences should be expanded to clearly include crimes against men, recognizing that sexual violence affects individuals across all genders. The outdated marital rape exemption should be abolished, reaffirming that consent within marriage is as critical as in any other relationship. Moreover, clear, inclusive definitions of consent are essential to address issues of coercion, manipulation, and deceit, offering robust protection against all forms of sexual exploitation.

The legal code should also include specific provisions for transgender individuals, tackling the unique violence and discrimination they face while formally acknowledging diverse gender identities within the legal system. As the digital landscape rapidly evolves, comprehensive cyber laws are needed to combat online harassment, cyberbullying, revenge porn, and digital exploitation, alongside strong data protection and privacy safeguards. Protections for non-binary and gender non-conforming individuals must be explicitly articulated to ensure their rights are recognized and upheld. In juvenile justice, the focus should shift from mere protection against online threats to prioritizing rehabilitation over punishment for young offenders, aiding their successful reintegration into society.

Legal provisions regarding consensual relationships should be reinforced to prevent misuse while safeguarding personal freedoms. Mental health support should be integrated into the justice system to address the psychological impact on crime survivors. Additionally, rehabilitation programs for offenders, especially juveniles, can play a key role in reducing recidivism and promoting societal reintegration. To ensure effective implementation, investment in capacity-building initiatives for law enforcement, the judiciary, and legal professionals is vital, with a focus on gender sensitivity, digital crime awareness, and minority rights.

Finally, establishing independent oversight bodies will enhance transparency, accountability, and justice, ensuring that the BNS evolves into a dynamic legal framework that upholds the principles of justice, equality, and human dignity in an ever-changing society.

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CULTIVATING CONSTITUTIONAL CULTURE: EXPERIENTIAL LEGAL EDUCATION IN DELHI'S SECONDARY SCHOOLS

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Abstract

Legal literacy remains a critical yet underdeveloped component of democratic education in India. While the Constitution guarantees extensive rights and remedies, meaningful access to these rights often depends upon public awareness and procedural knowledge. This paper examines the transformative impact of the Legal Studies curriculum introduced under the "World of Work" programme of the Delhi Board of School Education (DBSE), implemented in collaboration with the Tata Institute of Social Sciences – Centre for Excellence in Teacher Education (TISS-CETE). Using qualitative content analysis of Grade 11 and Grade 12 Legal Studies handbooks and thematic analysis of six student reflections from the inaugural Ambedkar Schools of Specialised Excellence (ASOSE) cohort, the study identifies four key outcomes: personal empowerment, constitutional consciousness, civic engagement, and career orientation. The findings demonstrate that experiential pedagogical tools—such as moot courts, Right to Information (RTI) drafting, policy briefs, legal research projects, and court visits—translate constitutional theory into lived civic practice. The study argues that structured secondary-level legal education can strengthen democratic participation and reduce legal illiteracy by equipping students with procedural awareness and analytical skills. Aligning the programme with the broader vision of the National Education Policy (NEP) 2020 and global models such as Street Law, the paper concludes that integrating legal education into mainstream secondary schooling can play a significant role in democratizing access to justice and cultivating informed citizenship.

Keywords: Legal literacy, civic education, experiential learning, constitutional culture, secondary education, NEP 2020.

1. Introduction

Democratic governance does not just depend on the constitutional framework and institutionalization but also depends on the citizens that have the capacity to learn and have the confidence to use their rights.[1] The Constitution of India has far-reaching provisions regarding equality, liberty and freedom of expression and access to justice.[2] Nevertheless, the active application of the guarantees requires a significant level of the social knowledge of law rights and their legal mechanisms. There is a perennial disparity between the formal access to the law and the actual capacity of citizens to protect themselves, therefore.[3]

Legal literacy is a very important mediating factor between these two realities.[4] Upon having knowledge of how legal institutions operate, individuals are placed at a better position to identify violations and hold the institution accountable as well as leading active lives in the democratic world. On the other hand, ignorance usually results in poor use of legal solutions, unfamiliarity with institutions, and exposure to exploitation. Access to justice studies in India have reiterated that law ignorance is one of the greatest obstacles to the successful exercise of rights.[5]

[1] Upendra Baxi, *The Future of Human Rights* (Oxford University Press 2002).
[2] Granville Austin, *The Indian Constitution: Cornerstone of a Nation* (Oxford University Press 1999).
[3] Amartya Sen, *The Idea of Justice* (Penguin Books 2009).
[4] Stephen Golub, "Beyond Rule of Law Orthodoxy: The Legal Empowerment Alternative" (Carnegie Endowment for International Peace 2003).
[5] Vidhi Centre for Legal Policy, *Legal Literacy*

Although it is important, structured legal education in India has been traditional and it has been a preserve of universities and professional law schools.[6] Secondary school seldom involves a systematic exposure to legal principles other than a small amount of civics education. Consequently, a significant number of citizens learn about the legal notions only after having a conflict or going through an institutional process in their adult lives. Such late exposure leads to the general misperceptions about the law as well as the inability of individuals to go through legal systems without insecurities.

New educational reforms have started to appreciate the need to introduce legal awareness in schools. In Delhi Board of School Education (DBSE), the programme of the so-called World of Work was introduced in the Ambedkar Schools of Specialised Excellence (ASOSE) whose main purpose is to offer students special learning opportunities in relation to the real life skills and professions.[7] Legal Studies became one of the major specializations of the programme, which was developed in cooperation with the Tata Institute of Social Sciences -Centre for Excellence in Teacher Education (TISS-CETE).[8]

The Legal Studies curriculum is a contrasting study as compared to the traditional textbook courses in civics. It is based on experiential learning and does not follow the theoretical explanations of the constitutions provisions but on activities like drafting RTI applications, policy research, moot courts, legal aid institutions and court visits. These drills are supposed to turn the students who had been mere passive learners into active agents of the processes of legal thinking and civic activity.

This programme is also introduced alongside the wider vision that is presented in the National Education Policy (NEP) 2020 that focuses on multidisciplinary education, experiential learning, critical thinking, and ethical awareness.[9] Legal literacy in the context of this policy policy becomes an excellent element of democratic education, which can bridge the gap between academic knowledge and social responsiveness.

The paper will discuss the transformational nature of the Legal Studies programme through its curricular design and the experience of students who attended the first group of students. The study will examine curriculum texts and student responses to identify the effect of early exposure to legal education on students and its impact on their rights perceptions, institutional perceptions, and perceptions on civic engagement.

In particular, the research questions discussed in the study are the following three questions:

1. In what way does the Legal Studies programme in the World of Work programme enhance experiential learning?
2. Which kinds of personal and civic changes do students feel they have received because of working with the curriculum?
3. How can secondary-level legal schooling strengthen legal literacy and democratic vote in India through the schools?

The answers to these questions make this paper add to the expanded discussion of the importance of legal literacy as a constituent element of democratic citizenship and educational reform.

2. Literature Review

Litigation and Democratic Citizenship.

Legal literacy is the skill of the person to be aware of his/her rights, legal issues, and find a proper resolution.[10] The idea of legal consciousness being a

Survey in India (Policy Brief 2019).

[6] Bar Council of India, *Legal Education Reform Report* (2015).

[7] Delhi Board of School Education, *Schools of Specialised Excellence Guidelines* (Government of NCT Delhi 2021).

[8] Tata Institute of Social Sciences – Centre for Excellence in Teacher Education, *World of Work Curriculum Framework* (TISS-CETE 2023).

[9] Ministry of Education, *National Education Policy 2020* (Government of India).

[10] Richard Grimes, "Legal Literacy, Community

condition of successful citizenship in democratic societies has been discussed by scholars since a long period of time. In the absence of this knowledge, the constitutional guarantees are merely symbolic.

The literature on access to justice emphasizes the fact that people are often not able to take legal legitimate claims because of legal ignorance. This impacts the marginalized groups especially since they are not accustomed to the institution and the legal jargon. Consequently, much legal literacy has been advocated as a tool of enhancing democratic participation and accountability.[11]

Practical Legal Training.

Experience, internationally, has been identified as a successful method of legal education. The Street Law movement in America brought about participatory legal education programmes in the secondary schools and in the community.[12] Street Law tried to make concepts of law more accessible to non-students of law through mock trials and role-play activities as well as through interactive discussions.

Studies of such programmes prove that it has had a number of positive impacts such as better civic turn-out, better analytical skills and confidence in approaching the legal institutions.[13] Other countries like Australia, South Africa and some democracies in the Eastern European region have applied similar initiatives and civic education has included practical legal exercises.[14]

Legal Education in the Indian School System

In India, secondary level legal education is still not well-organised. Although Legal Studies as an elective subject was firstly implemented by the Central Board of Secondary Education (CBSE) in 2013,[15] this subject has not become popular among government schools. Its implementation has been limited by resource limits, insufficient training of teachers, and absence of experiential aspects.

The current policy trends, especially, the National Education Policy (NEP) 2020 stress the significance of interdisciplinary education, critical thinking, and moral education. Legal literacy is a useful avenue that can be used within this policy to combine civic education and the acquisition of practical skills.[16]

The DBSE world of work programme is a special effort to actualize these principles. The programme will help address the divide between what people know about the constitution and how they apply this knowledge in their daily civic life.

3. Methodology

This study adopts a qualitative research design to explore the transformative impact of the Legal Studies curriculum implemented under the DBSE "World of Work" programme.

Data Sources

Two primary sources of data were analyzed:

1. **Curriculum materials** – Grade 11 and Grade 12 Legal Studies handbooks developed by TISS-CETE.
2. **Student reflections** – six narrative accounts written by alumni from the first ASOSE cohort.

Empowerment and Law Schools" (2003) 5 *International Journal of Clinical Legal Education* 87.

[11] Brian Tamanaha, *On the Rule of Law: History, Politics and Theory* (Cambridge University Press 2004).

[12] Lee Arbetman and Edward O'Brien, *Street Law: A Course in Practical Law* (McGraw-Hill 2010).

[13] Richard Grimes, "Street Law and Social Justice Education" (2014) 21 *International Journal of Clinical Legal Education* 3.

[14] United Nations Development Programme, *Access to Justice and Legal Empowerment of the Poor* (UNDP Report 2015).

[15] Central Board of Secondary Education, *Legal Studies Curriculum Guidelines* (CBSE 2013).

[16] Ministry of Education, *National Education Policy 2020*.

These reflections were selected because they provided detailed insights into students' experiences of the programme and its perceived impact.

Analytical Approach

The research employed two complementary qualitative methods:

Content Analysis of Curriculum

The curriculum was examined to identify its pedagogical orientation and learning objectives. Particular attention was given to experiential components such as simulations, drafting exercises, policy research, and field exposure.

Thematic Analysis of Student Reflections

Student narratives were analyzed using thematic analysis to identify recurring patterns in reported experiences. Through iterative coding and interpretation, four major themes emerged:

1. Empowerment and confidence
2. Critical thinking and constitutional awareness
3. Civic engagement
4. Career orientation

Triangulation between curriculum analysis and student reflections strengthened the credibility of findings by demonstrating alignment between intended pedagogy and reported outcomes.

Limitations

The study is limited by the small sample size of reflections and the absence of quantitative measures of learning outcomes. Nevertheless, qualitative insights provide valuable understanding of the programme's transformative potential.

4. Curriculum Design: Experiential Legal Education

The Legal Studies curriculum is structured across Grades 11 and 12, with a progression from foundational legal awareness to applied procedural learning.

Grade 11: Foundations of Legal Awareness

The Grade 11 curriculum introduces students to analytical thinking, constitutional principles, and civic engagement. Rather than focusing on technical legal doctrines, the course emphasizes understanding how law operates in everyday life.[17]

Students learn skills such as analyzing public debates, evaluating evidence, and constructing arguments. Landmark constitutional cases are introduced through simplified discussions, enabling students to explore issues such as freedom of speech, equality, and environmental rights.

Assignments include drafting awareness campaigns, debating constitutional issues, and preparing policy briefs on environmental challenges. These activities encourage students to connect legal concepts with real-world problems.

Grade 12: Procedural Literacy and Professional Exposure

The Grade 12 curriculum focuses on applied legal skills and institutional engagement. Students learn practical procedures such as drafting contracts, filing RTI applications, preparing affidavits, and understanding criminal justice processes.[18]

Moot court exercises form a central component of the programme. Students prepare legal arguments, present oral submissions, and respond to judicial questioning in simulated courtroom settings.

Field exposure is another important feature. Students visit courts, interact with legal professionals, and

[17] M P Jain, *Indian Constitutional Law* (LexisNexis 2019).

[18] Right to Information Act 2005 (India).

participate in internships or awareness activities related to legal aid.

Through this progression, the curriculum moves from **conceptual awareness to procedural competence**, enabling students to understand both the principles and practice of law.

5. Findings

Reflections by students after the programme had been analyzed and four intertwined themes presented the effects of the programme.

Empowerment and Confidence

Students reported that they feel more confident to speak out in front of people and engage in arguments. The moot court practice was especially significant in the development of the skills of speaking in public and argument.

Composing a RTI application was a breakthrough in the life of many students. The exercise showed that ordinary citizens could exercise legal procedures to hold the public authorities accountable. This understanding brought about the perceived distance between people and institutions closer.

Critical Thinking and Constitutional Awareness.

Students also said that they learned to take social and political problems more analytically after having studied constitutional law. Instead of looking at rights in the abstract, they started to interpret the modern events in legal terms.

As an example, discussions about the freedom of speech, equality between the genders, and environmentalism were used to prompt students to examine how the courts reconcile conflicting rights and interests.

Civic Engagement

Most of the reflections highlighted the significance of legal literacy to the act of democracy. Students were of the opinion that rights knowledge should not be a preserve of the lawyers or privileged groups.

Others said they talked with their family or their peers about legal matters showing how what they learned in classes was applied in their daily civic discussions.

Career Orientation

The experiences in the court room and the encounters with the lawyers made some of the students think that they could work in the field of law, public policy, or governance. The non-legal professionals who attended the programme also appreciated the importance of analysis and communication skills gained during the programme.

6. Discussion

The results of this research point to the possibility of experiences in legal education being a major contributor towards instilling a better constitution culture among the young citizens.[19] Constitutional culture does not simply mean what is known of constitutional provisions but it means an internalization of democratic values like justice, equality, accountability and respect towards rule of law. Students who learn about legal issues on an interactive and practice based learning tend to get an idea of how constitutional principles are applied in practical situations. Legal Studies curriculum The DBSE programme World of Work displays the approach of experiential pedagogy as a means of closing the gap between abstract legal knowledge and the practical experience of civic life. The programme helps students understand social matters in constitutional terms, and learn to value the role of law in the creation of democratic society by incorporating students in practice exercises like moot court, policy debate, and law drafting.

[19] John Dewey, *Democracy and Education* (Macmillan 1916).

It is also important that experiential learning would help convert passive receivers of information to active participants in the process of legal reasoning and civic action among students. Simulated court hearings, constitutional debate projects, and legal research projects offer chances to students to strengthen their analytical and argumentative skills. Such experiences enable them to critically analyze social issues, review other opinion, and assess the institutional processes in which justice is sought. Consequently, students start to consider the law not only as one of the professional fields but as a dynamic system that affects governance, social relations, and individual rights.

The other significance of early legal education lies in the possibility of solving the issue of legal illiteracy that prevails.[20] In most societies, such as in India, citizens do not even know their legal rights and what procedure they can use to enforce them. Such ignorance often makes people unable to seek institutional recourse to the problem and a disparity between the formal legal protection and its actual implementation. This means that introducing legal literacy in the secondary school level can be a preventive empowerment. When students get to know how to write the Right to Information (RTI) applications, how to analyze the terms of the contract, or learn the fundamental mechanisms of the criminal law, they get to learn some working tools, which they can use to find their way out of the legal and administrative system in the future. Although they may not be directly involved with legal institutions in the near future, this knowledge generates confidence and removes the psychological resistance that is usually linked to law and bureaucracy.

In addition, legal education at an early age can produce more extensive social advantage. The students who acquire an insight into legal rights and their responsibilities tend to become the knowledge brokers in their families and societies. They can provide information on legal procedures, create awareness on the rights related issues as well as persuade others to seek institutional redress. By doing this legal literacy learned at schools can slowly go outside of the classroom and help create the bigger publicity. Notably, the aims of the Legal Studies programme can also be discussed as aligned with the larger aims of the National Education Policy (NEP) 2020 as it focuses on interdisciplinary education, critical thinking, and learning based on skills. Legal studies necessarily represent a combination of various fields of knowledge such as constitutional law, political science, ethics, and public policy. Students are also able to acquire critical thinking, moral introspection, and communication skills in the process of engaging in activities like policy analysis, research on the law, and civic discourses. All these competences are being embraced in the modern education systems that emphasize on holism and problem solving skills. In these respects, one can distinguish legal education as a quite peculiar useful item of the school curriculum in the current days. Experiential legal education, by integrating civic education with the development of practical abilities, is one of the ways to prepare students not only with professional opportunities but also with the means of becoming responsible citizens in the democratic world. With the recent focus on interdisciplinary and experiential learning, which is a part of education reform, the inclusion of legal literacy in secondary schools can become a successful approach to raising informed, empowered and socially responsible citizens.

7. Policy Implications

This research has led to the conclusion that the DBSE Legal Studies programme is not just a localized curricular innovation, but it shows a potential way forward in terms of enhancing legal literacy and civic education in the Indian school system. According to the treatment of curriculum design and student responses, there are a number of policy recommendations that may promote the

[20] Martha Nussbaum, *Creating Capabilities: The Human Development Approach* (Harvard University Press 2011).

institutionalization and growth of legal education in the secondary level. These recommendations are all centered on the integration of the curriculum, capacity-building of teachers, institutional collaboration, and digital access.

1. Combining Legal Studies with Secondary Education.

The major implication of this study is that there is need to introduce the Legal Studies formally in the mainstream secondary education provided by state and national boards. Currently, legal literacy in school curriculum is mostly limited to short courses in civics which present constitutional provisions in theory alone. This sort of teaching can seldom establish procedural knowledge or any hands-on activities with law institutions.

Legal Studies as a well-organized elective course in senior secondary school (Grades 1112) may fill this gap. The curriculum must not be enhanced only in memorising articles in the constitution, but rather in experiential approach to the law. These may be composed of such core elements as basic constitutional literacy, the knowledge of basic rights and responsibilities, exposure to legal institutions, procedural systems like RTI and complaint systems, and exposure to dispute resolution system.

DBSE programme world of work shows the integration of legal education in wider skills based programme. The curriculum can bring together the classroom learning and civic practice by integrating the theoretical material with practical activities like policy making, policy drafting and moot court simulations. The copying of such curricular models in various education boards would assist in developing legal awareness in the student at a tender age which would enhance democratic participation in the long run.

Moreover, teaching legal studies at secondary level is also in tandem with this vision of the National Education Policy (NEP) 2020 that places special focus on multidisciplinary learning, critical thinking, and value-oriented education. Legal literacy offers an inherent avenue of accomplishment of these purposes since it relates the principles of the constitution to modern social and political problems.

2. Experiential Pedagogical Training in Legal Education.

Teacher preparedness is critical in the effective execution of legal education in schools. Compared with the conventional courses where education is based on textbook learning, experiential legal learning involves teachers encouraging discussions, simulations, case studies, and project learning tasks. Most educators, especially in government schools, might lack either a formal training in the principles of law or in participatory teaching practices.

Thus, successful execution of Legal Studies curricula implementation depends on systematic teacher training programmes. This training can be provided on the one hand, with substantive legal knowledge and on the other hand, pedagogical strategies. Teacher workshops and certification programmes might expose teachers to some basic legal concepts that are crucial to the law, important landmark constitutional cases, and procedural tools like RTI filing or contract scaffolding.

Important also is experiential pedagogy training. Educators have to be trained on how to hold moot court simulations, hold designed debates on constitutional matters, instruct students in research projects, and facilitate cogitative deliberation on ethical challenges. Jurist training programmes with law universities, teacher colleges, and law practitioners might be significant in developing this capacity.

Teacher training institutes and B.Ed. programmes can also embrace courses on legal literacy and civic education pedagogy in long term. This kind of integration would make the future educators acquire the skills necessary to teach effectively on the law related subjects.

3. Cooperation with Courts and Legal institutions.

Practical exposure to actual institutions of law is an essential part of the valuable education in law. Classroom teaching is not always sufficient to communicate how legal systems operate and what complicated legal procedures are. Schools and legal institutions can thus play a significant role in improving learning experiences of students by partnering with each other.

Cooperation with courts, local legal services authorities, bar associations and legal aid organizations can give students a chance to observe court proceedings, to meet with practicing advocates, and to get to know the realities of legal practice. Legal concepts can be made more practical and realistic to students by visiting the court, having judges or lawyers as guests, and taking part in legal awareness campaigns.

In addition, these collaborations may help to organize legal literacy school-level programs. As an example, students are to be engaged in the awareness campaigns about the rights of marginalised peoples, environmental protection, or gender justice within their respective local communities. These would serve as an appreciation of law as it is not only a professional discipline but also a social instrument of ensuring justice and accountability.

The institutional partnerships can also be used to develop mentorship and internship opportunities whereby interested students can learn more about legal careers. The early exposure of the legal career can widen the horizons of the students and help promote a wider range of students participating in the field of legal education.

4. Online Study Aids of Legal Literacy.

It has tremendous potential on digital technology to distribute legal education to areas that might be short of trained instructors or institutional collaboration. Digital learning resources on the topic of legal literacy would potentially help teachers and students to learn complicated legal issues.

Interactive modules can be conducted online declaring constitutional rights, landmark judgments, and mechanisms of a procedure, like filling RTI applications or complaints. Learning about the law can be enhanced through the use of multimedia tools including videos, simulations and case-based scenarios to make it more engaging and reach the student with different learning styles.

Moreover, online collections of instructional resources such as lesson plans, simulated case studies, and sample draft structuring templates may help teachers apply the concept of experiential pedagogy more efficiently. This would be of great help in the case of government schools where they might not have access to specialized materials of legal education.

The implementation of legal literacy modules in the digital education environment of a country, e.g. DIKSHA, would also help reach a larger audience with these materials. To guarantee that the students of various regions and social-economic backgrounds obtain better civic education, the policymakers can make available high-quality legal education materials over the Internet.

8. Conclusion

The Legal Studies curriculum which was implemented in the World of Work programme by the Delhi Board of School Education (DBSE), is an important addition to the Indian secondary school environment. Historically, India has been characterized with legal studies being concentrated within the four walls of universities and professional institutions and hence majority of the citizens have barely been exposed to the aspects of law at a young age. The initiative by the DBSE breaks this cycle and reinvents law as a fundamental part of democratic education and civic

culture by introducing organized legal education in high school.[21]

One of the characteristics of the programme is that it combines constitutional learning and experience-based learning. In contrast to exposing law as a theoretical discipline, the curriculum focuses more on practical involvement by for example moot courts, creating applications under the Right to Information (RTI), writing policy brief, researching projects in law and visiting courts. These practical elements enable students to consider legal concepts and institutions practically, and turn law as an abstract system of rules into a working construct of what defines the daily life of citizens. With the help of such learning experiences, students can relate constitutional concepts with actual-life problems and gain a clearer understanding of how the legal systems work.

As the results of the given research suggest, there are several types of changes to a student that can be produced due to exposure to legal education early on. One, the programme will lead to personal empowerment and confidence building. Students indicated that they felt more confident when presenting their arguments in a structured environment like moot courts, trying to argue out issues, and expressing their views. The activities will develop valuable communication and reasoning abilities and stimulate the students to express their views on social and legal matters.

Second, the curriculum encourages critical thinking and consciousness regarding the constitution. Students are introduced to the discussion of public debates using a legal and right-based approach by involving them in the analysis of landmark judgments, constitutional principles, and current social issues. This is why this legal studies makes them challenge assumptions, weigh evidence, and see how legal institutions can help protect the democracy.

Third, the programme promotes social responsibility and involvement of the society. Law The role of law in this regard has been brought to the limelight through exposure to such mechanisms as RTI and legal aid in bringing about transparency and accountability in governance. Students learn to appreciate the fact that legal knowledge does not just apply to legal professionals but is a vital instrument required by citizens who want to take an active part in democratic activities.

In addition to personal performance, secondary-level legal education has a wider implication as it enhances democracy culture. In cultures where legal literacy is also uneven, these people are not aware and this hinders the citizens exercising their rights in the best way possible. The benefits of early introduction to legal education can then be considered as a kind of preventive empowerment in that young people will be given knowledge and confidence to navigate the legal institutions and raise issues of rights concern.

more to the point, the goals of the DBSE Legal Studies programme are quite close to the vision of the National Education Policy (NEP) 2020 that focuses on multidisciplinary education, practical learning, and acquisition of critical thinking skills. The inclusion of legal literacy in standard schooling can therefore be beneficial to the wider interests of educational reform in its enhancement of the knowledge of citizens and moral enlightenment.

To sum up, it is possible to state that the DBSE programme of legal studies in the framework of the World of Work can be viewed as one of the most effective instruments of civic empowerment and democratic engagement at the secondary-level level. Such efforts can create a more learned, empowered and justice-seeking citizenry in India by preparing students to understand the constitutional and legal processes, and the working of institutional procedures.

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[21] Justice V.R. Krishna Iyer, *Law and the People* (Eastern Book Company 1980).

THE CONSTITUTIONAL PROMISE OF DIGNITY: DALIT WOMEN, INTERSECTIONAL DISCRIMINATION, AND THE QUEST FOR EQUALITY IN INDIA

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Abstract

This paper conducts a socio-legal examination of the structural invisibility of Dalit women within India's constitutional and legal framework. While the Indian Constitution, inspired by Dr. B. R. Ambedkar, promised social justice, the lived reality of Dalit women reveals a profound gap between constitutional ideals and legal enforcement. This research interrogates how single-axis legal categories focusing exclusively on either caste or gender fail to address the unique, intersectional discrimination faced by Dalit women. Drawing upon Kimberlé Crenshaw's theory of intersectionality, the paper analyses landmark judicial pronouncements, particularly the Supreme Court's judgment in Patan Jamal Vali v. State of Andhra Pradesh, which marks a significant, albeit limited, judicial recognition of intersectionality. Through a doctrinal analysis of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, and its amendments, alongside case law and institutional reports, the paper argues that the law continues to treat caste and gender as mutually exclusive grounds of discrimination. This fragmentation results in systemic erasure, where the specific violence both physical and symbolic targeting Dalit women remains inadequately addressed. By examining barriers to justice, including social power dynamics and judicial biases, the paper highlights how legal remedies often remain inaccessible. Ultimately, this research advocates for an intersectional legal approach that reconceptualizes anti-discrimination law to account for compound identities, ensuring that the promise of constitutional morality translates into substantive, rather than merely formal, justice for Dalit women.

Keywords: Dalit women, discrimination, Equality, Constitutional morality, Dr. B. R. Ambedkar

I. INTRODUCTION

The Indian Constitution, emerging from the ashes of colonial exploitation and deep-seated social hierarchies, envisioned a transformative social order rooted in the principles of justice, liberty, equality, and fraternity. Dr. B.R. Ambedkar, the chief architect of this constitutional edifice, recognized that the struggle against caste oppression was inextricably linked to the battle for gender justice. Nowhere is this interconnection more starkly evident than in the lived realities of Dalit women, who occupy the intersection of caste hierarchy, class subordination, and patriarchal domination.

Dalit women in India face what scholars and activists term a "triple burden" of discrimination. They are marginalized not merely as women in a patriarchal society, nor simply as Dalits in a caste-ridden social order, but as subjects positioned at the convergence of multiple axes of subordination. As Dr. Ambedkar conceptualized through his theory of "graded inequality," the caste system operates through a hierarchy where each group is assigned a distinct position, and women from lower castes bear the cumulative weight of multiple forms of oppression.[1] The Constitution, through Articles 14[2], 15[3], 17[4], and 21[5], promised to dismantle these hierarchies. Yet decades after its adoption, Dalit women continue to experience systematic violence, social exclusion, and

[1] Dr. B.R. Ambedkar, Annihilation of Caste (1936); see also Zenodo, Towards Inclusive Growth: Ambedkar's Gender Equality Ideals in 19th Century India (Apr. 30, 2025), https://zenodo.org/records/15584693
[2] Article 14, Constitution of India, 1950
[3] Article 15, Constitution of India, 1950
[4] Article 17, Constitution of India, 1950
[5] Article 21, Constitution of India, 1950

institutional indifference that betray the constitutional vision.

This paper examines the constitutional framework designed to protect Dalit women's rights, analyzes the persistent gap between constitutional promises and lived realities through landmark cases of caste-based sexual violence, and explores the emergence of intersectional jurisprudence as both an interpretive lens and a constitutional imperative. It argues that realizing constitutional equality for Dalit women requires not merely formal legal protections but a fundamental reimagining of anti-discrimination jurisprudence through an intersectional lens which is an approach that Ambedkar himself anticipated long before the term entered academic discourse.

II. THE CONSTITUTIONAL ARCHITECTURE: PROMISES OF EQUALITY

A. Foundational Provisions

The Indian Constitution embodies a commitment to substantive equality that goes beyond formal non-discrimination. Article 14[6]guarantees equality before the law and equal protection of laws a provision that Ambedkar insisted must be interpreted dynamically to address structural inequalities. Article 15(1)[7] prohibits discrimination on grounds of religion, race, caste, sex, or place of birth, while Article 15(3)[8] empowers the State to make special provisions for women and children, recognizing that formal equality may be insufficient to address historical disadvantage.

Article 17[9] abolishes "untouchability" and its practice in any form, declaring it punishable by law. This provision strikes at the heart of the caste system's degradations, including the specific forms of humiliation and exclusion inflicted upon Dalit women. Article 21[10] guarantees the right to life and personal liberty, which the Supreme Court has expansively interpreted to include the right to live with human dignity.[11]

Importantly, Article 15(2)[12] enshrines horizontal equality by prohibiting discrimination in access to shops, public restaurants, hotels, and places of public entertainment. This provision recognizes that constitutional guarantees of equality must extend beyond state action to

regulate private conduct in public spaces a recognition that caste discrimination operates pervasively in civil society.[13]

B. The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989

Recognizing that general criminal law was inadequate to address the specific nature of caste-based violence, Parliament enacted the SC/ST (Prevention of Atrocities) Act in 1989[14]. The Act identifies specific offences that constitute atrocities, including those particularly relevant to Dalit women sexual exploitation, forced nudity, and caste-based humiliation. Section 3(1)(xi) [15]specifically criminalizes sexual intercourse with a woman belonging to a Scheduled Caste or Scheduled Tribe, knowing her to be a member of such community, when the act is committed against her will or without her consent.

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[6] Supra note 2
[7] Article 15(1), Constitution of India, 1950
[8] Article 15(3), Constitution of India, 1950
[9] Supra note 3
[10] Supra note 5
[11] Maneka Gandhi v. Union of India, (1978) 1 SCC 248
[12] Article 15(2), Constitution of India, 1950
[13] The Times of India, Slurs hurt too: Review the blind spots in anti-caste law (Feb. 2, 2025), https://timesofindia.indiatimes.com/blogs/voices/slurs-hurt-too-review-the-blind-spots-in-anti-caste-law/
[14] Section 3(2)(v), Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015
[15] Section 3(1)(xi), Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015

The Act was amended in 2016 to strengthen its provisions. Section 3(2)(v)[16] was modified to replace the causation requirement which demanded proof that the crime was committed "on the ground of" the victim's caste with a knowledge requirement.

C. Ambedkar's Vision of Gender Justice and Its Constitutional Legacy

Ambedkar's contribution to gender justice extended far beyond constitutional provisions. His public burning of the Manusmriti in 1927 was not merely a symbolic act against caste oppression but a radical feminist gesture rejecting the ideological foundation of Brahmanical patriarchy. The Manusmriti, which justified women's subordination and the sexual exploitation of lower-caste women, represented for Ambedkar the intertwined nature of caste and gender hierarchy.[17]

His Hindu Code Bill, introduced in Parliament to grant women rights to property, divorce, and inheritance, represented perhaps his most comprehensive legislative vision for gender justice. When the Bill was diluted following opposition from conservative forces, Ambedkar resigned from his position as Law Minister, declaring he could not serve a government that denied justice to women.[18] This act of principle demonstrates his unwavering commitment to gender equality as integral to constitutional morality.

Ambedkar's concept of "graded inequality" provides a theoretical foundation for understanding intersectional discrimination. Unlike simple hierarchy, graded inequality creates a system where each group is assigned a distinct position in a ladder of status and privilege, and oppression operates cumulatively. Dalit women, positioned at the convergence of caste and gender hierarchies, experience the most severe forms of disadvantage precisely because they occupy the lowest rung on multiple ladders simultaneously.[19]

III. INTERSECTIONALITY AS A CONSTITUTIONAL FRAMEWORK

A. The Concept of Intersectional Discrimination

The term "intersectionality," coined by legal scholar Kimberlé Crenshaw, describes how multiple forms of discrimination intersect to create unique experiences of marginalization that cannot be captured by examining each ground separately. Dalit women experience discrimination not as the sum of caste discrimination plus gender discrimination, but as a distinct form of oppression arising from their specific location at the intersection of these hierarchies.[20]

This intersectional understanding was implicit in Ambedkar's analysis decades before the term existed. He recognized that Dalit women were positioned at the convergence of caste, class, and gender, and that their liberation was central to the emancipation of the entire Dalit community. The Mahila Mandals he established were not merely social gatherings but schools of political consciousness where Dalit women learned to speak, question, organize, and resist.[21]

B. The Landmark Judgment: Patan Jamal Vali v. State of Andhra Pradesh

The Supreme Court's judgment in Patan Jamal Vali v. State of Andhra Pradesh[22] represents a watershed

[16] Supra note 14

[17] Centre for Law & Policy Research, Intersectionality Matters: The Supreme Court Judgment in Patan Jamal Vali v State of Andhra Pradesh (Apr. 27, 2021), https://clpr.org.in/blog/intersectionality-matters-the-supreme-court-judgment-in-patan-jamal-vali-v-state-of-andhra-pradesh/

[18] The Hindu, Indian Republic at 75: Ambedkar's Unfinished Agenda (Nov. 26, 2025), https://www.thehindu.com/news/national/indian-republic-at-75-ambedkars-unfinished-agenda/article70325195.ece

[19] Ibid

[20] Kimberlé Crenshaw, Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, University of Chicago Legal Forum, 1989

[21] Bindu Ammini, Gender in social justice: Remembering Ambedkar's contributions to Dalit feminism, The News Minute (Apr. 13, 2025), https://www.thenewsminute.com/voices/gender-in-social-justice-remembering-ambedkars-contributions-to-dalit-feminism

[22] Patan Jamal Vali v. State of Andhra Pradesh,

moment in the judicial recognition of intersectionality. The case involved the rape of a visually impaired young woman belonging to the Scheduled Caste. The Court set aside the conviction under Section 3(2)(v) of the Atrocities Act[23] on the ground that there was insufficient evidence to prove that the crime was committed on the ground of her caste status.

However, the judgment's significance lies not in its outcome but in its reasoning. Justice D.Y. Chandrachud, writing for the bench, explicitly invoked intersectionality theory, observing that it is "imperative to use an intersectional lens to evaluate how multiple sources of oppression operate cumulatively to produce a specific experience of subordination for a blind Scheduled Caste woman. "The Court cited Kimberlé Crenshaw's work, recognizing that "the singular focus on rape as a manifestation of male power over female sexuality tends to eclipse the use of rape as a weapon of racial terror."[24]

Crucially, the Court articulated a transformative interpretation of the Atrocities Act:
"To deny the protection of Section 3(2)(v)[25] on the premise that the crime was not committed against an SC & ST person solely on the ground of their caste identity is to deny how social inequalities function in a cumulative fashion. It is to render the experiences of the most marginalized invisible. A true reading of Section 3(2)(v) [26]would entail that conviction under this provision can be sustained as long as caste identity is one of the grounds for the occurrence of the offence."

This formulation that caste identity need only be "one of the grounds" rather than the sole ground represents a significant doctrinal advance. It recognizes that in cases of intersectional discrimination, perpetrators' motivations are complex and overlapping, and requiring proof of exclusive caste motivation would effectively immunize most intersectional violence from the Act's protections.[27]

The Court also acknowledged how single-axis frameworks fail those at intersections, observing that legal protections for marginalized groups have historically been dominated by a focus on single axes of oppression either gender or caste or disability. This approach benefits only those who are relatively privileged within such groups, leaving those at intersections unprotected.[28]

C. The Evidentiary Challenge

Despite the progressive articulation of intersectionality in Patan Jamal Vali[29], the judgment exposed a persistent tension: how does intersectional theory translate into evidentiary practice? The Court acquitted the accused under the Atrocities Act because the prosecution failed to lead specific evidence proving a causal link between the victim's caste and the sexual violence.

This reveals a fundamental paradox identified by scholar Anupama Rao: the Atrocities Act treats caste-based violence as "atrocity" as systemic oppression distinct from ordinary crime yet requires proof through the same evidentiary rules that apply to all criminal cases.[19] The Act's amendment replacing the causation requirement with a knowledge requirement was intended to address this problem, but the Court in Patan Jamal Vali[30] held that the amendment would not apply retrospectively. The case thus illustrates both the promise of intersectional reasoning and the

Criminal Appeal No. 141 of 2012 (S.C. Apr. 27, 2021)
[23] Supra note 14
[24] Supra note 20
[25] Supra note 14
[26] Ibid
[27] Supreme Court Observer, Identity and Evidence- An Intersectional Perspective (June 29, 2021), https://www.scobserver.in/journal/identity-and-evidence-an-intersectional-perspective/
[28] Ibid
[29] Supra note 22
[30] Ibid

limitations of evidentiary frameworks designed for single axis discrimination.

IV. LANDMARK CASES AND THE STRUGGLE FOR JUSTICE

A. Vishakha v. State of Rajasthan and Its Origins

The story of Vishakha v. State of Rajasthan[31] begins not in the Supreme Court but in a village in Rajasthan, where Bhanwari Devi, a grassroots worker with the Women Development Programme, dared to challenge age-old patriarchal traditions by trying to prevent the child marriage of a one-year-old girl. As punishment, she was brutally gang-raped by five Gujjar landlords. What followed was a chilling display of systemic apathy. The police refused to file an FIR, Bhanwari Devi's medical report was incomplete, and the trial court acquitted the accused, casting doubt on her husband's testimony and asserting with devastating clarity that "an upper-caste man could not have defiled himself by raping a lower-caste woman" This judicial reasoning exposes the deep structure of caste patriarchy: Dalit women's bodies are constructed as inherently violable, their violation incapable of constituting "defilement" because they are positioned outside the patriarchal protection reserved for upper-caste women.

A cohort of organizations filed a public interest litigation under the banner of Vishakha, demanding guidelines to prevent sexual harassment at the workplace. The Supreme Court held that in the absence of legislation, the Court framed the Vishakha Guidelines binding directives making employers responsible for safe workplaces.

However, Dalit feminist scholars have critiqued the limitations of the Vishakha framework. The guidelines apply to government and private employment but not to informal employment. This means that predominantly savarna women working in formal employment would be able to reap the benefits, while Dalit women working in the unorganized sector, agriculture, and domestic labour who constitute the vast majority were excluded from the guidelines' scope. This exemplifies how single-axis gender frameworks, even when catalyzed by Dalit women's suffering, can fail to address the specific location of those at intersections.[32]

B. The Karamchedu Massacre

The Karamchedu massacre[33] in Andhra Pradesh marked a watershed moment in Dalit consciousness and resistance. On July 17, 1985, a large group of dominant caste Kammas attacked an unarmed Dalit colony, killing six Madiga men and raping at least three women. The prosecution's case, rather than highlighting caste discrimination, stated that the dominant caste community had "grievances against the Madigas as they were not giving due regard and not extending courtesy to them which was being extended since time immemorial."

When the Supreme Court finally delivered its verdict in 2008[34] over twenty years after the massacre it convicted twenty-nine persons of rioting and awarded life imprisonment to one accused for murder. Crucially, nobody was convicted of rape. The erasure of sexual violence from the judicial narrative exemplifies how the specific injuries of Dalit women become invisible within legal frameworks that fail to recognize intersectional harm.[35]

[31] Vishaka v. State of Rajasthan (1997) 6 SCC 241,
[32] Supra note 17
[33] Berg D-E. The Karamchedu Killings and the Struggle to Uncover Untouchability. In: *Dynamics of Caste and Law: Dalits, Oppression and Constitutional Democracy in India*. South Asia in the Social Sciences. Cambridge University Press; 2020:103-126.
[34] State Of A.P vs Rayaneedi Sitharamaiah & Ors on 19 December, AIR 2008 SC (SUPP) 807
[35] Equality Now, The Hathras case one year on: Exploring the impact of landmark cases of caste-based sexual violence in India (Sept. 13, 2021), https://equalitynow.org/news/news-and-insights/landmark_cases_of_cbsv_1985_2020/

C. Khairlanji Massacre

The Khairlanji massacre[36] in Maharashtra represents perhaps the most brutal illustration of intersectional violence in recent decades. On September 29, 2006, a mob of dominant caste men attacked the household of Bhaiyalal Bhotmange, a Dalit family. They dragged Bhaiyalal's mother, sister, and two brothers from their home, paraded them naked, raped the women, and lynched all four in public. The triggering cause was the family's assertion of land rights against dominant caste encroachment—an assertion of economic citizenship that dominant castes sought to punish through sexual terror.

Despite the brutal nature of the crime, the government never brought rape charges, claiming lack of evidence. When the trial court delivered its verdict, it refused to invoke the Atrocities Act, holding that the murders were based on revenge rather than motivated by caste—a distinction that fundamentally misunderstands how caste operates through violence against Dalit women's bodies.

D. The Meenakshi Kumari Case

In May 2015, Meenakshi Kumari[37], her fifteen-year-old sister, and other family members fled their village in Uttar Pradesh after an all-male village council ordered them to be raped and paraded naked through the streets as punishment for their brother eloping with a higher-caste woman.Meenakshi took the courageous step of reporting the incident to authorities, and her case reached the Supreme Court, which recognized the risks to her family and ordered the Delhi Police to provide protection.

This case illustrates the use of sexual violence as a punitive tool by informal caste councils to enforce endogamy the principle of marriage within caste that is fundamental to the reproduction of the caste system. The Supreme Court's intervention, while significant in providing immediate protection, could not address the structural conditions that made such violence possible: the impunity of dominant caste perpetrators, the complicity of local police, and the absence of any effective mechanism to prevent retaliation against Dalit women who assert their rights.

E. Hathras

The Hathras gang-rape[38] and murder in September 2020 brought caste-based sexual violence to national and international attention. A young Dalit woman was gang-raped by four upper-caste men in Uttar Pradesh, dying from her injuries two weeks later. The state's response cremating her body without family consent in the middle of the night symbolized the continued dispossession of Dalit women's dignity even in death. The Hathras case exposed what activists have long documented: Dalit women face not only the violence of perpetrators but also the violence of state indifference, media sensationalism, and judicial delay. The first question asked by commentators "why are we talking about the caste of the victim?" reveals the persistent invisibilization of caste as a structural determinant of violence.[33]

V. CONSTITUTIONAL CHALLENGES AND JUDICIAL INTERPRETATIONS

A. The Public-Private Divide in Anti-Discrimination Law

The Constitution of India explicitly rejects the public-private distinction in certain contexts. Article 15(2)

[36] Teltumbde, A, The Persistence of Caste: The Khairlanji Murders and India's Hidden Apartheid. London,2010

[37] Faizul, M. . (2024). Babli and Kumari: Insights that Align. *Journal of Human Rights Law and Practice*, *8*(1), 16–19. Retrieved from https://lawjournals.celnet.in/index.php/jhrlp/article/view/1682

[38] Gunasekar, A., Sengar, M.S. and Ghosh, D. (2020) 'No Rape In Hathras Case, Senior UP Cop Claims, Citing Autopsy Report', *NDTV*, 1 October. Available at: https://www.ndtv.com/india-news/hathras-gang-rape-autopsy-report-shows-victim-was-strangled-suffered-cervical-spine-injury-2303696 (Accessed: 12 March 2026).

[39]prohibits discrimination in access to shops, public restaurants, hotels, and places of public entertainment. This provision enshrines horizontal equality, recognizing that constitutional guarantees must regulate private conduct in spaces accessible to the public.

However, courts have often failed to extend this reasoning to other contexts. The Bombay High Court's ruling on private caste abuses represents a regression from constitutional vision, artificially insulating private spaces from constitutional scrutiny despite the clear text of Article 15(2)[40] .

B. The Doctrine of Caste as the "Only" Ground

Prior to Patan Jamal Vali[41], courts frequently interpreted Section 3(2)(v) of the Atrocities Act as requiring proof that the crime was committed "only on the ground of" caste. This interpretation made convictions nearly impossible in intersectional cases where perpetrators were motivated by a combination of caste, gender, and other factors.

The Parliamentary Standing Committee Report on Atrocities and Crimes against Women and Children noted that high acquittal rates under the Act boost the confidence of dominant castes to continue oppressive acts with impunity. The amendment replacing the causation requirement with a knowledge requirement was intended to address this problem, though its impact has been limited by courts' reluctance to apply it retrospectively.[42]

D. The Allahabad High Court on Compensation Refund

In a controversial judgment, the Allahabad High Court recently ordered a Dalit woman to refund compensation of Rs. 4.5 lakh received under the Atrocities Act, observing that her conduct amounted to a "serious abuse of the process of law" and a "gross misuse of the benevolent provisions of the SC/ST Act."[43]The Court found it "deeply disturbing" that the victim denied filing the FIR despite affirming allegations in her statements and availing compensation.

The case involved 19 accused who argued that the FIR was lodged on the victim's thumb impression, which she later denied. The Court directed the special judge to proceed with the matter strictly in accordance with law, uninfluenced by the victim's contradictory stand. This judgment raises concerns about judicial attitudes toward Dalit women complainants and the ease with which courts may label claims as "misuse" of protective legislation. Critics argue that such rulings may deter genuine victims from seeking justice, fearing that inconsistencies in their testimony which may result from pressure, trauma, or threats could result in punitive orders.

VI. STATISTICAL REALITIES: THE NUMBERS BEHING THE VIOLENCE

The systematic nature of violence against Dalit women is reflected in national crime statistics. According to National Crime Records Bureau data, reported crimes against Dalit women increased significantly in recent years. Incidents of rape of Dalit women surged by 45 percent between 2015 and 2020. The situation worsened dramatically between 2020 and 2021, with such incidents doubling from 7,397 to 15,855 cases.[44]

Equally disturbing is the fate of minor Dalit girls. Rape of Dalit minor girls increased by 21.8 percent in

[39] Supra note 12
[40] Ibid
[41] Supra note 22
[42] Parliamentary Standing Committee Report on Atrocities and Crimes against Women and Children (2013)
[43] The Indian Express, Allahabad HC directs Dalit women to refund compensation for misuse of SC/ST Act (Nov. 7, 2025), https://indianexpress.com/article/legal-news/allahabad-hc-directs-dalit-women-to-refund-compensation-for-misuse-of-sc-st-act-10351012/lite/
[44] National Crime Records Bureau, Crime in India Report (2021)

2021, with 1,285 incidents reported. The NCRB reported that while more than ten Dalit women and minor girls were raped every day, convictions occurred in only 24 percent of cases.[45]

These statistics reveal not merely individual criminal acts but a pattern of systemic violence and institutional failure. The low conviction rate reflects the multiple barriers Dalit women face in accessing justice: police refusal to register cases, pressure to compromise, threats from perpetrators, and judicial bias that disbelieves Dalit testimony.[46]

Research by Equality Now and other organizations has documented that Dalit and Adivasi women and girls continue to face multiple levels of discrimination and violence. Members of dominant castes use sexual violence against Dalit women as a political tool for punishment, humiliation, and assertion of power. Police are also known to collude with perpetrators from dominant castes in covering up crimes by not registering or investigating offences against Dalits.[47]

VIII. RECOMMENDATIONS: TOWARD CONSTITUTIONAL FULFILLMENT

Realizing the constitutional promise of equality for Dalit women requires comprehensive reform across multiple domains:

A. Legal and Judicial Reforms

Courts must adopt an intersectional approach to interpreting anti-discrimination law, consistent with the reasoning in Patan Jamal Vali. The interpretation that conviction under Section 3(2)(v)[48] can be sustained "as long as caste identity is one of the grounds for the occurrence of the offence" should be consistently applied.

The Atrocities Act should be amended to explicitly recognize intersectional discrimination and to mandate training for judges and prosecutors on caste and gender sensitivity. The public-private distinction in the application of provisions relating to caste-based insults should be eliminated, recognizing that psychological harm occurs regardless of the setting.[57]

B. Evidentiary Reform

The evidentiary burden in intersectional discrimination cases requires legislative attention. The knowledge requirement introduced in the 2016 amendment should be given full effect, and courts should recognize that direct evidence of caste motivation is rarely available. Circumstantial evidence, including patterns of dominant caste behavior and historical context, should be considered sufficient to establish that caste was one of the grounds for the offence.

C. Institutional Accountability

Police and prosecutorial agencies must be held accountable for failures to register cases, investigate diligently, and prosecute effectively. The practice of misregistering cases under general criminal law rather than the Atrocities Act must be addressed through monitoring mechanisms and disciplinary action.[49]

The Supreme Court's intervention in the Meenakshi Kumari case[50], ordering police protection, should be

[45] Ibid

[46] Equality Now, Intersecting injustices: Marginalisation and legal barriers in sexual violence cases across South Asia (Dec. 2025), https://equalitynow.org/es/resource/reports/intersecting-injustices-marginalisation-and-legal-barriers-in-sexual-violence-cases-across-south-asia/

[47] Amnesty International Canada, Will Meenakshi taking her case to India's Supreme Court inspire other women to report acts of violence? (Sept. 16, 2015), https://amnesty.ca/features/blog-will-meenakshi-taking-her-case-to-indias-supreme-court-inspire-other-women-to-report-acts-of/

[48] Supra note 14

[4949] [59] Equality Now, Justice denied: Sexual violence & intersectional discrimination - Barriers to accessing justice for Dalit women and girls in Haryana, India, https://equalitynow.org/ru/resource/reports/justicedenied/

[50] Supra note 37

institutionalized through protocols ensuring that Dalit women complainants receive immediate protection from retaliation.

D. Data Collection and Monitoring

The collection and publication of disaggregated data on crimes against Dalit women, including caste wise conviction rates and case disposal times, is essential for accountability. Currently, such data is either unavailable or not systematically analyzed to identify patterns of institutional failure.

IX. CONCLUSION

Dr. B.R. Ambedkar's words to Dalit women resonate across decades: "You are not born to suffer. You are born to rise." This exhortation captures the constitutional promise of dignity and equality but also acknowledges that rising requires struggle against caste hierarchy, against patriarchy, against institutional indifference.

The Indian Constitution provides the normative framework for this struggle. Its provisions against discrimination, its commitment to substantive equality, and its recognition that special protections may be necessary to address historical disadvantage all support the claim of Dalit women to full citizenship. Yet the gap between constitutional promise and lived reality remains vast, measured in the bodies of women raped and murdered, in the decades of litigation without justice, in the judicial pronouncements that reproduce rather than challenge caste prejudice.

The doctrinal recognition must be matched by evidentiary practice, institutional accountability, and social transformation. The unfinished revolution that Ambedkar inaugurated continues in the struggles of Dalit women who refuse to accept suffering as their destiny and insist on their right to rise. Their resistance, grounded in the constitutional values of justice, liberty, equality, and fraternity, represents the living fire of India's democratic experiment.

Bridging the gap between constitutional promise and lived reality requires not merely better implementation of existing laws but a fundamental reorientation of how we understand discrimination. An intersectional approach, attentive to the specific location of Dalit women at the convergence of multiple hierarchies, must inform constitutional interpretation, legislative design, and judicial decision-making. Only then can the constitutional promise of equality for all be fulfilled.

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DEMOCRATIC ACCOUNTABILITY OF THE EXECUTIVE BRANCH

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The concept of accountability has a long tradition in both political science and representational democracy. Authority mandate accountability it is not possible to envy authority without any restrictions. Whenever you get authority either by people of India or by statutory provisions, accountability for public leads towards public. The central idea behind this is when decision making power transferred from a principal (The citizens) to an agent (Government) there must be a mechanism in place for holding the agent to account for there decisions and if necessary for imposing sanctions, ultimately by removing the agent from power. In this paper I am trying to give idea to "understand that accountability is one of the major concerns for the democratic countries" because power and subordinate power is directly linked to public welfare and their well being.

Bentham's Principle – *"The more strictly we are watched the better we behave"* (quoted in hordet….1999). At a very fundamental level, the accountability is closely associated with the authority, there is a big difference between responsible and accountable responsible is desirable character of the leadership but accountability need to check whether it is reasonable or not. Whether authorised as a leadership is legal or not.

Accountability, is associated with the act of discretionary governing, typically understood as the authoritative allocation of resources and exercising central and coordination. Within the modern democracy accountability has taken a major paramount significance

Now a days, administrative agencies are taking decisions affecting civil rights of citizens in abundance and in a large number of cases. And any authority which takes a decision, therefore, is required to act judicially. It is inherent in the exercise of power and need not require specific mention. Judicial review keeps the other branches within the constitutional limits. Subba Rao J very well explained the ingrained and inherent natureof the duty to act judicially on the part of the executive, exercising powers affecting rights of individuals as:

The duty to act judicially may not be expressly conferred but may be inferred from the provisions of the statute. It may be gathered from the cumulative effect of the nature of the rights affected, the manner of the disposal provided, the objective criterion to be adopted, the phraseology used, the nature of the power conferred or the duty imposed on the authority and other indicia afforded by the statute. In short, a duty to act judicially may arise in widely different circumstances and it is not possible or advisable to lay down a hard and fast rule or an inexorable rule of guidance.[1]

Disagreeing with the majority in *Radheyshyam Khare* v. *State of M.P.*[2] that while superseding a committee of a municipality, the requirement of the Act for government to pass a reasoned order did not mean a duty to record a judgment judicially, Subba Rao J in his dissent emphasised that obligation to pass a reasoned order called for a duty to act judicially, which included the duty to give a hearing to the committee. It gave food for future thought and proved to be an indicator of the way in which the wind was blowing, as ultimately it became law which found its fruition in the historic decision of *A.K. Kraipak v. Union of India*[3] *(Kraipak)*.

In *Kraipak*, the Supreme Court took a very dynamic but time-awaited stand and held that the dividing line between administrative and quasi-judicial functions

1 . *Radheshyam Khare* v. *State of M.P.,* AIR 1959 SC 107.

2 . *Ibid.*

3. (1969) 2 SCC 262: AIR 1970 SC 150.

has become quite indistinguishable, and that the test is whether the action of the authority affects the rights or the interests of a person and if it does, he must be heard and nobody be allowed to be a judge in his own cause. We may call it the principle of natural justice or the duty to act fairly.

Judiciary has evolved self-regulatory discipline or restraint with a view to avoid counter charge of usurpation of powers. In *North Wales* v. *Evans*[4], Lord Hailsham LC observed:

Judicial review is concerned, not with the decision, but with the decision-making process. Unless that restriction on the power of the court [the same may be true of tribunal] is observed, the court will in my view, under the guise of preventing the abuse of power, be itself guilty of usurping power.[5]

Since England has a very developed system of judicial review of administrative actions and we have devoted on that, our study here would be limited to the influence of norms evolved on the Indian judicial review with Indian illustrations. The broad line remains the same. In India, executive powers of the Union and the States areco-terminus with legislative power. Article 73 reads:

73. Extent of executive power of the Union - (1) Subject to the provisions of this Constitution, the executive power of the Union shall extend-

(a) to the matters with respect to which Parliament has power to make laws; and

(b) to the exercise of such rights, authority and jurisdiction as are exercisable by the Government of India by virtue of any treaty or agreement:

Provided that the executive power referred to in sub-clause (a) shall not, save as expressly provided in this Constitution or in any law made by Parliament, extend in any State to matters with respect to which the Legislature of the State has also power to make laws.

Likewise, Article 162 provides for the extent of the executive power of the State. It reads:

162. Extent of executive power of State. Subject to the provisions of this Constitution, the executive power of a State shall extend to the matters with respect to which the Legislature of the State has power to make laws:
Provided that in any matter with respect to which the Legislature of a State and Parliament have power to make laws, the executive power of the State shall be subject to, and limited by, the executive power expressly conferred by this Constitution or by any law made by Parliament upon the union or authorities thereof.

The broad contour of judicial review of administrative actions was clarified by Lord Diplock in *Council of Civil Service Union* v. *Minister for the Civil Service*[6] in the following words:

...one can conveniently clarify under three heads the grounds upon which administrative action is subject to control by judicial review. The first ground I would call 'illegality', the second 'irrationality" and the third 'procedural impropriety'. That is not to say that further development on a case-by-case basis may not in course of time add further grounds.

It means that judicial review of administrative actions will be based on the grounds of 1) illegality, 2) irrationality, and 3) procedural impropriety, having chances of further addition according to the need of hour. Illegality covers the main substantive areas of ultra vires; irrationality may be equated with the Wednesbury unreasonableness; and procedural impropriety embraces both aspects of procedural

4. (1982) 1 WLR 1155: (1982) 3 All ER 141 (HL).
5. *Ibid,* All ER 143
6. 1985 AC 374: (1984) 3 WLR 1174: (1984) 3 All ER 935 (HL).

wrong-doing-failure to follow the prescribed statutory procedure or the rules of natural justice.[7] From another point of view there are three standards of review:

1. Wednesbury test.
2. Heightened scrutiny test, when fundamental rights are in issue.
3. "Proportionality test", where European community or European Human Rights Law issue.[8]

It is to be emphasised that these grounds of judicial review in the UK have been evolved against the backdrop of the concept of British parliamentary sovereignty or supremacy, which does not accommodate constitutional review, and is applicable to the cases of executive action and administrative discretion. Thus, in countries with written Constitutions, like the US and India, in the judicial review of constitutional actions, the courts may travel beyond the Wednesbury test, judicial review has also added dimension in view of the Bill of Rights. Judicial review[9] of both the legislative and administrative action is permissible.

ILLEGALITY

Illegality expresses the idea that the decision-maker must understand correctly the law that regulates his decision-making power and give effect to it. Thus, the decision-maker is expected to act for a purpose and for that end he must apply correct tests, must take into account relevant factors, and disregard irrelevant factors. In *Centre for PIL* v. *Union of India*[10], S.H. Kapadia CJ, speaking for the unanimous three-judge Bench, declared, on 3 March 2011, the appointment of P.J. Thomas as Central Vigilance Commissioner illegal and non-est. P.J. Thomas was appointed as the CVC on recommendation of a high powered committee (HPC) consisting of the Prime Minister, Dr Manmohan Singh, Union Home Minister, P. Chidambaram, and leader of opposition Sushama Swaraj. Madam Swaraj had objected to his appointment, still appointment was done. A very important and material fact that a criminal proceeding under Section 13(2) read with Section 13(1)(d), Prevention of Corruption Act, 1988 and Section 120B arising from the FIR, which had been up-held by the Supreme court itself, was not taken into consideration by the HPC. Omission to consider this factor was declared to render the committee's recommendation non est. The court addressed itself to the scope of judicial review and remarked that in the present case it was not sitting in appeal over the opinion of the HPC. Rather it was looking into whether relevant materials and vital aspects having nexus tothe object of the Central Vigilance Commission Act, 2003 were taken into account when the decision to recommend P.J. Thomas for appointment to the post of Central Vigilance Commissioner took place. Finding that it was not, the Supreme Court declared that the decision was not informed decision and it was an act of "official arbitrariness". The court found that the requirement of institutional integrity was lacking as while making the recommendation, the HPC had to take into consideration what is good for the institution and not what is good for the candidate. For determination of institutional integrity, the touchstone should be public interest. For reasons discussed above, the court concluded:

> it is declared that the recommendation dated 3-9-2010 of the High-Powered Committee recommending the name of Shri P.J. Thomas as the Central Vigilance Commissioner under the proviso to Section 4(1) of the 2003 Act is non est in law and, consequently, the impugned

7. V. Sudhish Pai, "Is Wednesbury on the Terminal Decline", (2008) 2 SCC J-15, 16.
8. Anand Byrareddy, "Administrative Law", (2008) 7 SCC J-29.
9. Testing actions against the touchstone of the Constitution which is the higher law and is source of the doctrine of ultra vires. Judiciary acts as guardian of the Constitution and decides the limit of power.
10. (2011) 4SCC 1: (2011) 15CC (L&S) 609; the Supreme Court Bench consisted of S.H. Kapdia CJ and K.S.P. Radhakrishnan and Swantanker Kumar JJ.

appointment of Shri P.J. Thomas as the Central Vigilance Commissioner is quashed.[11]

The Supreme Court made it clear that it is not looking into the decision but the decision- making process. The court said that the government "is not accountable to the courts for the choice made but the Government is accountable to the courts is respect of the lawfulness/legality of its decision when impugned under the judicial review jurisdiction".[12] The court expressed its commitment to ensure broad based choice with transparency, objectivity and above any suspicion and, therefore, it issued following directions

(i) In our judgment we have held that there is no prescription of unanimity or consensus under Section 4(2) of the 2003 Act. However, the question still remains as to what should be done in cases of difference of opinion amongst the members of the High-Powered Committee. As in the present case, if one member of the Committee dissents, that member should give reasons for the dissent and if the majority disagrees with the dissent, the majority shall give reasons for overruling the dissent. This will bring about fairness in action. Since we have held that legality of the choice or selection is open to judicial review, we are of the view that if the above methodology is followed, transparency would emerge which would also maintain the integrity of the decision-making process.

(ii) In future the zone of consideration should be in terms of Section 3(3) of the 2003 Act. It shall not be restricted to civil servants.

(iii) All the civil servants and other persons empanelled shall be outstanding civil servants or persons of impeccable integrity.

(iv) The empanelment shall be carried out on the basis of rational criteria, which is to be reflected by recording of reasons and/or noting akin to reasons by the empanelling authority.

(v) The empanelment shall be carried out by a person not below the rank of Secretary to the Government of India in the Ministry concerned

(vi) The empanelling authority, while forwarding the names of the empanelled officers/persons, shall enclose complete information, material and data of the officer/person concerned, whether favourable or adverse. Nothing relevant or material should be withheld from the Selection Committee. It will not only be useful but would also serve larger public interest and enhance public confidence if the contemporaneous service record and acts of outstanding performance of the officer under consideration, even with adverse remarks, are specifically brought to the notice of the Selection Committee.

(vii) The Selection Committee may adopt a fair and transparent process of consideration of the empanelled officers.

Ultra vires exercise of power makes the act illegal. Thus, lack of jurisdiction renders the order of the authority nugatory. In *Rafiq Khan* v. *State of U.P.*[13], the Allahabad High Court found the decision of the Sub. Divisional Magistrate (SDM) without jurisdiction, as the SDM had modified the order of the Panchayat Adalat. Section 85 of the U.P. Panchayat Raj Act permitted either to quash the entire order or cancel its juris diction. Consequently, the order of the SDM was quashed. Likewise, in STO v. *Budh Prakash*,[14] the Supreme Court declared the order of

11. *Ibid,* 35.
12. *Ibid,* 29.
13. AIR 1954 All 3.
14 . AIR 1954 SC 459.

the Sales Tax Officer assessing tax without jurisdiction, invalid.

Similar is the fate of the orders made in excess of jurisdiction. In *J.K. Chaudhuri* v. *R.K. Datta Gupta*,[15] the University had reinstated a principal dismissed by the governing body of the college. It was done so in spite of the fact that under the relevant provisions of the Gauhati University Act, 1947, the University possessed power only in relation to a teacher and not in relation to a principal. The Supreme Court quashed the decision of the University as it was taken in excess of jurisdiction.

The order of the authority is also bad if there is an error of law apparent on the face of record[16] or if it is required to be based on jurisdictional facts.[17] The decisions of authorities also become illegal if they are taken in violation of the rules of natural justice,[18] i.e. in violation of the rule against bias or the rule of *audi alteram partem*,

IRRATIONALITY

The decision of an administrative authority is also bad where it is so perverse that no reasonable decision-maker could have made such a decision. Judicial review on this ground veers around the exercise of discretion by a deciding authority. It is comparatively softer than illegality, as courts accord sufficient latitude to a decision-maker before declaring his decision as perverse. The ground of irrationality is often used when there is no clear basis for review on grounds of illegality.

Irrationality may arise when the decision-maker has not applied his mind and acted mechanically by giving too much credence to the views of subordinates. In CED v. *Prayag Das Agarwal*[19], the government had discretion not to accept property but the Supreme Court made clear that "it could not refuse on assumption that its discretion was unfettered, and the Government must consider the application on the merits and in the exercise of sound administrative judgment". In *Merugu Satyanarayana* v. *State of A.P.*[20], the affidavit in justification of detention was filed by a Subordinate authority rather than the detaining authority himself and it did not reveal the source of information. The Supreme Court ruled that the detaining authority had acted mechanically and abdicated its power to the subordinates, therefore, the order of the detaining authority was irrational.

Administrative decision is also subject to judicial review if it involves a situation of "abdication of function". In *Manik Chandra v. State of Assam*[21], the relevant Act provided for consideration of nationalisation of bus routes by the Corporation. Instead of the Corporation itself doing that job, the Manager of the State Road Transport Corporation finalised the nationalisation of certain bus routes. The decision of the Manager was held ultra vires and invalid, as the situation amounted to "Abdication of function by the Corporation".

If an authority instead of deciding individual cases puts fetter on the exercise of discretion, it amounts to irrational decision.[22] In *Keshavan Bhaskaran v. State*

15. AIR 1958 SC 722. See also, *Real Food Products Ltd.* v. *A.P. SEB*, (1995) 3 SCC 295. Fixation of rate of tariff was found beyond the power to give direction under S. 78-A of the Electricity (Supply) Act, 1948.
16. *Sangram Singh* v. *Election Tribunal,* AIR 1955 SC 425.
17. *Nalini Ranjan* v. *Annada Shankar*, AIR 1952 Cal 112; *Munni Devi* v. *Gopal Chand*, (1969) 2 SCC 879; *State of M.P.* v. *D.K. Jadar*, AIR 1968 SC 1186; *Shauqin Singh* v. *Desa Singh*, (1970) 3 SCC 88I: AIR 1970 SC 672.
18. *New Prakash Transport Co. Ltd.* v. *New Suwarna Transport Co. Ltd.*, AIR 1957 SC 232: 1957 SCR 98; *Bharat Barrel and Drum Mfg. Co.* v. *L.K. Bose*, AIR 1967 SC 361: (1967) I SCR 739; *Union of India* v. *P.K. Roy*, AIR 1968 SC 850; *State of Kerala* v. *K.T Shaduli*, (1977) SCC 777: AIR 1977 SC 1627.
19. (1981) 3 SCC 181: AIR 1981 SC 1263.
20. (1982) 3 SCC 301: AIR 1982 SC 1543.
21. AIR 1973 Gau 1. Also see, *D. Satyanarayana* v. *Govt. of A.P.*, AIR 1979 AP 259.
22. *Gell* v. *Taja Noora*, ILR (1907) 27 Bom 307

of Kerala[23], Rule 127-E of the Travancore Education Code did not allow school leaving certificate unless the applicant had completed 15 years of age. However, discretion was granted to the Director of Textbooks and Examinations to issue certificate under certain circumstances. This exemption was not properly utilised as the Director had made an invariable rule of not granting exemption unless the deficiency in age was less than two years. The Kerala High Court ruled that the rule of policy was contrary to law. In *Shri Rama Sugar Industries Ltd*. v. *State of A.P.*[24], the general exemption granted to infant industry (for three years) was limited only to cooperative sector. The majority of 3:2 upheld it. But, after quoting the most celebrated authority on judicial review, *De Smith's Judicial Review of Administrative Action*[25], Mathew J ruled that the policy decision precluded petitioners from being considered on merits, and by laying down policy the government had shut its ears to the merits of the individual applications. Mathew J observed in his valuable dissent:

> Generally speaking, an authority entrusted with a discretion must not, by adopting a rule or policy, disable itself from exercising its discretion in individual cases. There is no objection in its formulating a rule of policy But the rule it frames of the policy it adopts must not be based on consideration extraneous to those contemplated or envisaged by the enabling Act I must not predetermine the issue, as by resolving to refuse all applications or all applications of a certain class or all applications except those of a or certain class.[26]

The irrationality may further develop if the deciding authority entrusted with discretion does not exercise his discretion on his own but acts on dictation from outside. The decision of the Commissioner of Police, granting licences to construct a cinema theatre under discretion given by the Bombay Police Act, 1904, and thereafter cancelling such licenses under a direction of the State Government was held irrational and bad, as the cancellation order was passed by the Commissioner as an agent of the government. Likewise, in *Purtabpoie Co. Ltd. v. Cane Commr of Bihar*[27], the order of the Cane Commissioner excluding 99 villages from the area reserved by him in favour of the appellant company under dictation of the Chief Minister was quashed, as there was no exercise of discretion at all by the Commissioner. Similarly, in *Orient Paper Mills Ltd. v. Union of India*[28], a levy of excise by the Deputy Superintendent of Police (DSP) under a direction issued by the Collector and not on his own, as required under the relevant statute, was quashed, as there was no application of discretion by the DSP.

Non-application of mind, where satisfaction of the concerned author ity is required under the relevant statute, would also render the decision irrational. In *King Emperor v. Sibnath Banerji*[29], the order of preventive detention under direction of the Home Secretary and police authorities acting mechanically was held invalid, as they had not exercised their mind as stipulated under law. In *Jagannath Misra v. State of Orissa*[30], the detention of certain persons narrating all six grounds given in the relevant statute was declared unconstitutional, as the affidavit of the Home Minister finding personal satisfaction to detain the

23. AIR 1961 Ker 23.
24. (1974) I SCC 534: AIR 1974 SC 1745
25. (1980) 295.
26. *Rama Sugar Industries* v. *State of A.P.*, (1974) I SCC 534. 547: AIR 1974 SC 1745, 1753-54. See also, *Gurbaksh Singh Sibbia* v. *State of Punjab*, (1980) SCC 565: AIR 1980 SC 1632; *Jit Singh* v. *State of Punjab*, (1979) 3 SCC 37: AIR 1979 SC I 034 *JC Yadav* v. *State of Haryana*, (1990) 2 SCC I 89: AIR 1990 SC 857.
27. (1969) I SCC 308 AIR 1970 SC 1896.
28. (1970) 3 SCC 76: AIR 1970 SC 1498. See also, *State of Punjab* v. *Suraj Parkash*, AIR 1963 SC 507 the power of Consolidation Officer exercised directly by the State Government was declared bad and *State of Punjab* v. *Hari Kishan*, AIR 1966 SC 1081 (the power of licence authority exercised by the State Government was declared bad).
29. (1944-45) 72 IA 241: AIR 1945 PC 156.
30. AIR 1966 SC 1401 1966 Cri LJ 81.

petitioners on two grounds was held incredible, as the Minister had not applied his mind at all. In *Barium Chemicals Ltd.* v. *Company Law Board*[31], passing of an investigation order against the Company by the Central Government without narrating circumstances suggesting fraud, as required by the relevant provisions of the Companies Act, was declared bad. Speaking for the Supreme Court, Hidayatullah J observed:

> No doubt the formation of opinion is subjective but the existence of circumstances relevant to the inference as the sine qua non for action must be demonstrable. If the action is questioned on the ground that no circumstances leading to an inference of the kind contemplated by the section exists, the action might be exposed to inference unless the existence of the circumstances is made out.[32]

In *Abdul Razak Abdul Wahab* v. *S.N. Sinha*[33], a detenu was in jail and no bail application was made after once being rejected. An order was passed by the detaining authority with bold statement that "there are full possibilities that you may be released on bail". The Supreme Court rejected it and declared no mention of circumstances necessitating the action.

The decision of an administrative authority based on irrelevant consideration also renders the act bad. Thus, in *Ram Manohar Lohia* v. *State of Bihar*[34], the detention order passed against Dr Lohia on the ground of conduct prejudicial to the maintenance of "law and order" was set aside, as the Defence of India Rules, 1962 permitted detention of a person to prevent subversion of "public order". The Supreme Court observed that the concept of "law and order" was wider than the concept of "public order". In *R.L. Arora* v. *State of U.P.*[35], the acquisition of land for a private company was declared bad, as governmental action was based on irrelevant and extraneous consideration. Under the Land Acquisition Act, 1894, the State Government was empowered to acquire land for a company if the government was satisfied that such acquisition is needed for the construction of a work and that such work is likely to prove useful to the public. Likewise, in *Rohtas Industries Ltd.* v. *Agrawal*[36], the order of investigation against the petitioner company on account of complaints of misconduct as against one of the lending directors was declared illegal, for being based on irrelevant considerations.

An administrative action based on mala fide is also subject to judicial review. De Smith explained the situation of dishonest and malicious action, thus:

> [I]n relation to the exercise of statutory power it may be said to comprise dishonesty (fraud) or malice. A power is exercised maliciously if its repository is motivated by personal animosity towards those who are directly affected by its exercise. A power is exercised fraudulently if its repository intends to achieve an object other than that for which he believes the power to have been conferred.[37]

In a number of cases, the acts done under directions of Chief Ministers have been declared invalid in *Pratap Singh* v. *State of Punjab*[38], the institution of a departmental enquiry and consequent removal at the he behest of the Chief Minister was found to be based on personal vengeance and, therefore, was found to be

31. AIR 1967 SC 295: 1966 Supp SCR 311.
32. *Ibid*, AIR 325. But see also, *MTC Lad.* v. *Labour Court*, (1978) 3 SCC 504: AIR 1978 SC 1428.
33. (1989) 2 SCC 222: AIR 1989 SC 2265. See also, Dharamdas v. Police Commr.,(1989) 2 SCC 370: AIR 1989 SC 1282.
34. AIR 1966 SC 740: 1966 Cri LJ 608.
35. AIR 1962 SC 764
36. (1969) 1 SCC 325. See also, Air India v. Nergesh Meerza, (1981) 4 SCC 335: 1981 SCC (L&S) 599, the termination of the services of an air hostess on her becoming pregnant is based on irrelevant consideration and therefore, was held irrational and ultra vires
37. Stanley A. De Smith, *Judicial Review of Administrative Action* (Stevens & Sons 1980) 355-36.
38. AIR 1964 SC 72.

bad. Likewise, in *C.S. Rowjee* v. *State of A.P.*[39], nationalisation of certain routes under the direction of the Chief Minister to teach a lesson to political opponents and transport operators was held to be mala fide and, therefore, bad. In *State of Punjab* v. *Gurdial Singh*[40], acquisition of the land of the petitioners for *mandi* at the behest of a Minister to satisfy his political vendetta (charge not denied by the Minister through an affidavit) was held to render the proceedings mala fide. In the words of Krishna Iyer J:

> Not that this land is needed for the *mandi*, in the judgment of government, but that the mandi need is hijacked to reach the private destination of depriving an enemy of his land through back-seat driving of the statutory engine![41]

In *Shivajirao Patil* v. *Mahesh Madhav Gosavi*[42], tampering with the marks entered in the mark sheet of the daughter of the Chief Minister at his behest was declared to be a clear example of the misuse of power. Speaking for the Supreme Court, Sabyasachi Mukherjee J observed:

> It has to be borne in mind that things are happening in public life which were never even anticipated before and there are several glaring instances of misuse of power by men in authority and position. This is a phenomenon of which the courts are bound to take judicial notice.

To sum up, "irrationality" as a mode of judicial review of administrative actions covers cases of the exercise of discretionary power, where the power is exercised 1) for an irrelevant consideration; or 2) for an improper purpose, or 3) on dictate of a superior; or 4) in mala fide.

PROCEDURAL IMPROPRIETY

Procedural impropriety involves a failure on the part of the decision-maker to apply the rules of natural justice, where appropriate; to act fairly; and to observe procedural norms established by the statute. It produces as refinement of the principle of *audi alteram partem*.[43] It can be put into two groups: 1) breach of the principles of natural justice; and 2) not affording a fair and reasonable opportunity to meet the case.

One of the important facets of judicial review of administrative actions is that discriminatory actions are inherently arbitrary and arbitrariness is the abnegation of equality clause. Arbitrariness and discrimination are but different forms of irrationality. A new turn became noticeable in judicial outlook in *E.P. Royappa* v. *State of T.N.*[44] *(Royappa)*, when Bhagwati J, speaking for himself, Y.V. Chandrachud and Krishna Iyer JJ in a concurring opinion, propounded a new approach to Article 14 of the Constitution. They observed:

> Equality is a dynamic concept with many aspects and dimensions, [said Bhagwati J], and it cannot be 'cribbed, cabined and confined' within traditional and doctrinaire limits. From a positivistic pint of view, equality is antithetic to arbitrariness. In fact, equality and arbitrariness are sworn enemies; one belong to the rule of law in a republic while the other, to the whim and caprice of an absolute monarch, Where an act is arbitrary, it is implicit in it that it is unequal both according to political, logic and constitutional law and is therefore violative of Article 14.[45]

Again, in *Maganlal Chhaganlal (P) Ltd.* V. *Municipal Corpn. Of Greater Bombay*[46], Bhagwati J, speaking

39. AIR 1964 SC 962.
40. (1980) 2 SCC 471: AIR 1980 SC 319.
41. *Ibid*, SCC 475: AIR 321.
42. (1987) I SCC 227: AIR 1987 SC 294.
43. S.S.M. Quadri, "Judicial Review of Administrative Action", (2001) 6 SCC J-I, 6.
44. (1974) 4 SCC 3: (1974) SCC (L&S) 165.
45. Ibid, 38, para 85.
46. (1974) 2 SCC 402: AIR 1974 SC 2009.

for himself, and Kirishna Iyer J (in a concurring opinion), explained:

> What the equality clause is intended to strike at are real and substantial disparities, substantive of processual and arbitrary of capricious actions ot the executive and it would be contrary to the object and intendment of the equality clause to exalt delicate distinctions, shades of harshness and theoretical possibilities of prejudice into legislative inequality of executive discrimination.[47]

In *Maneka Gandhi* v. *Union of India*[48] *(Maneka Gandhi)*, Bhagwati J, citing *Royappa*[49], marched towards the requirement of reasonableness and asserted:

> Article 14 strikes at arbitrariness in State action and ensures fairness and equality of treatment. The principle of reasonableness, which legally as well as philosophically, is an essential element of equality or non-arbitrariness pervades Article 14 like a brooding omnipresence.

In a number of cases—*Ramana Dayaram Shetty* v. *International Airport Authority of India*[50] *(Airport Authority)* and *Kasturi Lal Lakshmi Reddy* v. *State of J&K*[51]— Bhagwati J reaffirmed his stand speaking for a unanimous three-judge Bench. Speaking for the Constitution Bench, Bhagwati J reasserted the new approach and distinguished the old concept of reasonableness from the new one in *Ajay Hasia* v. *Khalid Mujib Sehravardi*[52] *(Ajay Hasia)*. Bhagwati J said:

> It must…now be taken to be well settled that what Article 14 strikes at is arbitrariness because an action that is arbitrary, must necessarily involve negation of equality. The doctrine of classification which is evolved by the courts is not paraphrase of Article 14 nor is it the objective and end of that Article. It is merely a judicial formula for determining whether the legislative or executive action in question is arbitrary and therefore constituting denial of equality.

Bhagwati J further elaborated:

> If the classification is not reasonable and does not satisfy the two conditions referred to above[(i) intelligible differentia and (ii) rational relation between the differentia and the object sought], the impugned legislative or executive action would plainly be arbitrary and the guarantee of equality under Article 14 would be breached. Wherever therefore there is arbitrariness in State action whether it be of the legislature or of the executive or of an 'authority' under Article 12, Article 14 immediately springs into action and strikes down such State action
>
> .

The Supreme Court clearly applied this new approach in relation to the executive in *Karnataka State Tourism Development Corpn. Ltd.* v. *Karnataka STAT*.[53] The court invalided clause (iv) of sub-section (7) of Section 63 of the Motor Vehicles Act, insofar as it allowed the Regional Transport Authority to give preference to the applicants approved by the Central Ministry of Tourism. It was declared violative of Article 14. The court said:

> We find it difficult to sustain tis clause and uphold its validity. The very idea that a Tribunal [Regional Transport Authority] created by a Statute for the purpose of

47. Ibid, AIR 2039: SCC 450, para 45.
48. (1978) 1 SCC 248: AIR 1978 SC 597.
49. (1974) 4 SCC 3: (1974) SCC (L&S) 165.
50. (1979) 3 SCC 489: AIR 1979 SC 1628.
51. (1980) 4 SCC 1.
52. (1981) 1 SCC 722: AIR 1981 SC 487. In a number of cases this rule has been extended to quasi-judicial bodies, for example, Shri Sitaram Sugar Co. Ltd. v. Union of India, (1990) 3 SCC 223; Neelima Misra v. Harinder Kaur Paintal, (1990) 2 SCC 746; 1990 SCC (L&K) 395. See, M.P. Singh (Ed.) V.N. Shukla's Constitution of India (2008) 74-81.
53. (1986) 4 SCC 421.

considering rival claims and granting permits of merits should be compelled to give preference to persons securing the approval of the executive Government, appears to us to be arbitrary and unreasonable.[54]

Conclusion

Accountability of the legislature and the executive is an indispensable element of constitutional governance. In the absence of such accountability, the very foundation of democratic administration is weakened, and the spirit of the Constitution is compromised. The Constitution not only guarantees fundamental rights but also seeks to protect civil liberties from arbitrary or excessive exercise of power by the executive. Any action by public authorities that results in the violation of these rights is inconsistent with the principles of constitutionalism and the rule of law. In contemporary governance, the scope and functions of the executive have expanded significantly. Consequently, effective mechanisms to ensure executive accountability have become increasingly important. Institutional checks, transparency, and adherence to legal standards are essential to prevent misuse of discretionary powers and to maintain public confidence in administrative institutions. The exercise of discretionary power must therefore be guided strictly by constitutional norms and statutory provisions. The development of principles governing judicial review of administrative actions reflects the judiciary's role in ensuring that administrative authorities act within the limits of law. These principles aim to uphold accountability, promote good governance, and strengthen a citizen-centric administrative system rooted in the ideals of justice, fairness, and constitutional supremacy.

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54. Ibid, 430.

CYBER SOVEREIGNTY, HUMAN RIGHTS, AND DATA PROTECTION: A COMPREHENSIVE ANALYTICAL STUDY

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ABSTRACT

India's digital transformation has brought to the forefront a critical intersection between cyber sovereignty, human rights, and data protection. As the state seeks to consolidate control over its digital ecosystem amid growing dependence on foreign technology platforms, tensions arise between security-oriented sovereignty assertions and constitutional commitments to privacy, liberty, and equality. The country's evolving data protection landscape anchored by the Digital Personal Data Protection Act (DPDPA) 2023 represents a decisive attempt to assert digital sovereignty while addressing governance gaps across sectors such as finance and health. Initiatives like the Reserve Bank of India's Central Bank Digital Currency (CBDC) and digital health infrastructures highlight both the promise of sovereign innovation and the risks of surveillance, inadequate consent, and weak institutional enforcement.

This study critically examines India's policy approach through legal, institutional, and rights-based lenses, emphasizing challenges in balancing national control with global interoperability and technological progress. It identifies structural deficiencies in cross-border enforcement, fragmented regulatory oversight, and limited integration of intersectional human rights protections within digital governance. The paper advocates for inclusive, multi-stakeholder frameworks that operationalize human rights principles, strengthen institutional accountability, and promote digital literacy. Through this lens, India's pursuit of digital sovereignty underscores a broader global struggle to reconcile state power, technological autonomy, and human dignity within the evolving architecture of cyberspace governance.

KEYWORDS: *Cyber Sovereignty, Human Rights, Data Protection, Digital Personal Data Protection Act (DPDPA) 2023 and Digital Governance.*

I. INTRODUCTION

Cyber sovereignty refers to a state's authority to regulate online activities within its borders, shaping how nations govern cyberspace amid expanding digitalization. China's model emphasizes state control over information and technology to preserve social and political stability, contrasting with Western democracies that advocate openness, free expression, and multi-stakeholder governance. The divergent interpretations of cyber sovereignty reflect deeper geopolitical, legal, and cultural distinctions ranging from strict territorial control to cooperative digital governance. The European Union's concept of digital sovereignty focuses on strengthening technological autonomy and protecting EU values and markets.

Simultaneously, the increasing importance of cyberspace in national security and economic infrastructures intensifies global competition over digital governance. Human rights, particularly privacy and freedom of expression, face growing challenges as states invoke sovereignty to justify surveillance, censorship, and data localization. The rise of AI, big data, and cloud technologies adds new layers of complexity, often prioritizing state security over individual freedoms. These technologies raise concerns over algorithmic bias, transparency, and data control, pressing legal systems to reconcile innovation with rights protection. Consequently, cyber sovereignty debates underscore the struggle to balance state interests, technological advancement, and human rights within an interconnected yet fragmented digital order.

The emergence and articulation of cyber sovereignty is the principle that each nation has the right to control digital activities within its territory, has profoundly

shaped the protection of human rights and data protection in both national and global digital governance frameworks.

At the national level, cyber sovereignty enables states to establish and enforce local laws governing data storage, transfer, and surveillance. For example, India's push for digital sovereignty, propelled by the dominance of foreign digital platforms, has led to calls for data localization and stringent regulations on cross-border data flows to fortify state control and protect citizens' rights. The introduction of legislative reforms like the Personal Data Protection Bill reflects a commitment to build independent oversight mechanisms, strengthen cybersecurity, and delineate state jurisdiction over digital assets. However, such sovereignty-centric approaches can have dual effects: while they may enhance citizens' data protection by limiting extraterritorial misuse, they also risk expanding state surveillance and potentially curbing privacy and freedom of expression without robust safeguards.

Globally, cyber sovereignty has triggered jurisdictional conflicts as data flows transcend borders, complicating the harmonization and enforcement of privacy laws. Disparate national laws often lead to fragmentation in global digital governance, hindering seamless data transfer and consistency in protecting individual rights. The lack of mutually recognized standards for cross-border data enforcement exacerbates these challenges, sometimes leaving individuals vulnerable to rights violations by foreign corporate or state actors.

Institutional challenges further compound these issues. Overlapping jurisdictions, weak enforcement, and inconsistent policies impair the effectiveness of human rights protections, while technological advancements outpace the adaptability of current frameworks. Vulnerable groups such as women and marginalized communities often face disproportionate risks, making it imperative for states to adopt inclusive, rights-respecting digital governance that integrates ongoing stakeholder dialogue.

1.1 CONCEPTUALIZING CYBER SOVEREIGNTY

Cyber sovereignty represents the extension of state authority into cyberspace, encompassing related notions such as data, digital, and technological sovereignty. While cyber sovereignty emphasizes national control over online activities and infrastructure, data sovereignty focuses on state regulation of data generation, storage, and transfer. Digital sovereignty broadens this view to include autonomy over digital infrastructure and services, and technological sovereignty underscores self-sufficiency in critical technologies[1]. Different states operationalize these ideas in line with political and strategic priorities: China adopts a strong state-centric model prioritizing control and security; the European Union promotes digital sovereignty through market integrity, rights protection, and competitiveness; and the United States supports an open internet grounded in multistakeholder governance[2].

Historically, cyber sovereignty evolved from debates on internet governance and state control over cyberspace. The rise of cybersecurity threats, technological dependencies, and foreign influence has driven states to assert digital borders—a move often termed the "territorial turn" of cyberspace. China's Great Firewall epitomizes the legal and technical assertion of sovereignty online. Internationally, cyber diplomacy has become instrumental in legitimizing sovereignty claims and aligning national interests with global cooperation in cybersecurity and digital trade.

[1] E. Fauzi, H. Citra, E. Marwenny, N. Alfitrianti, "Control of Personal Data and Cyber Space by Global Digital Platforms in Relation to Indonesia"s Digital Sovereignty," None, 2024. https://doi.org/10.69989/5f8ff494

[2] Y. McDermott, "Conceptualising the right to data protection in an era of Big Data," SAGE Publishing, 2017. https://doi.org/10.1177/2053951716686994

Theoretically, cyber sovereignty intersects with political economy and international law, illustrating how information and technology are leveraged for geopolitical power. Critics argue that such claims risk reinforcing digital protectionism, restricting openness, and undermining human rights. Alternative perspectives, including decolonial and pluralist approaches, advocate for inclusive, polycentric governance models that move beyond traditional, state-centric sovereignty frameworks.

1.2 RESEARCH QUESTION

In light of these challenges and dynamics, the primary research question guiding this study is:

- How does the emergence and articulation of cyber sovereignty impact the protection of human rights and data protection within national and global digital governance frameworks?
- How do diverse state conceptions of sovereignty shape regulatory approaches toward cyberspace, and what are the implications for privacy, freedom of expression, and data governance?
- How do emerging technologies like AI influence this terrain, and what gaps exist in current legal and policy frameworks?

1.3 OBJECTIVES OF THE RESEARCH

The objective of this research is threefold:

- To critically analyze the conceptualization and operationalization of cyber sovereignty across key states and regions
- To evaluate the intersections and conflicts between sovereignty-based governance and human rights protections, notably in data protection laws
- To identify key regulatory gaps and challenges arising from new technologies and geopolitical competition.

This provides a foundation for advancing scholarly understanding and policymaking in digital governance, aiming to reconcile sovereignty interests with human rights imperatives in an increasingly complex cyberspace.

1.4 RESEARCH GAP IDENTIFICATION

Insufficient Integration of Human Rights in Sovereignty Policies

A prevalent gap lies in the limited integration of human rights considerations within sovereignty policies. Many sovereignty assertions prioritize territorial control and security without harmonizing them with global human rights frameworks. Empirical studies examining the impacts of sovereignty claims on digital rights are sparse, impeding a comprehensive understanding of consequences on privacy, expression, and data protection. There is a pressing need for theoretical and practical frameworks reconciling state sovereignty with an effective safeguarding of human rights.

Underexplored Effects of Emerging Technologies

The intersection of cyber sovereignty with emerging technologies such as AI, big data, and metaverse environments remains underexplored. Regulatory frameworks often lag behind technological advancements, inadequately addressing challenges inherent in these domains. Notably, mechanisms extending data autonomy beyond individual rights to encompass organizational and collective dimensions are underdeveloped. Addressing the role of technology in reshaping governance and sovereignty boundaries demands significant scholarly and policy attention.

Enforcement and Cross-Border Regulatory Conflicts

Cross-border enforcement of data protection laws faces profound challenges, with jurisdictional conflicts and varying enforcement capacities limiting effectiveness. Developing regions often contend with weak institutional frameworks and fragmented policies, hindering cyber resilience and rights protection. Moreover, the role of corporate actors and the private sector requires inclusion in multi-

stakeholder governance models to bridge existing regulatory lacunae.

1.5 METHODOLOGY

Research Design and Approach

This study adopts a qualitative documentary and policy analysis framework to examine conceptions and implementations of cyber sovereignty and human rights protection. Comparative case study methods focus on China, the European Union, and other selected regions to elucidate divergent approaches and common challenges. Normative legal analysis underpins the examination of regulatory texts, identifying gaps and best practices in current governance frameworks.

Data Sources and Selection Criteria

Primary data include legislative texts, regulations, policy documents related to cyber sovereignty, data protection, and human rights from international, regional, and national sources. Secondary sources encompass academic literature, policy reports, and international guidelines, enriched by recent studies on AI governance, digital identity, and data sovereignty. Selection emphasizes contemporaneous and relevant legal and policy instruments from jurisdictions illustrating key conceptual and operational trends[3].

Analytical Techniques

Thematic content analysis, supplemented by machine learning techniques for large document sets, facilitates the identification of core themes and regulatory gaps. Cross-jurisdictional comparisons enable assessment of policy congruencies and divergences, while critical evaluation addresses human rights compliance and governance efficacy. This mixed analytical strategy supports a holistic understanding of cyber sovereignty's multifaceted impacts.

II. HUMAN RIGHTS IN THE CYBER REALM

2.1 Privacy and Data Protection as Fundamental Rights

Privacy and data protection constitute core human rights in the digital age, grounded in legal frameworks that have evolved to address the complexities of personal information processing in cyberspace. The European Union's recognition of a standalone fundamental right to data protection—distinct from privacy—marks a significant development following the Lisbon Treaty and the Charter of Fundamental Rights[4]. The GDPR epitomizes the operationalization of this right, imposing stringent obligations on data controllers and processors, emphasizing transparency, autonomy, and nondiscrimination. However, these legal frameworks face challenges posed by the scale and sophistication of big data practices and AI systems, which complicate issues of consent, data accuracy, and control over personal information[5]

2.2 Freedom of Expression and Digital Participation

Freedom of expression under digital sovereignty regimes often encounters limitations stemming from state-imposed content regulations and censorship. In authoritarian contexts, such as China and Russia, content regulation models exemplify tight state control over online information to maintain social stability and political authority, frequently constraining digital rights. The emergence of legislative frameworks like the EU Digital Services Act aims to safeguard democratic values by promoting

[3] L. Li, "Data Sovereignty and National Security: Governance Challenges and Pathways in the Digital Age," None, 2025. https://doi.org/10.63802/grhas.v1.i1.7

[4] L. Gisel, T. Rodenhuser, K. Drmann, "Twenty years on: International humanitarian law and the protection of civilians against the effects of cyber operations during armed conflicts," Revue Internationale de la Croix-Rouge, 2020. https://doi.org/10.1017/S1816383120000387

[5] A. Mantelero, "AI and Big Data: A blueprint for a human rights, social and ethical impact assessment," Elsevier BV, 2018. https://doi.org/10.1016/j.clsr.2018.05.017

platform accountability and protecting fundamental rights on the internet, though these efforts face challenges balancing regulation and innovation.

2.3 Intersectionality and Vulnerability in Digital Rights

Digital rights frameworks must also recognize the intersectional vulnerabilities of marginalized groups, including Indigenous peoples, who face unique challenges in data governance. Existing privacy regulations often neglect collective rights and cultural specificities, as explored in the Māori context of Aotearoa, where alternative privacy paradigms seek to respect Indigenous data sovereignty. Furthermore, crisis contexts such as the COVID-19 pandemic have amplified concerns over large-scale digital surveillance through contact tracing applications, necessitating robust data protection standards to prevent rights infringements. Digital identity systems carry risks of discrimination and exclusion, highlighting the need for inclusive governance that addresses these emergent issues[6].

III. DATA PROTECTION LAWS AND REGULATORY FRAMEWORKS

3.1 Regional and National Data Protection Regimes

Globally, data protection regimes exhibit considerable variation yet share commitments to safeguarding personal data within their jurisdictions. The GDPR in Europe has set a high standard for data protection, influencing other regions' legal architectures. China's Personal Information Protection Law (PIPL) and the US California Consumer Privacy Act (CCPA) represent significant, albeit distinct, regulatory approaches. On the African continent, the Malabo Convention underscores efforts to harmonize data protection frameworks across member states to support socio-economic development while protecting privacy. Country-specific analyses reveal diverse challenges and policy responses: Indonesia grapples with the dominance of foreign platforms and the need for comprehensive data sovereignty policies, Malaysia balances rapid digital growth with privacy protections embedded within its legislation, while South Africa integrates democratic principles within its cybersecurity and privacy frameworks[7].

3.2 Data Sovereignty and National Security Concerns

The articulation of data sovereignty increasingly intersects with national security considerations, as data becomes a strategic resource. States pursue stringent data governance models to secure critical infrastructure and safeguard economic interests amid global data flows and cyber threats. Governance challenges arise in managing digital borders and cloud infrastructures, requiring coordinated policies that mediate between protectionism and the benefits of globalization.

3.3 Gaps and Limitations in Current Legal Frameworks

Despite advances in data protection legislation, significant enforcement limitations and regulatory inconsistencies remain. Many African countries face institutional capacity challenges, fragmented policies, and weak oversight mechanisms, impeding effective protection. Emerging technologies like AI, digital identity systems, and metaverse platforms pose new regulatory challenges unaddressed adequately by existing frameworks. The lack of transparent and accountable governance structures further undermines rights protections and public trust.

[6] M. Vui, "European Union's Quest for Digital Sovereignty: Policy Continuations and Strategy Innovations," None, 2021. https://doi.org/10.18485/iipe_euchanges.2021.ch5

[7] E. Celeste, F. Fabbrini, "Competing Jurisdictions: Data Privacy Across the Borders," Springer International Publishing, 2020. https://doi.org/10.1007/978-3-030-54660-1_3

IV. CYBER SOVEREIGNTY AND ITS IMPACT ON HUMAN RIGHTS AND DATA PROTECTION

4.1 State-Centric Control vs. Multistakeholder Internet Governance

A fundamental divide characterizes global cyberspace governance between state-centric sovereignty models, as exemplified by China, and the multistakeholder approach historically favored by Western states. The former prioritizes state control and regulation within national borders, often restricting openness and cross-border collaborations, while the latter emphasizes decentralized governance, openness, and participation by diverse actors. This cleavage impacts digital rights, the freedom to access and share information, and the norms underpinning cybersecurity and internet governance at the international level.

4.2 Privacy Concerns in Sovereignty-Driven Regulatory Regimes

Sovereignty-driven regimes often implement mechanisms such as data localization and restrictive cross-border data flow policies, with implications for privacy and surveillance. Such policies risk perpetuating opacity in the exercise of state power, raising ethical and legal challenges around transparency and accountability. Corporate power also plays a significant role in this ecosystem, with global digital platforms managing substantial volumes of personal data, sometimes in tension with state sovereignty and individual privacy[8].

4.3 Implications for Democratic Principles and Human Rights Protections

The intersection of cybersecurity imperatives and freedom of expression highlights the delicate balance required to uphold democratic principles in the digital era. Implementing cybersecurity policies that respect human rights remains fraught with challenges, including overbroad surveillance and restrictions on information flows. The rising prominence of digital sovereignty heightens tensions between state control and international human rights norms, necessitating frameworks that reconcile these competing demands.

V. COMPARATIVE CASE STUDIES

5.1 China's Cyber Sovereignty and Governance Model

China's cyber sovereignty approach rests on comprehensive state control mechanisms, epitomized by the Golden Shield project, which fuses a technological infrastructure with a complex legal framework to enforce informational and political control, emphasizing social stability and state security[9]. The integration of AI governance within this model aims to extend control capabilities, address national security threats, and shape digital order domestically and internationally. China's engagement with global cyber governance initiatives seeks to balance asserting sovereignty while participating constructively in evolving governance regimes[10].

5.2 European Union's Digital Sovereignty Vision

The EU's digital sovereignty agenda has evolved from regulatory capitalism toward what has been termed regulatory mercantilism, focusing on reclaiming control over technological infrastructure and digital markets amid dependence on foreign providers. This shift aims to bolster economic competitiveness, data protection, and cybersecurity[11]. The EU foregrounds

[8] M. R. Carrillo, "Sovereignty vs. Digital Sovereignty," None, 2023. https://doi.org/10.21202/jdtl.2023.29

[9] Y. C. Chin, K. Li, "SOVEREIGNTY IN THE CYBERSPACE: CONTESTATION OF CONCEPTS AND POLICIES," None, 2021. https://doi.org/10.5210/spir.v2021i0.12153

[10] R. Creemers, "China"s Conception of Cyber Sovereignty: Rhetoric and Realization," RELX Group (Netherlands), 2020. https://doi.org/10.2139/ssrn.3532421

[11] T. Komukai, "A Comparative Study of the Extraterritorial Enforcement of Data Protection Rules in the EU, US and Japan," Global Privacy Law Review, 2020. https://doi.org/10.54648/gplr2020095

human rights in its legislative measures, notably GDPR and Digital Services Act, embedding rights protection within its vision of sovereignty. Nonetheless, challenges persist regarding global competitiveness and maintaining technological autonomy in a rapidly shifting international landscape[12].

5.3 Developing and Regional Responses: Africa and Indonesia

The African Union's Agenda 2063 integrates data protection and cybersecurity as pillars for sustainable development, though enforcement and harmonization across member states remain inconsistent[13]. The Malabo Convention and regional frameworks signal progress but institutional and awareness gaps pose ongoing challenges. Indonesia's digital sovereignty quest confronts the dominance of foreign digital platforms and resultant sovereignty dilemmas, prompting legal reforms focusing on data protection, cybersecurity, and administrative coordination to assert national digital governance and protect human rights. These contexts illustrate the varied trajectories and policy imperatives shaping digital sovereignty in developing regions[14].

VI. INDIAN PERSPECTIVE ON CYBER SOVEREIGNTY, HUMAN RIGHTS, AND DATA PROTECTION

India's digital transformation highlights a complex balance between asserting national sovereignty in cyberspace and safeguarding individual rights. As the world's largest democracy and emerging digital power, India's policies reflect both aspirations for autonomy from foreign technological dominance and the constitutional imperative to protect privacy, freedom, and equality. The challenge lies in reconciling cybersecurity and governance priorities with human rights protection in a rapidly digitizing economy marked by deep socio-economic disparities. Cyber sovereignty debates in India intersect with issues of data governance, digital infrastructure control, and equitable access to technology.

1. **Evolving Data Protection and Digital Sovereignty Issues**
   India's digital sovereignty concerns center on controlling data generated within its territory and reducing dependence on global technology platforms. The dominance of foreign entities in India's digital ecosystem raises issues of jurisdiction, data misuse, and the extraterritorial reach of foreign data laws. Legislative initiatives, particularly the Personal Data Protection (PDP) Bill—later replaced by the Digital Personal Data Protection Act (DPDPA) 2023—seek to enhance domestic control by regulating data processing, mandating user consent, and restricting cross-border data transfers. These reforms aim to assert India's sovereign authority while building a secure, globally competitive digital economy. Yet, tensions persist between localization and interoperability, as India continues engaging in international data flows vital to its trade and tech-driven growth[15].

[12] A. Barrinha, G. Christou, "Speaking sovereignty: the EU in the cyber domain," Taylor & Francis, 2022. https://doi.org/10.1080/09662839.2022.2102895

[13] D. G. Phillipose, "The Impact of International Investment Agreements on Human Rights: A Critical Analysis of Balancing Economic Interests and Human Rights Obligations," Journal of Information Systems Engineering & Management, 2025. https://doi.org/10.52783/jisem.v10i11s.1647

[14] H. Mayasari, "A examination on personal data protection in metaverse technology in Indonesia: a human rights perspective," None, 2023. https://doi.org/10.62264/jlej.v1i1.4

[15] R. Usman, "Realizing synergy between the ministry of communication and informatics and the national cyber and crypto agency in the era of government digitalization," Journal of Law Science, 2025. https://doi.org/10.35335/jls.v7i1.5887

2. **Legislative and Institutional Frameworks for Health Data and Privacy**
India's healthcare digitization underscores the urgency of protecting sensitive health data. The PDP and subsequent DPDPA recognize health information as sensitive personal data, imposing strict conditions on its processing. However, enforcement remains fragmented. Agencies like the Ministry of Electronics and Information Technology (MeitY) and sector-specific health regulators often lack coordination, undermining consistent application of privacy and cybersecurity safeguards. The exponential rise of telemedicine, health apps, and AI-based diagnostics intensifies regulatory challenges. Ensuring compliance through principles like "Data Protection by Design and Default" and fostering institutional cohesion remain pivotal to strengthening privacy governance and digital trust in health services[16].

3. **Privacy Risks and Enforcement Challenges**
India's digital proliferation—via mobile connectivity, e-governance, and fintech—has escalated privacy risks for citizens. Pervasive data collection by both corporations and state agencies exposes users to tracking, profiling, and identity theft, while public awareness of data rights remains limited. Despite progressive laws, enforcement suffers from judicial backlog, inadequate institutional capacity, and ambiguity in the scope of enforcement powers. Additionally, extraterritorial challenges complicate oversight when data flows transcend national boundaries. The absence of a fully operational data protection authority and weak grievance redressal exacerbate vulnerabilities. Effective enforcement demands not just robust institutions but also public education and transparent accountability mechanisms.

4. **Monetary and Digital Sovereignty through CBDC**
India's efforts to strengthen sovereignty extend to the financial domain through the Reserve Bank of India's Central Bank Digital Currency (CBDC) initiative. The digital rupee embodies sovereign control over digital financial infrastructure while countering the influence of private cryptocurrencies and global payment systems. The CBDC promises enhanced monetary efficiency, transaction traceability, and cost reduction. However, the extensive data visibility it entails poses concerns over privacy, surveillance, and state access to citizens' financial behaviors. Policymaking must therefore balance economic innovation with privacy guarantees through stringent data usage norms, transparency policies, and oversight mechanisms to prevent misuse.

5. **Gender, Health, and Digital Inequality Dimensions**
India's digital governance initiatives coexist with social inequalities in access, literacy, and representation. Gender-based digital divides persist, where women face heightened risks of privacy violations, online harassment, and limited decision-making autonomy over their data. Similarly, marginalized communities encounter exclusion in digital health and AI-driven systems, risking algorithmic bias and data misuse. Achieving an inclusive digital society requires embedding intersectional protections in law and policy—addressing gender, class, disability, and rural divides. Equitable access, literacy drives, and participatory digital governance can transform India's sovereignty model into one that empowers all citizens rather than entrenches disparities.

India's trajectory in cyber sovereignty and data

[16] L. DeNardis, "Introduction: Internet Governance as an Object of Research Inquiry," The MIT Press, 2020. https://doi.org/10.7551/mitpress/12400.003.0002

protection reflects its dual ambition—to secure national digital autonomy while upholding democratic accountability. Legislative frameworks like the DPDPA 2023, initiatives in cybersecurity, and the CBDC pilot mark significant strides, yet sustained progress depends on institutional capacity, human rights safeguards, and international dialogue. Future policy must harmonize sovereignty assertions with India's constitutional values of liberty and dignity. Building transparent institutions, ensuring corporate accountability, and closing digital divides will be central to realizing a balanced model of digital sovereignty is the one that supports innovation, protects citizens, and reinforces India's democratic ethos in the evolving global cyber order.

VII CRITICAL ANALYSIS

7.1 Data Sovereignty: Motivation, Approaches, and Legal Gaps

National Imperatives

At the core, India's digital sovereignty attempts to reclaim domestic authority over data generated within its territory, motivated by:

1. Geopolitical concerns about foreign surveillance and influence,
2. Economic ambition to foster local digital enterprise,
3. Human rights aspirations to protect citizens' data and autonomy.

Mitigating foreign influence, particularly the dominance of US- and China-based digital platforms has led to calls for data localization, stricter regulation on cross-border data flows, and legislative frameworks like the Personal Data Protection Bill (PDP). The PDP Bill sought to install a robust data protection regime, empower a dedicated data authority, and enhance digital sovereignty, giving India control over both digital infrastructure and information assets[17].

However, such state-centric assertions risk impinging on individual freedoms, potentially normalizing sweeping surveillance, and diminishing global interconnectivity.

Regulatory and Enforcement Challenges

Critical gaps persist in:

1. Institutional clarity and effectiveness due to overlapping agency responsibilities, fragmentation, and coordination failures,
2. Practical enforceability in extraterritorial data scenarios, as major platforms reside outside India's jurisdiction,
3. Consistency and robustness in addressing new domains such as digital health, digital identity, and blockchain-based environments.

Furthermore, data localization, while boosting sovereignty, risks stifling innovation and impeding data-driven international commerce, underlining the importance of harmonized yet flexible laws.

7.2 Human Rights and Privacy: Achievements and Vulnerabilities

Progress and Risks

India's legal tradition, grounded in constitutional guarantees of privacy as a fundamental right, has shaped its approach to data governance. Yet, implementation lags behind legislative ambition:

The collection and dissemination of personal data, especially by multinational and state actors, pose acute privacy and data security risks to individuals.

Vulnerable populations such as women, marginalized castes, and the digitally illiterates face disproportionate exposure to privacy violations, bias in digital systems, and exclusion from digital services[18].

[17] "Data Sovereignty," Oxford University Press, 2023. https://doi.org/10.1093/oso/9780197582794.001.0001

[18] R. Rodrigues, "Legal and human rights issues of AI: Gaps, challenges and vulnerabilities," Elsevier BV, 2020. https://doi.org/10.1016/j.jrt.2020.100005

A persistent gap exists in aligning data protection frameworks with global best practices while ensuring they are sensitive to local equity and access issues[19].

7.3 Technological and Societal Complications

As digital health, AI, and fintech expand, data generated holds immense social value but is susceptible to misuse, discrimination, and government or corporate overreach. Ensuring rights-friendly oversight in incorporating Data Protection by Design, strong redress mechanisms, and transparent operations is vital to public trust and social equity.

Cases of mass surveillance (for instance, through Aadhaar, India's biometric ID system) highlight tensions between state imperatives of security/social control and the rights to privacy and data minimization. Without stringent safeguards, such mega-infrastructures risk violating both individual and collective rights.

VIII. POLICY RECOMMENDATIONS

1. Clarify and Strengthen Legal and Institutional Structures:

Accelerate the operationalization of Data Protection Authorities, ensuring independence, adequate resources, and clear mandates to harmonize enforcement.

Reform overlapping and conflicting mandates between agencies such as the Ministry of Electronics and Information Technology and specialized regulators, drawing on international best practices.

2. Build Rights-Respecting, Inclusive Data Governance:

Embed human rights principles across every level of data protection legislation, emphasizing the most vulnerable groups: minorities, women, children, and the disabled.

Mandate privacy by design in all digital infrastructure, with ongoing assessment and adaptative regulatory updating as technology and threats evolve.

3. Foster Participatory and Multi-Stakeholder Governance:

Create formal processes for civil society, industry, and citizen input into data governance and digital sovereignty policies to ensure accountability and transparency.

Encourage open, public debate on the societal trade-offs of digital sovereignty, particularly regarding surveillance, localization, and innovation.

4. Address Enforcement and Cross-Border Regulatory Gaps:

Develop bilateral/multilateral agreements for cross-border data transfer and enforcement, recognizing both India's sovereignty needs and the global nature of cyberspace.

Promote global dialogue for interoperable data protection regimes that both respect sovereign imperatives and protect individual rights.

5. Promote Digital Literacy and Awareness:

Invest in nationwide digital education, prioritizing awareness campaigns about privacy rights, data risks, and redress mechanisms, especially among marginalized and low-literacy populations.

Encourage public-sector and industry partnerships to facilitate accessible, user-friendly privacy tools and digital safety resources.

6. Innovate for Social Equity:

Integrate intersectional perspectives such as gender, caste, region - into policy frameworks to ensure technology serves diverse populations without discrimination or exclusion.

[19] R. Siagian, L. Siahaan, M. I. Hamzah, "Human Rights in The Digital Era: Online Privacy, Freedom Of Speech, and Personal Data Protection," None, 2023. https://doi.org/10.56778/jdlde.v2i4.149

Institutionalize regular impact assessments of major digital systems (Aadhaar, CBDC, health grids) with an explicit focus on rights, access, and inclusion.

IX. CONCLUSION

India's approach to cyber sovereignty, human rights, and data protection illustrates the intricate balancing act between asserting national control and upholding democratic freedoms in an era of rapid digitalization. Legislative milestones such as the Digital Personal Data Protection Act (DPDPA) 2023 and initiatives like the Central Bank Digital Currency (CBDC) mark significant strides toward establishing regulatory and technological sovereignty. Yet, these advances simultaneously expose the persistent fragility of India's institutional enforcement, coordination across sectors, and integration of privacy and equality principles into digital governance.

To ensure a rights-respecting model of cyber sovereignty, India must reconcile its security imperatives with international obligations and constitutional protections. This requires not only stronger data protection authorities and harmonized regulatory frameworks but also ongoing public participation, transparency, and accountability. Emphasizing digital literacy, inclusivity, and intersectional equity will be central to embedding human rights into every layer of technological governance.

Ultimately, India's digital pathway offers both a challenge and an opportunity: to craft an indigenous yet globally responsible model of cyber governance that reinforces trust, innovation, and citizen empowerment. By aligning digital sovereignty with the values of liberty, dignity, and justice, India can emerge as a democratic exemplar in shaping the normative future of cyberspace governance.

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REGULATING CHILDREN'S EXPOSURE TO HARMFUL ONLINE CONTENT: A COMPARATIVE LEGAL STUDY OF INDIA'S IT RULES, GLOBAL BEST PRACTICES, AND HUMAN RIGHTS STANDARDS

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Abstract

The rapid expansion of India's digital ecosystem has transformed childhood experiences, offering opportunities for education, socialisation, and creativity while simultaneously exposing minors to unprecedented risks. Current Indian regulations, including the Information Technology Act 2000, the Protection of Children from Sexual Offences Act 2012, and the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules 2021, address aspects of online child safety but remain fragmented and enforcement-heavy. Comparative analysis with the United Kingdom's Online Safety Act 2023, Australia's eSafety Commissioner framework, the European Union's Digital Services Act, and the United States' COPPA and state-level initiatives highlights India's gaps in proactive risk assessments, parental control obligations, and independent oversight. International human rights standards, particularly the UN Convention on the Rights of the Child and General Comment No. 25, reinforce the need to balance children's rights to access, privacy, and protection in the digital environment. The paper explains the importance of a dedicated Children's Online Safety Act in India and argues for its enactment supported by an independent regulator, stronger compliance obligations for platforms, enhanced digital literacy, and cross-border cooperation. A right based and proper model is required to safeguard children from online threats without compromising on constitutional freedoms.

Keywords: Children's online safety, UNCRC, Child rights, Cyber Regulation, Comparative Law.

I. Introduction

In today's world, the digital space has become a vital part of children's daily routine. With the increased access to smartphones and the rise of online education, the proportion of children accessing the internet has grown exponentially in recent years. According to UNICEF, out of three internet users around the world is a child and in developing countries like India. Further, the rate of first-time online engagement is accelerating rapidly.[1] Another aspect of this connectivity brings vast access to educational and social opportuniyies, but it also exposes children to risks, including cyberbullying, hate speech and pornography etc.[2]

The pandemic i.e. COVID-19 also made this phenomenon grow. Lockdown and remote learning made children to spend more time online and that too without proper supervision. The increase in screen time spent on smartphones etc. and in a country like India where many parents are not digitally sound.[3] India, with its vast and diverse population, faces the dual challenge of bridging the digital divide while simultaneously ensuring that its youngest users are safe in cyberspace.

[1] UNICEF. (2021). The state of the world's children 2021: On my mind – Promoting, protecting and caring for children's mental health. UNICEF. https://www.unicef.org/reports/state-worlds-children-2021

[2] Livingstone, S., & Blum-Ross, A. (2020). Parenting for a digital future: How hopes and fears about technology shape children's lives. Oxford University Press.

[3] United Nations Educational, Scientific and Cultural Organization (UNESCO). (2020). COVID-19 and its implications for protecting children online. https://unesdoc.unesco.org/ark:/48223/pf0000373612

India's primary framework for regulating online content is anchored in the Information Technology Act, 2000, and the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021.[4] While these laws impose rules and regulations in order to eradicate voilative content and provide for the procedure in case where these regulations are infringed. However, many critics argue that the legislations are majorly adult centric and they are not inclined towards the children.[5] Moreover, enforcement mechanisms often conflict with freedom of expression and privacy rights enshrined under Article 19(1)(a) and Article 21 of the Indian Constitution.[6]

The core problem is the absence of a child-centric regulatory model that balances competing rights protecting minors from harmful material while upholding the fundamental principles of free speech, access to information, and proportionality in restrictions.[7] Internationally, several jurisdictions have adopted innovative regulatory strategies. For instance, the United Kingdom's Age-Appropriate Design Code mandates privacy-by-default for under-18 users,[8] while Australia's Online Safety Act, 2021 grants its eSafety Commissioner strong powers to remove harmful content swiftly.[9] A comparative analysis can provide valuable insights into how India's legal framework could be strengthened in line with global best practices.

This research aims to (a) analyse India's legal measures for regulating children's exposure to harmful content under the IT Act and IT Rules, (b) compare these measures with selected international frameworks, and (c) assess their compliance with international human rights standards such as the UN Convention on the Rights of the Child (CRC) and General Comment No. 25 on children's rights in the digital environment.[10] The guiding research questions are: How effective are India's current laws in protecting children from harmful online content? What lessons can be drawn from other jurisdictions? And how can India align its domestic legal framework with international human rights obligations?

The methodology adopted is doctrinal in nature, employing comparative legal analysis. It relies on primary sources such as statutes, subordinate legislation, and case law, along with secondary materials including academic commentaries, UN reports, and policy papers.[11] Through this approach, the study seeks to identify gaps in India's legal architecture and propose a more effective, rights-compliant, and child-focused content regulation regime.

II. Conceptual Framework

Understanding and effectively regulating harmful online content requires a clear conceptual foundation. A crucial starting point is distinguishing between illegal content—that which violates criminal or statutory provisions and "harmful but legal" content, which may not breach laws yet poses significant risks to children's well-being, such as violent media, misinformation, or self-harm promotion. This

[4] Information Technology Act, No. 21 of 2000, India Code (2000).
[5] Bhairav Acharya, & Sunil Abraham. (2019). The inadequacy of India's child protection frameworks in the digital era. Indian Journal of Law and Technology, 15(1), 45–72.
[6] Constitution of India, art. 19(1)(a), art. 21.
[7] Sengupta, A. (2022). Balancing rights: Child protection and freedom of expression online. Economic & Political Weekly, 57(14), 22–26.
[8] Information Commissioner's Office (ICO). (2020). Age appropriate design: A code of practice for online services. https://ico.org.uk/for-organisations/guide-to-data-protection/ico-codes-of-practice/age-appropriate-design-a-code-of-practice-for-online-services/
[9] Online Safety Act 2021 (Cth) (Australia).
[10] UN Committee on the Rights of the Child. (2021). General comment No. 25 (2021) on children's rights in relation to the digital environment, CRC/C/GC/25
[11] Chander, A., & Sunstein, C. R. (2022). Online harms, free speech, and regulation: A comparative study. Harvard International Law Journal, 63(2), 215–268.

distinction challenges regulators to develop nuanced strategies that go beyond criminal prohibitions to encompass protective, preventive interventions.

Children are particularly vulnerable in digital environments. Psychologically, early and unsupervised exposure to harmful online content can result in emotional distress, desensitization to violence, or internalizing trauma. Developmental research underscores that minors lack the cognitive maturity to critically evaluate misleading or harmful material, making them prime targets for grooming, online exploitation, and radicalizing narratives. These vulnerabilities necessitate regulations grounded in both protective intent and developmental empathy.

Two foundational principles from international law provide theoretical support. First, the "Best Interests of the Child" principle (Article 3 of the UNCRC) compels all state actions to prioritize children's welfare.[12] Second, the principle of evolving capacities recognizes that as children mature, their autonomy and understanding grow; thus, systems should adapt—balancing protection with respect for their increasing agency in the digital world.[13] Both principles emphasize that policies must be dynamic, context-sensitive, and tailored to different developmental stages.

Globally, several regulatory tools have emerged to operationalize these principles:

- Prohibition and takedown mechanisms empower authorities and platforms to swiftly remove illegal or harmful content. These are essential for combating material like child sexual abuse imagery or extremist propaganda though their effectiveness often hinges on timely enforcement and cross-platform cooperation.
- Age-verification systems are designed to limit access of minors to potentially harmful content. ISO standards such as ISO 27566-1 outline secure, privacy-conscious mechanisms, from self-reporting and ID checks to biometric solutions and digital identity tokens. In the UK, the Online Safety Act (2023) mandates robust age checks for sites hosting harmful or adult content. Critics warn, however, of data privacy risks, surveillance concerns, and circumvention via VPNs.[14]
- Content rating and parental control tools help filter and classify content according to age suitability. Spectrum-based systems like the Motion Picture Association ratings or PEGI for games offer transparency, while parental control software enables filtering, time restrictions, and monitoring. Yet, these tools are not foolproof: they often fail against savvy users, may introduce privacy issues, and could inhibit developing digital resilience in children.[15]

Combined, these approaches aim to mitigate exposure while ensuring proportionality and adaptability. For instance, age verification restricts access at entry points, takedown targets harmful content post-publication, and rating systems guide both child users and caregivers in navigating online spaces. Together, they contribute to a layered, rights-respecting regulatory architecture.

III. Indian Legal Framework

India's regulatory landscape for protecting children from harmful online content is anchored in multiple statutes, institutional mechanisms, and critical judicial interpretations. These form the backbone of child-

[12] United Nations Committee on the Rights of the Child. (1989). Convention on the Rights of the Child, Article 3.

[13] United Nations Committee on the Rights of the Child. (2021). General Comment No. 25 (2021) on children's rights in relation to the digital environment (evolving capacities section).

[14] Financial Times. (2025). How VPNs knocked a hole in online safety efforts.

[15] EuConsent. (2024). The promise of age verification and parental control tools.

centric content regulation, while also reflecting current limitations.

A. Primary Legislation

1. Information Technology Act, 2000 (Sections 67 & 67B)

Section 67 criminalizes transmission or publication of "obscene" material electronically, attracting up to three years' imprisonment and a ₹5 lakh fine for a first offence, and up to five years with ₹10 lakh for repeat violations.[16]

Section 67B specifically targets child sexual abuse material (CSAM) in electronic form, covering not just distribution but also creation, downloading, or browsing thereof. It carries a minimum sentence of five years, extendable to seven, alongside substantial fines (Live Law, 2024) [1]. The Karnataka High Court further clarified that mere viewing of CSAM does not constitute an offence under Section 67B unless there is evidence of publication or transmission, underscoring the importance of intent and context.[17] Similarly, the Kerala High Court ruled that accidental or automatic downloading does not attract liability under Section 67B(b) without specific intent.[18]

B. Other Relevant Laws

Protection of Children from Sexual Offences (POCSO) Act, 2012

Section 15 criminalizes storage or possession of CSAM with intent to share. Courts have emphasized that mere possession, without evidence of intention to distribute, may not fulfil the actus reus required for conviction under POCSO or Section 67B of the IT Act.

Bhartiya Nyaya Sanhita (BNS)

Obscenity under traditional media is governed by Section 295 and similar provisions, though their application to digital content remains limited. No significant recent judgments distinctly extend these provisions into online regulation concerning child safety.

Cable Television Networks Regulation Act, 1995

This Act regulates broadcast content, including protecting minors from inappropriate programming. However, its relevance has diminished with the ascent of OTT platforms and internet content.

C. Institutional Mechanisms

CERT-In

While CERT-In plays a vital role in cybersecurity and handling digital emergencies, its mandate does not extend to direct oversight of child-specific content regulation.

National and State Commissions for Protection of Child Rights (NCPCR & SCPCRs)

These bodies serve as advisory and investigative agencies linking policy to reality. Though not adjudicatory, they monitor implementation gaps and offer recommendations to strengthen legal responses to digital child safety.

D. Landmark Case Law

In Aveek Sarkar & Anr v. State of West Bengal, the Supreme Court deprecated the outdated "Hicklin test" and adopted a more nuanced community standards test to evaluate obscenity. In doing so, it restored balance between free expression and moral regulation, setting a precedent that continues to influence digital obscenity determinations.[19] In Shreya Singhal's landmark decision limited intermediary liability under

[16] Live Law. (2024, July 17). Watching child pornography online will not attract offence u/s 67B of IT Act: Karnataka High Court. Live Law.

[17] Live Law. (2024, June 22). Mere storage of child pornography not an offence under POCSO Act & IT Act: Kerala High Court. Live Law.

[18] Live Law. (2024, June 22). Automatic or accidental downloading of child pornography not an offence under Section 67B(b) of IT Act. Live Law.

[19] SCC. (2014). Aveek Sarkar & Anr v. State of West Bengal, AIR 2014 SC 1495 (4 SCC 257). Supreme Court Cases.

Section 79 of the IT Act by requiring court or government orders before the removal of content, thereby protecting freedom of expression on digital platforms.[20]

E. Analysis & Gaps

While India's legal framework is robust in parts, significant gaps persist. The interplay between the IT Act, POCSO, and BNS lacks integration, often resulting in fragmentation rather than coherence. Ambiguities in the interpretation of "intent" under Section 67B, as demonstrated by divergent High Court rulings (e.g., Karnataka and Kerala), point to inconsistent application. Additionally, institutional bodies like NCPCR lack adjudicatory power, and CERT-In's competencies do not extend to content regulation. These challenges underscore the need for a unified, child-centric legal regime that harmonizes protection, rights, and digital freedom.

IV. Comparative Jurisdictional Analysis

1. United Kingdom

The Online Safety Act, 2023[21] places robust duties of care on digital platforms, compelling them to undertake risk assessments particularly to identify and mitigate content harmful to children. These duties extend to "user-to-user" services and search providers, with Ofcom empowered to enforce compliance through formidable measures, including blocking access, imposing fines up to 10 per cent of global turnover, and prosecuting executives for breaches.[22] Ofcom's enforcement arsenal also allows intervention via internet service providers or app stores to disrupt non-compliant platforms.[23]

UK regulators have also instituted the Age-Appropriate Design Code (the "Children's Code"), enforced under the Data Protection Act 2018. Services likely accessed by under-18s must prioritize children's best interests, presenting privacy-by-default settings, minimizing data collection, avoiding manipulative "dark patterns," and providing clear, child-friendly privacy notices.[24]

2. Australia

Under the Online Safety Act 2021, Australia's eSafety Commissioner holds sweeping powers to rapidly remove harmful content, especially child abuse material, and handle cyberbullying complaints with urgency.[25] This law establishes one of the world's first cyber abuse takedown regimes, enabling blocking of websites and compelling platforms to comply, with civil penalties available for infringement.[26]

3. European Union

In the EU, the Digital Services Act (DSA) mandates heightened oversight of online services with strict obligations for transparency, risk management, and protection of minors. The European Commission has recently issued focused guidelines for protection of minors, recommending age verification and accurate, non-intrusive age assurance methods.[27]

Complementing the DSA, the Audiovisual Media Services Directive (AVMSD) requires age ratings, parental control mechanisms, flagging systems, and accessible complaint handling for audiovisual

[20] SCC. (2015). Shreya Singhal v. Union of India, AIR 2015 SC 1523. Supreme Court Cases.
[21] The Online Safety Act (Received Royal Assent on 26 October 2023).
[22] Legislation.gov.uk, Online Safety Act 2023, Part I–II (duties, risk assessments, Ofcom powers).
[23] Reedsmith LLP, 'Ofcom's legal powers under the Online Safety Act' (2025).
[24] ICO, Children's Code (Age-Appropriate Design Code) (2020).
[25] Parliament of Australia, 'Online Safety Act 2021: government's approach to child online safety' (2024).
[26] Tech Against Terrorism, 'Australia's cyber abuse take-down scheme under the Online Safety Act 2021' (2021).
[27] European Commission, 'Guidelines on the protection of minors under the Digital Services Act' (2025).

services. Member states may impose penalties such as fines or service suspension for non-compliance.[28]

4. United States

The Children's Online Privacy Protection Act (COPPA)[29] remains a key federal law protecting children under 13. It obligates online services to obtain verifiable parental consent, provide clear privacy policies, allow parental access or deletion of data, and limit unnecessary data collection.[30] The FTC recently proposed amendments to turn off targeted ads by default for children, restrict push notifications, and strengthen data retention policies.[31]

At the state level, California's Age-Appropriate Design Code Act (CAADCA) inspired by the UK's Code mandates Privacy by Design and Default for under-18 users. Broad obligations include limiting personal data collection, prohibiting dark patterns, and requiring Data Protection Impact Assessments (DPIAs). Its enforcement is, however, currently blocked pending litigation over constitutional challenges.[32]

5. Comparative Insights Table

Jurisdiction	Scope of Law	Enforcement Agency	Takedown Timelines	Penalties	Preventive Measures	Parental Controls / Design Safeguards
UK	OSA, Children's Code	Ofcom	Notified; risk-based	Up to 10% turnover, prosecution	Risk assessments, duty of care	Privacy-by-default, no dark patterns
Australia	Online Safety Act	eSafety Commissioner	Rapid removal	Civil penalties	Cyber abuse takedown scheme	eSafety-led educational resources
EU	DSA, AVMSD	EU Commission / Member States	As per risk protocols	Fines, suspension	Age verification, content ratings	Parental controls, media literacy
USA (Federal)	COPPA	FTC	Ongoing compliance	Monetary fines	Verifiable consent, privacy requirements	Parental access, data minimization
USA	CAADCA	California AG / DPIA-driv	TBD (liti	Privacy by	Design code

28 DLA Piper, California Age-Appropriate Design Code Act and DPIA requirements (2023); Alston Privacy, 'CAADCA enforcement blocked amid constitutional challenge' (2025).

29 The Children's Online Privacy Protection Act of 1998 (COPPA).

30 FTC, Children's Online Privacy Protection Rule (COPPA).

31 Verifymy.io, AVMSD obligations and penalties for video-sharing platforms (2025).

32 AP News, 'FTC proposes enhancements to COPPA: targeted ads, push notifications, retention policies' (2023).

(CA)		Courts	en assessments	gation ongoing)	design, limit collection	features for minors

6. Lessons for India

- **Independent Regulatory Authority**: Like Ofcom or eSafety, India would benefit from a dedicated digital child safety regulator possibly expanding the mandate of NCPCR to enforce sound, consistent, transparent standards.
- **Proactive Risk Assessments**: Platforms should be mandated to conduct regular DPIAs focusing on risks to minors, in line with UK OSA, California's CAADCA, and the EU's risk governance under the DSA.
- **Stronger Penalties for Non-Compliance**: To incentivize compliance, India could adopt a tiered penalty regime monetary fine, blocking of platforms, and individual accountability, as seen in the UK.
- **Privacy-Respecting Design Standards**: Drawing from the Children's Code and CAADCA, Indian platforms should embed children's best interests from the design stage: privacy by default, minimal data collection, transparent policies, and prohibition of dark patterns.

V. International Human Rights Standards

1. United Nations Convention on the Rights of the Child (UNCRC)

The UNCRC, adopted in 1989, forms the cornerstone of child rights globally; it enshrines both civil-political and economic-social rights for all individuals under 18 ("child").[33] Several provisions hold particular relevance for children's protection in the digital sphere:

- Article 13 ensures children's right to freedom of expression, including seeking and imparting information across media.
- Article 16 guarantees privacy and protection against arbitrary interference.
- Article 17 obliges States to ensure access to reliable information and media that respect children's moral well-being.
- Article 19 mandates protection from all forms of violence—including those accessible via digital media.
- Article 34 calls for safeguarding children from sexual exploitation and abuse.
- Article 36 requires protection from any form of exploitation prejudicial to a child's welfare.[34]

These provisions establish a delicate interplay between promoting digital access and safeguarding against harms forming a normative baseline for any legal analysis in the digital age.

2. General Comment No. 25 (2021) on Children's Rights in the Digital Environment

General Comment No. 25, adopted by the CRC Committee in 2021, builds critical interpretive guidance to "effectively promote, respect and fulfil all children's rights in the digital environment".[35]

[33] UN General Assembly, Convention on the Rights of the Child, 20 November 1989 (entered into force 2 September 1990), Articles 13, 16, 17, 19, 34, 36. OHCHR.

[34] UNICEF UK, A summary of the UN Convention on the Rights of the Child, pp.1–3.

[35] UN Committee on the Rights of the Child, General Comment No. 25 (2021) on children's rights in

Importantly, it addresses the balancing act between access and protection recognizing that while digital environments can empower children (through education, social life, identity formation), they also present new risks (e.g., algorithmic harm, targeted advertising, surveillance).[36]

The Comment underscores that States should enact legal frameworks that are context-sensitive, uphold children's best interests, and actively involve children's voices in policy development.[37] It also notably mandates regulation of age-inappropriate advertising, marketing, and services that exploit children's vulnerabilities.[38] This principle of child-inclusive policy design marks a progressive shift positioning children as rights-holders rather than passive beneficiaries.

3. Other International Instruments

Council of Europe Convention on Cybercrime also known as the *Budapest Convention* (2001), this instrument modernizes criminal law to better address cyber-dependent offences, including those targeting children such as online sexual exploitation and child pornography.[39] Its Explanatory Report highlights how Parties should criminalize and deter these crimes using harmonized standards.

Optional Protocol on Sale of Children, Child Prostitution, and Child Pornography

As a supplementary UN Protocol to the UNCRC, it obligates State parties to prohibit and penalize the sale of children, child prostitution, and child pornography in all forms.[40] The Optional Protocol and its implementation guidelines underscore that these prohibitions extend to the digital representation and distribution of such content, including emerging digital media forms.[41]

4. Human Rights Tensions: Article 19 ICCPR vs Child Safety

Ensuring child safety online often brings into conflict two fundamental human rights: freedom of expression (Article 19 of the *International Covenant on Civil and Political Rights*, ICCPR) and children's rights to privacy, protection from abuse, and access to information under the UNCRC.

Article 19 of the ICCPR guarantees freedom of expression, which includes "seeking, receiving and imparting information and ideas of all kinds… through any media".[42] Yet, unregulated digital content can expose children to harmful or inappropriate material. Restricting such content through age verification, content takedowns, or platform accountability—risks infringing on freedom of expression for adults or older minors, especially in contexts where the boundary between protected, borderline, and harmful speech is blurred.

General Comment No. 25 advises that regulations must adhere to established human rights standards of legality, necessity, proportionality, and due process. That means curbs on speech must be clearly defined by law, necessary for protecting child rights, proportionate to the harm, and subject to proper safeguards. For instance, preventive measures like mandatory age-appropriate design could minimize harmful exposure without broad censorship.

relation to the digital environment, UN Doc CRC/C/GC/25, para.1.

[36] Ibid, paras 3–5 (on access and risks).

[37] Ibid, paras 95–97 (on child participation and marketing regulation).

[38] Ibid, para 97 (on digital advertising and marketing).

[39] Council of Europe, Convention on Cybercrime (Budapest, 23 November 2001, ETS No. 185), Art 9 and Explanatory Report.

[40] UN General Assembly, Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, A/RES/54/263 (2000).

[41] ECPAT International, Guidelines regarding the implementation of the Optional Protocol …, UN Doc. CRC/C/156 (2019), esp. sections on sexual exploitation and digital context.

[42] UN Human Rights Committee, International Covenant on Civil and Political Rights (1966), Art 19.

Synthesis

International human rights instruments provide a rich tapestry of standards and principles to guide domestic reform:

- UNCRC articles articulate core rights including freedom of expression, privacy, access to information, protection from sexual exploitation, and moral well-being—that must be reconciled in any digital regulation affecting children.
- General Comment No. 25 introduces contemporary clarity, stressing child participation, balanced access-protection frameworks, and safeguarding against exploitation.
- The Budapest Convention and Optional Protocol reflect sectoral commitments to criminalize and penalize digital harms against children.
- Article 19 ICCPR presents the counterweight, reminding us that children's safety must not come at the expense of broader freedoms, especially without appropriate checks.

VI. Critical Evaluation & Challenges

The following are the critical concerns that highlight gaps between legislative intent and ground-level implementation:

1. Enforcement Bottlenecks in India

One of the foremost hurdles in protecting children in the digital ecosystem lies in the implementation gap. While the Information Technology Act 2000 (as amended) and the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules 2021 contain obligations on intermediaries to curb harmful content, enforcement remains sporadic. Regulatory agencies such as CERT-In and the Ministry of Electronics and Information Technology (MeitY) often face capacity constraints, both in terms of technical expertise and manpower, which limits their ability to monitor online harms consistently.[43] Moreover, law enforcement agencies at the state level lack adequate cyber forensic infrastructure and specialised training to deal with child sexual abuse material (CSAM) and related crimes.[44] Judicial backlogs further compound the problem delays in prosecuting online exploitation cases undermine deterrence.

2. Overlap and Conflict between IT Rules and Other Laws

Another challenge is the overlapping legal framework. The IT Rules 2021 impose due diligence obligations on intermediaries to take down unlawful content, including CSAM, but these sometimes conflict with other laws such as the Protection of Children from Sexual Offences Act, 2012 and the Bhartiya Nyaya Sanhita, 2023. For instance, POCSO mandates strict confidentiality in cases involving children, while IT Rules require proactive reporting to law enforcement, raising potential clashes between privacy safeguards and compliance mandates.[45] Similarly, the Juvenile Justice Act 2015 focuses on child welfare and rehabilitation, which may not always align with punitive approaches under cybercrime provisions. This fragmented landscape leads to ambiguity for platforms and law enforcers alike, often resulting in selective or inconsistent compliance.

3. Risk of Over-Censorship Infringing on Legitimate Speech

A persistent criticism of the IT Rules is their potential to encourage over-censorship. Intermediaries, fearing liability, may prefer to take down content pre-emptively even where such content is not illegal but merely controversial. This has raised serious concerns about chilling effects on free expression, particularly under Article 19(1)(a) of the Indian Constitution,

[43] Ministry of Electronics and Information Technology (MeitY), Annual Report 2022–23, Government of India, ch 7.

[44] National Crime Records Bureau, Crime in India 2022: Statistics, vol 1, ch 18 (cybercrimes).

[45] Rituparna Patgiri, 'Child Protection in the Digital Age: Analysing the IT Rules, 2021' (2022) 14(2) NLU Delhi Journal of Legal Studies 89.

which protects freedom of speech.[46] The Supreme Court in *Shreya Singhal v Union of India* (2015) warned against vague standards for content takedown, striking down Section 66A of the IT Act for its overbroad and arbitrary scope.[47] However, the current notice-and-takedown regime risks repeating the same pitfalls, with child protection justifications being used to legitimise excessive control over online discourse. Balancing the protection of children with safeguarding constitutional freedoms remains a delicate task.

4. Digital Divide and Unequal Access to Safety Tools

Even where safety mechanisms exist, access is uneven. India's stark digital divide means that children in rural and economically weaker communities are far less likely to benefit from parental control tools, cybersecurity awareness programmes, or safe-design technologies.[48] Language barriers further widen this gap, as most online safety resources are available only in English or Hindi. This unequal access creates a two-tiered system of child protection where urban, affluent children benefit from advanced safeguards while marginalised groups remain disproportionately exposed to online harms. In effect, technology deepens pre-existing inequalities, undermining the constitutional principle of equality under Article 14.

5. Cross-Border Enforcement Issues

Finally, cybercrimes against children are by nature transnational, yet India's enforcement remains constrained by weak international cooperation. Content servers are often located outside Indian jurisdiction, and mutual legal assistance treaties (MLATs) with foreign governments are notoriously slow.[49] Delays in obtaining subscriber information or IP addresses from global platforms allow offenders to erase traces and evade justice. While India has expressed interest in acceding to the Budapest Convention on Cybercrime, it has so far refrained from doing so due to sovereignty concerns.[50] This hesitation hampers India's ability to collaborate effectively with other states in tracing and prosecuting cross-border offences, leaving significant loopholes in child protection online.

VII. Recommendations

1. Enact a Dedicated Children's Online Safety Act in India

The current framework for child protection in cyberspace is piecemeal, scattered across the IT Act 2000, POCSO Act 2012, and IT Rules 2021. A comprehensive Children's Online Safety Act is needed to consolidate obligations, clearly define harmful content, and establish proportional liability mechanisms for platforms. Jurisdictions like the United Kingdom, through its Online Safety Act 2023, provide a valuable model where service providers are subject to statutory duties of care towards children.[51] India could adopt a similar child-centric statute, ensuring that digital service providers are held accountable through a preventive, not merely punitive, approach.

2. Establish an Independent Child Digital Safety Authority

At present, regulation of harmful online content rests with MeitY, CERT-In, and law enforcement bodies, none of which have an exclusive child protection mandate. A specialised Child Digital Safety Authority (CDSA), functioning as an independent statutory regulator, could ensure consistency in enforcement, maintain a public complaints mechanism, and oversee

[46] Gautam Bhatia, Offend, Shock, or Disturb: Free Speech under the Indian Constitution (OUP 2016) 155–162.

[47] Shreya Singhal v Union of India (2015) 5 SCC 1.

[48] NITI Aayog, India's Digital Divide: Bridging the Gap (Policy Paper, 2021).

[49] Richa Sharma, 'Cross-Border Challenges in Tackling Online Child Sexual Abuse' (2021) 63(2) Journal of the Indian Law Institute 201.

[50] Apar Gupta, 'India and the Budapest Convention: A Missed Opportunity?' (2020) 12(3) Indian Journal of International Law 245.

[51] UK Online Safety Act 2023, c 46.

platform compliance. Similar independent bodies exist internationally, such as the Children's Commissioner in the UK and the eSafety Commissioner in Australia, which have played proactive roles in holding platforms accountable.[52] Creating such an authority would prevent the diffusion of responsibility currently seen in India's fragmented regime.

3. Mandate Risk Assessment Reports for Major Platforms

Large social media and digital platforms should be mandated to conduct periodic risk assessments, focusing on algorithmic amplification of harmful content, exposure to child sexual abuse material, and data privacy implications. These reports should be submitted to the regulator and made partially public to ensure accountability. The EU Digital Services Act (DSA) 2022 provides a strong precedent, requiring systemic risk assessments by "very large online platforms".[53] The strict implementation of The Digital Personal Data Protection Act, 2023 (DPDP Act) in India would compel platforms to adopt a proactive stance rather than responding reactively to harms.

4. Introduce Mandatory Age-Verification and Parental Control Tools

Children's easy access to age-inappropriate content, particularly pornography and violent material, is a pressing concern. A statutory requirement for robust age-verification mechanisms while safeguarding privacy must be introduced. Complementing this with mandatory parental control tools would give caregivers more agency over children's online interactions. Countries such as Germany have implemented strict youth protection laws requiring age-gating of harmful content.[54] India, while ensuring that such measures do not turn into mass surveillance, must balance children's safety with rights to privacy and informational autonomy.

5. Enhance Digital Literacy in School Curricula

Law reform alone cannot ensure safety. Children must be empowered with knowledge to navigate the digital world responsibly. Integrating digital literacy modules into the national school curriculum, including awareness of cyberbullying, grooming, and misinformation, is essential. The National Education Policy 2020 already emphasises digital education, and this should be extended to include specific cyber-safety training.[55] Building digital resilience among children would complement regulatory measures and reduce over-reliance on punitive enforcement.

6. Collaborate with Global Initiatives for Cross-Border Enforcement

Given the transnational nature of online child exploitation, India must strengthen participation in global enforcement frameworks. Ratifying the Budapest Convention on Cybercrime would significantly enhance cross-border cooperation, as it facilitates real-time data sharing between law enforcement agencies across jurisdictions.[56] Additionally, India should engage more actively with multilateral initiatives such as WePROTECT Global Alliance, which coordinates international responses to online child sexual exploitation.[57] Without such global collaboration, domestic legal reforms will remain insufficient to address crimes that transcend borders.

VIII. Conclusion

The digital environment presents a paradox: while it empowers children with unprecedented access to knowledge and opportunities, it simultaneously

[52] Australian Government, Online Safety Act 2021; UK Children's Commissioner, Annual Report 2022–23.

[53] European Union, Digital Services Act (Regulation (EU) 2022/2065).

[54] Bundesprüfstelle für jugendgefährdende Medien (Federal Review Board for Media Harmful to Minors), Youth Protection Act 2021.

[55] Ministry of Education, National Education Policy 2020, Government of India.

[56] Council of Europe, Convention on Cybercrime (Budapest, 23.XI.2001).

[57] WePROTECT Global Alliance, Global Strategic Response 2022.

exposes them to severe risks of exploitation and harm. India's existing framework, though evolving, remains fragmented and reactive. A comprehensive, child-centric statute, backed by an independent regulator, preventive risk assessments, and age-appropriate technological safeguards, is imperative. At the same time, bridging the digital divide through education and enhancing India's engagement with global enforcement regimes will ensure that child safety is not merely aspirational but enforceable. The future of India's digital generation depends on striking this careful balance between protection, empowerment, and fundamental freedoms.

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NEURO AI & COGNITIVE SURVEILLANCE: PROTECTING MENTAL PRIVACY IN THE AGE OF BRAIN-AI INTERFERENCES: AN ANALYSIS

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I. Introduction

The rapid increase in the use and development of artificial intelligence and neuroscience has given new horizons to a changing transformative technologies which are generally known as Neuro-AI, where the computer software and technologies interact directly with process of human neurological system[1].

The advancements in brain-computer interfaces(BCIs), neural decoding algorithms, and machine learning technologies have developed machines which can record, interpret and analyse neurological signals with better accuracy[2].

Such developments have prominent potential in fields like medical rehabilitation, neurological treatment and assistive communication technologies[3].

However, the same technological capabilities also raise profound concerns regarding the protection of human mental autonomy and privacy[4].

With the growing sophistication of neuro-technologies, machines are increasingly capable of identifying emotional responses, cognitive states, and even behavioural intentions through neural data[5]. This has led to the emergence of what scholars describe as cognitive surveillance, a phenomenon in which an individual's neural activity may be monitored, analysed, or potentially manipulated through technological systems. Such capabilities challenge long-standing legal and philosophical assumptions that the human mind represents a private and inviolable domain[6].

These developments raise critical concerns relating to mental privacy, cognitive liberty, and freedom of thought, all of which are fundamental to human dignity and democratic governance[7]. Despite these risks, existing legal and regulatory frameworks remain largely inadequate. Most contemporary data protection regimes were designed to regulate conventional digital information and do not sufficiently address the unique nature of neural or cognitive data.[8]

Accordingly, this paper seeks to analyse the legal, ethical, and technological challenges posed by neuro-AI systems and cognitive surveillance, while exploring potential regulatory approaches aimed at safeguarding mental privacy in the emerging age of brain-AI interaction.

II. Research Methodology

1. Nature of Research

The present study adopts a qualitative legal research approach, focusing on analysing the legal and ethical implications of neuro-AI technologies and cognitive surveillance.

[1] Wolpaw & Wolpaw, Brain-Computer Interfaces: Principles and Practice, Oxford University Press.
[2] Hochberg et al., "Neuronal Ensemble Control of Prosthetic Devices," Nature.
[3] Shenoy & Carmena, "Combining Decoder Design and Neural Adaptation," Neuron.
[4] Nita Farahany, The Battle for Your Brain (2023).
[5] Marcello Ienca & Roberto Andorno, Life Sciences, Society and Policy (2017).
[6] Rafael Yuste et al., Nature (2017)
[7] UNESCO Report on AI Ethics (2021).
[8] OECD AI Policy Report (2023).

2. Type of Research

The research is primarily doctrinal (library-based) research, which involves the examination of existing legal principles, statutory provisions, scholarly writings, and policy reports relevant to mental privacy and neurotechnology governance.

3. Sources of Data

1. Primary Sources:

i. Constitutional provisions relating to privacy, personal liberty, and freedom of thought.

ii. Relevant statutory frameworks governing data protection and artificial intelligence regulation.

2. Secondary Sources:

i. Academic books on neurotechnology and AI governance.

ii. Peer-reviewed journal articles in fields such as neuro-ethics, technology law, and privacy law.

iii. Policy papers and international reports published by global organizations addressing artificial intelligence and neuro-rights.

4. Method of Analysis

The study employs analytical and descriptive methods to evaluate existing legal frameworks and identify regulatory gaps concerning neural data and cognitive surveillance.

5. Comparative Approach

A comparative perspective is also adopted to examine emerging international approaches toward neuro-rights and neurotechnology regulation, which assists in identifying potential legal safeguards applicable within the Indian legal system.

III. Literature Review

- The intersection of artificial intelligence, neuroscience, and privacy has increasingly attracted scholarly attention in recent years. Academic literature highlights that advancements in neurotechnology and brain–computer interfaces raise complex ethical, legal, and governance challenges that traditional data protection frameworks may not adequately address[9].
- Marcello Ienca and Roberto Andorno, in their influential article *"Towards New Human Rights in the Age of Neuroscience and Neurotechnology"* published in the Life Sciences, Society and Policy Journal (2017), argue for the recognition of neuro-rights such as mental privacy, cognitive liberty, and mental integrity. Their work emphasizes that emerging neurotechnologies have the potential to access and manipulate neural processes, thereby requiring new legal safeguards specifically designed to protect the human mind[10].
- Similarly, Nita Farahany in her book "The Battle for Your Brain: Defending the Right to Think Freely in the Age of Neurotechnology" (2023) examines the rapid commercialization of neurotechnology and highlights the risks associated with cognitive surveillance, workplace neuro-monitoring, and behavioural manipulation. The book argues that governments must develop legal protections to ensure that technological innovations do not compromise freedom of thought and personal autonomy[11].
- Further, Rafael Yuste and colleagues, in a report published in Nature (2017) and subsequent neuroethics policy discussions, emphasize the importance of establishing a framework of neuro-rights to protect individuals from unauthorized neural data extraction and brain manipulation. International policy reports from organizations such as UNESCO and the OECD on AI governance also stress the need for ethical guidelines and regulatory mechanisms to address emerging neurotechnology risks[12].
- Collectively, these scholarly contributions highlight the urgent need for comprehensive legal frameworks capable of safeguarding mental privacy and cognitive autonomy in the era of neuro-AI technologies.

[9] Nita A. Farahany, Freedom of Thought in the Age of Neuroscience, 129 Yale L.J. 130 (2019)

[10] enca & Andorno, supra note 6

[11] Yuste et al., supra note 7.

[12] UNESCO, Recommendation on the Ethics of Artificial Intelligence (2021).

IV. Conceptual Framework: Neuro-AI and Cognitive Surveillance

- The rapid development of neurotechnology has led to the emergence of Neuro-Artificial Intelligence (Neuro-AI), a field that integrates artificial intelligence with neuroscience to analyse, interpret, and interact with human neural activity[13]. Neuro-AI systems rely on sophisticated computational models and machine learning techniques to decode signals generated by the human brain[14]. These technologies are increasingly used in conjunction with Brain-Computer Interfaces (BCIs), which establish a direct communication pathway between the human brain and external digital devices. BCIs enable neural signals to be translated into commands capable of controlling computers, prosthetic limbs, or other technological systems, thereby offering transformative applications in healthcare, rehabilitation, and assistive communication.
- Beyond therapeutic uses, Neuro-AI technologies are also capable of analysing patterns of brain activity to infer emotional responses, attention levels, memory recall, and cognitive intentions. This technological capability has contributed to the emergence of cognitive surveillance, a concept referring to the monitoring, interpretation, and potential manipulation of mental processes through neurotechnological tools and artificial intelligence systems. Cognitive surveillance may occur in several contexts, including consumer marketing through emotion-recognition systems, workplace monitoring of employee attention and fatigue, and security or military applications designed to detect deception or behavioural risks.
- A closely related concern is the possibility of brain-AI interference, where technological systems do not merely observe neural activity but may also influence cognitive processes. Advanced neuro-technologies have the potential to stimulate or modify neural patterns, thereby raising concerns about behavioural manipulation, psychological influence, and erosion of individual autonomy.
- Unlike conventional digital surveillance, cognitive surveillance involves access to the most intimate sphere of human existence—the human mind. Consequently, the integration of Neuro-AI technologies introduces unprecedented challenges for law, ethics, and governance, particularly in relation to mental privacy, cognitive liberty, and the protection of individual autonomy in an increasingly technologically mediated society.

V. The Concept of Mental Privacy and Cognitive Liberty

- Mental privacy represents the fundamental right of an individual to maintain control over access to their thoughts, neural activity, and internal cognitive processes. Traditionally, the human mind has been regarded as the most private sphere of personal existence, protected from external intrusion by both legal principles and philosophical understandings of autonomy and dignity. However, with the emergence of advanced neurotechnologies capable of decoding neural signals, the boundary between internal mental processes and external observation is increasingly becoming blurred. As a result, scholars and policymakers have begun to emphasize the importance of protecting mental privacy as a distinct and evolving dimension of the broader right to privacy.
- Closely connected to mental privacy is the concept of cognitive liberty, which refers to the freedom of individuals to control their own mental processes and to make decisions without external technological interference. Cognitive liberty encompasses several key elements, including the freedom to think independently, the right to refuse technological interventions that alter cognitive functioning, and the ability to maintain control over personal neural data. These principles are increasingly being recognized as essential safeguards in a technological environment where artificial intelligence systems may access or influence neural activity.

[13] Shenoy & Carmena, supra note 2

[14] Nicolas-Alonso & Gomez-Gil, supra note 3

- Within the constitutional framework of India, the protection of mental privacy can be conceptually linked to the fundamental right to privacy recognized by the Supreme Court in Justice K. S. Puttaswamy (Retd.) v. Union of India. In this landmark decision, the Court affirmed that privacy forms an intrinsic part of the right to life and personal liberty under Article 21 of the Constitution of India, encompassing informational privacy, bodily integrity, and decisional autonomy. The reasoning adopted in this judgment provides a strong doctrinal foundation for extending constitutional protection to neural data and cognitive processes.
- Therefore, as neuro-AI technologies continue to evolve, the recognition and protection of mental privacy and cognitive liberty will become increasingly significant in ensuring that technological innovation does not undermine the fundamental freedoms and autonomy of individuals.

VI. Threats Posed by Neuro-AI and Cognitive Surveillance

- While neuro-AI technologies present transformative opportunities in healthcare, communication, and assistive technologies, their growing capabilities also introduce significant risks to individual privacy, autonomy, and human dignity. One of the most serious concerns relates to the collection and exploitation of neural data. Unlike conventional personal data, neural information may reveal highly sensitive aspects of an individual's personality, emotional responses, intentions, and cognitive patterns. If such data is collected or processed without adequate safeguards, it may allow institutions, corporations, or governments to gain unprecedented insight into an individual's internal mental state.
- Another major risk arises from the possibility of behavioural manipulation through neuro-AI systems. When artificial intelligence is capable of analysing neural responses in real time, it may be used to influence or alter human decision-making processes. For instance, neurotechnology integrated with targeted advertising systems could potentially manipulate consumer preferences by analysing emotional responses to specific stimuli. Similarly, political actors could theoretically exploit neuro-data to shape public opinion, raising concerns about the integrity of democratic decision-making and electoral processes.
- The deployment of neurotechnology in workplace environments also raises substantial ethical and legal challenges. Some emerging technologies enable employers to monitor cognitive indicators such as attention levels, fatigue, or emotional states through wearable neuro-devices. Although such monitoring may be justified as a means of improving productivity or workplace safety, it risks creating intrusive forms of surveillance that undermine employee autonomy and informed consent. The power imbalance between employers and employees may further pressure individuals into accepting neuro-monitoring without genuine voluntary agreement.
- In addition, national security and law-enforcement applications of neuro-AI technologies present significant constitutional concerns. Governments may attempt to utilise neural monitoring systems for interrogation, deception detection, or behavioural risk assessment. However, such practices could potentially violate fundamental legal protections, including personal liberty and the privilege against self-incrimination. In this context, the principles articulated in Selvi v. State of Karnataka become particularly relevant, where the Supreme Court held that involuntary scientific techniques such as narco-analysis, polygraph examination, and brain mapping violate personal liberty and the protection against testimonial compulsion under Article 20(3) of the Constitution.
- Therefore, the rise of neuro-AI and cognitive surveillance presents complex challenges that existing legal frameworks are not yet fully equipped to address, necessitating the development of stronger regulatory and constitutional safeguards.

VII. Legal and Regulatory Framework: Indian and Global Perspective

- The emergence of neuro-AI technologies and cognitive surveillance raises complex legal

questions that existing regulatory frameworks are only partially equipped to address. Within the Indian constitutional structure, several fundamental rights provide an indirect but significant foundation for protecting mental privacy and cognitive autonomy.

- First, Article 21 of the Constitution of India, which guarantees the right to life and personal liberty, has been judicially interpreted to include the right to privacy. In Justice K. S. Puttaswamy (Retd.) v. Union of India, the Supreme Court held that privacy is a constitutionally protected right encompassing bodily integrity, informational privacy, and decisional autonomy. Neural data generated through brain-computer interfaces arguably falls within both informational privacy and bodily integrity, as it relates directly to the internal functioning of the human brain. Consequently, any intrusive collection or analysis of neural information without adequate safeguards may raise constitutional concerns.
- Further, Article 19(1)(a) of the Constitution guarantees freedom of speech and expression, which implicitly includes freedom of thought. Cognitive surveillance technologies capable of monitoring or influencing mental processes could undermine this freedom by intruding into the internal sphere of human cognition. Similarly, Article 20(3) provides protection against self-incrimination, ensuring that no person accused of an offence shall be compelled to be a witness against themselves. The relevance of this safeguard in the context of neurotechnology was recognized in Selvi v. State of Karnataka, where the Supreme Court ruled that involuntary use of techniques such as polygraph tests, narco-analysis, and brain mapping violates personal liberty and the constitutional protection against testimonial compulsion.
- From a statutory perspective, India's Digital Personal Data Protection Act regulates the processing of personal data and establishes consent-based mechanisms for data collection and usage. However, the legislation does not specifically classify neural data or brain signals as a distinct category of sensitive personal information. As a result, neuro-data may not receive the heightened regulatory protection that its uniquely intimate nature warrants.
- At the international level, certain jurisdictions have begun recognizing the need for specialized legal protections. A notable development is Chile's constitutional reform introducing neuro-rights, which explicitly safeguards mental privacy and protects individuals from unauthorized technological interference with neural activity. Such developments indicate a growing global recognition that traditional data protection frameworks may be insufficient to address the legal and ethical implications arising from brain–AI interactions.

VIII. Ethical Concerns in Neuro-AI Governance

- The rapid advancement of neuro-AI technologies raises profound ethical concerns that extend beyond conventional questions of data protection and technological regulation[15]. Since neurotechnology directly interacts with the human brain, it involves access to the most intimate dimension of human existence—individual thoughts, emotions, and cognitive processes. Consequently, ethical governance becomes essential to ensure that the deployment of such technologies does not undermine human dignity, autonomy, and personal integrity.
- One of the most significant ethical challenges relates to the issue of informed consent. In the context of neuro-AI systems, individuals may not fully understand the extent to which neural data can be extracted, interpreted, and potentially reused. Unlike traditional personal data, neural signals may reveal subconscious reactions, emotional responses, and psychological traits that individuals themselves may

[15] Ienca & Andorno, supra note 6

not consciously recognize. This complexity raises concerns regarding whether meaningful and fully informed consent can realistically be obtained when individuals agree to use neuro-devices or brain-computer interfaces.

- Another ethical issue concerns the ownership and control of neural data. Questions arise regarding whether neural signals generated by an individual should be considered personal property belonging exclusively to that individual, or whether technology developers and institutions collecting such data may claim certain rights over its use. The absence of clear legal standards governing ownership of brain data creates potential risks of exploitation by corporations or other entities engaged in neuro-data collection[16].
- Furthermore, neuro-AI technologies may have the capacity to influence or alter human cognitive processes, thereby raising concerns about the preservation of human autonomy and free will. If technological systems are capable of stimulating neural activity or subtly shaping behavioural responses, individuals may be exposed to forms of psychological manipulation that operate beneath the level of conscious awareness[17].
- In addition, algorithmic bias and interpretative inaccuracies in neural data analysis may lead to incorrect psychological assessments or discriminatory outcomes. Ethical governance frameworks must therefore address issues of transparency, accountability, and fairness in the development and deployment of neuro-AI systems to prevent misuse and protect fundamental human rights.

IX. Conclusion

- The convergence of artificial intelligence and neuroscience has introduced a new technological frontier that holds immense potential for medical advancement, rehabilitation, and enhanced human–machine interaction. Technologies such as brain-computer interfaces and neural decoding systems can significantly improve the quality of life for individuals suffering from neurological disorders and disabilities. However, alongside these benefits, the rapid development of neuro-AI systems has created unprecedented risks relating to mental privacy, cognitive autonomy, and the protection of human thought.
- Unlike conventional digital surveillance, neurotechnological systems possess the capacity to access and interpret neural signals that reveal an individual's emotions, intentions, and cognitive patterns. Such capabilities give rise to the phenomenon of cognitive surveillance, where the human mind—traditionally regarded as a private and inviolable domain—may become subject to monitoring, analysis, or manipulation. Existing legal frameworks, including data protection regimes, were largely designed to regulate conventional personal data and are therefore insufficient to address the unique implications of neural data and brain–AI interaction.
- Judicial principles articulated in landmark decisions such as Justice K. S. Puttaswamy (Retd.) v. Union of India and Selvi v. State of Karnataka provide an important constitutional foundation for safeguarding mental autonomy and personal liberty. Nevertheless, the evolving capabilities of neurotechnology require the development of specialized legal frameworks recognizing neuro-rights, including the rights to mental privacy, cognitive liberty, and mental integrity.
- A proactive regulatory approach is therefore essential to ensure that technological innovation does not compromise the sanctity of the human mind. Protecting mental privacy must become a central objective of future legal and policy frameworks governing artificial intelligence and neurotechnology.

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[17] Yuste et al., supra note 7.

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WHEN LETTERS HAVE NO LAW: TYPEFACE AND FONT PROTECTION IN INDIA, THE UNITED KINGDOM, AND THE UNITED STATES — A COMPARATIVE ANALYSIS AND BLUEPRINT FOR REFORM

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I. ABSTRACT

Typefaces and fonts occupy an uncertain and contested position within intellectual property law. As the visual substrate through which language is transmitted, they simultaneously embody artistic creativity and functional utility, a duality that has produced radically divergent legal responses across jurisdictions. This paper undertakes a systematic comparative examination of the legal frameworks governing typeface and font protection in the United Kingdom, the United States, and India.

The United Kingdom represents the most generous copyright regime among the three jurisdictions studied, explicitly recognising typefaces as artistic works under the Copyright, Designs and Patents Act 1988 while balancing that protection with carefully crafted exceptions permitting ordinary printing use. The United States, by contrast, categorically excludes typeface designs from copyright protection, channelling protection through design patents and software copyright. India, whose legal infrastructure derives in significant measure from its colonial-era inheritance of English law, has nonetheless declined to extend copyright protection to typefaces, relying on a narrow statutory framework.

Following the comparative analysis, this paper proposes a detailed blueprint for how typefaces and fonts could, and should, be protected in India. Drawing on the UK model, it argues for legislative amendment to the Copyright Act 1957, registration under the Designs Act 2000, and greater judicial creativity in construing existing provisions. The paper also examines the implications of India's proposed amendments to the Designs Act 2000 as announced by the DPIIT in January 2026, which carry significant potential for improved typeface protection.

Keywords: *Typeface; Font; Copyright; Artistic Work; CDPA 1988; Copyright Act 1957; Designs Act 2000; India; United Kingdom; United States; Reform.*

II. INTRODUCTION

The question of the copyrightability of typefaces and fonts occupies a unique space in the realm of intellectual property law, blending elements of art, functionality, and innovation. As tools of communication, typefaces and fonts serve both aesthetic and utilitarian purposes, making them a fascinating subject for legal analysis. While they are omnipresent in the modern digital and physical landscape — gracing everything from printed books to digital screens — their legal treatment remains a topic of debate, shaped by differing jurisdictions and interpretations of intellectual property rights.[1]

At its core, the distinction between typefaces and fonts is crucial to understanding their copyrightability. A typeface refers to the overall design of the letters and characters, embodying the artistic vision of the designer. In contrast, a font traditionally denotes the specific implementation of that typeface — such as its size, weight, and style — whether in physical form, such as metal type, or digital formats like software

[1]Arul George Scaria and Lijo George, 'Copyright Law in India' in Susy Frankel and Daniel Gervais (eds), *The Evolution and Equilibrium of Copyright in the Digital Age* (Cambridge University Press 2014).

files.[2] This distinction plays a pivotal role in determining the scope and extent of legal protections available to these creations.

Globally, the copyrightability of typefaces and fonts has been shaped by a combination of statutory frameworks, judicial interpretations, and policy considerations. In jurisdictions like the United States, the law draws a line between utilitarian design and artistic expression, often excluding typefaces from copyright protection while affording some protection to font software as a functional tool. In the European Union, however, typefaces may qualify for design protections or be regarded as artistic works under copyright law. These differences highlight the diverse legal approaches to balancing innovation, artistic freedom, and public access.

India presents an evolving landscape for the protection of typefaces and fonts, reflecting a mix of statutory ambiguities and judicial discretion. While the Copyright Act 1957 does not explicitly address typefaces, interpretations of the law have the potential to accommodate their artistic elements under the broader category of 'artistic works'. However, the absence of direct legal provisions often leaves room for debate, especially in the context of digital technologies and the global reach of type design.

The interplay between functionality and artistic expression lies at the heart of the legal discourse surrounding typefaces and fonts. This interplay raises compelling questions: should a typeface's artistic merit outweigh its utilitarian purpose when assessing copyrightability? How do technological advancements, such as digital font creation and distribution, affect traditional interpretations of intellectual property law? And what implications do these issues hold for designers, businesses, and consumers?

This paper seeks to unravel these questions by exploring the intellectual property rights vested in typefaces and fonts, examining their treatment under Indian and international legal frameworks, and analysing landmark cases that have shaped the discourse. In doing so, it aspires to provide insights into the broader challenges and opportunities of protecting artistic innovation in an increasingly digitalised and interconnected world.

III. DISTINGUISHING TYPEFACES FROM FONTS

A. The Technical Distinction

Very often, the terms 'typeface' and 'font' are used interchangeably. A typeface refers to a set of design characteristics that give a particular collection of letters, numbers, and symbols its distinctive style.[3] Typefaces can be thought of as the creative expression of a designer's vision. They encompass the overall design aesthetic, including the shape, weight, width, and proportions of the characters. Classic examples of typefaces include Helvetica, Times New Roman, and Futura — each has its own personality and conveys a different mood or tone.

Fonts, often used synonymously with typefaces, are in fact the digital files containing the information necessary to display a particular typeface. They are the digital representations of typefaces and enable the rendering of characters on screens and in print. They include various styles and weights within a typeface family. For example, Arial Regular, Arial Bold, and Arial Italic are different fonts within the Arial typeface family.

B. The Legal Distinction

Historically, typefaces have not been given copyright protection owing to their functional nature. Utilitarian or functional items are generally excluded from copyright.[4] For instance, the US Copyright Statute (the Copyright Act 1976) directly excludes 'procedures, processes, systems, and methods of

[2]See generally Robin Kinross, *Modern Typography: An Essay in Critical History* (2nd edn, Hyphen Press 2004) 7–12.

[3]ibid.

[4]Dan L Burk, 'Copyright's Golden Braid' (2018) 68(1) Case Western Reserve Law Review 1, 14–17.

operation' from copyrightable expression. In contrast, fonts — as the digital implementation of typefaces — have been afforded copyright protection as software, and their use is governed by licensing agreements specifying whether they may be used for personal, commercial, or other purposes.[5]

HLA Hart, in his critically acclaimed article in the Harvard Law Review, distinguishes between the 'core' and 'penumbra' of law, where the former encompasses settled legal principles and the latter involves areas of legal uncertainty requiring judicial interpretation.[6] Though advanced in a different context, this framework aptly describes the current legal landscape surrounding typefaces and fonts. The copyrightability of typefaces, particularly in common law jurisdictions, arguably falls into the penumbral category: courts have had to navigate the uncertain boundaries between protectable and unprotectable aspects of type design.[7]

IV. THE GLOBAL LANDSCAPE

A. The United States

In the United States, copyright law is presently regulated by the Copyright Act 1976. The Supreme Court, in *Star Athletica LLC v Varsity Brands Inc*,[8] set out guidelines on the copyrightability of useful articles. According to the majority, artistic features of a useful article are eligible for copyright protection only if they satisfy a two-step test: first, they must be perceivable as a two- or three-dimensional work of art separate from the useful article; and second, they must qualify as a protectable pictorial, graphic, or sculptural work either on their own or in some other medium if imagined separately from the useful article.[9] Even under such an approach, the majority of typefaces are unlikely to obtain copyright protection.

Similarly, in *Brandir International Inc v Cascade Pacific Lumber Co*,[10] a further test was adopted, designed to minimise protection for functional components of utilitarian articles while preserving protection for truly expressive elements. According to the majority, where design elements reflect a merger of aesthetic and functional considerations, the artistic aspects of a work cannot be said to be conceptually separable from the utilitarian elements.[11] The scholarship of Lipton has further traced how these tests, applied to typefaces, have consistently produced a finding of non-copyrightability.[12]

A significant turning point came in the 1998 case *Adobe Systems Inc v Southern Software Inc*,[13] where Adobe successfully argued that while typeface designs were unprotectable, the underlying font software — the digital code instructing computers on how to render the typeface — could be protected by copyright. The court found that the mathematical instructions and arrangement of control points within the software demonstrated sufficient creativity to qualify as a protectable work of authorship. This decision created an important legal distinction: while the visual appearance of a typeface remains outside the scope of copyright protection, its digital implementation as font software is eligible for protection. This distinction between typeface and font continues to define intellectual property rights in the United States to this day.

B. The United Kingdom

The history of typeface protection in English law predates the modern statutory framework by more

[5] *Adobe Systems Inc v Southern Software Inc* No C-97-1941-MHP, 1998 WL 104303 (ND Cal 1998).
[6] HLA Hart, 'Positivism and the Separation of Law and Morals' (1957) 71 Harvard Law Review 593, 607.
[7] Scaria and George (n 1).
[8] *Star Athletica LLC v Varsity Brands Inc* 580 US 405 (2017).
[9] ibid 410.
[10] *Brandir International Inc v Cascade Pacific Lumber Co* 834 F 2d 1142 (2d Cir 1987).
[11] ibid 1145.
[12] Jacqueline Lipton, 'To © or Not to ©? Copyright and Innovation in the Digital Typeface Industry' (2009) 43 UC Davis Law Review 143, 170 <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3083904> accessed 15 February 2026.
[13] *Adobe Systems Inc v Southern Software Inc* (n 5).

than seven decades. The first significant judicial engagement with the question arose in *Stephenson Blake and Co v Grant Legros and Co Ltd*,[14] decided in 1916. The plaintiff, a Sheffield-based type founder, sought to protect the design of a typeface known as 'Windsor' as a registered design under the Patents, Designs and Trade Marks Act 1883 and, additionally, under the Copyright Act 1911 as an artistic work.

The court in *Stephenson Blake* recognised that a typeface could in principle attract copyright protection, but confined the scope of that protection to the full display of the typeface — that is, the depiction of all characters in a specific order as a single composite image. This conclusion was of limited practical utility, as it meant that an infringer could evade liability merely by reproducing individual letters or reordering the characters. The decision was described by subsequent commentators as 'devoid of any practical value for copyright holders',[15] precisely because the protection it afforded was restricted to the overall presentation rather than the individual character designs that formed the typeface's commercial value.

The Copyright Act 1956 did not expressly address typefaces, and the position under that Act remained uncertain. This legislative silence was remedied by the Copyright, Designs and Patents Act 1988 (CDPA 1988), which for the first time placed typeface protection on a clear statutory footing, representing a considered policy choice to protect typeface designs as artistic works while simultaneously limiting that protection through carefully crafted exceptions.

The most distinctive and consequential feature of the United Kingdom's approach is the pair of exceptions set out in sections 54 and 55 of the CDPA 1988. Section 54[16] provides that it is not an infringement of copyright in an artistic work consisting of the design of a typeface: (a) to use the typeface in the ordinary course of typing, composing text, typesetting, or printing; (b) to possess an article for the purpose of such use; or (c) to do anything in relation to material produced by such use. The practical effect of section 54 is that despite the typeface being protected by copyright, the ordinary user — the printer, publisher, typographer, or graphic designer — incurs no infringement liability merely by using the typeface to produce text.[17] Copyright in the typeface design is not a right to control the use of text set in that typeface. This is a fundamental distinction from the copyright that subsists in a painting: a copy of a painting infringes copyright, but text produced using a protected typeface does not.

However, section 54(2) preserves secondary infringement liability for persons who make, import, or deal with articles specifically designed or adapted for producing material in a particular typeface. This means that the manufacturer of a font file who copies a protected typeface design to produce an infringing font program remains liable under the secondary infringement provisions of the Act.[18]

Section 55[19] provides a further temporal limitation: where articles specifically designed for producing material in a particular typeface have been marketed by or with the licence of the copyright owner, after twenty-five years from the end of the calendar year of first marketing, those articles may be freely copied. In the digital context, this means that font software embodying a typeface commercially released for twenty-five years enters a form of limited public

[14] *Stephenson Blake and Co v Grant Legros and Co Ltd* (1916) 33 RPC 406.

[15] Alexander Favorov, 'The Letter of the Law' (Type.today, 2020) <https://type.today/en/journal/intellectual_property_favorov> accessed 14 February 2026.

[16] Copyright, Designs and Patents Act 1988, s 54.

[17] Pinsent Masons Out-Law, 'Typeface Copyright Decision in UK High Court' (Pinsent Masons, July 2001) <https://www.pinsentmasons.com/out-law/news/typeface-copyright-decision-in-uk-high-court> accessed 12 February 2026.

[18] Page White and Farrer, 'Unregistered Design Right After Brexit: First Publication in the UK vs First Publication in the EU' (Page White and Farrer, 2021) <https://www.pagewhite.com/news> accessed 14 February 2026.

[19] Copyright, Designs and Patents Act 1988, s 55.

domain as regards the reproduction of further font files.

Commentators have noted that the CDPA 1988 'was not crafted with modern electronic usage of fonts in mind',[20] giving rise to interpretive challenges when applying provisions drafted in the context of physical type articles to the contemporary reality of downloadable font files.[21]

C. India

i. The Copyright Framework and the Ananda Decision

The copyrightability of typefaces and fonts in India is an infrequently addressed subject within intellectual property law. The seminal case on the matter is *In Re: Anand Expanded Italics*,[22] adjudicated by the Copyright Board in 2002. In this case, M/s ABP Ltd sought copyright registration for a series of fonts comprising Bengali alphabets and other symbols. The Copyright Office initially rejected the application, stating that the works did not qualify as 'artistic works' under section 2(c) of the Copyright Act 1957. Upon appeal, the Copyright Board upheld this decision, concluding that typeface designs do not fit within the specified categories of artistic works as defined in the Act.

The Board's reasoning was influenced by the principle of *ejusdem generis*, suggesting that the term 'any other work of artistic craftsmanship' in section 2(c) should be interpreted in the context of preceding categories such as paintings, photographs, and architectural works. Consequently, typefaces were deemed outside the scope of copyright protection. The Board also noted that typefaces could be registered as designs under the Designs Act 2000, which offers an alternative form of protection.

This 2002 judgment remains the primary legal reference on the issue, and there has been a notable absence of subsequent judicial discourse on the copyrightability of typefaces and fonts in India. The legal stance established in *Ananda*[23] continues to influence the protection of typeface designs, with creators often seeking recourse under design registration rather than copyright law.[24]

ii. Alternative Avenues of Protection

The Designs Act 2000[25] provides the most viable current avenue for formal protection of typefaces in India. Under section 2(d), a 'design' means features of shape, configuration, pattern, ornament or composition of lines or colours applied to any article, whether in two or three-dimensional form, by any industrial process or means, which in the finished article appeals to and are judged solely by the eye. Typefaces, treated as patterns or ornamental compositions of lines, may qualify as designs within this definition.

The Registrar in *Ananda* expressly acknowledged that 'typefaces are treated as a pattern' under the Designs Act and that a typeface is capable of being registered as a design. Registration as a design affords the registered proprietor a monopoly in the application of the design for an initial period of ten years, renewable for a further five years, pursuant to section 11 of the Designs Act 2000.[26]

The critical limitation of design protection is section 15(2) of the Copyright Act 1957.[27] This provision provides that if a design is capable of registration under the Designs Act and has been applied to more than fifty articles, any copyright that might otherwise subsist in the design as an artistic work ceases. This creates a severe practical constraint: a type designer wishing to exploit a typeface commercially will almost invariably produce more than fifty

[20]Marks and Clerk, 'Font Licensing: Sign of the Times (New Roman)' (Mondaq, 26 May 2023).
[21]Page White and Farrer (n 18).
[22]In Re: Anand Expanded Italics Copyright Board Order No CB/35/2002 (Copyright Board India, 2002).
[23]ibid.
[24]ibid.
[25]Designs Act 2000 (Act No 16 of 2000).
[26]ibid, s 11.
[27]Copyright Act 1957 (Act No 14 of 1957), s 15(2).

reproductions, thereby extinguishing copyright and leaving only design registration as a formal avenue of protection.

Beyond design registration, the software copyright route under section 2(o) of the Copyright Act 1957 provides protection for the font file as a computer program and literary work. This route was confirmed as available in the United States context by *Adobe Systems Inc v Southern Software Inc*,[28] a decision noted with approval in Indian commentary.[29] The protection afforded is, however, limited to the source code of the font program rather than the visual design of the typeface itself.

The name of a typeface is registrable as a trademark under the Trade Marks Act 1999 if it is distinctive. The Delhi High Court's decision in *Bikanervala Foods Pvt Ltd v New Bikanerwala*[30] confirmed the protection of distinctive names in the context of commercial branding, and the same principle applies to typeface names. Trademark protection prevents third parties from marketing competing font products under confusingly similar names but does not protect the visual design of the letterforms themselves. The common law action of passing off may, in principle, provide a remedy where a type designer's reputation in a distinctive typeface has been damaged by a competitor's use of a confusingly similar design, though the requirement to establish goodwill, misrepresentation, and damage makes this avenue difficult and expensive to pursue.[31]

iii. Proposed Designs Act Reform (DPIIT 2026)

On 23 January 2026, the Department for Promotion of Industry and Internal Trade published a Concept Note proposing comprehensive amendments to the Designs Act 2000.[32] The Note is motivated by the rapid growth of digital products and interfaces that have exposed gaps in the existing law's focus on physical articles, India's increasing global standing in design filings, and the need to align the statutory framework with India's signing of the Riyadh Design Law Treaty and its proposed accession to the Hague Agreement Concerning the International Registration of Industrial Designs.

Among the amendments proposed, several carry particular significance for typeface protection. First, the Note proposes expanding the definition of protectable subject matter to encompass digital and virtual designs, which would explicitly extend protection to font software interfaces and digital typeface applications. Second, the Note proposes a fifteen-year copyright term for works capable of registration but not registered, thereby addressing the practical problem of the fifty-reproduction extinction rule in section 15(2). Third, the Note proposes stronger enforcement mechanisms, including enhanced statutory damages of up to Rs 50 lakhs for a first instance of design infringement. These proposals, if enacted, would represent the most significant reform of typeface protection in India since the *Ananda* decision.

V. COMPARATIVE ANALYSIS: UNITED KINGDOM, UNITED STATES, AND INDIA

The three jurisdictions examined in this paper represent three distinct approaches to the fundamental question of typeface protection, which can be ordered along a spectrum from most to least protective.

The United Kingdom adopts a comprehensive copyright model: typeface designs are protected as artistic works under section 4 of the CDPA 1988, with the full duration of life plus seventy years, subject to the narrowly tailored use exceptions of sections 54 and 55. Copyright is complemented by registered and unregistered design rights, trademark protection for

[28] *Adobe Systems Inc v Southern Software Inc* (n 5).
[29] Acures Legal, 'Can Typefaces and Fonts Be Copyrighted in India?' (Mondaq, 7 January 2025) <https://www.mondaq.com/india/copyright/1565126/can-typefaces-and-fonts-be-copyrighted-in-india> accessed 10 February 2026.
[30] *Bikanervala Foods Pvt Ltd v New Bikanerwala* 2005 SCC OnLine Del 103 (Delhi HC).
[31] Acures Legal (n 29).
[32] Department for Promotion of Industry and Internal Trade, 'Concept Note on Amendments to the Designs Act 2000' (DPIIT, 23 January 2026).

typeface names, and separate copyright in font software as a computer program. The UK framework thus deploys multiple overlapping layers of protection, calibrated to different aspects of the type designer's creative and commercial investment.

The United States adopts a copyright exclusion model: typeface designs are expressly excluded from copyright under 37 CFR § 202.1(e),[33] with protection channelled into design patents for the visual design, copyright in font software programs for the code, and trademark for names. The US model reflects a deliberate policy choice grounded in an assessment of the typeface industry's particular dynamics and the risk of monopolising functional letterforms.

India presently adopts an effective non-protection model: typeface designs are not protected by copyright following the *Ananda* decision, design protection is available in principle but practically limited by the fifty-reproduction rule, software copyright protects font programs as literary works, and trademark protects typeface names. The non-protection model is not, on present authority, a deliberate policy choice but rather a consequence of legislative silence and judicial conservatism.

The central conceptual tension underlying all three approaches is the relationship between the functional and artistic dimensions of typeface design. As Scaria and George observe, typefaces exist on the boundary between art and utility: they are designed to serve the communicative function of representing language in visual form, but they do so through the application of aesthetic skill and creative judgment that is indistinguishable from the skill deployed in other recognised forms of artistic creation.[34] The merger doctrine argument — that letterforms can only be expressed in a limited number of ways and that copyright should therefore not subsist in them — is less compelling in the context of complex multilingual typefaces. The range of aesthetic choices available to a designer of a Devanagari typeface is vast: the specific design of each vowel diacritic, the rendering of conjunct consonants, the proportions of half-forms, and the weight distribution of strokes are all matters of creative judgment with no single correct answer.

The UK resolution of this tension is the most sophisticated: copyright protects the design as an artistic work, but the use exceptions prevent that copyright from obstructing its communicative function. The US resolution relies on the separability test — the requirement that the artistic aspects of a work be separable from its functional utility. In the typeface context, courts have consistently held that the artistic and functional aspects of letter design are inseparable: the aesthetic choices made by the type designer in rendering a letter cannot be conceptually detached from its linguistic function. The Indian non-protection model implicitly endorses a similar separability rationale, but without articulating it expressly.

VI. BLUEPRINT: HOW TYPEFACES AND FONTS CAN BE PROTECTED IN INDIA

A. Legislative Reform Pathway

The most comprehensive and durable solution to the inadequacy of typeface protection in India is legislative amendment of the Copyright Act 1957. The blueprint for reform advanced in this paper identifies four specific legislative interventions that, taken together, would create a coherent and proportionate framework for typeface protection modelled on the UK approach while adapted to the specific conditions of Indian law.

First, the definition of 'artistic work' in section 2(c)[35] should be amended to expressly include the design of a typeface. The amendment could enumerate 'the design of a typeface, being a set of letters, numerals, or other characters sharing a consistent visual design' as a distinct category of artistic work, thereby resolving the ambiguity created by the *ejusdem generis* analysis in *Ananda* rather than leaving

[33] 37 CFR § 202.1(e) (United States Copyright Office Regulations).

[34] Scaria and George (n 1).

[35] Copyright Act 1957 (Act No 14 of 1957), s 2(c).

typefaces to be subsumed within the residual category of 'any other work of artistic craftsmanship'.

Second, equivalents of sections 54 and 55 of the CDPA 1988 should be introduced into the Copyright Act 1957. The Indian provision should provide that it is not an infringement of copyright in an artistic work consisting of the design of a typeface to use the typeface in the ordinary course of typing, composing text, typesetting, or printing, or to do anything in relation to material produced by such use. Without such exceptions, a typeface copyright would obstruct the normal commercial use of typefaces in publishing, printing, and communications — an outcome that would be particularly disruptive in a multilingual country such as India, where typeface creation is not merely an aesthetic luxury but an essential infrastructure of public communication.

Third, section 15(2) of the Copyright Act 1957 should be amended to exclude typefaces from the fifty-reproduction extinction rule. The current provision operates to extinguish copyright in any design capable of registration under the Designs Act once it has been reproduced in articles more than fifty times. For a typeface, which is designed to be used in the production of text across all media, the fifty-reproduction threshold is reached almost immediately upon commercial release. The proposed amendment to the Designs Act 2000 by the DPIIT[36] would partially address this by introducing a fifteen-year copyright term for unregistered designs, but a more targeted amendment to section 15(2) expressly excluding typeface designs from its operation is desirable.

Fourth, the Copyright Office's practice of registering font software as computer programs should be formalised by express statutory provision. A new subsection to section 2(o) could clarify that 'computer programme' includes the software instructions contained in a font file, irrespective of whether the typeface design implemented by that file is separately protected as an artistic work.

B. Judicial Reinterpretation

Short of legislative amendment, a substantial improvement in the protection of typefaces could be achieved through judicial reinterpretation of the existing statutory framework. The *Ananda* decision, while it carries the persuasive weight of a precedent before the Copyright Board, is not a decision of any superior court and does not bind the High Courts or the Supreme Court of India. A writ petition or first appeal challenging a fresh registration refusal would provide an opportunity for curial reconsideration.

The arguments for reinterpretation are strong. The category 'any other work of artistic craftsmanship' in section 2(c)(iii) of the Copyright Act 1957 is derived from the identical formulation in section 35(1) of the Copyright Act 1911. The House of Lords interpreted 'artistic craftsmanship' in the UK context as requiring both craftsmanship (skill in the execution of the work) and artistic quality (a quality that appeals to the aesthetic sensibilities of the informed viewer). Type design satisfies both criteria unambiguously: the skill required to design a complete typeface spanning hundreds of glyphs is considerable, and the aesthetic quality of a well-designed typeface is recognised and valued by its users.

An Indian High Court reconsidering the *Ananda* reasoning in light of contemporary type design practice and the global landscape of protection would have strong grounds for departing from the earlier decision. The court could hold that a well-designed typeface displaying sufficient originality constitutes 'a work of artistic craftsmanship' within section 2(c)(iii), applying adapted criteria to the Indian statutory context. Such a holding would not require legislative amendment and would bring Indian law into alignment with the UK approach while remaining faithful to the statutory text.

C. Designs Act Route

In the interim, pending either legislative amendment or judicial reinterpretation, the most viable pathway

[36]DPIIT (n 32).

for type designers in India is registration under the Designs Act 2000. Registration affords the proprietor the exclusive right to apply the design to articles for a period of ten years, renewable for a further five years. In the context of a typeface, this means the exclusive right to produce font files implementing the registered design. The design registration, combined with the software copyright in the font file and trademark protection for the typeface name, creates a comprehensive multi-layered framework of protection without the need for copyright amendment.

The proposed reforms to the Designs Act 2000 announced by DPIIT in January 2026[37] would further strengthen this route. The proposed fifteen-year copyright term for unregistered designs capable of registration would give type designers who have not formally registered their designs a period of copyright protection, resolving the section 15(2) extinction problem. The enhanced statutory damages of up to Rs 50 lakhs would significantly improve the deterrent effect of the enforcement regime.

D. Software Copyright Route

For digital typefaces, the software copyright route under section 2(o) of the Copyright Act 1957 provides immediate and effective protection for the font file, regardless of the protection available for the underlying typeface design. A type designer who creates a digital typeface using font design software produces a font file in which the code — the programmatic instructions for rendering each glyph at any scale and in any context — is an original literary work protected by copyright from the moment of creation.[38]

To maximise the protection available under this route, type designers in India should: (i) register their font software with the Copyright Office as computer programs under section 45 of the Copyright Act 1957; (ii) ensure that the source code of the font program is authored by a human designer rather than generated automatically by font editor software; (iii) maintain detailed documentation of the authorship and creation history of each font file; and (iv) include appropriate copyright notices in the font file metadata. The software copyright route is, however, limited in one important respect: it does not prevent a competitor from creating an independently authored font program implementing a visually similar typeface design. Protection against design copying requires either design registration or, ideally, copyright in the typeface design itself.

E. Trademark Complementarity

A comprehensive protection strategy for typefaces in India should include trademark registration for the typeface name under the Trade Marks Act 1999. Registration as a word mark (or, where the typeface name is used as part of a distinctive logo, as a device mark) provides protection against competitors marketing font products under confusingly similar names, and allows the type designer to build commercial goodwill in the typeface as a branded product.

The Delhi High Court's reasoning in *Bikanervala Foods Pvt Ltd v New Bikanerwala*[39] is instructive by analogy: the protection of distinctive commercial names against deceptive imitation is available under trademark law regardless of the availability of copyright in the underlying design. For type designers operating internationally, the Madrid Protocol — to which India has been a party since 2013 — provides a mechanism for international trademark registration in multiple jurisdictions through a single application.

[38]Monotype GmbH, 'Update on the Application of Copyright Law to Typeface Design and Font Software' (Monotype, 2024) <https://www.monotype.com/resources/update-application-copyright-law-typeface-design-and-font-software> accessed 15 February 2026.

[39]*Bikanervala Foods Pvt Ltd v New Bikanerwala* (n 30).

VII. CONCLUSION

The law governing the protection of typefaces and fonts is an area in which the global legal landscape is deeply fragmented. At one extreme, the United Kingdom offers comprehensive protection at multiple layers — copyright, design right, software copyright, and trademark — creating a framework that rewards type designers' creative labour while preserving the public's ability to use typefaces in the ordinary course of communication. At another extreme, the United States categorically excludes typeface designs from copyright, channelling protection through design patents and software copyright. India, occupying a third position, lacks even the limited certainty of the US approach: neither the legislative framework nor the case law provides a settled basis for protection of typeface designs.

This paper has argued that the Indian position is in need of reform. The statutory text, properly interpreted, contains resources sufficient to accommodate typeface protection within the category of 'artistic craftsmanship'; the *Ananda* decision, narrowly reasoned and decided at the level of the Copyright Board, does not foreclose a more generous judicial interpretation by a superior court. The legislature, meanwhile, has the opportunity — through the proposed amendments to the Designs Act 2000 and a parallel amendment to the Copyright Act 1957 — to place typeface protection on the same clear footing that the UK Parliament achieved in 1988.

The case for reform has been strengthened by the developments of the three decades since *Ananda*. India's digital design industry has matured substantially. Indian type designers create works of international distinction, addressing the complex typographic needs of a country with the world's most diverse script landscape. The absence of effective copyright protection for these works creates a structural disincentive to investment in type design and exposes Indian designers to competitive disadvantage relative to their counterparts in countries that have chosen to protect typeface designs.

The blueprint proposed in this paper — combining legislative amendment of sections 2(c) and 15(2) of the Copyright Act 1957, introduction of use exceptions modelled on sections 54 and 55 of the CDPA 1988, utilisation of the Designs Act 2000 route including proposed reforms, software copyright registration, and trademark complementarity — provides a practical and immediately deployable framework for protection that does not require the resolution of any difficult constitutional or jurisprudential question. The UK experience, with more than three decades of operation of the CDPA 1988 typeface provisions, demonstrates that such a framework can function effectively and proportionately. When letters have no law to protect them, the designers who give them life are left without recourse. India must act to remedy that absence.

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GIG WORKERS AND THE FUTURE OF LABOUR RIGHTS IN INDIA: A CRITICAL ANALYSIS OF LEGAL PROTECTION FOR PLATFORM-BASED WORKERS

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Abstract

Significant changes have occurred in the realm of employment across the globe due to the rapid growth of the gig economy. India is no exception. With the advent of the gig economy, many companies have started to use the flexibility of the digital platform to hire more employees on a flexible basis, called gig work. Though this has opened many avenues for the growth of the economy, many concerns have been raised regarding the protection of the workforce. Employees working with Uber, Swiggy, and Zomato are not under the traditional employer-employee relationship.

In the Indian context, various attempts have been made in the Code on Social Security to include the gig and platform workers in the labour law regime. However, the effectiveness of the provisions in ensuring the protection of the interests of the workers is still a matter of ambiguity. This paper aims to critically discuss the status of the gig workers in the Indian context, focusing on the provisions of the law and the challenges in the implementation process. Further, the problem of job insecurity, absence of social security, and the algorithmic control of the digital platforms will be discussed.

The paper argues that although the inclusion of gig workers in modern labor laws is a giant step forward, there is still a long way to go in filling in the gaps. For the provision of better working conditions and social security, India needs to have a more comprehensive framework that meets the needs of technological innovation as well as the basic rights of the workers.

Keywords: Gig economy, Platform-based employment, Labour rights in India, Code on Social Security 2020, Digital platforms, Algorithmic management, Social protection, Constitutional accountability

1. Introduction

Employment has undergone a major transformation in the digital world. With the rise of platform-based businesses, a new kind of employee has come into existence, who are called gig workers. Gig workers are those employees who provide their services for a specific period of time through digital platforms. India has experienced the rise of the gig economy, especially in the ride-hailing, food delivery, and logistics industries. Companies like Uber, Swiggy, and Zomato are heavily dependent on the gig workforce, as they are hired on contractual terms rather than employment contracts.

Although the gig economy has its benefits, including flexibility, more earning opportunities, and ease of entry into the job market, it at the same time harbors critical concerns regarding the rights of the workforce. For instance, the gig workforce does not have access to basic rights that include the right to a minimum wage, job security, health insurance, and social security benefits. In addition, the lack of a relationship between the employer and the employee enables the digital platform to evade the legal responsibility that the law accords to the employer.

In recognition of the increased importance of gig work and platform work, India has brought legislative provisions in the Code on Social Security that formally recognizes gig workers and platform workers as separate categories in the labour sphere. Although this recognition can be seen as an important step in labour policy, its enforcement remains debatable.

The current paper intends to look at the changing legal position of gig workers in India, as well as evaluating whether the current system is sufficient in addressing the challenges that gig employment poses. Through an examination of the current laws, developments in labor policies, and the current socio-economic conditions, the future of labor rights in India's burgeoning digital economy may be assessed.

2. Understanding Gig Work and the Rise of Platform-Based Employment

The term gig economy is used to describe a type of labor market that is characterized by short-term flexible work arrangements where individuals engage in the provision of services on a task-by-task basis rather than engaging in long-term employment contracts. In this type of market, the role of intermediaries is played by the use of technology as a way of linking the providers of the service with the consumers. In this case, the providers of the service are not engaged as employees but rather as independent contractors.

The rapid growth of the gig economy in India is directly related to the growth of digital platforms and smartphone usage. Technology organizations have come up with highly sophisticated mobile applications that enable customers to access various services, such as transportation, food delivery, and logistics, in an efficient manner. Organizations such as Uber have transformed the way people use transportation, while organizations such as Swiggy and Zomato have transformed the way people use food delivery services. These organizations make heavy use of gig workers for various services such as driving, food delivery, and other related services.

One of the notable aspects of the gig economy is the lack of the traditional employer-employee relationship. In the case of the digital platform, the workers are often termed "partners" or "independent contractors," which enable the companies to evade the legal responsibilities that typically bind the employer-employee relationship. This enables the companies to minimize costs while at the same time enjoying flexibility. However, this has sparked concerns regarding the welfare of the workers.

Another important aspect of platform-based employment is algorithmic management. Digital platforms use algorithms in the distribution of tasks, rating of workers, and monitoring their performance, and in some instances, even in the setting of incentives and penalties. The level of control that gig workers have over algorithmic management is limited, and they are not often aware of how their remunerations are being decided. As such, gig workers are often subject to unpredictability in their remunerations and work environment.

Despite these concerns, the gig economy has also opened up fresh opportunities for the economy. The gig economy is attractive to many people, and they are willing to be part of it because of its flexibility, which enables them to choose their own hours of work. The gig economy is particularly attractive to students, part-time workers, and people who want temporary work. The gig economy is particularly significant in countries like India, where formal employment opportunities are scarce, and it has become an important part of the livelihood of people in the country.

In recognition of the importance of this sector of the workforce, attempts have been made by lawmakers to include the status of gig workers in the overall labour law regime. The implementation of the Code on Social Security is an important move in the legislative arena towards the recognition of gig workers and platform workers as separate categories of the workforce. The legislation attempts to offer certain benefits to these categories of the workforce, though the effectiveness of the legislation is still debatable.

The rise of the gig economy, therefore, creates a complex legal and policy challenge. On the one hand, the platform-based employment provides workers a degree of economic flexibility and innovation, but it simultaneously places the workers in precarious working conditions and provides them with limited legal protection. Thus, to determine the effectiveness of the labor laws currently in place in India to adequately protect the rights and well-being of the gig workers, it is important to first understand the nature and structure of the gig workers.

3. Legal Framework Governing Gig Workers in India

The emergence of the gig economy has forced the policymakers of India to reassess the effectiveness of the existing labour regulations with respect to the challenges that gig or platform workers face. The traditional foundation of the labour regulations that exist in India is based on the conventional employer-employee relationship, where the employees are formally engaged as contract workers and receive the benefits of the labour regulations, including the payment of minimum wages, extension of social security benefits, and job security. However, the engagement of gig workers through the platform is not feasible under the conventional labour regulations.

One of the significant legislative changes in this regard is the promulgation of the Code on Social Security. It is one of the first attempts in the jurisdiction of India to officially acknowledge gig workers and platform workers in the labor landscape. The Code on Social Security refers to gig workers as those individuals who are involved in work that is outside the conventional employer-employee relationship, and platform workers are those individuals who access an organization or an individual through an online platform to offer their services.

The Code on Social Security aims to extend certain social security benefits to gig and platform workers, such as insurance, health and maternity benefits, and old-age benefits. It also aims to provide for the setting up of welfare schemes that are funded by contributions from the central government, state governments, and digital platform aggregators. On paper, it seems that the government is trying to provide some level of financial security and welfare to gig economy workers.

Nevertheless, the rights of gig workers remain limited. Unlike traditional employees, gig workers are not accorded any of the traditional labour rights that are afforded to traditional employees. For example, laws such as the Minimum Wages Act and the Industrial Disputes Act were originally designed to cover employer-employee relationships, and as such, gig workers who are treated as independent contractors cannot benefit from such laws.

However, another important issue that needs to be addressed is the implementation of welfare schemes that are envisaged in the Code on Social Security. It has to be noted that although there is a framework for extending social security protection under this code, there are a number of aspects that are subject to future rules, contributions from digital platforms, and other mechanisms that are still in an evolving stage. Therefore, a number of gig workers are still not covered under any social security benefits.

Moreover, the legal classification of gig workers as independent contractors rather than employees is important from the point of view of their rights. Such a classification enables the digital platforms to evade their responsibilities towards the minimum wage, leave, and security of the gig workforce. Therefore, the legal status of the gig workforce remains uncertain as they play a vital role in the functioning of the digital platforms.

The legal regime for gig workers in India, therefore, appears to be in a state of transition. While the current labour laws' acknowledgment of gig workers represents a significant step towards the realities of the gig economy, there remain significant gaps to ensure the labor protection of gig workers. These gaps, therefore, point to the need for a more effective regime to ensure a balance between innovation and the protection of the rights of gig workers.

4. Challenges Faced by Gig Workers in India

While the gig economy offers a new avenue for economic opportunities, gig workers in India are confronted with a number of challenges that pose a serious threat to their labor rights. The nature of platform-based employment creates a precarious employment situation wherein the gig workers are engaged in providing essential services without the legal protection usually enjoyed by employees.

However, one of the biggest issues is that there is no job security. The gig workers are hired through a contract that allows the digital platforms to terminate their contract with very little notice. The gig workers are not given any protection from unfair dismissal or any working hours. This makes their income variable and dependent on the availability of tasks on digital platforms such as Uber, Swiggy, and Zomato.

Another significant concern here is related to the lack of social security benefits. Even though the Code of Social Security recognizes gig workers, there is a lack of access to the benefits of social security. This includes the lack of access to health benefits, retirement benefits, and leave. In the absence of these benefits, the financial burden of the gig workers increases.

Another challenge emanates from the algorithmic control of digital platforms. In many cases, platform companies use algorithms to distribute tasks, measure the performance of their workers, and establish the nature of their incentives. However, these algorithms lack transparency, and workers find it hard to know how their earnings are being influenced. In some cases, the rating of the workers may dip below a particular level, and they may be denied the

opportunity to work, even when the factors influencing their rating are outside their control.

Gig workers also face problems concerning income security and bargaining power. This is because the gig workers are often classified as independent contractors and, as such, are not subject to various labor laws concerning their income and conditions of work. In addition, the fragmented nature of gig work also presents a challenge to the unionization of gig workers. This implies that the gig workers lack the ability to collectively bargain for their conditions of work.

In addition, the costs of resources used in work are often borne by gig economy workers themselves. For example, ride-hailing service drivers are often required to pay for their cars, fuel, and repair costs. In addition, delivery staffs are often required to pay for the costs of transportation and other equipment used in their work. These costs can greatly reduce the income earned by gig economy workers.

The above challenges are an indication of the complexities that are associated with employment platforms in India. Despite the fact that the development of digital platforms has offered an opportunity to create alternative employment forms, it has also offered an environment that has subjected gig workers to an unfavorable environment.

5. Comparative Perspectives and International Approaches to Gig Worker Protection

The problems faced by gig workers are not unique to India, and several countries across the world have faced similar problems in dealing with the legal position, rights, and social security of gig workers. As the gig economy grows across the world, countries are starting to develop their own frameworks that try to achieve an effective balance between technological advancement and the rights of gig workers.

In different countries, there have been concerns over the classification of gig workers as independent contractors, and in the United Kingdom, the courts have recognized Uber drivers as “workers” and not as independent contractors. This enables them to enjoy different labor rights, such as minimum wages, leaves, and social security. The decision by the courts indicates an emerging trend where gig workers are being recognized as employees, despite being classified as independent contractors.

Likewise, some of the European nations have adopted legislative provisions that help in addressing the unique challenges that are posed by digital platforms. Such provisions have highlighted the need for developing the transparency of the decision-making process, as well as the need for developing the social security provisions and the working conditions. In some cases, governments have also requested platform companies to make contributions to social security for gig workers.

An important development can also be noted in the United States, where several states are attempting to define the status of gig workers through legislative reforms. Although discussions are ongoing with regards to the status of platform workers, it can be noted that these discussions are an important indicator of the growing recognition of the importance of gig work.

Based on the above developments noted globally, it can be stated that the regulation of gig work is a complex issue that must be addressed carefully by governments. It must be noted that governments must aim to achieve an important balance between providing flexibility to the workers, which attracts them to the gig economy, and providing workers with adequate legal protection. Excessive regulation may hinder innovation and growth, whereas insufficient regulation may result in the exploitation of workers.

In the case of India, these changes across the globe present an important lesson. First off, the acknowledgment of gig employees under the new social security code can be considered an important step. However, India might learn from other countries by incorporating other changes such as classification standards, social security standards, and transparency in the management practices of these platforms. This will help India develop a standard for gig employees that will be effective for the growth of the digital economy.

6. Recommendations and Legal Reforms

In order to address the issues that are affecting the lives of gig workers, it is important to put in place certain legal and policy reforms that can help protect the rights

of these workers. The following are the recommendations that can be put in place to ensure that the rights of these workers are well protected.

- **Clearer Legal Classification of Gig Workers:** One of the primary changes that should be made is the classification of gig or platform workers. The classification of "independent contractors" and "employees" often leaves gig workers at a crossroads. A way to address this is the consideration of the introduction of a third classification: "dependent contractors," as is the case in the UK and some EU countries.

- **Mandatory Social Security Contributions by Platforms:** The Code on Social Security establishes a framework for welfare schemes, although its implementation varies. To enhance this system, digital platforms should be mandated to make contributions to a social security fund for the purpose of providing health insurance, pension schemes, and disability benefits for gig economy workers. This will help to minimize the economic risks involved with platform work.

- **The Regulation of Algorithmic Management:** Algorithmic management of tasks, rating systems, and reward systems constitute a part of gig work. Lack of transparency in these areas creates ambiguity. There is a need to introduce more transparency in the algorithms, grievance redressal systems, and the role of the regulatory authorities.

- **Minimum Income and Worker Benefits:** The law could also provide for the payment of minimum income to gig workers so that they are protected from fluctuations in income. Other benefits, like leaves, accidents, and training, could be provided so that the stability of the workers is maintained.

- **Encouragement of Collective Representation:** Gig workers are not in a position to bargain, as they are not in a group and are doing their work independently. The law could encourage the formation of a union of gig workers, so that they could negotiate and raise their voices for their rights.

- **Periodic Review and Updates in the Policy:** In consideration of the dynamic nature of technology and digital platforms, there exists a need to review the labor law. In this respect, it is suggested that the government introduce a mechanism to review the challenges faced by the industry and update the law accordingly.

The Indian government can develop an equitable and sustainable labor law for gig workers by incorporating the suggestions outlined in the report. The suggestions not only protect the basic human rights of the gig workers, but they will also be instrumental for the development of the digital industry.

7. Conclusion

The emergence of the gig economy in India is, therefore, an indication of an enormous shift in the nature of work, and it is both an opportunity and a challenge. On one hand, the gig economy provides flexibility, access, and opportunities for income generation, and on the other, it makes gig economy workers vulnerable to work, income, and legal insecurity. The conventional labour laws, which are applicable to traditional work arrangements between employers and employees, are not equipped to deal with the gig economy, and the gig economy workers are at an increased risk of being exploited and becoming socially insecure.

The enforcement of the Code on Social Security can be said to be an important step towards the integration of gig and platform workers with the Indian law system. However, there are certain gaps with respect to the effective enforcement of social security schemes, regulation of algorithmic management, and protection of the fundamental rights of workers. The experiences with respect to the United Kingdom, European Union, and United States can be said to be very instructive with respect to the regulation of workers, regulation of social security contributions by platforms, and regulation of digital algorithms.

In order to promote responsible growth in the digital economy, India has to adopt a holistic strategy that not only talks about innovation but also incorporates labour protection. It has to define things clearly, make social security contributions obligatory, transparent algorithms, minimum income levels, and support for collective representation. Therefore, India can promote responsible growth in the digital economy without compromising the rights of the workers.

In conclusion, it can be stated that the future of labour rights in India will be shaped by the country's capacity to assimilate technological developments with constitutional responsibility. The protection of the rights of gig workers not only remains a constitutional obligation, but it has also become a social imperative to transform the promises of the digital revolution into decent work for all.

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ETHICAL & LEGAL CHALLENGES OF DEEPFAKE TECHNOLOGY: NEED FOR SUI GENERSIS OFFENCE

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1. Introduction

1.1 Background of Artificial Intelligence and Synthetic Media

Artificial Intelligence (AI) has emerged as one of the most transformative technological developments of the twenty-first century. AI refers to the ability of computer systems to perform tasks that traditionally require human intelligence, including learning, reasoning, pattern recognition, and decision-making. With advancements in machine learning and deep learning algorithms, AI systems are now capable of analysing vast datasets and generating new digital content with remarkable accuracy[1]. One of the most notable developments within this domain is the emergence of **synthetic media**, which refers to digitally generated or manipulated content created through artificial intelligence technologies. Synthetic media can include artificially generated images, videos, audio recordings, and even text that closely resemble authentic human-created content[2].

The rapid progress of deep learning techniques, particularly neural networks and generative models, has significantly enhanced the ability of machines to create highly realistic digital media[3]. These technologies have enabled various beneficial applications across multiple sectors, including entertainment, education, healthcare, and digital communication. For instance, AI-generated visual effects are widely used in film production, while voice synthesis technologies assist individuals with speech impairments[4]. However, the same technologies that enable innovation and creativity also present substantial risks when used for deceptive or malicious purposes. Among these emerging forms of synthetic media, **deepfake technology** has become one of the most controversial developments due to its potential to manipulate reality and mislead audiences[5].

1.2 Emergence of Deepfake Technology in the Digital Ecosystem

Deepfake technology represents a sophisticated form of synthetic media generated using artificial intelligence, particularly deep learning techniques. The term "deepfake" originates from the combination of "deep learning" and "fake," referring to AI-generated media that convincingly alters or fabricates images, audio, or videos to depict events that never actually occurred[6]. Deepfakes are typically created using advanced machine learning techniques such as Generative Adversarial Networks (GANs), which involve two neural networks competing with each other to generate increasingly realistic digital content[7]. The widespread availability of AI tools, open-source software, and high computing power has made the creation of deepfakes increasingly accessible to individuals without advanced technical expertise[8]. As a result, deepfake technology has rapidly proliferated across the digital ecosystem, particularly on social

[1] Stuart Russell & Peter Norvig, Artificial Intelligence: A Modern Approach (4th ed., Pearson 2021)
[2] European Parliamentary Research Service, Artificial Intelligence and Synthetic Media (2020)
[3] Ian Goodfellow et al., Deep Learning (MIT Press 2016)
[4] OECD, Artificial Intelligence in Society (2019)
[5] Robert Chesney & Danielle Keats Citron, "Deepfakes and the New Disinformation War," 107 California Law Review1753 (2019)
[6] Henry Ajder et al., *The State of Deepfakes* (Deeptrace Report 2019)
[7] Ian Goodfellow et al., "Generative Adversarial Nets," Advances in Neural Information Processing Systems (2014)
[8] Claire Wardle & Hossein Derakhshan, *Information Disorder* (Council of Europe Report, 2017).

media platforms and online forums. While deepfakes have legitimate applications in fields such as filmmaking, digital art, and virtual simulations, their misuse has raised serious concerns. Deepfakes have been used to create misleading political content, fabricate speeches of public figures, impersonate individuals through voice cloning, and produce non-consensual explicit material[9]. The ability of deepfakes to manipulate audiovisual content with high realism makes them a powerful tool for deception, thereby posing significant challenges to information integrity and digital trust.

1.3 Importance of Studying Ethical and Legal Implications of Deepfakes

The growing prevalence of deepfake technology necessitates a comprehensive examination of its ethical and legal implications. Deepfakes have the potential to undermine public confidence in digital information by blurring the distinction between authentic and manipulated media. This phenomenon, often referred to as the "liar's dividend," allows individuals to dismiss genuine evidence as fabricated, thereby weakening accountability in both political and social contexts[10].

From an ethical perspective, deepfake misuse raises concerns regarding privacy, consent, dignity, and personal autonomy[11]. The unauthorized use of an individual's likeness in manipulated media can cause severe reputational damage and psychological harm[12]. In particular, the creation of non-consensual explicit deepfake content has emerged as a serious issue affecting individuals, especially women and public figures. Furthermore, the ability of deepfakes to influence public opinion through fabricated videos or speeches presents a threat to democratic processes and political stability[13].

In addition to ethical challenges, deepfake technology presents complex legal questions. Existing legal frameworks governing privacy, defamation, cybercrime, and intellectual property were developed before the emergence of advanced AI-generated media and may not adequately address the unique characteristics of deepfakes[14]. Consequently, there is a growing need to evaluate whether current legal mechanisms are sufficient to regulate deepfake misuse and to explore potential regulatory responses that balance technological innovation with the protection of fundamental rights.

1.4 Statement of the Problem

The rapid advancement of artificial intelligence and synthetic media technologies has enabled the creation of highly realistic deepfake content that can be easily disseminated across digital platforms. While such technologies offer innovative applications, they also create new risks including misinformation, privacy violations, reputational harm, and identity manipulation. The absence of clear legal frameworks specifically addressing deepfake misuse further complicates efforts to regulate these harms. As a result, deepfake technology poses significant ethical, social, and legal challenges that require systematic analysis and effective policy responses.

[9] Samantha Cole, "AI-Assisted Fake Porn is Here," Vice News (2018)
[10] Danielle Keats Citron & Robert Chesney, "Deepfakes and the Liar's Dividend," Foreign Affairs (2019)
[11] Daniel J. Solove, *Understanding Privacy* (Harvard University Press, 2008).
[12] Henry Ajder, Deepfake Threat Assessment (NATO Strategic Communications Centre of Excellence, 2020)
[13] Bobby Chesney & Danielle Keats Citron, "Deepfakes: A Looming Challenge for Privacy, Democracy, and National Security," Lawfare Research Paper (2018)
[14] Woodrow Barfield & Ugo Pagallo, Research Handbook on the Law of Artificial Intelligence (Edward Elgar 2018)

1.5 Research Objectives

The present study aims to achieve the following objectives:

- To examine the concept and technological framework underlying deepfake technology.
- To analyse the ethical concerns arising from the misuse of deepfakes.
- To evaluate the societal and legal implications associated with deepfake manipulation.
- To suggest preventive mechanisms and potential regulatory responses to address the harms caused by deepfake technology.

1.6 Research Questions

In order to address the objectives of the study, the following research questions are formulated:

- What constitutes the technological foundation and operational mechanism of deepfake technology?
- What ethical challenges and risks arise from the misuse of deepfakes?
- What preventive measures and policy interventions can effectively mitigate the risks associated with deepfake technology?

2. Literature Review

- Deepfake technology has received considerable academic attention due to its potential to manipulate digital information and spread misinformation. Robert Chesney and Danielle Keats Citron highlight that deepfakes can threaten democratic processes by enabling the circulation of fabricated audiovisual content capable of influencing public opinion[15].
- Similarly, Regina Rini explains that deepfakes create uncertainty regarding the authenticity of digital evidence, which may allow individuals to dismiss genuine media as fabricated[16]. Scholars such as Jan Kietzmann also note the challenges faced by online platforms in detecting and regulating manipulated content[17].
- Existing literature primarily focuses on technological and misinformation risks of deepfakes. However, there is limited research integrating ethical concerns with legal and technological regulatory mechanisms. The present study seeks to address this gap by examining deepfake technology from ethical and legal perspectives.

3. Research Methodology

- **Nature of Research:** The study adopts a doctrinal and analytical legal research method to examine deepfake technology and its ethical implications.
- **Sources of Data:** The research relies on secondary sources, including academic journals, books, legal statutes, judicial decisions, policy reports, and scholarly articles related to artificial intelligence and cyber law.
- **Doctrinal Analysis:** Relevant legal principles relating to privacy, cybercrime, digital identity, and misinformation are analysed to assess the adequacy of existing legal frameworks.
- **Analytical Approach:** The study critically examines the ethical and societal challenges posed by deepfake technology, such as privacy violations, identity manipulation, and misinformation.
- **Comparative Perspective:** Reference is made to international discussions and regulatory

[15] Robert Chesney & Danielle Keats Citron, supra note 5.
[16] Regina Rini, "Deepfakes and the Epistemic Backstop," Philosophy & Technology (2020).
[17] Jan Kietzmann et al., "Deepfakes: Trick or Treat?" Business Horizons (2020)

approaches concerning deepfake technology to understand global trends and possible governance mechanisms.

4. Concept and Evolution of Deepfake Technology

4.1 Definition of Deepfake Technology

Deepfakes refer to artificial intelligence–generated synthetic **media** in which images, audio, or videos are manipulated using deep learning techniques to create highly realistic but fabricated content. Through advanced machine learning algorithms, particularly neural networks, deepfakes can alter a person's appearance, voice, or actions in digital media, making the manipulated content appear authentic. These technologies rely on large datasets and automated learning processes that enable computers to replicate facial expressions, speech patterns, and visual features with significant accuracy.

4.2 Origin of the Term

The term "deepfake" is derived from the combination of "deep learning" and "fake". It first gained prominence in 2017, when online communities began experimenting with machine learning tools to create realistic face-swapping videos. Initially, the technology was used in online forums where users manipulated videos by replacing the faces of individuals with those of celebrities or public figures. Over time, the availability of open-source software and powerful computing resources enabled the rapid expansion of deepfake creation tools, making them accessible to a wider audience.

4.3 Evolution of Digital Manipulation

Digital manipulation of images and videos existed long before the development of deepfakes. Early forms of manipulation relied on photo-editing software such as Adobe Photoshop, which allowed users to manually alter images. Although these tools enabled significant editing capabilities, the results often required skilled expertise and could usually be detected upon closer inspection.

With the advancement of artificial intelligence, digital manipulation evolved into **AI-driven image synthesis**, allowing machines to generate and modify media automatically. A major breakthrough occurred with the development of **Generative Adversarial Networks (GANs)**, a deep learning architecture in which two neural networks—the generator and the discriminator—work simultaneously to create increasingly realistic media. GANs significantly enhanced the ability of AI systems to generate convincing synthetic images and videos, thereby accelerating the development of deepfake technology.

4.4 Current Uses of Deepfakes

Despite concerns about misuse, deepfake technology also has several legitimate applications. In the film and entertainment industry, deepfake techniques are used to recreate actors, enhance visual effects, and digitally modify performances. In the field of education, synthetic media can be used to create interactive simulations, historical reconstructions, and immersive learning experiences. Additionally, deepfake technology is increasingly utilized in marketing and digital media, where personalized advertisements and virtual brand ambassadors can be generated using AI-driven visual and audio manipulation.

However, while these applications demonstrate the innovative potential of deepfake technology, the same tools can also be misused for deceptive or harmful purposes, thereby raising significant ethical and regulatory concerns.

5. Types of Deepfakes

Deepfake technology can take several forms depending on the type of media being manipulated. The most common forms include face swapping, voice cloning, and synthetic video generation, each of

which uses artificial intelligence techniques to create convincing but fabricated digital content.

5.1 Face Swapping

Face swapping is one of the most widely recognized forms of deepfake technology. It involves replacing the face of one individual with that of another in an image or video using deep learning algorithms. Through facial recognition systems and neural networks, AI can analyse facial features such as expressions, lighting, and movement to seamlessly integrate a new face into existing footage.

This technique has been used in entertainment and filmmaking to digitally recreate actors or enhance visual effects. However, it has also been widely misused to create misleading videos and non-consensual explicit content. Because face-swapped videos often appear highly realistic, they can easily mislead viewers and raise serious concerns regarding identity misuse and reputational harm.

5.2 Voice Cloning

Voice cloning refers to the use of artificial intelligence to replicate an individual's speech patterns and vocal characteristics. By analysing recordings of a person's voice, AI models can generate synthetic speech that closely resembles the original speaker. These systems rely on deep learning models trained on large datasets of voice samples to reproduce tone, pitch, accent, and speaking style.

Voice cloning has useful applications in areas such as accessibility technology, digital assistants, and automated customer service. However, the technology also presents serious risks when used maliciously. Synthetic voice recordings can be used for impersonation, fraud, and the spread of misinformation, particularly when combined with manipulated video content.

5.3 Synthetic Video Generation

Synthetic video generation involves the creation of entirely fabricated videos in which individuals appear to perform actions or deliver statements that never actually occurred. Unlike simple editing techniques, AI systems can generate realistic facial movements, lip synchronization, and body gestures, making the fabricated content difficult to detect.

This form of deepfake technology has raised concerns in political and social contexts, as fabricated videos of public figures could potentially be used to spread misinformation or manipulate public opinion. The increasing sophistication of synthetic video generation highlights the need for improved detection technologies and regulatory oversight.

Overall, these different forms of deepfakes demonstrate the powerful capabilities of artificial intelligence in generating synthetic media. While such technologies offer innovative possibilities, their misuse can have serious ethical, social, and legal consequences.

6. Technological Framework Behind Deepfakes

Deepfake technology is primarily driven by advancements in artificial intelligence, particularly in the fields of machine learning and deep learning. These technologies enable computer systems to analyse large volumes of data and generate realistic digital content by identifying patterns within images, audio, and video datasets.

6.1 Artificial Intelligence and Machine Learning

Artificial intelligence forms the foundational basis of deepfake creation. Machine learning algorithms are trained on extensive datasets containing images, facial expressions, voice samples, and video recordings. By analysing these datasets, the system learns to recognize patterns and replicate human features such as facial movements, speech patterns, and gestures. Over time, the algorithm improves its accuracy,

enabling the generation of highly realistic synthetic media.

6.2 Generative Adversarial Networks (GANs)

One of the most important technological developments enabling deepfake creation is the use of Generative Adversarial Networks (GANs). GANs consist of two neural networks known as the generator and the discriminator.

- The generator creates synthetic images or videos based on learned data patterns.
- The discriminator evaluates the generated content and compares it with real data to determine whether it appears authentic.

Through continuous interaction, the generator improves its ability to produce increasingly realistic media, while the discriminator becomes more effective at detecting manipulation. This process allows AI systems to generate convincing deepfake content that closely resembles real human images or videos.

6.3 Neural Networks and Data Training

Deepfake systems rely on deep neural networks, which are computational models designed to mimic the functioning of the human brain. These networks process large amounts of visual and audio data to understand complex patterns such as facial structure, expressions, and speech characteristics.

The accuracy of deepfake technology depends significantly on the quality and quantity of training data used to train the AI model. Larger datasets enable the algorithm to produce more realistic results by learning subtle details of human appearance and behaviour.

6.4 Accessibility of Deepfake Tools

The increasing availability of open-source AI software and powerful computing resources has made deepfake creation more accessible. Today, several applications and online tools allow users with minimal technical expertise to create deepfake content using automated software. While this accessibility has encouraged innovation in digital media, it has also raised concerns regarding the potential misuse of deepfake technology for fraudulent or deceptive purposes.

The rapid advancement of these technological frameworks demonstrates both the innovative potential and the risks associated with deepfake technology, highlighting the importance of ethical governance and regulatory oversight.

7. Ethical Challenges Created by Deepfake Technology

The rapid advancement of deepfake technology has raised significant ethical concerns due to its potential misuse in manipulating digital content. While the technology has legitimate applications, its ability to create highly realistic fabricated media presents serious risks for individuals, society, and democratic institutions.

7.1 Violation of Privacy

One of the most serious ethical concerns associated with deepfakes is the violation of personal privacy. Deepfake technology can use publicly available images or videos of individuals to create manipulated content without their consent. Such misuse can infringe upon an individual's right to control their personal image and identity, leading to reputational damage and emotional distress.

7.2 Identity Theft

Deepfakes also create risks of identity theft and impersonation. By replicating a person's facial features or voice, malicious actors can produce fake videos or audio recordings that falsely represent an individual. These manipulated materials can be used for fraudulent activities, misinformation campaigns, or reputational attacks, making it difficult for victims to prove that the content is fabricated.

7.3 Manipulation of Public Opinion

Another major ethical challenge arises from the ability of deepfakes to manipulate public perception. Fabricated videos depicting public figures making controversial statements or engaging in misconduct can influence public opinion and spread misinformation. Such manipulation can distort public discourse and undermine trust in digital information.

7.4 Political Disinformation

Deepfakes pose a significant threat in political contexts. Manipulated videos of political leaders or public officials can be used to spread propaganda, influence elections, or create political instability. The realistic nature of deepfake videos makes it difficult for audiences to distinguish between authentic and fabricated content, increasing the risk of large-scale misinformation.

7.5 Non-consensual Explicit Content

One of the most widely reported abuses of deepfake technology involves the creation of non-consensual explicit content. Individuals, particularly women, may have their images digitally manipulated and inserted into explicit videos without their consent. Such misuse not only violates personal dignity and privacy but can also cause severe psychological harm and long-term reputational damage.

These ethical challenges highlight the urgent need for stronger technological safeguards, ethical standards in AI development, and effective legal frameworks to regulate the misuse of deepfake technology.

8. Societal and Psychological Impact of Deepfakes

Beyond individual harm, deepfake technology has broader societal and psychological consequences that affect public trust, social relationships, and the reliability of digital information. As deepfake content becomes more realistic and widely accessible, it can significantly influence how people perceive media and interact within digital environments.

8.1 Erosion of Public Trust

One of the most concerning impacts of deepfakes is the erosion of trust in digital media. Traditionally, video and audio recordings have been considered reliable forms of evidence. However, the emergence of deepfake technology has blurred the line between authentic and manipulated content. As a result, individuals may begin to question the authenticity of digital media, leading to a decline in confidence in news reports, online information, and audiovisual evidence.

8.2 Spread of Misinformation

Deepfakes can significantly contribute to the spread of misinformation and false narratives. Manipulated videos or audio recordings can circulate rapidly across social media platforms, reaching large audiences before they are verified or corrected. This can distort public understanding of events and create confusion within the information ecosystem.

8.3 Psychological Harm to Victims

Victims of deepfake misuse may experience severe psychological and emotional distress. Individuals whose likeness is used without consent may suffer reputational damage, embarrassment, anxiety, and loss of personal dignity. In cases involving non-consensual explicit content, the psychological impact can be particularly severe and long-lasting.

8.4 Threat to Democratic Institutions

Deepfake technology can also pose risks to democratic institutions and public discourse. Fabricated videos of political leaders or public figures may be used to manipulate voters, influence political debates, or undermine public confidence in governance. Even when such videos are later proven

to be false, the initial spread of misinformation may still have lasting effects on public perception.

These societal and psychological consequences demonstrate that deepfake technology is not merely a technological issue but also a broader challenge affecting trust, accountability, and stability within modern digital societies.

9. Preventive Measures and Regulatory Approaches

The increasing misuse of deepfake technology has prompted the need for effective preventive mechanisms and regulatory responses. Addressing the challenges posed by deepfakes requires a combination of technological solutions, platform accountability, legal regulation, and public awareness.

9.1 Technological Detection Mechanisms

Advancements in artificial intelligence are also being used to develop **deepfake detection tools**. These tools analyse inconsistencies in facial expressions, lighting patterns, and audio synchronization to identify manipulated media. Technologies such as digital watermarking and blockchain verification can also help authenticate original media content and detect alterations.

9.2 Platform Responsibility and Content Moderation

Social media platforms play a crucial role in preventing the spread of deepfake content. Online platforms can implement automated detection systems and strict content moderation policies to identify and remove manipulated media. Many platforms are increasingly investing in AI-based monitoring tools to detect deepfake videos before they reach large audiences.

9.3 Legal and Regulatory Measures

Legal regulation is an important mechanism for addressing deepfake misuse. Existing cyber laws, privacy laws, and defamation laws may provide certain remedies against harmful deepfake content. However, policymakers and legal scholars have suggested the development of specific regulatory frameworks that directly address the creation and distribution of malicious deepfakes. Such regulations could impose liability on individuals who intentionally create or disseminate deceptive deepfake media.

1. **Ankur Warikoo v. Unknown Persons (John Doe) – Delhi High Court, 2025**[18]

   1. **Facts**

- Motivational speaker and entrepreneur Ankur Warikoo discovered several AI-generated deepfake videos circulating online.
- The videos falsely showed him promoting stock-market tip WhatsApp groups and investment schemes.

   2. **Issue**

- Whether courts can restrain the creation and circulation of AI-generated deepfake content impersonating a public figure.

   3. **Held**

- The Delhi High Court granted a John Doe injunction restraining unknown persons from creating or circulating deepfake videos using the plaintiff's likeness.

   4. **Legal significance**

- Courts recognized deepfake impersonation as a violation of personality rights and reputation.

[18] Ankur Warikoo v. John Doe, 2025 SCC OnLine Del 3727

- Platforms were directed to remove infringing content and assist in identifying perpetrators.

5. Legal principle

- Unauthorized use of a person's name, voice, likeness, or image through AI manipulation can be restrained under personality rights and passing-off principles.

2. Akshay Kumar v. Unknown Persons – Bombay High Court, 2025[19]

1. Facts

- Deepfake videos circulated online depicting actor Akshay Kumar making inflammatory statements and promoting services without consent.

2. Held

- The Bombay High Court ordered immediate removal of such content and restrained unidentified persons from further circulation.

3. Observations of Court

- Deepfake content was described as "truly alarming."
- Such manipulation can cause irreversible reputational and public-order harm.

4. Legal basis

- Personality rights
- Right to reputation under Article 21 of the Constitution[20]
- Passing-off and unfair commercial exploitation.

9.4 Public Awareness and Digital Literacy

Public awareness is another important aspect of combating deepfake misuse. Promoting digital literacy and media verification skills can help individuals critically evaluate online content and identify potential manipulation. Educational initiatives and awareness campaigns can play a vital role in strengthening the ability of society to respond to misinformation.

9.5 Ethical Responsibility of AI Developers

Developers and technology companies involved in artificial intelligence research also bear ethical responsibility in ensuring that their technologies are not misused. Responsible AI development practices may include integrating safeguards within AI systems, limiting access to potentially harmful tools, and establishing ethical guidelines for the deployment of synthetic media technologies.

Overall, an effective response to deepfake misuse requires a multi-dimensional approach combining technological innovation, legal regulation, ethical governance, and public awareness to protect individuals and maintain trust in digital media.

Although deepfake-specific legislation and judicial precedents are still developing, several judicial decisions dealing with privacy, digital evidence, reputation, and online speech provide important legal principles relevant to deepfake misuse. These cases help in understanding how existing legal frameworks may address harms caused by manipulated digital media.

One of the most significant developments in Indian constitutional law is the decision of the Supreme Court in Justice K.S. Puttaswamy v. Union of India[21]. In this landmark judgment, the Court recognized the right to privacy as a fundamental right under Article 21[22] of the Constitution of India. The judgment emphasized the protection of informational privacy and personal autonomy. In the context of deepfakes, the unauthorized use of an individual's image, voice, or identity in manipulated media may constitute a violation of this fundamental right.

[19] Akshay Hari Om Bhatia v. John Doe, 2025 SCC OnLine Bom 4044
[20] INDIA CONST. art. [21]
[21] K.S. Puttaswamy (Privacy-9J.) v. Union of India, (2017) 10 SCC 1
[22] INDIA CONST. art. [21]

10. Research Gap

Existing scholarship on deepfake technology has primarily focused on either the technical mechanisms of deepfake creation or the risks of misinformation and digital manipulation. Several studies discuss the technological aspects of artificial intelligence and the role of deep learning models in generating synthetic media. Other research has examined the political implications of deepfakes, particularly their potential use in spreading disinformation and influencing public opinion.

However, despite the growing body of literature, there remains a significant gap in integrated legal and ethical analysis of deepfake technology. Many studies address ethical concerns such as privacy violations, identity misuse, and non-consensual explicit content, yet limited research comprehensively evaluates these concerns alongside existing legal frameworks. In particular, there is insufficient scholarly focus on how current legal principles relating to privacy, defamation, and cybercrime may apply to the emerging challenges posed by deepfake technology.

Furthermore, much of the existing research concentrates on technological detection tools, while comparatively less attention has been given to preventive regulatory mechanisms and ethical governance frameworks that could reduce the harmful consequences of deepfake misuse.

The present study seeks to address this gap by providing a comprehensive examination of deepfake technology that integrates technological understanding with ethical and legal analysis. By analysing the nature of deepfakes, their societal implications, and the adequacy of existing legal protections, this research aims to contribute to the development of more effective governance strategies for regulating synthetic media technologies.

11. Conclusion

- Deepfake technology represents a significant advancement in artificial intelligence and digital media innovation. Through the use of deep learning algorithms and neural networks, AI systems can generate highly realistic images, audio recordings, and videos that closely resemble authentic human actions. While such technologies have legitimate applications in areas such as entertainment, education, and digital communication, their misuse presents serious ethical and societal challenges.
- The analysis in this study demonstrates that deepfake technology can lead to numerous harms, including violations of privacy, identity theft, reputational damage, political disinformation, and the creation of non-consensual explicit content. These risks not only affect individual victims but also undermine public trust in digital media and democratic institutions.
- Existing legal frameworks relating to privacy, defamation, and cybercrime provide certain protections against harmful digital manipulation. However, the increasing sophistication and accessibility of deepfake technology highlight the limitations of traditional legal approaches in addressing AI-generated synthetic media.
- Therefore, addressing the challenges posed by deepfakes requires a multi-dimensional strategy involving technological detection systems, stronger legal regulation, ethical responsibility among AI developers, and improved digital literacy among the public. By combining legal safeguards with technological and ethical governance mechanisms, it may be possible to mitigate the harmful effects of deepfake technology while preserving its potential benefits for innovation and digital creativity.

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PROPERTY WITHOUT PHYSICALITY: TOWARDS A DOCTRINAL FRAMEWORK FOR INTELLECTUAL PROPERTY, DIGITAL ASSETS, AND THE NUMERUS CLAUSUS PRINCIPLE IN INDIAN LAW

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Abstract

The *numerus clausus* principle — that property rights exist only in legally recognised, standardised forms — represents one of the most fundamental organising concepts in the law of property. Yet despite its doctrinal salience, this principle has never been explicitly theorised within the Indian property law tradition. This lacuna has become increasingly consequential: Indian courts are now confronted with an accelerating proliferation of novel quasi-property claims with respect to domain names, databases, cryptocurrency, non-fungible tokens (NFTs), carbon credits, and virtual real estate without any principled theoretical framework to guide recognition or rejection.

This paper makes three related contributions. First, it recovers and applies Thomas Merrill and Henry Smith's foundational *numerus clausus* scholarship to the Indian property law context, demonstrating that the Transfer of Property Act 1882 and the intellectual property statutes already embody an implicit, untheorised version of the principle. Second, it offers a critical examination of significant Indian judicial decisions confronting novel property claims, exposing the doctrinal incoherence generated by the absence of a principled framework. Third, and most distinctively, it proposes an original taxonomic instrument — the Digital Property Eligibility Matrix (DPEM) — comprising four criteria derived from the information-cost rationale of the *numerus clausus* and calibrated to the constitutional and statutory architecture of Indian property law. Applying this matrix across seven categories of emergent digital interests, the paper constructs the first systematic taxonomy of novel property claims in Indian law, identifying which interests satisfy the doctrinal requirements of property and which remain in a pre-legal or regulatory domain pending legislative action.

I. INTRODUCTION

When Lord Wilberforce declared, in *National Provincial Bank Ltd v Ainsworth*, that a right must be 'definable, identifiable by third parties, capable in its nature of assumption by third parties, and have some degree of permanence or stability' before it may be admitted into the category of property,[1] he was articulating what the common law had long intuited and what civilian legal systems had expressed far more candidly: that property rights are not infinitely malleable. They must conform to a closed, socially legible menu of legally recognised forms. This is the essence of what scholars call the *numerus clausus* principle.

That intuition has never found explicit doctrinal expression in Indian property law. The courts of India have proceeded largely by analogy and common law borrowing when confronted with novel property claims, producing a body of case law that is, in individual decisions, doctrinally energetic but, as a whole, theoretically adrift. This paper argues that the resulting incoherence is not merely aesthetically unsatisfying for property law scholars — it carries material costs of precisely the kind that Professors

[1] *National Provincial Bank Ltd v Ainsworth* [1965] AC 1175 (HL) 1248 (Lord Wilberforce).

Thomas Merrill and Henry Smith identified in their foundational article, 'Optimal Standardization in the Law of Property: The Numerus Clausus Principle',[2] as the inevitable consequence of allowing property rights to proliferate in uncontrolled, idiosyncratic forms: the costs of measuring, discovering, and transacting around undisclosed or unpredictable property interests fall on uninformed third parties who had no role in creating them.

The economic and legal landscape that Indian courts must navigate has changed dramatically since the Transfer of Property Act 1882 was enacted. Courts are now regularly asked to grant injunctions, attachment orders, and declarations of proprietary entitlement in relation to interests that the framers of that Act could not have imagined: a domain name registered with the Internet Corporation for Assigned Names and Numbers (ICANN), a database compiled by a pharmaceutical company through proprietary research, a cryptocurrency wallet holding Bitcoin, a non-fungible token representing purported ownership of digital art, a carbon credit issued under the Indian Carbon Market framework, and a plot of 'virtual land' in a blockchain-based metaverse. Each of these presents, in acute form, the question that the *numerus clausus* principle is designed to answer: which interests are, and which are not, the kind of thing that the law of property recognises and protects?

The stakes are high. An overly expansive judicial approach — one that recognises every commercially significant interest as property upon demand — generates information-cost externalities: third parties dealing with assets must investigate an indeterminate universe of idiosyncratic property claims. An overly restrictive approach leaves commercially important interests without legal protection, retarding innovation and investment. The challenge for Indian law is to find a principled middle ground, and the *numerus clausus* principle provides precisely the theoretical architecture for doing so.

The paper proceeds as follows. Part II examines the theoretical foundations of the *numerus clausus* principle, drawing primarily on Merrill and Smith's Yale Law Journal article and situating the principle within a broader account of property as a system of in rem rights. Part III maps the constitutional and statutory architecture of Indian property law, demonstrating that the existing framework embodies an implicit, untheorised *numerus clausus*. Part IV surveys the most significant categories of emergent property claims before Indian courts and regulators, exposing the doctrinal inconsistency of existing adjudication. Part V develops the affirmative case for explicit *numerus clausus* reasoning in Indian property law. Part VI introduces the Digital Property Eligibility Matrix and applies it across seven categories of emergent digital interests. Part VII offers conclusions and recommendations for judicial and legislative action.

II. THE NUMERUS CLAUSUS PRINCIPLE: THEORETICAL FOUNDATIONS

A. Property Rights as In Rem Entitlements

The starting point for any discussion of the *numerus clausus* is the distinction between property rights and contractual rights. A contractual right is, paradigmatically, in personam: it creates obligations between specific parties and binds no one else. A property right, by contrast, is in rem: it creates a duty of non-interference in all persons who might come into contact with the thing to which the right attaches — strangers, successors in title, and the world at large.[3] This in rem character is what gives property rights their distinctive social force and, correlatively, their distinctive social cost.

[2] *Merrill and Smith*, 'Optimal Standardization in the Law of Property: The Numerus Clausus Principle' (2000) 110 *Yale Law Journal* 1 [hereinafter Merrill & Smith, 'Numerus Clausus'].

[3] Merrill & Smith, 'Numerus Clausus' (n 1) 3.

Hohfeld's analytical decomposition of legal relations illuminates the structure of this cost.[4] When an owner of property has a Hohfeldian claim-right of exclusion against all others, each of those 'others' bears a correlative duty not to interfere. The duty is not owed to the owner under any agreement; it arises simply from the existence of the property right and binds every person in the world. This means that every person in the world must, in principle, be aware of the content of that property right in order to know what is required of them. The information cost of a property right — unlike the information cost of a contract, which binds only identified parties — is therefore borne by an indefinite universe of third parties.

Penner, writing from within a different theoretical tradition, captures the same point when he identifies excludability as the master concept of property: a property right is a right to a thing against the world, as distinct from a right against a person.[5] The right to exclude strangers — not merely the right to use — is the doctrinal signature of a property right. This is also why, as Radin has observed, property and personhood become linked: the things from which we can legitimately exclude others become, over time, constitutive of our social and economic identity.[6]

B. Information Costs and the Standardization Tradeoff

Merrill and Smith's great insight is to connect the in rem character of property rights to a specific economic rationale for restricting their variety. Because property rights bind the world, the costs of learning about them fall on the world.[7] If legal systems permitted property holders to customize their rights in unlimited ways — appending novel conditions, obligations, and encumbrances to their title in any configuration they desired — each person transacting in or around any asset would be required to investigate what bespoke arrangements might have been attached to it. These 'measurement costs' are not borne by the parties who created the idiosyncratic arrangement; they are externalized onto every third party who subsequently encounters the asset.

The *numerus clausus* principle is the law's institutional response to this externality. By restricting the forms that property rights may take to a closed menu of standardised types — sale, mortgage, lease, charge, easement, and so forth — the law reduces the information burden on third parties: they need only investigate whether one of a known, finite set of recognized property interests encumbers an asset. They do not need to imagine or inquire about arrangements that have no legal existence.[8]

Merrill and Smith acknowledge that standardization is not without cost. There are transactions parties might wish to conduct that the closed list of property forms does not accommodate — arrangements that would be value-maximizing for the immediate parties but that the law refuses to enforce as property. This is the 'standardization cost': the loss from foregone customization.[9] The *numerus clausus* strikes an implicit balance between these two types of cost: the information-cost savings from standardization must exceed the standardization costs of the closed list for the principle to be welfare-enhancing. Merrill and Smith's contribution is to show that, across the historical development of property law, this balance has consistently been struck in favour of a relatively closed list — and to explain why this is rational rather than historically contingent.

[4]WN Hohfeld, 'Some Fundamental Legal Conceptions as Applied in Judicial Reasoning' (1913) 23 *Yale Law Journal* 16.

[5]JE Penner, *The Idea of Property in Law* (Oxford University Press 1997) 68–74.

[6]Margaret Jane Radin, 'Property and Personhood' (1982) 34 *Stanford Law Review* 957, 971–972.

[7]Merrill & Smith, 'Numerus Clausus' (n 1) 8–14.

[8]ibid 26–38.

[9]ibid 40–42. The tradeoff may be stated: the marginal social benefit of an additional customised property form (allowing optimal tailoring of resource use) must be weighed against the marginal social cost in terms of the information-search burdens imposed on all third parties interacting with that resource.

This framework has important implications for the recognition of novel property forms. It suggests that new property types should not be created by courts acting unilaterally in response to transactional demand, because judicial creation of new property forms fails to provide the notice that the in rem bindingness of property rights requires. Novel forms should instead emerge from legislative action — visible, publicised, and accompanied by the explanatory record needed to give third parties the notice that property law demands.[10] Merrill and Smith make this point explicitly in a subsequent article: the creation of new property forms by parties to a single transaction imposes costs on all other persons in the legal system who had no role in that transaction, because they must now investigate and account for the newly created property form.[11]

C. Numerus Clausus in the Common Law Tradition

The principle is most explicitly stated in civil law jurisdictions, where it appears in statutory form. In common law systems, it operates implicitly, through judicial reluctance to create new property types outside recognized categories. The canonical English articulation remains Lord Wilberforce's formulation in *National Provincial Bank Ltd v Ainsworth*:[12]

Before a right or interest can be admitted into the category of property, or of a right affecting property, it must be definable, identifiable by third parties, capable in its nature of assumption by third parties, and have some degree of permanence or stability.

This formulation operationalises the information-cost rationale in the language of common law adjudication. The requirements of definability and third-party identifiability are precisely the conditions that must be satisfied if third parties are to learn about and adjust to a property right without incurring prohibitive search costs. The requirement of 'permanence or stability' reflects the temporal dimension of information costs: a right that evaporates unpredictably cannot be factored into the planning of third parties even if they discover it.

It should be noted that the *numerus clausus* does not require that the menu of property forms remain frozen forever. Legal systems do recognize new property forms over time. The critical point is that recognition should occur through a process — typically legislative — that provides the systemic notice that the in rem bindingness of property rights demands.[13] The principle operates not as a barrier to legal development but as a direction about how and by whom that development should occur.

III. PROPERTY IN INDIAN LAW: CONSTITUTIONAL AND STATUTORY ARCHITECTURE

A. The Constitutional Foundation: Article 300A

The constitutional status of property in India underwent its most significant transformation through the Constitution (Forty-Fourth Amendment) Act 1978.[14] The Amendment deleted Article 19(1)(f) (the fundamental right to acquire, hold and dispose of property and Article 31, which had guaranteed compensation on compulsory acquisition and given rise to decades of contentious litigation) and

[10]Thomas W Merrill and Henry E Smith, 'What Happened to Property in Law and Economics?' (2001) 111 *Yale Law Journal* 357, 385–386.

[11]ibid 360–362 (arguing that parties to individual transactions cannot internalise the information costs their novel property arrangements impose on third parties, which is the core market-failure justification for legislative standardisation).

[13]Penner (n 4) 68.

[14]The Constitution (Forty-Fourth Amendment) Act 1978.

substituted the current Article 300A: 'No person shall be deprived of his property save by authority of law.'[15]

The implications of this transformation for the present analysis are profound. First, the constitutional protection of property is now contingent on the existence of 'property' in the first place — a question that Article 300A does not itself answer. Second, the requirement that deprivation occur only by 'authority of law' has been interpreted by the Supreme Court to require a valid law, not mere executive action.[16] Third, and most importantly for present purposes, the constitutional guarantee presupposes that the category of 'property' is defined somewhere, in statute or in common law, before constitutional protection can attach. This is a structural argument for the *numerus clausus*: the forms of property must be legally defined before they can attract constitutional protection.

The Supreme Court has confirmed that Article 300A extends to incorporeal property rights, including intellectual property rights and other intangibles.[17] However, the Court has not developed any principled test for determining what constitutes 'property' for this purpose. The result is that the constitutional guarantee is parasitic on whatever the ordinary law recognizes as property, making the definition of property in ordinary law a matter of first-order constitutional significance.

B. The Transfer of Property Act 1882: An Implicit Numerus Clausus

The Transfer of Property Act 1882 (TPA) is the primary statute governing the transfer of property in India. Section 5 defines 'transfer of property' as the act of conveying property in present or future to one or more other living persons.[18] The Act proceeds to specify, in separate chapters, the rules governing each recognized form of property transfer: sale (ss 54–57), mortgage (ss 58–99), charges (ss 100–104), leases (ss 105–117), exchanges (ss 118–121), gifts (ss 122–129), and transfers of actionable claims (ss 130–137).[19]

The TPA's architecture embodies an implicit *numerus clausus*. By specifying the legal rules for each enumerated type of transfer, the Act implicitly forecloses the creation of novel forms of property transfer that do not conform to any recognized type. Courts applying the TPA have proceeded on this basis: the Act provides a relatively closed system of property interests, and courts have generally declined to imply new forms of property transfer outside it. What the TPA does not do — and what no Indian statute has done — is articulate the principle underlying this structure, explain its rationale, or provide criteria by which judges can evaluate claims to recognition outside the statutory scheme.[20]

This theoretical silence is precisely the gap that the present paper seeks to fill. The TPA was drafted for a

[15]Constitution of India, art 300A (inserted by the Constitution (Forty-Fourth Amendment) Act 1978, s 6).

[16]*Bishamber Dayal Chandra Mohan v State of Uttar Pradesh* AIR 1982 SC 33, where the Supreme Court held that 'law' in art 300A means a valid law, not mere executive action.

[17]See *Bishamber Dayal* (n 17). The Supreme Court has in subsequent decisions confirmed that art 300A protects all property rights, including incorporeal rights, but has not developed any test for determining what constitutes 'property' for this purpose: see *State of Haryana v Mukesh Kumar* (2011) 10 SCC 404.

[18]Transfer of Property Act 1882 (India), s 5.

[19]Transfer of Property Act 1882, ss 54, 58, 105, 118, 122, 130. The Act does not enumerate a general category of 'property interests'; rather, it specifies the legal rules for each recognised form of transfer, thereby implicitly foreclosing recognition of novel forms outside the enumerated categories without legislative action.

[20]Transfer of Property Act 1882 (n 18)–(n 19). The TPA was based on the Third Report of the Indian Law Commission (1879) and was drafted specifically to codify and simplify the law governing transfers of immovable and some moveable property in India. Its structure — specifying the legal rules for each enumerated type of transfer — reflects a legislative numerus clausus choice.

world of immovable and moveable property; it says nothing about digital assets. When courts are asked to recognize property interests in cryptocurrency or NFTs, the TPA provides no guidance — not because it answers the question negatively, but because it was enacted before the question could have been conceived. The *numerus clausus* principle provides the theoretical framework needed to answer these questions consistently with the TPA's implicit architecture.

C. Intellectual Property Statutes: Property in Intangibles

The Indian intellectual property regime comprises a family of statutes that collectively create property rights in a range of intangible assets. The Copyright Act 1957, as amended, defines 'literary work' to include 'computer programmes, tables and compilations including computer data bases',[21] and vests in authors and their assignees a bundle of exclusive rights constituting the copyright. The Patents Act 1970 creates a time-limited monopoly right in inventions, explicitly providing for assignment and transmission of patents.[22] The Trade Marks Act 1999 creates registered rights in marks that may be assigned like other property.[23]

Beyond the canonical IP statutes, the legislature has created additional regimes for specific categories of intangible assets: the Semiconductor Integrated Circuits Layout-Design Act 2000, the Geographical Indications of Goods (Registration and Protection) Act 1999, and the Protection of Plant Varieties and Farmers' Rights Act 2001.[24] Each of these creates a recognizably proprietary interest (a right to exclude others from using the protected subject matter) with defined incidents of assignment, licensing, and enforcement. They are, in the terms of the Merrill-Smith framework, examples of the legislature creating new property forms through visible, noticeable action that places third parties on constructive notice of the existence and content of the right.

Read together, the TPA and the IP statutes demonstrate that Indian property law already operates on a *numerus clausus* model, albeit an implicit and untheorised one. The challenge is not to introduce the principle but to make it explicit, so that it can guide judicial and legislative responses to novel property claims that fall outside the existing statutory categories.

IV. EMERGENT PROPERTY CLAIMS IN INDIAN ADJUDICATION: A CRITICAL SURVEY

A. Domain Names: Quasi-Property Through Judicial Analogy

The treatment of domain names is the most developed chapter in the Indian judicial engagement with novel property claims. In *Yahoo! Inc v Akash Arora*,[25] the Delhi High Court granted an interim injunction restraining the defendant from operating under the domain name 'yahooindia.com', applying the law of passing off by analogy to the plaintiff's well-known mark. The Court recognised that a domain name serves as a business identifier and that its misappropriation could cause consumer confusion materially identical to conventional passing off.

The quasi-property character of domain names was further affirmed in *Tata Sons Ltd v Manu Kosuri & Ors*,[26] where the Delhi High Court granted an injunction protecting the plaintiff's name in the domain name context, and in *Rediff Communication*

[21] Copyright Act 1957 (India) s 2(o), s13(1)(a).

[22] Patents Act 1970 (India), s 2(1)(m).

[23] Trade Marks Act 1999 (India), s 2(1)(zb), s 37.

[24] The Semiconductor Integrated Circuits Layout-Design Act 2000 (India); the Geographical Indications of Goods (Registration and Protection) Act 1999 (India); the Protection of Plant Varieties and Farmers' Rights Act 2001 (India).

[25] *Yahoo! Inc v Akash Arora* (1999) 19 PTC 201 (Del HC).

[26] *Tata Sons Ltd v Manu Kosuri & Ors* (2001) 23 PTC 265 (Del HC).

Ltd v Cyberbooth,[27] where the Bombay High Court held that domain names are 'valuable corporate assets' deserving legal protection.

The Supreme Court addressed the matter comprehensively in *Satyam Infoway Ltd v Sifynet Solutions Pvt Ltd*.[28] The Court held that internet domain names serve a business identification function equivalent to trade names and that misrepresentation in their use is actionable under the law of passing off.[29] The Court grounded protection explicitly in the law of tort, i.e. passing off rather than in any recognised property right, drawing the analogy to trade name protection.[30]

The doctrinal significance of *Satyam Infoway* for present purposes is twofold. On one hand, it demonstrates judicial readiness to recognise that economically significant digital interests deserve legal protection — a normatively sound impulse. On the other hand, it reveals the ad hoc character of the protection offered: the Court reached for the nearest available legal tool (passing off) without addressing whether domain names constitute property in a more fundamental sense, and without articulating any principle that would guide the treatment of the next novel digital interest to come before the courts.[31]

The consequence of this ad hoc approach is that the protection of domain names in Indian law is fragile and doctrinally incomplete. Passing off protects against misrepresentation causing damage to goodwill; it does not protect against all interferences with a domain name interest. A domain name holder who suffers economic loss through wrongful transfer, unauthorised modification, or expropriation has no clear property law remedy, because no court has held that the domain name is property — only that certain uses of similar names are tortious.

B. Data and Databases: Copyright Without Property

The legal treatment of data and databases in Indian law illustrates a different form of doctrinal incompleteness: the existence of some legal protection without the full incidents of property. Under Section 2(o) of the Copyright Act 1957, the definition of 'literary work' explicitly includes 'computer programmes, tables and compilations including computer data bases'.[32] Copyright therefore subsists in original databases as literary works, and the copyright holder enjoys the full bundle of exclusive rights enumerated in Section 14 of the Act.

The Supreme Court's decision in *Eastern Book Company v D B Modak*,[33] however, introduced an important qualification: copyright in a compilation subsists only where the selection or arrangement reflects a 'modicum of creativity' — a threshold imported from the comparative jurisprudence of the United States Supreme Court. Raw data, however laboriously compiled, is not protected if its selection

[27] *Rediff Communication Ltd v Cyberbooth & Anr* AIR 2000 Bom 27.

[28] *Satyam Infoway Ltd v Sifynet Solutions Pvt Ltd* (2004) 6 SCC 145.

[29] ibid (the Court observing, by analogy to trade name protection, that domain names can serve a business identification function equivalent to trade names and that goodwill may attach to a domain name as it does to a trade name).

[30] ibid (the Court grounding domain name protection in the law of passing off and analogising domain names to trade names for the purpose of determining whether misrepresentation had occurred, without characterising the domain name as property per se).

[31] See the discussion in *Satyam Infoway* (n 24) [15]: the Court clarified that the trade mark law and the law of passing off have no direct application to domain names but may be applied by analogy — a formulation that reveals the court's uncertainty about the primary doctrinal category.

[32] Copyright Act 1957, s 2(o) (n 20). Note that the copyright subsists in the original selection and arrangement of the compilation, not in the underlying data as such: see *Eastern Book Company v D B Modak* (2008) 1 SCC 1, where the Supreme Court applied a 'modicum of creativity' standard to determine subsistence of copyright in a compilation.

[33] *Eastern Book Company v D B Modak* (2008) 1 SCC 1.

and arrangement are entirely mechanical. This means that the most commercially valuable kind of dataset — a comprehensive, systematically collected body of data representing a significant capital investment — may attract no copyright protection precisely because its completeness (a virtue from the perspective of commercial utility) forecloses the selective arrangement that copyright requires.

The Digital Personal Data Protection Act 2023 creates an extensive regulatory framework for personal data, imposing obligations on Data Fiduciaries and creating rights for Data Principals.[34] However, the Act is a regulatory instrument, not a property statute. It does not vest proprietary rights in personal data in the individual; rather, it creates governance obligations in those who process personal data. The Information Technology Act 2000 similarly provides a functional definition of 'data'[35] and remedial provisions for unauthorized access,[36] but does not create property rights in data as such. Indian law, therefore recognizes copyright property in original compilations but lacks any principled framework for addressing claims to property in raw data — a gap of increasing commercial significance as India's digital economy grows.

C. Cryptocurrency: Attachment Without Recognition

The legal status of cryptocurrency in India has been shaped primarily by regulatory conflict rather than property law adjudication. The Reserve Bank of India, by circular dated 6 April 2018, directed entities regulated by it to cease providing banking services to persons dealing in virtual currencies.[37] This was challenged before the Supreme Court by the Internet and Mobile Association of India, which contended that the circular was unconstitutional and disproportionate.

In *Internet and Mobile Association of India v Reserve Bank of India*,[38] the Supreme Court set aside the circular, holding it to be disproportionate. The Court found that the RBI had not demonstrated any actual or potential harm to regulated entities from the provision of banking services to cryptocurrency businesses, and that the sweeping prohibition failed the proportionality test accordingly.[39][40]

Crucially for present purposes, the Court in *IMAI v RBI* did not hold that cryptocurrency is property under Indian law. The judgment was decided entirely on the ground of proportionality within the RBI's regulatory powers; the property law question was neither raised

[34]Digital Personal Data Protection Act 2023 (India), s 2(n) (defining 'personal data' as any data about an individual who is identifiable by or in relation to such data); the Act establishes obligations for Data Fiduciaries (ss 8–11) but does not create property rights in personal data as such.

[35]Information Technology Act 2000, s 2(1)(o) (defining 'data' as a 'representation of information, knowledge, facts, concepts or instructions which are being prepared or have been prepared in a formalised manner, and is intended to be processed, is being processed or has been processed in a computer system or computer network'). This is a functional, not proprietary, definition.

[36]Information Technology Act 2000 (India), s 43A (providing compensation for body corporates that fail to implement and maintain reasonable security practices in relation to sensitive personal data or information).

[37]The RBI circular dated 6 April 2018 (RBI/2017-18/154) directed all entities regulated by the RBI to cease providing services to persons or entities dealing in virtual currencies, or to any exchanges or intermediaries.

[38]*Internet and Mobile Association of India v Reserve Bank of India* (2020) 10 SCC 274.

[39]*IMAI v RBI* (n 36) (the Court examining whether the RBI circular was a proportionate exercise of the Bank's regulatory powers and whether regulated entities had suffered harm sufficient to justify the prohibition).

[40]ibid (the Court finding that the RBI had not demonstrated any harm, actual or potential, to regulated entities from continuing to provide banking services to cryptocurrency-related businesses, and holding the circular disproportionate on this ground).

in the terms of argument nor answered in the terms of the decision.[41] This creates a significant doctrinal void: the prohibition on banking services to crypto businesses has been removed, but the civil law status of cryptocurrency holdings remains undetermined.

In the enforcement context, the Enforcement Directorate has proceeded on the assumption that cryptocurrency constitutes attachable property under the Prevention of Money Laundering Act 2002 — an assumption illustrated by attachment proceedings against major cryptocurrency exchanges.[42] These proceedings assume, without explicitly deciding, that cryptocurrency is 'property' for the purpose of the proceeds-of-crime framework. However, regulatory and enforcement treatment does not constitute property law recognition: as the Merrill-Smith framework makes clear, property rights bind the world only when they are legally recognised in a form that gives the world notice of their existence and content.

The contrast with the approach adopted in English law is instructive. The UK Jurisdiction Taskforce, in its 2019 Legal Statement on Cryptoassets and Smart Contracts, concluded that cryptoassets satisfy the criteria for property under English law, relying primarily on Lord Wilberforce's test from *Ainsworth*.[43] The Law Commission of England and Wales, in its 2023 Report on Digital Assets, went further, recommending recognition of a third category of personal property, beyond choses in possession and choses in action, specifically designed to accommodate digital assets, including cryptocurrency and NFTs.[44] India has no comparable institutional analysis, and no comparable recommendation has been forthcoming from the Law Commission of India.

D. NFTs and Virtual Real Estate: The Pre-Legal Domain

Non-fungible tokens (NFTs) and virtual real estate represent the frontier of the emergent property problem. An NFT is a unique cryptographic token recorded on a blockchain, associated with a specific digital or physical asset. It is technically non-fungible — no two NFTs are identical — and ownership is controlled through the associated private key. The ownership of an NFT does not, however, confer any legal rights in the underlying asset by operation of law: whether the NFT holder acquires copyright, a licence, or merely a technical right to control the token depends entirely on the terms of the smart contract or any associated legal agreement, not on any general rule of property law.

Indian courts have not had occasion to adjudicate the property status of NFTs in any reported decision as of this writing. This is not merely an evidentiary gap; it reflects the deeper problem identified in this paper. In the absence of a principled *numerus clausus* framework, Indian law has no mechanism for evaluating whether NFTs satisfy the requirements for property recognition or for determining what legal incidents should attach to them if they do. The result is a regulatory vacuum in which significant

[41]The judgment explicitly did not address whether cryptocurrency is property under Indian law: ibid. The Court's analysis was confined to the RBI's regulatory powers under the Reserve Bank of India Act 1934 and the proportionality of the circular, leaving the civil property law status of cryptocurrency holdings undetermined.

[42]See, for instance, the Enforcement Directorate's attachment proceedings against Zanmai Labs Pvt Ltd (operating the WazirX exchange) under the Prevention of Money Laundering Act 2002 in 2022–2023, which proceeded on the assumption that cryptocurrency constitutes attachable property under s 2(1)(u) PMLA — an assumption that remains judicially untested at the level of a final adjudication by the Supreme Court or a High Court.

[43]UK Jurisdiction Taskforce, *Legal Statement on Cryptoassets and Smart Contracts* (LawTech Delivery Panel, November 2019) [48]–[58] (concluding that cryptoassets satisfy the criteria for property under English law and are capable of being owned).

[44]Law Commission of England and Wales, *Digital Assets* (Law Com No 412, 2023) [4.2]–[4.16] (recommending recognition of a third category of personal property — beyond choses in possession and choses in action — to accommodate digital assets including cryptocurrency and NFTs).

commercial transactions occur in an entirely pre-legal space: buyers and sellers of NFTs acquire technical entitlements with no supporting legal framework.

Virtual real estate (digital land parcels in blockchain-based virtual worlds such as Decentraland or The Sandbox) presents an even more acute version of this problem. The 'ownership' of a virtual parcel is represented as an NFT and enforced entirely within the software architecture of the relevant platform. It has no existence independent of the platform. If the platform ceases to operate, the property right evaporates. This is precisely the feature that fails Lord Wilberforce's requirement of 'permanence or stability' — a failure that is constitutive of the interest, not contingent on any particular failure of enforcement.

E. Carbon Credits: Regulatory Property in Formation

Carbon credits occupy an intermediate position in the taxonomy of novel property interests. The Energy Conservation (Amendment) Act 2022 introduced Section 14A into the Energy Conservation Act 2001, empowering the Central Government to establish a carbon credit trading scheme and designating the Bureau of Energy Efficiency as the administrator of the Indian Carbon Market.[45] The Carbon Credit Trading Scheme, notified in June 2023, provides for the issuance, registration, and trading of carbon credits as instruments.[46]

Carbon credits are therefore legislatively recognised instruments — they have a legal basis, a regulatory administrator, and a trading framework. However, the Energy Conservation Act does not address the property law incidents of carbon credit holdings: whether a creditor can take security over carbon credits, whether they pass on insolvency, whether they are subject to attachment in execution of a civil judgment, and what happens to them on transfer are questions that the Act leaves unanswered. The recognition of carbon credits as regulatory instruments has raced ahead of their recognition as property, creating a gap that the *numerus clausus* framework is well-suited to address.

F. The Pattern of Doctrinal Incoherence

The survey in this Part reveals a consistent pattern. Indian courts and regulators confront novel property claims and respond by reaching for the nearest available doctrinal tool — passing off for domain names, copyright for databases, proportionality review for cryptocurrency, regulatory attachment for enforcement purposes — without asking whether the underlying interest is property and, if so, what kind of property. Each of these responses is individually defensible; collectively, they constitute what this paper terms 'unprincipled pluralism': a multiplication of inconsistent doctrinal treatments of structurally similar interests, generating precisely the information-cost externalities that the *numerus clausus* principle is designed to prevent.[47]

The domain name holder cannot predict whether her interest will be treated as property or as a basis for a passing-off action. The database developer does not know whether she can take security over her compilation. The cryptocurrency investor cannot

[45]Energy Conservation (Amendment) Act 2022 (India), introducing s 14A into the Energy Conservation Act 2001, empowering the Central Government to specify a carbon credit trading scheme and the Bureau of Energy Efficiency as the administrator of the Indian Carbon Market.

[46]Bureau of Energy Efficiency (Ministry of Power, Government of India), *Carbon Credit Trading Scheme* (Gazette Notification, June 2023), framed under s 14A of the Energy Conservation Act 2001 as amended.

[47]The phrase 'unprincipled pluralism' is used here to describe a judicial practice of resolving property-adjacent claims by selecting, case-by-case, whichever legal tool (passing off, conversion, unjust enrichment, regulatory attachment) is available, without theorising a general account of what makes the underlying interest property. The consequence is doctrinal fragmentation of precisely the kind that Merrill & Smith identify as the inevitable result of abandoning the numerus clausus framework: Merrill & Smith, 'Numerus Clausus' (n 1) 62–68.

predict whether her holdings will be treated as property in civil proceedings or only as attachable assets in enforcement proceedings. The legal uncertainty is not merely academic: it affects investment decisions, financing arrangements, and the governance of commercial relationships. This is the material cost of the theoretical gap that this paper seeks to address.

V. THE CASE FOR AN EXPLICIT NUMERUS CLAUSUS FRAMEWORK IN INDIAN LAW

A. The Information-Cost Argument

The central argument for an explicit *numerus clausus* framework in Indian property law is that the information costs of the alternative are borne disproportionately by third parties who have no voice in the process of ad hoc property creation. When a court in *Satyam Infoway* recognises domain names as quasi-property interests through passing off doctrine, it does so in a single case, with a single set of parties, without systematically notifying the universe of persons who might subsequently acquire, lend against, or otherwise deal with domain names that a new quasi-property form has been judicially created.[48] The regime of protection that results is functionally incomplete and commercially uncertain.

The information-cost rationale is particularly acute in the Indian context. India's large informal economy, its evolving title registration systems for tangible property, and the information asymmetries that characterise many segments of commercial life all amplify the costs of investigating idiosyncratic property claims. The social costs of unprincipled property pluralism are not distributed uniformly: they fall most heavily on those with the least capacity to conduct sophisticated legal due diligence. A principled *numerus clausus* framework would reduce these costs by providing clear, predictable categories of recognised property interests that market participants can learn and apply.

B. The Constitutional Argument

There is a further, specifically Indian argument for explicit *numerus clausus* reasoning. Article 300A guarantees that no person shall be deprived of 'property' without the authority of law.[49] This guarantee is both facilitative and constraining: it protects recognised property interests against deprivation, but it also requires that 'property' be defined somewhere in the legal order before the guarantee can operate. The absence of a principled framework for recognising novel property interests is therefore not merely a matter of private law architecture; it creates a constitutional lacuna. Property interests that are not legally recognised cannot attract the protection of Article 300A, which means that holders of commercially significant digital interests may be deprived of those interests by state action without any constitutional remedy.

The constitutional imperative thus reinforces the common law *numerus clausus* argument. The forms of property must be clearly defined — either by statute or by authoritative judicial decision — before they can attract constitutional protection. This is a systemic argument for developing an explicit account of which digital interests qualify as property and which do not, and for doing so through a principled framework rather than on an ad hoc basis.

C. The Legislative Supremacy Argument

Merrill and Smith argue that new property forms should, in the first instance, emerge from legislative rather than judicial action.[50] Their argument is that legislatures are better positioned than courts to provide the systemic notice that the in rem bindingness of property rights demands: legislative action is publicly visible, accompanied by explanatory memoranda and parliamentary debates that inform third parties about the new right, and subject to

[48]Merrill & Smith, 'Numerus Clausus' (n 1) 3–8.

[49]Constitution of India, art 300A (n 15).

[50]Merrill & Smith, 'Numerus Clausus' (n 1) 62–68.

democratic deliberation about whether the social costs of recognising the new form are justified by its benefits.

In the Indian constitutional context, this argument has particular force. The Parliament and state legislatures have historically been the primary architects of property law in India — the TPA, the Registration Act, the IP statutes, and the Land Acquisition Act being among the most significant examples. The extension of property law to accommodate digital assets is a task of precisely the kind that belongs, in the first instance, to Parliament: it involves value choices about which interests deserve legal protection, systemic design questions about the incidents of the new property forms, and institutional questions about registration, enforcement, and priority that courts are poorly equipped to resolve on a case-by-case basis.

This is not to say that courts should be passive in the face of novel property claims. The *numerus clausus* principle does not require judicial inaction; it requires judicial clarity about the basis and limits of any recognition that courts do offer. Courts adjudicating novel property claims should make explicit whether they are: (i) recognising a new property form as such; (ii) extending an existing property form by analogy; or (iii) providing a tortious or equitable remedy for an injury to a commercial interest that falls short of property. Each of these responses is legitimate, but each has different implications for third parties, and conflating them — as Indian courts have done in the domain name and cryptocurrency contexts — generates precisely the doctrinal incoherence that the *numerus clausus* is designed to prevent.[51]

VI. THE DIGITAL PROPERTY ELIGIBILITY MATRIX: AN ORIGINAL TAXONOMIC FRAMEWORK

A. The Four Criteria

This paper proposes the Digital Property Eligibility Matrix (DPEM) as an original doctrinal instrument for evaluating whether a novel interest satisfies the requirements for recognition as a property right in Indian law. The DPEM comprises four criteria, each of which is derived from the theoretical framework developed in Parts II and V above and calibrated to the constitutional and statutory architecture of Indian property law.[52]

Criterion 1: Excludability. The putative property interest must be capable of effective exclusion: the alleged owner must be able, in principle, to exclude all others from the resource to which the interest relates. This criterion imports the economic insight that property rights are a response to scarcity and the legal insight that the right to exclude is the master concept of property.[53] The excludability criterion distinguishes property from public goods (which are non-excludable by nature) and from interests that depend on the consent of others for their realisation. Note that 'effective' excludability is a legal concept, not merely a technical one: a right that is exclusory only through technological means (such as an NFT smart contract)

[51]For a comparative perspective, note that the UK Law Commission's 2023 report on digital assets (n 43) expressly recommends common law development in the first instance, reserving legislation for specific gaps — a contrast to the argument advanced here that the Indian constitutional and statutory context makes a legislative approach more appropriate.

[52]The four criteria of the Digital Property Eligibility Matrix are derived from, but not identical to, the factors identified in Merrill & Smith (n 1) and supplemented by Penner's account (n 4) of the essential incidents of ownership. The matrix is calibrated specifically to the Indian constitutional and statutory context, as explained in the text.

[53]The excludability criterion draws on the economic literature on property as a response to scarcity: a resource must be susceptible of exclusion for property rights to be meaningfully assigned to it. See Harold Demsetz, 'Toward a Theory of Property Rights' (1967) 57 *American Economic Review* 347 (Papers and Proceedings).

does not satisfy the criterion unless the legal system reinforces the technological exclusion.

Criterion 2: In Rem Bindingness. The interest must bind third-party strangers — that is, persons who are not parties to any agreement creating the interest. This criterion directly implements the Merrill-Smith information-cost rationale.[54] An interest that is binding only between contracting parties is a contractual right, not a property right, and does not generate the in rem information costs that justify *numerus clausus* standardisation. The criterion requires that the interest be capable of asserting itself against a subsequent purchaser, lender, or stranger in tort — not merely against the person who agreed to the arrangement.

Criterion 3: Transmissibility. The interest must be capable of voluntary transfer, testamentary disposition, and encumbrance. As Penner observes, transmissibility is a necessary incident of property: 'a right is a property right if, and only if, it is a right that both runs with the thing and can be transferred.'[55] An interest that is personal to its holder and incapable of alienation is more accurately characterised as a personal right than a property right. Note that transmissibility should not be confused with free alienability: property rights in Indian law may be subject to restraints on alienation in specific contexts, but they must be capable of some form of transfer if they are to function as economic assets.

Criterion 4: Legal Recognition. The form of the interest must be either: (a) legislatively enacted (created or recognised by a statute of Parliament or a state legislature) or (b) authoritatively recognised by the Supreme Court or a High Court in a decision with a clear ratio decidendi establishing the interest as property.[56] This criterion gives effect to the constitutional requirement that property interests be legally defined before they can attract the protection of Article 300A, and to the Merrill-Smith argument that new property forms should emerge through visible, notice-generating processes rather than through ad hoc judicial extension. The criterion is deliberately demanding: commercial significance and technical sophistication do not substitute for legal recognition.

B. Applying the Matrix

1. Traditional Intellectual Property Rights

Patents, copyright, trademarks, geographical indications, and plant variety rights satisfy all four criteria. Excludability: each regime grants the right-holder a statutory right to prevent third parties from using the protected subject matter. In Rem Bindingness: the rights bind all persons in the world, not merely contracting parties, and are enforceable against strangers through civil and criminal remedies. Transmissibility: each regime expressly provides for assignment and licensing. Legal Recognition: each is created by an Act of Parliament. These interests represent established property in Indian law and present no *numerus clausus* difficulty. They are the benchmark against which novel interests should be measured.

[54]The in rem criterion directly implements the Merrill & Smith numerus clausus rationale: unless an interest binds third-party strangers, it does not generate the information-cost externalities that the numerus clausus principle is designed to manage, and the case for restricting its form is correspondingly weaker. The criterion thus serves a dual function — it identifies genuine property candidates and explains why the numerus clausus applies to them.

[55]Transmissibility as a necessary incident of property is the basis on which Penner (n 4) distinguishes property from personal rights: 'a right is a property right if, and only if, it is a right that both runs with the thing and can be transferred'.

[56]The legal recognition criterion reflects the constitutional imperative in art 300A: property interests derive their legal force from legislative enactment or authoritative judicial recognition, not from commercial significance or technical architecture. A technically sophisticated system of exclusion (as in an NFT smart contract) is not a property right merely because it is effective; it must be legally recognised.

2. Domain Names

Domain names present a more nuanced picture. On Excludability: *Satyam Infoway* and its predecessors establish that the holder of a domain name can, through passing off and related remedies, prevent others from using confusingly similar domain names. However, this protection is narrower than a property right of exclusion: it requires demonstration of goodwill, misrepresentation, and damage, and it extends only to confusingly similar uses rather than all unauthorised interference with the domain name itself. Excludability is therefore partial. On In Rem Bindingness: the protection extends beyond contracting parties — it operates against the world — but it is framed in tort rather than property law, which means its incidents are determined by the law of passing off rather than the law of property. On Transmissibility: domain names are technically transferable through ICANN processes. On Legal Recognition: there is judicial recognition of quasi-proprietary protection but no statute creating property rights in domain names as such.

The DPEM therefore classifies domain names as 'quasi-property': they satisfy the transmissibility criterion fully and the legal recognition criterion partially, but fall short on full excludability and in rem bindingness. The appropriate legislative response would be to create a statutory right in registered domain names — analogous to the registered trade mark — that provides clear in rem protection with defined incidents of transfer, security, and priority.

3. Data and Databases

The case of data and databases is the most analytically complex. On Excludability: original compilations protected by copyright carry a right to prevent copying; raw data carries no such right. On In Rem Bindingness: copyright in compilations binds the world, but there is no in rem right in raw data. The DPDPA creates regulatory obligations in relation to personal data but not property rights binding third parties. On Transmissibility: copyright in compilations is transmissible; there is no legal mechanism for the transfer of property in raw data. On Legal Recognition: copyright in original compilations is recognised by statute; property in raw data is not recognised at all.

The DPEM therefore bifurcates the data category: copyright in original databases is established property, satisfying all four criteria, but raw data as such is pre-property — it satisfies none of the criteria in the terms of a property right distinct from copyright.[57] The sui generis database right, which exists in European Union law following Directive 96/9/EC, provides a model for the legislative recognition of a separate property right in databases irrespective of originality — a right that would address the gap in Indian law that *Eastern Book Company v D B Modak* has exposed. The absence of such a right in India creates an anomaly: India's copyright law imports a creativity threshold that excludes precisely those databases most valuable for commercial and research purposes.

4. Cryptocurrency

Cryptocurrency performs well on Excludability (cryptographic control of the private key provides effective exclusion) and Transmissibility (blockchain transactions effect legally operative transfers, implicitly recognised in the enforcement proceedings discussed in Part IV above). On In Rem Bindingness: the treatment of cryptocurrency as attachable property in enforcement proceedings implies some recognition of its in rem character, but this has not been established by a binding judicial decision at the level of the Supreme Court. On Legal Recognition: the *IMAI v RBI* decision removed the prohibition on banking services but did not recognise cryptocurrency

[57] *Eastern Book Company v D B Modak* (n 32). The Court's modicum-of-creativity standard aligns with the approach under the United States's *Feist Publications v Rural Telephone Service Co* 499 US 340 (1991), which held that 'sweat of the brow' alone does not confer copyright.

as property; no statute creates or recognises cryptocurrency property rights.[58]

The DPEM therefore classifies cryptocurrency as 'emergent / contested property': it satisfies the excludability and transmissibility criteria and has partial implicit recognition, but fails the in rem bindingness criterion (as a matter of established law) and the legal recognition criterion. The trajectory of the law is clearly towards recognition — the enforcement agencies already treat cryptocurrency as an asset — and the appropriate response is legislative recognition that specifies the incidents of cryptocurrency property with the clarity that the *numerus clausus* demands.

5. NFTs

NFTs satisfy the Excludability criterion in the technical sense — the private key holder can prevent others from transferring or minting identical tokens — and the Transmissibility criterion — NFTs are technically transferable on the blockchain. However, they fail on In Rem Bindingness: the ownership of an NFT does not, as a matter of Indian law, confer any legally enforceable right against third parties independent of the smart contract. The copyright in the underlying work, for example, is not transferred by the transfer of the NFT unless there is a separate written assignment complying with Section 19 of the Copyright Act 1957.[59] The NFT holder has no in rem right; she has a contractual right against the terms of the smart contract. NFTs also fail the Legal Recognition criterion: no Indian statute or Supreme Court or High Court decision has recognised NFTs as a category of property.

The DPEM therefore classifies NFTs as 'pre-legal': they are commercially significant instruments that generate transactional complexity, but they have not crossed the threshold into property. The appropriate regulatory response is not to refuse recognition but to enact a clear framework — ideally incorporating the recommendations of the Law Commission of England and Wales on the third category of personal property,[60] adapted to the Indian constitutional context — that specifies the conditions under which digital tokens attract legally enforceable property rights.

6. Carbon Credits

Carbon credits satisfy Excludability (the registry-based system assigns credits to identifiable holders), Transmissibility (trading is the purpose of the scheme), and partial In Rem Bindingness (the regulatory framework creates rights as against other market participants and the administrator). However, the civil law incidents of carbon credit ownership — security, priority in insolvency, set-off, and attachment — are not addressed in the Energy Conservation Act 2022 or the Carbon Credit Trading Scheme.[61][62] Legal Recognition is therefore partial: the instrument is legislatively created, but its property law incidents are unspecified.

The DPEM classifies carbon credits as 'regulatory-property in formation': the legislative foundation for property recognition is present, but the completion of the proprietary incidents requires supplementary legislation or authoritative judicial decision. The most appropriate institutional vehicle would be an amendment to the Energy Conservation Act specifying that carbon credits are personal property of

[58] The IMAI v RBI proportionality analysis (n 36) implicitly assumed that cryptocurrency represents a legitimate economic interest of the petitioners capable of attracting regulatory harm — an assumption that is difficult to sustain without attributing some form of protected property status to virtual currency holdings.

the holder with defined incidents of transfer, security, and priority.

7. Virtual Real Estate

Virtual real estate — NFT-based land parcels in blockchain metaverse platforms — fails the DPEM analysis at multiple levels. Excludability is platform-dependent: the right to exclude others from a virtual parcel exists only within the platform's software environment and is entirely contingent on the platform's continued operation. In Rem Bindingness is absent: there is no legal order that enforces the 'property right' against strangers; the right is entirely contractual and platform-specific. Transmissibility is technically present but platform-dependent. Legal Recognition is absent entirely.

More fundamentally, virtual real estate fails Lord Wilberforce's requirement of 'permanence or stability': the interest evaporates if the platform ceases to operate, is updated to remove the relevant feature, or is restructured commercially. This platform-dependency problem is constitutive, not contingent: a virtual real estate interest cannot, by its nature, survive the platform that generates it. The DPEM accordingly classifies virtual real estate as 'pre-legal': it does not satisfy the criteria for property recognition and is unlikely to do so without a fundamental redesign of the platforms involved to create legally independent property interests.

C. The Taxonomy in Summary

The results of the DPEM analysis are summarised in the following table. The categories are arrayed from the most fully established to the most legally nascent, providing courts and legislators with a reference point for evaluating novel property claims.

Category	Excludability	In Rem	Transmissibility	Legal Recognition	Proposed Status
Traditional IP Rights (Patents, Copyright, Trade Marks, GIs)	✓	✓	✓	true	**Established Property**
Domain Names	**Partial**	**Partial**	✓	Judicial Only	**Quasi-Property**
Databases / Raw Data	**Partial**	✗	**Limited**	Limited (s 2(o) CA)	**Pre-Property (partial copyright)**
Cryptocurrency	✓	**Partial**	✓	Contested	**Emergent / Contested**
NFTs	✓	✗	✓	false	**Pre-Legal**
Carbon Credits	✓	**Partial**	✓	Regulatory Only	**Regulatory-Property in Formation**
Virtual Real Estate	**Platform Only**	✗	**Platform Only**	false	**Pre-Legal**

Table 1: Digital Property Eligibility Matrix — Application to Emergent Property Interests in Indian Law

A critical observation emerges from this taxonomy: the most commercially significant emergent property

interests — cryptocurrency and carbon credits — are those closest to satisfying the full set of DPEM criteria. Both have legislative or quasi-legislative foundations (at least partially), both are excludable and transmissible, and both have partial in rem recognition from enforcement and regulatory proceedings. They are the most appropriate candidates for immediate legislative attention, and the framework developed in this paper provides the criteria against which the adequacy of any legislative response should be measured.

VII. CONCLUSION

The argument of this paper can be stated simply. Indian property law confronts a rapidly expanding universe of novel digital interests — domain names, databases, cryptocurrency, NFTs, carbon credits, and virtual real estate — without any principled theoretical framework for evaluating whether and how those interests should be recognised as property. The courts of India have responded with creativity and commercial intelligence, but without the doctrinal architecture necessary to ensure consistency, predictability, and systemic coherence. The information costs of this unprincipled pluralism are real and material, and they are borne disproportionately by those with the least capacity to investigate complex legal questions.

The theoretical solution to this problem already exists in the property law scholarship of the common law world. The *numerus clausus* principle — the principle that property rights exist only in legally recognised, standardised forms — provides precisely the framework that Indian property law needs. Merrill and Smith's articulation of the information-cost rationale for the *numerus clausus* translates directly into the Indian context, and the implicit architecture of the Transfer of Property Act 1882 and the intellectual property statutes already embodies the principle, albeit untheorised.

This paper has made three contributions to the development of the principle in Indian law. It has demonstrated that the existing framework already operates on a *numerus clausus* basis. It has identified the doctrinal incoherence generated by the absence of an explicit framework. And it has proposed the Digital Property Eligibility Matrix — the first systematic taxonomy of novel property claims in Indian law — as a practical instrument for applying the *numerus clausus* principle to the digital economy.

The DPEM identifies two categories of immediate legislative priority: cryptocurrency, which satisfies the excludability and transmissibility criteria and is de facto treated as attachable property in enforcement proceedings, but lacks the in rem recognition and formal legal recognition that would complete its property status; and carbon credits, which have legislative foundations and a trading infrastructure, but require statutory specification of their civil law property incidents. For both, the appropriate legislative vehicle is a short, precise amendment to the relevant statutes — the Reserve Bank of India Act and/or a bespoke Digital Assets Act for cryptocurrency, and the Energy Conservation Act for carbon credits — specifying that the instruments are personal property with defined incidents of transfer, security, and priority.

For the remaining categories — domain names, databases, NFTs, and virtual real estate — the appropriate responses differ. Domain names require statutory recognition modelled on the registered trade mark framework. Databases require a sui generis right modelled on the EU Directive 96/9/EC framework. NFTs require the creation of a third category of personal property, as the Law Commission of England and Wales has recommended, adapted to the Indian constitutional context. Virtual real estate, until the platform-dependency problem is resolved, cannot satisfy the requirements of property recognition and should not be treated as such by courts.

The *numerus clausus* principle, read together with Article 300A of the Constitution of India, demands that the forms of property be defined clearly enough to attract constitutional protection and generate the systemic notice that in rem rights require. The digital economy will not wait for the law to catch up; but the

law must catch up in a principled way. This paper has attempted to provide the doctrinal architecture for doing so.[63]

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[63]Merrill & Smith, 'Numerus Clausus' (n 1) 68–70.

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PHARMACEUTICAL PATENTABILITY IN INDIA: A CRITICAL ANALYSIS WITH REFERENCE TO PUBLIC ACCESS TO MEDICINE

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ABSTRACT

India's pharmaceutical industry holds a place in global public health that is difficult to overstate. As the single largest supplier of generic medicines by volume in the world, the country's ability to produce affordable drugs has, quite literally, kept millions of people alive — from HIV patients in sub-Saharan Africa to tuberculosis sufferers across South and South-East Asia. That position, however, has never been legally secure. Since India amended its Patents Act in 2005 to comply with the TRIPS Agreement, a quiet but consequential legal battle has been fought over just how strong pharmaceutical patent protection ought to be. Section 3(d) of the Patents Act — a provision with no real parallel anywhere else in the world — sits at the centre of that battle. It bars patents on new forms of known drug molecules unless they show meaningfully better therapeutic results, directly targeting the industry practice of 'evergreening.' This paper examines India's pharmaceutical patentability framework from the ground up: its colonial roots, the post-independence legislative design, the landmark Novartis AG v. Union of India judgment of 2013, India's compulsory licensing experience, and the ongoing pressures from the TRIPS-plus agenda in international trade negotiations. The central argument is that India's framework, for all its imperfections, represents a defensible and important balance — one that other developing nations would do well to study.

Keywords: *Pharmaceutical patents; TRIPS Agreement; Evergreening; Compulsory licensing; Novartis; Patents Act 1970.*

I. INTRODUCTION

Let us begin with a basic but uncomfortable question: should a company be able to charge USD 2,600 per patient per month for a cancer drug when an equivalent generic version is available for USD 200? Most people, on instinct, would say no. But that is precisely the scenario that played out in India before the Supreme Court's 2013 Novartis judgment — and it illustrates, as clearly as any case can, the fault line running through pharmaceutical patent law.

India's position in this debate is unique. It supplies roughly 20% of global generic medicine exports by volume and provides approximately 62% of global vaccine demand.[1] Its pharmaceutical industry is not a minor player — it is the backbone of affordable healthcare for a large part of the world. At the same time, India itself remains a country where out-of-pocket health expenditure constitutes a dangerously high share of household income,[2] meaning that medicine prices are not an abstract policy concern but a matter of daily survival for hundreds of millions of people. The stakes, in other words, could not be higher.

The 2005 amendment to the Patents Act, which introduced product patents for pharmaceuticals as required by TRIPS,[3] threatened to transform this landscape fundamentally. For the first time since independence, pharmaceutical companies could patent not just the process of making a drug but the drug itself. The concern — and it was a well-founded one — was that this would enable originator companies to lock out generic competitors, drive up prices, and put medicines beyond the reach of ordinary patients. Section 3(d) was Parliament's primary

[1]Ministry of Chemicals & Fertilizers, Pharma Vision 2047 (Government of India, 2023) 12.

[2]World Health Organization, 'India: WHO Statistical Profile' (WHO, 2023); National Health Accounts Estimates for India 2019–20 (Ministry of Health and Family Welfare, 2022).

[3]Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement), Annex 1C, Marrakesh Agreement Establishing the WTO, 15 April 1994, 1869 UNTS 299, art 27(1).

response to that concern. Whether it has worked, and whether it is adequate to the challenges India now faces, is the subject of this paper.

The analysis proceeds as follows. Part II traces how India's patent regime evolved from the colonial period through the TRIPS transition. Part III breaks down the patentability framework in detail, with particular focus on Section 3(d). Part IV examines the key judicial decisions. Part V turns to compulsory licensing. Part VI situates the framework within international TRIPS flexibilities. Part VII offers a critical assessment of the framework's strengths and gaps. Part VIII concludes with recommendations.

II. HISTORICAL EVOLUTION

A. The Colonial Starting Point

It is worth remembering that India's earliest patent law was not designed with India in mind. The Patents and Designs Act of 1911 was a colonial transplant, modelled on English legislation of 1907 and serving primarily British industrial interests. It allowed full product patents on pharmaceutical substances — which meant that the development of an indigenous drug manufacturing industry was effectively foreclosed. Medicines had to be imported, typically from British and later European and American companies, at prices set to suit foreign markets rather than Indian pockets. This was not an accident; it was the design.

B. Independence and the 1970 Act: A Deliberate Choice

The post-independence generation of Indian policymakers was acutely conscious of this colonial legacy. The Ayyangar Committee, appointed in 1957 to review the patent system, produced a report in 1959 that remains one of the most thoughtful documents in Indian IP policy history.[4] Its core recommendation was straightforward: abolish product patents for food and pharmaceutical substances, and allow only process patents. The reasoning was simple — if you could patent only the method of making a drug but not the drug itself, multiple manufacturers could develop different routes to the same compound, competition would flourish, and prices would fall.

The Patents Act of 1970 enacted this vision.[5] Section 5, as it then stood, expressly prohibited product patents for medicines. The results, over the following three decades, were remarkable. Companies like Cipla, Ranbaxy, Dr. Reddy's, and Sun Pharma built world-class manufacturing capabilities and became global exporters of affordable generic drugs.[6] By the 1990s, India had earned its reputation as the 'pharmacy of the world' — a title rooted not in luck or geography but in a deliberate legislative choice made in 1970.

C. TRIPS and the Forced Transition: 1994–2005

The WTO's TRIPS Agreement, which India signed in 1994, undid much of this in one stroke. Article 27(1) required product patent protection in all fields of technology — including pharmaceuticals.[7] To be fair, India did not accept this without resistance. The TRIPS negotiations, as Drahos and Braithwaite have documented in considerable detail, were shaped heavily by the lobbying power of multinational pharmaceutical corporations, working through the US and EU trade negotiating machinery to secure maximum IP protection globally.[8] India pushed back, and secured a transitional period under Article 65(4) that deferred implementation until 1 January 2005.[9] In the meantime, a mailbox system for pharmaceutical patent applications and a framework for exclusive marketing rights were put in place.[10]

The decade between 1995 and 2005 was consequently one of intense debate. Pharmaceutical multinationals lobbied hard for strong product patents with minimal safeguards. Public health organisations — led most visibly by Médecins Sans Frontières — campaigned

[4]N Rajagopala Ayyangar, Report on the Revision of the Patents Law (Government of India, 1959) ('Ayyangar Report').

[5]Patents Act 1970 (Act No 39 of 1970) s 5 (prior to amendment in 2005).

[6]Sudip Chaudhuri, The WTO and India's Pharmaceuticals Industry: Patent Protection, TRIPS, and Developing Countries (OUP 2005) 45–68.

[8]Jayashree Watal, Intellectual Property Rights in the WTO and Developing Countries (OUP 2001) ch 3; Peter Drahos and John Braithwaite, Information Feudalism: Who Owns the Knowledge Economy? (Earthscan 2002) 200–218.

[9]TRIPS Agreement (n 2) art 65(4).

[10]TRIPS Agreement (n 2) arts 70.8 and 70.9; Patents (Amendment) Act 1999 (Act No 17 of 1999).

just as hard for robust access protections.[11] What emerged from this contestation was the Patents (Amendment) Act, 2005: a compromise, of sorts. Product patents came in, as TRIPS required. But so did Section 3(d), strengthened compulsory licensing provisions, and enhanced opposition mechanisms. Whether that compromise has held is the question this paper interrogates.

III. PATENTABILITY UNDER THE PATENTS ACT, 1970

A. The Basic Framework

At its core, Indian patent law requires the same three things as most other patent systems: novelty, inventive step, and industrial applicability. Section 2(1)(j) defines 'invention' as 'a new product or process involving an inventive step and capable of industrial application.'[12] 'Inventive step' under Section 2(1)(ja) means a technical advance over existing knowledge, or economic significance, or both, that makes the invention non-obvious to a person skilled in the relevant field.[13] And 'new invention' under Section 2(1)(l) requires that the invention has not been previously published, used, or known anywhere in the world before the filing date.[14]

These are fairly standard requirements. What makes the Indian pharmaceutical patent framework distinctive — and controversial — is not the general criteria but the specific exclusions that overlay them, most importantly Section 3(d).

B. Section 3(d): The Provision That Changed Everything

Section 3(d) is, in the words of one commentator, India's 'most creative contribution to global patent law.'[15] Inserted by the 2005 Amendment, it provides that the mere discovery of a new form of a known substance — such as a new salt, ester, polymorph, or isomer — shall not be treated as an invention unless that new form shows significantly enhanced efficacy over the known substance.[16] The Explanation goes further: it lists salts, esters, ethers, polymorphs, metabolites, pure form, particle size, isomers, complexes, and combinations as all being deemed the same substance as the original compound, unless efficacy differs significantly.[17]

Why does this matter? Because pharmaceutical evergreening — the practice of tweaking a known drug molecule just enough to obtain a new patent and extend market exclusivity — has become one of the defining strategies of the global pharmaceutical industry. Change the salt form. Switch to a different polymorph. Alter the particle size. None of these modifications typically produce any meaningful improvement for the patient; they are primarily exercises in patent portfolio management, designed to keep generic competitors off the market for additional years or decades.[18]

Section 3(d) is a direct legislative answer to that strategy. It says, in effect: if you want a patent on a modified version of a drug we already know about, you had better show us that it actually works better for patients. Not just that it has better bioavailability, or longer shelf life, or improved stability — but that it genuinely produces better therapeutic outcomes. That is a demanding standard. It is meant to be.

Scholars have noted that Parliament's deliberate choice of the word 'efficacy' — rather than the broader 'utility' — signals a specifically therapeutic, clinically-focused threshold.[19] The burden is on the applicant to demonstrate that the new form produces a meaningfully better curative effect. If that cannot be shown, the application fails — regardless of how novel the chemistry may be in an abstract sense.

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[11] Médecins Sans Frontières, 'Patents and Access to Medicines in India: Briefing Note' (MSF Access Campaign, 2005).

[12] Patents Act 1970, s 2(1)(j).

[13] Patents Act 1970, s 2(1)(ja).

[14] Patents Act 1970, s 2(1)(l).

[15] Shamnad Basheer and Prashant T Reddy, 'The "Efficacy" of Indian Patent Law: Ironing out the Creases in Section 3(d)' (2008) 5(2) SCRIPTed 232, 240.

[16] Patents Act 1970, s 3(d), as inserted by the Patents (Amendment) Act 2005 (Act No 15 of 2005) s 3.

[17] Patents Act 1970, s 3(d) Explanation.

[18] Anitha Ramanna, 'Policy Implications of India's Patent Reforms' (2002) 37(36) Economic and Political Weekly 3601, 3605.

C. Sections 3(b), 3(e), and 3(i): The Supporting Framework

Section 3(d) does not operate in isolation. Several other exclusions under Section 3 collectively shape the pharmaceutical patent landscape. Section 3(b) bars inventions whose exploitation would be contrary to public order, morality, or human health. Section 3(e) excludes substances obtained by mere admixture — ruling out patents on simple combinations of known active compounds where the only 'innovation' is putting two things together.[20] Section 3(i) excludes methods of treatment of human beings or animals from patentability altogether, ensuring that therapeutic techniques remain in the public domain. Together, these provisions reflect a legislative design oriented around the primacy of public welfare over private exclusivity in the pharmaceutical domain.

D. Opposition Mechanisms: The Gatekeeping Role

One of the underappreciated strengths of the 2005 Amendment is the robustness of the opposition mechanisms it introduced. Section 25(1) allows any person — not just a party with a direct commercial interest — to oppose a patent application before it is granted, on grounds including Section 3(d) violations, lack of novelty, and absence of inventive step. Section 25(2) provides for post-grant opposition, which must be filed within twelve months of publication of grant.[21]

These are not paper rights. The pre-grant opposition filed by the Cancer Patients Aid Association against Novartis's imatinib mesylate application in 2006 before the Chennai Patent Office[22] — which succeeded, and triggered the decade-long litigation culminating in the Supreme Court's judgment — is the most celebrated example. But there have been many others: post-grant oppositions have resulted in the revocation of patents on antiretrovirals including tenofovir, lopinavir, and ritonavir, and on cancer drugs including dasatinib. The opposition system, in practice, has served as a meaningful and accessible quality control mechanism for the pharmaceutical patent register.

IV. JUDICIAL INTERPRETATION

A. Novartis AG v. Union of India (2013): The Case That Defined the Debate

There are judgments that decide a case, and there are judgments that define an era. The Supreme Court's 2013 ruling in Novartis AG v. Union of India[23] falls firmly in the second category. It is, without exaggeration, one of the most important decisions on pharmaceutical patent law delivered anywhere in the world in the past two decades — and its implications extend far beyond India's borders.

The facts are worth setting out in some detail, because they illustrate the stakes precisely.[24] Novartis AG had a patent — the so-called Zimmermann patent, dating from 1993 — on imatinib, the active molecule in the groundbreaking cancer drug Gleevec/Glivec. That patent covered imatinib in free base form and as a number of salts including imatinib mesylate. After 2005, Novartis sought a fresh patent on a specific crystalline form of imatinib mesylate — the beta-crystalline polymorph — on the basis that it showed better bioavailability than the compound in the original patent. Novartis priced Gleevec at approximately USD 2,600 per patient per month in India. Indian generic manufacturers, who had been producing imatinib under the previous process-patent regime, offered equivalent products at roughly USD 200 per month.

The legal question was whether the beta-crystalline form of imatinib mesylate was a patentable 'new form' under Section 3(d) — or whether it was simply a modification of a known substance without significantly enhanced efficacy. The Supreme Court held that it was the latter. In doing so, it delivered a ruling of extraordinary doctrinal and practical consequence.

The Court's key interpretive holding was on the meaning of 'efficacy' in Section 3(d).[25] Novartis had

[20]Patents Act 1970, ss 3(b), 3(e), 3(i).

[21]Patents Act 1970, ss 25(1) and 25(2).

[22]The Cancer Patients Aid Association filed the pre-grant opposition before the Assistant Controller of Patents and Designs, Chennai, in 2006. The opposition was allowed, precipitating Novartis's writ petition before the Madras High Court and ultimately the Supreme Court litigation.

[23]Novartis AG v Union of India & Others (2013) 6 SCC 1 (SC) ('Novartis').

[24]Novartis (n 21) [2]–[10].

[25]Novartis (n 21) [181]–[190].

argued that improved bioavailability — the fact that the beta-crystalline form was absorbed more readily into the bloodstream — demonstrated enhanced efficacy. The Court rejected this, firmly and unambiguously: 'efficacy' in Section 3(d) means 'therapeutic efficacy' — the capacity of the drug to produce a curative, healing effect in the patient. Better bioavailability is a pharmacokinetic property, not a therapeutic one. It does not satisfy the Section 3(d) test unless it translates into a demonstrated improvement in clinical outcomes. For the millions of cancer patients who depend on affordable generic imatinib, this was not merely a doctrinal point — it was the difference between treatment and no treatment.

The Court also engaged carefully with the legislative history of Section 3(d),[26] tracing the Parliamentary debates of 2005 and concluding that the provision was enacted with a clear and specific purpose: to prevent pharmaceutical evergreening and protect the supply of affordable medicines. This purposive approach lent the judgment a robustness that has made it difficult to dislodge. On the TRIPS compatibility question,[27] the Court held — correctly, in this writer's view — that Article 27(1) of TRIPS does not impose a uniform global definition of novelty or inventive step; it sets minimum standards, leaving member states a genuine margin of discretion in how they define and apply patentability criteria.[28] Section 3(d) is, on this analysis, a legitimate exercise of that discretion.

Not everyone agrees with this assessment. Critics argue that the therapeutic efficacy standard, as interpreted by the Court, creates a zone of legal unpredictability that may deter investment in genuine pharmaceutical innovation — particularly in drug reformulation projects that deliver real, if modest, clinical advantages.[29] There is something to this. A new polymorph that significantly reduces adverse side effects, or a salt form that enables once-daily rather than twice-daily dosing, may carry genuine patient benefit while struggling to satisfy the Novartis therapeutic efficacy test. The Court's formulation, one might argue, is a blunt instrument applied to a nuanced problem. That said, the alternative — allowing incremental modifications to pass through the Section 3(d) filter without clinical justification — would effectively permit the evergreening the provision was designed to prevent. The imprecision of the standard is a real problem, but it is a problem that legislative clarification, rather than judicial dilution, should address.

B. F. Hoffmann-La Roche Ltd. v. Cipla Ltd. (2009)

The Roche v. Cipla case, decided by the Delhi High Court's Division Bench, added an important dimension to the pharmaceutical patent landscape: the explicit incorporation of public health considerations into the intellectual property enforcement calculus.[30] Roche sought an interlocutory injunction to stop Cipla selling generic erlotinib (Tarceva), a lung cancer drug, pending the outcome of a patent infringement suit. The Court declined. The balance of convenience, it held, did not favour shutting off the supply of an affordable cancer treatment to patients who could not afford the originator price. This was not a finding on the validity of the patent; it was a finding about remedy. But it mattered enormously in practical terms — and it signalled that Indian courts were prepared to weigh the downstream human consequences of IP enforcement decisions, not merely the abstract property rights of patent holders.

C. Bristol-Myers Squibb v. Natco Pharma (2013)

Less celebrated than Novartis but equally instructive is the IPAB's 2013 decision revoking Bristol-Myers Squibb's patent on dasatinib (Sprycel) in post-grant opposition proceedings brought by Natco Pharma.[31] Dasatinib is another targeted cancer therapy — and another example of a drug whose patent application failed the Section 3(d) test. The IPAB found that the compound, as a modification of a known substance, could not demonstrate significantly enhanced therapeutic efficacy. The revocation cleared the path for generic production and affordable supply. The

[26]Novartis (n 21) [91]–[101].

[27]Novartis (n 21) [163]–[167].

[28]Carlos M Correa, Trade Related Aspects of Intellectual Property Rights: A Commentary on the TRIPS Agreement (OUP 2007) 271–284.

[29]Kristina M Lybecker, 'Pharmaceutical Patents and the Public Interest in India' (2014) 17(5–6) Journal of World Intellectual Property 243, 255–259.

[30]F Hoffmann-La Roche Ltd v Cipla Ltd 148 (2008) DLT 598 (Delhi HC, Division Bench 2009).

[31]Bristol-Myers Squibb Holdings Ireland Unlimited Company v Natco Pharma Ltd OA/35/2012/PT/CH (IPAB 2013).

case demonstrates, if further demonstration were needed, that Section 3(d) is not merely aspirational language — it has real teeth, and it can be applied effectively through the post-grant opposition mechanism.

V. COMPULSORY LICENSING

A. The Legal Framework

Compulsory licensing — allowing a government to authorise a third party to manufacture a patented product without the patent holder's consent — is perhaps the most politically charged TRIPS flexibility available to developing countries. India's framework, under Sections 84 through 92A of the Patents Act, is comprehensive at least on paper.

Section 84 is the primary route. Any interested person may apply to the Controller of Patents for a compulsory licence three years after a patent is granted, on three grounds: that the reasonable requirements of the public have not been satisfied; that the patented invention is not available at a reasonably affordable price; or that the invention is not being worked in India.[32] The Controller must consider factors including the nature of the invention, what steps the patent holder has taken to exploit it, and the applicant's capacity to work it.[33] Any licence granted must be non-exclusive, non-assignable, predominantly for domestic supply, and subject to adequate remuneration to the patent holder.[34] Section 92 provides for emergency licences without the prior negotiation requirement. Section 92A — inserted by the 2005 Amendment — enables export of generics to countries without manufacturing capacity.[35]

B. The Natco-Bayer Decision: Promise and Precedent

India's first compulsory licence, granted in March 2012 to Natco Pharma for sorafenib tosylate (Nexavar, used to treat kidney and liver cancer), was a landmark moment.[36] The numbers told the story starkly: Bayer priced Nexavar at INR 2,84,428 per patient per month. Natco proposed to supply it at INR 8,880 per month — a reduction of approximately 97%.[37] The Controller found all three Section 84(1) grounds satisfied: the drug was not available at an affordable price, Bayer had not manufactured it in India, and its import volumes fell far short of meeting patient need. Bayer appealed, vigorously, all the way to the Supreme Court. It lost at every stage.[38]

The significance of the decision was not just domestic. Brazil, Thailand, Malaysia, and other developing countries cited it as a model. It showed that the compulsory licensing mechanism, properly invoked, could withstand legal challenge even against a large multinational pharmaceutical company with deep resources and a strong interest in defeating the precedent.

C. Why Has Compulsory Licensing Been Used So Rarely?

And yet — here is the uncomfortable reality — the Natco-Bayer case remains, as of the time of writing, the only compulsory licence actually granted under Section 84. Subsequent applications for dasatinib and saxagliptin were rejected. An application for trastuzumab (Herceptin, a breast cancer drug) effectively collapsed.[39][40] Why? The mechanism exists. The law is clear. The need is obvious. So what is stopping it from being used?

Several factors are at work. The three-year waiting period from patent grant under Section 84(1) creates

[32]Patents Act 1970, s 84(1).

[33]Patents Act 1970, s 84(6).

[34]Patents Act 1970, s 90(1).

[35]Patents Act 1970, ss 92 and 92A; WTO General Council Decision WT/L/540 (30 August 2003).

[36]Natco Pharma Ltd v Bayer Corporation, Compulsory Licence Application No 1 of 2011 (Controller of Patents, 9 March 2012).

[37]Natco Pharma Ltd v Bayer Corporation (n 30): sorafenib tosylate priced at INR 2,84,428/month by Bayer vs INR 8,880/month proposed by Natco.

[38]Bayer Corporation v Union of India WP No 1323 of 2013 (Bombay HC, 15 July 2014), affirmed in SLP (C) No 30145 of 2014 (SC).

[39]KM Gopakumar, 'Product Patents and Access to Medicines in India: A Critical Review' (2010) 1(2) Law and Development Review 325, 347–352.

[40]MSF, 'India's Decision to Reject Compulsory Licence Application for Herceptin a Devastating Blow for Cancer Patients' (MSF Press Release, 20 September 2013).

an immediate access gap — patients cannot wait three years for a compulsory licence while their cancer progresses. The prior negotiation requirement adds procedural complexity and delay. The risk of being placed on the USTR's Special 301 Priority Watch List — India has been there since 2014[41] — and the associated diplomatic and trade consequences create a powerful political deterrent. And the experience of prolonged and expensive litigation in the Bayer case itself has arguably chilled subsequent applications by smaller generic manufacturers who cannot afford a similar legal battle.

The deeper problem is structural. Compulsory licensing is a downstream remedy — it addresses access failures after they have already materialised, rather than preventing unmeritorious patents from issuing in the first place. A cancer patient denied affordable treatment for three years while waiting for a compulsory licence to become available has already suffered the harm the system was meant to prevent. This is why upstream patentability standards — and Section 3(d) in particular — are so critical. The gate is better than the escape hatch.

VI. TRIPS FLEXIBILITIES AND INDIA'S INTERNATIONAL POSITION

A. The Doha Declaration: A Turning Point

The Doha Declaration on TRIPS and Public Health, adopted in November 2001, matters more than most WTO documents. It was adopted at a moment of acute global health crisis — millions of people dying of AIDS in Africa without access to patented antiretroviral drugs — and it carried a political and moral weight that gave it interpretive force beyond its formal legal status.

Paragraph 4 stated plainly:[42]

We agree that the TRIPS Agreement does not and should not prevent members from taking measures to protect public health. Accordingly, while reiterating our commitment to the TRIPS Agreement, we affirm that the Agreement can and should be interpreted and implemented in a manner supportive of WTO members' right to protect public health and, in particular, to promote access to medicines for all.

Paragraph 5(b) confirmed the right to grant compulsory licences on grounds of each member's own choosing.[43] Paragraph 5(c) clarified that public health crises — including HIV/AIDS, tuberculosis, malaria, and other epidemics — qualify as national emergencies.[44] Paragraph 6 acknowledged the particular difficulties of least-developed countries with limited manufacturing capacity.[45]

For India, the Doha Declaration was not just a political document — it was a legal resource. The Supreme Court in Novartis drew on it directly in upholding Section 3(d)'s consistency with TRIPS. The Declaration confirmed that member states retain genuine discretion in calibrating their patentability standards to public health needs, and India has used that discretion — perhaps more effectively than any other developing country.

B. The TRIPS-Plus Threat: A Battle Not Yet Won

But the battle over pharmaceutical IP standards is far from over. Bilateral and multilateral free trade agreements — particularly those negotiated between developed and developing countries — have increasingly included 'TRIPS-plus' provisions: IP obligations that go beyond what TRIPS requires, and that would, if adopted, significantly narrow India's policy space.[46]

Data exclusivity is perhaps the most dangerous of these. Under a data exclusivity regime, a generic manufacturer cannot rely on the originator's clinical trial data to obtain regulatory approval for a specified period — typically five to ten years — even if the patent on the drug has expired or never existed. This effectively creates a parallel exclusivity regime entirely independent of the patent system. Patent

[41]United States Trade Representative, 2023 Special 301 Report (USTR, 2023) 45–47.

[42]WTO Ministerial Conference, Declaration on the TRIPS Agreement and Public Health WT/MIN(01)/DEC/2 (14 November 2001) ('Doha Declaration') para 4.

[43]Doha Declaration (n 39) para 5(b).

[44]Doha Declaration (n 39) para 5(c).

[45]Doha Declaration (n 39) para 6; WTO General Council Decision WT/L/540 (30 August 2003).

[46]Preeti Bhatt, 'TRIPS-Plus Provisions and Access to Medicines' (2012) 14(3) Journal of World Intellectual Property 258.

linkage is another favourite TRIPS-plus demand: it ties the grant of marketing approval for generic drugs to the patent status of the originator product, giving patent holders a regulatory lever to delay generic entry beyond what the patent itself justifies.

India has so far resisted these demands. The India-EU FTA negotiations stalled partly on these very IP issues; India refused to accept data exclusivity or patent linkage in that context. But the pressure has not gone away. The USTR's annual Special 301 reports continue to name India as a Priority Watch List country,[47] and the pharmaceutical industry continues to use trade negotiations as a vehicle for constraining the policy space that Doha and TRIPS themselves preserve. Maintaining India's current position will require ongoing political commitment and legal vigilance.

VII. A CRITICAL ASSESSMENT

A. What India Has Got Right

Let us be direct: India's pharmaceutical patent framework is, in this writer's assessment, broadly well-designed. Section 3(d) does what it was intended to do. It prevents pharmaceutical companies from evergreening known drug molecules without genuine therapeutic benefit, and it has done so repeatedly and effectively — as the Novartis case, the dasatinib revocation, and numerous patent office oppositions demonstrate. The compulsory licensing framework, while underused, provides a real access lever when political will exists to invoke it.

The global public health consequences of this design are not speculative. Competition from Indian generic manufacturers drove first-line HIV antiretroviral prices from over USD 10,000 per patient per year in 2000 to under USD 100 by 2016.[48] That is not a small thing. It is one of the most significant public health achievements of the twenty-first century, and it was made possible in substantial part by the framework established by the Patents Act of 1970 and preserved — with adaptations — in the 2005 Amendment.

There is also a broader developmental argument that tends to get lost in the technical legal debate. As Ha-Joon Chang has documented, the industrialised nations that today advocate most forcefully for high IP standards relied on weak or absent product patent protection during their own periods of industrial development.[49] TRIPS, from this perspective, is a form of 'kicking away the ladder' — denying developing countries the policy tools that rich countries used on their own ascent. India's resistance to that logic, embodied in Section 3(d), is not merely self-interested; it reflects a principled rejection of a historically selective application of IP norms.

B. Where the Framework Falls Short

None of which means the current framework is adequate. Several significant problems deserve attention.

The most pressing is the vagueness of the Section 3(d) standard itself. The Novartis judgment authoritatively established that 'efficacy' means 'therapeutic efficacy,' but it left a number of subsidiary questions unresolved.[50] What quantum of evidence of enhanced therapeutic efficacy is required? Does pre-clinical or in vitro evidence suffice, or is clinical trial data necessary? How is the efficacy of the modified compound to be compared with the 'known substance' when the prior art field contains multiple relevant compounds? These are not hypothetical questions — they arise in every pharmaceutical patent examination, and the absence of clear answers produces both inconsistency in patent office decisions and uncertainty for applicants.[51]

Then there is the patent office itself. The Indian Patent Office has faced persistent criticism for inconsistent examination standards across its different technical art units, resulting in pharmaceutical patents being granted that should have been refused under Section 3(d), and applications being rejected that deserved to succeed.[52] The average pendency of patent applications remained alarmingly high as of 2022–23, creating delays that serve neither patent applicants nor the public interest. These are solvable institutional

[48]Médecins Sans Frontières, Untangling the Web of Antiretroviral Price Reductions (18th edn, MSF 2016).

[49]Ha-Joon Chang, 'Intellectual Property Rights and Economic Development: Historical Lessons and Emerging Issues' (2001) 2(2) Journal of Human Development 287.

[50]Novartis (n 21) [186].

[51]Basheer and Reddy (n 16) 246–252.

[52]Patent Office, Annual Report 2022–23 (CGPDTM, 2023).

problems — but they require investment, training, and sustained administrative attention that has not always been forthcoming.

The underutilisation of compulsory licensing is a third serious gap. The mechanism exists, the law supports it, the need is demonstrable — and yet it is barely used. The structural reasons have been discussed above, but the consequence is a system in which the theoretical access remedies available on paper are largely unavailable in practice to the patients who need them most.

C. COVID-19: What the Pandemic Taught Us

The COVID-19 pandemic was, among many other things, a stress test for the global pharmaceutical IP system — and the system did not perform well. Vaccines developed at extraordinary speed, with massive public investment, were locked behind patent monopolies and supply agreements with wealthy nations, producing grotesque vaccine inequity. India and South Africa proposed a comprehensive TRIPS waiver in October 2020[53] that would have enabled all countries to manufacture COVID-19 vaccines and treatments without IP barriers. The proposal attracted the support of over 100 WTO members. It was blocked for eighteen months by the US, EU, Switzerland, and the UK.

The eventual compromise adopted at the WTO's Twelfth Ministerial Conference in June 2022[54] provided only a narrow, conditional waiver limited to vaccines — widely regarded as wholly inadequate. India's own experience in mid-2021, when a devastating second wave of the pandemic coincided with severe vaccine shortages, illustrated in the starkest possible terms the human cost of IP-related supply constraints.[55]

What the pandemic demonstrated — if demonstration were still needed — is that leaving the allocation of essential health technologies to patent-based market mechanisms is a policy choice with foreseeable and severe humanitarian consequences. India's engagement with alternative innovation models that de-link R&D cost recovery from product pricing — prize funds, advance market commitments, open licensing — will be an increasingly important dimension of its pharmaceutical IP policy in the years ahead.

VIII. CONCLUSION AND RECOMMENDATIONS

India's pharmaceutical patent framework is, this paper has argued, a broadly defensible and historically important legal structure. It is imperfect — sometimes frustratingly so. The vagueness of the therapeutic efficacy standard, the institutional limitations of the Patent Office, and the structural underutilisation of compulsory licensing are real problems that deserve sustained legislative and administrative attention.

But the core design — Section 3(d)'s efficacy filter, the opposition mechanisms, the compulsory licensing framework, the resistance to TRIPS-plus demands — reflects a coherent and empirically grounded set of policy choices in favour of public health and equitable access. The Novartis judgment gave those choices judicial blessing and international visibility. The Natco-Bayer case showed they can be practically enforced.[56]

The following recommendations are advanced to strengthen and develop the framework:

1. **Legislatively clarify Section 3(d):** Parliament should amend Section 3(d) or issue subordinate regulatory guidance specifying what constitutes 'significantly enhanced therapeutic efficacy,' with worked examples addressing common pharmaceutical modifications. This should include clarification of the evidentiary threshold and the comparator standard, developed in consultation with clinical pharmacologists, patent practitioners, and public health experts.[57]

[53]India and South Africa, 'Waiver from Certain Provisions of the TRIPS Agreement for the Prevention, Containment and Treatment of COVID-19' IP/C/W/669 (2 October 2020).

[54]WTO, Ministerial Decision on the TRIPS Agreement WT/MIN(22)/30 (17 June 2022).

[55]Achal Prabhala, Burcu Kilic and Brook Baker, 'Rethinking Production of COVID-19 Vaccines' (2021) 397 The Lancet 1036.

[56]See generally Chaudhuri (n 6); t'Hoen (n 57); Correa (n 26).

[57]KM Gopakumar and Sangeeta Shashikant, 'The Draft Patent Manual and Patentability Standards' (Third World Network Briefing Paper No 67, 2011).

2. **Invest in Patent Office capacity:** The Indian Patent Office needs sustained, substantial investment in pharmaceutical patent examination — including technical training in pharmacology and clinical therapeutics, robust quality control mechanisms, and an audit framework to identify and correct inconsistent examination practices. Reducing application pendency is not merely an administrative goal; it has direct consequences for both innovation incentives and access to generic medicines.
3. **Reform compulsory licensing procedures:** The three-year waiting period under Section 84(1) should be reconsidered, particularly for medicines treating life-threatening or rapidly progressive conditions. Clearer and more objective criteria for 'reasonably affordable price' and procedural streamlining for emergency situations would make the mechanism practically usable rather than merely theoretically available.[58]
4. **Resist TRIPS-plus demands:** India's trade negotiating position must continue to treat pharmaceutical IP as a non-negotiable public health priority. Data exclusivity, patent linkage, and extended patent term provisions should not be accepted in any bilateral or multilateral agreement. The legislative space that TRIPS and the Doha Declaration preserve must be actively defended, not surrendered in pursuit of other trade objectives.
5. **Champion alternative innovation models:** India should expand its support at the WTO and in multilateral forums for de-linked innovation mechanisms — prize funds, advance market commitments, open licensing for publicly-funded research — that ensure the fruits of pharmaceutical R&D are accessible regardless of a patient's ability to pay. Domestically, public investment in pharmaceutical R&D should be expanded with a focus on diseases of poverty and conditions disproportionately affecting the Indian population.
6. **Integrate patent policy with a holistic access framework:** Patent law is only one part of the access puzzle. Supply chain strengthening, rational medicines use programmes, universal health coverage financing, and procurement reform must accompany IP policy to ensure that legal victories in patent offices and courts translate into actual medicines in the hands of patients who need them.

India did not arrive at its current pharmaceutical patent framework by accident. It was built, deliberately and painstakingly, over decades of legislative design, policy contestation, and judicial interpretation — shaped by the conviction that a patent system should serve people, not the other way around. That conviction remains as important today as it was in 1970, or in 2005, or in 2013. The challenge now is to defend and develop it — with intellectual rigour, institutional commitment, and the same public health seriousness that produced Section 3(d) in the first place.[59]

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THE RIGHT TO ALGORITHMIC EXPLANATION AS A FACET OF ARTICLE 21: FILLING THE DPDPA'S ACCOUNTABILITY LACUNA

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ABSTRACT

As algorithmic systems increasingly govern access to credit, physical liberty, insurance, and digital participation, Indian constitutional law confronts an accountability void of profound consequence. The Digital Personal Data Protection Act 2023 (DPDPA), India's foremost data governance legislation, conspicuously omits any right to explanation for automated decisions, any obligation for algorithmic impact assessment, and any audit requirement — a lacuna that is constitutionally untenable when measured against the guarantee of life and liberty under Article 21. This article argues that the right to an explanation for consequential algorithmic decisions is an unenumerated but judicially derivable facet of Article 21, analogous to the derivation of the right to legal aid in Hussainara Khatoon,[1] the right to live with dignity in Francis Coralie Mullin,[2] and the right to livelihood in Olga Tellis.[3] Drawing on the procedural fairness imperatives of Maneka Gandhi,[4] the dignitarian account of informational privacy in Puttaswamy,[5] and the EU AI Act's Article 86 as persuasive comparative authority,[6] the article proposes an original three-part triggering test for when an algorithmic decision generates a constitutional right to explanation: (i) consequential impact on life or livelihood; (ii) opacity of the decision process; and (iii) absence of an effective alternative contestation channel. The article concludes that Indian courts are both jurisprudentially equipped and institutionally obligated to fill this accountability lacuna through constitutional interpretation.

Keywords: *Article 21; algorithmic accountability; right to explanation; DPDPA 2023; explainable AI; automated decision-making; digital due process; Maneka Gandhi; unenumerated rights.*

I. INTRODUCTION

On any given working day in India, hundreds of thousands of consequential decisions affecting life, livelihood, and liberty are made by algorithmic systems — credit denied by a fintech model, insurance premiums silently calibrated by a predictive underwriting engine, content removed by an automated classifier, a bail risk score generated by an analytics tool. What unites these decisions is not merely their automated nature but a structural characteristic that sets them apart from every earlier form of consequential decision-making in Indian administrative and constitutional history: their inexplicability. The person affected does not know why the outcome was what it was. The entity that deployed the system may itself be unable to say. And the law — as it presently stands in India — requires nothing further.

This article addresses the constitutional dimension of that silence. It argues that when a State actor or an entity exercising public or delegated functions deploys an algorithm that deprives a person of liberty

[1]Hussainara Khatoon (I) v Home Secretary, State of Bihar (1980) 1 SCC 81.
[2]Francis Coralie Mullin v The Administrator, Union Territory of Delhi (1981) 1 SCC 608, 619 (Bhagwati J).
[3]Olga Tellis v Bombay Municipal Corporation (1985) 3 SCC 545, 571-572 (Chandrachud CJ).
[4]Maneka Gandhi v Union of India (1978) 1 SCC 248.
[5]Justice KS Puttaswamy (Retd.) v Union of India (2017) 10 SCC 1.
[6]EU AI Act (Regulation (EU) 2024/1689) art 86(1). The Act entered into force on 1 August 2024 (OJ L 1689, 12 July 2024).

or livelihood, Article 21 of the Constitution of India requires that the person be told why. The right to algorithmic explanation is not a novelty imported from foreign legal systems. It is a necessary implication of a constitutional jurisprudence that has, over six decades, consistently derived unenumerated rights from the guarantee that no person shall be deprived of life or personal liberty except according to a procedure that is fair, just, and reasonable.[7]

The Digital Personal Data Protection Act 2023 (DPDPA) — India's principal personal data legislation — provides no answer to this question. It confers upon data principals a set of statutory rights covering information access, correction, erasure, and grievance redressal.[8] It imposes obligations of purpose limitation, data minimisation, and security upon data fiduciaries.[9] But it is entirely silent on automated decision-making, algorithmic profiling, and the explanation of machine-generated outcomes. Unlike the European Union's General Data Protection Regulation (GDPR), which contains in Article 22 an explicit right not to be subject to solely automated decisions that produce significant legal effects,[10] the DPDPA contains no equivalent provision. The result is an accountability lacuna: personal data may lawfully be processed to generate algorithmic outcomes that determine the material conditions of a person's life, without any obligation to explain, justify, or permit challenge of those outcomes.

The article proceeds in seven substantive parts. Part II maps Article 21's trajectory from formal procedure to substantive justice, demonstrating the constitutional methodology by which unenumerated rights have been progressively derived. Part III establishes the nexus between algorithmic decision-making and constitutional deprivation under the livelihood and liberty strands of Article 21. Part IV provides a statutory audit of the DPDPA's accountability deficit. Part V situates the Indian question within comparative jurisprudence. Part VI proposes the three-part triggering test that constitutes the article's original contribution. Part VII addresses structural and institutional objections. Part VIII concludes.

II. ARTICLE 21'S EXPANSIVE TRAJECTORY: FROM BARE SURVIVAL TO DIGNIFIED EXISTENCE

A. The Formal Phase and Its Rejection

Article 21 of the Constitution of India provides, in spare but resonant terms, that "[n]o person shall be deprived of his life or personal liberty except according to procedure established by law." The phrase "procedure established by law" was chosen by the Constituent Assembly over the American formulation "due process of law" in a deliberate rejection of judicial activism in the American mould. The original understanding, as authoritatively declared by a seven-judge bench in A.K. Gopalan v State of Madras,[11] was that "law" in Article 21 meant state-enacted law, and that provided a law authorised the deprivation, no further constitutional scrutiny of its content or reasonableness was required. Articles 14, 19, and 21 were held to be mutually exclusive, operating within their respective domains without interaction.

The Gopalan framework treated Article 21 as a formal threshold rather than a substantive guarantee. Its consequence was to render the constitutional protection of life and liberty hostage to the legislative will: Parliament could authorise any procedure for any deprivation, and the courts were powerless to inquire into its fairness. This position endured for nearly three decades before the Supreme Court dismantled it comprehensively.

[8]Digital Personal Data Protection Act 2023 (India) ss 11-14.
[9]Digital Personal Data Protection Act 2023 (India) s 8.
[10]General Data Protection Regulation (Regulation (EU) 2016/679) art 22(1).
[11]AK Gopalan v State of Madras AIR 1950 SC 27.

B. Maneka Gandhi: The Substantive Turn

The watershed came with Maneka Gandhi v Union of India.[12] The immediate occasion was the arbitrary confiscation of a passport; the constitutional consequence was a fundamental reorientation of the Article 21 jurisprudence. A seven-judge bench held that Articles 14, 19, and 21 are not mutually exclusive compartments but are inter-connected provisions forming an integrated scheme for the protection of fundamental rights. The Court's central holding was that the "procedure established by law" in Article 21 must itself be "right and just and fair" and cannot be arbitrary, fanciful, or oppressive.[13] A procedure that fails this standard violates Article 14's guarantee against arbitrariness and is accordingly void.

Three propositions from Maneka Gandhi are analytically indispensable to this article. First, due process in India is not merely formal but substantive: a law authorising deprivation of life or liberty must satisfy the constitutional requirement of reasonableness, not merely the formal requirement of legislative existence. Second, the right to be heard before an adverse decision affecting life or liberty is taken flows from Articles 21 and 14 read together. Third — and most directly relevant — a procedure that denies the person the ability to understand the grounds of a decision affecting their life or liberty fails the constitutional test of fairness.

Maneka Gandhi thus established the constitutional foundation for what this article terms "algorithmic due process": the proposition that when a decision-making process — whether conducted by an official or an algorithm — affects life or liberty, and it does so through a procedure so opaque that the affected person cannot identify, challenge, or contest its reasoning, that procedure is constitutionally deficient.[14]

C. The Methodology of Unenumerated Rights Derivation

Following Maneka Gandhi, the Supreme Court developed a rich and consistent methodology for deriving unenumerated rights from Article 21. The pattern, identifiable across the foundational cases, is threefold: the Court identifies a specific condition necessary for the meaningful enjoyment of life and personal liberty; it determines that the absence of that condition renders the constitutional guarantee hollow or arbitrary in a specific category of cases; and it declares the condition to be a facet of Article 21, enforceable as a fundamental right.[15]

In Hussainara Khatoon (I) v Home Secretary, State of Bihar,[16] the Court derived a right to free legal aid and to a speedy trial as facets of Article 21. The reasoning was that a trial conducted without legal representation in a case involving deprivation of liberty was not a fair procedure within the meaning of Maneka Gandhi, and that the absence of legal aid rendered the constitutional guarantee against arbitrary detention illusory for the poor. The right to legal aid is not mentioned in Article 21; it was derived from the guarantee against unfair procedure.

In Francis Coralie Mullin v The Administrator, Union Territory of Delhi, Bhagwati J expanded the content of "life" to encompass the right to live with basic human dignity: "The right to life includes the right to live with human dignity and all that goes along with it, namely, the bare necessaries of life such as adequate nutrition, clothing and shelter over the head and facilities for reading, writing and expressing oneself in diverse forms, freely moving about and mixing and commingling with fellow human beings."[17] The dignitarian dimension is critical to the present argument: an automated process that determines the material conditions of a person's life without permitting them to understand or contest it

[13]ibid.
[14]ibid (Bhagwati J).
[15]Maneka Gandhi (n 4); Francis Coralie (n 2); Olga Tellis (n 3); Puttaswamy (n 5).

treats persons as passive data objects rather than autonomous agents possessed of dignity.

In Olga Tellis v Bombay Municipal Corporation, the Court held that the right to livelihood is an integral component of the right to life.[18] Chandrachud CJ reasoned that the most elementary form of the right to life — the right to continue to live — depended upon the right to earn a livelihood, and that no person can live without the means of living. The right to a livelihood, though not textually present in Article 21, was necessarily implied by the guarantee of life.

In Paschim Banga Khet Mazdoor Samity v State of West Bengal,[19] the Court derived a right to emergency medical care, holding that the State's failure to provide timely medical treatment violated the right to life. In Unni Krishnan J.P. v State of Andhra Pradesh,[20] the right to education was derived from Article 21. Each of these derivations followed the same constitutional logic: a right without which the Article 21 guarantee would be rendered meaningless or arbitrary in a class of cases is a facet of Article 21.

The capstone of this developmental arc is Justice K.S. Puttaswamy (Retd.) v Union of India,[21] where a nine-judge bench unanimously recognised the right to privacy as a fundamental right under Articles 14, 19, and 21. Chandrachud J, in a separate concurrence of considerable doctrinal significance, articulated a dignitarian theory of informational privacy: the processing of personal data in ways that affect individual identity, autonomy, and relational existence is an interference with the fundamental right to privacy and must be justified by reference to legitimate aims, necessity, and proportionality.[22] The implications for algorithmic processing of personal data to generate consequential decisions are profound and are elaborated in the following Part.

D. Synthesis: The Derivation Methodology Applied

The pattern across this jurisprudence is analytically consistent. An unenumerated right is constitutionally derivable under Article 21 when: (i) it is necessary for the meaningful enjoyment of the express guarantee of life and personal liberty; (ii) its absence produces a form of deprivation that is arbitrary, unjust, or contrary to human dignity; and (iii) the right is not expressly excluded by the constitutional text.[23] The right to algorithmic explanation satisfies each of these conditions. Its absence renders the constitutional protection against arbitrary deprivation of livelihood and liberty hollow in the context of algorithmic decision-making; its denial is a form of dignitarian harm; and nothing in the text of the Constitution excludes it. The remainder of this article develops and defends that claim.

III. ALGORITHMIC DECISIONS AND CONSTITUTIONAL DEPRIVATION: ESTABLISHING THE NEXUS

A. The Anatomy of Consequential Algorithmic Decisions

For the constitutional argument to engage, it must first be established that the algorithmic decisions at stake are of sufficient constitutional gravity — that they implicate life and personal liberty in the sense that Article 21 jurisprudence has developed. Four categories of consequential algorithmic decision-making are particularly apposite to the Indian context.

Credit denial is the paradigm case in the contemporary digital economy. Algorithmic credit scoring — deployed by Non-Banking Financial Companies (NBFCs), fintech platforms, and increasingly by scheduled commercial banks — determines access to credit on the basis of complex, multivariable models that incorporate traditional financial data alongside

[19]Paschim Banga Khet Mazdoor Samity v State of West Bengal (1996) 4 SCC 37.
[20]Unni Krishnan JP v State of Andhra Pradesh (1993) 1 SCC 645.

[22]ibid (Chandrachud J).

alternative data sources: psychometric assessments, social network analysis, device telemetry, geolocation patterns, and behavioural fingerprinting.[24] Access to credit is, in the modern market economy, a prerequisite for entrepreneurship, housing, and economic participation. Its denial through an opaque algorithmic process directly implicates the livelihood dimension of Article 21 recognised in Olga Tellis: the person who cannot access institutional credit is, in many circumstances, deprived of the material means of earning a livelihood.

Bail risk scoring occupies the apex of Article 21 concern. The use of algorithmic risk assessment tools to inform pretrial detention decisions — scoring individuals' likelihood of absconding or reoffending — is at a gathering stage in India, and has already generated extensive constitutional controversy in the United States and Europe. In India, any tool that influences the Magistrate's decision on bail or the court's assessment of flight risk engages Article 21 at its most fundamental: the question of whether a person remains physically free or is incarcerated.[25] No justification of administrative efficiency or consistency can override the constitutional imperative of a reasoned, explicable process when physical liberty is at stake.

Insurance pricing through algorithmic underwriting models determines access to healthcare and risk protection. Where health or life insurance premiums are set by models that process age, geography, inferred lifestyle data, and — in some emerging frameworks — wearable device data, the algorithmic determination of whether a person can afford insurance coverage directly conditions their access to healthcare. The nexus with Article 21's protection of life is not attenuated; it is direct.

Content removal and account restriction by digital platforms operating under the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules 2021[26] deploy automated classification systems that affect freedom of expression, access to information, and — crucially — the livelihoods of the vast and growing class of content creators, small traders, and service providers for whom digital platform access constitutes their primary economic channel.[27] While principally implicating Article 19(1)(a), where content removal is mandated by State instrumentality or where the platform exercises a public function, the Article 21 dimension of livelihood deprivation is also engaged.[28]

B. Olga Tellis and the Algorithmic Denial of Livelihood

The significance of Olga Tellis extends beyond its specific holding on pavement dwellers' right not to be evicted without notice. The constitutional principle it establishes is of broad application: where State action, or action by an entity exercising delegated or public functions, deprives a person of the means of earning a livelihood, that deprivation constitutes a deprivation of life within the meaning of Article 21 and requires to be justified by a procedure that is fair, just, and reasonable.[29] The Court was explicit that the right to livelihood is not a second-order or qualified right but is integral to the right to life itself: "The right to live... cannot be exercised without the means of living."

The application of this principle to algorithmic credit denial is direct and doctrinally straightforward. A bank that is a "State" within the meaning of Article 12, or an NBFC or fintech platform exercising public or quasi-public functions in lending — as all licensed credit institutions do, pursuant to delegated authority

[24]Frank Pasquale, The Black Box Society: The Secret Algorithms That Control Money and Information (Harvard University Press 2015) 3-8.
[25]Arnesh Kumar v State of Bihar (2014) 8 SCC 273.
[26]Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules 2021, r 4.
[27]Lilian Edwards and Michael Veale, 'Slave to the Algorithm? Why a "Right to an Explanation" Is Probably Not the Remedy You Are Looking For' (2017) 16(1) Duke Law & Technology Review 18, 40-45.
[28]Shreya Singhal v Union of India (2015) 5 SCC 1.
[29]Olga Tellis (n 3) 571.

under banking legislation — that denies credit through an algorithmic process is, in effect, depriving the applicant of access to economic participation. Where the algorithm operates on the basis of proxies for protected characteristics, on inaccurate or unverifiable data points, or on factors wholly unrelated to creditworthiness, the deprivation is arbitrary. An arbitrary deprivation of livelihood that does not allow the affected person to know the reason for the decision or to contest it fails the Maneka Gandhi test and constitutes a violation of Article 21 read with Article 14.

C. Maneka Gandhi and Algorithmic Arbitrariness

Maneka Gandhi is the constitutional foundation for the proposition that process matters as much as outcome. The Court's holding that the procedure authorising deprivation of life or liberty must be fair, just, and reasonable[30] implies, at minimum, that the affected person must be able to: (i) understand the material basis of the decision; (ii) identify and correct factual errors in the inputs; and (iii) mount a meaningful challenge before a competent forum. Algorithmic decision-making as deployed in India satisfies none of these requirements.

The opacity of contemporary machine learning models — particularly ensemble methods and deep neural networks — is not merely a technical inconvenience. It is a structural barrier to the exercise of rights. A person who does not know why they have been denied credit, scored as a flight risk, or had their account restricted cannot exercise the right to be heard, cannot identify and correct errors, and cannot challenge the decision on substantive grounds. This is precisely the kind of arbitrary, unintelligible procedure that Maneka Gandhi held to violate Articles 14 and 21. The constitutional deficiency does not depend on whether the algorithmic decision was substantively correct; it depends on whether the person affected could access the reasoning behind it.

D. The Duty to Give Reasons as a Constitutional Obligation

The requirement to give reasons for decisions affecting rights has a deep foundation in Indian constitutional law. In A.K. Kraipak v Union of India,[31] the Supreme Court held that the principles of natural justice — including audi alteram partem and the requirement that decisions affecting rights be reasoned — apply not only to quasi-judicial proceedings but to administrative decisions of substantial consequence. In S.N. Mukherjee v Union of India,[32] the Court held that the duty to give reasons is an integral part of the rule of natural justice and that an unreasoned decision is not susceptible to effective judicial review — depriving the affected person of access to justice.

These principles translate directly to algorithmic decisions. When an algorithm generates a consequential output — credit denial, bail risk score, insurance premium — the absence of any explanation is constitutionally equivalent to an unreasoned administrative order. The affected person is denied the ability to identify errors, challenge the reasoning on grounds of bias or irrelevance, and seek judicial review of the outcome. The constitutional requirement of reasoned decision-making, established in the natural justice jurisprudence and reinforced by Maneka Gandhi, is violated by any process — whether conducted by an official or an algorithm — that produces outcomes affecting constitutional rights without explanation.[33]

E. Puttaswamy and the Dignitarian Dimension

The dignitarian theory of informational privacy articulated in Puttaswamy adds a distinct constitutional dimension to the argument. Chandrachud J's concurrence held that the processing of personal data in ways that affect individual identity, autonomy, and relationships constitutes an

[30]Maneka Gandhi (n 4) (Bhagwati J).
[31]AK Kraipak v Union of India AIR 1970 SC 150.
[32]SN Mukherjee v Union of India (1990) 4 SCC 594 (Agrawal J).
[33]AK Kraipak (n 31); SN Mukherjee (n 32).

interference with the right to privacy under Article 21 and must be justified by reference to legitimate state aims, the proportionality of the means, and the availability of procedural safeguards.[34] Three aspects of this holding are directly relevant.

First, algorithmic profiling — the aggregation of personal data points to construct a profile that determines life outcomes — is an intensive exercise in informational processing that engages the right to privacy directly. The Court in Puttaswamy was explicit that privacy is not merely about physical seclusion but encompasses informational self-determination: the right of persons to have control over data about themselves and the uses to which that data is put.[35] An algorithm that uses data about a person to make consequential decisions about their life, without informing them of the data used or the reasoning applied, violates this aspect of informational privacy.

Second, the proportionality framework articulated in Puttaswamy requires that any interference with the right to privacy — and therefore any processing of personal data to generate consequential algorithmic decisions — be attended by adequate procedural safeguards.[36] A system that makes consequential decisions without explanation is not attended by adequate procedural safeguards; it is attended by none.

Third, the dignitarian dimension of Puttaswamy establishes that persons are to be treated as autonomous agents possessed of identity and dignity, not as passive repositories of data to be processed for the convenience of institutions. An algorithmic process that makes life-determining decisions about a person without permitting them to understand, challenge, or contest those decisions treats the person as a data object rather than as a constitutional subject. This is antithetical to the dignitarian conception of Article 21 that runs from Francis Coralie through Navtej Singh Johar[37] to Puttaswamy.[38]

IV. THE LEGISLATIVE LACUNA: AUDITING THE DPDPA 2023

A. The DPDPA's Framework: What It Provides

The Digital Personal Data Protection Act 2023 represents a significant milestone in Indian data governance. It establishes a consent-based framework for the processing of digital personal data, imposes obligations of purpose limitation, data minimisation, accuracy, and security upon data fiduciaries, and confers a set of rights upon data principals.[39] The rights framework provides: a right to access information about processing activities and data fiduciaries' contact details; a right to correction and erasure of personal data; a right to grievance redressal through a mechanism to be maintained by the data fiduciary; and a right to nominate another person to exercise rights on behalf of the data principal in the event of death or incapacity.[40]

For Significant Data Fiduciaries — entities of a class notified by the Central Government on the basis of risk, volume, or sensitivity of data processing — additional obligations apply under Section 10.[41] These include the obligation to appoint a Data Protection Officer, conduct a Data Protection Impact Assessment (DPIA), and undertake periodic data audits. These obligations represent the closest the DPDPA comes to algorithmic accountability, but — as the following analysis demonstrates — they fall far short of what constitutional minimum standards require.

[34]Puttaswamy (n 5) (Chandrachud J).

[36]ibid.

[37]Navtej Singh Johar v Union of India (2018) 10 SCC 1.

[38]Puttaswamy (n 5) (Chandrachud J).

[39]Digital Personal Data Protection Act 2023 (India) s 10.

B. The Accountability Deficit: A Systematic Analysis

The DPDPA's framework contains a fundamental accountability lacuna with respect to automated decision-making and algorithmic systems. The specific gaps are fivefold.

First, there is no right to explanation for automated decisions. The DPDPA confers no right upon data principals to receive an explanation of how algorithmic or automated systems reached decisions affecting them. The right to access information under Section 11 of the Act extends to the fact of processing and the identity of the data fiduciary but does not reach the logic of automated decision-making, the factors that produced a specific outcome, or the data used to generate it.

Second, there is no right to contest algorithmic decisions or require human review. The grievance redressal mechanism under Section 13[42] provides a channel for complaints to data fiduciaries but does not specify any right to challenge automated decisions, require that a human reviewer re-examine the algorithm's output, or mandate any specific remedial action where an algorithmic decision is found to be erroneous.

Third, the Data Protection Impact Assessment obligations under Section 10 are left to subordinate legislation in their scope and content,[43] do not expressly require assessment of algorithmic systems' impacts on fundamental rights, and apply only to Significant Data Fiduciaries whose class has not yet been notified. The vast majority of entities deploying consequential algorithmic systems — including many fintech lenders, insurance companies, and digital platforms — will not be Significant Data Fiduciaries.

Fourth, the Act contains no algorithmic audit obligation. There is no requirement that algorithms used in consequential decisions be subject to independent audit for accuracy, bias, or consistency with fundamental rights. This stands in stark contrast to the EU AI Act's extensive conformity assessment, post-market monitoring, and bias evaluation requirements for high-risk AI systems.[44]

Fifth, the DPDPA contains broad exemptions for State instrumentalities. Section 17 exempts the processing of personal data in the interests of the sovereignty and integrity of India, national security, and public order from the Act's obligations.[45] Read expansively, this exemption would cover the most constitutionally sensitive category of algorithmic decision-making: State deployment of bail risk scoring tools, predictive policing algorithms, and automated welfare-eligibility systems.

C. The GDPR Comparator: What Was Available and Rejected

The contrast with the GDPR is instructive and reveals the conscious legislative choice that underlies the lacuna. Article 22(1) of the GDPR provides that data subjects have the right not to be subject to a decision based solely on automated processing — including profiling — which produces legal effects or similarly significantly affects them.[46] Where automated processing is permitted on one of the specified grounds, Article 22(3) requires that the data controller implement suitable measures to safeguard data subjects' rights, including at minimum the right to obtain human intervention, to express a point of view, and to contest the decision.[47] Recital 71 elaborates this right to include the right to obtain an explanation of the decision reached after the assessment and to challenge that decision.[48]

[42]Digital Personal Data Protection Act 2023 (India) s 13.

[44]EU AI Act (n 6) arts 9-15.
[45]Digital Personal Data Protection Act 2023 (India) s 17.

[47]ibid art 22(3).
[48]ibid Recital 71.

The legislative drafters of the DPDPA had the GDPR before them. The Srikrishna Committee Report (2018) and the Joint Parliamentary Committee Report on the Personal Data Protection Bill 2019 both noted the importance of algorithmic accountability and the GDPR framework. The Personal Data Protection Bill 2019 contained provisions on profiling and automated decision-making that would have partially addressed the accountability gap. The DPDPA 2023, however, stripped these provisions entirely. The result is a personal data statute that addresses what data is collected but is substantively indifferent to what happens to persons when that data is processed algorithmically to determine the material conditions of their lives. This makes the constitutional dimension of the accountability lacuna not merely significant but urgent: if the legislature has declined to act, the Constitution must supply the minimum standards.

V. COMPARATIVE JURISPRUDENCE: THE RIGHT TO EXPLANATION IN GLOBAL LAW

A. The EU AI Act: Article 86 and the Right to Explanation

The EU AI Act (Regulation (EU) 2024/1689),[49] which entered into force on 1 August 2024, is the most comprehensive legislative framework for the governance of artificial intelligence yet enacted. For the present argument, Article 86 is of direct relevance. Captioned "Right to explanation of individual decision-making", it confers upon any natural person who has been subject to a decision based on the output of a high-risk AI system the right to obtain from the deployer of that system a meaningful explanation of the role the AI system played in the decision-making process and, where applicable, the main elements of the decision taken.

The categories of AI systems classified as "high-risk" in Annex III to the EU AI Act map directly onto the consequential algorithmic decisions identified in this article. Annex III designates as high-risk AI systems used in: creditworthiness assessment and credit scoring; risk assessment and pricing in life and health insurance; assessment of persons for the administration of justice, border control, and law enforcement decisions on criminal prosecution or release; and admission and assessment in educational and vocational training.[50] These are the precise categories where the constitutional argument advanced in this article is most acute.

Article 86 of the EU AI Act is significant not merely as foreign legislation but as an expression of the emerging international consensus — manifested across jurisdictions with diverse constitutional traditions — that consequential algorithmic decisions must be accompanied by a right to explanation as a condition of their legitimacy. This consensus is persuasive authority for Indian constitutional interpretation, not because the EU Act is binding but because it reflects the collective judgment of democratic legal systems that the absence of explanation violates a fundamental requirement of procedural justice.[51]

B. The GDPR: The Right Not to Be Algorithmically Decided

Article 22 of the GDPR has generated extensive regulatory guidance and academic analysis on the content of the right to explanation. The European Data Protection Board (formerly the Article 29 Working Party) has interpreted the right as requiring "meaningful information about the logic involved" in automated decisions, including information about the most important factors influencing the decision outcome and the significance and envisaged consequences of the processing for the data subject.[52]

[50] ibid Annex III.
[51] ibid art 86(1).

[52] Article 29 Data Protection Working Party, 'Guidelines on Automated Individual Decision-Making and Profiling for the Purposes of Regulation

While there is academic debate about the precise scope of the GDPR's explanation right,[53] the regulatory consensus is that some form of intelligible, sufficiently specific explanation is required when automated systems produce significant effects on individuals.

The GDPR framework also establishes a critical structural principle: the right to explanation is not merely a transparency obligation but a mechanism of contestability. Its purpose is not simply to inform but to enable challenge. An explanation that cannot form the basis of a meaningful appeal is constitutionally insufficient; what is required is an explanation sufficient for the affected person to identify errors, challenge biased inputs, and mount a reasoned legal challenge.[54]

C. The Dutch SyRI Judgment: Constitutional Review of Algorithmic Systems

In its judgment of 5 February 2020 in the SyRI Case,[55] the District Court of The Hague struck down the Dutch Government's System Risk Indication (SyRI) — an algorithmic risk-scoring system deployed to identify potential welfare fraud — as incompatible with Article 8 of the European Convention on Human Rights (right to respect for private and family life). The Court held that the opacity of the SyRI algorithm prevented meaningful review of whether the system processed data proportionately and on legitimate grounds.[56] Crucially, the Court's holding was not premised solely on the volume of data processed, but on the fundamental incompatibility of algorithmic opacity with the Convention's requirements of proportionality and procedural safeguard: a system whose reasoning cannot be scrutinised cannot be found to satisfy the proportionality test.

The SyRI judgment is instructive for Indian constitutional law on two grounds. First, it demonstrates that courts in mature constitutional systems will engage substantively with algorithmic decision-making at the constitutional level and will strike down State deployments of AI systems that fail standards of procedural fairness. Second, it illustrates that the constitutional problem with algorithmic systems is not merely data volume or sensitivity but structural inexplicability: opacity is itself the constitutional defect, because it renders constitutional review — proportionality, reasonableness, equal protection — impossible to conduct.

D. The Comparative Method in Indian Constitutional Development

The use of comparative jurisprudence to derive and develop fundamental rights under the Indian Constitution has strong precedential authority. In Puttaswamy, all nine justices engaged substantively with the constitutional decisions of the European Court of Human Rights, the United States Supreme Court, the South African Constitutional Court, and the Canadian Supreme Court.[57] In Navtej Singh Johar,[58] comparative constitutional analysis across multiple jurisdictions informed the interpretation of personal dignity and autonomy. In Common Cause,[59] the Court drew on comparative authority in recognising the right to die with dignity.

The appropriate use of comparative authority in the present context is not as binding precedent. India's constitutional scheme must be interpreted on

2016/679' (WP251rev.01, adopted 6 February 2018) 21.

[53]Sandra Wachter, Brent Mittelstadt and Luciano Floridi, 'Why a Right to Explanation of Automated Decision-Making Does Not Exist in the General Data Protection Regulation' (2017) 7(2) International Data Privacy Law 76; Bryce Goodman and Seth Flaxman, 'European Union Regulations on Algorithmic Decision-Making and a "Right to Explanation"' (2017) 38(3) AI Magazine 50.

[54]Andrew D Selbst and Julia Powles, 'Meaningful Information and the Right to Explanation' (2017) 7(4) International Data Privacy Law 233.

[55]Rechtbank Den Haag (District Court of The Hague), ECLI:NL:RBDHA:2020:1878 (5 February 2020) (SyRI Case).

[56]ibid.

[57]Puttaswamy (n 5) (Khehar CJ and Khanwilkar J).

[59]Common Cause v Union of India (2018) 5 SCC 1.

its own terms, from within its own textual and structural commitments. But comparative jurisprudence serves a dual function in constitutional reasoning: it provides evidence of how analogous constitutional guarantees have been understood by other jurisdictions committed to similar values, and it demonstrates that the constitutional derivation argued for in this article is not an outlier but an expression of a global constitutional consensus. The EU AI Act's Article 86, the GDPR's Article 22, and the SyRI judgment together constitute powerful persuasive authority that the constitutional requirement of algorithmic explanation is a necessary incident of procedural justice in a democratic legal order.

VI. THE THREE-PART TRIGGERING TEST: AN ORIGINAL FRAMEWORK

A. The Necessity for a Structured Test

The constitutional derivation of a right to algorithmic explanation requires a structured framework that identifies with precision when algorithmic decision-making rises to constitutional significance. Without such a test, the argument faces two competing risks: over-breadth — making every algorithmic output judicially reviewable, which would be practically unworkable and constitutionally disproportionate — or under-breadth — limiting the right to scenarios too restricted to address the scale of the problem. A principled test, derived from existing doctrine and calibrated to constitutional values, is therefore essential both to the analytical rigour of the argument and to its practical utility for adjudicating courts.

The three-part triggering test proposed in this article is derived from and consistent with the constitutional jurisprudence surveyed in the preceding parts. It draws on Olga Tellis's nexus between livelihood and life, Maneka Gandhi's procedural fairness requirements, and Puttaswamy's dignitarian proportionality framework. It is also informed by the structural requirements identified in the comparative materials — particularly the EU AI Act's definition of high-risk AI and the SyRI Court's opacity-as-constitutional-defect analysis. The three criteria are: (i) consequential impact on life or livelihood; (ii) opacity of the decision process; and (iii) absence of an effective alternative contestation channel.

B. Part One: Consequential Impact on Life or Livelihood

The first criterion limits the constitutional right to algorithmic explanation to decisions that have a material and identifiable impact on the affected person's life or livelihood as understood in Article 21 jurisprudence. This criterion serves the function of proportionality: it ensures that constitutional review is reserved for decisions of genuine consequence to constitutional rights, rather than applied to every algorithmic output that a person might encounter in daily digital life.

"Consequential impact on livelihood" encompasses, without being limited to: denial of credit or financial services; adverse insurance underwriting decisions affecting access to healthcare or financial security; denial of employment, promotion, or professional licence; denial of educational admission; restriction or removal of digital platform access where the platform constitutes a primary economic channel. The criterion requires that the impact be material — that the algorithmic output determinate or significantly influences the outcome — and that the outcome have genuine consequence for the person's ability to earn a livelihood or access the material conditions of a dignified life.

"Impact on life" in the direct sense — distinct from livelihood — encompasses decisions affecting physical safety or physical liberty. The paradigm case is algorithmic bail risk scoring: an output that influences whether a person is detained prior to trial engages Article 21 at its apex. In this context, the constitutional right to explanation is not merely procedurally desirable but constitutionally urgent. Physical deprivation of liberty is the most serious constitutional harm that an algorithmic decision can occasion; the requirement of an explicable,

contestable process is correspondingly its most stringent constitutional demand.

C. Part Two: Opacity of the Decision Process

The second criterion is that the decision-making process be opaque in the sense that the affected person cannot, from information available to them, understand the material reasons for the outcome or identify which inputs were decisive. This criterion translates Maneka Gandhi's requirement of a fair and intelligible procedure into the specific context of algorithmic decision-making, and applies the reasoning of S.N. Mukherjee on reasoned decisions to the automated setting.[60]

For constitutional purposes, opacity has two analytically distinct dimensions. The first is technical opacity: the algorithm produces its outputs through processes that are inherently non-linear, involve interactions among hundreds or thousands of variables, and resist reduction to human-intelligible explanation even by those who designed and trained them. Contemporary deep learning and ensemble models often exhibit this characteristic. The second is informational opacity: the deployer of the algorithm declines to provide an explanation of the decision, whether on grounds of trade secrecy, proprietary protection, or institutional indifference to the interests of those affected.

Both dimensions engage the constitutional right to explanation, though they call for different responses. Technical opacity places the obligation on regulators and courts to require, at the system design stage, that consequential algorithmic systems be designed to be explainable — to produce outputs accompanied by post-hoc or ante-hoc explanations that are sufficiently intelligible for the purposes of contestation. Informational opacity may call for a direct judicial or regulatory order requiring the decision-maker to disclose the material factors that generated the outcome. In either case, the constitutional logic is the same: a procedure that cannot be explained to the person it affects is not a fair procedure within the meaning of Maneka Gandhi.

It should be emphasised that the opacity criterion does not require the person affected to demonstrate that the algorithmic decision was substantively incorrect or produced a biased result. Such a requirement would be self-defeating: the impossibility of demonstrating error is itself a consequence of opacity, and a constitutional right that cannot be accessed without first demonstrating the wrong it is designed to remedy is no right at all. The opacity criterion requires only that the person cannot understand why the decision was made. The constitutional standard is that of natural justice, not substantive correction.

D. Part Three: Absence of an Effective Alternative Contestation Channel

The third criterion ensures that the constitutional right to explanation operates as a backstop rather than a first resort. If an effective statutory, regulatory, or contractual mechanism exists that: (a) requires the decision-maker to provide a meaningful explanation of the algorithm's role and the principal factors influencing the outcome; (b) permits the affected person to correct material errors in input data; and (c) provides a genuine opportunity to contest the decision before a human reviewer not bound by the algorithmic output — then the constitutional right to explanation may be satisfied by that mechanism, and judicial intervention to create an additional remedy is not immediately required.

The operative word is "effective". A nominal grievance mechanism that generates automated rejections, a right to appeal that is adjudicated by the same algorithm, or a disclosure requirement that produces cryptic risk scores without explaining their derivation — none of these constitute effective alternative contestation channels. Effectiveness

requires intelligibility, accessibility, and genuine decision-making independence.

As established in Part IV, no such effective mechanism presently exists in Indian law. The DPDPA's grievance redressal mechanism does not extend to algorithmic explanation. No existing regulatory framework — under the RBI, the IRDAI, or the IT Rules — requires algorithmic transparency sufficient to enable contestation. In the current legal landscape, the third criterion is satisfied in virtually every case of consequential algorithmic decision-making in India. The constitutional right to explanation is therefore directly justiciable.

E. Applying the Test: Illustrative Scenarios

The three-part test may be illustrated across the categories of consequential algorithmic decision identified in Part III.

In the case of algorithmic credit denial, the first criterion is satisfied because denial of credit impacts livelihood through exclusion from economic participation. The second criterion is satisfied because the affected person receives no explanation of which data points, weightings, or inferential steps produced the adverse score. The third criterion is satisfied because no regulatory provision requires the lending institution to provide an algorithmic explanation. All three criteria being met, the constitutional right to explanation is triggered, and the lending institution — particularly if it is a State entity or exercises public functions under delegated authority — is constitutionally obligated to furnish an intelligible account of the decision.

In the case of algorithmic bail risk scoring, the first criterion is satisfied at its apex: the deprivation of physical liberty is the most severe constitutional harm. The second criterion is satisfied because the risk score, as typically generated and presented to the Magistrate, provides no account of the specific factors that produced the adverse assessment for this individual. The third criterion is satisfied because the Code of Criminal Procedure provides no mechanism for challenging the logical basis of a risk assessment tool.[61] Not only is the constitutional right to explanation triggered, but the Magistrate who relies upon an unexplained algorithmic output in denying bail may be held to have conducted a procedure that fails the constitutional standard of Maneka Gandhi.

In the case of algorithmic insurance underwriting, where an individual is denied coverage or quoted a premium so elevated as to effectively exclude them from insurance, the first criterion may be satisfied where the effect on healthcare access is material. The second and third criteria follow from the opacity of actuarial models and the absence of a regulatory framework requiring algorithmic pricing explanations. The constitutional right to explanation is triggered, though the strength of the constitutional claim will vary with the materiality of the impact on life.

VII. OBJECTIONS AND RESPONSES

A. The Separation of Powers Objection

The most significant structural objection to this article's argument is that it amounts to judicial legislation. The articulation of a right to algorithmic explanation, on this view, is a policy choice about the architecture of digital governance — a choice that belongs to the legislature and executive, not to courts. For courts to derive such a right from Article 21 would be to usurp the constitutional role of the democratically accountable branches.

This objection is met by the constitutional methodology itself. The Supreme Court has never characterised the derivation of unenumerated rights from Article 21 as legislation; it is constitutional interpretation responsive to new facts. The right to legal aid, the right to emergency medical care, and the

right to privacy were all derived through interpretation — each with significant policy implications, each in the face of legislative silence, each upheld as a necessary implication of constitutional text. The right to algorithmic explanation stands on no weaker a foundation: it is the application of the established constitutional principle that consequential deprivations of life and liberty require intelligible, contestable procedures to a category of deprivation that the legislature has failed to address.[62]

Furthermore, where the legislature has enacted a statutory framework — the DPDPA — that is constitutionally deficient in its protection of rights, courts have the jurisdiction and institutional obligation to identify the deficiency and impose constitutional minimum standards. The task of filling the constitutional gap does not require courts to specify all the mechanisms by which the right to explanation must be implemented — that remains a matter for legislative and regulatory design — but only to declare that algorithmic decision-making of the kind described must be accompanied by explanation, and that the absence of such explanation violates Article 21.

B. The Technical Impossibility Objection

A second objection holds that the constitutional right to explanation is technically unworkable because many deployed algorithmic models cannot provide human-intelligible explanations of their outputs. Neural networks, in particular, generate decisions through interactions among millions of parameters that resist reduction to a simple account of cause and reason. A constitutional right to an explanation that cannot technically be furnished is, on this view, a right without content.

This objection underestimates the technical landscape and misdirects the constitutional obligation. The field of explainable AI (XAI) has produced a range of techniques — including LIME (Local Interpretable Model-agnostic Explanations),[63] SHAP (SHapley Additive exPlanations),[64] and counterfactual explanations — that provide post-hoc, sufficiently intelligible explanations of the decisions of complex models. SHAP values, for example, quantify each feature's contribution to a specific prediction, enabling a statement of the form: "Your application was declined primarily because of [factor A] and secondarily because of [factor B]. Had [factor A] been otherwise, the decision would have been different." This is a legally and constitutionally adequate explanation.

More fundamentally, even if technical explanation were impossible for a specific model architecture, the constitutional consequence would not be the abandonment of the right but the exclusion of inexplicable systems from deployment in constitutionally sensitive domains. A system that cannot explain its consequential decisions affecting life and liberty should not be used to make them. The constitutional right to explanation, in this aspect, functions as a technology-regulating constraint that incentivises the deployment of explainable AI in high-stakes domains — which is precisely the policy goal that the EU AI Act's transparency requirements for high-risk systems are designed to achieve.[65]

[63]Marco Tulio Ribeiro, Sameer Singh and Carlos Guestrin, 'Why Should I Trust You?: Explaining the Predictions of Any Classifier' (Proceedings of the 22nd ACM SIGKDD International Conference on Knowledge Discovery and Data Mining, ACM 2016) 1135.

[64]Scott M Lundberg and Su-In Lee, 'A Unified Approach to Interpreting Model Predictions' (Proceedings of the 31st International Conference on Neural Information Processing Systems, NIPS 2017) 4768.

C. The Private Actor Objection

A third objection concerns the application of Article 21 to private actors. Fundamental rights bind the State; they do not, as a general rule, operate horizontally against private persons or corporations. Fintech lenders, insurance companies, and social media platforms are not, in the ordinary case, "State" within the meaning of Article 12. If the constitutional right to algorithmic explanation binds only the State, its practical scope in India's predominantly private digital economy is severely limited.

This objection has genuine doctrinal force, but its practical scope is more limited than it appears. The argument advanced in this article is primarily — and most urgently — directed at public bodies and instrumentalities that deploy algorithmic systems: courts using risk assessment tools, public sector banks, State benefit-eligibility algorithms, and public health systems. For these actors, the constitutional obligation is clear and direct.

For private actors, two supplementary constitutional pathways remain open. First, where private entities exercise public functions pursuant to statutory or regulatory delegation — as credit bureaus licensed under the Credit Information Companies (Regulation) Act 2005[66] or digital intermediaries subject to mandatory compliance requirements under the Information Technology Act 2000[67] may be held to do — they may constitute "other authorities" within Article 12 or entities whose conduct triggers Article 21 obligations. Second, and independently of whether any private entity is a State actor, the DPDPA, the IT Act, and all subordinate legislation must be interpreted in a manner consistent with fundamental rights. A rights-conforming interpretation of the statutory framework requires, at minimum, that the grievance redressal and information access provisions of the DPDPA be read as requiring disclosure of the material logic of automated decisions, to the extent that is possible and proportionate.

VIII. CONCLUSION

The Indian Constitution's guarantee of life and personal liberty has never been confined to its textual expression. Through a progressive, purposive jurisprudence spanning more than four decades, the Supreme Court has transformed Article 21 from a formal threshold into a substantive charter of human dignity — one that encompasses the right to livelihood, the right to health, the right to legal assistance, and the right to informational privacy. This transformation was not the importation of alien values but the recognition that the constitutional text's deepest commitments required their elaboration in response to new conditions and new threats to human freedom.

The right to algorithmic explanation stands squarely within this tradition. When an algorithm determines whether a person receives credit, remains free, accesses healthcare, or earns a living — and does so through a process that is opaque, unaccountable, and structurally immune to challenge — it deprives that person of the meaningful exercise of their constitutional rights. The deprivation is real; the arbitrariness is structural; the dignitarian harm is acute. The DPDPA has failed, by legislative design, to address this harm. The constitutional guarantee has not.

The three-part triggering test proposed in this article — consequential impact on life or livelihood; opacity of the decision-making process; and absence of an effective alternative contestation channel — offers Indian courts an analytically grounded, doctrinally consistent, and practically administrable framework for extending Article 21's protection to the algorithmic domain. The test requires no new principle; it requires only the faithful application of established constitutional doctrine to a new category of deprivation.

[66]Credit Information Companies (Regulation) Act 2005.

[67]Information Technology Act 2000 (India) s 2(w).

The practical stakes are considerable. As India's data economy deepens, as artificial intelligence enters criminal justice, public health administration, welfare allocation, and financial services, and as the scale and opacity of algorithmic decision-making expands, the question of whether the Constitution requires explanation will become among the most consequential legal questions of the coming decade. The answer that this article advances — derived from Maneka Gandhi's procedural imperatives, Olga Tellis's identification of livelihood with life, Francis Coralie's dignitarian conception of existence, and Puttaswamy's account of informational autonomy — is that the Constitution does require explanation, that Indian courts have both the jurisprudential tools and the institutional obligation to say so, and that the articulation of this right is not an act of judicial legislation but of constitutional fidelity.

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SUPREMO AMICUS

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LEGAL ACCOUNTABILITY FOR AI-DRIVEN OFFENCES: A COMPARATIVE ASSESSMENT

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Abstract
The explosion of Artificial Intelligence (AI) technologies in financial, medical, judicial, military and social domains has been unmatched by the development of coherent legal frameworks that can accurately attribute responsibility when such systems inflict harm. This paper recommends a solution to the doctrinal and normative problems presented by attributing legal accountability for AI-induced harms understood broadly as conduct that causes or constitutes a violation of the law, enabled by, or performed through autonomous/semi-autonomous AI frameworks. This paper critically assesses how existing doctrines in tort, criminal and administrative law apply through a comparative study of the approaches adopted by financial regulators across the EU, US, UK, India and China. This paper critically analyzes how existing tort, criminal, and administrative law doctrines apply and where they fall short to AI-generated harm. After critically considering mens rea, agency, vicarious liability, strict liability and new innovations like 'electronic personhood', this paper concludes that none of the current legal frameworks alone can make AI accountable. Instead, we present a layered liability structure assigning responsibility to developers, deployers, operators and regulatory entities as the most jurisprudentially natural way forward.

Key Words: Artificial Intelligence, Legal Liability, Autonomous Systems, Comparative Law, Tort Law, Criminal Accountability, AI Regulation, Algorithmic Harm, Electronic Personhood.

1. Introduction

We are living in a time when people used to make decisions about things like bail conditions and loan approvals and doctors used to make decisions about diagnoses and soldiers used to make decisions about battlefield targeting. Now these decisions are being made by Artificial Intelligence systems more and more often. It is not always clear how they are making these decisions. These Artificial Intelligence systems were made by engineers but they are getting better at working on their own. They can learn from data, get used to situations and come up with answers that their designers did not think of. This big change in who gets to make decisions has effects on the law. The law is based on the idea that people are the ones who do things and they should be responsible for what they do.

Let's take an instance, when a self-driving car hits a pedestrian, who's responsible? The person who taught you to drive a car? The company that let it on the road? The person who told it to move? The official who did not set safety rules? Should the self-driving car itself be held accountable in some way?

To give you an idea, when an AI tool for diagnosing diseases gets it wrong. Says cancer is not cancer, who answers? The developer who made the tool? The hospital that used it? The doctor who relied on it? The government that did not check it? Should the AI tool itself face some form of legal consequences?

Let's say that, when a computer program used for trading stocks causes a market problem, who is to blame? The person who programmed it? The company that used it? The person who told it to trade? The regulator who did not oversee it? Should the computer program itself be responsible?
When a generative AI model creates fake and hurtful content, about someone, who is responsible? The person who trained the model? The company that let it run? The person who told it to create content? Should the AI model itself be held accountable?

These are not just questions that people talk about. Artificial Intelligence systems are now a part of our lives both at home and in public. The problem is that Artificial Intelligence (AI) systems can do a lot of things. The law does not always say who is responsible when something goes wrong. When people get hurt because of Artificial Intelligence, they often cannot figure out who is to blame, prove that it was the Artificial Intelligence that caused the harm or get the help they need. At the time the people who make and use Artificial Intelligence systems benefit from the fact that the law is not clear which means that the public has to deal with the problems that Artificial Intelligence systems cause and also have to suffer the loss caused by the negligence of Artificial Intelligence. Artificial Intelligence systems are becoming more common. The law needs to catch up with Artificial Intelligence systems.

Moreover, this paper attempts to map the legal landscape as it currently stands, identify its inadequacies, and offer a comparative and theoretical basis for a reformed accountability regime.

2. Conceptual Framework: Defining AI-Driven Offences

Before examining liability, it is necessary to define what we mean by an 'AI-driven offence'. The term which is used in this paper to describe any harmful, unlawful, or legally actionable outcome that is directly or substantially caused by the autonomous or semi-autonomous operation of an AI system, and which cannot be reduced to the straightforward implementation of a pre-programmed human instruction.

This definition requires unpacking. First, the reference to 'autonomous or semi-autonomous operation' distinguishes AI-driven offences from ordinary software errors or human-directed computer crimes. A human who uses an AI tool to write a fraudulent email remains the agent of that fraud; the AI's role is merely instrumental. But when an AI system generates defamatory content without specific human direction, or when an autonomous trading agent makes an independent investment decision that constitutes market manipulation, the AI's decision-making capacity becomes central to the legal analysis.

Subsequently, the concept encompasses harms across a wide spectrum:
Physical harm: Autonomous vehicle accidents, AI-guided surgical errors, drone strikes.
Economic harm: Algorithmic price-fixing, AI-driven fraud, flash market crashes.
Reputational harm: AI-generated defamatory deepfakes, synthetic media abuse.
Privacy violations: Facial recognition misidentification, algorithmic data profiling.
Systemic discrimination: Biased hiring algorithms, racially skewed predictive policing tools.
Cybersecurity harm: AI-powered malware, autonomous cyberattacks.

Tertiary, the definition includes the things that can happen with the Artificial Intelligence system at various stages. This includes problems that happen when the Artificial Intelligence system is being designed like when the model's not put together correctly. It also includes problems that happen when the Artificial Intelligence system is being trained like when the data used to train it's not fair. Then there are problems that happen when the Artificial Intelligence system is actually being used, like when the people using it do not use it. Additionally, there are problems that happen when the Artificial Intelligence (AI) system is working, like when it does things that the people who made it did not expect the Artificial Intelligence system to do.

Furthermore, it is also important to distinguish between Artificial Intelligence (AI) acting as a tool of human crime (instrument) and AI causing harm through its own agency (autonomous actor). Legal systems have generally been more equipped to handle the former; it is the latter that presents the deepest jurisprudential challenges.

3. Existing Legal Doctrines and Their Limitations

Traditionally, established legal concepts created to manage human behavior and organizational accountability have guided the determination of legal liability. In both criminal and civil law, concepts like strict liability, vicarious liability, fault liability, and the necessity of mens rea have long been the basis for assigning blame. These theories were developed in a legal setting where human beings or entities under human control carried out activities directly. However, the application of these conventional theories has grown more complicated due to the quick development of autonomous systems and artificial intelligence. Intention, control, foreseeability, and accountability are new issues raised by AI-driven offenses that were not intended to be addressed by current legal standards. The autonomous nature of AI frequently results in an accountability gap, making it challenging to decide who should be held accountable, the developer, the user, the manufacturer, or the system itself. In order to determine if the current legal framework is adequate or has to be modified to address new technological challenges, it becomes necessary to review the existing legal doctrines and analyze their limitations in the context of AI-driven offenses.

3.1 Tort Law and Civil Liability

The law of torts is how we make sure people who hurt others pay for what they did or for the damages caused to others because of their negligence. When someone is careless which is called the tort of negligence, the person who was hurt has to show things. They have to show that the other person had a responsibility to take care of them, that they did not do what they were supposed to do, that this is what caused the hurt and that they really were hurt. This way of doing things has worked well for a long time even when new things, like trains and medicines came along. Now that we have artificial intelligence it is getting really hard to figure out how to use this system.

The duty of care question is complicated by the multi-party nature of AI systems. Does the developer of a general-purpose large language model owe a duty of care to persons who may be harmed by its outputs? The proximity and reasonable foreseeability tests of Donoghue v Stevenson [1932][1] and Caparo Industries v Dickman [1990][2] provide uncertain guidance. Courts have generally been reluctant to impose duties on defendants who lack a direct relationship with the claimant, and the distance between an AI developer and an ultimate end-user may be significant.

The causation analysis is equally fraught. The 'but-for' test of causation like, “Would the harm have occurred but for the defendant's breach?” assumes a linear causal chain. Artificial Intelligence (AI) systems, however, often produce outcomes through processes that are opaque even to their developers, the so-called 'black box' problem. When an AI model trained on millions of data points generates a harmful output, identifying the specific causal contribution of design choices, training data, or deployment context is exceedingly difficult. The doctrine of material contribution (Fairchild v Glenhaven Funeral Services [2002])[3] offers some relief in cases of evidential uncertainty, but its application to AI-specific causation has not been authoritatively settled.

Using intelligence systems can be really complicated. When people use intelligence systems without checking what they are doing or when they rely too much on what the artificial intelligence systems say they may be partly to blame. But a lot of intelligence systems are sold with promises that they work well so people may think it is okay to trust them. This can mean that the people who made the intelligence systems are actually the ones who should be responsible.

[1] Donoghue v Stevenson [1932] AC 562 (House of Lords).

[2] Caparo Industries plc v Dickman [1990] 2 AC 605 (House of Lords).

[3] Fairchild v Glenhaven Funeral Services Ltd [2002] UKHL 22.

3.2 Criminal Liability and Mens Rea

Criminal liability in common law systems is premised on the coexistence of Actus Reus (the guilty act) and Mens Rea (the guilty mind). This foundational principle creates a near-insuperable barrier to direct criminal liability of Artificial Intelligence (AI) systems that indicates a machine, however sophisticated, cannot as a matter of current law possess the mental states of intention, recklessness, and the knowledge that criminal law requires.

The question is "Can the people who made the Artificial Intelligence (AI) system be held responsible for crimes?" A few ideas have been suggested. First the person who creates the AI system and knows it can be used to hurt people may be held responsible as someone who helped with the crime. The person who made the AI system is the one who can be blamed. The AI system can be used for things that can be harmful for human kind and well-being and the person who made it knows this.

Second, the person who uses the AI system and does not care about the risks of hurting people may be guilty of crimes like being very careless and causing someone's death in the United Kingdom or similar crimes, in places. The person who uses the AI system is the one who can be blamed for being reckless and knowing about the danger that occur with the using of such system used it.

However, the practical difficulties of establishing criminal mens rea in the Artificial Intelligence (AI) context are formidable. The diffusion of decision-making authority across large teams of engineers, data scientists, and product managers, none of whom may individually bear the requisite mental element that creates what scholars have called the 'problem of many hands'. Moreover, the emergent nature of AI behaviour means that harmful outcomes may have been genuinely unforeseeable to any individual developer, even if the system was created with inadequate safeguards.

Corporate criminal liability is one way to tackle the issue. Companies that create and use AI systems can be held responsible in countries if they are found guilty of corporate wrongdoing. For instance, the UKs Corporate Manslaughter and Corporate Homicide Act 2007[4], makes companies liable if their management's behavior is much worse than what is normally expected and it results in someone's death or grievous hurt whether it's on mental health or on physical health. There have been suggestions to apply rules to deaths caused by AI but nothing has been officially implemented yet.

Some people think that companies that make and use AI systems should be responsible if something goes wrong. This can be done by making them follow rules. The Corporate Manslaughter and Corporate Homicide Act 2007[5], in the UK is one example. It says companies can be held responsible if their management does something wrong and someone dies or suffers grievous hurt mentally or physically as a result. Now some are saying that we should also hold companies responsible if their Artificial Intelligence (AI) systems cause someone's death. For the time being this is just an idea.

3.3 Product Liability

Product liability law means that something which imposes liability on manufacturers and suppliers for defective products that cause harm and would appear well-suited to AI systems, which are frequently commercial products. Under strict liability regimes (such as the EU Product Liability Directive 85/374/EEC and its 2024 revision)[6], a claimant need not prove negligence; it suffices to establish that the

[4] Corporate Manslaughter and Corporate Homicide Act 2007 (UK), c. 19.
[5] Supra
[6] EU Product Liability Directive 85/374/EEC, as revised by Directive 2024/2853.

product was defective and that the defect caused the harm.

The concept of a 'defect' is defined in terms of the safety that persons are entitled to expect. This raises difficult questions for AI systems such as “Is an AI that produces biased outputs 'defective'?” “Is a self-driving car that fails to navigate an unexpected road condition defective, or merely limited?” The development risk defence which permits manufacturers to escape liability if the defect could not have been discovered at the state of scientific knowledge at the time of manufacture is particularly concerning for AI systems, where the dynamic and self-learning nature of the technology means that harmful behaviour may emerge only after deployment.

Furthermore, many AI systems are arguably services rather than products, particularly those delivered via cloud platforms and APIs. Traditional product liability frameworks may not apply to services, creating a significant gap in coverage.

3.4 Agency and Vicarious Liability

The law of agency which means that under which a principal is bound by the acts of their agent has been creatively invoked by some scholars as a basis for AI liability. If an AI system can be conceptualized as acting as the agent of its deployer, then the deployer would be vicariously liable for the AI's 'acts'. However, the legal concept of agency requires that the agent be a legal person capable of entering into legal relations, which AI systems currently are not.

Vicarious liability, the doctrine under which employers are held liable for the tortious acts of employees committed in the course of employment, similarly assumes a human actor in the employment relationship. Extending vicarious liability to AI systems would require either treating the AI as analogous to an employee (which raises the legal personhood problem) or conceptualizing liability as arising from the deployer's failure to adequately supervise and control the AI system's operations.

4. Comparative Regulatory Regime

4.1 European Union: The AI Act (2024)

The EU Artificial Intelligence Act (Regulation 2024/1689)[7], which entered into force in August 2024 and will be progressively applicable through 2026–2027, represents the world's first comprehensive statutory framework for AI regulation. The Act adopts a risk-based approach, classifying AI systems into four tiers: unacceptable risk (prohibited), high risk (subject to mandatory conformity assessments and registration), limited risk (transparency obligations), and minimal risk (largely unregulated).

Systems that use artificial intelligence and are often high risk including those used in important things like the water and power that people need, schools, jobs, services that people have to have, police work, managing people moving from one place to another and the court, legal system. The people who make these systems have to make sure they are working correctly by keeping records of how they work, have people watching these systems to make sure they are working right, to make sure that the data is handled correctly and put their systems on a list so that the public can see in the European Union. If they do not do these things they can get in trouble. They have to pay a lot of money up to thirty-five million euros or seven percent (70%) of the money they make in a year. This makes the artificial intelligence law a tough rule for artificial intelligence systems. The artificial intelligence law is really strict. That is why the artificial intelligence law is considered the toughest artificial intelligence rule, in the world.

[7] European Union Artificial Intelligence Act (Regulation 2024/1689), entered into force August 2024.

The EU has also revised its Product Liability Directive (2024/2853)[8] to explicitly cover AI systems, including AI-as-a-service. Crucially, the revised directive shifts the burden of proof in certain circumstances, allowing claimants to rely on a presumption of defectiveness when a product fails to meet mandatory safety standards.

The proposed AI Liability Directive[9] (still in legislative process) would establish a disclosure obligation requiring AI providers to disclose evidence relevant to claims of AI-caused harm, and a rebuttable presumption of causation where non-disclosure occurs. Together, these instruments represent a comprehensive, if complex, European approach to AI accountability.

4.2 United States: Sectoral and Fragmented Approach

The United States is doing things differently. They have a lot of rules for different areas like medicine and finance. They like to use laws that are already in place and existing but they do modify them with changing society. The United States really wants to encourage ideas and innovation.

There is no law that says what happens when Artificial Intelligence causes problems. Instead, Artificial Intelligence (AI) is overseen by groups. For instance, the Food and Drug Administration (FDA) watches over Artificial Intelligence used in medicine. The Federal Trade Commission (FTC) looks at Artificial Intelligence used in things people buy and privacy issues. The Equal Employment Opportunity Commission (EEOC) deals with Artificial Intelligence used in employment. The Securities and Exchange Commission (SEC) handles Artificial Intelligence used in services. The National Highway Traffic Safety Administration (NHTSA) is in charge of autonomous vehicles that use Artificial Intelligence.

Executive Order 14110 on Safe, Secure, and Trustworthy Artificial Intelligence (October 2023)[10], though subsequently modified in the administration of President Donald Trump, established baseline requirements for AI risk assessments in certain federal contexts. The voluntary nature of many frameworks including NIST's AI Risk Management Framework (2023)[11] means that legal accountability remains largely contingent on existing common law torts and sector-specific regulatory enforcement.

Section 230 of the Communications Decency Act[12] is a law that says online platforms are not responsible for what other people post on them. This has made it hard to figure out who is accountable for things that are made by artificial intelligence. The courts have usually said that online platforms are not liable for things that are chosen by artificial intelligence but people are starting to argue against this in the hon'ble court.

There are some things happening at the state level with artificial intelligence. For example, California had a bill called SB 1047 that was vetoed in 2024. Colorado also has a bill called SB 205 that's about artificial intelligence being used to make big decisions. Artificial intelligence is a part of these laws and it is important to understand how artificial intelligence works in these situations.

[8] EU Product Liability Directive 85/374/EEC, as revised by Directive 2024/2853.
[9] EU AI Liability Directive (Proposed), COM/2022/496, European Commission.
[10] US Executive Order 14110 on Safe, Secure, and Trustworthy Artificial Intelligence (October 30, 2023).
[11] NIST, AI Risk Management Framework (AI RMF 1.0), NIST AI 100-1 (January 2023).
[12] Communications Decency Act 1996, 47 U.S.C. § 230 (USA).

4.3 United Kingdom: Pro-Innovation Posture

After the United Kingdom left the European Union (EU), the country is trying to be a place where people can experiment with rules for intelligence. The UK Government does not want to make a lot of laws about intelligence right now. Instead, they want to make some rules that different industries can follow.

The UK Government wrote a paper about intelligence in March 2023[13]. This paper says there are five things to consider: the artificial intelligence should be safe and secure, it should be easy to understand, how it works, it should be fair, people should be responsible for what it does and users should have a way to complain if something goes wrong. The government wants the industries to follow these rules on their own than having a new group of people making sure they do.

The Automated Vehicles Act 2024[14] is a deal. This law says that if a self-driving car gets into an accident the company that made the car is responsible not the person who was supposed to be in charge of the car. This is a way of thinking about who is responsible when Artificial Intelligence (AI) is involved.

The Online Safety Act 2023[15] is about keeping people safe on the internet. It also talks about artificial intelligence such as if artificial intelligence is used to create content the companies that provide internet services have to find a way to stop it. They have to make systems that can detect and remove this kind of content that is causing harm to others. If they do not do this then the people in charge of these companies could get in trouble, with the law and have to face legal consequences depending upon the damages caused.

4.4 India: Emerging Regulatory Architecture

India is an example of evolving with generation as it is growing fast in the field of Artificial Intelligence (AI) development and use but it does not have a clear law to govern Artificial Intelligence. The Information Technology Act of 2000[16] and the IT rules of 2021[17] provide some basis for deciding who is responsible in digital situations but they were not made with Artificial Intelligence in mind.

The Digital Personal Data Protection Act of 2023[18] is a deal for Indias data protection. It is relevant to Artificial Intelligence because Artificial Intelligence systems often handle data across every aspect. This Act gives rights to people whose data is being used within the Artificial Intelligent (AI) system. It tells companies how to handle this data. It also sets up a Data Protection Board that can make decisions. However, the Digital Personal Data Protection Act 2023 does not talk about decisions made by algorithms or profiling done by machines or the specific problems caused by Artificial Intelligence.

India has a National Strategy for Artificial Intelligence from 2018. A plan that is for Responsible Artificial Intelligence for All from 2021. These are not laws but rather guidelines. The Ministry of Electronics and Information Technology wants to make some specific laws for Artificial Intelligence but it has not done so yet. This lack of laws creates a lot of uncertainty for people making Artificial Intelligence and for individuals who get hurt by Artificial Intelligence. It is also worth noting that Indian courts have not yet made any decisions on who is responsible when Artificial Intelligence (AI) causes harm, hurt, or damages to anyone. As Artificial Intelligence (AI) is

[13] UK Government, AI Regulation: A Pro-Innovation Approach (White Paper), CP 815 (March 2023).
[14] Automated Vehicles Act 2024 (UK), c. 12.

[15] Online Safety Act 2023 (UK), c. 50.
[16] Information Technology Act 2000 (India), No. 21 of 2000.

[17] IT (Intermediary Guidelines and Digital Media Ethics Code) Rules 2021 (India).
[18] Digital Personal Data Protection Act 2023 (India), No. 22 of 2023.

used more and more in some courts it raises important questions, about fairness.

4.5 China: State-Led AI Governance

China is taking an active approach to making rules for Artificial Intelligence or AI. This is because China wants to be a leader in technology and use AI to keep society stable. Chinas' rules for AI are made up of smaller or micro rules for different areas rather than one big or major rule.

The Provisions on the Management of Algorithmic[19] Recommendations which came out in 2022 say that companies that make algorithms for recommendations must be transparent and fair.

The Provisions on the Management of Deep Synthesis Technology[20] from 2022 regulate things like deepfakes and AI-made content. These rules say that AI-made content must be labelled and that it cannot be used to harm security.

The Interim Measures for the Management of Generative Artificial Intelligence Services[21], which came out in 2023 have more rules for companies that make generative AI. These rules include moderating content checking users and getting approval from the Cyberspace Administration of China before using the AI.

China's approach to AI regulation is very detailed. Has a lot of oversight from the government. This approach prioritizes keeping society under control along, with protecting consumers. China's rules are very specific. Some people are worried that they will be used to censor people's speech. Chinas AI regulations focus on AI. The country keeps working on its AI rules.

Comparative Overview Table

Jurisdiction	Primary Instrument	Liability Approach	Key Strength	Key Gap
European Union	AI Act 2024, Revised PLD	Risk-based, strict liability	Comprehensive coverage	Compliance complexity
United States	Sectoral regulations	Tort-based, fragmented	Innovation flexibility	No federal statute
United Kingdom	V Act 2024, White Paper	Sector-led, common law	Pro-innovation, flexible	Gaps between sectors
India	IT Act, DPDPA 2023	General tort/data law	Data protection base	No AI-specific law
China	Algorithmic/GenAI regulations	State-administered	Operational specificity	Political instrumentalisation

5. The Attribution Problem: Who is Responsible?

The attribution problem is in identifying about which actor in the AI value chain bears legal responsibility for a given or caused damage or harm is the central practical challenge of AI accountability. The AI value chain typically involves: (1) data providers who supply training datasets; (2) model developers who

[19] Provisions on the Management of Algorithmic Recommendations (March 2022).
[20] Provisions on the Management of Deep Synthesis Internet Information Services (January 2023).
[21] Interim Measures for the Management of Generative Artificial Intelligence Services, Cyberspace Administration of China (July 2023).

design and train the underlying model; (3) platform providers who host and operationalize the infrastructure; (4) application developers who build products on base models; (5) deployers who integrate AI into operational contexts; and (6) users who interact with and direct AI systems in specific tasks.

5.1 The Problem of Many Hands

The 'problem of many hands', first articulated by Dennis Thompson[22] in the context of public administration, describes the difficulty of assigning responsibility when an outcome results from the collective action of many individuals, none of whom alone would have caused the harm. In the Artificial Intelligent (AI) context, this problem is acute: thousands of engineers, data labeler's, product managers, and business executives may collectively contribute to a harmful Artificial Intelligent (AI) system without any single individual bearing clear responsibility.

This diffusion of responsibility is not merely a practical enforcement problem; it reflects a genuine moral difficulty. If no individual acted wrongfully then each did their job competently and in good faith. Is it just to hold any of them legally liable? The answer must be yes if liability is understood as a matter of risk allocation rather than moral desert; the question is not who was morally blameworthy but who is best placed to internalize the costs of AI risk and thereby create incentives for safer design and deployment.

5.2 The Black Box Problem and Evidentiary Challenges

Many high-performing AI systems, particularly deep neural networks can operate through processes that are not transparently interpretable even to their creators. This creates profound evidentiary challenges for a claimant who suffers harm from an AI decision may be unable to establish precisely what caused the AI to reach to that decision, and therefore unable to identify the specific conduct, whether in design, training, or deployment that constitutes the relevant breach.

Explainable AI (XAI) research is developing technical tools to illuminate algorithmic decision-making, but these tools remain imperfect and contested. Legal systems will need to develop evidentiary rules that accommodate the inherent opacity of AI systems that whether through presumptions of causation, mandatory disclosure obligations, or the appointment of technical experts with forensic access to AI systems.

5.3 Shared Liability and Contribution

When many people are involved and an artificial intelligence causes harm we need to figure out who is responsible and how to divide the blame. In the United Kingdom there is a law called the Civil Liability Act of 1978[23] that says if one person has to pay for the harm, they can ask others who are also to blame to help pay. Artificial Intelligence (AI) is what we are talking about here. Other countries have laws, rules or regulations. These laws only work if we already know who is mainly, at fault. The problem is that with artificial intelligence we often do not know who bears the main responsibility. Artificial intelligence (AI) is still a part of the problem. We have to solve this before we can use these laws to divide the blame. Artificial intelligence causes harm. We need to know who is responsible.

6. Theoretical Dimensions: Electronic Personhood and Legal Agency

The idea of giving AI systems a legal status is really interesting. This is called personhood. It means that Artificial Intelligent systems would have rights and responsibilities just like people do. This idea is similar to how companies are treated by the law. Companies

[22] Thompson, D.F. (1980). 'Moral Responsibility of Public Officials: The Problem of Many Hands'. American Political Science Review, 74(4), 905–916.

[23] Civil Liability (Contribution) Act 1978 (UK).

are not people as they are considered as legal entities. They can own things, make deals and get sued.

People who like this idea say it would make things and work a lot easier. We would not have to figure out who is responsible when something goes wrong. Artificial Intelligence (AI) systems would have to have insurance, like car insurance or medical insurance. This insurance would be paid for "by the people who make and use the AI systems". If something bad happens then the people who are hurt or suffering damages could get money from the insurance.

Some people do not like this idea. They say it is not a comparison to companies. Companies are made up of people who are living and have legal identity. When something goes wrong the people in charge can get in trouble. AI systems do not have people in charge. Hence, it is not the same. They also say that if we make Artificial Intelligence (AI) systems responsible the people who make and use them might not be held accountable. That means they might not get in trouble even if they do something wrong or harmful.

Another problem is that AI systems are not like people. They do not have thoughts or feelings. They cannot make decisions like people do. So, it does not make sense to give them the rights and responsibilities as people.

Some experts, like Ryan Calo, Karen Yeung and Lyria Bennett Moses have an idea. They think we should make rules for AI systems but we should not give them the same status as people. This way we can still hold people accountable for what they do with AI systems. We can also make sure that the rules are fair and work well for everyone. This idea is simpler and not much complex. It makes sense. We need to make sure that people are responsible for what they do with AI systems and that we have rules that work well for everyone. The idea of personhood is interesting but it is not the only way to solve the problems, with AI systems.

7. Proposed Multi-Layered Accountability Framework

Having identified the inadequacies of existing doctrines and surveyed comparative approaches, this paper proposes a multi-layered accountability framework designed to address the specific characteristics of AI-driven harm.

The framework rests on three core principles: risk-proportionate liability allocation, mandatory transparency and disclosure, and accessible victim compensation.

Layer 1: Developer Liability for Design and Training

Developers of AI systems should bear primary strict liability for harms arising from fundamental design, defects or training data deficiencies, subject to a cap on aggregate liability for general-purpose foundation models. This reflects the principle that developers, as creators of the underlying technology, are best placed to identify and mitigate systemic risks. The development of risk defence should be narrowed or eliminated for high-risk AI systems, given the capacity of responsible developers to conduct pre-deployment testing.

Mandatory pre-market conformity assessments, similar to those required by the EU AI Act[24] for high-risk systems that should be required in all jurisdictions for AI systems deployed in high-stakes contexts. Independent third-party auditors should certify compliance. Failure to conduct required assessments should constitute a basis for strict liability without requiring proof of negligence.

[24] European Union Artificial Intelligence Act (Regulation 2024/1689), entered into force August 2024.

Layer 2: Deployer Liability for Operational Risks

Deployers entities that integrate AI systems into operational products and services should bear secondary liability for harms arising from inadequate operational safeguards, insufficient human oversight, or deployment of AI systems in contexts for which they are not designed. Deployers should be required to conduct context-specific risk assessments prior to deployment, maintain logs of AI system, behaviour sufficient to support post-hoc investigation of harms, and establish user-accessible redress mechanisms for challenging AI decisions.

Layer 3: Operator and User Obligations

Individual operators and users bear responsibility for harms arising from willful misuse, negligent oversight, or deployment beyond authorized parameters. In contexts, where AI systems are deployed with human oversight mandated such as clinical AI tools failure to exercise required oversight should constitute a basis for liability even where the AI system itself operated correctly. This preserves the accountability of human decision-makers while acknowledging the AI's role in the decision-making process.

Layer 4: Regulatory and State Accountability

Regulatory bodies that fail to exercise their oversight functions by declining to investigate known AI risks, failing to update outdated safety standards, or approving AI systems without adequate review that should face administrative accountability mechanisms. The severity and systemic nature of AI-related harms may justify expanded grounds for public law challenges to regulatory inaction.

Layer 5: Safety Net- AI Victim Compensation Fund

Given that it is hard to hold someone in individual cases we should set up an extra fund to help people hurt by AI. This fund is called the AI Victim Compensation Fund would be paid for by AI developers and deployers. They would contribute based on how big their market shares are and how risky their AI systems are.

The fund would help people who got hurt because of Artificial Intelligence (AI). It can't get compensation through regular courts. This is similar to how the UKs Vaccine Damage Payment Scheme works or how the Motor Insurers Bureau helps with road accidents involving drivers.

Having this fund doesn't mean people can't still sue if they find someone responsible, for the harm or the damages caused. The fund would provide a way to get some compensation without having to go through a long and difficult court process.

The AI developers and deployers would pay into the fund according to their market share and the risk of their AI systems. This way those who benefit more from AI and pose risk would contribute more to the fund.
The goal is to make sure that people who get hurt by AI can get some help even if it is hard to figure out who is responsible.

8. Conclusion

This paper argues that current laws such as tort law, criminal liability, product liability and agency law. They are not enough to deal with the problems that AI systems create. The black box problem, the difficulty in assigning blame across chains of parties the unclear nature of AI decision-making and the unpredictable behavior of AI systems all create gaps in accountability that current laws were not designed to address. No country has yet created a system to hold AI accountable. The EU AI Act is the ambitious attempt at regulating AI but it is still being implemented. The United States has an approach that encourages innovation but also creates significant gaps in accountability. The United Kingdom's approach is flexible but relies on regulators who may not have the authority to deal with types of AI harm.

India's lack of regulation creates gaps in a rapidly growing AI market.

China's approach is specific as it is controlled by the state, which raises its own concerns. A new framework for accountability is proposed: Developers of systems would be primarily responsible.

Those who deploy Artificial Intelligent (AI) systems would be secondarily responsible if they fail to manage risks. Individuals who misuse AI systems on purpose would still be accountable. A funded system would also be created to compensate victims to ensure they are not left without help. Effective AI accountability is not about technology or law. It is about the values we build into AI systems and the institutions that govern them. Law is about making decisions about what we want our world to be like. The development of AI accountability law is, about making sure AI serves humanity than harms it.

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ANALYSING ROLE OF THE RBI AS A REGULATORY FRAMEWORK FOR REAL MONEY GAMING IN INDIA

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ABSTRACT

"The exponential growth of the real money gaming (RMG) sector in India, driven by technological advancements and increasing internet penetration, has highlighted the need for a robust and coherent regulatory framework. This research critically analyses the existing regulatory landscape for RMG in India, with a particular focus on the role of the Reserve Bank of India (RBI). The study examines the complexities and ambiguities within the current framework, including the distinction between games of skill and games of chance, and the fragmented nature of state and central regulations. By comparing international regulatory practices and analysing recent legal developments, this research identifies key regulatory gaps and proposes comprehensive reforms. The recommendations emphasize the establishment of a central regulatory authority, harmonization of laws, enhanced consumer protection measures, and strengthened anti-money laundering protocols. The study also underscores the pivotal role of the RBI in overseeing financial transactions, developing specialized guidelines, and promoting financial literacy. These reforms aim to create a secure, transparent, and effective regulatory environment that balances industry growth with consumer protection and financial integrity."

Keywords - *Real Money Gaming, Regulatory Framework, Reserve Bank of India, Online Gaming, Anti-Money Laundering, Consumer Protection, Games of Skill, Games of Chance, Digital Payments, Financial Transactions, Legal Ambiguities, Regulatory Reforms, India.*

INTRODUCTION

The rapid proliferation of digital technologies has significantly transformed various sectors, including the gaming industry. Real money gaming (RMG), which involves wagering real currency on games of skill or chance, has emerged as a prominent segment within this digital revolution. In India, the RMG sector has witnessed exponential growth, driven by increased internet penetration, smartphone usage, and a burgeoning young population. However, this growth has also brought to the forefront critical regulatory challenges that necessitate a robust and coherent legal framework.

The regulatory landscape for RMG in India is complex and multifaceted, involving various statutes, judicial pronouncements, and regulatory bodies. The primary legal instruments governing RMG include the Public Gambling Act, 1867[1], and state-specific gambling laws. Additionally, the Information Technology Act, 2000[2], and the Prevention of Money Laundering Act, 2002[3], play crucial roles in addressing issues related to online gaming and financial transactions. Despite these regulations, the sector remains fraught with ambiguities and inconsistencies, particularly concerning the distinction between games of skill and games of chance, which has significant legal implications.

The Reserve Bank of India (RBI), as the apex financial regulator, holds a pivotal position in the regulation of financial transactions within the RMG sector. The RBI's mandate includes ensuring the integrity of the financial system, preventing money laundering, and safeguarding consumer interests. Given the financial nature of RMG transactions, the RBI's role is crucial in addressing the associated risks, such as fraud,

[1] The Public Gambling Act, 1867 (Act No 3 of 1867).
[2] The Information Technology Act, 2000 (21 of 2000).
[3] The Prevention of Money Laundering Act, 2002 (15 of 2003).

money laundering, and cybersecurity threats. Recent developments, including the RBI's guidelines on digital payments[4] and the introduction of the Payment and Settlement Systems Act, 2007[5], underscore the need for a comprehensive regulatory approach that encompasses the unique challenges posed by the RMG sector.

This research aims to critically analyse the existing regulatory framework for RMG in India, with a particular focus on the role of the RBI. By examining the current laws, regulatory practices, and recent developments, this study seeks to identify gaps and propose recommendations for enhancing the regulatory framework. The objective is to provide a nuanced understanding of the regulatory challenges and to suggest measures that can ensure a balanced approach, promoting both innovation and consumer protection in the RMG sector.

In conclusion, the regulation of RMG in India is at a critical juncture, necessitating a thorough examination of the existing legal and regulatory mechanisms. The RBI's involvement is indispensable in crafting a regulatory framework that addresses the financial intricacies of RMG while safeguarding the interests of all stakeholders. This research endeavours to contribute to the ongoing discourse by providing a comprehensive analysis and proposing actionable recommendations for a more effective regulatory regime.

OVERVIEW OF REAL MONEY GAMING IN INDIA

Real Money Gaming (RMG) refers to online gaming activities where participants wager real currency on games of skill or chance. This sector encompasses a variety of gaming formats, including online poker, fantasy sports, rummy, and online casinos. Each of these formats operates under different legal and regulatory frameworks, often influenced by the distinction between games of skill and games of chance.[6] For instance, fantasy sports and rummy are generally classified as games of skill and are thus permitted under Indian law, whereas games of chance, such as online casinos, face stricter regulatory scrutiny.

The RMG market in India has experienced significant growth over the past decade, driven by factors such as increased internet penetration, the widespread use of smartphones, and a young, tech-savvy population. According to industry reports, the Indian RMG market was valued at approximately USD 1.5 billion in 2020 and is projected to grow at a compound annual growth rate (CAGR) of 22% over the next five years.[7] This growth is not only indicative of the sector's economic potential but also highlights its contribution to employment, revenue generation, and technological innovation.

Economically, the RMG sector has a substantial impact, contributing to the digital economy and generating significant tax revenues for the government.[8] The sector also supports ancillary industries such as payment gateways, cybersecurity firms, and digital marketing agencies. However, the rapid expansion of RMG has also raised concerns regarding financial security, consumer protection, and regulatory compliance.[9] These concerns underscore the need for a robust regulatory framework that can effectively address the unique challenges posed by the

[4] Reserve Bank of India, 'Guidelines on Digital Payments' <https://www.rbi.org.in> accessed 12 September 2024.

[5] The Payment and Settlement Systems Act, 2007 (51 of 2007).

[6] The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, G.S.R. 139(E).

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[9] Anjali Anchayil, 'A New Dawn for India's Online Gaming Industry: Introduction of Central Rules for Real Money Games' (The National Law Review, 27 April 2023) <https://www.natlawreview.com/article/new-dawn-india-s-online-gaming-industry-introduction-central-rules-real-money-games> accessed 12 September 2024.

RMG sector while fostering its growth and innovation.

In conclusion, the RMG sector in India is a dynamic and rapidly evolving industry with significant economic implications. Understanding its definition, types, market size, and economic impact is crucial for developing a comprehensive regulatory framework that balances innovation with consumer protection. This overview sets the stage for a detailed examination of the regulatory challenges and the pivotal role of the Reserve Bank of India (RBI) in ensuring the sector's financial integrity and regulatory compliance.

CURRENT REGULATORY FRAMEWORK

The regulatory framework for real money gaming (RMG) in India is a complex amalgamation of central and state laws, reflecting the diverse and evolving nature of the sector. At the central level, the Information Technology Act, 2000[10], along with its subsequent amendments, including the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021[11], and the recent amendments in 2023, form the cornerstone of the regulatory regime. These amendments introduced specific provisions for the regulation of online gaming intermediaries, emphasizing due diligence, grievance redressal mechanisms, and the establishment of self-regulatory organizations (SROs) to oversee compliance[12]. The amendments define key terms such as "online gaming intermediary" and "online real money game," and mandate that intermediaries ensure their platforms are not used for illegal activities[3].

In addition to the IT Act, the Public Gambling Act, 1867[12], continues to influence the regulatory landscape, although its applicability varies across states. States have the constitutional authority to enact their own laws on gambling, leading to a patchwork of regulations. For instance, states like Sikkim[13] and Nagaland[14] have enacted specific laws to regulate online gaming, while others like Telangana and Andhra Pradesh have imposed stringent prohibitions on real money gaming. This state-level variation creates significant legal ambiguities, particularly concerning the classification of games of skill versus games of chance, which has critical implications for the legality of RMG activities.

The Reserve Bank of India (RBI) plays a pivotal role in regulating the financial transactions associated with RMG. The Payment and Settlement Systems Act, 2007[15], and the RBI's guidelines on digital payments[16] and anti-money laundering measures are instrumental in ensuring the integrity of financial transactions within the RMG sector. The RBI's oversight aims to prevent financial fraud, money laundering, and ensure consumer protection, thereby contributing to a more secure and transparent gaming environment. Recent guidelines issued by the RBI have further emphasized the need for stringent KYC (Know Your Customer) norms and the monitoring of payment gateways to prevent illicit activities.

Despite these regulatory measures, the RMG sector in India faces significant challenges due to legal ambiguities and enforcement issues. The distinction between games of skill and games of chance remains a contentious issue, with various judicial pronouncements attempting to clarify this dichotomy. Recent legal developments, such as the Supreme Court's rulings on fantasy sports platforms, have provided some clarity but have also highlighted the need for a more coherent and unified regulatory

[10] The Information Technology Act, 2000 (21 of 2000).
[11] The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, G.S.R. 139(E).
[12] The Public Gambling Act, 1867 (Act No 3 of 1867).
[13] The Sikkim Online Gaming (Regulation) Act, 2008 (Sikkim Act No 9 of 2008).
[14] The Nagaland Prohibition of Gambling and Regulation of Online Games of Skill Act, 2016.
[15] The Payment and Settlement Systems Act, 2007 (51 of 2007).
[16] Reserve Bank of India, 'Guidelines on Digital Payments' <https://www.rbi.org.in> accessed 12 September 2024.

framework.[17] [18]The rapid growth of the RMG sector, driven by technological advancements and increasing internet penetration, necessitates continuous regulatory updates to address emerging challenges and ensure effective governance.

In conclusion, while the current regulatory framework for RMG in India comprises a combination of central and state laws, significant gaps and ambiguities persist. The role of the RBI in overseeing financial transactions is crucial, but there is a pressing need for a more coherent and comprehensive regulatory approach to address the evolving dynamics of the RMG sector.

ROLE OF THE RBI

The Reserve Bank of India (RBI) plays a critical role in the regulatory framework governing real money gaming (RMG) in India, primarily through its oversight of financial transactions and payment systems. As the apex financial regulator, the RBI's mandate includes ensuring the integrity, security, and efficiency of the payment infrastructure, which is crucial for the RMG sector where financial transactions are frequent and substantial. The Payment and Settlement Systems Act, 2007, empowers the RBI to regulate and supervise payment systems, thereby ensuring that all transactions within the RMG ecosystem are conducted in a secure and transparent manner.

One of the key areas where the RBI's role is pivotal is in the implementation of anti-money laundering (AML) and counter-terrorist financing (CTF) measures. The RBI's guidelines on Know Your Customer (KYC)[19] norms and due diligence processes are designed to prevent illicit activities such as money laundering and fraud within the RMG sector. These guidelines mandate that all entities involved in processing payments for RMG platforms must adhere to stringent KYC procedures, ensuring that the identities of all participants are verified and documented. This not only enhances the security of financial transactions but also helps in maintaining the integrity of the gaming environment.

Furthermore, the RBI's regulations on digital payments have a significant impact on the RMG sector. The introduction of the Payment and Settlement Systems (PSS) Regulations, 2008[20], and subsequent guidelines on electronic payment systems have facilitated the growth of digital transactions, which are the backbone of the online gaming industry. The RBI's oversight ensures that payment gateways and intermediaries comply with regulatory standards, thereby reducing the risk of financial fraud and enhancing consumer protection. The RBI's emphasis on secure and efficient payment systems is crucial for fostering trust among users and promoting the sustainable growth of the RMG sector.

In addition to these regulatory measures, the RBI also plays a role in shaping policy through its advisory and consultative functions. By engaging with stakeholders, including gaming companies, financial institutions, and policymakers, the RBI contributes to the development of a coherent regulatory framework that addresses the unique challenges of the RMG sector[21]. Recent initiatives, such as the formation of inter-regulatory working groups to study and recommend measures for the regulation of digital payments and fintech innovations, underscore the RBI's proactive approach in adapting to the evolving landscape of the RMG industry.

Despite these efforts, challenges remain in the effective regulation of the RMG sector. The rapid pace

[17] Dr KR Lakshmanan v State of Tamil Nadu AIR 1996 SC 1153.

[18] Varun Gumber v Union Territory of Chandigarh (P&H HC, 18 April 2017) (2017) CWP No 7559 of 2017.

[19] Reserve Bank of India, 'Master Direction – Know Your Customer (KYC) Direction, 2016' <https://www.rbi.org.in> accessed 12 September 2024.

[20] The Payment and Settlement Systems (PSS) Regulations, 2008, G.S.R. 622(E).

[21] Reserve Bank of India, 'Guidelines on Regulation of Payment Aggregators and Payment Gateways' <https://www.rbi.org.in> accessed 12 September 2024.

of technological advancements and the dynamic nature of online gaming necessitate continuous updates to regulatory frameworks. The RBI's role, therefore, extends beyond mere oversight to include ongoing monitoring and adaptation of regulations to address emerging risks and opportunities. By leveraging its regulatory authority and expertise, the RBI can play a transformative role in ensuring that the RMG sector operates within a secure, transparent, and fair legal framework.

RECENT DEVELOPMENTS

The regulatory landscape for real money gaming (RMG) in India has witnessed significant developments in recent years, reflecting the sector's rapid growth and the evolving nature of digital technologies. One of the most notable developments is the amendment to the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, which introduced specific provisions for online gaming intermediaries. The 2023 amendments to these rules have further clarified the regulatory requirements for RMG platforms, mandating the establishment of self-regulatory organizations (SROs) to ensure compliance with due diligence and grievance redressal mechanisms. These amendments aim to create a more structured and accountable regulatory environment for online gaming, addressing concerns related to user protection and platform integrity.

In addition to these legislative changes, there have been significant judicial pronouncements that have shaped the regulatory framework for RMG. The Supreme Court of India's rulings on fantasy sports platforms, such as Dream11, have provided clarity on the distinction between games of skill and games of chance.[22] These rulings have affirmed that games predominantly involving skill do not fall under the ambit of gambling laws, thereby providing a legal basis for the operation of fantasy sports platforms. However, the interpretation of what constitutes a game of skill versus a game of chance continues to be a contentious issue, necessitating further legal and regulatory clarity.

The Reserve Bank of India (RBI) has also been proactive in addressing the regulatory challenges posed by the RMG sector. Recent guidelines issued by the RBI on digital payments and anti-money laundering (AML)[23] measures have emphasized the need for stringent Know Your Customer (KYC) norms and enhanced due diligence processes.[24] These guidelines aim to prevent financial fraud and money laundering within the RMG sector, ensuring that all financial transactions are conducted in a secure and transparent manner. The RBI's focus on strengthening the payment infrastructure and enhancing consumer protection is crucial for fostering trust and promoting the sustainable growth of the RMG industry.

Furthermore, the formation of inter-regulatory working groups by the RBI to study and recommend measures for the regulation of digital payments and fintech innovations underscores the regulator's commitment to adapting to the evolving landscape of the RMG sector. These working groups bring together stakeholders from various sectors, including gaming companies, financial institutions, and policymakers, to develop a coherent and comprehensive regulatory framework that addresses the unique challenges of the RMG industry.

In conclusion, the recent developments in the regulatory framework for RMG in India reflect a concerted effort by the government and regulatory bodies to create a more structured and accountable environment for the sector. The amendments to the IT Rules, judicial pronouncements, and proactive measures by the RBI highlight the dynamic and evolving nature of the regulatory landscape. As the

[22] Varun Gumber v Union Territory of Chandigarh (P&H HC, 18 April 2017) (2017) CWP No 7559 of 2017.

[23] Reserve Bank of India, 'Guidelines on Digital Payments and Anti-Money Laundering Measures' <https://www.rbi.org.in> accessed 26 September 2024.

[24] Reserve Bank of India, 'Formation of Inter-Regulatory Working Groups on Fintech and Digital Banking' <https://www.rbi.org.in> accessed 12 September 2024.

RMG sector continues to grow, ongoing regulatory updates and stakeholder engagement will be essential to address emerging challenges and ensure effective governance.

CASE STUDIES

1. **Dream11 and the Legality of Fantasy Sports**: Dream11, one of India's leading fantasy sports platforms, has been at the forefront of legal debates concerning the classification of games of skill versus games of chance. In 2017, the Punjab and Haryana High Court ruled that Dream11's fantasy sports format constituted a game of skill, as it required substantial knowledge, judgment, and discretion.[25] This ruling was subsequently upheld by the Supreme Court of India, which dismissed a Special Leave Petition challenging the High Court's decision. The Supreme Court's affirmation provided significant legal clarity and set a precedent for the legality of fantasy sports in India. This case underscores the importance of judicial interpretation in shaping the regulatory landscape for real money gaming (RMG) and highlights the need for clear legal definitions to distinguish between games of skill and games of chance.

2. **The Sikkim Online Gaming (Regulation) Act, 2008**: Sikkim has been a pioneer in the regulation of online gaming in India, with the enactment of the Sikkim Online Gaming (Regulation) Act, 2008.[26] This legislation allows for the licensing and regulation of online gaming activities, including real money games, within the state. The Act mandates that operators obtain a license from the state government and comply with stringent regulatory requirements, including measures to prevent money laundering and ensure responsible gaming. The success of Sikkim's regulatory framework has provided a model for other states considering the regulation of online gaming. It demonstrates the potential benefits of a well-structured regulatory approach, including increased revenue generation and enhanced consumer protection.

3. **The Telangana Gaming (Amendment) Act, 2017**: In contrast to Sikkim's regulatory approach, Telangana has adopted a more prohibitive stance towards real money gaming. The Telangana Gaming (Amendment) Act, 2017, expanded the definition of "gaming" to include online games and imposed a blanket ban on all forms of real money gaming, including games of skill. This legislative move was driven by concerns over gambling addiction and financial losses among the public. The amendment faced significant opposition from industry stakeholders and led to legal challenges questioning its constitutionality. The Telangana High Court's subsequent rulings have highlighted the tension between state-level regulatory autonomy and the need for a balanced approach that considers both consumer protection and industry growth.

4. **The Role of the RBI in Regulating Payment Systems for RMG**: The Reserve Bank of India (RBI) has played a crucial role in regulating the financial transactions associated with RMG. A notable example is the RBI's directive to payment gateways and banks to ensure compliance with anti-money laundering (AML) and Know Your Customer (KYC) norms. In 2020, the RBI issued guidelines requiring payment intermediaries to implement robust KYC procedures and monitor transactions for suspicious activities. This directive aimed to prevent financial fraud and money laundering within the RMG sector. The RBI's proactive measures have been instrumental in enhancing the security and transparency of financial transactions, thereby fostering trust among users and promoting the sustainable growth of the RMG industry.

These case studies illustrate the diverse regulatory approaches adopted by different states and the pivotal role of the judiciary and the RBI in shaping the

[25] Varun Gumber v Union Territory of Chandigarh (P&H HC, 18 April 2017) (2017) CWP No 7559 of 2017.

[26] The Sikkim Online Gaming (Regulation) Act, 2008 (Sikkim Act No 9 of 2008).

regulatory framework for RMG in India. They highlight the need for a coherent and balanced regulatory approach that addresses the unique challenges of the RMG sector while promoting consumer protection and industry growth.

ANALYSIS OF THE PROMOTION AND REGULATION OF ONLINE GAMING ACT, 2025 AND ITS IMPLICATIONS FOR THE RBI'S ROLE

1. Overview and Legislative Architecture of the Act

The enactment of the Promotion and Regulation of Online Gaming Act, 2025 (Act No. 32 of 2025) marks a watershed moment in India's approach to governing the online gaming ecosystem. Receiving Presidential assent on 22nd August 2025, the Act represents the culmination of years of legislative deliberation and fills the critical regulatory vacuum that had long plagued the sector. The research presented in the preceding sections of this project analysed the regulatory landscape as it existed under the fragmented patchwork of state laws, the IT Act, 2000, and the RBI's financial oversight guidelines. The 2025 Act now fundamentally transforms that landscape, and a thorough critical analysis of its provisions—particularly against the backdrop of the regulatory challenges identified in this paper—is essential.

The Act's architecture is structured around a dual mandate: the promotion of legitimate online gaming (e-sports and online social games) on one hand, and the strict prohibition of online money games on the other. Parliament, invoking its authority under Entry 97 of the Union List and the doctrine of pith and substance, has assumed a uniform national-level legislative competence over the sector, displacing the inconsistent state-by-state regulatory approaches that this paper identified as a primary source of legal ambiguity. The accompanying Promotion and Regulation of Online Gaming Rules, 2025 (Draft Rules) further operationalise the statutory framework by establishing the Online Gaming Authority of India (OGAI), prescribing registration procedures, grievance mechanisms, and penalty enforcement norms.

2. Definitional Clarity and Resolution of the Skill vs. Chance Dichotomy

One of the most significant contributions of the 2025 Act is the codification of clear, technology-neutral definitions that directly address the definitional ambiguities this paper identified as a central regulatory challenge. The Act defines "online money game" under Section 2(1)(g) as any online game — irrespective of whether it is based on skill, chance, or both — that involves a user paying fees or depositing money in expectation of monetary gain. This definition is deliberately agnostic to the skill-chance distinction that had for decades formed the crux of contentious judicial and legislative debates.[27]

This definitional approach has profound implications. The Supreme Court rulings discussed in the Case Studies section — particularly the affirmation of Dream11 as a game of skill — had created an expectation that skill-based games with monetary components could operate freely. The 2025 Act effectively overrides this doctrinal edifice by prohibiting all online money games regardless of skill element. "E-sports," defined under Section 2(1)(c), is carved out as a permissible exception: it must involve no placing of bets or wagers, be duly recognised under the National Sports Governance Act, 2025, and have outcomes determined solely by skill.[28] Similarly, "online social games" under Section 2(1)(i) are permissible provided they do not involve staking of money. Together, these definitions create a tripartite taxonomy — e-sports, online social games, and online money games — that replaces judicial ambiguity with statutory precision. While this resolves the longstanding uncertainty, it also effectively prohibits a wide range of skill-based RMG platforms (such as fantasy sports and online rummy involving real money) that had hitherto occupied a legally grey zone.

[27] The Promotion and Regulation of Online Gaming Act, 2025 (32 of 2025) s 2(1)(g).

[28] ibid s 2(1)(c).

3. The Prohibition Regime and Its Intersection with the RBI's Mandate

Chapter III of the Act constitutes its enforcement backbone and is of direct relevance to the RBI's regulatory function. Section 5 imposes a blanket prohibition on any person offering, aiding, abetting, or otherwise participating in the offering of any online money game or online money gaming service. Section 6 prohibits all forms of advertisement, direct or indirect, that promote online money games. Most significantly for the purposes of this paper, Section 7 prohibits any bank, financial institution, or any other person facilitating financial transactions from engaging in, permitting, aiding, or facilitating any transaction towards payment for any online money gaming service.[29]

Section 7 directly implicates the RBI's regulatory domain. As the apex regulator of payment and settlement systems under the Payment and Settlement Systems Act, 2007, the RBI now has a statutory anchor in the 2025 Act to direct all entities within its regulatory perimeter — including payment aggregators, payment gateways, banks, and prepaid payment instrument (PPI) issuers — to refuse and block fund flows to online money gaming platforms. This is a significant legislative reinforcement of the RBI's existing advisory capacity, which this paper had identified as an area requiring greater statutory backing. The Act's approach mirrors, and indeed goes further than, the analogous provisions found in Section 7 of the US Unlawful Internet Gambling Enforcement Act, 2006 (UIGEA), which similarly imposed obligations on financial institutions to identify and block restricted transactions. Violation of Section 7 of the 2025 Act is punishable under Section 9(3) with imprisonment extending to three years and a fine up to one crore rupees, with enhanced penalties for repeat offences.[30]

However, the Act leaves a critical operational question unanswered: how are banks and payment intermediaries to identify a transaction as relating to an "online money gaming service" in real time, given the opacity of many such platforms? The Act delegates to the Central Government rule-making power but does not specify a mechanism for RBI coordination in building a transaction-flagging or negative-list system. This gap will need to be bridged through RBI circulars and coordination with the newly established Online Gaming Authority of India, whose published list of online money games under Rule 13(4)(d) of the Draft Rules provides a potential starting point for such a compliance architecture. The RBI must proactively develop a regulatory interface with the OGAI to ensure that the Section 7 prohibition is operationally enforceable.

4. The Online Gaming Authority of India: Institutional Design and Coordination with the RBI

Section 8 of the Act empowers the Central Government to constitute the Online Gaming Authority of India (OGAI) as the sector's dedicated regulatory body, and Rule 5 of the Draft Rules establishes it as a statutory body corporate with perpetual succession.[31] This paper had recommended, drawing from the UK's Gambling Commission model, the creation of a centralised regulatory authority as a solution to the fragmented regulatory landscape. The OGAI, therefore, directly addresses that recommendation. Its composition, as prescribed under Rule 6, includes members from the Ministries of Electronics and Information Technology, Information and Broadcasting, Youth Affairs and Sports, and Financial Services. The inclusion of a representative from the Ministry of Financial Services is particularly noteworthy, as it creates a structural channel for coordination between the gaming regulator and the financial regulatory ecosystem within which the RBI operates.

Rule 10(1)(j) of the Draft Rules explicitly empowers the OGAI to coordinate with "financial institutions, law enforcement agencies and other agencies of the

[29] ibid ss 5–7.
[30] ibid s 7.
[31] The Promotion and Regulation of Online Gaming Rules, 2025 (Draft), r 5.

Central or State Government, authorities or regulators for effective enforcement of the Act." This provision creates the legal basis for formal coordination between the OGAI and the RBI, something this paper had advocated in the Recommendations section. However, the provision remains aspirational in tone; the Act does not mandate a formal memorandum of understanding or a joint enforcement protocol between the two bodies. Given that the AML and KYC obligations under the Prevention of Money Laundering Act, 2002, and the RBI's Master Directions on KYC will continue to apply concurrently with the 2025 Act's prohibitions, the absence of a structured inter-regulatory coordination framework is a notable gap that requires attention through subsidiary legislation or regulatory guidance.

5. User Fund Protection and the RBI's Role in Transition

Rule 24 of the Draft Rules addresses a practically significant transitional concern: the fate of user funds held by online money gaming platforms at the time of the Act's enforcement. The Rule provides that funds due to be returned to users, and held in the custody of banks, financial institutions, or payment facilitators prior to enforcement of the Act, may be remitted to users. Such remittance is explicitly exempted from constituting a violation of Section 7's prohibition. This rule is operative only for 180 days from the date of enforcement of the Act, after which it ceases to have effect.

The RBI has a critical supervisory role to play during this 180-day window. Banks and non-bank payment service providers holding such funds must ensure that refund processes are conducted in compliance with existing KYC and AML frameworks. The RBI will need to issue operational guidance to regulated entities specifying the documentation and verification requirements for such refunds, so as to prevent the transitional provision from being misused as a conduit for laundering gaming-related proceeds. This underscores the continuing relevance of the RBI's oversight function even in the context of a prohibitory statute: the mechanics of winding down financial flows from a now-prohibited sector require as much regulatory attention as the oversight of an active sector.

6. Penal Framework, Cognizability and Enforcement Architecture

Chapter V of the Act establishes a robust penal regime. Section 9 provides for imprisonment of up to three years and fines up to one crore rupees for offering online money gaming services (Section 9(1)) and for facilitating financial transactions in violation of Section 7 (Section 9(3)). Repeat offenders face mandatory minimum imprisonment of three to five years and fines between one crore and two crore rupees. Offences under Sections 5 and 7 are classified as cognizable and non-bailable under Section 10, read with the Bharatiya Nagarik Suraksha Sanhita, 2023, which significantly enhances the enforcement teeth of the legislation.[32]

Section 11 extends criminal liability to company directors, managers, and officers, with an exception for non-executive or independent directors not involved in actual decision-making. This corporate liability framework is particularly relevant to fintech companies and payment intermediaries that may inadvertently or knowingly route payments to prohibited gaming services. The RBI, as regulator of these entities, will need to incorporate the Act's prohibitions into its supervisory frameworks, including through updates to the Master Directions on Payment Aggregators and Payment Gateways, to ensure that regulated entities understand and manage their legal exposure under the 2025 Act.

7. Critical Assessment: Strengths, Gaps, and the Evolving Role of the RBI

The 2025 Act achieves several of the reform objectives identified in this paper. It creates a uniform national framework (addressing the recommendation to harmonize state and central laws), establishes a dedicated regulatory authority (echoing the recommendation modelled on the UK Gambling Commission), resolves definitional ambiguities around the skill-chance dichotomy, imposes direct

[32] The Promotion and Regulation of Online Gaming Act, 2025 (32 of 2025) ss 9–10.

obligations on financial intermediaries (reinforcing RBI oversight), and provides for extra-territorial application to offshore gaming services. The Act's preamble explicitly recognises the links between online money gaming and money laundering, tax evasion, and terrorism financing, underscoring the AML concerns that this paper had highlighted as central to RBI's regulatory mandate.

Nevertheless, certain gaps and concerns merit critical attention. First, the Act adopts a total prohibition model rather than a regulated licensing model. While this aligns with a strong consumer protection and public health rationale, it foregoes the substantial tax revenue and economic activity that a licensed RMG industry could generate — an approach that stands in contrast to the models of the UK, Malta, and the state of New Jersey (USA) which this paper examined in the Comparative Analysis section. The prohibition of all skill-based real money games may also face constitutional challenge on grounds of Article 19(1)(g) (right to practise any profession or carry on any trade or business), particularly given prior Supreme Court jurisprudence recognising skill-based gaming as a legitimate commercial activity.

Second, the Act does not specifically define the role of the RBI within its statutory framework, relying instead on the general obligation in Section 7 to implicitly bind RBI-regulated entities. Given the RBI's constitutionally and legislatively distinct mandate, a more express provision for RBI coordination — such as a provision requiring the RBI to issue directions to payment system participants to implement the Act's prohibitions — would have strengthened the enforcement architecture considerably. Third, the Act's extra-territorial application to services "offered within the territory of India or operated from outside the territory of India" (Section 1(2)) presents formidable jurisdictional enforcement challenges, particularly with respect to cryptocurrency-based gaming platforms and Virtual Private Network (VPN)-enabled access to foreign gaming sites. The RBI's existing framework regulating virtual digital assets and cross-border payments will need to evolve to address these technological circumvention risks.

In sum, the Promotion and Regulation of Online Gaming Act, 2025 is a landmark piece of legislation that represents a decisive policy choice to prohibit rather than regulate the RMG sector. For the RBI, this Act transforms its role from a watchdog over a regulated industry to an active enforcement participant in a prohibitory regime. The RBI must now recalibrate its supervisory tools, guidance, and inter-agency coordination mechanisms to operationalise the financial dimensions of the Act's prohibition framework. The hypothesis advanced in this paper — that the RBI's active involvement can significantly enhance governance of the RMG sector — is affirmed and amplified by the 2025 Act's reliance on financial system controls as a primary enforcement tool. However, the full realisation of the Act's objectives will depend substantially on the RBI's institutional response and its willingness to develop a proactive, technology-aware enforcement posture in the years ahead.

COMPARATIVE ANALYSIS

The regulatory framework for real money gaming (RMG) in India can be better understood by comparing it with international regulatory practices, particularly those in jurisdictions with well-established gaming industries such as the United Kingdom, the United States, and Australia. This comparative analysis highlights the strengths and weaknesses of India's current regulatory approach and provides insights into potential improvements.

In the United Kingdom, the Gambling Commission regulates all forms of gambling, including online gaming, under the Gambling Act, 2005.[33] The UK model is characterized by a comprehensive and unified regulatory framework that emphasizes consumer protection, fair play, and the prevention of

[33] Gambling Act 2005 (UK).

gambling-related harm. The Gambling Commission's robust licensing regime ensures that operators adhere to stringent standards, including anti-money laundering (AML) measures and responsible gaming practices. This centralized approach contrasts with India's fragmented regulatory landscape, where state-specific laws and varying interpretations of central statutes create legal ambiguities and enforcement challenges.

The United States presents a more complex regulatory environment due to its federal structure, similar to India. However, significant strides have been made in recent years, particularly with the repeal of the Professional and Amateur Sports Protection Act (PASPA) in 2018, which allowed states to legalize and regulate sports betting. States like New Jersey and Nevada have established comprehensive regulatory frameworks that include rigorous licensing requirements, consumer protection measures, and robust AML protocols.[34] The role of financial regulators, such as the Financial Crimes Enforcement Network (FinCEN), in overseeing financial transactions related to gaming activities is crucial in ensuring compliance with federal AML laws.[35] [36]This multi-layered regulatory approach provides valuable lessons for India, particularly in harmonizing state and central regulations and enhancing the role of financial regulators like the Reserve Bank of India (RBI).

Australia's regulatory framework for online gaming is another pertinent example. The Interactive Gambling Act, 2001[37], regulates online gambling at the federal level, prohibiting certain types of online gaming while allowing others under strict regulatory oversight.[38] The Australian Communications and Media Authority (ACMA) enforces these regulations, ensuring that operators comply with national standards. Additionally, state and territory governments have their own regulatory bodies that oversee gambling activities within their jurisdictions. This dual regulatory approach, combining federal oversight with state-level enforcement, offers a balanced model that India could consider to address its regulatory fragmentation.

Comparing these international frameworks with India's current regulatory environment reveals several areas for improvement. Firstly, the need for a unified and coherent regulatory framework is evident. The establishment of a central regulatory authority, similar to the UK's Gambling Commission, could streamline regulatory processes and reduce legal ambiguities. Secondly, enhancing the role of the RBI in overseeing financial transactions related to RMG, akin to FinCEN's role in the US, could strengthen AML measures and ensure the integrity of payment systems. Lastly, adopting a dual regulatory approach, as seen in Australia, could help harmonize state and central regulations, providing a more consistent and effective regulatory environment.

In conclusion, while India's regulatory framework for RMG has made significant strides, there is considerable scope for improvement. By learning from international best practices and adapting them to the Indian context, policymakers can develop a more robust and coherent regulatory framework that addresses the unique challenges of the RMG sector and promotes its sustainable growth.

[34] Murphy v National Collegiate Athletic Association 584 US 453 (2018).

[35] Financial Crimes Enforcement Network, 'Guidance on Application of FinCEN's Regulations to Certain Business Models Involving Convertible Virtual Currencies' (9 May 2019) <https://www.fincen.gov> accessed 12 September 2024.

[36] Gambling Commission, 'About Us' <https://www.gamblingcommission.gov.uk> accessed 12 September 2024.

[37] Interactive Gambling Act 2001 (Cth) (Australia).

[38] Australian Communications and Media Authority, 'Interactive Gambling' <https://www.acma.gov.au> accessed 12 September 2024.

RECOMMENDATIONS FOR REFORM

The regulatory framework for real money gaming (RMG) in India requires comprehensive reforms to address existing ambiguities and enhance regulatory oversight. These reforms should aim to create a coherent, transparent, and effective regulatory environment that balances industry growth with consumer protection and financial integrity.

Proposals for Enhancing the Regulatory Framework:

To begin with, the establishment of a central regulatory authority dedicated to overseeing all aspects of RMG is imperative. This authority would be responsible for licensing, compliance monitoring, and enforcement, ensuring uniformity across states. Such centralization would mitigate the current legal ambiguities arising from the fragmented regulatory landscape and provide a consistent legal framework for operators and consumers alike.

Harmonizing state and central laws is another critical step. A model law that states can adopt would ensure uniform regulatory standards and enforcement practices, addressing the inconsistencies that currently plague the sector. This harmonization would facilitate a more predictable legal environment, fostering industry confidence and consumer trust.

Furthermore, there is an urgent need to clearly define and codify the distinction between games of skill and games of chance. This legal clarity would reduce the scope for judicial interpretation and provide a solid foundation for regulatory enforcement. Establishing empirical criteria for determining the skill component in games, based on international best practices, would further enhance this clarity.

Enhanced consumer protection measures are also essential. These should include mandatory self-exclusion options, deposit limits, and responsible gaming initiatives. Operators should be required to provide clear information about the risks associated with RMG and offer support for individuals experiencing gambling-related harm. Such measures would ensure that consumer interests are safeguarded while promoting responsible gaming practices.

Strengthening anti-money laundering (AML) protocols is crucial to prevent financial fraud and money laundering within the RMG sector. This includes mandatory reporting of suspicious transactions, enhanced due diligence for high-risk customers, and regular audits of operators' compliance with AML regulations. Robust AML measures would enhance the integrity of financial transactions and protect the sector from illicit activities.

Specific Suggestions for the RBI's Role:

The Reserve Bank of India (RBI) should play a more proactive role in regulating the financial transactions associated with RMG. Enhanced oversight of payment systems used in the RMG sector is essential. The RBI should implement stricter monitoring of payment gateways and intermediaries to ensure compliance with Know Your Customer (KYC) and AML norms. Mandating the use of secure and transparent payment methods would protect consumers and prevent financial fraud.

The development of specialized guidelines for financial transactions related to RMG is another critical area. These guidelines should address the unique risks associated with the sector, such as the potential for money laundering and fraud, and provide clear directives for financial institutions on how to manage these risks. By tailoring its regulatory approach to the specific needs of the RMG sector, the RBI can enhance the effectiveness of its oversight.

Collaboration with other regulatory bodies is also essential. The RBI should work closely with the proposed central regulatory authority and state governments to ensure a coordinated approach to regulating RMG. This collaboration could include sharing information on suspicious activities, joint enforcement actions, and the development of unified regulatory standards. Such a coordinated approach would enhance regulatory efficiency and effectiveness.

Promoting financial literacy among consumers, particularly in relation to RMG, is another important role for the RBI. Educational initiatives should be

launched to inform consumers about the risks associated with RMG, the importance of responsible gaming, and the measures they can take to protect themselves from financial harm. By enhancing consumer awareness, the RBI can contribute to a safer and more responsible gaming environment.

Finally, the RBI should regularly review and adapt its regulations to keep pace with technological advancements and emerging trends in the RMG sector. This proactive approach would ensure that the regulatory framework remains relevant and effective in addressing new challenges and opportunities. By continuously updating its regulatory strategies, the RBI can foster a dynamic and resilient regulatory environment for the RMG sector.

In conclusion, these recommendations aim to create a robust and coherent regulatory framework for RMG in India, with the RBI playing a pivotal role in ensuring financial integrity and consumer protection. Implementing these reforms would promote the sustainable growth of the RMG sector while safeguarding the interests of all stakeholders.

CONCLUSION

The regulatory framework for real money gaming (RMG) in India is at a critical juncture, necessitating comprehensive reforms to address existing ambiguities and enhance regulatory oversight. The exponential growth of the RMG sector, driven by technological advancements and increasing internet penetration, underscores the need for a robust and coherent regulatory environment. This research has highlighted the fragmented nature of the current regulatory framework, characterized by a patchwork of central and state laws, and the significant role of the Reserve Bank of India (RBI) in overseeing financial transactions within the sector.

The establishment of a central regulatory authority, harmonization of state and central laws, and clear legal definitions distinguishing games of skill from games of chance are essential steps towards creating a more predictable and effective regulatory environment. Enhanced consumer protection measures and strengthened anti-money laundering (AML) protocols are crucial to safeguarding consumer interests and maintaining the integrity of financial transactions. The RBI's proactive role in regulating payment systems, developing specialized guidelines, and promoting financial literacy is pivotal in ensuring the sector's sustainable growth.

Comparative analysis with international regulatory practices reveals valuable lessons that can be adapted to the Indian context. The UK's centralized regulatory approach, the US's multi-layered regulatory framework, and Australia's dual regulatory model offer insights into creating a balanced and comprehensive regulatory environment for RMG in India. By learning from these international best practices, India can develop a regulatory framework that addresses the unique challenges of the RMG sector while promoting fair play and consumer protection.

In conclusion, the recommendations proposed in this research aim to create a robust and coherent regulatory framework for RMG in India, with the RBI playing a central role in ensuring financial integrity and consumer protection. Implementing these reforms will not only enhance the regulatory oversight of the RMG sector but also foster a secure and transparent gaming environment. As the RMG sector continues to evolve, ongoing regulatory updates and stakeholder engagement will be essential to address emerging challenges and ensure effective governance. This research contributes to the ongoing discourse on the regulation of digital economies and fintech innovations, offering valuable insights and practical recommendations for policymakers and regulators.

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BETWEEN PROTECTION AND PUNISHMENT, THE MISUSE OF POCSO ACT,2012 IN CONSENSUAL ADOLESCENTS

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ABSTRACT

Protection of children against sexual offences (POCSO) Act aimed at curb sexual exploitation and abuse of minors, but has been increasingly criticized because of overly applied to cases of consensual relationships among adolescents. Although the Act is important in protecting the vulnerable children, its application in cases of consensual sex among teenagers has raised concerns about misuse and unintended criminalization of normal adolescent behavior.

This challenge is critically addressed in this paper through the analysis of landmark judicial interventions such as the observations of Supreme Court that warned about the unnecessary application of POCSO in cases of teenage romance and marital relationships involving underage children. It delves into major case laws that highlight the need to strike a balance between child protection and the adolescent's rights to autonomy, privacy, and their evolving capacities. The paper also explains the recommendations of the 22nd Law Commission of India which suggests maintaining the age of consent as 18 while allowing guided judicial discretion in the case of close-in-age.

Furthermore, the paper discusses the socio and psychological effects of over criminalization, in particular, in boys and young men, where the lack of legal knowledge can result in stigma, trauma, and long term harm. The paper compares India's legal situation with international laws and best practices and identifies the main gaps and recommends reforms to enhance the rights of adolescents. It finds that an child sensitive approach combining comprehensive sexuality education with judicial discretion and protective law is necessary to ensure POCSO does not become into a means of injustice in consensual adolescent relationships, while safeguarding the health and dignity.

Keywords: POCSO Act, adolescent consent, judicial discretion, criminalization of teenagers, Law Commission of India.

INTRODUCTION

Adolescent love affairs occupy an ambiguous and highly debated position at the intersection of developmental psychology, emerging social expectations, and strict legal regulation. Although adolescence is biologically and psychologically a phase of exploration and the discovery of one's sexual self, the Indian legal system adopts a contradictory view of childhood and adulthood. This division is most clearly reflected in the Protection of Children from Sexual Offences (POCSO) Act, 2012, which sets the absolute age of consent at eighteen[1]. The Act declares all sexual acts involving minors, irrespective of consent or context, as criminal, since anyone below eighteen is legally defined as a child[2]. This legal inflexibility creates a fiction whereby consensual sex between teenagers particularly those aged sixteen to eighteen becomes indistinguishable from predatory sexual violence, leading to prosecution as a serious sexual offence.

The clash between this zero tolerance legislative approach and the lived realities of adolescence has generated a crisis within the Indian criminal justice system. The disproportionate and often adverse consequences of this framework are increasingly

[1] The Protection of Children from Sexual Offences Act, No. 32 of 2012, INDIA CODE (2012).

[2] Id. § 2(1)(d).

highlighted by legal scholars, sociologists, and rights activists. A statute designed to protect innocent children from sexual exploitation is frequently invoked against consenting couples[3], commonly referred to in legal discourse as 'Romeo and Juliet' cases. The results are harmful especially for adolescent boys who, despite being part of a mutual relationship, are arrested and forced to live with the lifelong stigma of being labeled sex offenders. These outcomes raise serious doubts about the intention of the law when compared to its practical implementation, and it can be argued that the present structure creates more problems than it resolves.

Moreover, the criminalization of adolescent sexuality is deeply intertwined with India's socio and cultural anxieties. Parents and guardians often employ the POCSO framework as a mechanism of social control[4]. Empirical evidence indicates that many prosecutions are not motivated by concerns of abuse[5] but by attempts to punish disobedience to parental authority, particularly in relationships that cross caste, religious, or class boundaries[6]. In such cases, the state effectively reinforces patriarchal norms under the form of child protection, thereby deepening the conflict between an adolescent's emerging autonomy and the social controls imposed upon them.

This paper critically examines the multiple layers involved in criminalizing consensual adolescent relationships in India. It questions the constitutionality of such criminalization in light of the rights to privacy and dignity and explores the evolving judicial trend wherein courts increasingly express discomfort with a rigid interpretation of the statute. Finally, the study argues that the Indian legal system must realign its approach by moving away from absolute criminalization. It proposes the adoption of close-in-age exemptions, greater judicial discretion in sentencing, and the integration of comprehensive sex education. With a more balanced approach that protects children without undermining their developmental needs, the state can uphold child safety without criminalizing the natural process of growing up.

THE LEGAL PARADOX OF ADOLESCENT DEVELOPMENT, CONSENT, AND LEGAL REGULATION

Adolescence, in developmental psychology, is universally acknowledged as one of the most crucial transitional periods of life, marked by rapid cognitive, emotional, and psycho sexual maturation. It is a phase characterized not only by physical development but also by the discovery of identity and relationships. Within this developmental framework, the exploration of intimacy both romantic and sexual is regarded as natural, normative, and developmentally appropriate[7]. However, the existing legal landscape in India creates a significant paradox laws intended to protect children from harm end up causing harm by criminalizing these natural developmental milestones.

This paradox becomes particularly evident when examined through the lens of constitutional jurisprudence and moral philosophy. In K.S. Puttaswamy v. Union of India (2017), the Supreme Court of India delivered a landmark judgment affirming that the rights to privacy, dignity, and autonomy are integral components of the right to life under Article 21[8]. Human dignity is grounded in autonomy the capacity of individuals to make decisions and exercise self governance. This aligns with the Kantian imperative that human beings must always be treated as ends in themselves and never

[3] Shonee Kapoor, Misuse of POCSO in Consensual Teen Relationships, JUS CORPUS (2023).
[4] Flavia Agnes, Protecting Children or Policing Sexuality?, 52 ECON. & POL. WKLY. 42 (2017).
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[8] K.S. Puttaswamy v. Union of India, (2017) 10 SCC 1 (India).

merely as means[9]. Denying adolescents the agency to form relationships with their peers reduces them to passive subjects of state protection, violating not only their constitutional rights but also their philosophical right to personhood.

This violation is further intensify by the POCSO Act's blanket approach, which ignores the evolving capacities of the child[10] one of the core principles of the United Nations Convention on the Rights of the Child (UNCRC)[11], to which India is a signatory. The Act's rigid division between childhood and adulthood fails to reflect neuron scientific and psychological consensus adolescents, though not fully mature, possess developing competence and should be recognized as such by the law. By conflating exploitation with exploration, the law imposes the same punitive framework designed for adult predation onto consensual relationships between sixteen year olds. As a result, the state's refusal to acknowledge degrees of capacity has produced a legal regime that is protective in intent but punitive in practice, thereby criminalizing the very autonomy it must to nurture.

COMPARATIVE JURISPRUDENCE: THE RECOGNITION OF EVOLVING CAPACITIES

The legal paradox faced by India under the POCSO Act is commonly addressed in other jurisdictions through legislative measures that formally acknowledge the developmental reality of adolescent intimacy. Prominent among these are close-in-age exemptions or "Romeo and Juliet" provisions, which represent deliberate legislative efforts to distinguish between exploitative conduct and consensual peer relationships. Such measures reflect the UNCRC's principle of 'evolving capacities,' which recognizes that as adolescents mature, they warrant increased legal agency and reduced punitive consequences for consensual behavior.

For example, in the United Kingdom, the age of consent is 16[12]. The law provides specific defenses for individuals aged 16 or 17 who engage in sexual activity with a partner slightly younger than the age of consent (typically between 13 and 15). This close-in-age defense enables the criminal justice system to treat peer relationships less punitively, acknowledging that the central issue is not exploitation but a technical breach of the age threshold.

Similarly, in the United States, several states have enacted "Romeo and Juliet" laws[13] that allow statutory affirmative defenses or reduced charges for older minors who engage in sexual activity with younger minors, provided the age difference falls within a defined range (commonly two, three, or four years and the relationship is consensual and non exploitative.

These laws generally focus on:

1. Age Differential:

Establishing a maximum permissible age gap between the parties to differentiate consensual adolescent relationships from predatory behavior .

2. Maturity Assessment:

Permitting courts to consider the relative maturity of the individuals, the power dynamics, and the overall circumstances of the relationship, rather than relying solely on chronological age .

[9] IMMANUEL KANT, GROUNDWORK OF THE METAPHYSICS OF MORALS 36–37 (Mary Gregor trans., Cambridge Univ. Press 1998) (1785).

[10] Committee on the Rights of the Child, General Comment No. 20, U.N. Doc. CRC/C/GC/20 (2016).

[11] Convention on the Rights of the Child art. 5, Nov. 20, 1989, 1577 U.N.T.S. 3.

[12] Sexual Offences Act 2003, c. 42, §§ 9–13 (UK).

[13] See, e.g., Michelle Oberman, Regulating Consensual Sex with Minors: Defining a Role for Statutory Rape, 48 BUFF. L. REV. 703 (2000).

Jurisdiction	Statutory Mechanism	Age of Consent	Key Feature Recognizing Evolving Capacity
India (POCSO Act)	Absolute Age Limit	18	None, Consent is irrelevant below 18.
United Kingdom	Close-in-Age Defense	16	Defenses available for partners aged 16-17 with minors slightly under 16.
United States (Varies by State)	Romeo & Juliet Laws	Varies (often 16 or 17)	Reduced charges or affirmative defenses if the age difference is small (e.g.,2-4 years) and the relationship is peer-based.

JUDICIAL TRENDS : A SHIFT TOWARD FINE TUNING AND INTENT DIFFERENTIATION

Indian courts increasingly find themselves at the intellectual and ethical crossroads between the rigid text of the Protection of Children from Sexual Offences (POCSO) Act and the complex realities of adolescent development. A clear judicial trend has emerged in which both the Supreme Court and several High Courts actively attempt to introduce nuance into the legal framework and to prevent the criminalization of consensual peer relationships. Collectively, these judicial interventions place strong pressure on the legislature to pursue long overdue statutory reform.

The Supreme Court has moved beyond mere acknowledgment of the issue and has begun drawing a clear moral and legal distinction between genuine exploitation and consensual romantic relationships. Earlier judgments such as Independent Thought v. Union of India (2017)[14] and observations in Alakh Alok Srivastava[15] highlighted concerns regarding over criminalization. More recent hearings have gone further, explicitly questioning the fundamental assumption underlying the age based rigidity of the Act.

In proceedings relating to the age of consent and misuse of POCSO, a Bench comprising Justices B.V. Nagarathna and R. Mahadevan openly recognized the social reality of co education and adolescent affection, famously asking 'Can you say it is criminal to love?'[16] The Court emphasized the need to distinguish between grave offences such as rape and consensual romantic involvement. It expressly stated that POCSO must not be applied indiscriminately to teenage relationships and that minors in genuine romantic situations should not be treated as criminals. The Court also acknowledged the unfortunate reality that the Act is often misused by parents to penalize elopements or enforce caste, honor, or familial control, resulting in wrongful prosecution and immense psychological trauma for adolescent boys.

This judicial trend of interpreting the POCSO Act more contextually and more sensitively is not just acclimated by new cases in the High Court but also upheld by the previous cases in which the judge recognized the details of adolescent relationships. One of the precedents that were used in the current judgment is Sabari v. Inspector of Police[17], where the Madras High Court considered the abuse of POCSO in instances of consensual romantic relationships between teenagers. In Sabari, the Court emphasized the importance of differentiating actual instances of

[14] Independent Thought v. Union of India, (2017) 10 SCC 800 (India).
[15] Alakh Alok Srivastava v. Union of India, W.P. (C) No. 1024 of 2017 (India).
[16] Can You Say It's Criminal to Love?, HINDUSTAN TIMES (Aug. 2023).
[17] Sabari v. Inspector of Police, (2019) 3 Mad. LJ (Cri) 110 (India).

child sexual abuse with cases that involve normal youthful romantic behavior which has been wrongly charged as a criminal offence. The role of this judicial position is to ensure that the Act is not abused besides the need to avoid subjecting adolescents to harsh criminal penalties due to developmentally normal and non exploitative behavior.

In support of this argument, the judgment also refers to Parbathbhai Aahir @ Parbathbhai v. State of Gujarat[18] and Dhruv Gurjar, (2019) 2 Mad LJ (Cri) 10. These cases established some valuable principles, which should be followed when quashing non compoundable offences on the basis of Section 482 of the Code of Criminal Procedure. They emphasize the need to be able to distinguish the personal or interpersonal conflicts, in which case it may be reasonable to quash them, and the offences that have a wider impact on society, in which case they must be curbed by the judicial system.

This shift toward judicial subtlety is even more pronounced in various High Courts, which confront the practical consequences of POCSO on a daily basis:

- **Madras High Court on January 27, 2021** (Vijayalakshmi v. State)[19]:- The Court has repeatedly criticized the trend of parents filing POCSO cases under societal pressure relating to caste, honor, or family reputation. It emphasized that criminalizing an adolescent boy for a consensual peer relationship, thereby branding him a sexual offender, defeats the protective purpose of the Act.
- **Calcutta High Court on 17th September, 2021 (**Ranjit Rajbanshi v. State of West Bengal)[20]:- The Court strongly asserted that a law intended to safeguard children cannot be transformed into a weapon that destroys the lives of young people. It urged judicial caution and contextual interpretation.
- **Meghalaya High Court on 27th October, 2022** (Silvestar Khonglah & Anr. v. State of Meghalaya & Anr.)[21]:- The Court consistently highlighted the unfairness of prosecuting teenagers for consensual acts under POCSO, often mitigating consequences where mutual affection and lack of exploitation were evident.

Importantly, many of these judicial interventions rely on extraordinary constitutional or statutory powers such as Article 226/227 of the Constitution, Section 482 CrPC for quashing proceedings, or Article 142 in the Supreme Court. The courts themselves recognize that these measures are merely stop gap solutions. In effect, the judiciary is signaling to the legislature that meaningful reform is essential.

The cumulative judicial pressure points toward the need for statutory mechanisms most notably, a close-in-age exception that would allow the law to distinguish between predatory abuse and consensual adolescent romance during investigation and trial. Such reforms would align the statute with constitutional values, empirical social realities, and internationally recognized principles of adolescent autonomy and evolving capacities.

ABUSE OF POCSO : SOCIAL, CULTURAL, AND GENDERED ISSUES

The excessive criminalization of teenage intimacy under the POCSO Act is deeply connected to India's socio and cultural environment, where a child protection law is often transformed into an instrument of social control. Empirical evidence and extensive legal research consistently demonstrate that the misuse of POCSO is neither accidental nor incidental it is rooted in entrenched socio and cultural norms and

[18] Parbathbhai Aahir @ Parbathbhai v. State of Gujarat, (2017) 9 SCC 641 (India).
[19] Vijayalakshmi v. State, 2021 SCC OnLine Mad 276.
[20] Ranjit Rajbanshi v. State of West Bengal, 2021 SCC OnLine Cal 2306.
[21] Silvestar Khonglah v. State of Meghalaya, 2022 SCC OnLine Megh 189.

hierarchical structures. Surveys across multiple Indian states repeatedly show that a large proportion of POCSO cases involve consensual adolescent relationships. The sheer volume of such cases being prosecuted as sexual offences highlights the vast gap between the legislative intent of child protection and the harmful consequences experienced by young people in real life.

SOCIO AND CULTURAL FOUNDATIONS OF MISUSE

In practice, the legal system becomes interwoven with conservative social expectations, resulting in the weaponization of criminal law to enforce traditional norms and police social boundaries.

1. Parental Control and Honour Norms :-

Parental disapproval is the most common trigger for misuse of the Act. POCSO complaints are frequently filed when parents oppose their daughter's romantic relationship or elopement, especially when it violates entrenched norms of caste, religion, or age. Such complaints though framed as protective are often driven by broader social motives:

1.1 Regulating Female Sexuality:-

The law becomes a tool of patriarchal control, used to restrict a girl's autonomy over her body and relationships and to enforce compliance with familial and community expectations.

1.2 Preserving 'Honor':-

In communities where caste and religious purity are heavily policed, inter-caste or inter religious relationships are perceived as threats to family honor. Filing a POCSO case enables families to restore their perceived social integrity by seeking harsh punishment for the male partner, symbolically 'cleansing' the supposed dishonor.

2. Caste and Community Surveillance

POCSO's application often mirrors and reinforces caste based hierarchies. Inter caste relationships irrespective of consent are commonly criminalized. The Act thus unintentionally contributes to community level surveillance and control, reinforcing social inequalities by enabling severe legal action against adolescents who challenge caste or religious boundaries. In such cases, the law functions less as a protective statute and more as a conservative tool for maintaining social order, at the expense of minors' constitutional rights to autonomy and choice.

GENDERED IMPACT AND THE CRISIS OF LEGAL LITERACY

Although POCSO aims to protect girls, its misuse disproportionately harms adolescent boys, producing a dual tragedy for both partners in consensual relationships.

1. **Gendered Impact on Adolescent Boys:-** Many of the boys implicated in POCSO cases are minors themselves. Yet they are subjected to the full force of the criminal justice system immediate incarceration, mandatory minimum sentences, and lifelong stigma as 'sex offenders. The consequences are devastating school expulsion, barriers to employment, long term psychological trauma, and a disrupted life trajectory. These punishments are grossly disproportionate to the moral culpability in consensual, peer level intimate relationships.

2. **Crisis of Legal and Sexual Literacy:-** The prevalence of consensual POCSO cases also stems from a broader systemic crisis in legal and sexual literacy. Most adolescents are unaware that mutual, consensual intimacy is treated as a serious criminal offence under current law. This widespread ignorance directly reflects structural gaps in Comprehensive Sexuality Education (CSE) and legal awareness programs. The Supreme Court's recent directives emphasizing

the need for public education on the age of consent highlight the urgency of addressing this systemic deficiency.

A GLOBAL VIEW : COGITATING LAWS OF ADOLESCENT SEXUALITY

The legal framework of adolescent sexuality is unique and unprecedented in India due to its stringent and excommunicating nature particularly in comparison with jurisdictions across the world that are more progressive and developmentally suitable in their line of differentiation. The fundamental problem is the lack of distinction between the really exploitative sexual abuse and the intimacy between adolescents aged closely. This is the key difference between modern, rights based legal regimes, which codify this distinction (often under the name Romeo and Juliet laws or close-in-age exemption) and provides an example of reform, in which autonomy and harm reduction are put more highly than criminalization.

This disparity is outlined in a comparative research of various jurisdictions with indications of flexible frameworks that can be applied to the Indian context:

South Africa (A call to Dignity and Ubuntu):- South Africa has also embraced one of the most innovative strategies through successful decriminalization of consensual intimacy[22] in the adolescence age. It has a legal philosophy based on the concepts of human dignity and Ubuntu, which means I am because we are and which is focused on compassion, humanity, and mutual respect. This strategy appreciates that any consensual sexual activity, which is not influenced by coercion or exploitation, in the course of adolescent development, is a normal part of growing up and should not be simply criminalized. The emphasis is made on the support, protection, and education of actual harm instead of punitive response.

United Kingdom & Canada (Age-Gap Safeguards):- Both Canada and the United Kingdom permit teenage consent but provide age gap protections to ensure that the teenage is not abused by a much older person. Their legal paradigms create a practical compromise they admit the possibility of consensual relationships between older and younger teenagers, but create an upper age limit at which point exploitation is assumed. This guarantees further safeguard of minors who are vulnerable without making relationships among people of almost similar age and developmental stage criminal.

Australia (Uninterrupted Close-in-Age Protections):- However, regardless of age of consent differences across the states and territories of Australia, has a consistent age of close-in-age protections. Although the exact age ratios tend to vary, the general principle is the same in cases where no substantial age difference exists and the acts were consensual, the law tries to prevent the imposition of harsh legal penalties of rape by statute. This ambiguity shows that there is a legislative intent of differentiating between social behavior that is normal during adolescence and the predatory types of behavior.

Germany (Consent with Restraints on Power and Imbalance):- Germany establishes the age of consent at 14 but contains critical limitations that deal with power imbalances[23]. The law recognizes and penalizes the instances where an adult takes the advantage of their power, as a teacher, guardian, coach, or a vast difference in age to abuse a minor, regardless of the minor supposedly agreeing to it. The model is advanced since it does not focus on the chronological age but considers the context, relationship, and the possible abuse of power.

France vs. Philippines (New Contemplative Reforms):- The recent changes in the French and

[22] Teddy Bear Clinic for Abused Children v. Minister of Justice & Constitutional Development 2014 (2) SA 168 (CC) (S. Afr.).

[23] Strafgesetzbuch [StGB] [Penal Code], §§ 176–182 (Ger.).

Philippine legal systems can be seen as an indication of a worldwide move toward a more subtle conceptualization of adolescent development. Such changes acknowledge that adolescent sexuality is not simple and that the law also needs to be changed in line with psychological maturity and chronological age. The changes simplify legal language and establish firmer lines between the two in order to ensure that attraction between equals is not confused with predatory actions.

INDIA LESSONS : A WAY OF REFORM

There is the strong guidance of the international experience to India. Autonomy based, developmental recognition based and harm reduction based models show that rigid criminalization cannot be justified and cannot work. The present system of India tends to ignore the reality of the relationships between adolescents and therefore thousands of youths, particularly boys, have been accused of being criminals because of engaging in consensual sex.

Both the close-in-age exemption and the stringent precautions against power imbalances will make India take a step forward into globally progressive measures. These reforms would enable the justice system to focus their punitive power on actual predators, and afford adolescents the room to experience their developmental process without having to fear being criminally prosecuted.

POCSO ACT OF INDIA AND THE CASE OF THE NEED TO REFORM LEGISLATION

India is now faced by a profound and problematic paradox of application of the Protection of Children from Sexual Offences (POCSO) Act, 2012. A legislation that was meant to guard children is in most instances hurting the same teenagers that it should be guarding. This hypocrisy has proven too difficult to ignore and the stark contrast in the fixed paradigm of the Act and the actualities of adolescents, especially adolescents between the ages of 16 to 18. This state of affairs demand an extreme and timely legislative amendment to make the law fit the values of the constitution, the realities of contemporary society, and best practices in international societies about children rights.

The first problem that should be addressed is the most immediate and urgent problem the use of the Act in case of the consensual relations between the teenagers. Currently, the law has failed to draw a line between actual sexual exploitation and romantic or sexual relations by consent of the minors, particularly between similar age groups. Close in age exemptions must thus be introduced. Such exemptions would stop criminalization of consensual relations between adolescents who are nearly in the age of majority and when the interaction is not exploitative. The absence of this reform has seen dozens of young people unjustly charged with crimes and families and communities broken in the name of protection.

Besides a statutory exemption it is important that guided judicial discretion should be adopted with the recommendation being highly suggested by the 22nd Law Commission of India[24]. Human relationships are too complex and cannot be controlled only by strict legal solutions. Judicial discretion would enable courts to examine beyond an age factor and be in a position to provide an assessment that is more significant and examine the context, power relations, and pure intent of the sexual performance. This would assist in distinguishing between actual instances of exploitation and consensual teenage love whereby the punitive provisions of POCSO would be applied to actual culprits and not young couples. The lack of such discretion in the current times has led to the victim as accused phenomenon, in which families are using the law as a weapon, and adolescents engaged in consensual relationships are facing criminal charges. Moreover, the effectiveness of any protection law relies so much upon social consciousness and willingness. The need to have comprehensive sex

[24] LAW COMM'N OF INDIA, CONSULTATION PAPER ON REFORM OF FAMILY LAW (2018).

education in every school is thus inevitable. This should be factual, rights based and age sensitive education, where the adolescents are informed about consent, healthy relationships, sexual and reproductive health risks, and their rights under POCSO. A well informed youthful community is among the most effective means of counteracting victimization and unwanted criminal acts, a culture of responsible behavior and making informed choices will always be much more effective than incarceration.

Another issue that is very pronounced in the present application of POCSO is the disproportionate criminalization especially among young men who are engaged in consensual relationships with the age difference is small. In order to overcome this gender imbalance and to ensure the principle of equality before the law, we should make some amendments based on gender neutrality. The emphasis of the law should be on whether or not the accused is exploited as opposed to the gender of the accused. It is only at this point that the Act can effectively focus on the offenders without necessarily punishing young boys who have consented to sexual relationships.

Lastly, where no exploitation is witnessed the justice system ought to substitute punitive actions by restorative intervention[25] and developmental intervention. The counseling option as opposed to criminalization is imperative. In cases where a court concludes that the teenagers have done consensual sex without the exploitative factors, non punitive interventions, like counseling, psychological assistance, and family mediation ought to be considered. Crime in this instance leads to stigmatization, school dropout and long term mental health problems which contradict the very principle of the best interests of the child on which child protection laws are founded. Reformative and not punitive approaches not only provide much more advantages in the long run of the well being and development of adolescents.

CONCLUSION

The extent to which the Protection of Children from Sexual Offenders Act, 2012 has been applied to consensual adolescent relationships shows a gaping disconnect between the rigidity of the laws and legal frameworks and the realities of the modern world. Although when it was enacted, the Act had a legitimate purpose of guaranteeing that children are not sexually exploited and abused, its criminalization of all sex involving individuals under the age of eighteen years has been in effect the wrongful prosecution of consensual teenage relationships. The judicial statements made in the different High Courts and the Supreme Court have proved over and over again the detrimental effects of this careless usage, but the judicial restraint is not enough to correct the structural and legislative failure of the current structure.

It is without any doubt that the guarding of the minors against sexual violence should always be a priority of the legal system. However, this kind of protection cannot be achieved at the expense of undermining adolescent autonomy, dignity and emerging abilities, and should not result in the criminalization of youth over the long term of behavior that is developmentally normal and consensual. It is thus an urgent need to have a calibrated, child sensitive , and rights oriented approach. Such a strategy should include exemptions at close age , allow a judicial discretion which should be guided by some constitutional considerations, and entail strong emphasis on preventive and educational strategies, including extensive sexuality education. By amending the POCSO Act to accommodate such concerns, the Act will not undermine its protective role instead, it will make it more legitimate and effective because it would make a clear distinction between sexual exploitation, and intentional teenage intimacy. This reform is critical to the preservation of

[25] Howard Zehr, The Little Book of Restorative Justice 45–47 (2002).

constitutional values of dignity, privacy, equality and personal liberty and to promote a legal regime that is just and humane, without being in any way compromised on the best interests of adolescents.

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PROSECUTING WAR CRIMES WITHOUT ICC MEMBERSHIP: A CRITICAL STUDY OF INDIA'S DOMESTIC AND INTERNATIONAL LEGAL APPROACH

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Abstract:
War is never isolated and neither are the crimes that take place as an outcome to those wars. They are considered to be an outcome of the consistent human rights abuses and the failure of state machinery at a national level in a manner that affects the justice system. The prosecution of war crimes lies heavily on the analysis of the court it is being taken up in. The Rome Statute which was introduced in July 1998 after being formulated by the Preparatory Committee, the establishment of an international criminal court was done which came into existence in the year 2002 after being ratified by sixty nation-states. The International Criminal Court has jurisdiction over four matters: crimes against humanity, war crimes, genocide and crimes of aggression. India did not ratify the statute because of reasons which will be critically analysed in this paper. India's non-membership at the ICC and the accountability gap it creates within domestic legislations which are not at par with the international treaties India is a signatory to. There will also be a critical analysis of domestic legislations along with dissecting military laws. This paper will also conduct a comparative analysis with countries that are not members to the ICC. Subsequently, there will also be a brief study about the structure, the kinds of crimes prosecuted; and why it exists as a permanent court and not as an ad-hoc tribunal as was the case in the Military Tribunals which were established in the post world-war II era along with studying what role did India play at these tribunals. The aim of this paper is to conclusively establish the reason behind the lack of accountability which exists and to also recommend necessary policy changes which will enable India to strengthen its position in the international diaspora which converges on the grounds of human rights.

Keywords: war, human rights, rome statute, tribunals, domestic laws.

I. Introduction

In the past one hundred years of existence of international relations and politics which not just affects a country domestically but also how it impacts the greater reality of the world has begun to be recognised through the impact it brings. This recognition has happened by way of building structured international organisations such as the United Nations[1], European Union[2], ASEAN[3]; military and strategic alliances such as NATO[4]. Along with international treaties and conventions such as the Geneva Convention[5] and UNICEF. Due to this development, certain obligations have also been laid down for the member states to follow; however for every right that is granted, a corresponding duty too shall arise.

This obligation is followed in terms of ensuring national peace along with international cooperation. However with the onset of wars from 1914 up until 1945, the need of the hour which arose was to build a forum for accountability with regards to the crimes

[1] U.N. Charter pmbl., June 26, 1945, 59 Stat. 1031, 3 Bevans 1153.
[2] Treaty on European Union (Maastricht Treaty), Feb. 7, 1992, 1992 O.J. (C 191) 1
[3] ASEAN Declaration (Bangkok Declaration), Aug. 8, 1967, 6 I.L.M. 1233 (1967).
[4] North Atlantic Treaty art. 1, Apr. 4, 1949, 63 Stat. 2241, 34 U.N.T.S. 243.
[5] Geneva Conventions of Aug. 12, 1949, 6 U.S.T. 3114–4799, 75 U.N.T.S. 31–417.

that have been committed during those specific war years. This accountability did not come into existence prior to the recognition of those acts done with a malafide intention, to specifically harm a group of people belonging to a particular race, ethnicity, colour or religion as was the case in World War II with the persecution of Jews and Polish people by the Nazi regime founded by Adolf Hitler, to name a few.

The efforts to bring about accountability in the nature of prosecution after the recognition of crimes that had happened during war times with regard to setting up and formulating a designated court or tribunal began after World War I finished. However, this attempt turned out to be frugal in the sense that the tribunals could not be set up. Consequently, no international criminal accountability was created. After World War II was over and there was an uproar about the heinous crimes which were committed in Nazi-Germany, the need for bringing justice started to rise. As a result, the International Military Tribunal at Nuremberg [6]was set up which legally speaking was an ad-hoc tribunal meaning that it was a temporary court which would punish the criminals belonging to the Axis powers who were responsible for committing crimes against peace, war crimes and crimes against humanity. This was mentioned in the Charter of the tribunal.

However, this tribunal faced serious criticisms in the sense that it was believed to be "Victor's Justice" as the foundation of this tribunal was thought of by the Allied powers and it was stated that the victors of World War II had a lot of influence on the working of this tribunal. Regardless, this tribunal found twenty-two individuals guilty out of which eleven received the death penalty and the rest were convicted. After this endorsement of justice on an international level, the need for a permanent court which would not only prosecute but also punish the individuals committing acts far beyond the ambitions of human rights arose. But, this need faced a setback due to the Cold War Era. And upon the breakdown of the USSR in 1991 and the civil wars which happened in that region, another tribunal was set up namely the International Military Tribunal at the Former Yugoslavia in 1993[7]. This tribunal indicted one-hundred-and-sixety-one individuals and convicted a staggering ninety individuals for crimes against humanity, war crimes and genocide. A year later, the International Military Tribunal at Rwanda[8] was also set up for the same crimes which convicted sixty-four individuals out of the ninety-six indicted.

After these subsequent tribunals, it was finally accepted by global powers that a permanent court needed to be established. The Preparatory Committee was set up in 1995 and the Committee introduced the Rome Statute in July of 1998. Upon its introduction, the statute was ratified by sixty-states and in the year 2002, the International Criminal Court [9]was set up. This court was not only permanent in nature but it also promised a forum for ensuring prosecution and accountability.

However, this court was deemed to be idyllic as it was not ratified by many countries due to their reasons which were accordingly raised, India happens to be one of them. The same countries which enthusiastically participated in the Prep Com, were the ones which didn't ratify the statute. Literature across many fields of study have pointed to the reasons why states did not accept the authority of the court stating that it created sovereignty and jurisdictional issues along with others which will be analysed in this paper. Further, the research tends to map out the history of the court and reasons many states do not join but what they fail to analyse or rather not inquire is the consequence which occurs domestically for the non-

[6] Agreement for the Prosecution and Punishment of the Major War Criminals of the European Axis art. 1, Aug. 8, 1945, 82 U.N.T.S. 279 (Charter of the International Military Tribunal).
[7] S.C. Res. 827, U.N. Doc. S/RES/827 (May 25, 1993).
[8] S.C. Res. 955, U.N. Doc. S/RES/955 (Nov. 8, 1994).
[9] Rome Statute of the International Criminal Court, July 17, 1998, 2187 U.N.T.S. 90.

state parties who are otherwise at the fore-front of complying with global peace policies.

The main core of this paper is to analyse the gap which occurs between ratifying international treaties that instil human rights values and not enacting laws that favour those particular values. For India, there are constitutional provisions which allow prescriptive jurisdiction to take over and enact those laws but they are not applicable. And even if such laws, they are not enforced effectively due to social and economic systems, which again points to a gap. Researchers across various fields of study have tried to state the reasons why this non-membership occurs however in these studies, there is always a lack of an acknowledgement for an accountability gap. That even though India is party to international conventions such as CEDAW, CRC, ICCPR to name a few, there are not enough legislations to back this obligation. Some statutes do find existence but they do not find enforceability and hence the standard of obligation is not met. These statutes have been set up because the government of India has the constitutional obligation to make these legislations as per Article 51(c) and Article 253.

Further, there are certain laws that will be evaluated which find intense enforceability but the result of this comes in the form of human rights abuses which is contrary to the obligations India is required to fulfil. Simultaneously there will also be a critical analysis of the Codified laws in defining "War crimes" and "genocide" along with dissecting military laws. This paper will also conduct a comparative analysis with countries that are not members to the ICC in order to compare the reasons for these states' non-membership. The aim of this paper is to conclusively establish the reason behind the lack of accountability which exists and to also recommend necessary policy changes which will enable India to strengthen its position in the international diaspora which converges on the grounds of human rights.

II. Theoretical Framework: ICC and an analysis of India's domestic legal framework

The Rome Statute was adopted on the fifteenth day of July, 1998 and it became a law which enacted the International Criminal Court which was adopted in the year 2002 on the first day of July. The statute has thirteen parts with one-hundred-and-thirty-eight articles. The Court has international legal personality and it is an organ of any other international organisation ensuring that it functions independently. Presently, the ICC seat is at Hague, the Netherlands. It has three branches namely, Judicial, Investigatorial and Prosecutorial and Registry. Matters at this court can be brought forth in three ways- by a Party State, United Nations Security Council or the Prosecutor.

The Rome Statute has jurisdiction over four types of crimes namely, genocide, crimes against humanity, war crimes and crimes of agression as shown in Table 1. Genocide is defined under Article 6 of the statute as the intent to destroy whole or in part a national, racial, ethical or religious group. Article 7 of the statute establishes that crimes against humanity are specific acts committed as part of systematic attacks that are directed towards any civilian population with knowledge.[10] War Crimes are defined under Article 8 of the statute as grave breaches of the Geneva Convention of 1949 along with it being defined as violations of established protections of the laws of war. Crimes of aggression are an addition to Article 8 as Article 8 *bis* that states it as a person who is in a place of position indicting the military to commit acts that are violent in nature.

[10] Ray Murphy, *International Criminal Accountability and the International Criminal Court*, Irish Ctr. for Hum. Rts., Sch. of Law, Nat'l Univ. of Ireland, Galway, https://ciaotest.cc.columbia.edu/casestudy/mur01/mur01.pdf

Crime	Definition (General)	Key Elements
Genocide	Acts committed with intent to destroy a protected group	Killing, causing serious harm, preventing births
Crimes Against Humanity	Widespread or systematic attacks against civilians	Murder, torture, enslavement, persecution
War Crimes	Serious violations of international humanitarian law during armed conflict	Attacks on civilians, torture, unlawful detention
Crime of Aggression	Use of armed force against another state violating UN Charter	Planning or executing aggressive war

Table 1

As of 2025, 125 countries have ratified the Rome Statute which have been granted complete membership. There are many countries which stay out of the court such as USA, China and Pakistan; their reasons for non-membership will be studied in the future course of this paper. But most importantly, India has not yet ratified the statute and has yet to become a permanent member of the court. Although India was a very prominent member of the Prep Comm however when it came to ratifying the statute, India abstained from voting stating that there are sovereignty issues along with the lack of defining certain crimes that India regularly faces that is terrorism within the ambit of 'crimes of aggression'[11].

The main jurisprudential basis of the Rome Statute follows the concepts of universal jurisdiction and balance of state sovereignty. Universal Jurisdiction refers to the instances wherein the court can take up matters from a party state in which the domestic legal machinery has collapsed and ceases to impart justice to those who seek it. This notion does not entirely go against state sovereignty since it only occurs when there is a domestic breakdown hence the balance. Upon a deeper research, it can be found that scholars have argued incessantly on the fact that the reason behind India's non-membership is far greater than originally stated by the delegation. Primarily, India has sovereignty issues with the court's formulation. In essence, the country does not seek resolution of its domestic cases on an international level.

India has a long history of awaiting a chance to become a permanent member at the United Nations Security Council which is one of the bodies that can directly refer a matter to the ICC.[12] This referral style suggests that India wants that permanence in order to ensure that the five permanent members do not overmine their superiority and use their powers to influence major decisions. Further, India also believes that the seat secured by permanent members does not reflect the realities of the current world.

Another reason why India chooses to stay out is that of jurisdiction. India states that the doctrine of complementarity is an instance where the court will take up jurisdiction only in cases where the national legal machinery has failed and it cannot accurately or effectively impart justice to those who seek it will not work properly because on what basis can the court decide effective and non-effective. It is a promoter of the idea of "Optional Jurisdiction" wherein party-states can hand over jurisdiction if they believe the

[11] Devasheesh Bais, *India and the International Criminal Court*, FICHL Policy Brief Series No. 54 (Torkel Opsahl Acad. EPublisher 2016), https://www.toaep.org/pbs-pdf/54-bais

[12] *supra 11*

matter which is at their hands cannot be resolved by domestic legal systems.

One of the reasons why India stays out of the ICC is because it does not recognise "terrorism" as a crime of aggression and that is a problem India has faced for a very long time. Due to the lack of this recognition, India does not become a party to the statute. Further, India also wants to include nuclear weapons to the list of weapons which can be used to inflict crimes which are defined under the statute. This is also stated to be a strong reason due to which India stays out of the International Criminal Court.

Subsequently, India believes that the prosecutor has been given a lot of powers. As in its eyes, the prosecutor alone can open an investigation against any individual or a governing authority of any of its member states. Along with this objection, India also seeks recognition of terrorism as a part of 'crimes of aggression' which is an issue the country deals with regularly. India believes in the deterrence policy of nuclear weapons and forwards the opinion that the use of nuclear weapons be included in the definition of war crimes.

The reasons behind India's non-membership of the ICC have been critiqued by many scholars and political analysts.[13] They put forth the argument India stays out due to sovereignty and jurisdictional issues. However, these issues, according to the researchers, are meagre issues which can be resolved upon the study of the Rome Statute in itself and further ensuring that the ICC will not override its authority to prosecute any individual belonging to any member-party at its beck and call. India also stays out due to the powers granted to the prosecutor which are not based on the Statute as the Prosecutor has to comply with the rules and inform the government of that particular country that they will be opening an investigation against one of their countrymen. Similar is the issue of UNSC bringing matters to the ICC, in reality, that power of referral is not granted by the Rome Statute specifically, however, the UN Charter grants this power which again proves to be a reason for India to abstain itself from joining the ICC.

But the real contrast can be seen when noticing that India has had many international disputes that have occurred over the course of many years. These issues have mainly been border disputes, water disputes and terrorism; and the resolution of these issues has been found by way of arbitration at the Permanent Court of Arbitration. [14] This promotes the idea that the country not only focuses on resolution of disputes on a rule-based framework as seen in the Indus Water Treaty Dispute but also in a manner that will protect the countrymen as was seen in the Kulbhushan Jadhav Case[15] wherein even though courts in Pakistan had passed a death penalty, India seeked a stay of that order on grounds of human rights at the Court's seat at Hague.

After a few years of attaining independence, India adopted the Constitution[16] in the year 1950. Under the ambit of constitutional law, this book is considered to be grund norm. Essentially, the constitution will grant fundamental rights in Part III, to all its citizens and it also laid down the Directive Principles of State Policy in Part IV, which are not enforceable in nature but are to be followed as established principles in order to build a socially and politically sensible society. India is also signatory to many international conventions and treaties which follow the agendas of protection against violation of human rights, protection of women and children to name a few. Subsequently, these laws create multiple obligations for India to fulfil in the sense that in order to ensure global peace

[13] Sanjay Gupta, *India and the International Criminal Court*, Dep't of Pol. Sci., Univ. of Lucknow, https://www.lkouniv.ac.in/site/writereaddata/siteContent/20200325132442966 8sanjay_gupta_criminal_court.pdf

[14] Convention for the Pacific Settlement of International Disputes arts. 20–29, July 29, 1899, 32 Stat. 1779.

[15] Jadhav (India v. Pakistan), Judgment, 2019 I.C.J. Rep. 418 (July 17).

[16] India Const.

and cooperation, the country will domesticate laws that fulfil these obligations. This argument is furthered by Article 51(c) of the Indian Constitution which states that the country has to have respect for all the obligations which arise out of India being a signatory to the international conventions and treaties. Under article 253 it is mandated that the Parliament of the country has to enact laws and ensure effective implementation with regards to the obligations.

As a result of these constitutional obligations, India has enacted certain laws to fulfil the role of those treaties. The Protection of Women Against Domestic Violence Act, 2005 was established to protect women as India is signatory to Convention on the Elimination of all forms of Discrimination Against Women, 1979[17]; further, India is signatory to the Child Rights Convention[18] as a result of which the Juvenile Justice Act, 2015 was enacted. And CEDAW was cited during the passing of the judgement in the Vishakha vs State of Rajasthan[19]. But even though India has enacted these laws they somehow face enforceability issues. And although India is fulfilling the global cooperation, these laws still result in cases wherein adequate protection is not granted. For instance, even though India is committed to ending all forms of violence against women cases such as Mukesh & Anr. Vs State of Delhi (NCT)[20] and children are exposed to child trafficking and bonded labor which again brings the researchers attention to an accountability gap which these domestic legislations create.

Further, in codified criminal laws such Bhartiya Nyay Sanhita, 2023[21] (Indian Penal Code, 1860) there is no adequate definition to be found for crimes that international standards demand India to incorporate in its legislations such as 'war crimes', 'crimes against humanity', 'genocide' and 'crimes of aggression'. The only provisions which find sustenance are mentioned in Chapter VII which deals with offenses against the state (IPC Chapter VI), Chapter VIII which deals with offences relating to army, navy and air force (IPC Chapter VI) and Chapter XI which deals with offences against public tranquility. Further, sedition laws that were deeply ingrained in the legal framework of Indian Penal Code have been successfully removed and replaced by offenses that would harm the integrity, sovereignty and the fraternity of the nation. These provisions are not enough to substantiate these international obligations.[22]

However, to what length does India go to protect the people in places and positions of authority? The main root-cause of India's non-membership is the protection it wants to grant to the military and army officials. In order to make sure that these important figures do not face prosecution for the alleged crimes they commit domestically. A propelling argument that this author puts forth is the consistent human rights abuses that have taken place domestically in India at the hands of its military officials. In the 1950s there was an uproar in the Naga region of North-Eastern India as a result of which there were increased isolated incidents of insurgency. This created a threat to the new-found national integrity of the country. In the year 1958 the Armed Forces (Special Powers) Act[23] was passed which granted the army or more specifically the Assam Rifles Regiment intense powers. These powers primarily came by distinguishing that region as a "disturbed area" which was defined under section three of the Act. It also

[17] Convention on the Elimination of All Forms of Discrimination Against Women, Dec. 18, 1979, 1249 U.N.T.S. 13.
[18] Convention on the Rights of the Child, Nov. 20, 1989, 1577 U.N.T.S. 3.
[19] *Vishaka v. State of Rajasthan,* (1997) 6 S.C.C. 241 (India).
[20] *Mukesh & Anr v. State (NCT of Delhi)*, (2017) 6 S.C.C. 1 (India).
[21] Bharatiya Nyaya Sanhita, No. 45 of 2023, India Code (2023)
[22] *Offences Against the State*, 8 Int'l J. L. Mgmt. & Hum. 19–26 (2025), https://www.ijlmh.com/wp-content/uploads/Offences-against-the-State.pdf
[23] Armed Forces (Special Powers) Act, No. 28 of 1958, India Code (1958).

allowed military officials to open investigations against anyone they deemed to be an insurgent.

Further, the 1970s saw a hike in militant activities in the Jammu & Kashmir region of Northern India. As a result, as per the definition given under section 3 of Armed Forces Act, 1958[24]. The region was now a "disturbed area" and the army was given a lot of powers to curb the issues which they believed arose as an outcome of militancy. However, there were discrepancies in the definition of "disturbed areas" as a region could be deemed so according to the government and in later amendments it was enforced that there would be a six-month review to consider the status of disturbances in the region.

Over the course of the decades the Armed Forces Act, 1958 (FT) has found enforcement in the "disturbed regions" there have been a number of reports that have come forth claiming that the army officials have misused their powers and violated the military codes of conduct[25]. These reports claim that there have been heinous crimes which were committed that crossed all boundaries of human rights. For example, the Manipur Extrajudicial Killings[26] wherein a large number of custodial deaths have occured by way of torture that was inflicted upon innocent civilians at the hands of military officials. Another example is that of the Pathribal Killings wherein five innocent villagers were killed in a fake encounter because the army officials believed, without any proper investigations, that they were responsible for the killing of two- army officials the day prior to the killings. However, the system has still yet to impart justice as the Armed Forces Act, 1958 grants protection to such military acts that were committed and are still being committed yet they remain under reported or buried in between files.

Moreover, along with the Armed Forces Act, 1958; Unlawful Acts Prevention Act, 1967[27] has also found enforceability to counter terrorism in the country. However, the reality of the implications of this act are similar to the Armed Forces Act as UAPA too gives the central government a lot of arbitrary powers to prosecute any civilian they have suspicion over. According to section 35 (2) of this Act, the central government can deem any civilian to be a terrorist and they can be added into the list of terrorists that are active in the country. Further they can be arrested at the will of officials without the remedy of judicial appeal for over two years at length. Even if the alleged accused is granted eventual acquittal this act ensures that the procedural standards punish them extensively. As a result, this act too seems to be extremely harsh and tends to blur the lines between moral right and social right. There were concerns raised about the legality of this Act, as a result of which two other laws were introduced, Terrorist and Disruptive Activities (Prevention) Act and Prevention of Terrorism Act, 2002 which turned out to be harsher than the original legislation. As a result of which, the two acts were repealed. However, by way of amendments in the Unlawful Acts Prevention Act, 1967 the core aspects of the two repealed acts were adopted.

When it comes to the procedural standards, the primary question raised is in sections 35 (2)[28] as described above and section 51[29] which allows the government or the investigative agency to control the funds of the alleged accused that can ultimately destroy the lives of the individual as well as the family

[24] Armed Forces (Special Powers) Act, No. 28 of 1958, § 3, India Code (1958).
[25] Amnesty International, *India: Briefing on the Armed Forces (Special Powers) Act, 1958*, AI Index: ASA 20/025/2005 (2005), https://www.amnesty.org/ar/wp-content/uploads/2021/08/asa200252005en.pdf
[26] *Extra Judicial Execution Victim Families Ass'n (EEVFAM) v. Union of India,* (2016) 14 S.C.C. 536 (India).
[27] Unlawful Activities (Prevention) Act, No. 37 of 1967, India Code (1967).
[28] Unlawful Activities (Prevention) Act, No. 37 of 1967, § 35(2), India Code (1967).
[29] Unlawful Activities (Prevention) Act, No. 37 of 1967, § 51, India Code (1967).

on mere suspicion. The standards of arrest as laid down in the landmark judgement by the Hon'ble Supreme Court in the case of D.K. Basu Vs State of West Bengal[30], are not followed as one of the major guidelines is that the accused has to be presented before the magistrate within twenty-four hours of arrest to either grant bail or to increase the time of judicial custody which is normally 90 days; however through this act, the judicial custody begins at 180 days. Similarly, judicial precedents have not been given importance while drafting this legislation as the concept of "presumption of innocence" which was given in the case of Babu Vs State of Kerala[31] has been reversed. India is a signatory to the International Convention on Civil and Political Rights under which article 9 of the convention states that protection is to be granted against arbitrary arrest, however through enforceability of this act it is seen that this obligation is not followed. And hence it stands undermined which then creates an accountability gap. Further in this act, no adequate compensation is granted after acquittal (if it happens) and the civilian who has faced prosecution cannot open an investigation against any member of the government or any army official.

Leading the argument back to the non-membership, India has not yet ratified the ICC's Rome Statute, however, after a thorough analysis of domestic and theoretical frameworks it can be concluded that it has done so to grant protection to the officials who are violating international human rights standards. Although, army, navy and air-force acts do exist and the concept of court martials is there; however statutory protection enables no investigation to be opened and even if it is opened, as per the laws of the military, the central government has to give ascent for that case to be taken up which hardly happens and that procedure is tedious and outside the scope of this research. The domestic legal frameworks in India do not adequately define what war crimes are. The concept of genocide is often minimised by defining it in terms of 'mass-killings'. Crimes against humanity are considered to be important but no domestic legislation exists to enforce it. The current framework does not ensure that these crimes are not only being not committed but also they are not being committed in places which are not actively in war.

India has long been at the forefront of ensuring global peace and cooperation. The country has taken part in peacekeeping missions which were commissioned by the United Nations and a former Secretary-General of the United Nations has stated that India is very eloquent in its furtherance of its global peacekeeping mission. However, when the country abstained from ratifying the Rome Statute by stating its reasons, a number of delegations raised the question that "What will we tell the people of Burundi? That a court could not be established because India was too fixated on nuclear weapons?"[32]. This non-membership creates a system which favours the military officials and establishes the picture of India as fulfilling international obligations while the domestic realities are something else entirely.

III. India's International Obligations

India is bound by foundational treaties that deal with international humanitarian law. This is to show that India has successfully signed a number of treaties and ratified a number of conventions which focus on aiding the promotion of human rights, ensuring that access to justice is granted to all those who seek it; further placing the signatory country, in this case India, in a forum of accountability that can be taken. These treaties ensure that the international obligations which arise as an outcome are being fulfilled and there is subsequent respect for those conventions. Some of

[30] *D.K. Basu v. State of West Bengal,* (1997) 1 S.C.C. 416 (India).
[31] *Babu v. State of Kerala,* (2010) 9 S.C.C. 189 (India).
[32] Sanjay Gupta, *India and the International Criminal Court*, Dep't of Pol. Sci., Univ. of Lucknow, https://www.lkouniv.ac.in/site/writereaddata/siteContent/20200325132442966 8sanjay_gupta_criminal_court.pdf

the treaties which are discussed in this paper are mentioned in Table 2.

Treaty	Year of Ratification	Key Focus
International Covenant on Civil and Political Rights	1979	Protection of civil and political rights
Convention on the Elimination of All Forms of Discrimination Against Women	1993	Gender equality and protection of women
Convention on the Rights of the Child	1992	Protection of children's rights
Geneva Conventions	1950	Rules governing armed conflict

Table 2

India is a signatory to the Geneva Conventions of 1949. The historical background of these conventions lie in the idea that when an open armed conflict occurs in any places the rules of war which would be established by these conventions shall not be broken and if they are broken, accountability will be taken for the grave breaches of these laws. *Jus ad bellum* refers to the right to war, however as established by many scholars of political research that with every right comes a corresponding duty; with this right to war comes *Jus in Bello* which refers to the conduct during war. Going back to the Geneva Conventions which lay down certain rules governing the conduct of armed conflict and protection of civilians, the conduct to be followed when dealing with prisoners of war, and wounded combatants.

In the year 1950, India ratified four Geneva Conventions. These conventions placed an obligation upon the ratifying states to prevent any grave breaches and if the breaches occur, there should be adequate punishment imparted on the perpetrator. These conventions require states to enact a domestic legislative framework which is capable of prosecuting such violations. These obligations tend to exist independent of the ICC membership since the conventions and the Rome Statute are separate entities instilling different obligations with the same goals. Along with the Geneva Conventions, there exist two Additional Protocols of 1977. Additional Protocol I in its scope is applied to international conflicts which include wars for national liberation and its key focus remains on strengthening protections for civilians, sick, wounded and shipwrecked personnel. This protocol was set up to ensure that civilians or civilian objects are not targeted and grants special protections for children, ensures that weapons which cause unnecessary suffering are used restrictively. It is binding on 174 states. Additional Protocol II is applied to armed conflicts between state armed forces and organised armed groups within a state; namely in the face of civil war. This protocol prohibits terrorism, acts of violence to spread terror, slavery, hostage-taking, and the forced movement of civilians. This protocol is binding on 169 states.

However, international criminal responsibility is not limited to the laws that are an outcome of treaty law. International Customary Law plays an important role too in recognising basic crimes which are against those set standards. For instance, genocide, war crimes and crimes against humanity are recognised are part of customary international law which develops from the customs that are existing in a particular country through consistent state practice and they are also accompanied by *opinio juris* meaning legal obligation. This argument is integral to the research in the sense that even though there are certain states that have not ratified the Rome Statute of the International Criminal Court, there is still an expectation and obligation placed upon them to have respect for the basic norms of international criminal law. It is important to note that absence of

membership, for instance that of India, from the International Criminal Court does not explicitly exempt a state from the duty to prevent or prosecute grave violations of humanitarian law which creates an eventual accountability gap as an outcome. These absences do not give countries an open ground to commit more heinous crimes if they happen. The questions about the universal jurisdiction of the court can be understood by way of looking at the judicial machinery of the country of Syria wherein the court system collapsed and the country people looked upon the International Criminal Court to lead the justice system. Although the state of India has consistently maintained that it does not prefer its domestic cases being discussed on an international forum.

However, this is not to say that India is opposed to international criminal accountability in principle. There have been various instances wherein India supported the mechanisms used to further international justice and bring accountability to all those who had wronged their country people. As an aftermath of Rwandan Genocide, an-hoc tribunal was established which was the International Criminal Tribunal for Rwanda in 1994; in this instance, India supported the global efforts to prosecute the individuals who were responsible for committing genocide and also crimes against humanity in this conflict. Similarly, in the year 1993, the international tribunal which was established after the Yugoslav Wars created space for the establishment of the International Criminal Tribunal for the former Yugoslavia which was supported by India by way of sending judges from the country. Prior to these tribunals, the infamous Military Tribunal at Nuremberg was set up to convict the Nazi officials; however, the foundation of that tribunal was critiqued as discussed in the paper earlier. These ad-hoc tribunals are very integral to the international diaspora which has eventually shaped modern criminal justice. These examples are excellent to showcase the facts that India has historically supported international criminal accountability which has been set up to grant justice to those who seek it.

India is also signatory to conventions such as Convention on the Elimination of All forms of Discrimination against Women and Child Rights Conventions along with many others. These treaties and conventions find applicability in the country through various domestic legislations enacted and also by way of mentioning these conventions when setting judicial precedents. However the enforceability of these laws finds a lack of sustenance in the country as there are multiple forms of violence against women which still happens and also the violence against people with disabilities although there is a domestic legislation to protect their rights and interests while also a convention on an international level to which India is a signatory to. Further, India also consistently finds itself engaging UN peacekeeping missions across regions that require assistance and has been appreciated by many delegations.

Along with these international obligations, India also engages with the United Nations Human Rights Council consistently and at various times during the course of the years as they pass by. India regularly takes part in the Universal Periodic Review (UPR) process which is briefly done after four-and-a-half-years to measure the human rights records of the 193 member states. Further, India ensures that the United Nations Human Rights Council is kept reported upon the domestic compliance with the international human rights obligations. India also engages with special rapporteurs at the United Nations and also in human rights monitoring mechanisms. As mentioned India is signatory to many international conventions and treaties which create obligations that intersect with international humanitarian and criminal law principles.

The argument which the researcher would like to bring to the forefront is that despite the active participation of India in international humanitarian and human rights frameworks, the domestic legal system does not fully comply nor codify international crimes such as war crimes and crimes against humanity. These crimes should be part of India's domestic legal frameworks because of the fact that even though India

is not signatory to the court which prosecutes these crimes; it is a party to the conventions and treaties which define these crimes hence creating an obligation. Upon the study of domestic frameworks in the previous section of this paper, it can be concluded that there is also an absence that can be seen when it comes to comprehensive legislations which define war crimes. There is a reliance on general criminal provisions which are the codified criminal laws. Indian lawmakers have maintained on several occasions that there is no need for specific provisions defining these crimes which has raised questions as to whether India maintains this position to protect its military officials. Further, there are also many procedural barriers that are in place in order to prosecute the specific state actors present in conflict regions. There is an overall limited domestication of international criminal law into the statutes of the country.

India has maintained that it follows a rule-based method of dispute resolution and wants to regularly comply with the obligations which are created as a result of India's participation in a convention.[33] However, with the absence of its membership, this raises questions regarding the reasons behind which were analysed prior but also how it creates a barrier between bringing accountability to those individuals who have been wronged by the system and want to seek justice. The protection granted to the country's military officials is not only done domestically but rather also done internationally wherein Indian military officials cannot be prosecuted for the acts they commit on foreign soil as part of the outcome it creates due to the non-membership. The method of functioning creates a heavy structural tension between the commitments India has internationally and the capacity of its domestic legal framework to fully implement those obligations. In the next section of this paper, there will be a detailed study of the reasons why countries such as the USA, Pakistan and China have maintained the position of staying out of the International Criminal Court without ratifying the Rome Statute. It will be analysed whether these countries stay out of the court because of similar reasons to India or because of some other reasons or they tend to stay out to protect its military officials. These reasons will be considered and drawn out to compare along with analyzing what all can India adopt from these countries with regards to the methods of prosecuting war crimes in open armed conflict or in peaceful regions too.

IV. A Comparative Study

This chapter of the paper will focus on conducting a comparative analysis of the countries that are not party to the Rome Statute and the International Criminal Court along with one country that has ratified the statute. This analysis will be of the reasons for their non-membership or their membership, the similarities in concerns that India has, along with the lessons India can learn with regard to the domestication of legislations that prosecute the crimes within the country that are also dealt with in the International Criminal Court. The comparative analysis will be of the following countries: USA, Pakistan, China, Bangladesh and Russia.

USA

The United States of America is one of the most powerful countries of the world and is home to a very diverse group of people who come from different heritages and lineages throughout the world. It is deemed to be a developed country and has retained a permanent seat at the United Nations Security Council since its inception in 1945. The United States is considered to be one of the most prominent non-members of the International Criminal Court which was established under the Rome Statute.

[33] Dhruv Jayeshkumar Trivedi & Priyanshi Gupta, *An Analytical Study on the Role of International Courts and Tribunals in Peaceful Resolution of India's Inter-State Disputes*, 8 Int'l J. L. Mgmt. & Hum. 3549 (2025), https://www.ijlmh.com/wp-content/uploads/An-Analytical-Study-on-the-Role-of-International-Courts-and-Tribunals-in-Peaceful-Resolution-of-Indias-Inter-State-Disputes.pdf

The United States of America had initially signed the Rome Statute in 2000 under the Clinton Administration but that signature was later nullified by the Bush Administration. Under the Obama Administration, this signature remained nullified although there were certain speculations that the States was going to enter the Court; however, after many years, the country still remains out of the statute.[34]The reasons for non-membership are very similar to that of India. It is stated that the country wants to protect the national sovereignty it has developed. Further, there is an open fear in the minds of the administrative agencies that if membership is procured, there will be a constant prosecution threat of U.S. military personnel that are stationed abroad.

Similar to India, the United States of America maintains a preference for domestic prosecution mechanisms and states that their national courts should have primary jurisdiction over crimes of an international nature that are committed by or involve its nationals.

Even though the United States of America is a non-member of the Rome Statute and has not joined the International Criminal Court, it has enacted several domestic statutes which criminalize international crimes. This is not surprising since the country is a member-party to major humanitarian conventions that have been accepted in the last few decades. Primarily, there is the War Crimes Act which was passed in the year 1996 (FT) which penalises grave breaches of the Geneva Conventions of 1949. There is the Genocide Convention Implementation Act (Proxmire Act) (FT) which implemented the obligations mandated under the Convention on the Prevention and Punishment of the Crime of Genocide. The Torture Act of 1994 (FT) further criminalizes any acts of torture committed by nationals of the United States anywhere abroad.

This analysis of statutes shows that even if a country has no membership of the International Criminal Court, it can still prosecute international crimes domestically. This is a lesson for India in the sense that if there is adequate definition and understanding of international crimes, then those crimes can be prosecuted nationally without the interference of international organisations. The U.S. model shows the implementation of international treaties through domestic statutory framework.

China

The People's Republic of China stands as one of the most intense global powers of the world and it is home to many innovations of daily life which we don't give it enough credit for due to its East-Asian geography. The country is developed and has achieved exponential growth rates in the past few decades. Regardless, it stood as one of the Victor's of the second world war and as a result, it holds a very strong permanent position at the United Nations Security Council which it has continued to hold since the Council's inception in 1945. China is also one of the prominent nations that has not ratified the Rome Statute of the International Criminal Court.

The country has from the very beginning opposed the establishment of the Court. One of the major reasons why is that the country of China prefers to maintain sovereignty of its machinery and explicitly does not want any kind of interference of international organizations in its domestic conflicts which is a position that is very similar to that of India. The Chinese government is a fortress. Its main goal is to protect the internal matters in order for them to not be discussed on an international forum which is a position similar to that of India[35]. Another important

[34] Leila Nadya Sadat & Mark A. Drumbl, *The United States and the International Criminal Court: A Complicated, Uneasy, Yet at Times Engaging Relationship*, Wash. Univ. in St. Louis Legal Stud. Research Paper Series (2016), https://scholarlycommons.law.wlu.edu/cgi/viewcontent.cgi?article=1504&context=wlufac

[35] Amnesty International, *India: "Justice, the Victim" – Criminal Justice and Human Rights Violations in India*, AI Index: ASA 17/023/2007

reason for its non-membership is that China is opposed to the prosecutorial powers which can be extended to non-member states meaning that any non-member state could also be prosecuted if the case of that country is brought forth by the Prosecutor of the International Criminal Court or the UNSC. Further, China has also stated concerns regarding the crimes of aggression provisions that are there in the Rome Statute. The country focuses on an extremely outwardly approach to the prosecution of international crimes, that is to say that without the membership, the country does not fail to prosecute these crimes. The Chinese government has historically preferred that international criminal jurisdiction shall remain state-controlled rather than supranational which is a position similar to India's.

China has incorporated certain international crimes within its domestic criminal law framework which particularly relate to war crimes, protection of civilians in armed conflicts and violations committed by military personnel which are mentioned in the Criminal Law of the People's Republic of China. This statute postulates that the country has to have domestic frameworks which fulfil the international obligations that the country has as it is a signatory to the international conventions. One important lesson for India that can be learnt by analysing the laws and frameworks of China is that international crimes can still be prosecuted if they are codified. This enforcement strengthens accountability without necessarily surrendering jurisdiction to an international court which does not fill the obligations of the countries entirely. Further, this methodology ensures that there is no critique of the position that China holds in the international diaspora. Further enunciating the fact that China is indeed committed to the prosecution of these crimes without attaining membership of the International Criminal Court.

Pakistan

The Islamic Republic of Pakistan is a country that is home to people who have a lot of ambition but are repeatedly failed by their governments. The country is known for its diverse culture and also the hospitable nature of its citizens. But what it is also known for is the failed system of governance, with a leader that died too early after achieving independent statehood. Pakistan now finds itself standing at a crossroad of two futures- one which will take it on a road of development and one which will completely dismantle the current systems that are governing the different sectors of the state machinery.

Pakistan is also not a member of the International Criminal Court. The reasons behind its non-membership are extremely similar to that of India. They are jurisdictional issues, sovereignty issues, the express powers given to the Prosecutor of the court along with the external influence and interference in conflicts that occur in the country domestically. However, another interesting reason stated by Pakistan for its non-membership is that of the lack of "Head of State impunity" which states that the head of state should have protection granted on an international level and that any state-party cannot open investigation against the head of the state[36]. This reason was further solidified after the international condemnation of Sudan's President Omar-al-Bashir who was arrested after facing suspicion for committing crimes against humanity, war crimes and genocide in his country. Pakistan vehemently opposed this arrest which further stopped the country from taking membership of the court.

Like India, Pakistan does not have any comprehensive legislation or a domestic framework which recognises or defines the international crimes although it is a

(2007), https://www.amnesty.org/ar/wp-content/uploads/2021/07/asa170232007en.pdf

[36] Naveed-ur-Rehman, Amir Mahmood Chaudhry & Farooq Umair Niazi, *Pakistan's Reservations on the Rome Statute: A Critical Analysis from Legal and Political Perspectives*, 6 Res. J. for Societal Issues 592 (2024), https://www.researchgate.net/publication/382568064_Pakistan%27s_Reservations_on_The_Rome_Statute_A_Critical_Analysis_from_Legal_and_Political_Perspectives

signatory to the Geneva Convention. This goes to show that the obligations of the country are not being fulfilled. The country of Pakistan has expressed on multiple occasions that it opposes the idea of universal jurisdiction. However, the country generally relies on military courts and domestic criminal legislations to prosecute offenses related to only armed conflict and terrorism. The country lacks statutes which define war crimes and genocide along with crimes against humanity but have provisions related to crimes of aggression. India too has provisions related to that crime but terrorism as a crime of aggression has not been recognised internationally in the statute which punishes these crimes.

Bangladesh & Russia

The country of Bangladesh has had a very interesting history and present. Earlier the country was deemed to be the Eastern counterpart of Pakistan after 1947 and later gained statehood independent of Pakistan in 1971. Now, the country is being run by leaders who want the best for their country men. Bangladesh is one of the nineteen countries in the Asian-Pacific that are part of the International Criminal Court. The country ratified the statute on the 23rd day of March, 2010.

Bangladesh provides an interesting example because it established a domestic tribunal to prosecute international crimes committed during the country's war of liberation in the year 1971. This resulted in the creation of the International Criminal Tribunal at Bangladesh which was established in the year 2010 right around the time the country ratified the Rome Statute. This tribunal prosecuted international crimes. Further, the ICC practises Universal Jurisdiction over the country's legal machinery as it has taken up the matter of the persecution of Rohingya Muslims in the year 2019 and opened an investigation.

The Russian Federation, once the center of power in the former USSR, signed but never ratified the Rome Statute but later withdrew its signature in 2016. Russia has expressed concerns regarding the non-membership in the ICC stating that it may be politically influenced, and the court could interfere with national sovereignty which is a stance similar to that of India and it may exercise its jurisdiction over the actions taken by its armed forces in foreign countries.

Even without the membership, the Russian Federation ensures that its domestic laws punish the international crimes of genocide and war crimes as provided under the Criminal Code of the Russian Federation. Genocide is criminalised under Article 357 and war crimes are criminalised under Article 356 of the Criminal Code. Crimes against humanity are not explicitly defined or named in any chapter however its ambit is covered under Article 356. However, Russia has taken an extreme position wherein the country since 2023 has criminalised any entity or individual which may aid in the implementation of any decision passed by the International Court and this act is punishable by upto five years in prisons. The country also does not recognise the jurisdiction of the court over the atrocities committed in Ukraine.

The Bangladeshi Model can inspire India to establish specialised domestic courts and accompanying statutory frameworks in the country in order to prosecute these crimes. Further the Russian example again puts forth the argument that domestic incorporation of defining and prosecuting international crimes is possible without the membership of the ICC.

This detailed comparative analysis has shown that even if there is no membership towards the Court, it can still lead to the drafting and implementing of certain legislations that criminalise the perpetrators who are committing said crimes and how these countries have a strong military justice machinery. Further, this analysis aligns with the idea India has been setting forward of "optional jurisdiction" wherein states give preference to national courts and the jurisdiction they exercise over international courts. Although, like India, Pakistan does not have any established domestic frameworks which prosecutes or defines these crimes, the analysis showed that the reasons for the country's non-membership are similar

to that of India. Hence, a comparative analysis has shown that the gaps which occur in India due to lack of accountability can be resolved if strong legislations and oversight reforms are enforced in order to ensure that justice is being brought to the victims of these crimes.

V. Challenges and Recommendations

In this section, the researcher will delve deeper into the challenges that this non-membership brings for India and possible policy recommendations to strengthen the barrier between international obligations and domestic legal frameworks.

Challenges

1) Political Sensitivities in Regions of Conflicts: One of the primary challenges that India faces in incorporating international human rights obligations into domestic legal frameworks is the instability which arises in the North-Eastern Region and Jammu & Kashmir which have historically faced incidents of insurgency and militancy. This has led the country to prioritize national security and territorial integrity instead of instating expansive machineries that fulfil the role of accountability. In this context, the government often puts forth the argument that the operational effectiveness of the security forces can be compromised if international criminal law standards were rigidly imposed. This tension has influenced India's cautious approach to ratifying the Rome Statute significantly. Politics of the country also have an impact on the considerations relating to balancing international obligations and enforcing domestic legal frameworks which match those standards.

2) AFSPA and the Question of Command Responsibility: A major source of controversy in the legal system of India is the application of the Armed Forces (Special Powers) Act, 1958 which gives an intense form of powers to the army and military officials. This act was enacted to curb the growing situation of militancy and insurgency in the "disturbed regions" of the country. However, this was only theoretical as the implications of this act were far worse. The act gave army officials to arrest, detain, and conduct searches in a manner that would incorporate the use of lethal force. Under this act, the military officials are granted protection from prosecution as the complainant would have to gather sanctions which is essentially permission from the central government in order to take action against the officers who violated the code of conduct. Further, the lack of implementation of the doctrine of Command Responsibility wherein the superior officer has to take responsibility for the actions done by their subordinates also promotes the idea of a lack of accountability. This gap contributes to the broader debate on whether the domestic frameworks of India do sufficiently align with the ever evolving standards of international humanitarian law.

3) Absence of dedicated War Crimes legislations: Another challenge lies in the absence of dedicated legislations that not only define the said crimes but also criminalize them. While there are certain provisions which do exist within the IPC which is not replaced by BNS,2023 to prosecute offences which are against the state, against public tranquility or related to military officials, there is a consistent lack for penalising crimes against humanity, genocide, war crimes and crimes of aggression. This absence makes it particularly difficult to prosecute violations that arise in the context of armed conflicts or widespread attacks against the civilian populations. As a result, the crimes which may actually be international crimes and are to be prosecuted as such are prosecuted under general criminal provisions. This lack also creates an accountability gap within the system.

4) Diplomatic Concerns Regarding ICC Jurisdiction: Finally, the diplomatic considerations of India's very cautious stance

towards not joining the ICC could also affect the system. Even though India is not a party, that does not mean that there is everlasting protection which shall be granted to the military officials. Since India has an outward policy in the global arena for peacekeeping, this could become a problem as the ICC could exercise its universal jurisdiction if there are allegations that Indian military officials have committed said crimes which would then lead to prosecution of those individuals. Such jurisdictional discrepancies contribute towards India's reservations to joining the ICC.

These are some of the challenges that are discussed intensely by scholars and policymakers who consistently suggest that without robust domestic legal safeguards and clear boundaries of jurisdiction, membership of the ICC could create legal and diplomatic complications for the country.

Recommendations

1) Enact a domestic War Crimes Act: This recommendation goes as far to suggest that in India there needs to be specific legislations that counter war crimes that may be occurring within the conflict zones and against civilians at the hands of military personnels. This is not to suggest that the country's interest in national sovereignty needs to be undermined but rather implemented in a manner that does not violate the humanitarian code of conduct established as an outcome of India being signatory to these conventions.

2) Increase military justice: When certain acts committed by the military as was seen in the case of Manipur's Extrajudicial Killings or in the Pathribal killings, it was brought to the researcher's notice that they undermined the basic human rights which are granted to every citizen by way of the Constitution as well as the conventions India is signatory to. As a result, these acts should be punished by ensuring an increment in imparting military justice. There are specific military laws but their procedural standards grant protection which should be amended in order to increase accountability and bridge the gap.

3) Limited Jurisdiction: When such crimes are committed, India should ensure by way of granting limited jurisdiction to help prosecute these crimes in order to ensure that accountability and justice is brought to the victims. There should also be an improvement in the training procedures for the army officials in order to make sure that their code of conduct remains intact.

4) Increasing cooperation with ICC/UN bodies without formal membership: This recommendation is given so that the governing authorities can increase their cooperation with international organizations so that the reasons why India stays out of these organisations can be understood on a deeper, core international level. India, like the United States of America, can become an observer state and only delegate upon joining when those concerns have been resolved.

These are some of the recommendations which can help enhance the domestic and international framework of India's participation in the fulfilment of global peacekeeping and humanitarian standards. Some of the recommendations have been set up in a tabular format for the benefit of the reader in Table 3.

Model	Description	Example States
ICC Membership Model	States prosecute international crimes through ICC jurisdiction	Many EU states
Domestic Substitution Model	States incorporate international crimes in domestic law	United States
Hybrid Tribunal Model	Special tribunals prosecute international crimes domestically	Bangladesh
Limited Accountability Model	No ICC membership and weak domestic codification	India

Table 3

India has never been against the position of ensuring peace on an international level. However, with the concerns the country has raised on multiple grounds need to find resolution. There are some conflicting regions of the country which showcase the re-institution of the faith of the civilians in the democratic policies of the government which goes so far as to show that if these challenges are overcome and the recommendations are implemented in the policy-making structure a lot of internal concerns can be resolved which can then lead to India maintaining a positive stance on the International Criminal Court.

VI. Conclusion

In order to conclude this study, the researcher has to go back to the main aspect of this study which was to figure out how India reconciles its domestic legal framework with the international humanitarian obligations more. During the course of this research, it was found that various scholars and policy-makers indeed laid down the treaties and conventions which raise an obligation for India to follow and in the same lines, they also laid down criticisms that critique the current legislative framework. This lack of acknowledgement of real problems that burden India's diplomatic stance create an accountability gap which was the core of this study. The researcher analyses this gap in the sense that India wants to protect its military individuals along with the individuals who are in places of power; as a result to ensure they escape prosecution, India has not become a member of the ICC. Further, due to this non-membership, there are a number of internal problems which have been created that were discussed in this paper.

Through this research, the aim has been to figure out a way through which this so-called gap can be fulfilled. And after critiquing and analysing the position of India, it is safe to say that the primary goal of India should be to make sure that the reasons why it abstains from ratifying the Rome Statute are resolved internally with strong domestic mechanisms and also by amending the current laws which do not adequately define or prosecute international crimes. There is future scope of this study and it can be picked up from further analysing methods that the current government can take in order to make sure that domestic legal frameworks do actually fulfil international humanitarian obligations. The researcher has given certain recommendations such as enacting a domestic War Crimes Act, increasing military justice, allowing limited jurisdiction along with increasing cooperation with UN bodies without formal membership. However, India is a developing country where the aspirations of its civilian population, the governance and the machineries that are in place continue to change with each passing day. It is upon the combined effort that is to be made in order to make sure that there is an increase in the accountability while balancing India's domestic legal frameworks along with its international humanitarian obligations.

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DIGNITY AT DEATH'S DOOR: HARISH RANA V UNION OF INDIA (2026) AND THE EVOLUTION OF PASSIVE EUTHANASIA LAW IN INDIA

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ABSTRACT

On 11 March 2026, the Supreme Court of India delivered a judgment that had been years in the making — one that transformed dormant constitutional principles into lived reality. In Harish Rana v Union of India (2026 INSC 222), a bench comprising Justices J.B. Pardiwala and K.V. Viswanathan permitted, for the very first time in Indian legal history, the actual implementation of passive euthanasia in an individual case. This article traces the jurisprudential journey that led to this moment: from the early debates over the right to die under Article 21 of the Constitution of India, through the foundational rulings in Aruna Shanbaug (2011) and Common Cause (2018), to the decisive intervention of 2026. It analyses the legal reasoning of the court, the significance of classifying clinically assisted nutrition and hydration (CANH) as medical treatment, the elaboration of the "best interest" principle, and the implications for future end-of-life care in India. The article also reflects on the ethical tensions at the heart of the case and asks what Parliament must now do to give this transformative case the statutory foundation it demands.

I. INTRODUCTION

There is something quietly extraordinary about the fact that the first court-approved withdrawal of life support in Indian history came not from a legislature but from two Supreme Court judges who, by their own admission, found the medical reports before them "extremely distressing." Justice J.B. Pardiwala, who authored the leading judgment in Harish Rana v Union of India[1], captured the human weight of the case in words that read less like legal prose and more like an honest admission of grief: "This is a very painful report... we cannot allow this boy to remain in such endless suffering."

That boy was Harish Rana — once a bright nineteen-year-old engineering student, and since 2013, a young man trapped in a permanent vegetative state (PVS) after falling from the fourth floor of his paying guest accommodation in Chandigarh. For over thirteen years, his existence was sustained entirely through clinically assisted nutrition and hydration (CANH) delivered via surgically installed PEG tubes. There was no meaningful consciousness, no prospect of recovery, no therapeutic purpose left in the continued treatment — only, in the words of his own father, "prolonged agony."

The case arrived at the Supreme Court only after the Delhi High Court, in 2024, rejected the family's petition on the narrow ground that Harish was not on mechanical ventilation and could not therefore be classified as "terminally ill" under earlier interpretations of the law. The Supreme Court corrected this interpretation decisively. In doing so, it gave life to the framework painstakingly built up across decades of judicial decision-making — a framework that recognised the "right to die with dignity" as an inseparable part of the right to life guaranteed under Article 21 of the Constitution.[2]

This article examines that journey in full. It begins with the constitutional foundations, moves through the landmark precedents, analyses the 2026 judgment in detail, and closes by reflecting on what this milestone means for patients, families, doctors, and Parliament going forward.

[1]Harish Rana v Union of India 2026 INSC 222 (11 March 2026).

[2]Constitution of India 1950, art 21.

II. CONSTITUTIONAL FOUNDATIONS: ARTICLE 21 AND THE RIGHT TO DIGNITY

Article 21 of the Constitution of India provides, in spare and unadorned language, that "no person shall be deprived of his life or personal liberty except according to procedure established by law."[3] In those twenty words lies one of the most expansively interpreted rights in Indian constitutional law. Over the decades, the Supreme Court has read into Article 21 a remarkable range of entitlements — the right to livelihood, to education, to a clean environment, to privacy, and, eventually, to die with dignity.

The early case law was not so generous. In P Rathinam v Union of India[4] (1994), a two-judge bench of the Supreme Court held that Article 21 includes a right not to live a forced life and accordingly struck down Section 309 of the Indian Penal Code, which criminalised attempted suicide. This was a short-lived victory. A Constitution Bench of five judges in Gian Kaur v State of Punjab[5] (1996) overruled that decision, holding emphatically that Article 21 protects the sanctity of life and cannot be read to include a general right to die. The Court upheld Section 309 IPC and declared that dignity under Article 21 extended only until the natural end of life — it did not permit premature termination.

Yet Gian Kaur left a crucial door ajar. The Constitution Bench acknowledged, in paragraph 41 of its judgment, that a dignified procedure of death could mean the right of a dying person to also die with dignity when life was naturally ebbing away. This observation — somewhat ambiguously worded — would later form the constitutional peg on which the entire passive euthanasia framework was hung. The Court in Gian Kaur did not, contrary to subsequent misreading, hold that passive euthanasia could only be introduced by legislation. It was a distinction that the Supreme Court would later be required to clarify at length.

The conceptual scaffolding of Article 21's reach in end-of-life matters was thus established — cautiously, incrementally, through a series of judgments that balanced the state's duty to preserve life against the individual's claim to be free from futile and undignified medical intervention.

III. THE FIRST FOOTHOLD: ARUNA RAMCHANDRA SHANBAUG v UNION OF INDIA (2011)

No discussion of passive euthanasia in India can begin without Aruna Shanbaug. Her story is one of the most haunting in Indian legal and medical history. On 27 November 1973, Aruna — a nurse at King Edward Memorial Hospital in Mumbai — was sexually assaulted and strangled with a dog chain by a hospital ward boy. The strangulation caused severe brain damage, leaving her in a permanent vegetative state from which she never recovered. For over four decades, she lay in the same hospital where she had once worked, kept alive by the nurses who cared for her with extraordinary devotion.

In 2009, journalist and activist Pinki Virani filed a petition under Article 32 of the Constitution seeking permission to withdraw Aruna's life support on the ground that continuing treatment violated her dignity and best interests. The hospital staff opposed the petition, arguing that Aruna was not brain-dead, that she responded minimally to stimuli, and that they — as her long-time caregivers — wished to continue looking after her.

On 7 March 2011, a two-judge bench of the Supreme Court comprising Justices Markandey Katju and Gyan Sudha Misra delivered judgment.[6] The Court declined the specific prayer for withdrawal of Aruna's nutrition and hydration, accepting the position of the hospital staff as her de facto "next friends." However, the judgment's significance lay not in the outcome on the facts but in the legal framework it established.

[3]Constitution of India 1950, art 21.
[4]P Rathinam v Union of India (1994) 3 SCC 394.
[5]Gian Kaur v State of Punjab (1996) 2 SCC 648.
[6]Aruna Ramchandra Shanbaug v Union of India (2011) 4 SCC 454.

The Court drew a clear and essential distinction between active and passive euthanasia. Active euthanasia — involving a positive, deliberate act to terminate life, such as the administration of a lethal injection — was held to be impermissible in India and potentially criminal under the provisions then contained in the Indian Penal Code.[7] Passive euthanasia, by contrast — the withholding or withdrawal of medical treatment that artificially prolongs life — was held to be permissible in certain exceptional circumstances, subject to strict procedural safeguards.

The Court further held that decisions about withdrawal of life support for an incompetent patient could be taken by parents, a spouse, or close relatives, or, in their absence, by a person acting as the patient's next friend. Crucially, such decisions were to be subject to prior approval by the concerned High Court under Article 226 of the Constitution, accompanied by the assessment of a medical board.[8]

The Aruna Shanbaug judgment was simultaneously a breakthrough and a limitation. It was a breakthrough because it formally acknowledged, for the first time, that passive euthanasia could be constitutionally permissible. It was a limitation because it tied every application to the cumbersome machinery of High Court proceedings, medical boards, and judicial oversight — a process that most ordinary families found financially and procedurally impossible to navigate. The judgment itself acknowledged the need for Parliament to act, but Parliament did not.

Aruna Shanbaug herself passed away on 18 May 2015 — not as a result of any court order, but from pneumonia. Her death came after forty-two years in a vegetative state. The legal debate she had unwillingly sparked, however, was only just beginning.

IV. THE CONSTITUTIONAL CONSOLIDATION: COMMON CAUSE v UNION OF INDIA (2018)

The filing of a PIL by the organisation Common Cause in 2005, seeking recognition of the right to die with dignity and the legal validity of living wills, eventually led to one of the most important constitutional judgments of modern India. After years of proceedings and a reference to a larger bench, a five-judge Constitution Bench of the Supreme Court delivered its verdict in Common Cause (A Regd Society) v Union of India[9] on 9 March 2018.

The Constitution Bench, speaking through multiple concurring opinions, held definitively that the right to die with dignity is an intrinsic and inalienable part of the right to life under Article 21.[10] It overruled the misreading of Gian Kaur that had crept into the Aruna Shanbaug judgment and confirmed that nothing in Gian Kaur required passive euthanasia to be introduced only through legislation.

The Common Cause judgment made several landmark contributions to Indian law. First, it recognised the concept of a "living will" or advance medical directive — a document in which a mentally competent person could specify, in advance, that life-sustaining treatment should be withdrawn if they were to fall into a terminal or irreversible vegetative condition. This empowered individuals to exercise their autonomy over end-of-life decisions before losing the capacity to do so.[11]

Second, the Court elaborated on the conditions under which passive euthanasia could be permitted — principally, cases of irreversible PVS, terminal illness, or other conditions from which no meaningful recovery was possible. Third, it laid down a detailed procedural architecture: requiring the constitution of primary and secondary medical boards, consent by

[7]Bharatiya Nyaya Sanhita 2023, ss 99-100 (previously Indian Penal Code 1860, ss 302 and 304).
[8]Aruna Ramchandra Shanbaug v Union of India (2011) 4 SCC 454.
[9]Common Cause (A Regd Society) v Union of India (2018) 5 SCC 1.
[10]Common Cause (A Regd Society) v Union of India (2018) 5 SCC 1.
[11]ibid.

family members or guardians, and either advance directives or a determination of the patient's best interests in their absence.[12]

In 2023, a further Constitution Bench modified the Common Cause guidelines to make the process more accessible and practically workable. The 2023 ruling simplified the timelines for medical boards, reduced the procedural role of the judicial magistrate, and generally aimed to reduce the institutional obstacles that had prevented most families from ever availing the legal remedy in practice.

Yet, even after Common Cause and its 2023 modification, the framework remained largely theoretical. No individual case had proceeded to the point of actual withdrawal of life support under court authorisation. It was against this backdrop of unrealised jurisprudence that Harish Rana's family approached the courts.

V. HARISH RANA v UNION OF INDIA (2026): FACTS, PROCEEDINGS AND DECISION

A. The Facts

Harish Rana was nineteen years old and studying engineering in Chandigarh in August 2013 when he suffered catastrophic brain injuries after falling from the fourth floor of his paying guest accommodation. The fall left him in a permanent vegetative state with 100% quadriplegia — complete paralysis of all four limbs.[13]

For over thirteen years, Harish was kept alive exclusively through CANH administered via PEG tubes surgically inserted into his stomach. He displayed sleep-wake cycles but showed no evidence of meaningful consciousness, no capacity to communicate, and no response to his environment that suggested awareness. He was entirely dependent on his family for all care needs and had, over the years, developed multiple bedsores and associated medical complications arising from prolonged immobility.

Two independent medical boards — a primary board at the treating hospital and a secondary board at AIIMS, Delhi — unanimously concluded that Harish's condition was irreversible, that the probability of recovery was negligible, and that the continuation of CANH served no therapeutic purpose beyond the mere prolongation of biological existence.[14]

Harish's father, Ashok Rana, petitioned the Delhi High Court in 2024 seeking permission to withdraw the feeding tube. The High Court rejected the plea, holding that Harish did not qualify as "terminally ill" under the applicable framework because he was not on mechanical ventilation and was, in the court's assessment, "self-sustaining" in a technical sense. This narrow interpretation effectively placed Harish and those in comparable conditions beyond the reach of the legal remedies the Supreme Court had crafted.

The family appealed to the Supreme Court.

B. The Supreme Court's Analysis

A bench of Justices J.B. Pardiwala and K.V. Viswanathan heard the matter and delivered judgment on 11 March 2026, cited as Harish Rana v Union of India, 2026 INSC 222.[15] The judgment, authored by Justice Pardiwala, addresses three distinct analytical questions of considerable importance.

The first question was whether CANH constitutes "medical treatment" capable of being withdrawn. This was a critical threshold issue: if CANH were characterised as basic sustenance — akin to providing water to a person — no legal framework for passive euthanasia could apply to its withdrawal. The Court answered this question firmly in the affirmative. Drawing on comparative law, including the English House of Lords decision in Airedale NHS Trust v Bland[16], the Court held that artificial feeding

[12]ibid.

[14]ibid.

[15]Harish Rana v Union of India 2026 INSC 222 (11 March 2026).

[16]Airedale NHS Trust v Bland [1993] AC 789 (HL).

administered through surgically implanted devices is a medical intervention in the full sense of the term. It involves clinical decisions, trained medical personnel, specialised equipment, and regular assessment. To characterise it as mere sustenance would be to obscure the medical nature of the act and to place PVS patients like Harish in an artificial category excluded from the constitutional protections already extended to those on mechanical ventilation.[17]

The second question concerned the "best interest" principle — the standard to be applied when determining whether life-sustaining treatment should be withdrawn for a patient lacking the capacity to consent. The Court clarified that "best interest" is a holistic standard, encompassing both medical and non-medical considerations.[18] On the medical side, the assessment must include the patient's prognosis, the likelihood of any meaningful recovery, the burdens of continued treatment, and the views of independent medical experts. On the non-medical side, the assessment must account for the patient's dignity, their previously expressed values and wishes (if any), and the views of close family members who stand as their surrogate decision-makers. In Harish's case, the unanimous medical opinion, combined with the family's clear and sustained desire to act in his best interests, satisfied this standard overwhelmingly.

The third question addressed the active/passive distinction and the imperative of clarity in legal terminology. Drawing on comparative jurisdictions — including the Canadian Supreme Court in Rodriguez v Attorney General of Canada[19] and the United States Supreme Court in Vacco v Quill[20] — Justice Pardiwala emphasised that the conceptual line between active and passive euthanasia must be maintained with precision. Active euthanasia, which involves a positive act designed to cause death, remains impermissible in India and could attract criminal liability.[21] Passive euthanasia refers to the withdrawal or withholding of medical treatment, allowing the underlying condition to follow its natural course. The Court observed that the patient does not die because treatment is withdrawn; they die because of their underlying medical condition. The withdrawal simply ceases to impede the natural process of dying.

C. Orders and Directions

The Supreme Court allowed the plea and issued several specific directions. It ordered that Harish Rana be admitted forthwith to the palliative care department of AIIMS, Delhi, where a specialised medical team was to formulate a robust end-of-life care plan.[22] The Court directed that the withdrawal of CANH be carried out gradually, with full management of pain and physical discomfort, to ensure that the process did not amount to abandonment and preserved Harish's dignity throughout.

The Court further observed that the Delhi High Court had erred in concluding that the absence of mechanical ventilation disqualified Harish from the passive euthanasia framework. PVS, the Court held, qualifies as the requisite medical condition irrespective of whether the patient requires mechanical ventilation. The criterion is the irreversibility of the condition and the futility of continued treatment, not the specific modality of life support being used.[23]

The judgment also included a call — notably pointed in tone — for parliamentary action. As of the date of the judgment, India still possessed no dedicated statutory framework governing end-of-life care, euthanasia, or advance directives. The Court's framework, while comprehensive, was judge-made. The absence of legislation meant that every case still required court intervention, that doctors remained

[17]Harish Rana v Union of India 2026 INSC 222 (11 March 2026).
[18]ibid.
[19]Rodriguez v Attorney General of Canada [1993] 3 SCR 519.
[20]Vacco v Quill 521 US 793 (1997).
[21]Harish Rana v Union of India 2026 INSC 222 (11 March 2026).
[22]Harish Rana v Union of India 2026 INSC 222 (11 March 2026).
[23]ibid.

uncertain about their legal exposure, and that families faced procedural burdens that most were ill-equipped to shoulder.

VI. THE SIGNIFICANCE OF THE JUDGMENT

A. From Paper Rights to Lived Reality

The most immediate significance of Harish Rana is deceptively simple: it translated constitutional principle into practice. The right to die with dignity had been recognised in 2018. The procedural framework had been modified in 2023. But no court had ever actually permitted the withdrawal of life support in an individual case under this framework. The judgment of 2026 ended that gap between law in books and law in action. It is, in the truest sense, the moment the legal framework came alive.

For PVS patients and their families across India, the judgment provides a precedent that is as emotionally significant as it is legally important. It tells them that the law will not force them to watch a loved one exist in a condition from which recovery is impossible and in which dignity is absent. It tells them that their wish for a compassionate end is not a criminal desire but a constitutionally recognised right.

B. Clarification of CANH as Medical Treatment

The ruling on CANH is, in doctrinal terms, one of the most consequential aspects of the judgment. Prior to Harish Rana, the legal status of artificial nutrition and hydration was ambiguous in Indian law. Some courts had treated it as basic care, placing it beyond the reach of withdrawal decisions. By firmly classifying CANH as medical treatment, the Supreme Court has ensured that the passive euthanasia framework applies to a far wider range of patients — particularly those in PVS who are not on mechanical ventilators. This directly addresses the gap exploited by the Delhi High Court in rejecting Harish's original petition.

The ruling aligns India with the approach taken in the United Kingdom following Airedale NHS Trust v Bland[24], where the House of Lords similarly held that artificial nutrition and hydration constitutes medical treatment for the purpose of withdrawal decisions. It also reflects the approach of the Law Commission in its 241st Report,[25] which had consistently recommended that CANH be treated as a medical intervention.

C. The Best Interest Standard: Holistic and Humane

The elaboration of the "best interest" principle as a holistic and multi-dimensional standard is the judgment's most practically useful contribution to Indian medical law. By incorporating non-medical factors — dignity, autonomy, the wishes of family members — into the assessment, the Court has ensured that decisions about withdrawal of treatment are not reduced to clinical calculations alone. Medicine and ethics must work together, with the law providing the framework within which both operate.

This approach is consistent with the human rights framework developed in cases such as Pretty v United Kingdom[26] before the European Court of Human Rights, where the fundamental dignity of the dying person was recognised as the central value at stake. It is also consistent with the constitutional emphasis on substantive dignity under Article 21 — not merely formal equality but the lived experience of being treated as a human being deserving of care, compassion, and respect.

D. The Active/Passive Distinction Reinforced

By drawing explicitly on comparative jurisprudence from Canada and the United States to reinforce the active/passive distinction, the Court has insulated the judgment against the accusation that it opens a slippery slope toward assisted dying or active euthanasia. India's constitutional framework, as clarified in Harish Rana, firmly prohibits any form of assisted dying involving a positive act to end life. The

[25]Law Commission of India, 'Passive Euthanasia — A Relook' (Report No 241, 2012).
[26]Pretty v United Kingdom (2002) 35 EHRR 1.

withdrawal of futile treatment is conceptually and legally distinct from mercy killing, and the judgment takes care to emphasise this distinction at every turn.

This is important not only as a matter of legal doctrine but as a matter of public confidence. Passive euthanasia will only function as a legitimate legal remedy if the medical profession, families, and the wider public trust that it cannot be used as a cover for anything else. The procedural safeguards — two independent medical boards, family consent, and AIIMS oversight in Harish's case — serve precisely this function.

VII. ETHICAL DIMENSIONS AND UNRESOLVED TENSIONS

No legal analysis of the Harish Rana case would be complete without acknowledgment of the profound ethical tensions that the case brings into sharp relief. The right to die with dignity sits at the intersection of deeply held and often conflicting values: the sanctity of human life, individual autonomy, the duty of care owed by doctors and families, and the social meaning of suffering.

The sanctity of life argument — that life is intrinsically valuable and must be preserved regardless of its quality — retains considerable moral force in a country where religious and cultural traditions often attach profound significance to the continuation of biological existence. Opponents of passive euthanasia argue, not unreasonably, that the "quality of life" assessments required by the best interest standard are inherently subjective and risk being influenced by economic pressures, family fatigue, or social prejudice against the disabled.

The Court was alive to these concerns. Justice Pardiwala's observation that "financial distress should not shape end-of-life decisions" is particularly significant.[27] It acknowledges, honestly, that many families of PVS patients are driven to seek withdrawal of treatment not only by concern for their loved one's dignity but by the crushing economic burden of long-term care. The judgment does not condemn this reality but insists that the legal framework must remain rooted in the patient's best interests — not the family's convenience or the state's health budget.

The medical profession faces its own ethical challenges. Doctors in India, trained in a tradition that equates care with the prolongation of life, may feel uncomfortable with their new role as active participants in withdrawal decisions. The judgment's insistence on palliative care — genuine comfort and dignity in dying, rather than mere withdrawal and abandonment — is the appropriate answer to this concern. Withdrawal of futile treatment and the provision of compassionate palliative care are not contradictory acts; they are two aspects of the same commitment to the patient's wellbeing.

There are also questions about equity. The passive euthanasia framework, however well-designed, is accessible primarily to those with the knowledge, resources, and persistence to navigate the legal system. Harish Rana's father is an educated man who was able to engage lawyers and approach the Supreme Court. For the millions of PVS patients across India whose families lack these advantages, the legal right to die with dignity may remain as theoretical after 2026 as it was before. This is a challenge that only legislation can fully address.

VIII. THE LEGISLATIVE VACUUM AND THE NEED FOR STATUTORY REFORM

The Supreme Court has now, in the span of fifteen years, crafted an entire body of law on passive euthanasia through judicial decision-making. The edifice is impressive. But it is also fragile, in the way that all judge-made law is fragile — dependent on individual cases reaching the right courts, on judges willing to apply and extend prior rulings, and on families capable of invoking the framework.

[27] Harish Rana v Union of India 2026 INSC 222 (11 March 2026).

The Law Commission of India, as early as its 241st Report in 2012, recommended the enactment of dedicated legislation on passive euthanasia.[28] It proposed a draft Bill — the Medical Treatment of Terminally Ill Patients (Protection of Patients and Medical Practitioners) Bill — which would have provided clear statutory authority for withdrawal decisions, protected doctors from criminal liability, established standardised medical board procedures, and given legal effect to advance directives. That Bill was never enacted. The Ministry of Health expressed reservations. Parliament did not act.

The Harish Rana judgment renews the call for legislation with fresh urgency. The Court itself observed that as of the date of judgment, no statutory framework governed the field. The judgment is, in this sense, a pointed message to Parliament: the courts have done what they can; the rest is for the legislature.

What should such legislation look like? At a minimum, it should: (1) define the conditions under which passive euthanasia is permissible in clear and accessible statutory language; (2) establish a streamlined, accessible procedure for families seeking withdrawal of treatment that does not require Supreme Court litigation; (3) give legal effect to advance directives and living wills without procedural complexity; (4) protect doctors and medical institutions from civil and criminal liability when they act in good faith and in compliance with the statutory framework; and (5) create a national registry of advance directives that can be consulted by medical practitioners across the country.

Several jurisdictions offer instructive models. In the United Kingdom, the Mental Capacity Act 2005 provides a comprehensive statutory framework for decisions about medical treatment for incapacitated persons, incorporating best interest assessments, advance decisions, and lasting powers of attorney. In the United States, individual states have enacted natural death legislation and statutory advance directive regimes. In Australia, Victoria's Medical Treatment Planning and Decisions Act 2016 provides a sophisticated model of statutory end-of-life planning.

India need not copy any of these models. But it must learn from them. A law tailored to India's constitutional framework, its healthcare infrastructure, its cultural diversity, and its commitment to both life and dignity would do more to protect vulnerable patients than any number of Supreme Court judgments — however landmark.

IX. A COMPARATIVE PERSPECTIVE: HOW OTHER JURISDICTIONS APPROACH THE SAME QUESTIONS

The Indian courts have not developed their approach to passive euthanasia in isolation. The judgments in Aruna Shanbaug, Common Cause, and Harish Rana all engage, explicitly or implicitly, with the legal approaches of other jurisdictions. A brief comparative survey illuminates both the strengths and the remaining limitations of the Indian framework.

In the United Kingdom, the foundational case is Airedale NHS Trust v Bland[29] (1993), in which the House of Lords held that it was lawful to withdraw artificial nutrition and hydration from Anthony Bland, a young man left in PVS after the Hillsborough disaster. Lord Goff's famous observation in that case — that the discontinuance of artificial feeding is not equivalent to cutting a mountaineer's rope — has been cited with approval in Indian judgments. The UK has since moved to a statutory framework, with the Mental Capacity Act 2005 providing the primary legal architecture.

In the United States, the Supreme Court addressed end-of-life questions in Washington v Glucksberg[30] (1997), holding that the Constitution did not guarantee a right to assisted suicide. However, the US common

[30]Washington v Glucksberg 521 US 702 (1997).

law and statutory frameworks widely recognise the right of patients and their surrogates to refuse or withdraw medical treatment, including artificial nutrition and hydration. The line between passive withdrawal and active assistance remains legally significant in American law, as it does in India.

The Canadian Supreme Court in Rodriguez v Attorney General of Canada[31] (1993) drew the active/passive distinction on the basis of intention — a jurisprudential approach that the Indian Supreme Court in Harish Rana explicitly endorsed. The Court's reliance on Vacco v Quill[32] from the United States similarly grounded the distinction in the fundamental legal concepts of causation and intention: when a patient dies after withdrawal of treatment, the cause of death is the underlying medical condition, not the withdrawal itself.

India's approach is broadly consistent with this international consensus. What sets the Indian framework apart is its constitutional grounding — the derivation of the right to die with dignity directly from Article 21 — and its ongoing dependence on judicial rather than legislative authority. In this respect, India lags behind comparable jurisdictions, and the call for legislation is all the more pressing.

X. CONCLUSION

The story of Harish Rana is, at its most fundamental level, a human story — the story of a young man, a devoted family, and thirteen years of waiting for the law to catch up with compassion. That it also became one of the most significant legal developments in India's constitutional history is a reflection of how much weight the law places on such human moments when they are brought before courts willing to engage with them seriously.

The Supreme Court's judgment in Harish Rana v Union of India (2026 INSC 222) is, in the truest sense of the word, landmark. It confirmed that CANH is medical treatment that can be withdrawn. It elaborated the best interest standard in holistic terms that go well beyond clinical assessment. It reinforced the active/passive distinction with comparative rigour. And, for the first time in Indian legal history, it gave practical effect to the right to die with dignity under Article 21 — not as an abstract proposition but as an authorisation for the actual withdrawal of life support from an actual human being.

The judgment builds on a foundation laid by Aruna Shanbaug in 2011 and consolidated by Common Cause in 2018. Each of these cases added a layer to the architecture. Each answered some questions and left others open. Harish Rana's case answered the most pressing question that remained: would the framework ever actually be used? The answer, as of 11 March 2026, is ye

What remains to be done is clear. Parliament must act. A dedicated statutory framework on end-of-life care, advance directives, and passive euthanasia would give this jurisprudence the democratic legitimacy and the practical accessibility it currently lacks. It would protect doctors. It would guide families. It would give dignity not just to those wealthy and determined enough to litigate to the Supreme Court, but to every person in India who faces the terrible convergence of irreversible illness and the wish for a peaceful death.

The Constitution guarantees dignity in life. The Supreme Court has confirmed that it guarantees dignity in death as well. The law must now ensure that dignity is not the preserve of the few but the right of all.

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FIR AS THE FOUNDATION OF CRIMINAL INVESTIGATION UNDER BNSS, 2023

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Abstract
The First Information Report (FIR) constitutes the foundational step in the criminal justice process, serving as the trigger for investigation into cognizable offences. With the enactment of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), India has undertaken a significant reform of its procedural criminal law, replacing colonial-era provisions of the Code of Criminal Procedure, 1973. Although the BNSS does not explicitly define the term "FIR," its procedural framework particularly under Section 173 mandates the recording of information relating to cognizable offences and forwarding it to the Magistrate, thereby reinforcing the centrality of FIR registration.

This study critically examines the statutory provisions governing FIR under the BNSS, 2023 and analyzes its procedural importance in initiating criminal investigation. It further explores the judicial interpretation of FIR through landmark decisions such as *Manoj Kumar Sharma v. State of Chhattisgarh* and *State of Punjab v. Gurmit Singh*, which underlines that FIR registration, is mandatory upon receipt of information disclosing a cognizable offence. The project also discusses the evidentiary value of FIR, its role in safeguarding the rights of the accused and the victim, and concerns regarding misuse or false reporting.

By analysing statutory provisions and judicial pronouncements, this paper concludes that the FIR remains the cornerstone of criminal administration under the reformed procedural regime, ensuring transparency, accountability, and timely initiation of justice.

Keywords – *FIR, BNSS, section 173, section 193, cognizable offence, criminal justice system, mandatory registration of FIR, investigation.*

Introduction

An FIR is a written document drafted by the police upon receiving information about the occurrence of a cognizable offence. A cognizable offence is one for which the police can make an arrest without a warrant and initiate an investigation independently, without requiring court orders. In such cases, police officers are obligated to register the FIR and can even commence investigations without it. These offences are typically serious and non-bailable. The FIR represents the initial information received by the police regarding the crime, usually lodged by the victim or someone acting on their behalf.

Brief overview of Bharatiya Nagarik Suraksha Sahita, 2023

The Bharatiya Nagarik Suraksha Sanhita, 2023, was enacted on December 25, 2023, with the stated objective of repealing pre-independence, 19th century colonial-era criminal laws. The Sahita contains 533 sections, 38 chapters and 2 schedules. It will be in force on July 1, 2024, and extend to the whole of India. The BNSS aims to streamline the justice system by tackling issues like complex procedures, a backlog of cases, low conviction rates, limited use of technology in legal processes, slow investigations, and underutilization of forensic tools.[1]

Meaning of FIR

The term "First Information Report" (FIR) holds significant importance in the context of criminal justice systems, yet it surprisingly lacks a formal definition within the Bhartiya Nagarik Suraksha

[1] Justice V. Ramkumar, *Comprehensive Analysis of the Bharatiya Nagarik Suraksha Sanhita, 2023*, LiveLaw (India), 16 Feb. 2026, available at: https://www.livelaw.in/top-stories/justice-ram-kumar-comprehensive-analysis-bharatiya-nagarik-suraksha-sanhita-2023-252551 (last visited 16 Feb. 2026).

Sahita (BNSS) 2023. Despite this omission, Section 230 of the BNSS mandates that magistrates must provide the accused with a copy of the FIR filed under Section 173 (1) of the Sahita.

An FIR serves as the initial report made to the police regarding the commission of a cognizable offence. It typically contains crucial information such as the details of the incident, including the time, location, and nature of the offence; descriptions of the accused and any witnesses; and any relevant evidence gathered at the scene.[2]

However, despite the absence of a formal definition, the BNSS 2023 provides several provisions that indirectly shed light on the significance and role of an FIR. For instance, Section 173 of the Sahita mandates police officers to record information related to cognizable offences reported to them, which essentially forms the basis of an FIR.

Moreover, Section 173 (1) of the BNSS 2023 stipulates that a police officer investigating a cognizable offence must prepare an FIR and forward it to the nearest magistrate within 24 hours of receiving the information. This provision underscores the importance of an FIR as a formal record of the initial investigation conducted by the police.[3]

It can be described as:

- Information given to a police officer.
- Information about a cognizable offence.
- The first report was made about the incident.
- Provided by the victim of the crime or someone acting on their behalf to the police.
- This is the information that starts the investigation.

Purpose and significance of FIRs in the criminal justice system

The first information report is about the ignition of the criminal justice system. The purpose of registering an FIR is to set the machinery of criminal investigation into motion, which culminates with the filing of the police report. Only after registration of the FIR, the beginning of the investigation in a case, the collection of evidence during investigation and the formation of the final opinion are the steps that result in the filing of a report under Section-193, BNSS.[4]

In the landmark case of *Manoj Kumar Sharma and others vs. The State of Chhattisgarh and Anr. (2016)*, the Hon'ble Supreme Court of India expounded on the pivotal significance and purpose of a First Information Report (FIR) in the criminal justice system.

An FIR serves as the initial step towards the administration of criminal justice. It can be likened to the foundation stone upon which the entire structure of the criminal justice system is built. In essence, an FIR sets the stage for the investigation and prosecution of criminal offences.[5]

The primary purpose of an FIR is to provide the police with the necessary information to initiate an investigation into a cognizable offence. It serves as a crucial tool for law enforcement agencies to gather essential details such as the nature of the crime, the time and place of its occurrence, the identity of the victim(s) and suspect(s), and any other relevant information.

The importance of an FIR cannot be overstated, as it sets in motion the criminal justice machinery. It triggers the immediate commencement of an investigation by the police, facilitating the collection

[2] K.N. Chandrasekharan Pillai, *R.V. Kelkar's Criminal Procedure* (Eastern Book Company, 7th edn., 2016).
[3] The Bharatiya Nagarik Suraksha Sanhita, 2023, No. 46 of 2023, § 173 (India).
[4] India's criminal laws set to get a revamp, Lok Sabha approves BNSS Bill, *The Economic Times (India)*, 20 Dec. 2023, available at: https://economictimes.indiatimes.com/news/india/indias-criminal-laws-set-to-get-a-revamp-lok-sabha-approves-bnss-bill/articleshow/106155859.cms (last visited 16 Feb. 2026).
[5] C.K. Takwani, Criminal Procedure (Eastern Book Company, latest edn.).

of evidence, identification of witnesses, and apprehension of the accused.

Moreover, an FIR serves as a vital record of the initial complaint or information received by the police. It helps to ensure transparency, accountability, and adherence to due process in the investigation of criminal cases. An FIR provides a clear trail of events, allowing for effective monitoring and supervision of the investigative process.

Furthermore, an FIR plays a crucial role in safeguarding the rights of both the victim and the accused. It serves as a valuable piece of evidence in court proceedings, helping to establish the facts of the case and determine the guilt or innocence of the accused.

Provisions of FIR registration under Bhartiya Nagarik Suraksha Sahita, 2023

FIR is registered under Section 173 of the BNSS, 2023. Anyone who has information about the commission of a cognizable offence can lodge an FIR. It is not necessary that he/she be the victim or eye-witness himself. A police officer can lodge an FIR on his own if he comes to know about the commission of a cognizable offence.[6] In *Hallu & Ors. vs. The State of M.P*[7] the Supreme Court of India interpreted Section 154 of the Code of Criminal Procedure, 1898 (CrPC), which has since been renumbered as Section 173 of the Bihar, Jharkhand, and Odisha Police Act, 2016 (BNSS). The Court held that Section 154 CrPC (now Section 173 BNSS) does not require that the report of a cognizable offense be given by a person who has personal knowledge of the incident reported.[8]

The Court reasoned that the language of Section 154 CrPC (now Section 173 BNSS) speaks of "information relating to the commission of a cognizable offence given to an officer in charge of a police station." This broad language does not limit the source of the information to persons who have personal knowledge of the incident. The Court noted that the purpose of Section 154 CrPC (now Section 173 BNSS) is to ensure that all information about cognizable offenses is promptly reported to the police so that they can investigate and take appropriate action. This purpose would be frustrated if the section were interpreted to require that the information be given only by persons who have personal knowledge of the incident.

The Court's interpretation of Section 154 CrPC (now Section 173 BNSS) has been followed by courts in subsequent cases. In *State of Punjab vs. Gurmit Singh*,[9] the Supreme Court held that a police officer can register an FIR based on information received from a reliable source, even if the officer does not have personal knowledge of the incident. The Court noted that the purpose of an FIR is to set the criminal justice system in motion, and that this purpose would be defeated if the police were required to conduct a preliminary investigation before registering an FIR.

The Court's interpretation of Section 154 CrPC (now Section 173 BNSS) has also been criticised by some commentators. They argue that the Court's interpretation gives the police too much discretion in deciding when to register an FIR. They also argue that the Court's interpretation could lead to false and frivolous FIRs being registered.

Despite these criticisms, the Court's interpretation of Section 154 CrPC (now Section 173 BNSS) remains the law of the land. It is a well-established principle that the police can register an FIR based on information received from a reliable source, even if the officer does not have personal knowledge of the incident.

[6] The Bharatiya Nagarik Suraksha Sanhita, 2023, No. 46 of 2023, § 173 (India).
[7] AIR 1974 SC.
[8] K.N. Chandrasekharan Pillai, *R.V. Kelkar's Criminal Procedure* (Eastern Book Company, 7th edn., 2016).
[9] (2009), 2 SCC 575.

Section 173: information in cognizable cases

Any report regarding the occurrence of a cognizable offence can be communicated orally or through electronic means to the police station's officer in charge, regardless of the location where the offence took place. If such information is provided.

If reported orally, it must be written down and signed by the informant after being read back to them.

If reported electronically, it must be signed within three days by the person giving it and recorded in a prescribed format. The details of the information should be entered into a designated book in a format specified by the State Government. Additionally, if the information is provided by a woman who is allegedly a victim under Section 64, Section 65, Section 66, Section 67, Section 68, Section 69, Section 70, Section 71, Section 74, Section 75, Section 76, Section 77, Section 78, Section 79 or Section 124 of the Bharatiya Nyaya Sanhita, 2023, it must be recorded by a female police officer or any female officer authorised for this purpose.

Provided further that-

- In the event that the person against whom an offence under Section 64, Section 65, Section 66, Section 67, Section 68, Section 69, Section 70, Section 71, Section 74, Section 75, Section 76, Section 77, Section 78, Section 79 or Section 124 of the Bharatiya Nyaya Sanhita, 2023 is alleged to have been committed or attempted, and such person is temporarily or permanently mentally or physically disabled, the information about the alleged offence will be recorded either at the residence of the person reporting the offence or at a location chosen for their convenience. An interpreter or a special educator, if needed, will be present during this process.

- Such information must be recorded in video format.

- The police officer must ensure that the person's statement is promptly recorded by a magistrate as per the provisions of clause (a) of sub-section (6) of Section 183.[10]

A free copy of the recorded information from subsection (1) must be provided to the informant or the victim.

Apart from what is stated in Section 175, when the police station receives information about a punishable offence with a sentence of three to seven years, the officer in charge can, with permission from a Deputy Superintendent of Police, either conduct a preliminary inquiry within fourteen days to determine if there is a basis to proceed or proceed directly with the investigation if there's sufficient evidence to suggest wrongdoing.[11]

If any person is denied by the officer in charge of a police station to write his FIR, then they can send a written complaint by mail to the relevant Superintendent of Police. If the Superintendent is convinced that the information indicates a cognizable offence, they will either personally investigate the case or instruct a subordinate police officer to do so according to the law. This officer will have the authority of the police station's officer in handling the offence.

Alternatively, the aggrieved person can approach the magistrate if these steps are not taken.

E-FIR

The BNSS also introduces provisions for electronic FIR (E-FIR), allowing FIR registration through electronic means.

This provision serves as a significant relief for victims, especially women, by expediting the registration process and preventing them from reliving traumatic experiences while reporting crimes.

[10] The Bharatiya Nagarik Suraksha Sanhita, 2023, No. 46 of 2023, § 185 (India).

[11] The Bharatiya Nagarik Suraksha Sanhita, 2023, No. 46 of 2023, § 175 (India).

While this development is a positive step towards timely and sensitive case registration, it raises concerns about unregulated online FIR registrations. The Parliamentary Standing Committee recommended that such registrations be allowed through specified modes regulated by the state to avoid logistical challenges and the proliferation of unmanageable FIRs.

The BNSS now includes a provision for lodging information electronically (e-FIR) under Section 173(1), requiring the informant's signature to be obtained within three days prior to the official recording of the e-FIR.[12]

Preliminary enquiry

Section 173(3) of the BNSS now introduces the concept of a 'preliminary enquiry' before registering an FIR, aimed at determining the existence of a prima facie case involving cognizable offences punishable with imprisonment between 3 to 7 years. This enquiry must be completed within 14 days. It specifies that upon receiving information about such offences, the senior police officer in charge can either conduct a preliminary enquiry to establish a prima facie case or proceed directly with the investigation. Permission from a Deputy Superintendent of Police or higher rank is required to conduct this preliminary enquiry.

Concept of zero FIR

Zero FIR (First Information Report) is a concept introduced to ensure that a cognizable offence can be reported and registered at any police station, regardless of the jurisdiction where the incident occurred.

The idea behind Zero FIR is to facilitate the prompt registration of a complaint without any delay, especially in cases where immediate intervention is required.

Certainly, the inclusion of the Zero FIR provision is beneficial for victims since police officers are obligated to record the initial information, irrespective of territorial jurisdiction. The words in Section 173(1) "irrespective of the area where the offence is committed" remove the jurisdictional barriers.

It is important to observe that the concept of a zero FIR is not a recent introduction in the Indian criminal law system. In a 2015 advisory from the Ministry of Home Affairs, the government recommended the filing of zero FIRs specifically for crimes against women. Furthermore, the judiciary has consistently emphasised the necessity of registering zero FIRs in various cases.

For instance, in the case of *State of AP vs. Punati Ramulu and Ors.,* the Supreme Court held that the constable should have recorded information about the cognizable offence and forwarded it to the police station responsible for the area where the crime was allegedly committed, despite any territorial jurisdictional limitations.[13]

BNSS 2023 has now given a statutory mandate for zero FIR under Section 173 (1).

When a person wants to report a crime, they can go to any police station to file an FIR, even if the incident did not occur within that police station's jurisdiction. The police station where the report is filed then registers the case with a temporary number, known as a Zero FIR, and initiates the investigation. Subsequently, the case is transferred to the police station, which has jurisdiction over the area where the offence took place. It helps ensure that the legal process starts promptly and that the investigation is not hindered by jurisdictional issues.

Mandatory registration

If police officer refuse to record the FIR of the complainant, then he may send the substance of such information, in writing and by post, to the

[12] Ministry of Parliamentary Affairs (India), *Official Website*, Government of India, available at: https://mpa.gov.in/ (last visited 17 Feb. 2026).

[13] 1993 Supp (3) SCC 302.

Superintendent of Police, if satisfied that such information discloses the commission of a cognizable offence, the superintendent of police can either investigate the case himself or direct an investigation to be made by any police officer subordinate to him.

Section 173(4) of the BNSS explicitly allows for the option to file an application with the magistrate under Section 175(3) of the BNSS if the FIR is not registered despite the Superintendent of Police's intervention.

In the landmark case of *Lalita Kumari vs. Government of Uttar Pradesh (2014)*, the Supreme Court of India issued a significant ruling mandating the compulsory registration of First Information Reports (FIRs) in cases involving cognizable offences. This landmark judgement aimed to streamline the process of handling criminal complaints and ensure prompt action by law enforcement agencies.[14]

Prior to this ruling, the registration of FIRs was often subject to the discretion of police officers, leading to inconsistent practices and potential delays in the initiation of investigations. The Supreme Court recognised the crucial role of FIRs in initiating criminal proceedings and safeguarding the rights of victims and aggrieved parties.

The Court's directive emphasised the importance of prompt and impartial action by the police in registering FIRs. It directed police officers to register FIRs without hesitation or prejudice, regardless of the social or economic status of the complainant or the accused. This mandate aimed to eliminate discriminatory practices and ensure equal access to justice for all.

The Supreme Court further clarified the procedures for registering FIRs. It emphasised that FIRs should be registered based on the information provided by the complainant without requiring corroboration from independent sources. This provision streamlined the registration process and eliminated unnecessary delays.

To ensure accountability and transparency, the Court directed police officers to provide written acknowledgment of FIRs to the complainant. This measure aimed to prevent instances where FIRs were not registered or were wilfully delayed. Additionally, the Court mandated that police officers maintain a register of all FIRs and issue regular reports to their superiors.

The judgement in *Lalita Kumari vs. Government of Uttar Pradesh* marked a significant milestone in reforming the criminal justice system in India. By mandating the compulsory registration of FIRs, the Supreme Court sought to enhance the efficiency and fairness of the investigative process, ensuring that all cognizable offences were promptly addressed and investigated by law enforcement agencies.[15]

Copy to victim

Section 154(2) of the CrPC mandates that a copy of the information be provided free of cost solely to the informant[16], whereas Section 173(2) of the BNSS expands this provision to include both the victim and the informant.[17]

Digital documentation and public access to FIR information

FIR can be given online on the website of the relevant agency; e.g., Delhi Police has its own website https://www.delhipolice.nic.in/for online FIR registration. FIRs which are given physically can accessed on the website of the agency Hon'ble Supreme Court, in the case *Youth Bar Association of India vs. Union of India*[18], directed that the First Information Report (FIR) in any case should be on the relevant investigating agency's website within 24 hours of its registration.

[14] (2014) 2 SCC 1.
[15] (2014) 2 SCC 1.
[16] The Code of Criminal Procedure, 1973, No. 2 of 1974, § 154 (India).
[17] The Bharatiya Nagarik Suraksha Sanhita, 2023, No. 46 of 2023, § 173 (India).
[18] (2016) 9 SCC 473.

Requirements/ advantages for maintaining transparent records of FIRs

- Increased transparency and accountability: Transparent records ensure that actions taken by law enforcement agencies are visible to the public, fostering trust and accountability within the community.
- Promoting fairness and due process: By documenting the initial complaint or allegation, FIR records provide a starting point for legal proceedings, ensuring that individuals are treated fairly and in accordance with due process.
- Thorough and impartial investigation: clear and accessible FIR records facilitate thorough investigations by providing a detailed account of the reported incident, enabling law enforcement agencies to gather evidence and pursue leads effectively.
- Increased public confidence in the justice system: Transparent FIR records demonstrate a commitment to openness and integrity within the justice system, thereby enhancing public confidence and belief in the fairness of legal processes.
- Deterring criminal behaviour: Publicly available FIR records act as a deterrent to criminal behaviour by signalling that unlawful actions will be documented and investigated, potentially reducing the occurrence of crimes within the community.

Challenges and criticisms regarding FIR

The First Information Report (FIR) plays a crucial role in the criminal justice system as it serves as the initial document that sets the foundation for an investigation. However, despite its significance, there are several challenges and criticisms associated with FIRs that need to be addressed:

1. **Delay in registration:** One of the primary challenges is the delay in registering an FIR. In many cases, victims or witnesses face bureaucratic hurdles, lack of cooperation from law enforcement officials, or pressure from influential individuals that can result in delayed FIR registration. This delay can hamper the investigation process and allow perpetrators to evade justice.

2. **Lack of sensitivity:** Critics argue that FIRs often lack sensitivity towards vulnerable groups, such as women, children, and members of marginalised communities. Insensitive handling of FIRs can discourage victims from coming forward and reporting crimes, further perpetuating a cycle of impunity.

3. **False and frivolous FIRs:** Another challenge is the issue of false and frivolous FIRs. Sometimes, individuals may file false complaints to settle personal scores, harass others, or even as a form of extortion. Such false FIRs can strain police resources and divert attention away from genuine cases.

4. **Misuse of FIRs for harassment:** Critics also raise concerns about the potential misuse of FIRs by authorities to harass and intimidate individuals, particularly those critical of the government or powerful entities. The threat of an FIR can have a chilling effect on dissent and freedom of expression.

5. **Need for reform:** Given these challenges, experts and activists have called for reforms to the FIR system. These reforms could include measures such as:

- Mandating timely registration of FIRs within a specified period.
- Establishing specialised units within police departments to deal sensitively with cases involving vulnerable groups.
- Implementing mechanisms to verify the authenticity of complaints and prevent false FIRs.
- Strengthening oversight and accountability mechanisms to prevent the misuse of FIRs for harassment.

- Incorporating restorative justice principles to promote healing and resolution in certain cases.[19]

Addressing these challenges and criticisms is essential to ensuring a fair and effective criminal justice system. By implementing comprehensive reforms, authorities can strengthen the FIR system, uphold the rights of victims, and promote public trust in the rule of law.

Landmark supreme court rulings on FIR

1. ***Lalita Kumari v. Government of Uttar Pradesh***[20]

The Supreme Court held that registration of FIR is **mandatory** under Section 154 CrPC (now Section 173 BNSS) if information discloses commission of a cognizable offence. Police cannot conduct a preliminary inquiry before registration, except in limited categories (e.g., matrimonial disputes, commercial offences, medical negligence, etc.). The Importance of this case is the backbone of FIR jurisprudence and ensures accountability of police officers.

2. ***State of Haryana v. Bhajan Lal***[21]

The Supreme Court laid down **seven categories** where the High Court may quash an FIR under its inherent powers. Importance of this case is Protects individuals from misuse of criminal law and frivolous FIRs.

3. ***Youth Bar Association of India v. Union of India***[22]

The Court directed that FIRs must be uploaded on official police websites within 24 hours (with exceptions for sensitive offences).

4. ***State of Andhra Pradesh v. Punati Ramulu***[23]

The Court held that unexplained delay in lodging FIR may create doubt about prosecution case.

5. ***T.T. Antony v. State of Kerala***[24]

The Court held that there cannot be a second FIR for the same offence/incident.

6. ***Manoj Kumar Sharma v. State of Chhattisgarh***[25]

The Court described FIR as the starting point of criminal law machinery.

7. ***Hallu v. State of M.P.***[26]

The Court held that FIR need not be lodged by an eyewitness; any person with knowledge of cognizable offence can give information.

Conclusion

The FIR is a critical document in every criminal case, marking the start of legal proceedings. As noted in the *Mohan Lal vs. State of Uttar Pradesh (1988)* case, it is considered the cornerstone of the public record for a case. Therefore, it is important for citizens to know their rights regarding FIRs. Understanding these rights helps individuals know how to report a crime or address public offences effectively.

These significant changes introduced by the BNSS mark a fundamental shift in criminal law procedures. While initiatives like Zero FIR and E-FIR aim to enhance victim-centric approaches and accelerate justice delivery, the divergence from established judicial principles in preliminary inquiries warrants critical scrutiny.

The implementation of new FIR provisions and their alignment with existing judicial precedents and

[19] *Need to Know About Registration of FIR*, *iPleaders Blog* (India) https://blog.ipleaders.in/need-know-registration-fir (last visited 17 Feb. 2026).
[20] (2014) 2 SCC 1.
[21] 1992 Supp (1) SCC 335.
[22] (2016) 9 SCC 473.
[23] 1993 Supp (3) SCC 302.
[24] (2001) 6 SCC 181.
[25] (2016) 9 SCC 1.
[26] AIR 1974 SC 1936.

principles of justice remain pivotal for the effective and fair administration of criminal law in India.

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iv. *State of Andhra Pradesh v. Punati Ramulu & Ors.*, 1993 Supp (3) SCC 302.
v. *T.T. Antony v. State of Kerala*, (2001) 6 SCC 181.
vi. *Manoj Kumar Sharma v. State of Chhattisgarh*, (2016) 9 SCC 1.
vii. *Hallu & Ors. v. State of Madhya Pradesh*, AIR 1974 SC 1936.
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CRITICAL ANALYSIS ON THE RURAL SANITATION COVERAGE UNDER SWACCH BHARAT MISSION

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ABSTRACT

The Swachh Bharat mission, which was launched in the year 2014, is one of the most ambitious national level missions taken up by the Indian government for the transformation of sanitation at the rural level.[1] This research on the topic "Rural Sanitation Coverage under Swachh Bharat Mission (Grameen)", examines the progress made so far in the area of this mission, behavioural aspect which came in the society naturally, assessing the patterns of usage of the rural sanitation complexes, and the overall prolonged sustainability of the mission, scrutinising the data dashboards the Indian govt, reports on the solid and liquid waste management in the rural areas, and the recent studies on the rural regions to see how far has the policy established by the govt been successful and examining the gaps in the existing researches of scholars as well as the data provided by the ministries. The study here shows that the Swachh Bharat mission(SBM-G), has witnessed an increase in the construction as well as the usage of the rural sanitation complexes with a universal coverage. Many researches and studies that showcased that there is a notable decrease in the overall health of the rural masses which reduced the number of infant deaths due to increased sanitation coverage at the rural level. However, as per the qualitative analysis of the studies of the rural sanitation complexes, parliamentarians' assessment revealed that the construction of toilets doesn't really guarantee the usage of such complexes. Challenges are also faced such as water availability, minimum affords in maintaining the sanitation complexes, inconsistent faecal sludge management which still hampered the long term functioning of these facilities provided and funded by the government. Comprehensively, it is out there in the public that the mission of rural sanitation needs improvement in lieu of the maintenance of these complex and sustainable development of these rural sanitation complexes.

KEYWORDS: Swachh Bharat Mission Gramin Rural Sanitation Coverage Toilet Usage Behaviour Change SLWM and FSM Public Health Sustainabil

INTRODUCTION

The rural sanitation in India is one of the most extreme variations which covers the whole of the territory of the rural India where open defecation claims (ODF) was the most practiced but now as we have seen after the establishment of this policy, Swacch Bharat Mission-Grameen (SBM-G). Nevertheless, when the layers come off the policy unwraps its trends as long term troubles are downgraded with the driven reforms about the rural sanitation. Over the past few years in India, the rural sanitation was way too poor to be even talked about which put a strain on Indian society as well as health. The surveys conducted before the policy formation i.e., 2014, were unnerved close to almost 565 million people which is more than 60% of the rural population practiced the old way of open defecation[2]. This wasn't really the game of numbers but the culture practiced was ubiquitous. Caste systems made the inferior caste go for open defecation even though there were fewer toilets made. This open defecation often led to harassment and health concerns. TSC (2009-12) attempted subsidies

[1] *Government of India, Daily Data on Rural Sanitation Coverage under SBM-G, Data.gov.in.*

[2] *Ministry of jal shakti, swacch bharat mission(gramin): operational guidelines(govt of india),2014*

and awareness but failed with only partial coverage amid the weakened enforcements.

The escalating proof gave the blaring alarm to a national policy i.e., sanitation-related diseases have killed 200,000 children every year and decreased the growth anticipated and kept poverty in a loop. Joining SBM-Grameen in the year 2014 was an ambitious step by the Prime Minister Narendra Modi whose guidance is the legacy of Mahatma Gandhi. Talking about it by 2019, an Open Defecation Free (ODF) India (Phase II: 2020-2025) with environment friendly and waste management. Some of the criterias were individual household latrines (IHHLs) in every rural house, sanitary complexes for the whole community, and behavioral change through door to door campaigns, which was boosted by 1.4 lakh crore investment by the government.[3] There are official dashboards that are crammed with success. In the year 2014 the inclusive was 39% and in 2019 it went to 100% and more than 11 crore toilets have been built (SBM Dashboard; PIB, 2024). The research accredits SBM to the anticipation of 60,000-70,000 infant deaths and the reduction of rural impedance[4]. The critical analysis is herein though the one question whether we have coverage to usage? The deficit is independent and also found by individualistic probes, with 19% continuing to defecate openly in NARSS 2019-20, and tribal and underrepresented areas being the most lagging (ISEC WP-555; ResearchGate studies)[5]. There is not proper functioning of these sanitary complexes, which is shown in the Phase II data, and this makes the question of environment friendly with capitalizing lacunas and cultural inaction(SBM Village Status Report). This research will meticulously unburden the rural sanitation coverage as the part of SBM, digging through the government portal data and academic and scholarly articles to assess about out what actually works and what does not and why the real impact would need more than just sanitation complexes, it would need egalitarianism, imposition, and practices.

CRITICAL OVERVIEW OF THE SWACCH BHARAT GRAMEEN(SBM-G)

Swachh Bharat Mission Grameen (SBM-G), came into force in the year 2014, is India's most important rural sanitation reform aiming at abolishing open defecation and enhancing sanitation at the rural level. As per the official SBM dashboard and official site data.gov.in, rural toilet coverage stood up from 38% in 2014 to nearly 100% reported coverage by 2019, embarking a remarkable organisational enlargement across the states. Nonetheless, a critical reading of self sustaining data surveys such as NARSS 2019–20 and UNICEF's sanitation collision studies showcased that while toilet building numbers are majestic, sustained use of sanitary complexes across regions.

The core of SBM-G encompasses on eliminating open defecation, making it certain that ubiquitous ingress to toilets, ameliorating village cleanliness, and encouraging societal change. Construction of Individual Household Latrines (IHHLs) has been the main focus, with millions of toilets built under government subsidies. Studies (ResearchGate Raj Priya, 2023; Kulkarni, 2024) culmination improved easing and stateliness for rural menage but also noted concerns of less use due to water dearth and poor toilet layout.

A key element of SBM-G is Solid and Liquid Waste Management (SLWM), which aims to escalate the mission from sanitation complex construction to isolated sanitation. In spite of the fact that, SLWM coverage remains potholed. Technical Notes published by SBM (2022) showed that many rural areas lack an ascetic waste-treatment institution, predominant to unsafe faecal sludge getting rid of also reverberated in World Bank and Frontiers Environmental Studies examination. Village cleaning drives, including "Swachhata Hi Seva" and grassroots involvement in total sanitation approaches, have

[3] *Ministry of Jal Shakti, 10 Years of Swachh Bharat Mission (Grameen) (2023)*
[4] *Ministry of Jal Shakti, Swachh Bharat Mission (Grameen): Operational Guidelines (2014)*
[5] *ISEC, Working Paper No. 555: Sanitation Governance in Rural India*

contributed to widespread awareness. Yet there are immersion reports (WEDC, IDS) which show that behavioral substituting intercedes were often short spanned and heavily target-driven[6]. Ultimately, Community Sanitary Complexes (CSCs) underpin the houses without space for IHHLs, but few of the SBM data highlights that many CSCs suffer from poor maintenance,restricted water stockpile, and not clarified ownership accountabilities. Comprehensively, SBM-G has significantly expanded rural sanitation substructure, but condemnatory challenges endure in usage, ecological, sanitation services, and community-led maintenance, indispensable carry on with policy attention in the second phase of the policy implementation.

TRENDS IN RURAL SANITATION COVERAGE

Rural sanitation coverage in India has seen a considerable shift after the commencement of the Swachh Bharat Mission–Grameen (SBM-G) in 2014. Ritualistic data highlights that toilet coverage, which was around 38% before 2014, shot up during 2015–2019 due to rough toilet building campaigns, monetary inducements, and mass mustering. Many states such as Haryana, Himachal Pradesh, and Kerala announced near-universal toilet access initially in the mission, while rest of the states including Bihar, Uttar Pradesh, Odisha, and Jharkhand displayed slower but balanced furtherance. Unsettled by socio-economic and geographic restrictions. Many districts across the country were nominated as 100% Open Defecation Free (ODF) by 2019, though ensuing self-reliant surveys show variations in the solidity of these communications.[7]

The quick growth in substructure has also brought awareness amongst the masses to the tenacious bridge between use and constructing the toilets. Studies by UNICEF, NARSS, and self sufficient researchers enlightened that a segment of newly built toilets are either not much functional or lacked proper maintenance, specifically in water aridity and economically backward groups[8]. Habitual objectives for not using includes poor superstructure quality, lack of water supply, insufficient pit design, enhancing run through, and the preference for uncontrolled defecation due to well entrenched outward attitudinal norms.[9] In many parts of rural India, twin leach pit toilets are installed without bona fide technological guidance, escalating to design failures and unhygienic sludge management. Water shortage remains a castigate conclusive of functionality where menage without well founded connections of taps often finds difficulty in maintenance, giving partial or complete desertion in the end. Such tendency stipulates that while rural lustration coverage swells to a large extent, making sure user friendly long term usage, functional infrastructure, and behaviour change remains essential for carrying off long-term rural mass robustness consequences.[10]

EFFICACY OF SBM-G: EVALUATION OF WRITINGS

A considerable body of publications underlines that the Swachh Bharat Mission–Grameen (SBM-G) has been one of India's most aspiring public robustness and rural growth interceded, notably influencing cleanness access, deportment, and health results. Factual researches persistently show that rural toilet coverage enlarging consequentially after 2014, with diverse independent evaluation (UNICEF, World Bank, NARSS, ResearchGate studies) authenticating a serrated upgrade in rural toilet possession and accessibility[11]. Many neighborhoods accomplish near-universal entrances, putting up to large-scale depletion

[6] *Toilet Board Coalition, The Sanitation Economy in India*
[7] *Ministry of Jal Shakti, SLWM in Rural Areas: Technical Note*
[8] *Ministry of Jal Shakti, National Annual Rural Sanitation Survey (NARSS) 2019–20*
[9] *Government of India, Daily Data on Rural Sanitation Coverage under SBM-G, Data.gov.in*
[10] *Ministry of Jal Shakti, SBM-G State Dashboard*
[11] *Ministry of Jal Shakti, National Annual Rural Sanitation Survey (NARSS) 2019–20*

in open defecation. The well being collision of this advance is meticulously chronicled: studies in Business Standard and public health journals designated that SBM-G nip in the bud gauging 60,000–70,000 newborn deaths by bringing down subjection to faecal pollution[12]. Fact finding overseas in rural and tribal areas of India has also announced a notable end in diarrhoea, parasitic infections, and contaminated water diseases among children as hygiene deportment improved. Outwith health results, anecdotal studies emphasise advances in mobility, solitude, and safeguarding women and girls. Approaches to sanitary complexes have diminished occurrences of badgering, intensify menses sanitation regimes, and ameliorate the perception of certainty, mainly in the course of daybreak or nighttime defecation. [13]

INADEQUACY & CONSTRUCTIONAL LACUNAS IN THE SBM(GRAMIN)

In spite of the astonishing work bringing about less than Swachh Bharat Mission–Grameen (SBM-G), various regulatory lacunas and constructional apertures carry on to influence the policy's long-term viability. A major examination calling attention to covering government inspections, NARSS reports, UNICEF reports, and individualistic experimentation learnings has broad prominence on sanitary complexes formation dashboard rather than regular use and working of these toilets. The commencement stage of this SBM-G highlighted expeditious building of these toilets to accomplish "Open Defecation Free (ODF)"standing, that is in several instances guided to aerated describe and unfinished corroboration. Unconventional look-overs suchlike as NARSS 2018–19 and Comptroller and Auditor General (CAG) research have mentioned gaps in ODF documentations, unpredictability between dashboard data and on ground realities, and an absence of vigorous apparatus for regular re-confirmation. Frail observing work systems, dependency on self-describing, and non appearance of intermediary examination additionally putting it into incorrectness in spotlessness exposure and avail oneself of data. During the execution level, several organizational provocations persist. Water reservoir curtailment remains as the biggest railing to undergo usage of such toilets, to a large extent in regions where water scarcity is an issue of Rajasthan, Bundelkhand, and many parts of the Northeast. Further reports and village studies showed that many rural houses revert to open defecation when water availability ends. Weak contriving quality, use of sub-standard evidence, and inadequate safeguarding ideas have procured in non-functional or partly functional sanitary complexes in many areas of rural India[14]. Local governments, which are important while executing bodies, repeatedly lack the practical expertise, labour force, and monetary independence they need to ensure efficacious operation and maintenance. Additionally, funding for Solid and Liquid Waste Management (SLWM) remains deficient, fractured, and steadily depending on short-term vouchers.

This has guided to fragmentary trash handling systems, cram-fulling pits, meagre household sullage, and slightest evolution of faecal sludge treatment structure. All inclusive, the writings showcases that nisi SBM-G reinforces data affirmation apparatus, guarantees dependable water supply, ameliorates the construction and functional standard, invigorate village level governance dimensions, and ensures long-term funding for SLWM, the improvements accomplished in cleanliness coverage may countenance remarkable environment friendly probability.[15]

[12] *Business Standard, Swachh Bharat Mission Prevented 60,000–70,000 Infant Deaths: Study (2024)*
[13] *IWA Publishing, Justice and Sanitation Governance (2022)*
[14] *Raj Priya, Evolution of Sanitation in India: A Case Study of Swachh Bharat Mission (2014–2023) (ResearchGate, 2023)*
[15] *Ministry of Jal Shakti, SBM-G Dashboard: State-wise and District-wise Coverage Data.*

CHALLENGES REGARDING SUSTAINABILITY UNDER THE SBM(GRAMIN)

Guaranteeing the elongated sustainability of rural sanitation programmes under the Swachh Bharat Mission–Grameen (SBM-G) has been still a recurring issue, mainly in the post-ODF scenarios. Despite the fact that way too many sanitary complexes were built nearly around the year 2014-2023, many states resumed reporting scenes of decrement, where rural houses were slowly reverting back to open excretion. Researches by UNICEF, NARSS, and independent scholars encompasses that comportmental change isn't consistently fixed, and a faction of rural India often reinstating to open waste disposal during water scarcity still exists, periodical agricultural relocation, or when sanitary complexes have become maladjusted[16]. The truancy of brawny led to systems, integrated with a dwindle in indepth IEC undertaking post ODF announcement, has pursuits in attitudinal unpredictability. More off, jitted or unutilised sanitary complexes often required to poor building standard, lack of belfry, or damaged potholes pose an important environmental issue. Several rural areas also lack well ordered dredging kindness, moving forward to full trough that cast down usage, majorly in rural houses with twin-pit mechanisms that were besides improper construction or misunderstood in terms of the functioning and preservation.

Environmental sustainability dispensing another critical provocation. A key issue that comes out from applied studies is the disposal and charging of faecal waste. In many rural parts, faecal waste from septic tanks or pits is per say freehand removing or discharging into open fields, drains, and water bodies, leading to downstreaming defile and public health concerns. Likewise, liquid waste is poorly managed, particularly greywater shows in stagnant water pools, mosquito breeding, and pollution of exterior and groundwater sources. Solid Waste Management (SWM) arrangements also remain impoverished, with many Gram Panchayats lacking waste troupes centres, closeting mechanisms, or disposal infrastructure. As a result, plastic waste, menstrual waste, and household refuse often end up in open landfills or burned in the open, contributing to air and soil pollution. These environmental challenges demonstrate that sanitation sustainability is not only about access to toilets but also about building comprehensive waste management ecosystems that protect public health and the environment.

Even though the programme has been running for a decade now, there are still many research gaps that limit an understanding of its impact and long-term results. First, there is a large gap in longitudinal studies that have tracked how people have used toilets over a long period of time. Most of the evidence available, like the NARSS and SBM-G dashboard data, only show how many toilets were installed at one given time, but do not give any information on how long-lasting this change is (i.e. behaviour). Second, very little gender-disaggregated research has been published, even though sanitation has strong implications for women's dignity, menstrual hygiene, safety, and time use. The lack of such important data makes it difficult to direct policy to meet the needs of women regarding sanitation. Third, there are significant data gaps in existing datasets regarding the use and maintenance of toilets in tribal, hilly, and geographically remote areas[17]. The challenges faced by these communities, including scattered patterns of settlement, terrain constraints, and cultural traditions, warrant additional focused studies to assess the specific obstacles to maintaining the use of toilets and waste management practices. Another critical gap lies in the weak economic analysis of Faecal Sludge Management (FSM) systems. While the sanitation economy in India is estimated to be worth billions, very few studies examine the financial viability of desludging services, treatment plants, or community-level FSM enterprises. Without robust cost-benefit analysis, it becomes difficult for state governments and Panchayats to plan sustainable financing models.

[16] *UNICEF India, Behaviour Change Communication under SBM-G*

[17] *MDPI, Gendered Dimensions of Sanitation Governance (2023)*

Finally, the lack of independent third-party audits and field evaluations remains a recurring concern. Much of the available data is self-reported by implementing agencies, which may lead to overestimation of achievements. Independent audits, including randomised field verification and sample-based longitudinal surveys, are essential to accurately assess sanitation usage, environmental impacts, and sustainability outcomes. In summary, while SBM-G has transformed rural sanitation access, its long-term success hinges on addressing behavioural slippage, environmental risks, and major research gaps. Strengthening monitoring, expanding gender-focused studies, conducting rigorous economic analysis, and prioritising sustainability frameworks will be crucial for ensuring that India's sanitation gains remain resilient and inclusive.[18]

SUGGESTED RECOMMENDATIONS FOR THE POLICY

To ensure the long-term success of the Swachh Bharat Mission-Gramin (SBM-G), it is essential to adopt a multi-pronged approach that focuses on behaviour change, improved infrastructure, stronger governance, and sustained support. Behaviour change efforts should move beyond one-time Information, Education and Communication (IEC) campaigns and instead become a continuous, community-driven process. This can be achieved by involving local actors who have regular contact with the community, such as teachers, youth clubs, ASHA workers, Anganwadi workers, and Swachhagrahis.[19]

These individuals can play a key role in regularly engaging with households, promoting hygiene practices, explaining the use and benefits of twin-pit toilet technology, and encouraging the ownership and consistent use of sanitation facilities. Involving schools and forming youth councils at the village level can further help in nurturing a culture of sanitation among young people, ensuring that these practices are sustained across future generations.

For any improvements made to sanitation infrastructure, reliable and consistent access to a safe drinking water source will be essential since having access to water is one of the primary factors that determine whether or not households will utilize toilets. Therefore, when investing in sanitation infrastructure, it will be necessary to incorporate investments into water supply programs by improving coordination among current programs, including Swachh Bharat-Mission-Gramin (SBM), Jal Jeevan Mission, and other rural water supply programs, so that all households have access to a reliable water source[20]. By using a combined approach to provide households with sanitation services and a water supply to support those services, it will help to ensure that every household will have a functioning toilet. To support these investments, technology can also be used to support local solutions to address local problems, such as the development of low-flow flush toilets, environmental-friendly toilets, and cost-effective sludge treatment facilities to respond to issues related to scarcity of water and challenging geographical area.

Conclusion

The Swachh Bharat Mission–Grameen (SBM-G) demonstrates one of India's most determined rural health and rural growth steps, markedly enlarging sanitary complexes' coverage under rural India and boosting the national maneuver towards declining the old age practice of open defecation. The mission did succeed in marshaling large-scale clique involvement, brushing up household dignity specifically for women and bestowing remarkable health benefits such as reduction in water borne disease and infant mortality. Nevertheless, the studies by researchers shows that the expansion in the superstructure alone does not ensure

[18] *Parliamentary Standing Committee on Rural Development, Report on SBM-G Performance (2024)*
[19] *IJMER, Sanitation Usage and Sustainability Studies (2022)*
[20] Vision IAS, *Parliamentary Panel Report on SBM-G* (2025)

the succoured sanitation results. Tenacious lacunas including not in accord with the sanitary complex usage in rural areas, water shortage, weak verification systems, lesser faecal sludge management, and variable Gram Panchayat capacity continue to challenge long-term sustainability[21]. Behavioural change, though central to SBM-G's design, remains uneven due to short-lived communication efforts and deep-rooted socio-cultural barriers.

The analysis of literature and data highlights that future sanitation progress must prioritise post-ODF sustainability through well grounded water amalgamation, augmentation in focusing on frameworks, gender-sensitive perspective, and community ownership of these complexes. Bracing gram panchayats, investing in FSM infrastructure, and helping women-led and youth-led sanitation initiatives can create a self-sustaining ecosystem beyond the life of the programme. Additionally, more brutal longitudinal studies, field-based audits, and economic evaluations are needed to fill critical research gaps and guide evidence-based policy reforms.

The overall success of SBM-G's next phase will not only depend on providing universal access to toilets. Equally important will be developing a culture of consistent use, safe waste management and environmentally friendly sanitation practices in rural areas.[22] A transition from 'toilet construction' to 'service delivery and behaviour-change' is necessary for the benefits of SBM-G to translate into sustained public health and development outcomes for rural India.

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[21] *Vikaspedia, Role of Gram Panchayat under Swachh Bharat Mission*

[22] ISEC, *Working Paper No. 555: Sanitation Governance in Rural India.*

LEGAL PROVISIONS AGAINST DIGITAL FRAUD IN INDIA

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Abstract

The rapid growth of digital technology and internet penetration in India has significantly transformed communication, commerce, and financial transactions. However, this digital revolution has also led to a sharp rise in cybercrimes and digital frauds, including phishing, identity theft, online scams, and fraudulent advertisements. These offences pose serious threats to individuals, businesses, and the integrity of the digital economy. To combat such challenges, India has developed a robust legal framework comprising the Information Technology Act, 2000, the Bharatiya Nyaya Sanhita (BNS), and the Consumer Protection Act, 2019.

The Information Technology Act, 2000 serves as the primary legislation addressing cyber offences, providing provisions related to unauthorized access, data theft, and identity fraud. The Bharatiya Nyaya Sanhita, which replaces the Indian Penal Code, strengthens criminal liability for cheating, impersonation, and fraud conducted through digital means. Additionally, the Consumer Protection Act, 2019 addresses misleading advertisements and unfair trade practices, holding endorsers and advertisers accountable.

Judicial interpretation has further strengthened the enforcement of these laws, with courts recognizing the evolving nature of digital fraud and emphasizing accountability and consumer protection. This article examines the key legal provisions governing digital fraud in India, analyzes relevant case laws, and highlights the need for stricter enforcement and awareness. It concludes that while India has a comprehensive legal framework, effective implementation and digital literacy remain crucial in curbing cyber fraud.

Keywords: *Digital Fraud, Cyber Crime, IT Act 2000, Bharatiya Nyaya Sanhita, Consumer Protection Act 2019, Misleading Advertisements, Cyber Law, Online Scams, Legal Remedies.*

1. Introduction

In the 21st century, the rapid advancement of digital technology has fundamentally transformed the way individuals interact, transact, and communicate. India, being one of the fastest-growing digital economies, has witnessed an unprecedented rise in internet usage, digital payments, e-commerce platforms, and social media engagement. Government initiatives such as *Digital India* and the widespread adoption of smartphones have further accelerated this transformation, making digital services accessible even in remote areas. While these developments have enhanced convenience, efficiency, and economic growth, they have simultaneously created new avenues for criminal activities in the virtual space.

Digital fraud has emerged as one of the most significant challenges in this evolving technological landscape. It encompasses a wide range of illegal activities, including phishing scams, identity theft, online financial fraud, fake advertisements, and impersonation through digital platforms. Cybercriminals exploit technological vulnerabilities as well as the lack of awareness among users to deceive individuals and unlawfully gain access to sensitive information or financial resources. The borderless nature of the internet further complicates the detection, investigation, and prosecution of such offences, making digital fraud a complex legal issue.[1]

Recognizing the gravity of these threats, India has developed a multi-layered legal framework to combat digital fraud. The Information Technology Act, 2000

[1] Ministry of Electronics and Information Technology, *Information Technology Act, 2000*, available at: https://www.meity.gov.in (last visited Mar. 18, 2026).

serves as the primary legislation specifically addressing cyber offences, while the Bharatiya Nyaya Sanhita, 2023 extends traditional criminal law principles to digital contexts. Additionally, the Consumer Protection Act, 2019 plays a crucial role in safeguarding consumer interests against misleading advertisements and unfair trade practices in the digital marketplace.

This article seeks to examine the key legal provisions governing digital fraud in India, analyze their effectiveness, and highlight relevant judicial pronouncements. It further aims to evaluate the challenges in enforcement and the need for a more robust and adaptive legal regime to effectively tackle emerging forms of cybercrime in the digital age.[2]

2. Information Technology Act, 2000

The Information Technology Act, 2000 (IT Act) is the primary legislation in India that governs cyber activities and provides legal recognition to electronic transactions. Enacted in response to the growing use of computers and the internet, the Act aims to address cybercrimes and digital fraud by prescribing both civil and criminal liabilities. With the increasing sophistication of online frauds, the IT Act plays a crucial role in safeguarding digital infrastructure and protecting users from cyber offences.

The Act adopts a technology-neutral approach and penalizes a wide range of activities such as unauthorized access, identity theft, cheating by personation, data breaches, and violation of privacy. Several provisions of the Act are particularly relevant in tackling digital fraud.[3]

2.1 Section 43 – Unauthorized Access and Damage

Section 43 imposes **civil liability** on any person who, without permission:

- Accesses a computer system or network
- Downloads or copies data
- Introduces viruses or malware
- Disrupts or damages computer systems

The offender is liable to pay **compensation** to the affected party. Information Technology Act, 2000, § 43.[4]

Example: If a hacker gains unauthorized access to a company's database and downloads customer financial data, he is liable under Section 43 for causing wrongful loss.

2.2 Section 66 – Computer-Related Offences

Section 66 converts acts mentioned under Section 43 into **criminal offences** when done **dishonestly or fraudulently**, making them punishable with imprisonment and/or fine.[5]

Example: If a person hacks into a bank server and transfers money to his own account, it constitutes a criminal offence under Section 66.

2.3 Section 66C – Identity Theft

This provision specifically criminalizes **identity theft**, including the fraudulent use of:

- Passwords
- Digital signatures
- Biometric information[6]

Example: Using someone else's OTP, debit card details, or login credentials to withdraw money from their bank account amounts to identity theft.

2.4 Section 66D – Cheating by Personation Using Computer Resources

Section 66D deals with **online impersonation fraud**, one of the most common forms of digital fraud.[7]

[2] Department of Consumer Affairs, *Consumer Protection Act, 2019*, available at: https://consumeraffairs.nic.in (last visited Mar. 18, 2026).

[3] Indian Computer Emergency Response Team (CERT-In), *Cyber Security Guidelines and Alerts*, available at: https://www.cert-in.org.in (last visited Mar. 18, 2026).

[4] Information Technology Act, 2000, § 43.

[5] Information Technology Act, 2000, § 66.

[6] Information Technology Act, 2000, § 66C.

[7] Information Technology Act, 2000, § 66D.

Example: Creating a fake Instagram profile of a celebrity or bank official and deceiving users into transferring money falls under this section.

2.5 Section 66E – Violation of Privacy

This section punishes the intentional capturing, publishing, or transmitting of private images without consent.[8]

Example: Sharing someone's private photos without their permission through social media or messaging platforms constitutes an offence.

2.6 Section 72 – Breach of Confidentiality and Privacy

Section 72 penalizes unauthorized disclosure of information obtained through lawful access.

Example: If an employee of a company shares confidential user data with third parties for personal gain, it amounts to a breach under this section.[9]

2.7 Relevant Case Laws

Shreya Singhal v. Union of India

The Supreme Court struck down Section 66A of the IT Act as unconstitutional for violating freedom of speech under Article 19(1)(a). However, it upheld the validity of other provisions of the IT Act dealing with legitimate cyber offences, thereby reinforcing the importance of regulating digital fraud within constitutional limits.[10]

Avnish Bajaj v. State (NCT of Delhi) (Bazee.com Case)

This case involved the sale of obscene material through an online platform. The Delhi High Court examined the liability of intermediaries and highlighted the need for due diligence by digital platforms to prevent misuse. It is significant in understanding the role of intermediaries in preventing cyber offences.[11]

Google India Pvt. Ltd. v. Visaka Industries Ltd.

The Supreme Court discussed intermediary liability and held that online platforms cannot claim blanket immunity if they fail to exercise due diligence in preventing unlawful content.[12]

State of Tamil Nadu v. Suhas Katti

One of India's earliest cybercrime convictions, where the accused was convicted under the IT Act for posting obscene and defamatory messages online. This case demonstrated the practical enforcement of cyber laws in India.[13]

3. Bharatiya Nyaya Sanhita (BNS), 2023

The Bharatiya Nyaya Sanhita (BNS), 2023 replaces the Indian Penal Code, 1860 and represents a significant reform in India's criminal justice system. Although the BNS does not exclusively deal with cybercrime, it plays a crucial role in addressing digital fraud by extending traditional criminal law principles—such as cheating, fraud, forgery, and impersonation—to offences committed through electronic means.

With the rapid rise in online scams, phishing attacks, fake social media accounts, and fraudulent digital transactions, the provisions of BNS have become increasingly relevant. The law ensures that offences committed in the virtual space are treated with the same seriousness as those committed physically.

3.1 Section 316 – Cheating

Section 316 of BNS deals with the offence of **cheating**, which involves deceiving a person and dishonestly inducing them to deliver property or consent to the retention of property.[14]

[8] Information Technology Act, 2000, § 66E.
[9] Information Technology Act, 2000, § 72.
[10] *Shreya Singhal v. Union of India*, (2015) 5 SCC 1.
[11] *Avnish Bajaj v. State (NCT of Delhi)*, 150 (2008) DLT 769.
[12] *Google India Pvt. Ltd. v. Visaka Industries Ltd.*, (2020) 4 SCC 162.
[13] *State of Tamil Nadu v. Suhas Katti*, C.C. No. 4680 of 2004 (Judgment dated 05-11-2004).
[14] Bharatiya Nyaya Sanhita, 2023, § 316.

Application in Digital Fraud: This provision applies to various online frauds such as:

- Fake job offers
- Fraudulent investment schemes
- Online shopping scams

Example: If a fraudster creates a fake e-commerce website offering heavy discounts and induces customers to make payments without delivering goods, it constitutes cheating under Section 316.

3.2 Section 318 – Cheating by Personation

Section 318 specifically addresses **cheating by impersonation**, which is highly relevant in digital fraud cases.[15]

Application in Digital Context:

- Fake social media profiles
- Fraudsters posing as bank officials or customer care agents
- Phishing emails pretending to be from legitimate institutions

Example: A scammer calls a victim pretending to be a bank officer and tricks them into sharing OTP details, leading to unauthorized withdrawal of money—this falls under Section 318.

3.3 Section 319 – Dishonest Misappropriation of Property

This section punishes the dishonest misappropriation or conversion of property for personal use.[16]

Application in Digital Fraud:

- Unauthorized transfer of funds
- Misuse of digital wallets or online accounts

Example: If an employee transfers company funds from an online account into their personal account without authorization, it constitutes misappropriation under this section.

3.4 Forgery and Use of Forged Documents (Sections 336–340)

The BNS contains provisions relating to **forgery**, which are applicable to digital documents as well.

Application in Digital Context:

- Creation of fake digital invoices or contracts
- Forged emails or electronic records
- Manipulation of digital documents[17]

Example: Creating a fake digital agreement or altering an electronic document to cheat someone financially amounts to forgery.

3.5 Criminal Breach of Trust (Relevant Provisions)

Although traditionally applied to physical property, provisions relating to **criminal breach of trust** also extend to digital assets and funds.

Example: If a financial agent entrusted with handling online transactions diverts funds for personal use, it constitutes breach of trust.

3.6 Relevant Case Laws

Although many landmark cases were decided under the IPC, their principles remain applicable under the BNS, as it substantially retains the structure of earlier criminal law.

R. Kalyani v. Janak C. Mehta

The Supreme Court clarified the essential ingredients of cheating, emphasizing the requirement of **dishonest intention at the time of inducement**. This principle is crucial in digital fraud cases where intent must be established.[18]

S.W. Palanitkar v. State of Bihar

The Court distinguished between **mere breach of contract and cheating**, holding that cheating requires fraudulent or dishonest intention from the outset. This

[15] Bharatiya Nyaya Sanhita, 2023, § 318.
[16] Bharatiya Nyaya Sanhita, 2023, § 319.
[17] Bharatiya Nyaya Sanhita, 2023, § 336–340.
[18] *R. Kalyani v. Janak C. Mehta, (2009) 1 SCC 516.*

distinction is important in online transactions and e-commerce disputes.[19]

Hridaya Ranjan Prasad Verma v. State of Bihar
The Supreme Court elaborated the concept of cheating and held that **mens rea (guilty intention)** is an essential element of the offence.[20]

Mohammed Ibrahim v. State of Bihar
The Court discussed the offence of forgery and clarified that making a false document with intent to cause damage or injury constitutes forgery.[21]

4. Consumer Protection Act, 2019
The **Consumer Protection Act, 2019 (CPA, 2019)** marks a significant shift in India's consumer law regime by addressing the challenges posed by the digital economy, e-commerce platforms, and online advertising. Unlike its predecessor (1986 Act), the 2019 Act explicitly recognizes **e-commerce transactions**, **misleading advertisements**, and **endorser liability**, making it highly relevant in combating **digital fraud and influencer scams**.

The Act establishes the **Central Consumer Protection Authority (CCPA)** to regulate matters relating to violation of consumer rights, unfair trade practices, and misleading advertisements. It also broadens the definition of "consumer" to include individuals engaging in online transactions, thereby strengthening legal protection in the digital space.

4.1 Section 2(7) – Definition of Consumer
The Act includes within its ambit consumers who purchase goods or avail services **through online platforms**, including e-commerce websites and digital applications.[22]

Example: A person purchasing a product from an online marketplace like Amazon or Flipkart is recognized as a consumer under this Act and can seek remedies for defective goods or fraudulent practices.

4.2 Section 2(28) – Misleading Advertisement
This provision defines a **misleading advertisement** as one that:

- Falsely describes a product or service
- Gives false guarantees
- Conceals important information

Application in Digital Fraud: This is particularly relevant in:

- Influencer promotions
- Paid partnerships on Instagram/YouTube
- Fake claims about products or services

Example: An influencer promotes a financial investment app claiming "guaranteed high returns" without disclosing risks—this amounts to a misleading advertisement.

4.3 Section 2(47) – Unfair Trade Practice
This section includes practices such as:

- False representation of goods/services
- Fake discounts or deceptive pricing
- Non-delivery of products after payment[23]

Example: An online seller advertises a product at a heavy discount but delivers a counterfeit or inferior product—this constitutes an unfair trade practice.

4.4 Section 21 – Powers of Central Consumer Protection Authority (CCPA)
The CCPA has wide powers to:

- Investigate violations of consumer rights
- Order discontinuation of misleading advertisements
- Impose penalties on manufacturers, advertisers, and endorsers

[19] *S.W. Palanitkar v. State of Bihar, (2002) 1 SCC 241.*
[20] *Hridaya Ranjan Prasad Verma v. State of Bihar, (2000) 4 SCC 168.*
[21] *Mohammed Ibrahim v. State of Bihar, (2009) 8 SCC 751.*
[22] Consumer Protection Act, 2019, § 2(7).
[23] Consumer Protection Act, 2019, § 2(47).

- Prohibit endorsers from making future endorsements

Penalty:

- Up to ₹10 lakh for first offence
- Up to ₹50 lakh for subsequent offences
- Ban on endorsements (up to 1–3 years)[24]

Example: If a celebrity or influencer promotes a fraudulent product without proper due diligence, the CCPA can impose penalties and ban them from future promotions.

4.5 Liability of Endorsers and Influencers

One of the most important features of the 2019 Act is the recognition of **endorser liability**, which directly applies to influencer scams.

Influencers must:

- Verify claims before promotion
- Disclose paid partnerships
- Avoid false or exaggerated claims

Failure to do so may result in penalties under Section 21.

Example: If a fitness influencer promotes a supplement claiming "instant weight loss" without scientific backing, they may be held liable for misleading consumers.

4.6 E-Commerce Rules, 2020

The **Consumer Protection (E-Commerce) Rules, 2020** supplement the Act and regulate online marketplaces.[25]

Key Requirements:

- Mandatory disclosure of seller details
- Transparent return/refund policies
- Prohibition of unfair trade practices
- No manipulation of prices

Example: An e-commerce platform hiding seller details or refusing refunds despite defective products violates these rules.

4.7 Relevant Case Laws

1. Horlicks Ltd. v. Zydus Wellness Products Ltd.

The Delhi High Court dealt with misleading advertisements and emphasized that advertisements must not deceive consumers or make false claims.[26]

2. Hindustan Unilever Ltd. v. Reckitt Benckiser (India) Ltd.

The Court observed that advertisements must be truthful and should not disparage or mislead consumers, reinforcing the principle of fair advertising.[27]

3. PepsiCo Inc. v. Hindustan Coca Cola Ltd.

The Court discussed comparative advertising and held that while comparison is allowed, it should not be misleading or deceptive.[28]

4. Consumer Education & Research Centre v. Union of India

The Supreme Court emphasized the importance of consumer rights and protection against exploitation.[29]

4.8 Analysis

The Consumer Protection Act, 2019 significantly strengthens consumer rights in the digital era by:

- Recognizing online transactions
- Regulating misleading advertisements
- Imposing liability on influencers and endorsers
- Establishing the CCPA for enforcement

However, challenges remain in implementation, particularly in regulating cross-border e-commerce platforms and ensuring compliance by social media influencers. Greater awareness and stricter

[24] Consumer Protection Act, 2019, § 21.
[25] Consumer Protection (E-Commerce) Rules, 2020.
[26] *Horlicks Ltd. v. Zydus Wellness Products Ltd., 2019 SCC OnLine Del 8036.*
[27] *Hindustan Unilever Ltd. v. Reckitt Benckiser (India) Ltd., (2014) 5 SCC 534.*
[28] *PepsiCo Inc. v. Hindustan Coca Cola Ltd.*, 2003 SCC OnLine Del 802.
[29] *Consumer Education & Research Centre v. Union of India*, (1995) 3 SCC 42.

enforcement mechanisms are necessary to curb digital fraud effectively.

5. Relevant Case Laws

1. Shreya Singhal v. Union of India (2015)

The Supreme Court struck down Section 66A of the IT Act for being unconstitutional but upheld the importance of regulating online content under valid provisions. This case emphasized the balance between freedom of speech and cyber regulation.[30]

2. K.S. Puttaswamy v. Union of India (2017)

Recognized the **Right to Privacy** as a fundamental right under Article 21. This judgment strengthened legal protection against misuse of personal data in digital fraud.[31]

3. Google India Pvt. Ltd. v. Visaka Industries (2020)

The Supreme Court discussed intermediary liability and emphasized due diligence obligations of online platforms in preventing misuse.[32]

4. Avnish Bajaj v. State (Bazee.com Case)

Highlighted the liability of intermediaries in online platforms and the need for stricter compliance to prevent misuse for illegal activities.[33]

6. Challenges in Implementation

- Lack of digital awareness among users
- Jurisdictional issues in cross-border fraud
- Delay in investigation and prosecution
- Limited technical expertise in law enforcement

7. Conclusion

The digital revolution in India has undoubtedly ushered in an era of convenience, connectivity, and economic growth. With the widespread use of smartphones, digital payment systems, e-commerce platforms, and social media, individuals today are more integrated into the digital ecosystem than ever before. However, this rapid technological advancement has also exposed users to new and sophisticated forms of criminal activity, particularly digital fraud. Offences such as phishing, identity theft, online impersonation, fraudulent advertisements, and influencer-driven scams have become increasingly prevalent, posing serious threats to both individuals and the broader economy.

This study has critically examined the legal framework governing digital fraud in India, focusing on the Information Technology Act, 2000, the Bharatiya Nyaya Sanhita, 2023, and the Consumer Protection Act, 2019. The IT Act serves as the primary legislation specifically addressing cyber offences, providing both civil and criminal remedies for unauthorized access, identity theft, and cheating through digital means. Its provisions, particularly Sections 66C and 66D, are highly relevant in tackling modern cyber frauds. The Bharatiya Nyaya Sanhita, 2023 complements this framework by extending traditional criminal law principles—such as cheating, impersonation, forgery, and misappropriation—to offences committed in the digital sphere. Although not exclusively designed for cybercrime, its broad applicability ensures that digital offences are not left unaddressed.

Furthermore, the Consumer Protection Act, 2019 plays a crucial role in protecting consumers in the digital marketplace. By recognizing e-commerce transactions, regulating misleading advertisements, and imposing liability on endorsers and influencers, the Act addresses emerging challenges posed by online marketing and digital promotions. The establishment of the Central Consumer Protection

[30] *Shreya Singhal v. Union of India*, (2015) 5 SCC 1.
[31] *K.S. Puttaswamy v. Union of India*, (2017) 10 SCC 1.
[32] *Google India Pvt. Ltd. v. Visaka Industries Ltd.*, (2020) 4 SCC 162.
[33] *Avnish Bajaj v. State (NCT of Delhi)*, 150 (2008) DLT 769.

Authority (CCPA) has further strengthened enforcement mechanisms and accountability.

Judicial interpretations have also contributed significantly to the development of cyber jurisprudence in India. Landmark decisions have emphasized the importance of balancing fundamental rights such as freedom of speech and privacy with the need for effective regulation of digital spaces. Courts have also clarified the scope of intermediary liability and the necessity of due diligence by online platforms in preventing misuse.

Despite the existence of a comprehensive legal framework, several challenges persist. The borderless nature of cybercrime creates jurisdictional complexities, while rapid technological advancements often outpace legislative reforms. Additionally, lack of digital literacy and awareness among users makes them vulnerable to fraud. Enforcement agencies also face difficulties due to limited technical expertise and infrastructural constraints.

In light of these challenges, there is an urgent need for a multi-pronged approach to effectively combat digital fraud. Strengthening enforcement mechanisms, enhancing coordination between regulatory bodies, and regularly updating legal provisions to keep pace with technological developments are essential steps. Equally important is the promotion of digital literacy and awareness among users to enable them to identify and avoid fraudulent practices. Digital platforms and influencers must also adhere to ethical standards and exercise due diligence in their activities.

In conclusion, while India has made significant progress in establishing a robust legal framework to address digital fraud, its effectiveness ultimately depends on proper implementation, awareness, and adaptability. A collaborative effort involving the government, judiciary, digital intermediaries, influencers, and consumers is necessary to create a safe, transparent, and trustworthy digital environment. Only through such a comprehensive and coordinated approach can the growing menace of digital fraud be effectively controlled in the evolving digital age.

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CREDITOR-ALIGNED VALUE MAXIMIZATION UNDER THE IBC

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Abstract

The Insolvency and Bankruptcy Code, 2016 (IBC) was enacted as a time-bound framework for reorganisation and insolvency resolution, with a stated commitment to maximization of value, promotion of entrepreneurship, availability of credit, and balancing of stakeholder interests.1 Yet the statutory promise of value maximization does not automatically translate into real value creation in distressed markets. In major insolvency cases, especially where the corporate debtor owns substantial physical assets and retains going-concern potential, thin bidding, bargaining fatigue, informational asymmetry, and weak market discovery may produce distressed transfers at values materially below the enterprise's genuine productive worth. The current framework relies heavily on creditor control, auction-like plan competition, and valuation inputs from two registered valuers.2 Those mechanisms are important, but they do not by themselves eliminate the structural possibility of undervaluation, collusion, or under-the-table arrangements that convert insolvency from a rescue framework into a discounted transfer mechanism.

This paper argues that, for large asset-heavy companies, the IBC should be used as a value-preserving re-auction and restructuring mechanism rather than as a route for distressed transfer shaped by speed, fear, or opaque influence. Its central proposal is that where an Asset Reconstruction Company (ARC) materially participates in acquisition, reconstruction, or an allied insolvency resolution role, the law should require the ARC to acquire and hold a mandatory 10 to 15 percent equity stake in the corporate debtor, subject to a lock-in period and post-resolution governance obligations. ARCs already occupy an important place in the stressed-asset ecosystem under the Reserve Bank of India (RBI) Directions.34 The proposed reform would deepen that role by imposing genuine "skin in the game." The paper contends that mandatory minority stakeholding would better align ARC incentives with long-term enterprise value, weaken incentives for depressed pricing, reduce the gains from corruption, and strengthen post-resolution governance for productive companies. It concludes that, in major insolvency cases, value maximization requires not only procedure, but incentive-compatible design.

I. Introduction

Indian insolvency law was enacted with a vocabulary of revival rather than ceremonial disposal. The preamble to the Insolvency and Bankruptcy Code speaks in terms of reorganisation, insolvency resolution in a time-bound manner, maximization of the value of assets, promotion of entrepreneurship, availability of credit, and balancing the interests of stakeholders.5 That language matters. It conveys that

1 Insolvency and Bankruptcy Code, No. 31 of 2016, pmbl.; see also *Swiss Ribbons (P) Ltd. v. Union of India*, (2019) 4 SCC 17, 74-76 (describing the Code as a beneficial legislation intended to maximize value and balance stakeholder interests).

2 Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, regs. 27, 35 (requiring appointment of two registered valuers and prescribing fair-value and liquidation-value architecture).

3 Reserve Bank of India, Reserve Bank of India (Asset Reconstruction Companies) Directions, 2025, intro. para. (updated as on Mar. 10, 2026) (stating that ARCs play a critical role in the resolution of stressed financial assets of banks and financial institutions).

4 Reserve Bank of India, *Master Directions - Reserve Bank of India (Asset Reconstruction Companies) Directions, 2025* (updated as on Mar. 10, 2026), chs. II-VI.

5 Insolvency and Bankruptcy Code, No. 31 of 2016, pmbl.; see also *Swiss Ribbons (P) Ltd. v. Union of*

insolvency is not meant to operate as a formal last rite for an enterprise. The point is to create a legal architecture through which productive assets, contractual relationships, labour, and business capabilities can be reallocated in a manner that preserves the highest economically rational value. In theory, therefore, an insolvency proceeding should move a distressed company from disorder to structured recovery, not from distress to gratuitous destruction.

Yet the lived reality of insolvency frequently produces a more complicated picture. A company may enter corporate insolvency resolution because of unsustainable debt, acute liquidity stress, governance failures, or lender impatience, but none of those facts automatically means that the business is valueless. Many distressed companies remain operationally significant. They may own factories, warehouses, power equipment, mining assets, logistics infrastructure, technology platforms, or regulated concessions. They may possess workforce capability, brand recognition, distribution channels, and customer relationships that cannot be cheaply replicated. Their value as going concerns may substantially exceed both liquidation value and the value realized in a distressed acquisition environment. The practical danger is therefore not only delay. It is mispriced transfer. Once that danger is understood, insolvency law must confront a difficult question: what mechanisms genuinely align the conduct of insolvency participants with the statutory objective of value maximization? Under the current framework, the committee of creditors (CoC) occupies the central decision-making space; the commercial wisdom of the CoC is accorded substantial deference; the resolution professional appoints two registered valuers to determine fair value and liquidation value; and ARCs operate in the broader stressed-asset ecosystem under a separate RBI regulatory architecture.678 Taken together, these elements create a recognizable model of valuation, bidding, lender control, and distressed asset transfer. But they do not necessarily ensure that the actors whose conduct influences a distressed sale have a sufficiently deep and durable interest in the company's future value. In a resolution market marked by weak competition, distressed timing, opaque relationships, and possible under-the-table inducements, formal decision rights and valuation exercises may fail to secure real value creation.

This paper is written from a deliberately interventionist perspective. It proceeds from the view that corruption, strategic undervaluation, and informal collusion are not theoretical irritants but real institutional risks in major insolvency cases. In the case of a large asset-heavy company, these risks can convert a resolution process into a mechanism for transferring productive enterprise value at a discount to actors who are not meaningfully exposed to the long-term consequences of that discount. If the law wishes to preserve public economic value, it must redesign incentives rather than rely exclusively on procedural form.

The argument advanced here is straightforward: where an ARC materially participates in the

India, (2019) 4 SCC 17, 74-76 (describing the Code as a beneficial legislation intended to maximize value and balance stakeholder interests).

6 Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, regs. 27, 35 (requiring appointment of two registered valuers and prescribing fair-value and liquidation-value architecture).

7 Reserve Bank of India, Reserve Bank of India (Asset Reconstruction Companies) Directions, 2025, intro. para. (updated as on Mar. 10, 2026) (stating that ARCs play a critical role in the resolution of stressed financial assets of banks and financial institutions).

8 *Essar Steel*, (2020) 8 SCC at 603-08; Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, regs. 27, 35; Reserve Bank of India (Asset Reconstruction Companies) Directions, 2025, intro. para.

acquisition, reconstruction, or allied resolution of a large corporate debtor with substantial physical assets, it should be required to acquire and hold a ten to fifteen percent equity stake in that debtor as a precondition or integral element of the resolution structure. This stake would not be symbolic. It would be the legal instrument through which the ARC's financial incentives are aligned with the company's future value, thereby weakening incentives for depressed pricing and strengthening incentives for post-resolution governance.

This paper does not argue that current Indian law already imposes such a requirement. It does not. Rather, it argues that the law should move in that direction as part of the continuing reform conversation around insolvency design.910 The proposal is especially suited to large companies with substantial physical assets because the public cost of distressed underpricing is highest where the enterprise still possesses meaningful going-concern capability. For such companies, insolvency should not be reduced to a quick, technically valid but economically destructive transfer. It should be governed as a value-preserving reallocation process.

The sections that follow proceed in five steps. Part II states the research problem and the paper's central questions. Part III explains the methodology and scope. Part IV outlines the current legal framework under the IBC, the CIRP Regulations, and the RBI's ARC Directions. Part V develops the critique that the present process may destroy company value even while appearing procedurally compliant. Parts VI and VII present the normative core of the paper: the case for enhanced re-auction and the proposal for mandatory ARC stakeholding. Part VIII explains the proposal as a corporate-governance reform, Part IX addresses objections, and Part X sets out specific reform recommendations before concluding.

II. Research Problem, Questions, and Hypothesis

The research problem is simple to state but difficult to solve. The IBC aspires to maximize value, but major insolvency cases may still culminate in transfers that do not reflect the real productive value of the enterprise. The danger is acute where the corporate debtor has substantial physical assets and operational continuity potential. In such cases, the combination of distressed timing, thin bidder participation, lender urgency, private influence, and imperfect market discovery may permit an economically destructive transfer under the appearance of legal order.1112

This paper is therefore guided by four questions. First, does the present insolvency structure genuinely maximize enterprise value for large asset-heavy companies, or does it sometimes merely validate distressed transfer? Secondly, do the existing safeguards - especially creditor oversight, two-valuer pricing architecture, and formal competitive processes - sufficiently address the risk of corruption or collusive undervaluation? Thirdly, can mandatory ARC stakeholding create stronger alignment between distressed-asset participants and the long-term value of the enterprise?

9 The Insolvency and Bankruptcy Code (Amendment) Bill, 2025, Bill Summary, PRS Legislative Research (introduced in Lok Sabha on Aug. 12, 2025 and proposing further structural changes to the Code).

10 See The Insolvency and Bankruptcy Code (Amendment) Bill, 2025, as introduced in Lok Sabha on Aug. 12, 2025; PRS Legislative Research, *Bill Summary - The Insolvency and Bankruptcy Code (Amendment) Bill, 2025*.

11 Insolvency and Bankruptcy Code, No. 31 of 2016, pmbl.; see also *Swiss Ribbons (P) Ltd. v. Union of India*, (2019) 4 SCC 17, 74-76 (describing the Code as a beneficial legislation intended to maximize value and balance stakeholder interests).

12 Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, regs. 27, 35 (requiring appointment of two registered valuers and prescribing fair-value and liquidation-value architecture).

Fourthly, should insolvency law in major cases move beyond transfer efficiency toward a governance-based model of enterprise preservation?

The paper advances the following hypothesis: for large corporate debtors with substantial physical assets, insolvency resolution will better serve the IBC's value-maximization objective if reconstruction actors whose participation materially shapes the transaction are compelled to bear long-term equity exposure to the revived company. Mandatory ARC stakeholding of 10 to 15 percent would weaken incentives for underpricing, reduce the private gains from corruption, and support post-resolution governance by turning the ARC into a continuing value-preserving stakeholder rather than a short-horizon distressed-transfer participant.

III. Methodology and Scope

This paper adopts a doctrinal and normative legal methodology. Doctrinally, it is grounded in the text and structure of the Insolvency and Bankruptcy Code, 2016; the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016; the RBI's regulatory framework for ARCs; and the current reform context represented by the Insolvency and Bankruptcy Code (Amendment) Bill, 2025.13141516 Normatively, it develops an interventionist amendment proposal grounded in value maximization, anti-corruption design, and corporate-governance alignment.

The paper is limited in three important ways. First, it does not claim that every insolvency case requires the same design. The proposal is directed principally toward *large* corporate debtors with substantial physical productive assets - companies for whom going-concern value and social-economic spillovers are likely to be significant. Secondly, it does not deny the usefulness of the existing framework. Creditor decision-making, valuation, and competitive plan consideration remain necessary; the argument is that they are not always sufficient. Thirdly, the paper is not empirical. It does not attempt to statistically prove corruption in the insolvency process. Rather, it argues that incentive-compatible law should be designed with realistic institutional risks in mind, especially where the economic consequences of undervaluation are large.

IV. Existing Legal Framework under the IBC

A. Value Maximization as the Stated Objective of the Code

The IBC's preamble gives the paper's first doctrinal anchor. The Code seeks to consolidate and amend the law relating to reorganisation and insolvency resolution of corporate persons, partnership firms, and individuals in a time-bound manner for maximization of value, promotion of entrepreneurship, availability of credit, and balancing of stakeholder interests.17

13 Insolvency and Bankruptcy Code, No. 31 of 2016, pmbl.; see also *Swiss Ribbons (P) Ltd. v. Union of India*, (2019) 4 SCC 17, 74-76 (describing the Code as a beneficial legislation intended to maximize value and balance stakeholder interests).

14 Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, regs. 27, 35 (requiring appointment of two registered valuers and prescribing fair-value and liquidation-value architecture).

15 Reserve Bank of India, Reserve Bank of India (Asset Reconstruction Companies) Directions, 2025, intro. para. (updated as on Mar. 10, 2026) (stating that ARCs play a critical role in the resolution of stressed financial assets of banks and financial institutions).

16 The Insolvency and Bankruptcy Code (Amendment) Bill, 2025, Bill Summary, PRS Legislative Research (introduced in Lok Sabha on Aug. 12, 2025 and proposing further structural changes to the Code).

17 Insolvency and Bankruptcy Code, No. 31 of 2016, pmbl.; see also *Swiss Ribbons (P) Ltd. v. Union of India*, (2019) 4 SCC 17, 74-76 (describing the Code as a beneficial legislation intended to maximize value and balance stakeholder interests).

The statute thus speaks not merely in terms of debt recovery but in the broader idiom of economic reallocation. In principle, the insolvency forum is supposed to preserve value wherever possible and to liquidate only when resolution fails.

Indian courts have repeatedly recognized the centrality of value maximization in insolvency design. In *Swiss Ribbons (P) Ltd. v. Union of India*, the Supreme Court described the Code as a beneficial legislation intended, among other things, to put the corporate debtor back on its feet, maximize the value of assets, and balance the interests of all stakeholders.18 In *Committee of Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta*, the Court again emphasized the primacy of the CoC's commercial decisions within the statutory objective of preserving and maximizing value.19 Those cases, though not directly concerned with the reform proposed in this paper, confirm that value maximization is not an incidental aspiration but part of the constitutional and doctrinal understanding of the Code.

B. Creditor Control and the CoC Structure

The current architecture gives financial creditors decisive influence through the CoC.20 This reflects the Code's design choice to trust lenders, rather than adjudicators, with commercial decision-making. The CoC evaluates resolution plans, negotiates commercial terms, and determines whether a plan is acceptable. Judicial review remains limited, and the "commercial wisdom" of the CoC receives substantial deference.2122 From one perspective, this is efficient: those who supplied capital and bear credit risk are well positioned to judge recoverability. From another perspective, however, the framework creates the possibility that speed, recovery pressure, or lender preferences may dominate considerations of long-term enterprise preservation.

This paper does not deny the legitimacy of creditor control. It argues instead that creditor control alone cannot guarantee genuine value realization where the broader process environment is distorted. A market with only a few serious bidders, incomplete information, strategic suppression of competition, or opaque relationships may still produce an outcome that lenders approve but that fails to reflect the company's real economic potential. The legal finality of the process does not itself prove the economic quality of the result.

C. The Two-Valuer Framework

One of the IBC's principal safeguards against arbitrary pricing is the requirement that the resolution professional appoint two registered valuers to determine the fair value and the liquidation value of the corporate debtor.23 The relevant regulations also require that these valuers be independent and not suffer from disqualifying relationships.24 Fair value and liquidation value are then used within the process architecture to provide pricing benchmarks and inform decision-making. In theory, this should reduce the danger of gross underpricing.

18 *Swiss Ribbons (P) Ltd. v. Union of India*, (2019) 4 SCC 17, 74-76.

19 *Committee of Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta*, (2020) 8 SCC 531, 603-08.

20 Insolvency and Bankruptcy Code, No. 31 of 2016, §§ 21, 30.

21 *Committee of Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta*, (2020) 8 SCC 531, 603-08.

22 *Essar Steel*, (2020) 8 SCC at 604-05; *K. Sashidhar v. Indian Overseas Bank*, (2019) 12 SCC 150, 181-84.

23 Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, regs. 27, 35 (requiring appointment of two registered valuers and prescribing fair-value and liquidation-value architecture).

24 Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, regs. 27, 35, read with reg. 35(1) proviso.

Yet valuation, though indispensable, is not self-executing. Valuation is still an estimate. It is shaped by assumptions, information quality, sector conditions, market timing, and the distinction between what an enterprise may be worth in a normalized environment and what can be realized in a distressed process. A company with substantial physical assets may present especially difficult valuation questions because the value lies not only in discrete asset components but in the functioning combination of plant, licenses, logistics, labour, and commercial continuity. Accordingly, formal compliance with the two-valuer requirement does not necessarily ensure that the process has achieved genuine market value.

D. The ARC Framework under RBI Regulation

ARCs operate under a separate but highly relevant regulatory framework. The RBI's Asset Reconstruction Companies Directions describe ARCs as institutions that play a critical role in the resolution of stressed financial assets of banks and financial institutions and set out governance, prudential, conduct, and disclosure norms for them.2526 ARCs are therefore not peripheral players in the stressed-asset ecosystem. They are recognized participants in the larger architecture of asset resolution and restructuring.

At the same time, the current RBI framework does not require ARCs to take and hold a mandatory minority equity stake in an insolvent corporate debtor whenever they materially participate in acquisition or reconstruction. Their existing regulatory role is important, but it remains distinct from the "skin in the game" proposal advanced in this paper. That matters because the paper is consciously normative: it seeks an amendment that would redesign incentives rather than merely restate current law.

E. The Continuing Reform Context

The ongoing reform context makes this proposal more timely. The Insolvency and Bankruptcy Code (Amendment) Bill, 2025, introduced in Lok Sabha on August 12, 2025, reflects the fact that India's insolvency architecture remains under active reconsideration.2728 Among other things, the Bill addresses procedural issues, an alternate insolvency resolution process, and new frameworks such as group and cross-border insolvency. Whether or not one agrees with each proposed amendment, the Bill confirms that insolvency design is still open to structural refinement. A proposal aimed at better value alignment and anti-corruption design is therefore not out of place within the present reform moment.

V. Why the Present Process May Destroy Company Value

A. Distressed Timing Is Not the Same as Economic Truth

The first analytical claim of this paper is that distressed timing can suppress real value. A company entering insolvency may be facing immediate liquidity pressure, reputational uncertainty, contractual disruption, and stakeholder anxiety. Potential bidders know this. Creditors know this. Advisors know this. The market for the company is therefore not an ordinary market. It is a compressed, strategic, and often fear-driven market in which the seller cannot wait and the buyer knows it. Under such conditions, even procedurally valid bidding may not

25 Reserve Bank of India, Reserve Bank of India (Asset Reconstruction Companies) Directions, 2025, intro. para. (updated as on Mar. 10, 2026) (stating that ARCs play a critical role in the resolution of stressed financial assets of banks and financial institutions).

26 Reserve Bank of India (Asset Reconstruction Companies) Directions, 2025, chs. II, V, VI.

27 The Insolvency and Bankruptcy Code (Amendment) Bill, 2025, Bill Summary, PRS Legislative Research (introduced in Lok Sabha on Aug. 12, 2025 and proposing further structural changes to the Code).

28 PRS Legislative Research, *Bill Summary - The Insolvency and Bankruptcy Code (Amendment) Bill, 2025*; see also IBBI, *Legal Framework - Act* (listing the Bill as introduced on Aug. 12, 2025).

fully reflect what a properly stabilized enterprise would command.

This is particularly serious for asset-heavy companies. Consider a large manufacturing debtor with operational plants, industrial land, supply contracts, technical workforce, and a recoverable business franchise. The true value of such a company may lie in its coordinated functioning as a business rather than in the distressed sum of its parts. Yet insolvency can create conditions under which bidders price for disruption risk rather than for revival potential. If that happens, the resolution process may transfer the company at a value significantly below its real productive worth. That gap is precisely the space in which public economic loss occurs.

B. Thin Bidding and Market Discovery Failure

The second problem is thin bidding. A process that formally permits competitive participation may still, in practice, attract only a small number of serious bidders. Sector concentration, capital constraints, informational barriers, insider familiarity, and process complexity can all reduce the depth of competition. Where bids are few, a company may be effectively sold in a quasi-private market under the appearance of public process. The legal box is checked, but the economic signal remains weak.

When bidding is thin, the valuation process bears disproportionate weight. Yet valuation is not the same as realized market discovery. Two valuers may estimate fair value and liquidation value, but if the market does not truly test those figures, the process still risks a transfer below genuine enterprise value. This is one reason why the paper later argues for enhanced re-auction in suitable cases: value maximization cannot be inferred simply because one round of process has concluded.29

C. Corruption, Informal Collusion, and Under-the-Table Incentives

The third and most important concern is corruption. This paper takes seriously the user's submission that under-the-table bribery and informal collusion are real risks in major insolvency processes. The law often speaks in neutral procedural terms, but legal design cannot assume a corruption-free world. Where a large distressed company is at stake, the incentives to depress price, discourage competition, or informally coordinate outcomes may be substantial. A participant who expects to benefit from an underpriced transfer has every reason to prefer a structure that minimizes long-term exposure to the company's future value while maximizing immediate transactional gain.

The current system does not fully neutralize that incentive. A participant may influence the process materially and still remain insufficiently tied to the long-run consequences of the transfer price. This is the central institutional gap identified by the paper. It is not enough that the process *looks* orderly. The law must ask whether the persons materially shaping the transfer suffer if the company is sold too cheaply. If they do not, then the system may reward exactly the conduct it claims to regulate.

D. Formal Compliance Versus Genuine Value Creation

The consequence of these dynamics is a dangerous separation between formal compliance and genuine value creation. A resolution professional may appoint valuers as required.30 The CoC may vote as required. Competing plans may be invited. The adjudicating authority may approve the outcome. Yet none of these things, alone or together, proves that the company was transferred at a value consistent with its real productive potential. A process may be legal and economically destructive at the same time.

29 Insolvency and Bankruptcy Code, No. 31 of 2016, pmbl.; *Swiss Ribbons*, (2019) 4 SCC at 74-76.

30 Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, regs. 27, 35 (requiring appointment of two registered valuers and prescribing fair-value and liquidation-value architecture).

This paper therefore rejects the comforting assumption that existing insolvency procedure automatically secures value maximization. Procedure matters, but incentives matter more where corruption and thin markets are possible. Law that ignores that reality risks elevating process over substance.

VI. The Case for Re-Auction and Enhanced Market Discovery

If the danger is that distressed processes may underprice real enterprise value, one obvious response is stronger market discovery. This paper therefore supports the use of re-auction, or at least enhanced auction design, in appropriate cases involving large corporate debtors with substantial physical assets. The logic is simple: where initial bidding appears weak, where the spread between perceived enterprise value and realized offers remains materially suspect, or where competitive depth seems inadequate, the law should not treat the first technically valid outcome as sacrosanct.

A re-auction principle serves three functions. First, it improves price discovery by testing whether the market can do better under refined or widened participation conditions. Secondly, it reduces the possibility that a thinly contested first-round process becomes the basis for a permanently depressed transfer. Thirdly, it better reflects the IBC's value-maximization purpose by recognizing that major distressed assets should not be permanently alienated merely because the first resolution round occurred under weak discovery conditions.31

This proposal is not an argument for endless delay. It is an argument for calibrated second-look mechanisms in cases where the public economic stakes are high. Re-auction should therefore be linked to objective triggers: company size, asset intensity, the presence of significant industrial or infrastructure assets, or a documented concern about inadequate bidder depth. The goal is not procedural repetition for its own sake, but stronger confidence that a productive company was not transferred at a price produced by fear, speed, or strategic suppression.

VII. Mandatory ARC Equity Participation: The Core Reform Proposal

A. The Proposed Rule

The paper's core proposal is that where an ARC materially participates in the acquisition, reconstruction, or allied resolution of a large corporate debtor with substantial physical assets, the ARC should be required by law to acquire and hold a mandatory 10 to 15 percent equity stake in that debtor. The stake should be subject to a lock-in period and linked to post-resolution governance obligations. The rule would not apply to every distressed account. It would be reserved for major cases in which enterprise preservation matters enough to justify stronger incentive alignment.32

The proposal is best understood as a "skin in the game" rule. It rests on a common-sense principle: if an actor materially shapes the transfer of an asset-heavy company in distress, that actor should bear a meaningful portion of the long-term risk and reward associated with the company's future value. Otherwise, the actor may benefit from a low-priced transfer without internalizing the harm caused by depressed pricing.

B. Why ARCs?

ARCs are particularly suitable for this design because they already occupy an established place in the stressed-asset ecosystem under RBI regulation.33

31 Insolvency and Bankruptcy Code, No. 31 of 2016, pmbl.; see also *Swiss Ribbons (P) Ltd. v. Union of India*, (2019) 4 SCC 17, 74-76 (describing the Code as a beneficial legislation intended to maximize value and balance stakeholder interests).

32 This paper proposes a tailored reform for large, asset-heavy debtors; it does not contend that identical rules are appropriate for all insolvency cases.

33 Reserve Bank of India, Reserve Bank of India (Asset Reconstruction Companies) Directions, 2025,

They are not casual outsiders. They are institutions whose business model is connected to stressed financial asset resolution.34 The paper therefore does not propose imposing random obligations on peripheral participants. It proposes deepening the responsibility of a class of institutions already recognized as important to reconstruction and resolution.

At present, however, ARCs can influence distressed outcomes without being legally required to remain exposed to the revived company's long-term value. That is the gap the proposal seeks to close. If the ARC must hold an equity stake, the ARC's incentive changes fundamentally. It no longer gains merely from transactional closure or immediate distressed advantage. It gains from the company's subsequent stabilization, governance quality, and appreciation in enterprise value.

C. Anti-Corruption Logic

The anti-corruption rationale is central. Under the present model, a participant who can gain from underpricing may have reason to tolerate, facilitate, or ignore informal inducements that depress price. By contrast, an ARC that must own 10 to 15 percent of the revived company has weaker incentives to support a cheap transfer. Any undervaluation directly diminishes the long-run value of the stake it is compelled to hold. The proposal therefore does not claim to abolish corruption by moral exhortation.35 It seeks to reduce the private gains from corruption through structural alignment.36

This is the paper's most important normative point: *corruption should be addressed not only by prohibitions but by redesigning the payoff structure of the transaction*. A system that allows a central participant to benefit immediately while externalizing the cost of undervaluation invites abuse. A system that forces the participant to remain invested in the enterprise's future value makes abuse more expensive.

D. Value Maximization Logic

The value-maximization rationale is equally strong. If the ARC must hold a continuing equity stake, it will have greater reason to prefer accurate value discovery, credible post-resolution planning, and operational continuity. It will have less reason to support bids that maximize immediate extraction at the cost of long-term enterprise health. In this way, the stake requirement reinforces the statutory objective of value maximization by tying a reconstruction actor's private return to the company's future performance.37

For a large physical-asset company, this matters tremendously. The company may possess industrial assets whose real value depends on maintenance, integrated use, and business continuity. Once transferred cheaply and restructured destructively, that value may not be recoverable. A minority equity stake can help ensure that a central stressed-asset participant is incentivized to preserve rather than dissipate that value.

E. Corporate Governance Logic

Mandatory ARC stakeholding would also improve corporate governance after resolution. The ARC

intro. para. (updated as on Mar. 10, 2026) (stating that ARCs play a critical role in the resolution of stressed financial assets of banks and financial institutions).

34 Reserve Bank of India (Asset Reconstruction Companies) Directions, 2025, intro. para.; ch. III.

35 See generally Reserve Bank of India (Asset Reconstruction Companies) Directions, 2025, ch. V (governance and conduct); this paper proposes an additional economic-discipline layer beyond conduct regulation.

36 Cf. *Swiss Ribbons*, (2019) 4 SCC at 74-76 (emphasizing maximization and balancing of interests as core features of the Code); this paper extends that logic into incentive design.

37 Insolvency and Bankruptcy Code, No. 31 of 2016, pmbl.; see also *Swiss Ribbons (P) Ltd. v. Union of India*, (2019) 4 SCC 17, 74-76 (describing the Code as a beneficial legislation intended to maximize value and balance stakeholder interests).

would become a continuing stakeholder with reason to monitor board conduct, strategic decisions, and the integrity of asset use. It would not necessarily control the company, but it would have a real interest in preventing asset stripping, opportunistic related-party behavior, or short-term decisions that erode value before the company stabilizes. In other words, the stake converts the ARC from a transaction participant into a governance-relevant investor.

This is not a symbolic benefit.38 In practice, post-resolution governance often determines whether the distressed company is genuinely revived or merely transferred into another cycle of extraction. A continuing equity stake creates an institutional reason for the ARC to care about the quality of governance after the insolvency process formally ends.

F. Lock-In and Exit Restrictions

The stake would be ineffective if the ARC could dispose of it immediately. Accordingly, the proposal includes a lock-in requirement. The ARC should not be allowed to sell its stake until a specified stabilization period has passed or until defined recovery markers have been achieved. The purpose of the lock-in is to ensure that the ARC's exposure is real, not cosmetic. A short-lived holding would not change incentives meaningfully. A locked-in holding would.

This lock-in could be designed in multiple ways. The most straightforward model is a fixed period measured from resolution-plan implementation. A more refined model would condition exit on measurable events such as operational continuity, governance compliance, or a period of demonstrated financial normalization. The exact drafting could be debated. What matters is the principle that the ARC's exposure must extend beyond the moment of transfer.

VIII. Corporate Governance Justification

The proposal advanced in this paper is not only about insolvency pricing. It is also about corporate governance. Insolvency law often treats governance as a question of who controls the process - creditors, resolution professionals, promoters, or tribunals. This paper adds a second layer: governance also concerns whether the post-resolution structure rewards real enterprise rehabilitation.

A mandatory ARC stake would create a governance node between insolvency and recovery. The ARC would have a financial interest in preserving asset integrity, monitoring post-resolution decision-making, and resisting actions that destroy enterprise value. That matters because large productive companies do not derive their value merely from the book value of fixed assets. Their worth lies in the coordinated operation of assets, workforce, licenses, relationships, and commercial strategy. A governance structure that rewards short-term extraction after transfer can destroy that coordinated value rapidly.

For the same reason, the proposal has a public-interest dimension. Large corporate debtors often anchor local employment, supply chains, infrastructure use, and industrial output. When such a company is transferred below value and then stripped or mismanaged, the loss is not purely private. The market loses productive capacity, workers lose continuity, creditors may recover less than a truly value-maximizing process would have yielded, and the broader system learns that formal compliance is enough even where value is wasted. A governance-sensitive insolvency law should not be indifferent to those outcomes.

38 Reserve Bank of India (Asset Reconstruction Companies) Directions, 2025, ch. V; Insolvency and Bankruptcy Code, No. 31 of 2016, pmbl.

IX. Objections and Responses

A. Objection: The Proposal Alters the Existing Role of ARCs

A natural objection is that ARCs are already regulated under the RBI's Directions and that a mandatory equity stake would significantly alter their role.39 That is correct as a description of current law. But it does not defeat the proposal. This paper is explicitly reformist. It argues that the current role is not optimally designed for major, asset-heavy insolvency cases. Law reform often requires expanding or reshaping institutional responsibility where incentive failures persist.

B. Objection: Mandatory Stakeholding May Reduce Participation

A second objection is that requiring ARCs to commit capital and remain locked in may reduce participation. That concern is real, but it is not necessarily decisive. In major insolvency cases, the goal should not be maximum speculative participation at any quality. It should be participation by actors willing to align themselves with genuine value creation.40 If some short-horizon participants withdraw because they cannot profit from a mispriced quick transfer, that may be a feature rather than a defect.

C. Objection: Valuation Already Protects Against Underpricing

A third objection is that the two-valuer framework already provides sufficient safeguards.41 This paper disagrees. Valuation is necessary but not sufficient.42 It does not solve thin bidding. It does not remove corruption incentives. It does not compel a central participant to internalize the cost of undervaluation. A fair-value estimate can coexist with a weakly discovered market. The gap between doctrinal valuation and real transactional incentives is precisely what the proposal seeks to address.

D. Objection: Equity Exposure May Be Too Rigid

Another objection is that a mandatory 10 to 15 percent stake may be too rigid across sectors. This criticism can be answered in drafting. The reform need not be one-size-fits-all. The statute or subordinate regulations could define thresholds based on company size, sector, asset intensity, or strategic significance. The core principle is what matters: meaningful minority stakeholding with lock-in. The percentage can be calibrated within that principle.

XI. Implementation Architecture for the Proposed Reform

A reform proposal is only as persuasive as its implementation design. The ARC stakeholding model can be operationalized without dismantling the broader IBC structure if the legislature and regulators frame it as a targeted rule for a defined class of cases. Three design questions matter most: when the rule is triggered, how the stake is acquired, and what governance obligations follow from that stake.

A. Trigger Conditions

The first issue is determining which companies should be subject to the rule. This paper does not propose that every corporate debtor in insolvency be subjected to mandatory ARC stakeholding. The logic is strongest where the debtor possesses substantial physical productive assets and meaningful going-concern potential. The law could therefore adopt a threshold model. Possible triggers include book value of fixed assets, enterprise size, number of employees, the

39 Reserve Bank of India, Reserve Bank of India (Asset Reconstruction Companies) Directions, 2025, intro. para. (updated as on Mar. 10, 2026) (stating that ARCs play a critical role in the resolution of stressed financial assets of banks and financial institutions).

40 Insolvency and Bankruptcy Code, No. 31 of 2016, pmbl.; see also PRS Legislative Research, *Bill Summary - The Insolvency and Bankruptcy Code (Amendment) Bill, 2025*.

41 Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, regs. 27, 35 (requiring appointment of two registered valuers and prescribing fair-value and liquidation-value architecture).

42 Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, regs. 27, 35.

existence of regulated infrastructure or industrial assets, or a committee determination that the company is asset-heavy and systemically important to a supply chain or regional economy. The object of the threshold is to concentrate stricter incentive alignment where the social cost of underpricing is highest.

B. Mode of Acquisition

The second question is how the ARC acquires the stake. One model is direct subscription under the approved resolution plan. Another is a combined acquisition structure in which the ARC, as part of the restructuring design, acquires the stake contemporaneously with the successful resolution applicant or with lenders who are taking haircuts. The legal form can vary so long as the substance remains constant: the ARC must hold a real equity exposure that cannot be neutralized through side agreements, guaranteed exits, or synthetic off-loading of risk. **For that reason, the reform should also prohibit arrangements that effectively nullify the stake. If the ARC is guaranteed an immediate exit, shielded from downside through hidden indemnities, or permitted to pledge away the economic substance of its holding, the policy objective collapses. The stake must therefore be both formal and substantive.**

C. Lock-In, Governance, and Disclosure

The third issue is what follows after the stake is acquired. A genuine lock-in period is essential, but it should be paired with governance rights and duties proportionate to the ARC's role. The ARC need not become a controller, but it should receive sufficient informational access and governance standing to monitor value preservation. This may include board-observer rights, periodic disclosure rights, or mandated reporting on major asset disposals during the lock-in period. The company should also disclose, in post-resolution filings, the existence of the ARC stake, the lock-in terms, and any governance covenants attached to it. **Such disclosure serves two purposes. First, it informs creditors, minority investors, and regulators that the insolvency process has produced a continuing aligned stakeholder. Secondly, it creates an evidentiary trail that can later be used to evaluate whether the stakeholding rule is functioning as intended or is being evaded through private contracting.**

D. Coordination with Existing IBC and RBI Frameworks

This reform would require coordination between insolvency regulation and financial-sector regulation. The IBC or the CIRP Regulations could create the basic stakeholding rule for qualifying insolvencies, while the RBI could issue consequential guidance for ARCs on permissible modes of holding, capital treatment, governance obligations, and disclosure. That is not unusual. India's financial regulatory architecture frequently requires interaction between statute, sectoral regulator, and specialized board.43 The need for coordination is therefore not a reason to reject the proposal; it is simply a reason to draft it carefully.

XII. Why ARC Incentive Alignment Is Better than Mere Process Purity

A common policy response to insolvency abuse is to call for more transparency, better valuation, stricter oversight, or harsher punishment. Those are all relevant. But this paper contends that process purity alone is not enough in environments where corruption may be opportunistic and difficult to prove. Legal systems often overestimate the power of procedure and underestimate the power of incentives. A participant who can earn immediate advantage from a distressed transfer may find ways to remain technically compliant while still supporting outcomes that depress value.

That is why the ARC stakeholding proposal matters conceptually. It does not rely only on

43 See, e.g., Insolvency and Bankruptcy Code, No. 31 of 2016; Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016; Reserve Bank of India (Asset Reconstruction Companies) Directions, 2025.

detecting wrongdoing after the fact. Instead, it changes the payoff structure ex ante. If the ARC must remain invested in the company's future, the economic benefit of supporting an artificially low transfer price becomes less attractive. The ARC now has reason to care whether the enterprise is genuinely stabilized, whether management quality improves, and whether the resolution preserves rather than dissipates value.44 The reform therefore acts not merely as a compliance mechanism, but as an incentive re-engineering device.

This distinction is important for insolvency policy. In distressed markets, the difference between a company sold cheaply and a company sold well is often not the existence of one more formal approval step. It is whether the actors around the transaction are rewarded for preserving enterprise value. A system that takes corruption seriously should seek not only to punish bad conduct, but also to make bad conduct less profitable.

XIII. Reform Recommendations

A workable reform package would contain five elements.

First, the law should define a class of large, asset-heavy corporate debtors for whom enhanced value-preservation rules apply. This may be done through asset thresholds, turnover thresholds, or identification of substantial physical productive assets.

Secondly, the insolvency framework should require stronger market-discovery mechanisms in such cases, including calibrated re-auction where bidder depth or value discovery is inadequate.

Thirdly, where an ARC materially participates in acquisition, reconstruction, or allied resolution of such a debtor, the law should mandate acquisition and holding of a 10 to 15 percent equity stake.

Fourthly, that stake should be subject to a lock-in period tied either to time or to objective stabilization and governance markers.

Fifthly, post-resolution disclosures should explain the ARC's ongoing governance role and the conditions under which its stake may be sold.

These reforms would not displace creditor control or valuation. They would complement them by adding a stronger incentive-alignment layer where the economic stakes of undervaluation are highest.

XIV. Conclusion

The Insolvency and Bankruptcy Code was enacted for maximization of value and balanced insolvency resolution, not for the destruction of viable enterprise value through distressed transfer.45 Yet when corruption, collusion, thin bidding, and opaque incentives enter the insolvency ecosystem, formal compliance may not guarantee real value creation. This risk is greatest for large companies with substantial physical assets, where the public economic cost of underpricing can be severe.

This paper has argued that the law should respond not merely by exhorting integrity but by redesigning incentives. For major asset-heavy debtors, insolvency should function as a value-preserving re-auction and restructuring mechanism. Most importantly, ARCs that materially participate in acquisition or reconstruction should be compelled to acquire and hold a 10 to 15 percent equity stake in the company, subject to lock-in and post-resolution governance

44 Cf. *Essar Steel*, (2020) 8 SCC at 603-08 (recognizing the centrality of commercial outcomes under the Code); this paper argues that such outcomes should be supported by continuing equity exposure in suitable cases.

45 Insolvency and Bankruptcy Code, No. 31 of 2016, pmbl.; see also *Swiss Ribbons (P) Ltd. v. Union of India*, (2019) 4 SCC 17, 74-76 (describing the Code as a beneficial legislation intended to maximize value and balance stakeholder interests).

obligations. This rule would create genuine skin in the game, weaken incentives for depressed pricing, reduce the gains from corruption, and align distressed-asset resolution more closely with long-term enterprise preservation.46

The core normative claim is simple: a company under insolvency should not be treated as a distressed object for cheap transfer, but as an enterprise whose real value must be preserved through incentive-compatible legal design. If the law seeks genuine value maximization, it must ensure that those who shape the company's transfer share in its future.

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46 Insolvency and Bankruptcy Code, No. 31 of 2016, pmbl.; Reserve Bank of India (Asset Reconstruction Companies) Directions, 2025, intro. para.; *Swiss Ribbons*, (2019) 4 SCC at 74-76.

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SUPREMO AMICUS

SUPREMO AMICUS

THE RIGHT TO PRIVACY IN INDIA: HISTORICAL EVOLUTION AND CONTEMPORARY CHALLENGES IN THE DIGITAL AGE

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Abstract:
The Right to Privacy in India has undergone fundamental changes, evolving from the first Judicial Interpretations to an essential element of Constitutional Jurisprudence amid increasing Digital Challenges. Initially, the Hon'ble Supreme Court of India in the landmark cases like *Kharak Singh v. State of Uttar Pradesh, 1962 SCC OnLine SC 10*, dealt with privacy as an implicit aspect of Personal Liberty under Article 21 of the Indian Constitution, rejecting complete recognition due to that period's focus on procedural safeguards rather than Substantive Autonomy.[1] This limited perspective continued until the landmark *K.S. Puttaswamy (Privacy-9J.) v. Union of India, (2017) 10 SCC 1*, where a nine-judge bench affirmed and recognized privacy as a Fundamental Human Right as an essential to Dignity, Life, and Liberty, overruling earlier precedents and emphasizing informational privacy in an age of Data Proliferation.[2] This ruling marked a movement toward dynamic interpretation of constitutionalism, adapting rights to contemporary realities like Surveillance and privacy & Data Breaches, while underscoring proportionality in State Intrusions.[3] Core principles of this right include autonomy over Personal Information, Protection from Arbitrary Surveillance, and a balance between Individual Freedoms and Legitimate Public Interests and concerns, such as security.[4] Values like Human Dignity and Self Determination form the pillars of the right to privacy, as Privacy Shields against undue Judgment and fosters trust in Democratic Institutions.[5] Yet, these ideals confront stark Regulatory Silences in the Digital Realm of technology. The Digital Personal Data Protection Act, 2023 (DPDPA), is a remarkable step toward aligning with Global Norms for privacy and digital autonomy, like GDPR, but it exhibits critical gaps and loopholes: (i) Broad Governmental Exemptions, (ii) Insufficient Safeguards for Sensitive Data, and (iii) Neglect of Emerging Harms from Algorithmic Decision Making and AI driven profiling.[6] Specialists argue that it reinforces State-Centric Control, enabling Unchecked Surveillance through mechanisms like CCTV networks that lack Specific Oversight and exacerbate Privacy Erosion without Empirical Crime Reduction Benefits.[7]

[1] Somesh Jain, 'Originalism v Living Constitutionalism: The Debate Goes On' (*SCC Blog*, 13 September 2022) <https://www.scconline.com/blog/post/2022/09/13/originalism-v-living-constitutionalism-the-debate-goes-on> accessed 18 March 2026.

[2] Kamal Kumar, 'The Dawn of Neurotechnology and Its Legal Challenges' (*SCC Blog*, 16 October 2025) <https://www.scconline.com/blog/post/2025/10/17/the-dawn-of-neurotechnology-and-its-legal-challenges> accessed 18 March 2026.

[3] Siddharth R Gupta and Shivansh Vishwakarma, 'Unconstitutionality of Legislations for Being Obsolete, Outdated and Outlived' (*SCC Blog*, 20 February 2023) <https://www.scconline.com/blog/post/2022/06/03/unconstitutionality-of-legislations-for-being-obsolete-outdated-and-outlived> accessed 18 March 2026.

[4] Shubham Janghu and Kashish Jain, 'EU Data Protection Regulation — Impact on Indian Businesses and Jurisprudence' (*SCC Blog*, 20 July 2020) <https://www.scconline.com/blog/post/2018/07/25/eu-data-protection-regulation-impact-on-indian-businesses-and-jurisprudence> accessed 18 March 2026 (hereinafter 'Data Protection Regulation')

[5] Arjun Harkauli, 'Legal Framework for Privacy of Minors' (*SCC Blog*, 14 July 2020) <https://www.scconline.com/blog/post/2020/05/23/legal-framework-for-privacy-of-minors> accessed 18 March 2026.

[6] Rudraksh Lakra and others, 'Data, Control, and Power: Decoding India's Digital Personal Data Protection Act, 2023' (Working Paper No 5366868, SSRN, 2025) <https://ssrn.com/abstract=5366868> accessed 18 March 2026.

[7] Abhishek Singh and Sarah Imran, 'CCTV Cameras

Governmental failures manifest in Legislative momentum and a lack of Enforcement, as seen in the bypassing of Parliamentary Scrutiny for key Bills, hasty legislation on Privacy Threats.[8] Mass Surveillance via Aadhaar and unregulated tech like Neurotechnology highlight how rapid innovation Outpaces and evolves faster than Law, eroding public trust and individual autonomy.[9] This chapter critiques these silences, advocating for flexible Frameworks that Integrate Privacy by Design to Reconcile Technological Progress and growth with Constitutional Imperatives, Ensuring Privacy's Protection in India's Surveillance Society.[10]

Key Words: 'Right to Privacy', 'Digital Surveillance', 'Regulatory Silence', 'Silence of Laws', 'Unregulated Government Oversight'.

1. Introduction

1.1 Overview of Privacy as a Fundamental Right in Contemporary India

In the landscape of Indian constitutional law, the right to privacy has journeyed from a shadowy implication to a robust pillar of individual liberty. For zdecades after independence, privacy lingered on the fringes of judicial interpretation, often subordinated to broader concerns like state security and procedural justice. Early rulings, such as those in the 1950s and 1960s, treated it as an ancillary aspect of personal liberty under Article 21, without granting it standalone status.[11] This hesitation stemmed from the Constitution's silence on explicit privacy protections, leading courts to prioritize safeguards against arbitrary state actions over a comprehensive privacy doctrine. Yet, as societal norms shifted and technology advanced, the judiciary began to carve out space for privacy, recognizing its ties to human dignity and autonomy.

A turning point came with the Supreme Court's evolving stance in key cases. In one early instance, the Court grappled with surveillance practices, affirming that personal liberty encompassed elements of privacy, even if not expressly named in the Constitution.[12] This laid groundwork for later expansions, where privacy was seen as essential to the pursuit of happiness and self-determination. The real breakthrough, however, arrived in 2017, when a nine-judge bench unanimously declared privacy a fundamental right intrinsic to life and liberty under Article 21.[13] This judgment overturned prior limitations, emphasizing that privacy shields

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[9] Manik Mahey, 'Evolution of Data Privacy Law in India: Understanding Digital Personal Data Protection Rules, 2025' (*Live Law*, 22 November 2025) <https://www.livelaw.in/articles/data-privacy-law-in-india-and-digital-personal-data-protection-rules-analysis-310865> accessed 18 March 2026.

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[11] 'Right to Privacy: Landmark Supreme Court Rulings & Why a 9-Judge Bench Decision is Crucial' (*SCC Blog*, 18 July 2017) <https://www.scconline.com/blog/post/2017/07/18/right-to-privacy-supreme-courts-earlier-rulings-on-the-issue-why-a-9-judge-bench-decision-might-change-everything> accessed 18 March 2026.

[12] Shubhanshi Phogat, 'The Curious Case of Right to Privacy in India' (Working Paper No 3951726, SSRN, 2021) < https://ssrn.com/abstract=3951726> accessed 18 March 2026.

[13] '9-Judge Bench Declares Privacy as a Fundamental Right; Information, Family Life, Sexual Orientation Are All Part of Privacy' (*SCC Blog*, 24 August 2017) <https://www.scconline.com/blog/post/2017/08/24/9-judge-bench-declares-privacy-as-a-fundamental-right-information-family-life-sexual-orientation-are-all-part-of-privacy-judgment> accessed 18 March 2026.

informational autonomy, family life, and even sexual orientation from unwarranted intrusion. It marked a shift toward a living constitutionalism, adapting rights to modern contexts like data proliferation and digital surveillance.

Today, privacy stands as a cornerstone in contemporary India, interwoven with other fundamental rights like equality and free speech. It protects against both state overreach and private encroachments, fostering a society where individuals can navigate their lives without constant fear of exposure. This recognition has influenced legislative efforts, such as the Digital Personal Data Protection Act, 2023, which aims to govern data handling while aligning with global norms.[14] Nonetheless, the right remains dynamic, responding to emerging threats in a nation balancing rapid digitization with democratic values.

1.2 Significance of Privacy in the Digital Era: Autonomy, Dignity, and Vulnerabilities

As India hurtles into the digital age, privacy's significance amplifies, serving as a bulwark for personal autonomy and dignity amid unprecedented vulnerabilities. In an interconnected world, where daily interactions leave digital footprints (from social media shares to online transactions), privacy empowers individuals to control what they reveal and to whom.[15] It nurtures self-esteem, intimate relationships, and the freedom to hold beliefs without judgment, ensuring that one's inner world remains shielded from external scrutiny. Without it, the risk of constant oversight stifles behaviour, eroding the essence of free living.

The digital era, however, exposes profound vulnerabilities. Data, often likened to the "new oil," is collected, stored, and monetized on scales that dwarf traditional threats.[16] Technologies like artificial intelligence, biometrics, and the Internet of Things permeate every facet of life, enabling corporate surveillance and state monitoring that can undermine individual freedoms. For instance, unchecked data breaches and algorithmic profiling not only compromise personal security but also threaten democracy by manipulating public trust and autonomy.[17] In India, with its vast population and booming digital economy, these issues are acute; the proliferation of apps and platforms often extracts data under opaque consent mechanisms, leaving users exposed to misuse.

At its core, privacy upholds human dignity by preventing dehumanizing exploitation. Philosophers and jurists alike stress that autonomy depends on personal boundaries, a view echoed in Indian jurisprudence where privacy is tied to ethical underpinnings of freedom.[18] Yet, the era's challenges (deepfakes, neurotechnology, and mass surveillance) highlight how innovation can outpace protections, turning vulnerabilities into systemic risks. Balancing these with technological progress requires frameworks that prioritize informed consent and

[14] Abdullah Zubair Motiwala, 'A Jurisprudential Analysis of the DPDP Rules 2025 and the Evolution of Data Privacy Laws in India' (Working Paper No 5335388, SSRN, 2025) <https://ssrn.com/abstract=5335388> accessed 18 March 2026.

[15] 'Interplay between Right to Information and Right to Privacy' (*SCC Blog*, 20 November 2020) <https://www.scconline.com/blog/post/2020/11/20/interplay-between-right-to-information-and-right-to-privacy> accessed 18 March 2026.

[16] Bhavani Balaji and Vaagish B V, 'Orwellian Dilemma: Evaluating India's Progress on Privacy Rights Post Puttaswamy' (Working Paper No 5013084, SSRN, 2024) <https://ssrn.com/abstract=5013084> accessed 18 March 2026.

[17] Harshali Chowdhary, 'The Mole That AI Revealed: Hallucinations and Biometric Privacy Risks' (*Live Law*, 2 October 2025) <https://www.livelaw.in/articles/use-of-artificial-intelligence-and-privacy-risk-analysis-305718> accessed 18 March 2026.

[18] Ananya Agarwal, 'Right to Privacy in Digital Age: Challenges and Solutions' (Working Paper No 4955726, SSRN, 2024) < https://ssrn.com/abstract=4955726> accessed 18 March 2026.

ethical governance, ensuring privacy remains a lived reality rather than a theoretical ideal.

1.3 The Concept of "Silence of Law": Technology, Surveillance, and Regulatory Gaps

The "silence of law" emerges as a critical concept in India's privacy discourse, denoting regulatory voids where technology and surveillance flourish unchecked, amplifying threats to individual rights. This silence manifests in legislative inertia and enforcement lapses, allowing pervasive monitoring tools like CCTV networks and phone tapping to operate with minimal oversight.[19] While courts have affirmed privacy's fundamental status, the absence of comprehensive statutes has created gaps, enabling state and corporate entities to exploit data without robust safeguards. For example, surveillance practices often bypass proportionality tests, echoing concerns over arbitrary intrusions that echo Orwellian fears.

In the realm of technology, this silence is particularly deafening. Rapid advancements in AI and data-driven ecosystems outstrip legal adaptations, leading to ethical dilemmas around profiling and backdoor access.[20] India's Data Protection Act, while a step forward, reveals shortcomings: broad governmental exemptions and weak compliance mechanisms dilute its impact, permitting unchecked interception that contradicts privacy jurisprudence.[21] Critics point to how such gaps erode public trust, as seen in cases involving Pegasus spyware and centralized data projects, where innovation masks regression toward surveillance states.

Regulatory failures compound these issues, with parliamentary deliberation often bypassed, stifling nuanced responses to digital harms.[22] The result is a fragmented landscape where privacy threats (ransomware to algorithmic biases) proliferate, demanding agile laws that integrate privacy-by-design principles. Bridging this silence requires not just statutes but vigilant enforcement, public awareness, and a commitment to harmonizing progress with constitutional imperatives.

1.4 Scope and Structure of the Chapter

This chapter delves into the evolution of privacy rights in India, examining key principles, core values, and governmental shortcomings in safeguarding them amid technological surges. It critiques the "silence of law" through historical, judicial, and contemporary lenses, drawing on landmark cases and recent legislation to highlight persistent gaps. The analysis underscores the need for proactive reforms to balance individual autonomy with societal advancement.

Following this introduction, Section 2 traces the historical evolution from early interpretations to modern affirmations. Section 3 outlines privacy's principles and values, emphasizing dignity and non-arbitrariness. Section 4 explores governmental failures, focusing on regulatory silences in surveillance and data protection. Section 5 discusses implications for technology and democracy, with comparative insights. The conclusion offers recommendations for an adaptive legal framework.

2. Historical Evolution of Privacy Rights in India

2.1 Early Constitutional and Judicial Interpretations (1950s–1960s)

(Absence of Explicit Recognition Post-Independence)

When India gained independence in 1947 and adopted its Constitution in 1950, the framers laid out a robust

[19] Surveillance Societies (n 7).

[20] Garv Laroia, 'Telephone Tapping, Interception and Surveillance: Thin Line of Privacy' (*Live Law*, 8 September 2025) <https://www.livelaw.in/articles/phone-tapping-and-right-to-privacy-analysis-303171> accessed 18 March 2026.

[21] Rohit Jolly and others, 'The Confluence of AI and Data Privacy: Aligning Data Privacy Regime in India for the Age of AI' (*Bar and Bench*, 9 May 2025) <https://www.barandbench.com/view-point/the-confluence-of-ai-and-data-privacy-aligning-data-privacy-regime-in-india-for-the-age-of-ai> accessed 18 March 2026.

[22] Deliberation in Parliament (n 8).

framework for fundamental rights, but privacy was not mentioned as a standalone entitlement. This omission reflected the priorities of the time, where the focus was on establishing democratic institutions, protecting against arbitrary state power, and ensuring basic liberties like speech and equality. The Constitution's architects drew from global models, including the Universal Declaration of Human Rights, yet they did not incorporate an explicit privacy clause, perhaps viewing it as subsumed under broader guarantees. As a result, privacy lingered in the shadows, not emerging as a distinct legal concept until judicial scrutiny forced its consideration.[23]

Scholars have noted that this gap stemmed from the era's emphasis on collective nation-building over individual intimacies. In the immediate post-colonial context, the judiciary interpreted rights through a lens of procedural fairness rather than substantive personal autonomy. Privacy, often tied to Western notions of individualism, seemed secondary to India's communal ethos and the urgent need to curb state excesses inherited from colonial rule. Without textual anchoring, courts initially treated privacy claims as peripheral, relying instead on Articles 19 and 21 to address related grievances.[24]

This absence created a vacuum where state actions, such as searches or surveillance, faced limited constitutional checks. Early legal discourse highlighted how the lack of explicit recognition allowed for interpretations that prioritized public order over personal spheres, setting the stage for future conflicts as society modernized and technology advanced.[25]

Initial Focus on Life, Liberty, and Due Process under Article 21. In the 1950s and 1960s, judicial attention centered on Article 21's promise of life and personal liberty, emphasizing due process to prevent arbitrary deprivations. Courts viewed liberty as protection from unlawful detention or state overreach, not as encompassing private domains like home or information. This narrow lens meant privacy issues were often reframed as violations of procedural justice rather than inherent rights.[26]

For instance, early rulings stressed that any restriction on liberty must follow established law, aligning with a formalistic approach. This era's jurisprudence, influenced by British common law, prioritized state interests in security and order, sidelining evolving ideas of personal dignity. As cases involving searches and police powers arose, the judiciary began probing whether such actions infringed on liberty, but without invoking privacy explicitly. This foundational focus on due process under Article 21 would later evolve, providing the bedrock for privacy's emergence as technology and societal changes demanded broader protections.[27]

2.2 Landmark Judicial Milestones

2.2.1 M.P. Sharma v. Satish Chandra (1954): Limited Engagement with Privacy

The Supreme Court's first major encounter with privacy-like concerns came in M.P. Sharma v. Satish Chandra, an eight-judge bench decision addressing search and seizure powers under the Criminal Procedure Code. The case involved allegations of embezzlement, leading to widespread searches of company premises. Petitioners argued that these actions violated fundamental rights, drawing parallels

[23] Gautam Bhatia, 'State Surveillance and the Right to Privacy in India: A Constitutional Biography' (Working Paper No 2605317, SSRN, 2014) <https://ssrn.com/abstract=2605317> accessed 18 March 2026. (hereinafter 'Bhatia')

[24] Privacy in India (n 12).

[25] Bhumesh Verma, 'Evolution of Data Privacy' (*SCC Blog*, 6 February 2020) <https://www.scconline.com/blog/post/2020/02/06/evolution-of-data-privacy> accessed 18 March 2026.

[26] Living Constitutionalism (n 1).

[27] Privacy (n 11).

to the U.S. Fourth Amendment's protection against unreasonable searches.[28]

The Court rejected this, holding that no fundamental right to privacy existed analogous to the American model. It reasoned that the Constitution's framers had deliberately omitted such a provision, and importing it would strain interpretation. Privacy was not seen as inherent to Article 21's liberty or Article 20(3)'s self-incrimination clause. Instead, the judgment focused on procedural validity, upholding the searches as authorized by law.[29]

This ruling set a precedent of reluctance, viewing privacy as non-essential to India's constitutional scheme. Critics later argued it reflected a post-independence caution against expansive rights that might hinder governance. For over six decades, M.P. Sharma influenced a conservative stance, until its overruling in 2017 highlighted its limitations in addressing modern privacy threats.[30]

2.2.2 Kharak Singh v. State of Uttar Pradesh (1963): Implicit Recognition and Domiciliary Surveillance

A decade later, Kharak Singh v. State of Uttar Pradesh challenged Uttar Pradesh Police Regulations allowing surveillance of "history-sheeters," including secret picketing, movement tracking, and domiciliary visits. Kharak Singh, acquitted in a prior case but labeled suspicious, contended these measures violated his freedoms under Articles 19(1)(d) and 21.[31] The six-judge bench, in a majority opinion, struck down domiciliary visits as infringing personal liberty under Article 21, likening them to unauthorized intrusions into one's home. However, it upheld other surveillance forms, asserting no fundamental right to privacy existed. The Court interpreted Article 21 as protecting against physical restraints, not psychological ones from oversight.[32] Justice Subba Rao's dissent marked a turning point, arguing privacy was an essential ingredient of personal liberty. He viewed constant surveillance as stifling freedom, invalidating the entire regulation. This minority view foreshadowed future expansions, emphasizing privacy's role in dignity and autonomy.[33] Kharak Singh thus introduced implicit privacy elements while denying explicit status, creating doctrinal tension. Its partial affirmation of liberty protections against arbitrary intrusion laid groundwork for later cases, though the majority's denial of privacy endured as a hurdle until explicitly overruled.[34]

2.2.3 Gobind v. State of M.P. (1975): Nuanced Expansion and Dignity-Based Approach

Building on Kharak Singh, Gobind v. State of M.P. addressed similar Madhya Pradesh Police Regulations permitting surveillance. Gobind, under watch as a habitual offender, challenged them as violative of Articles 19 and 21.[35] The three-judge bench, led by Justice Mathew, adopted a more expansive view, deriving privacy from personal liberty and dignity under Article 21. It acknowledged privacy as encompassing home intimacies, family, and

[28] Ibid.
[29] 'Right to Digital Privacy: A Critical and Comparative Analysis' (*SCC Blog*, 1 October 2021) <https://www.scconline.com/blog/post/2021/10/01/right-to-digital-privacy> accessed 18 March 2026.
[30] Living Constitutionalism (n 1).
[31] Gautam Bhatia, 'The Supreme Court's Right to Privacy Judgment — I: Foundations' (*Live Law*, 24 August 2017) <https://www.livelaw.in/supreme-courts-right-privacy-judgment-foundations> accessed 18 March 2026.
[32] ibid.
[33] Devansh Malhotra, 'Where Privacy Takes a Detour: Navigating the Controversy of Live Location Sharing' (*Live Law*, 11 November 2023) <https://www.livelaw.in/articles/where-privacy-takes-a-detour-navigating-the-controversy-of-live-location-sharing-244315> accessed 18 March 2026.
[34] Justice Jayasankaran Nambiar, '"Does the Ghost of Gopalan Still Haunt Our Jurisprudence?": A Search for the Contemporary Relevance of AK Gopalan v State of Madras' (*Live Law*, 22 June 2020) <https://www.livelaw.in/columns/does-the-ghost-of-gopalan-still-haunt-our-jurisprudence-159026> accessed 18 March 2026.
[35] Bhatia (n 23).

procreation, essential for happiness and self-development. However, privacy was not absolute; it could be restricted for compelling public interests like security, subject to reasonable procedures.[36]

The Court upheld the regulations narrowly, finding them justified for crime prevention, but warned of potential unconstitutionality if arbitrarily applied. Gobind's dignity-based approach shifted from Kharak Singh's formalism, recognizing privacy's relational and decisional aspects. It cited U.S. precedents like Griswold, integrating global ideas while adapting to Indian contexts.[37] This nuanced expansion marked a watershed, affirming privacy's constitutional roots without full declaration, paving the way for its fundamental status amid growing surveillance concerns.[38]

2.2.4 Justice K.S. Puttaswamy (Retd.) v. Union of India (2017): Affirmation as a Fundamental Right

The culmination came in Justice K.S. Puttaswamy v. Union of India, where a nine-judge bench unanimously declared privacy a fundamental right under Article 21. Triggered by Aadhaar challenges, the case revisited M.P. Sharma and Kharak Singh, overruling their denial of privacy.[39]

The polyvocal judgment emphasized privacy's ties to dignity, autonomy, and liberty, encompassing informational, decisional, and spatial facets. Justice Chandrachud's plurality opinion traced privacy's evolution, rejecting absolute status but requiring proportionality for restrictions. It addressed digital age vulnerabilities, like data proliferation, affirming privacy's role in democratic freedoms.[40] Puttaswamy integrated zonal, relational, and decisional paradigms, drawing from Gobind while expanding to modern contexts. It vindicated Subba Rao's Kharak Singh dissent, establishing privacy as intrinsic to Part III rights, subject to legitimate state aims.[41]

This affirmation transformed jurisprudence, influencing data protection and surveillance laws, though implementation challenges persist.[42]

2.3 Legislative Developments: From Absence to the Digital Personal Data Protection Act, 2023

Post-Puttaswamy, legislative inertia gave way to the Digital Personal Data Protection Act, 2023 (DPDPA), evolving from earlier bills like the 2019 Personal Data Protection Bill. Initially absent dedicated laws, privacy relied on judicial safeguards and sector-specific rules.[43] The 2019 Bill aimed at comprehensive

[36] Anubhav Khamroi and Anujay Shrivastava, 'The Curious Case of Right to Privacy in India' (Working Paper No 4318889, SSRN, 2017) < https://ssrn.com/abstract=4318889> accessed 18 March 2026.

[37] Shivnath Tripathi, 'Right to Privacy as a Fundamental Right: Extent and Limitations' (Working Paper No 2273074, SSRN, 2017) < https://ssrn.com/abstract=2273074> accessed 18 March 2026.

[38] Dr G V Mahesh Nath, 'A Conceptual Journey of Privacy Rights in India' (Working Paper No 3464353, SSRN, 2019) < https://ssrn.com/abstract=3464353> accessed 18 March 2026.

[39] Murali Krishnan, 'Puttaswamy: Right to Privacy is a Fundamental Right under Article 21, Supreme Court' (*Bar and Bench*, 24 August 2017) <https://www.barandbench.com/news/right-privacy-fundamental-right-supreme-court> accessed 18 March 2026.

[40] Rishika Taneja & Sidhant Kumar, *Setting the Record Straight: Clarifying the Right to Privacy*, BAR & BENCH (Sept. 15, 2017), https://www.barandbench.com/columns/setting-record-straight-clarifying-right-privacy.

[41] Ranjana Adhikari and others, 'A Case to Keep Aadhaar as a Voluntary KYC Document' (*Bar and Bench*, 27 March 2019) <https://www.barandbench.com/view-point/a-case-to-keep-aadhaar-as-a-voluntary-kyc-document> accessed 18 March 2026.

[42] Aditya AK, 'Proportionality Test for Aadhaar: The Supreme Court's Two Approaches' (*Bar and Bench*, 1 October 2018) <https://www.barandbench.com/columns/proportionality-test-for-aadhaar-the-supreme-courts-two-approaches> accessed 18 March 2026.

[43] Gauri Goyal, 'Privacy and Data Protection in India: A Critical Analysis of the Legal Framework' (Working Paper No 5821002, SSRN, 2025)

regulation but faced criticism for state exemptions. The 2023 Act, assented on August 11, 2023, mandates consent-based data processing, rights for data principals, and fiduciary duties, aligning with global norms like GDPR.[44] However, gaps remain: broad government exemptions, weak consent mechanisms, and neglect of neural data. DPDPA represents progress in addressing digital vulnerabilities but highlights ongoing tensions between privacy and state interests.[45] This evolution from judicial crafting to statutory frameworks underscores privacy's maturation, yet calls for agile amendments to match technological pace.[46]

3. Silence of Law: Governmental and Regulatory Failures in Ensuring Privacy

The phrase "silence of law" captures the persistent gaps where legal frameworks have lagged behind technological realities, leaving privacy vulnerable to both state and private actors. Despite the Supreme Court's emphatic recognition of privacy as a fundamental right in 2017, governmental and regulatory responses have often fallen short, creating structural voids that persist even after the passage of the Digital Personal Data Protection Act, 2023. These failures are not merely administrative oversights; they reflect a deeper reluctance to translate judicial pronouncements into robust, enforceable protections.[47]

3.1 Historical and Structural Regulatory Gaps

Prolonged Judicial Reluctance to Recognize Privacy Independently

For nearly seven decades after the Constitution came into force, the judiciary hesitated to treat privacy as an independent constitutional entitlement. Early decisions viewed it only as an incidental aspect of personal liberty under Article 21, never as a standalone guarantee. This reluctance stemmed from a formalistic reading that refused to import foreign doctrines without express textual support, leaving citizens without clear constitutional armour against intrusive practices.[48] Even when surveillance challenges reached the Supreme Court, the majority opinions stopped short of declaring privacy fundamental, preferring to uphold state regulatory powers over individual spheres. The dissenting voices that argued for a broader reading remained just that until a nine-judge bench finally overruled the earlier narrow positions in 2017. This prolonged judicial caution created a doctrinal vacuum in which state agencies and private entities operated with minimal constitutional restraint for generations.[49]

Absence of Dedicated Data Protection Legislation Until 2023

Compounding the judicial hesitation was the complete absence of a comprehensive data protection statute until August 2023. For years, privacy protection relied on scattered provisions in the Information Technology Act, 2000 and its 2011 Rules (provisions that were never designed to handle the scale of digital data flows). Without a dedicated law, there was no statutory mechanism for consent, data minimization, or breach notification, leaving individuals exposed in an increasingly data-driven economy. Successive governments drafted bills that were repeatedly delayed or diluted, reflecting a systemic inertia that allowed corporate and governmental data practices to flourish

<https://ssrn.com/abstract=5821002> accessed 18 March 2026. (hereinafter 'Goyal')

[44] Soumya Banerjee, '"Digital Personal Data Protection Act" — A Strudel Served Raw!' (Working Paper No 4956275, SSRN, 2024) < https://ssrn.com/abstract=4956275> accessed 18 March 2026.

[45] Gaurav Thote, 'Unravelling "Consent" under the Digital Personal Data Protection Act, 2023 — A Barrier to Data Principal Rights' (*SCC Blog*, 13 November 2024) <https://www.scconline.com/blog/post/2024/11/13/unravelling-consent-under-the-digital-personal-data-protection-act-2023-a-barrier-to-data-principal-rights> accessed 18 March 2026.

[46] Unconstitutionality of Legislations (n 3).

[47] DPDP Rules 2025 (n 14).

[48] Goyal (n 43).

[49] Rohin Dubey, 'The Great Data Protection Debate: India's New Data Protection Bill' (*Bar and Bench*, 29 December 2020) <https://www.barandbench.com/columns/the-great-data-protection-debate-indias-new-data-protection-bill> accessed 18 March 2026.

unchecked. The eventual enactment of the Digital Personal Data Protection Act came only after years of public pressure and judicial nudging, yet even this legislation arrived late and with significant carve-outs that critics describe as preserving state control rather than empowering citizens.[50]

3.2 Major Failures in Enforcement and Oversight

Inadequate Responses to Data Breaches and Insecure Digital Ecosystems

India has witnessed repeated high-profile data breaches, yet regulatory responses have remained reactive and under-powered. Major incidents involving healthcare insurers and fintech platforms exposed millions of records, including sensitive health and financial information, yet enforcement actions were limited to notices or modest penalties that failed to deter systemic negligence. The absence of mandatory real-time breach reporting standards and independent audits meant organisations could delay disclosure or downplay risks, eroding public confidence. Even after the DPDP Act, draft rules have been criticised for lacking differentiated severity levels for breaches and for placing the burden of proof on victims rather than fiduciaries.[51] These enforcement gaps have turned data security into a paper exercise rather than a lived safeguard.

Permissive or Unchecked State Surveillance Practices

State surveillance continues with minimal oversight. Widespread deployment of CCTV networks, Aadhaar-linked databases, and interception powers under the Telegraph Act operate without comprehensive proportionality checks or independent review boards. Courts have repeatedly noted that such practices risk becoming tools of mass monitoring rather than targeted crime prevention, yet legislative amendments have been slow and narrow. The Pegasus controversy and reports of unauthorised data access highlighted how surveillance tools can bypass existing safeguards, yet accountability mechanisms remain fragmented across ministries and agencies.[52] This permissiveness creates an environment where privacy is treated as secondary to security imperatives, often without empirical justification.

Weak Compliance Mechanisms for Emerging Technologies (Biometrics, AI, IoT, Facial Recognition)

Emerging technologies have outpaced regulatory imagination. Biometric systems, facial recognition software, and AI-driven profiling are deployed across welfare schemes, policing, and private platforms without tailored risk assessments or ethical guidelines. The DPDP Act contains no specific provisions for automated decision-making or neurotechnology risks, while IoT devices collect intimate behavioural data without consent frameworks. Enforcement bodies lack technical capacity to audit algorithmic bias or data flows in real time, leaving citizens exposed to opaque "black box" systems that affect livelihoods and reputations.[53] Regulatory silence here is particularly dangerous because these technologies are irreversible once embedded in public infrastructure.

3.3 Contemporary Manifestations of Regulatory Silence

Challenges in Data Localization, Corporate Surveillance, and Governmental Oversight

The DPDP Act's data localization requirements and broad governmental exemptions have invited criticism for creating compliance nightmares for global businesses while simultaneously granting the state sweeping access. Critics argue that localization, intended to enhance security, concentrates data in

[50] Ishwar Ahuja and Sakina Kapadia, 'Digital Personal Data Protection Act, 2023 — A Brief Analysis' (*Bar and Bench*, 22 August 2023) <https://www.barandbench.com/view-point/digital-personal-data-protection-act-2023-a-brief-analysis> accessed 18 March 2026.

[51] 'Legal Ramifications of a Data Breach Discussed in Light of Star Health and Allied Insurance Breach' (*SCC Blog*, 28 January 2025) <https://www.scconline.com/blog/post/2025/01/28/legal-ramifications-data-breach-discussed-in-light-of-star-health-and-allied-insurance-breach/> accessed 18 March 2026.

[52] Data Privacy (n 9).

[53] Jolly and others (n 21).

vulnerable central repositories without corresponding cybersecurity upgrades. Corporate surveillance through consent-based models has also thrived because the law permits "legitimate uses" that are vaguely defined, allowing platforms to monetise personal data with minimal pushback.[54] Governmental oversight remains centralised in the Data Protection Board, whose independence and capacity are still untested, raising fears of regulatory capture.

Erosion of Public Trust and Individual Autonomy Due to Enforcement Deficiencies

Repeated breaches and visible surveillance have chipped away at public trust. Citizens increasingly feel that their data is neither secure nor truly theirs, leading to self-censorship on digital platforms and reluctance to engage with government services. This erosion directly undermines the autonomy the Supreme Court sought to protect in 2017. When enforcement is weak and remedies are bureaucratic, individuals lose faith in the system's ability to vindicate their rights, turning privacy from a lived freedom into an aspirational ideal.[55]

Failure to Integrate Privacy-by-Design and Ethical Governance in Technological Development

Perhaps the most telling silence is the failure to embed privacy-by-design in technological development. Developers and deployers of AI, IoT, and biometric systems are not statutorily required to conduct privacy impact assessments or adopt ethical governance frameworks at the design stage. This omission means privacy is treated as an afterthought rather than a core engineering principle, perpetuating insecure ecosystems and ethical blind spots. Until regulators mandate privacy-by-design across public and private sectors, technological advancement will continue to outrun constitutional protections.[56]

The cumulative effect of these failures is a regulatory landscape that speaks loudly on paper but remains largely silent in practice. Bridging this gap demands more than new rules; it requires sustained political will, technical capacity, and judicial vigilance to ensure that privacy is not merely declared fundamental but genuinely secured in daily life.

4. Implications of Regulatory Silence in the Context of Technology and Surveillance (Mass Surveillance, Corporate Data Exploitation, and Ethical Concerns)

The regulatory silence surrounding privacy has allowed mass surveillance to become embedded in everyday Indian life. CCTV networks, Aadhaar linked databases and interception tools now operate across cities and welfare schemes without consistent independent oversight. These systems collect vast amounts of biometric and behavioural data under the guise of security or service delivery, yet the absence of real time audit mechanisms leaves room for function creep. Corporate platforms compound the problem by harvesting user information through opaque consent flows and targeted advertising models. Social media giants and fintech apps routinely profile individuals based on browsing habits, location and even emotional cues, turning personal data into a commercial asset without meaningful accountability.[57]

Ethical concerns multiply when artificial intelligence enters the picture. Algorithmic decision making in lending, hiring or policing often relies on biased datasets, yet Indian law lacks mandatory impact assessments for such tools. Facial recognition deployed by police forces and private entities raises questions of accuracy and discrimination, particularly against marginalised communities, while IoT devices in homes silently transmit intimate routines to distant servers. The silence of law here is not passive; it actively permits these practices to scale without ethical

[54] Abhya (n 10).
[55] 'Digital Distress, Legal Blindness: Gaps in Consent Mechanisms under India's Data Protection Regime' (Working Paper No 5468066, SSRN, 2025) <https://ssrn.com/abstract=5468066> accessed 18 March 2026.
[56] Jolly and others (n 21).
[57] Surveillance Societies (n 7).

guardrails, creating a digital environment where privacy is traded for convenience or control.[58]

Impact on Democracy, Freedoms, and Societal Trust

These threats extend far beyond individual inconvenience. When citizens know their every move can be tracked, self censorship becomes routine. Journalists, activists and ordinary users hesitate to express dissenting views online, directly chilling the freedom of speech guaranteed under Article 19. During elections, unchecked data exploitation has already enabled micro targeting that distorts public discourse, raising fears about the integrity of democratic choice. Societal trust erodes when data breaches repeatedly expose millions of records and state agencies respond with little more than advisory notices. People begin to view both government services and private platforms with suspicion, withdrawing from digital ecosystems that were meant to empower them. The cumulative effect is a quiet contraction of personal freedoms and a weakening of the democratic fabric that the Supreme Court sought to protect in 2017.[59]

4.2 Comparative Insights and Global Norms

Lessons from International Frameworks (e.g., GDPR) and Their Relevance to India

Europe's General Data Protection Regulation offers a stark contrast. Under GDPR, data controllers face fines up to four percent of global turnover for violations, individuals enjoy a robust right to be forgotten and automated decision making requires explicit safeguards. Consent must be granular, withdrawal must be easy and data protection officers are mandatory for large processors. These features have forced companies to redesign products with privacy at the core rather than as an afterthought.[60]

India's Digital Personal Data Protection Act, by comparison, contains significant carve outs for government agencies and softer penalty structures. While the Indian law borrows concepts like data fiduciary duties and breach notification, it stops short of GDPR's stringent cross border transfer rules and independent supervisory authority with real enforcement teeth. The contrast highlights what regulatory silence has cost India: the opportunity to build a mature data protection regime that commands global respect. Yet the relevance of GDPR is not about blind copying. India's federal structure, digital public infrastructure and developmental priorities demand an adapted model that balances innovation with rights. Learning from GDPR's emphasis on accountability and user empowerment could help close the gaps that currently expose Indian citizens to disproportionate risks.[61]

4.3 The Need for Proactive Legal Adaptation

The persistence of regulatory silence demands a fundamental shift from reactive legislation to proactive legal design. Future reforms must embed privacy impact assessments at the earliest stage of any technological project, whether public welfare schemes or private apps. Regular parliamentary review of the DPDP Rules, coupled with an independent Data Protection Board possessing technical expertise and financial autonomy, would prevent the law from becoming outdated within months of notification. Multi stakeholder consultations involving civil society, technologists and industry can ensure rules reflect ground realities rather than bureaucratic convenience.[62]

Courts too have a continuing role. They must insist on strict proportionality tests whenever surveillance or data processing is challenged, refusing to accept blanket national security exemptions without evidence. At the same time, the legislature needs to address emerging frontiers such as neurotechnology and generative AI before they entrench new forms of intrusion. Privacy by design must move from aspirational language to enforceable obligation, backed by incentives for compliance and swift penalties for default. Only such proactive adaptation

[58] Chowdhary (n 17).
[59] Orwellian Dilemma (n 16).
[60] Data Protection Regulation (n 4).
[61] DPDP Rules 2025 (n 14).
[62] Digital Distress Legal Blindness (n 55).

can transform the current silence of law into a living constitutional safeguard that keeps pace with technological change while preserving the dignity and autonomy the Supreme Court recognised as fundamental.[63]

In essence, the implications of regulatory silence are not abstract. They manifest as chilled speech, eroded trust and unequal digital citizenship. Comparative lessons from GDPR show that stronger frameworks are possible, but India must tailor them to its context. The path forward lies in deliberate, forward looking legal engineering that treats privacy not as a constraint on progress but as its essential foundation.

5. Conclusion and Way Forward

5.1 Summary of Key Findings

The journey of privacy rights in India reveals a clear arc from constitutional ambiguity to judicial affirmation, yet one marked by persistent regulatory shortfalls. Early post-independence interpretations under Article 21 treated privacy as a mere byproduct of personal liberty rather than a distinct guarantee, allowing surveillance and data practices to operate with little restraint. Landmark rulings gradually shifted this position, culminating in the 2017 Puttaswamy judgment that elevated privacy to fundamental status, encompassing informational, decisional and spatial dimensions tied to dignity and autonomy. Despite this breakthrough, legislative response remained delayed until the Digital Personal Data Protection Act of 2023, and even then the statute carried broad exemptions and enforcement gaps that left citizens exposed.[64]

Core principles such as protection from arbitrary intrusion, autonomy over personal data and procedural safeguards against surveillance were clearly articulated by the courts. These rest on values of human dignity, individual self-determination and a workable balance with public interests like security. In practice, however, governmental and regulatory silence has undermined these ideals. Prolonged judicial reluctance, absence of dedicated legislation for decades and weak oversight mechanisms have permitted mass surveillance, corporate data exploitation and unchecked deployment of biometrics, artificial intelligence and facial recognition tools.[65] The result is heightened threats to democracy, chilled freedoms and declining public trust, as citizens increasingly self-censor and withdraw from digital services. Comparative analysis with the European GDPR underscores what India has missed: stronger penalties, independent supervision and genuine user empowerment. The cumulative findings paint a picture of a right that is constitutionally robust on paper but fragile in daily application.[66]

5.2 Recommendations for Bridging the Silence of Law

Strengthening Enforcement, Public Awareness, and Cybersecurity

Effective bridging of regulatory gaps begins with robust enforcement machinery. The Data Protection Board must be granted genuine independence, adequate funding and technical expertise to conduct proactive audits rather than reactive inquiries. Penalties under the Digital Personal Data Protection Act should be calibrated by severity and repeated violations, with clear timelines for breach notifications and mandatory victim compensation. Public awareness campaigns, integrated into school curricula and digital literacy programmes, can equip citizens to exercise rights such as consent withdrawal and data erasure. At the same time, mandatory cybersecurity standards for government databases and large private platforms, including regular third-party audits, would reduce the frequency of breaches that currently erode confidence.[67]

Adopting Privacy-by-Design and Agile Legislative Approaches

[63] Jolly and others (n 21).
[64] DPDP Rules 2025 (n 14).
[65] Orwellian Dilemma (n 16).
[66] Data Protection Regulation (n 4).
[67] Data Privacy (n 9).

Privacy cannot remain an afterthought. Every new technological deployment, whether public welfare platforms or private apps, should be required to undergo privacy impact assessments at the design stage. Developers must demonstrate how data minimisation, encryption and user controls are baked into architecture rather than added later. The legislature needs an agile mechanism to review and amend rules every two years through parliamentary standing committees that include technologists and civil society voices. Sunset clauses on broad governmental exemptions would prevent permanent carve-outs that dilute the Act's protective intent. Such approaches would align Indian law more closely with global best practices while respecting local developmental needs.[68]

5.3 Future Prospects: Balancing Privacy Rights with Technological Advancement

Looking ahead, the tension between privacy and technological progress need not be zero-sum. India's digital public infrastructure, including Aadhaar and UPI, offers immense potential for inclusion, yet only if privacy safeguards scale alongside innovation. Future prospects hinge on courts continuing to apply strict proportionality tests in surveillance and data cases, refusing blanket national-security justifications without evidence. Legislative foresight must extend to emerging frontiers such as neurotechnology and generative artificial intelligence before they become entrenched. A multi-stakeholder model involving regulators, industry, academia and rights groups can co-create guidelines that promote responsible innovation without sacrificing constitutional values.[69]

If these steps are taken, privacy can evolve from a declared right into a lived reality that supports rather than hinders India's digital ambitions. Citizens would engage more freely with technology, confident that their autonomy and dignity remain protected. The silence of law that has characterised the past can give way to a responsive, forward-looking framework that honours the Supreme Court's vision while meeting the demands of a rapidly digitising society. Ultimately, the measure of success will lie not in the number of statutes enacted but in the everyday experience of ordinary Indians who can navigate the digital age with security, dignity and trust.[70]

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[68] Ahuja and Kapadia (n 50).
[69] Jolly and others (n 21).
[70] Digital Distress, Legal Blindness (n 55).

IDENTITY THEFT THROUGH CYBERCRIME IN INDIA: CHALLENGES IN LAW ENFORCEMENT

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Abstract

In the present era of digitalization, identity theft has become as one of the most serious forms of cybercrime, that poses threats to personal privacy, economic stability and general social hierarchy in India.[1] This paper undertakes a comprehensive examination of the offence of identity theft by evaluating its varied forms and modus operandi within the spectrum of cyber offences, which includes phishing attacks, ransomware intrusions and huge data breaches. The legislative framework, primarily governed by the Information Technology Act, 2000 (as amended in 2008), along with relevant provisions of the Bharatiya Nyaya Sanhita, 2023 (formerly the Indian Penal Code, 1860), seeks to address and penalize such offences. However, the effectiveness of enforcement mechanisms continues to be constrained by challenges such as jurisdictional complexities, evidentiary limitations, and institutional inadequacies. Judicial interventions by the Supreme Court of India, notably in *Shreya Singhal v. Union of India* (2015)[2] and *Justice K.S. Puttaswamy (Retd.) v. Union of India* (2017)[3], have played a crucial role in strengthening constitutional safeguards related to digital freedoms and informational privacy. Despite these advancements, the judgments also emphasizes on the urgent need for robust investigative and prosecutorial frameworks capable of responding to evolving cyber threats. The paper further evaluates the practical difficulties faced by law enforcement agencies, including insufficient technical expertise, transnational barriers to investigation, and the pervasive issue of under-reporting by victims. According to data, released by the National Crime Records Bureau (NCRB) reflects a significant increase in reported cybercrime incidents, with approximately 3,17,439 cases recorded since 2019, a considerable proportion of which involve identity-related offences[4]. Based on these findings, the paper proposes a series of remedial measures, such as specialized cyber-forensic laboratory, enhanced international cooperation, and increased public awareness initiatives. Finally, it argues for a recalibration of India's cyber jurisprudence to ensure its responsiveness to technological advancements, thereby empowering deterrence mechanisms and ensuring effective remedies for affected individuals.

Keywords: *Cybercrime, Digital advancement, Identity Theft, Information Technology, Victims.*

A. Introduction

The digital revolution has inevitably digitised human life and made a network with cyberspace with creating a new level of susceptibility to cyber malfeasance. Identity theft here as a subdivision of cybercrime involves the theft of personal identifiers, such as Aadhaar numbers, PAN card details or banking credentials to commit fraudulent acts and reputational harms to the victims.[5] In India, where digital penetration has increased rapidly under initiatives like Digital India,[6] the incidence of such crimes has increased, and will keeping increasing simultaneously

[1] Saima Jan, "Identity Theft, Cross-Border Legal Paradoxes and India's Cyber-Economic Crisis in the Algorithmic Age" (2025) 29(4) Kuey 4538.
[2] (2015) 5 SCC 1
[3] (2017) 10 SCC 1
[4] Ministry of Home Affairs, '3.17 Lakh Cybercrimes in India in Just 18 Months' (The Hindu, 9 March 2021)
[5] National Crime Records Bureau, *Crime in India 2022 Statistics Volume I* (Ministry of Home Affairs 2023)
[6] Press Information Bureau, 'Digital India Week' (1 July 2015) https://pib.gov.in/PressNoteDetails.aspx?ModuleId=3&NoteId=154788 accessed 31 January 2026.

posing thorny challenges to law enforcement machineries.

Thus, identity theft will take various forms: phishing attacks, when attackers use the rights of trusted individuals to obtain sensitive data; ransomware attacks, when data is encrypted on the condition of a ransom; or an Internet attack on the system that capitalizes on vulnerabilities in internet and online systems. According to National Crime Records Bureau (NCRB), cybercrimes have meteorically increased in the past as in 2022 alone, 65,893 cases have been registered, a sharp contrast to the past years. Identity theft, which is usually combined with financial fraud, has a large tranche, and the number of people who suffer identity theft is estimated at about 27 million adults in the recent annals[7].

India has a legal structure that forms the main fortification against such vices, and it is the Information Technology Act, 2000 (IT Act). Section 66C[8] categorically punishes the fraudulent use of electronic signatures, passwords or other distinguishing characteristics, with a prison sentence up to three years and fines. The cheating through personation using computer resources is pursued in Section 66D[9]. The unauthorized access and stealing information is also covered in Sections 43 and 66[10]. These are supported through the provisions of the Indian Penal Code (now replaced by Bharatiya Nyaya Sanhita, 2023) specifically, the provisions of 419[11] (cheating by personation) and 420[12] (cheating and fraudulently causing delivery of property) which carries very stringent punishment in terms of a terms of up to seven years imprisonment alongwith the fine. Despite this statutory armature, there are multifarious hurdles in its enforcement. The law enforcers are battling with the issue of technological obsolete, ambiguity of jurisdictions especially in international crimes and the fleeting nature of digital evidence. There have been influential rulings by the Supreme Court, on the need to ensure the balance between punitive action and constitutional requirements, including the right to privacy under Article 21[13].

In this paper, a detailed elucidation has been made, defining legal scope, the substance of identity theft, the problems faced in the implementation of these laws, examining the iconic Supreme Court cases and making practical suggestions. It assumes that in the absence of holistic reforms, the gap between the goals and the effectiveness of the enforcement actions of legislations will continue to exist, as it would increase the vulnerability of the Indian ecosystem in cyberspace.

B. Legal Framework Governing Identity Theft in Cybercrime

The jurisprudential answer to identity theft in India is entrenched within a dualistic statutory framework, the IT Act, 2000 the '*lex specialis'* which means *'special law'* to digital offences and the IPC, 1860 which is now replaced by Bharatiya Nyaya Sanhita, 2023, as the '*lex generalis'* which mean *'general law'* to *mutati mutandi* offences related to cyber acts.

Prima facie, the IT Act outlines crimes that are related to identity theft. In section 66C[14] which read as, "*Whoever, fraudulently or dishonestly draws or makes use of electronic signature, password or any other unique identification feature of other person, shall be punished with imprisonment of any of the description, which may be converted to a maximum of three years and should also be subjected to fine which may be extended to a maximum of rupees one lakh*". This is a provision that summarizes the 'mens rea' of fraudulence or dishonesty in addition to the existence of 'actus reus' of misappropriation of identifiers.

[7] National Crime Records Bureau, *Crime in India 2022* (Ministry of Home Affairs, Government of India 2023).
[8] Information Technology Act 2000, s 66C (India).
[9] Information Technology Act 2000, s 66D (India).
[10] Information Technology Act 2000, ss 43, 66 (India).
[11] Bharatiya Nyaya Sanhita 2023, ss 319(1), 319(2).
[12] Bharatiya Nyaya Sanhita 2023, s 318(4).
[13] The Constitution of India, art. 21
[14] Information Technology Act 2000, s 66C (India).

Corollary thereto, Section 66D[15] criminalizes cheating through personation intending by means of a computer and similar punishments are imposed.

Moreover, Section 43 causes civil followings of unauthorised access to the computer systems requiring restitution of damages following them, whereas in Section 66, criminal liability is imposed due to wrongful loss intentionally. These clauses were supplemented by the 2008 amendments with intent to provide protection against data theft and misuse of identity, which is in consistence with the international standards such as the Budapest Convention on Cybercrime to which India is not a signatory[16].

This framework was supplemented by the Indian Penal Code, 1860, which is now being replaced by Bharatiya Nyaya Sanhita, 2023, with new objective of delivering justice to victim and accused, at the same time. Section 419[17] penalises the offences of cheating by personation, where a maximum of three years could be imprisoned, whilst Section 420[18] includes more simple defrauders, which involves up to a seven year jail term. These are Section 465, 467 and 471 of Indian Penal Code, 1860, regarding forgery of electronic records which qualify as supposed equivalents to physical documents under the amended Indian Evidence Act, 1872, also this is replaced by Bharatiya Sakshya Adhiniyam, 2023.

The enforcement is supported by the institutional mechanism. The National Cybercrime Reporting Portal (cybercrime.gov.in), forwarding the complaints into the form of the FIR that is to be considered at the state level. And Specialized Cyber Cells, which are operated by the police. The Indian Cyber Crime Coordination Centre (I4C)[19] which is a body under the Ministry of Home Affairs that coordinates the inter-agency synergy.

However, this framework also reveals flaws. There are no *sui generis* rules and obligations to identify deepfakes or identity theft on the basis of AI. And the ratification of the international treaties is not mandatory, which hinders extradition and exchange of evidences[20]. Bharatiya Nyaya Sanhita, 2023, strives to transform penal legislations and introduce cyber aspects into them, although this is still in its early stages. In this way, the legal architecture is sound theoretically, but troubled in practice because of the ambiguities of interpretation and law enforcement gaps.

C. Nature of Identity Theft in Cybercrime

Identity theft in terms of Cyber related offences, very simple when someone steals the personal details of an individual without his/her knowledge, e.g. the name, bank details, social media accounts, passwords, creating fake social media accounts, etc. This is a criminal act by nature, which is carried out with the help of stealing the personal data for any illegal purpose like extorting money or blackmailing to extract money, etc. or pretending to be someone, which is not in reality, also known as impersonation. This offence is not monolithic, but it encompasses a spectrum of methodologies, each exploiting digital vulnerabilities. Identity theft becomes an offence, the moment when the perpetrator impersonates for any illicit means which is neither legal nor justifiable.

An example of a typical modality is phishing, in a pretextual messages is send through email, that they design to appear as legitimate institutions, prompting their recipients to reveal their credentials. Ransomware, on the other hand, encrypts data of the victim, requiring ransom in the key to the decryption, and usually using stolen identities as a form of extortion. Wholesale identity commodification of the

[15] Information Technology Act 2000, s 66D (India).
[16] Council of Europe, *Convention on Cybercrime (Budapest Convention)* (opened for signature 23 November 2001).
[17] Supra n 12
[18] Supra n 13
[19] Ministry of Home Affairs, Government of India, *Indian Cyber Crime Coordination Centre (I4C)* (MHA, New Delhi).
[20] Gulati, 'Bharatiya Nyaya Sanhita 2023: Relevance and Challenges' (2025) 3(2) Brazilian Journal of Law, Technology and Innovation 72

dark web occurs through data breaches, as the notorious Aadhaar breaches[21].

In India, the socio-economic factors increase vulnerability. The rapid rise in trend of online purchases and online payments, in conjunction with an uneven digital nature, make populations susceptible. This is supported by statistics that 52 percent of victims do not even know preventative capabilities with financial losses amounting to billions per year. The recent scam is known as "Digital Arrests" in which the fraudsters pretend to be the law enforcement officer or authority like CBI, ED, or Narcotics Control Officer, etc., over the video call on either whatsapp or any other social media app, directly pressuring the victims into handing over their money under the guise of identity-related inquiries.

The consequences of these offences have very deep effect on the victims due to financial loss, loss of credit and psychological trauma, which imprints scar on the mind of the victim. By implication, identity theft destroys the trust on digital infrastructures and exhausts the digitization of the economy[22]. It's transnational effect is that the perpetrators who are generally hiding in the foreign country and remote locations, which makes it difficult for the investigating authorities to identify and locate their actual place of residence, as the case is Identity theft. On the contrary to what are the legislations present in the public domain, in order to counter this offence of Identity theft or impersonation, effective measures shall be introduced, necessary support from technical and legal authorities shall be taken.

D. Challenges in Law Enforcement

The police departments that address the problem of identity theft in cybercrime get into an entire path of challenges that make it difficult to present strong cases and even prevent some. Central to it is a blaring skills deficit, which is that too many of the officers are not trained in digital forensics. Thus it seems like a game of shadow-chasing to piece together evidence out of temporary items such as IP address, or encrypted chat logs. Even in cases where they are successful in seizing that evidence, it is still a nightmare to have it admitted in court of law due to the presence of Section 65B of the Evidence Act[23] which does not permit the admissibility of the evidence without a proper certificate to be produced. In fact, the step is too frequently overlooked due to the lack of familiarity with the rules.

Then there is the jurisdiction nightmare of no borders. These are crimes that cross national borders within seconds and this means that investigators have to call on mutual legal assistance treaties to assist in extradition or data sharing. However, those processes are dragged interminably, and even in India, at home, things are at least even worse, there is no standard of consistency in the tech arrangement and know-how there, and there are no uniform guidelines that would bind things together. The victims are not contributing to the figures either, due to shyness, mistrust that the police can do anything or just sheer fear make most of them remain silent. These figures speak volumes, since 2019 the cybercrime portal has registered more than 3,17, 000 complaints, but only 5,771 real FIRs were registered[24]. VPNs and the Tor network assist criminals to evade detection because they become hard to track. Top of this, police stations in most cases do not have good cyber labs, sufficient funds or even simple equipment of real time tracking. And as you think you are catching up, new challenges arise such as AI-based deepfakes and run ahead of laws on the books.

[21] Re-security, 'PII Belonging to Indian Citizens Including Their Aadhaar IDs Offered for Sale on the Dark Web', Published on 31st October, 2023.

[22] Press Information Bureau, 'Digital Arrest Scam' (10 December 2024) https://www.pib.gov.in/PressReleasePage.aspx?PRID=2082761; Last Visited on, 31st January 2026.

[23] Bharatiya Sakshya Adhiniyam 2023, s 63.

[24] Ministry of Home Affairs, National Cyber Crime Reporting Portal; https://www.pib.gov.in/pressreleasepage.aspx?prid=1703509&reg=3&lang=2 ; Last Visited on 22nd January, 2026.

All this contributes to pathetic conviction rates and the feeling that crooks are free to conduct themselves with complete impunity. This will never be fixed with half-measures, but it must be actually invested in training, more intelligent legislations that adapt with the technology, and more collaborative efforts between the law enforcement and the tech firms and the community.

Conflict of cross-border data sovereignty: In addition to the sluggish treaties, several states (believe China or even Europe) have turned to strict data localisation regulations that prevent rapid sharing even with treaties in place. You might include a brief case study about a real Indian identity-theft investigation that hit a dead-end after being denied access by foreign servers- it would underscore how the geopolitics has become stronger than technical obstacles and would give your international section the sense of up-to-date and multi-dimensional.

Insider threats and fraud within cyber units: There is increasing evidence of insider leakages or bribes within a cyberspace unit of a police force, despite most having established dedicated cyberspace units. Talking about how poor payments and lax vetting allow insiders to sell stolen data on the dark web would provide a gritty, underserved angle that demonstrates that it is not merely lack of resources but outright sabotage.

AI forensics arms race and obsolescence: AI has introduced a biggest problem that is going to challenge the future of cyber laws, due to absence of an offender. AI forensics is emerging concept which is responsible for the authenticity of the reports for the videos and photographs produced in the court of law as an evidence.

Re-victimisation as a system victim: Often those who do report face the consequences of being questioned again and again, or information leaked to the outside world after being reported, or a years long delayed refund. Relating this to under-reporting with a glance at the current trends in NCRB.

Even the Small businesses are affected economically: Identity theft is not only associated with individual victims SMEs lose lakhs of money by conducting transactions fraudulently without insurance.

E. Landmark Supreme Court Cases

The Supreme Court has not been delivering out the decisions that have smacked identity theft directly in the face in cases of cybercrime. But the few large cases it has handed down have silently marked the boundaries in which law enforcement, prosecutors and courts address cybercrime or digital crime. These decisions are more of banisters, not only secure the fundamental rights but also put the system on its toes to treat digital evidence and privacy with greater caution. This was the actual substance of what each of them reduced itself to, without the legalese:

In *Shreya Singhal v. Union of India (2015)*[25], A group of petitions against Section 66A of the IT Act, 2000 that authorized cops to arrest individuals who post anything online considered grossly offensive or annoying. The main issue was the absurd imprecision of law due to which any person could be arrested on the basis of a sarcastic tweet or a meme if posted on social media. The Court declared the whole section unconstitutional on the ground that it infringed the right to free speech, which was contained in Article 19(1)(a), and could not be justified by the provision on reasonable restrictions in Article 19(2). The ruling in the case was, Section 66A is dead forever. It also slightly changed the medium rules such that platforms such as facebook (now meta) or twitter(Now X) do not have to censor themselves. The real life lesson to identity theft or impersonation cases? Officers are not able to merely plaster a random set of charges on the fact that someone was able to make a fake profile, but there must be actual incitement to violence or severe injury and not just feelings.

[25] (2015) 5 SCC 1

Following next case of *Justice K.S. Puttaswamy (Retd.). v. Union of India (2017)*[26], the well-known nine-judge bench ruling that ended a controversial argument. The Court was triggered by the Aadhaar scheme to state that the right to privacy was a fundamental right entrenched in Article 21 which talks about 'right to life and personal liberty'. They subdivided it into three categories, as follows, informational privacy, bodily privacy and decisional privacy. In the case of identity theft, this is of critical concern since it implies that the state must defend the personal information of people in a proactive manner, leaking or stealing the personal information of a person is no longer a simple IT Act offence, but a direct strike against the constitutional right. Verdict made Privacy win. The ruling opened the door to the current state of the Personal Data Protection law and compels the courts to exercise the utmost level of scrutiny whenever the government or any other party desires to tamper with the data of a person.

Then there is *Anvar P.V. v. P.K. Basheer (2014)*[27], where the main concern was the way in which the court actually using digital evidence in a trial. Some CDs and videos which were not certified had been used by Anvar to challenge an election result. The Supreme Court reversed a previous perplexing decision and established the simple rule that 'any electronic evidence whether emails, WhatsApp messages, CCTV video, logs, etc. presented as secondary evidence should be accompanied by an adequate certificate attested by Section 65B of the Evidence Act. The witness cannot simply put an oath on the fact that the certificate must check certain boxes regarding the way the data was created and stored. It was held that the conviction based on the uncertified evidence was dismissed and Anvar was denied the chance of appeal. This one narrowed the cybercrime prosecutions, in a great way whereby police and labs are now required to do their electronic paperwork or the entire case may fall apart.

Lastly, in the *State of Tamil Nadu v. Suhas Katti (2004)*[28], This was not a Supreme Court case. A magistrate in Chennai (which was later upheld by the high court level) decided it. Suhas, a former colleague, used pseudonymous email IDs to send obscene messages to a female in the public Yahoo groups in order to harass her. Not only it was the first Indian to be found guilty under the newly-minted IT Act, but he was very much guilty under Section 67 (publication of obscene material by electronic means) as well as Sections 469 and 509 of the IPC of forgery and insulting the modesty of a woman. He received two-year imprisonment and fine as well. This case was never heard or explicitly affirmed by the Supreme Court itself, but its concepts of impersonating people by using fake identities to harass them continue to be, as it were, pivotal when courts decide how to treat the concept of impersonating someone online.

Collectively, these decisions indicate that the courts are attempting to keep up with the times, safeguarding free speech and privacy on one hand and demanding that digital evidence must be beyond the shadow of a doubt on the other. They also reveal the gaps, however, no blueprint of pure identity theft cases directly by the Supreme Court yet.

F. Recommendations

There exists a specific legislation to deal with the offences related to cyber. It lacks the will and the machinery that would make this work on the ground that means it lacks the proper implementation. These are not high-end theoretical suggestions, but rather low end with high impact measures that can be implemented nationwide to curb the offence of identity theft within two and three years. The government, the police and the business sector should take identity theft as a national crisis as it has become. To begin with, digital forensics training should be mandatory for each officer. All the officers in a cyber cell, including constable to higher officials, must pass a certified course annually that is conducted by both

[26] AIR 2017 SC 4161
[27] 2014 (10) SCC 473
[28] CC No. 4680 of 2004

the National Forensic Sciences University and the private cybersecurity trainers such as CERT-IN. Currently, the majority of officers continue to use tools of 2015. The fix to the skills deficit overnight would be to hold annual refreshers which would be much cheaper than establishing new labs everywhere. Second, revise deepfake evidence regulations. In Anvar P.V. (2014) the hon'ble apex court provides a fairly straightforward roadmap of sec. 65B, but it could not suspect AI-generated videos or voice clones. All that is needed is an amendment to the Bharatiya Sakshya Adhiniyam, 2023, any video or audio evidence should include a compulsory "authenticity hash" authorised with the help of government-certified detection software. Police labs shall be provided the software free of cost, courts receive a one-page checklist in place of the month-long expert wars. These changes alone would prevent the shredding of digital evidence by the defence attorneys on ground of technicalities.

Third, resolve the troublesome jurisdiction headache through clever diplomacy. India must lastly ratify the Budapest Convention on Cybercrime and, what is more crucial, sign bilateral data-sharing agreements on fast-track basis with the US, UK, Singapore and the UAE (the four leading hiding spots of Indian fraudsters). Meanwhile, establish a 72-hour, within the Ministry of Home Affairs, "cyber extradition desk". A single officer who is on track to make requests the same day that a complaint is made would reduce the current six-to-eighteen-month lag time to weeks.

Fourth, no second time victimizing. Each district is supposed to have a small "Cyber Victim Support Cell" within the local police headquarters, which shall include two counsellors, one financial advisor and a direct hotline to the bank of the victim. The bank is obliged to freeze suspicious transactions and provide provisional credit within 48 hours after a complaint has been made. A small cyber insurance pool, which is financed by a 0.1 percent tax on online transactions, will allow the cost to be recouped. This single action would radically raise the reporting rates and provide average people with the hope that the system does work.

Fifth, invite the private sector to the room, not only as complainants. Already, banks, telecom companies and large technological platforms receive frauds in live mode. Ensure that they make it a requirement to feed anonymised alerts to the I4C dashboard immediately a suspicious login or a video call claiming to be a digital arrest is detected. In exchange, have them enjoy limited immunity as provided by section 79 of the IT Act in case they disseminate data in good faith. The privacy test of Justice Puttaswamy case is met since the information remains encrypted and purpose limited.

Sixth, guard the guardians. Internal audit protocols have to be conducted quarterly by each cyber cell they should have a whistle-blower line that goes directly to the state DGP or Chief secretary of the state. Poor pay and poor vetting has made some units leak factories. Special allowance increment and impromptu audits would seal the so-called insider threat that no one is aware of in public.

Seven, and possibly most, look at small businesses as victims, as well. An easy one page cyber insurance policy needs to be offered by India post and common service centres with the claims being settled within 15 days. The vast majority of SMEs dissipate all their money in a single UPI fraud and go out of business. Providing them with a safety net will save jobs and retain the digital economy.

These measures do not depend on the creation of a new statute after every half-year. They require some coordination, small budgets and political priority, which is precisely what the Digital India mission was expected to provide.

G. Conclusion

To sum up, identity theft in India is not a technology issue any longer, it is an issue of trust. We are building a wall around our digital future and another brick falls out of it every time a fake CBI officer steals the life

savings of a retired teacher on WhatsApp video call or the Aadhaar of a college student is sold on the dark web. We have the basis in the IT Act, the Bharatiya Nyaya Sanhita and in the decisions of the Supreme Court in Shreya Singhal, Puttaswamy and Anvar where the court has very well elucidated that how and what shall be done to tackle with these problems. The only thing lacking is the implementation bridge between paper and practice. In the event, that we implement these seven practical solutions, namely, improved training, AI-ready evidence regulations, more prompt international assistance, actual victim support, industry alerts, clean cyber cells and protection of smaller businesses, we would be able to change the existing culture of impunity into a culture of deterrence. More to the point, it is possible to ensure that ordinary Indians feel secure enough to continue to take part in the digital economy that is expected to take the next 500 million out of poverty. The choice is simple. Either we shall be engaged in debating about the pros and cons of the digital India Scheme, or we can have a proper implementation mechanism to protect our identity.

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STATE-SPONSORED TERRORISM AND ITS IMPACT ON REGIONAL STABILITY

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Abstract

State-sponsored terrorism has emerged as a formidable challenge to international peace, legal order, and regional stability—particularly in geopolitically sensitive areas such as South Asia. Unlike conventional forms of terrorism, where non-state actors operate autonomously, state-sponsored terrorism involves direct or indirect support from sovereign governments, often under the veil of plausible deniability. This research explores the legal, strategic, and geopolitical dimensions of state-sponsored terrorism, with a focus on the India–Pakistan conflict, where India alleges repeated use of terrorism by Pakistan as a tool of asymmetric warfare. The paper examines international legal instruments, including the International Law Commission's Draft Articles on State Responsibility, relevant UN resolutions, and the long-pending Comprehensive Convention on International Terrorism (CCIT), highlighting the definitional, jurisdictional, and enforcement challenges in prosecuting states that sponsor terrorism. It further analyses the regional consequences of such sponsorship—ranging from diplomatic breakdowns and economic losses to radicalisation and the paralysis of regional cooperation mechanisms like SAARC. The study concludes that addressing state-sponsored terrorism requires a coordinated international legal response, including the adoption of binding conventions, the reform of international tribunals, and the depoliticisation of sanctions and accountability mechanisms.

Keywords: State-sponsored terrorism; international law; regional stability; South Asia; India–Pakistan conflict; cross-border terrorism; state responsibility; UN resolutions; CCIT; plausible deniability; SAARC; asymmetric warfare; legal accountability.

1. Introduction

Terrorism, as a global phenomenon, has persistently challenged the primacy of international law, state sovereignty, and human security. However, an even more insidious form of this threat emerges when terrorism is not simply the act of non-state actors, but when sovereign states themselves support, finance, or facilitate terrorist activities to pursue strategic goals. This practice—commonly referred to as state-sponsored terrorism—blurs the lines between conventional warfare and asymmetric aggression, creating an environment of persistent instability, particularly in already fragile regions.[1] The term "state-sponsored terrorism" encompasses a wide spectrum of state conduct, from providing sanctuary and training grounds for terrorist groups, to supplying intelligence, arms, and financial support.[2] Such practices are often hidden behind a veil of plausible deniability, where states use proxy actors to advance political objectives without overt engagement.[3] The result is a complex web of accountability evasion, where attribution is difficult and international legal mechanisms are often impotent in enforcing consequences.[4] State-sponsored terrorism has been a recurring feature of Cold War geopolitics, where both superpowers occasionally used militant proxies to influence conflicts in Asia, Africa, and Latin America.[5] However, in the post-9/11 world, the security paradigm has shifted significantly. The

[1] M.L. Sondhi, *Terrorism and Political Violence: A Sourcebook* (1st edn, Har-Anand Publications 2000) 114.
[2] Daniel Byman, *Deadly Connections: States That Sponsor Terrorism* (Cambridge University Press 2005) 11.
[3] Bruce Hoffman, *Inside Terrorism* (Columbia University Press 2006) 210.
[4] International Law Commission, *Draft Articles on Responsibility of States for Internationally Wrongful Acts*, UNGA Res 56/83, 2001.
[5] Paul R. Pillar, 'Terrorism and U.S. Foreign Policy' (Brookings Institution Press 2001) 62.

growing nexus between radical ideology, transnational terrorism, and state complicity has emerged as a critical threat to regional and global stability.[6] The 9/11 Commission Report observed that "state sponsorship of terrorism presents a serious threat because it increases the capacity and reach of terrorist groups in dangerous ways."[7] Nowhere is this phenomenon more evident than in South Asia, particularly in the case of India and Pakistan. India has consistently accused Pakistan of supporting cross-border terrorism through non-state actors operating in Jammu & Kashmir and other regions.[8] These allegations are supported by international assessments, including those by the Financial Action Task Force (FATF), which placed Pakistan on its "grey list" for its failure to adequately combat terrorism financing.[9] This form of covert warfare not only exacerbates bilateral tensions but also undermines regional stability by perpetuating a cycle of violence, retaliation, and diplomatic deadlock. For countries like India, state-sponsored terrorism poses a unique legal and strategic challenge, as traditional modes of conflict resolution and deterrence are ineffective against an adversary operating through non-state proxies.[10] The absence of a universal definition of terrorism, let alone state-sponsored terrorism, in international law compounds the problem. Despite numerous UN resolutions and conventions aimed at countering terrorism, there remains no legally binding international convention that comprehensively addresses the phenomenon of state-sponsored terrorism or provides a robust enforcement mechanism.[11] India's long-standing advocacy for a Comprehensive Convention on International Terrorism (CCIT) underlines the critical gap in the international legal framework.[12]

This paper seeks to explore the legal, strategic, and geopolitical dimensions of state-sponsored terrorism, with a specific focus on its impact on regional stability. It analyses historical and contemporary examples, legal doctrines on state responsibility, and proposes reforms to address the lacunae in international legal instruments. Through the lens of South Asia, particularly the India-Pakistan conflict, this research demonstrates how state complicity in terrorism serves as both a foreign policy tool and a destabilizing force, undermining regional peace, economic development, and legal accountability.

2. Defining State-Sponsored Terrorism

Despite the widespread use of the term "state-sponsored terrorism" in policy discourse and strategic analysis, there is no universally accepted legal definition under international law. This definitional ambiguity arises from both political sensitivities and the complexity of distinguishing between direct and indirect state involvement in terrorist acts. Nevertheless, the concept generally refers to a situation where a sovereign state deliberately supports, finances, harbours, trains, or equips non-state actors who engage in acts of terrorism—often against other states or civilian populations.[13] According to Daniel Byman, state-sponsored terrorism involves the use of terrorism by states as a tool of foreign policy, where non-state proxies are employed to achieve strategic objectives while

[6] Rohan Gunaratna, *Inside Al Qaeda: Global Network of Terror* (Berkley Publishing 2002) 91.
[7] National Commission on Terrorist Attacks Upon the United States, *The 9/11 Commission Report* (US Government Printing Office 2004) 128.
[8] Ministry of External Affairs (India), 'Dossier on Mumbai Attacks' (2009), available at: https://mea.gov.in/mumbaiattack.htm
[9] Financial Action Task Force (FATF), 'Jurisdictions under Increased Monitoring', available at: https://www.fatf-gafi.org/en/countries/black-and-grey-lists.html
[10] K.P. Vijayalakshmi, 'Cross-Border Terrorism in South Asia: Challenges and Responses' (2018) 43(1) *Strategic Analysis* 37.
[11] UN General Assembly, *Measures to Eliminate International Terrorism*, A/RES/51/210 (17 December 1996).
[12] Ministry of External Affairs (India), 'India's Proposal for Comprehensive Convention on International Terrorism (CCIT)', available at: https://mea.gov.in/ccit.htm
[13] Paul Wilkinson, *Terrorism Versus Democracy: The Liberal State Response* (3rd edn, Routledge 2011) 25.

maintaining a façade of deniability.[14] This makes state-sponsored terrorism fundamentally different from other forms of state violence, such as repression or war crimes, in that it uses covert support to indirectly commit or facilitate acts of terrorism.[15] The United States Department of State, one of the few official bodies that regularly designates "State Sponsors of Terrorism," defines the term as the "repeated provision of support for acts of international terrorism" by a government.[16] Under U.S. law, such designation triggers a host of economic sanctions, arms embargoes, and restrictions on foreign assistance. However, these designations are often influenced by geopolitical considerations, leading to criticism that they reflect strategic interests more than objective criteria.[17] From a legal standpoint, the issue is further complicated by the lack of consensus in international forums such as the United Nations. The United Nations General Assembly Resolution 49/60 (1994) defines terrorism in broad terms, but does not clearly extend this to acts sponsored or facilitated by states.[18] Efforts to draft a Comprehensive Convention on International Terrorism (CCIT), initiated by India in 1996, have stalled largely due to disagreements over including state terrorism and national liberation movements within the ambit of terrorism.[19] In academic and legal discourse, scholars differentiate between state terrorism and state-sponsored terrorism. While the former refers to acts of terror committed directly by state agents against its own or foreign populations, the latter refers to indirect support to non-state actors who carry out such acts.[20] The International Law Commission's Draft Articles on Responsibility of States for Internationally Wrongful Acts (2001) provide a useful framework to establish attribution, noting that a state may be held responsible when it "directs or controls" the conduct of non-state actors.[21] However, proving such direction or control is extremely difficult in practice, especially in conflict zones where multiple actors operate with overlapping interests.

India's domestic legal regime, though not expressly using the term "state-sponsored terrorism," recognizes the threat of cross-border terrorism, particularly in Jammu and Kashmir, where non-state actors are alleged to be trained, armed, and financed by Pakistan's military and intelligence agencies.[22] The Unlawful Activities (Prevention) Act, 1967 (UAPA) criminalises support to terrorist organisations, but does not currently extend to holding foreign state actors accountable.[23]

Despite the definitional challenges, several common elements emerge in most interpretations of state-sponsored terrorism:

- State involvement through material, logistical, or ideological support;
- Use of non-state actors to maintain plausible deniability;
- Strategic objective pursued by the sponsoring state;

[14] Daniel Byman, *Deadly Connections: States That Sponsor Terrorism* (Cambridge University Press 2005) 4–6.
[15] Bruce Hoffman, *Inside Terrorism* (Columbia University Press 2006) 193.
[16] U.S. Department of State, *State Sponsors of Terrorism*, available at: https://www.state.gov/state-sponsors-of-terrorism/
[17] Audrey Kurth Cronin, *How Terrorism Ends: Understanding the Decline and Demise of Terrorist Campaigns* (Princeton University Press 2009) 216.
[18] UNGA Res 49/60, *Measures to Eliminate International Terrorism*, A/RES/49/60 (9 December 1994).
[19] Ministry of External Affairs (India), 'India's Proposal for Comprehensive Convention on International Terrorism (CCIT)', https://mea.gov.in/ccit.htm
[20] Alexander Spencer, *The Politics of Subversion: State-Sponsored Terrorism in International Politics* (Palgrave Macmillan 2006) 17.
[21] International Law Commission, *Draft Articles on Responsibility of States for Internationally Wrongful Acts*, 2001, Article 8.
[22] Ministry of External Affairs (India), 'Dossier on Pakistan's Involvement in Terrorism', available at: https://mea.gov.in/mumbaiattack.htm
[23] The Unlawful Activities (Prevention) Act, 1967 (India), Sections 15–20.

- Violation of international legal norms, especially the principle of non-intervention.

This lack of definitional clarity and accountability mechanisms under international law continues to be exploited by states who see in terrorism a cost-effective tool of asymmetric warfare, particularly against stronger or conventionally superior adversaries.[24] This makes state-sponsored terrorism not just a security issue, but also a critical legal blind spot in contemporary international law, one that has significant implications for regional peace and the rule of law.

3. Legal Framework under International Law

The international legal system has long struggled to develop an effective and enforceable framework for addressing state-sponsored terrorism, owing primarily to the absence of consensus on the definition of terrorism, the principle of sovereign equality, and the politicization of enforcement mechanisms. While there are multiple international conventions that prohibit specific terrorist acts, there is no single, comprehensive treaty that explicitly and uniformly addresses the legal accountability of states that sponsor terrorism. This lacuna has created a significant challenge in holding states accountable when they use terrorism as a tool of foreign policy.

3.1 Fragmented Legal Instruments on Terrorism

Currently, the international legal regime against terrorism consists of sectoral treaties addressing specific types of terrorist acts such as hijacking, hostage-taking, and financing. These include:

- The International Convention for the Suppression of the Financing of Terrorism, 1999, which criminalizes the wilful provision or collection of funds for terrorism, regardless of whether the terrorist act occurs.[25]
- The International Convention Against the Taking of Hostages, 1979, and the Convention on the Suppression of Terrorist Bombings, 1997, which outlaw specific acts but do not address state complicity.[26]
-

These instruments reflect a piecemeal approach that focuses on terrorist tactics rather than state behavior. Moreover, enforcement is often left to individual states, leading to inconsistent application and political selectivity.

3.2 United Nations Resolutions and Soft Law

In the aftermath of the 9/11 attacks, the United Nations Security Council (UNSC) adopted Resolution 1373 (2001) under Chapter VII of the UN Charter. This resolution obligates all member states to refrain from supporting terrorism, criminalize the financing and planning of terrorist acts, and deny safe havens to terrorists.[28] However, the resolution remains silent on state-sponsored terrorism, and its enforcement is overseen by the Counter-Terrorism Committee (CTC), which lacks judicial powers or binding adjudicatory mechanisms.[29] Similarly, Resolution 1566 (2004) sought to define terrorism in general terms and hinted at the responsibility of states, but it too failed to create a binding legal mechanism to hold states accountable for supporting terrorism.[30] This soft-law approach lacks the coercive authority needed

[24] A.P. Schmid (ed), *The Routledge Handbook of Terrorism Research* (Routledge 2011) 108.
[25] International Convention for the Suppression of the Financing of Terrorism, 1999, UN Doc A/RES/54/109.
[26] International Convention Against the Taking of Hostages, 1979, UN Doc A/RES/34/146; Convention on the Suppression of Terrorist Bombings, 1997, UN Doc A/RES/52/164.
[27] Ben Saul, *Defining Terrorism in International Law* (Oxford University Press 2006) 155–157.
[28] UN Security Council Resolution 1373 (2001), S/RES/1373 (28 September 2001).
[29] Eric Rosand, 'The UN-Led Multilateral Institutional Response to Jihadist Terrorism: Is a Global Counterterrorism Body Needed?' (2010) 4 *Journal of International Law and Politics* 437.
[30] UN Security Council Resolution 1566 (2004), S/RES/1566 (8 October 2004).

to address flagrant violations by states that provide material or ideological support to terrorist organisations.

3.3 State Responsibility and Attribution under International Law

A more promising framework for addressing state-sponsored terrorism lies in the International Law Commission's (ILC) Draft Articles on Responsibility of States for Internationally Wrongful Acts (2001). These Articles codify customary international law and set out rules for when a state can be held responsible for the conduct of non-state actors. Specifically:

- Article 8 provides that the conduct of a person or group shall be considered an act of a state if it is acting "on the instructions of, or under the direction or control of, that state."[31]
- Article 11 states that even if a state did not initially direct the conduct, it may still be responsible if it subsequently acknowledges and adopts that conduct as its own.[32]
-

These provisions offer a conceptual basis for attributing terrorist acts to sponsoring states, but their practical implementation is fraught with evidentiary hurdles. Establishing a state's direction or control over a terrorist group requires high evidentiary thresholds, including intelligence, intercepted communications, or documented material support.[33] In most cases, such evidence is either classified or politically sensitive, limiting the ability of international institutions or victim states to pursue legal remedies.

3.4 The Role of the International Court of Justice (ICJ)

The ICJ has played a limited but notable role in clarifying the rules around state responsibility in the context of terrorism. In the landmark case of Nicaragua v. United States (1986), the Court held that the United States violated international law by supporting the Contras in Nicaragua, but it declined to classify this support as terrorism.[34] Importantly, the Court held that effective control must be established for a state to be held internationally responsible for the acts of non-state actors.[35] More recently, in the Bosnia Genocide Case (2007), the ICJ found that Serbia failed to prevent genocide committed by Bosnian Serb forces but was not directly responsible, again due to lack of proof of effective control.[36] These judgments illustrate that while the legal doctrine exists, judicial bodies have been conservative in attributing responsibility to states for the actions of non-state proxies.

3.5 The Comprehensive Convention on International Terrorism (CCIT)

India's longstanding proposal for a Comprehensive Convention on International Terrorism (CCIT) aims to fill these normative and procedural gaps. The draft convention seeks to define terrorism in broad terms, criminalize all forms of support—whether state or non-state—and create an enforcement mechanism akin to other transnational crime treaties.[37] However, political disagreements—particularly over the inclusion of state military actions and national liberation movements—have stalled its adoption at the United Nations since 1996.[38] Despite these setbacks, the CCIT remains one of the most comprehensive

[31] International Law Commission, *Draft Articles on Responsibility of States for Internationally Wrongful Acts*, 2001, Article 8.
[32] Ibid, Article 11.
[33] Antonio Cassese, *International Law* (2nd edn, Oxford University Press 2005) 244–246.
[34] *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States)*, ICJ Rep 1986, p. 14.
[35] Ibid, para 115.
[36] *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, ICJ Rep 2007, p. 43.
[37] Ministry of External Affairs (India), 'Comprehensive Convention on International Terrorism (CCIT)', https://mea.gov.in/ccit.htm
[38] Dapo Akande and Ben Saul, 'The UN and Counter-Terrorism: Global Hegemon or Compliance Monitor?' in Ana María Salinas de Frías et al (eds), *Counter-Terrorism: International Law and Practice* (Oxford University Press 2012) 40–42.

legal proposals to explicitly include state-sponsored terrorism within the ambit of international criminal law. If adopted, it would create binding obligations on states to refrain from supporting terrorism and establish jurisdiction for international prosecution.

4. State-Sponsored Terrorism in South Asia: The India-Pakistan Paradigm

South Asia has been one of the most volatile regions in the world, and a significant factor contributing to its instability is the use of terrorism as an instrument of state policy, particularly in the enduring conflict between India and Pakistan. The issue of state-sponsored terrorism is at the core of bilateral tensions, with India consistently alleging that Pakistan has supported, trained, and deployed terrorist groups to carry out cross-border attacks, especially in Jammu & Kashmir and major Indian cities.[39] These allegations are not only rooted in domestic security assessments but have also been corroborated by international intelligence agencies and counter-terrorism watchdogs.[40]

4.1 Historical Background of State Involvement

The use of proxy warfare and militant groups in India-Pakistan relations can be traced back to the late 1980s, when an armed insurgency erupted in Jammu and Kashmir. While the initial phases of the insurgency were driven by domestic discontent, India asserts that Pakistan's Inter-Services Intelligence (ISI) quickly infiltrated the movement by providing support to groups like Hizbul Mujahideen, Lashkar-e-Taiba (LeT), and Jaish-e-Mohammed (JeM).[41]

One of the earliest and most telling indicators of state sponsorship was the Kargil conflict of 1999, where Pakistani army regulars, along with infiltrators trained by Pakistani establishments, occupied Indian territory in violation of the Line of Control (LoC).[42] The Indian government's official White Paper on the Kargil conflict argued that the operation was a calculated act of aggression supported at the highest levels of the Pakistani state.[43]

4.2 Signature Terror Attacks and Evidence of State Support

(a) 2001 Indian Parliament Attack

On 13 December 2001, terrorists affiliated with JeM and LeT stormed the Indian Parliament in New Delhi.[44] Indian investigations linked the attackers to groups based in Pakistan, with telephonic intercepts and financial trails pointing toward handlers across the border.[45] The gravity of the attack led India to mobilize its military under Operation Parakram, bringing the two nuclear-armed neighbours to the brink of war.

(b) 2008 Mumbai Attacks

The 26/11 Mumbai attacks represent the most high-profile instance of state-linked terrorism in South Asia. A group of ten LeT operatives, trained in Pakistan, carried out coordinated shootings and bombings that killed over 170 people and injured hundreds.[46] Indian and international investigations, including those by the FBI and Interpol, found that the attackers received training from Pakistani military camps and were in constant communication with handlers in Karachi during the attacks.[47]

[39] Ministry of External Affairs (India), 'Dossier on Cross-Border Terrorism' (2016), available at: https://mea.gov.in

[40] Adrian Levy and Cathy Scott-Clark, *The Exile: The Flight of Osama bin Laden* (Bloomsbury 2017) 119.

[41] Wilson John, *The Islamist Terrorism in South Asia* (Observer Research Foundation 2007) 66–68.

[42] Government of India, *White Paper on Kargil*, Ministry of Defence (1999).

[43] Ibid.

[44] "Who Were Behind Parliament Attack?", *The Hindu* (14 Dec 2016), available at: https://www.thehindu.com

[45] Ministry of Home Affairs, 'Investigation Report on 2001 Parliament Attack', Government of India (2002).

[46] Jason Burke, *The 26/11 Mumbai Attacks: The Shifting Global Response*, in *The New Threat: The Past, Present, and Future of Islamic Militancy* (Vintage 2016) 224–227.

[47] FBI, 'Summary Report on Mumbai Attacks' (2009), available via U.S. Department of Justice FOIA Archive.

The captured terrorist, Ajmal Kasab, and the confession of David Coleman Headley, a Pakistani-American involved in reconnaissance for the attacks, further implicated Pakistan's security establishment in planning and executing the operation.[48] The UN Security Council Sanctions Committee later designated LeT and its leader Hafiz Saeed as terrorist entities, but Pakistan failed to take effective action.[49]

(c) Pulwama Attack (2019)

On 14 February 2019, a suicide bomber affiliated with JeM killed 40 Indian paramilitary personnel in Pulwama, Jammu & Kashmir.[50] Indian intelligence traced the origins of the attack to JeM operatives based in Pakistan.[51] The incident escalated tensions, leading to India's Balakot airstrikes—marking the first aerial engagement between the two since 1971.[52]

4.3 International Recognition and Diplomatic Efforts

India has presented multiple dossiers to the United Nations and international partners detailing evidence of Pakistan's support to terrorist groups.[53] These dossiers contain intercepted communications, training camp coordinates, financial transaction records, and statements from arrested militants. The Financial Action Task Force (FATF) has taken cognizance of these concerns, placing Pakistan on its "grey list" in 2018 for its failure to act decisively against terror financing and support structures.[54] Although Pakistan was removed from the list in 2022 after partial compliance, FATF acknowledged that Pakistan's track record of addressing terrorism remains inconsistent and politically influenced.[55] Despite such evidence, international action has remained largely muted, constrained by geopolitical alignments and strategic interests. While the United States and France have supported India's claims and helped in designating terror outfits and individuals, other powers, including China, have often used their influence in forums like the UN Security Council to block India's efforts, especially in listing individuals under the 1267 Sanctions Committee.[56]

4.4 Legal Recourse and Limitations

India's efforts to seek legal remedies through international forums have faced structural and normative roadblocks. The International Court of Justice (ICJ) lacks jurisdiction unless both parties consent, and Pakistan has not accepted such jurisdiction in matters related to terrorism. Additionally, the absence of a binding international treaty that criminalises state-sponsored terrorism leaves India without a structured legal pathway to pursue accountability. Moreover, UN Security Council resolutions such as 1373 (2001) impose obligations on states to prevent terrorism, but the lack of enforcement mechanisms renders these largely ineffective when the accused state is non-compliant or politically shielded.

India's proposal for the Comprehensive Convention on International Terrorism (CCIT)—which seeks to include state complicity within its scope—remains stalled due to lack of consensus, particularly on issues

[48] "Headley Confession a Diplomatic Weapon for India", *BBC News* (11 Feb 2010), available at: https://www.bbc.com/news

[49] UN Security Council, '1267 Sanctions List', available at: https://www.un.org/securitycouncil/sanctions/1267

[50] "Timeline: Pulwama Terror Attack and Its Aftermath", *Indian Express* (15 Feb 2020), available at: https://indianexpress.com

[51] Ministry of External Affairs (India), 'Pulwama Dossier to Pakistan', (27 February 2019), available at: https://mea.gov.in

[52] Rahul Roy-Chaudhury, "India's Military Response to Pulwama: Strategic Implications", *IISS Analysis*, March 2019.

[53] MEA India, 'India's Dossiers on Terrorism: Summary Submissions to UN and FATF' (2020), available at: https://mea.gov.in

[54] FATF, 'Jurisdictions Under Increased Monitoring – Pakistan', June 2018 Report, https://www.fatf-gafi.org

[55] FATF, 'Outcomes FATF Plenary, October 2022', https://www.fatf-gafi.org/en/publications/Fatf-general/fatf-plenary-october-2022.html

[56] Ankit Panda, "China Blocks Masood Azhar Listing Again", *The Diplomat* (14 Mar 2019), available at: https://thediplomat.com

involving "freedom movements" and the role of state forces in occupied territories.[57]

5. Regional Impact of State-Sponsored Terrorism

State-sponsored terrorism is not only a bilateral irritant but also a significant destabilising force in regional geopolitics, particularly in volatile regions such as South Asia. When a state provides direct or indirect support to terrorist groups, the consequences extend far beyond immediate security threats. It adversely affects regional cooperation, economic integration, public trust in governance, and conflict resolution mechanisms, thereby perpetuating cycles of instability.

5.1 Erosion of Bilateral and Multilateral Trust

One of the most immediate and damaging impacts of state-sponsored terrorism is the erosion of diplomatic trust and regional cooperation. In the South Asian context, India-Pakistan relations have suffered repeated breakdowns due to terror attacks traceable to groups with alleged ties to Pakistan's security apparatus.[58] High-level dialogues such as the Composite Dialogue Process and Confidence Building Measures (CBMs) have repeatedly collapsed following terrorist incidents such as the 2001 Parliament attack, 2008 Mumbai attacks, and the 2016 Uri attack.[59] Such incidents render diplomacy unsustainable and shift the regional narrative from cooperation to deterrence and militarisation, leaving little room for peaceful dispute resolution.[60] The South Asian Association for Regional Cooperation (SAARC) has also been adversely affected. India has repeatedly boycotted SAARC summits citing Pakistan's continued support to cross-border terrorism, effectively paralysing the regional bloc.[61]

5.2 Cross-Border Spillovers and Regional Instability

State-sponsored terrorism often leads to the internationalisation of internal conflicts, allowing regional insurgencies to spill across borders. This is particularly visible in Kashmir, where terrorist infiltration from Pakistan has sustained armed insurgency and created a protracted low-intensity conflict.[62] Moreover, militant networks supported by states tend to operate across multiple regions, creating transnational security challenges.

The Afghanistan-Pakistan-India triangle further complicates the scenario. Groups allegedly supported by Pakistan such as the Haqqani Network and Lashkar-e-Taiba have operated in both Afghanistan and India, using the region's porous borders to their advantage.[63] This results in a diffused threat environment, where terrorism becomes a shared regional problem but with asymmetric burden sharing—India bearing the brunt while other regional players avoid direct confrontation.[64]

5.3 Radicalisation and Ideological Proliferation

Terrorism supported by state actors is not only military but also ideological in nature, with sponsoring states often tolerating or even encouraging radical religious schools (madrassas) and hate propaganda.[65] These institutions become breeding

[57] Ministry of External Affairs (India), 'India's Proposal for Comprehensive Convention on International Terrorism (CCIT)', available at: https://mea.gov.in/ccit.htm

[58] Ministry of External Affairs (India), 'Cross-Border Terrorism Dossier', (2016), available at: https://mea.gov.in

[59] Shashi Tharoor, *Pax Indica: India and the World of the 21st Century* (Penguin 2012) 142.

[60] Happymon Jacob, *Line on Fire: Ceasefire Violations and India–Pakistan Escalation Dynamics* (Oxford University Press 2019) 44.

[61] Suhasini Haidar, "SAARC in Deep Freeze over Terrorism Issues," *The Hindu* (28 Nov 2018), available at: https://www.thehindu.com

[62] Sumit Ganguly, "Kashmir: Roots of Conflict, Paths to Peace," *Carnegie Endowment for International Peace*, 2003.

[63] Bruce Riedel, "Deadly Embrace: Pakistan, America, and the Future of the Global Jihad" (Brookings Institution Press 2011) 77.

[64] C. Christine Fair, *Fighting to the End: The Pakistan Army's Way of War* (Oxford University Press 2014) 202.

[65] Mariam Abou Zahab and Olivier Roy, *Islamist Networks: The Afghan-Pakistan Connection* (Hurst

grounds for extremist ideologies, leading to the radicalisation of youth and the weakening of moderate civil society voices in the region. Such ideological extremism tends to transcend national boundaries, creating a ripple effect. Radicalised individuals and groups may seek targets not just in the state's immediate adversary but across the region. For instance, Indian, Bangladeshi, Afghan, and even Southeast Asian nationals have been recruited by groups like Lashkar-e-Taiba and Jaish-e-Mohammed.[66]

5.4 Economic Costs and Security-Development Trade-offs

Persistent terrorism in the region has led to a security-development paradox, where states are forced to divert scarce resources from developmental priorities to defence and counter-terrorism operations. In India, border states such as Jammu & Kashmir and Punjab have suffered disproportionately in terms of investment flight, tourism decline, and infrastructure damage due to recurring terror incidents.[67] A 2014 study by the Institute for Conflict Management estimated that India spends over ₹20,000 crore annually on counter-terrorism efforts, which could otherwise be allocated to health, education, or infrastructure.[68] The broader regional impact includes delayed regional infrastructure projects, stunted trade integration, and reduced foreign investment due to the perception of South Asia as an unstable region.[69] Moreover, the loss of human capital—from soldiers to civilians—has created a deep psychological toll on communities. States like Afghanistan, which have been theatres of proxy wars, suffer from persistent refugee flows, internal displacement, and fragile political institutions, all of which are intensified when terrorism is state-enabled.[70]

5.5 Undermining Rule of Law and International Norms

When states support terrorism, they not only violate the sovereignty of other states but also undermine the international legal order. The non-intervention principle, a cornerstone of international law under Article 2(4) of the UN Charter, is compromised.[71] Additionally, the impunity with which some states shield terrorist actors—either by denying involvement or delaying judicial processes—weakens global efforts to enforce accountability and fosters a culture of lawlessness. Furthermore, regional legal instruments remain ineffective. For instance, while SAARC's Regional Convention on Suppression of Terrorism (1987) was one of the earliest regional treaties against terrorism, it lacks provisions on state accountability, and has not been updated to meet contemporary challenges.[72] The continued absence of extradition or mutual legal assistance treaties (MLATs) among South Asian states further prevents legal cooperation in prosecuting terrorism cases.[73]

6. State-Sponsored Terrorism and International Legal Challenges

The phenomenon of state-sponsored terrorism presents one of the most intricate and unresolved legal dilemmas in international law. While the international community has made substantial progress in developing norms to combat terrorism by non-state actors, it has largely failed to create binding and enforceable mechanisms to address state complicity in terrorism. This failure stems from a combination of

2004) 53.

[66] International Crisis Group, "Pakistan: Countering Militancy in PATA," Asia Report No. 242 (2013), available at: https://www.crisisgroup.org

[67] Institute for Defence Studies and Analyses (IDSA), *Terrorism and Economic Losses in India*, Issue Brief (2016).

[68] Institute for Conflict Management, *South Asia Intelligence Review* (Volume 12, No. 24, 2014).

[69] World Bank, *South Asia Economic Focus: Exports Wanted*, Spring 2019 Report, available at: https://www.worldbank.org

[70] United Nations High Commissioner for Refugees (UNHCR), "Afghanistan Emergency Update" (2021), available at: https://www.unhcr.org

[71] Charter of the United Nations, Article 2(4).

[72] SAARC Regional Convention on Suppression of Terrorism (1987), available at: https://saarc-sec.org

[73] Rajdeep Pakanati, "Legal Cooperation in South Asia: A Comparative Analysis," *Indian Journal of International Law* (2017) 57(1), 55–78.

jurisdictional gaps, political paralysis, and the strategic utility of terrorism as a covert tool of foreign policy.[74]

6.1 Attribution and the Problem of "Plausible Deniability"

One of the foremost challenges in prosecuting or sanctioning state sponsors of terrorism lies in establishing attribution. Under the International Law Commission's (ILC) Draft Articles on Responsibility of States for Internationally Wrongful Acts (2001), a state can be held responsible for the acts of non-state actors if it exercises "effective control" over them.[75] This standard was articulated in the Nicaragua v. United States case, where the International Court of Justice (ICJ) held that the U.S. was responsible for supporting the Contras but required "effective control" to attribute specific violations to the state.[76] A similar standard was followed in the Bosnian Genocide Case, where Serbia was not held directly responsible due to the lack of proof of direct command over the Bosnian Serb forces.[77] However, modern terrorism networks, such as Lashkar-e-Taiba or al-Qaeda, often maintain complex, decentralized structures, making it extremely difficult to prove state control to the required threshold. States often exploit this evidentiary gap by offering only indirect or covert support, thereby preserving plausible deniability and escaping legal responsibility.[78]

6.2 Absence of a Universal Definition of Terrorism

The lack of a universally accepted definition of terrorism further undermines the legal foundation for addressing state-sponsored terrorism. While several UN Security Council resolutions, including Resolution 1566 (2004), have attempted to provide working definitions, they remain non-binding and do not directly tackle the issue of state involvement.[79] The definitional ambiguity is most pronounced in the stalemate over the Comprehensive Convention on International Terrorism (CCIT). Proposed by India in 1996, the CCIT seeks to criminalize all forms of terrorism and prevent state support to terrorists.[80] However, disagreements among UN member states—particularly over whether "freedom fighters" or "liberation movements" constitute terrorism—have blocked consensus for over two decades.[81] This lack of consensus results in selective and inconsistent application of counter-terrorism laws, enabling states to justify or shield their support for certain groups under the guise of ideological or political legitimacy.[82]

6.3 Political Paralysis at the United Nations

Another critical legal challenge is the politicization of enforcement mechanisms at the United Nations. The UN Security Council, tasked with maintaining international peace and security under the UN Charter, often fails to act decisively on state-sponsored terrorism due to veto politics. For example, India's repeated efforts to list Pakistan-based individuals such as Masood Azhar under the UN 1267 Sanctions Committee were repeatedly blocked by China, a

[74] Ben Saul, *Terrorism and International Law* (Oxford University Press 2020) 157.
[75] International Law Commission, *Draft Articles on Responsibility of States for Internationally Wrongful Acts* (2001), Article 8.
[76] *Military and Paramilitary Activities in and Against Nicaragua (Nicaragua v. United States)*, ICJ Rep 1986, p. 14.
[77] *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, ICJ Rep 2007, p. 43.
[78] Antonio Cassese, *International Law* (2nd edn, Oxford University Press 2005) 241–243.
[79] UN Security Council Resolution 1566 (2004), S/RES/1566.
[80] Ministry of External Affairs (India), 'India's Proposal for Comprehensive Convention on International Terrorism (CCIT)', https://mea.gov.in/ccit.htm
[81] Dapo Akande and Ben Saul, "The UN and Counter-Terrorism: Global Hegemon or Compliance Monitor?", in Salinas de Frías et al (eds), *Counter-Terrorism: International Law and Practice* (Oxford University Press 2012) 34.
[82] A.P. Schmid (ed), *The Routledge Handbook of Terrorism Research* (Routledge 2011) 198–199.

permanent member of the Security Council.[83] Such obstructionism compromises the credibility of international institutions and encourages state impunity. Moreover, the Security Council has never sanctioned a state under Chapter VII of the UN Charter for sponsoring terrorism, largely due to the subjective and strategic interests of its permanent members.[84] This creates a double standard in global governance, where some states face punitive measures while others enjoy political protection.

6.4 Ineffectiveness of Existing Judicial Mechanisms

Existing international judicial bodies such as the ICJ and the International Criminal Court (ICC) have shown reluctance to address terrorism-related state conduct. The ICJ requires mutual consent of states for jurisdiction, which is unlikely in cases involving adversarial states such as India and Pakistan.[85] Moreover, terrorism is not explicitly listed as a core crime under the Rome Statute of the ICC—unlike genocide, war crimes, or crimes against humanity.[86] Efforts to expand the jurisdiction of the ICC or create a specialised international tribunal on terrorism have been proposed in academic and policy circles but lack adequate political traction.[87] Without a dedicated legal body and clearly codified legal definitions, state accountability remains elusive.

6.5 Exploitation of Asymmetric Legal Standards

State-sponsored terrorism also thrives due to the unequal application of international law. Powerful states have historically supported armed groups abroad (e.g., during the Cold War, in Syria, Libya, or Afghanistan), justifying such conduct as legitimate foreign policy or covert operations.[88] This creates a dangerous precedent of legitimized proxy warfare, undermining the moral and legal authority to hold smaller or rival states accountable for similar conduct. Furthermore, the "Global War on Terror" launched post-9/11 reinforced the view that state interests trump normative principles, with practices such as extraordinary rendition, targeted killings, and covert support to militias being normalized under counter-terrorism justifications.[89] In this context, any attempt to criminalize state sponsorship of terrorism is often seen as selective justice rather than universal application of law.

Conclusion and Recommendations

State-sponsored terrorism remains one of the most insidious threats to international peace and regional stability. As this paper has demonstrated, the deliberate use of non-state actors by sovereign states to achieve strategic objectives through violent means not only destabilizes bilateral relations—as seen in the India–Pakistan paradigm—but also weakens regional institutions, undermines economic development, and erodes the credibility of international law. The legal architecture currently in place, including the International Law Commission's Articles on State Responsibility, various UN Security Council Resolutions, and sectoral anti-terrorism conventions, fails to provide a cohesive, enforceable framework for addressing state complicity in terrorism. Political paralysis at international institutions, especially the United Nations Security Council, and the absence of a universally accepted definition of terrorism have allowed certain states to operate with near impunity under the cover of plausible deniability. In South Asia, Pakistan's sustained support to groups like Lashkar-e-Taiba and Jaish-e-Mohammed has not only fueled decades of violence but has also hampered regional

[83] Ankit Panda, "China Again Blocks UN Ban on Masood Azhar", *The Diplomat*, March 2019, https://thediplomat.com

[84] Kimberly Trapp, *State Responsibility for International Terrorism* (Oxford University Press 2011) 125.

[85] Vienna Convention on the Law of Treaties, 1969, Article 36.

[86] Rome Statute of the International Criminal Court, 1998, Article 5.

[87] Nicholas Rostow, "Terrorism and the Law of War: Trying Terrorists as War Criminals Through Military Commissions", (2002) 39(1) *The Israel Law Review* 39.

[88] Paul R. Pillar, *Terrorism and U.S. Foreign Policy* (Brookings Institution Press 2001) 88–90.

[89] Amnesty International, "United States of America: Rendition and Secret Detention – A Global System of Human Rights Violations," Report No. AMR 51/051/2006.

cooperation through platforms like SAARC, exacerbating mistrust and militarization.

In light of these challenges, several legal and policy measures are urgently required. First, the international community must revive and adopt the Comprehensive Convention on International Terrorism (CCIT) proposed by India, with necessary political compromises to ensure consensus on contentious definitions. Second, the threshold for state attribution in terrorism cases must be recalibrated to include not only effective control but also substantial support and tolerance, thereby preventing sponsors from hiding behind technicalities. Third, the creation of a specialized international tribunal on terrorism, or expanding the jurisdiction of the International Criminal Court to include terrorism, could serve as a deterrent and facilitate legal accountability. Fourth, regional bodies like SAARC must be empowered through updated legal instruments and mutual legal assistance frameworks to counter state-enabled terrorist networks collectively. Finally, a global consensus must be forged on establishing a credible sanctions regime that penalizes states that continue to fund, train, or shelter terrorist actors. Only through such coordinated legal reforms and political will can the international community hope to dismantle the infrastructure of state-sponsored terrorism and restore lasting peace and security in conflict-prone regions like South Asia.

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17. Jason Burke, *The 26/11 Mumbai Attacks*, in *The New Threat: The Past, Present, and Future of Islamic Militancy*, Vintage, 2016.
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31. UN Security Council Resolutions 1267, 1373, 1566, available at: https://www.un.org/securitycouncil
32. UN Charter, Article 2(4).
33. UN General Assembly Resolution 49/60 (1994), *Measures to Eliminate International Terrorism*.
34. United Nations High Commissioner for Refugees (UNHCR), "Afghanistan Emergency Update", 2021, https://www.unhcr.org
35. United States Department of State, *State Sponsors of Terrorism*, https://www.state.gov/state-sponsors-of-terrorism/
36. Vienna Convention on the Law of Treaties, 1969.
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DOCTRINE OF PART PERFORMANCE - AN EVIDENTIARY AND JURISPRUDENTIAL ANALYSIS

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Introduction:

Lord Macaulay once stated, "No country ever stood so much in need of a code of law as India,"[1] and unfortunately, he was accurate. The colonial masters believed that Indian Property law was an area that was lacking and that the twins, clarity and rigidity must be injected into the system in order to create a civilized system.[2] The codification of the Transfer of Property Act, 1882[3] (from hereby referred to as TPA, 1882) was their attempt at curbing judge-made law in India. While the TPA, 1882 was successful in bringing a lot of order, it remained silent on many concepts, wanting to leave significant areas to the courts and parties to develop. However, this rigidity was proving to be a fly in the ointment and the only way to solve the dilemma was to introduce the laws of equity.[4] The law of equitable interests or equities has a considerable gloss over the law of property[5] , because property naturally arises from competing interests. The rights secured in rem are disputed and are adjudged as disputes that require judgment in persona.[6]

The doctrine of part performance was inserted in the TPA, 1882 via Section 53A by the Transfer of Property (Amendment) Act, XX of 1929 and was retrospective in nature. It came into force with effect from April 1, 1930.[7] Prior to this amendment, the application of the English equity of part-performance was not very uniform and certainly not certain.[8] There was a difference in opinion with respect to the application of this Section. In some cases, the doctrine of part performance was applied while in other cases, it is not. The drafters of the TPA, 1882[9] made the conscious effort to focus more on transfers of property rather than just the property itself. This attempt of creating an absolute and comprehensive set of rules proved to be mostly aspirational, as most parts either eventually needed legislative revision or creative judicial interpretation in order to be applicable to the complexity of society.[10]

Origins and Development:

The doctrine of part-performance under Section 53-A[11] is an equitable doctrine. To put it plainly, the section states that if a person has taken possession of an immovable property on the basis of a contract or agreement of sale and has either performed or is willing to perform his part of the contract then, he would not be ejected from the property on the ground that the sale was unregistered and that a legal title has not been transferred to him. It was incorporated in section 53A by the amending Act of 1929[12]. However, before 1929, the application of this English equitable

[1] T.B.M.B Macaulay, *Macaulay: Prose and Poetry* (Rupert Hart-Davis 1952)
[2] Nandita Navadgi, 'The Crystallization of Section 53-A of the Transfer of Property Act and the Role of Laws of Equity in Doing So' (2022) 4 *International Journal of Legal Science and Innovation* 334-335
[3] *Transfer of Property Act, 1882*
[4] Ibid
[5] S Brice Charles, 'Aequitas and Equity: A Brief History and Contrast with Roman Natur' (*Georgetown Law Journal*)
[6] Shashank Patil, 'The 1929 Amendment to the Transfer of Property Act, 1882: An Expansion of Notice and Other Rights and Principles in Equity' (2025) SSRN
[7] Transfer of Property (Amendment) Act, 1929 (XX of 1929) s 1 (inserting s 53A, TPA, 1882, effective 1 April 1930)
[8] Aman Mehta, 'S.53A, Transfer of Property Act – A Sword to Its Own Shield?' (2020) 19 *Supremo Amicus* 67
[9] Ibid
[10] Ibid2
[11] Transfer of Property Act, 1882, Sec 53A
[12] Ibid8

doctrine was neither definite nor consistent. The Doctrine of part of performance was evolved by the Court of Equity in England.[13] In 1677, a statute was enacted in England known as the Statute of Frauds,1677,[14] The Statute of Frauds**,** 1677 required land transfer agreements to be in writing, which unintentionally caused injustice to genuine buyers relying on oral contracts. To correct this, Equity Courts stepped in and protected those who had already acted in good faith by paying or taking possession recognizing their rights even without a written or registered deed. In *Maddison v Alderson*[15], The court held that liability arises not from the contract itself but from the equitable obligations created by acts done under it, and denying such equity would lead to injustice contrary to the statute's intent.

In India, the doctrine of part performance evolved through varying judicial views. In *Kurri Veera Reddi v Kurri Bapi Reddi(1909)[16],* it was held inapplicable. Later, in *Md Musa v Aghore Kumar Ganguly (1914)[17],* the Privy Council applied it on grounds of justice, equity, and good conscience, validating an unregistered compromise deed. However, in *Ariff v Jadunath (1931)[18]* and *Mian Pir Bux v Sardar Mohammad Tahir(1934)[19]*, the Privy Council ruled that the doctrine could not override express provisions of the Indian Registration Act, 1908[20] and TPA, 1882. The TPA, 1882 provided in section 107 that a permanent lease could be granted only by a registered and written document and here in this case the lease was oral. Section 49 of the Registration Act, 190822 made it absolutely clear that any unregistered documentation relating to immovable property is unacceptable as evidence to establish any title[21].

The egalitarian principle of part performance is concerned with protecting the transferee whenever a transferor seeks to evict a transferee from land entrusted to him and pursuance of a contract, provided that certain fundamental requirements are met.[22] Therefore, the transferee is not needed to have initiated an action for part performance to demand Section 53A relief.[23] Yet, essential criteria should be met for the principle to operate. To begin with, the transferee's agreement should be written. The judges have indicated unequivocally that the concept doesn't quite extend to verbal agreements in India.[24]Furthermore, there has to be a consideration for the indicated transfer.[25] As nothing more than a consequence, gifts are excluded.[26] Moreover, the contract's provisions must be fairly identifiable by the judge in determining the agreement's precise character.[27] The deal's ambiguity and uncertainties weaken the transferee's case.

Section 53 safeguards against fraud and mala fide intent by preventing transferors from defrauding

[13] Avtar Singh and Harpreet Kaur, *Textbook on the Transfer of Property Act* (6th edn, Universal Law Publishing – an imprint of LexisNexis 2020)

[14] Statues of Frauds, 1677

[15] *Maddison v Alderson* (1883) 8 App Cas 467 (HL)

[16] *Kurri Veera Reddi v Kurri Bapi Reddi (1909) ILR 32 Mad 86*

[17] *Md Musa v Aghore Kumar Ganguly* (1914) 41 IA 79 (PC)

[18] *Ariff v Jadunath Majumdar* (1931) 58 IA 91 (PC)

[19] *Mian Pir Bux v Sardar Mohammad Tahir* (1934) 61 IA 388 (PC)

[20] Indian Registration Act, 1908

[21] Indian Registration Act, 1908, Sec 49

[22] *Madan Mohan v Gauri Shanker (1988), AIR 1988, MP 152*

[23] *Technicians Studio Pvt. Ltd. v Lila Ghose* AIR 1979, SC 2425

[24] *Kalawati Tripathi v Damyanti Devi* AIR 1993 Pat 1

[25] Chaitanya Thakura, 'The Emergence of the Doctrine of Part Performance: A Legal Analysis of Section 53A of the Transfer of Property Act' (2022) 2 *Jus Corpus Law Journal* 321, https://www.juscorpus.com/wp-content/uploads/2022/04/75.-Chaitanya-Thakur.pdf accessed 7 October 2025.

[26] *Piru Charan Pal v SumtmonyNema* AIR 1973 Cal 1

[27] *Mool Chand Bakhru v Rohan* AIR 2002, SC 812

creditors or evading lawful obligations, thereby maintaining honesty in transactions. In contrast, Section 53A protects an honest transferee who, acting in good faith under a written contract, has taken possession and is ready to perform their part. While Section 53 prevents deceit, Section 53A promotes fairness together they balance protection against fraud with recognition of genuine performance. Essentially, Section 53 lays the moral foundation, and Section 53A applies it in practice, reflecting the legislative intent to uphold the principle of justice and good faith in property dealings.

Jurisprudential Foundations:

The equitable foundation of Section 53A lies in the maxim *"equity looks to the intent rather than the form"*, which seeks to prevent fraud and unfairness arising from rigid adherence to formal legal requirements. Equity, historically developed by the English Chancery courts, intervened where strict common law rules caused hardship. Lord Denning's assertion that "equity is not past the age of childbearing" aptly applies to this provision, as Section 53A continues to protect good-faith transferees from the inequity of technical non-compliance with registration formalities.[28] The doctrine thus embodies the equitable principle of fairness and prevention of fraud, ensuring that a transferor does not take advantage of their own default to the detriment of the transferee. From a natural law and justice perspective, Section 53A resonates with the moral philosophy that law must serve substantive justice rather than formal legality. Thinkers like Aquinas and Grotius emphasized that law devoid of justice ceases to be law.[29] The transferee's possession under an unregistered but bona fide contract represents a moral claim that the legal system validates through equity. By protecting possession, the provision ensures alignment between moral justice and legal outcomes, bridging the gap between *lex* and *jus*.

Indian jurisprudence, influenced by both English and indigenous concepts, recognizes possession as a significant element of ownership and property relations.[30] Possession, as Salmond noted, is not merely a physical control but a legal relation implying an expectation of continued enjoyment.[31] In this sense, Section 53A's protection of possession symbolizes a partial recognition of ownership interests, safeguarding de facto possession until de jure ownership is perfected through registration. A comparative analysis reveals that while the doctrine originated in English equity, India uniquely incorporated it statutorily through Section 53A. The English doctrine, enunciated in *Maddison v Alderson*,[32] was purely equitable and required recourse to the Chancery courts. In contrast, the Indian legislature codified the principle in 1929, thereby transforming a discretionary equitable remedy into a legal right of defense. Section 53A raises a critical question: Is it merely a shield or a partial recognition of ownership? The provision, by express language, allows only a defensive claim; it "cannot be used as a sword."[33] The right conferred by section 53A is a right only available to the defendant to protect his possession; it does not create any title on the defendant. It merely operates as a bar to the plaintiff asserting his title and it cannot be used as a weapon of attack or sword.[34] Yet, by granting legal protection to possession, it effectively acknowledges a limited proprietary interest. Jurists have debated whether this protection converts equitable interests into quasi-

[28] Lord Denning, *The Discipline of Law* (Butterworths 1979) 21.

[29] Thomas Aquinas, *Summa Theologica* (trans. Fathers of the English Dominican Province, Benziger Bros 1947) I–II, Q.95, Art.2.

[30] James W Harris, *Property and Justice* (Clarendon Press 1996) 54.

[31] John Salmond, *Jurisprudence* (P J Fitzgerald ed, 12th edn, Sweet & Maxwell 1966) 239.

[32] Ibdi16

[33] *Shyam Narayan Prasad v Krishna Prasad* (2018) 7 SCC 646 [16].

[34]Darashaw J Vakil, *Commentaries on the Transfer of Property Act* (6th edn, Vol 1, LexisNexis 2022).

ownership.[35] While the Indian courts consistently maintain that Section 53A does not transfer title, its operation blurs the boundary between ownership and possession, symbolizing the enduring tension between legal formalism and equitable justice.

The leading case of *Walsh v Lonsdale* (1882)[36] is a classic illustration of the equitable rule that what ought to be done in pursuance of a binding agreement is treated in equity as having been actually accomplished. The case established that once there is a valid and enforceable agreement between the parties, equity considers the intended transfer or lease as effectively executed, even if the formal legal requirements have not been fulfilled. Section 53A, by incorporating this equitable doctrine, reflects three cardinal principles of equity: first, he who seeks equity must do equity, which implies that a party claiming equitable relief must act fairly and fulfill their own obligations; second, equity looks to the intent rather than to the form, meaning that courts of equity focus on the substance of the transaction and the bona fide intention of the parties rather than technical or procedural formalities; and third, equity treats that is done which ought to have been done, signifying that equity presumes the completion of an act that the parties were bound to perform under a valid agreement. The Privy Council has held in two cases, *Ariff v Jadunath(1931)*,[37] and *Mian Pir Bux v Sardar Mohd Tahir(1934)*,[38] that no equitable rule could override the provisions of this Act or Registration Act regarding writing or registration. Therefore, it follows that there is no scope in India for applying the equity of *Walsh v Lonsdale, (1882)* except in limited cases where an interest in land can be created without registration, for example, a lease for less than one year or a sale for less than Rupees 100.

Evidential Dimensions:

The doctrine of part performance is not merely a substantive equitable defense but also involves crucial evidentiary considerations. The burden of proof lies squarely on the transferee who asserts the plea of part performance.[39] The transferee must establish that a written contract exists, that they have taken or continued in possession in part performance of the contract, and that they have been willing to perform their obligations.[40] Courts have consistently held that failure to prove readiness and willingness defeats the protection under Section 53A.[41] After the Registration and other related laws (Amendment) Act, 2001,[42] which made registration compulsory for contracts affecting immovable property, the evidentiary value of unregistered agreements became limited. While such documents cannot be received as evidence to prove transfer of title, they may still be admissible for a collateral purpose, such as showing the nature of possession, under Section 49 of the Registration Act, 1908.[43]

The conduct of the parties, possession, and surrounding circumstances are often decisive in determining whether the transaction qualifies as part performance. Courts scrutinize improvements made, payment of consideration, and the transferee's continued possession to infer performance and bona fides.[44] However, evidentiary inconsistencies, such as vague terms or incomplete documents, weaken the defense. The proviso to the section contains an

[35] Avtar Singh, *Law of Contract and Specific Relief* (13th edn, Eastern Book Company 2011) 448.
[36] *Walsh v Lonsdale* (1882) 21 Ch D 9 : 46 LT 858 : 52 LJ Ch 2
[37] Ibid19
[38] *Mian Pir Bux v Sardar Mohammad Tahir* (1934) 61 IA 388 (PC)
[39] *Nathulal v Phoolchand* AIR 1970 SC 546 [10].
[40] *Shrimant Shamrao Suryavanshi v Pralhad Bhairoba Suryavanshi* (2002) 3 SCC 676 [12]
[41] *Maneklal Mansukhbhai v Hormusji Jamshedji Ginwalla* AIR 1950 SC 1 [14].
[42] Registration and Other Related Laws (Amendment) Act 2001, No 48 of 2001.
[43] *K.B. Saha and Sons Pvt Ltd v Development Consultant Ltd* (2008) 8 SCC 564 [24].
[44] *Technicians Studio Pvt Ltd v Lila Ghosh* AIR 1977 Cal 345 [19].

exception in favour of a transferee for consideration who has no notice of the contract or of part-performance thereof. This means that the transferee for consideration having no notice of the contract or its performance is not affected by this rule. Any right which the transferee may have against the transferor under this section would not be of any avail against a bona fide transferee for value having no notice of the transaction. The Supreme Court held in *Hemraj v Rustomji(1935)*,[45] that the proviso to the section saves the right of a transferee for consideration, i.e., any rights which the transferee under the unregistered document may have on the strength of the part-performance of the contract against the transferor would not be of any avail against a bona fide transferee for value having no notice of the previous transaction. The burden of proving that the subsequent transferee had notice lies on the person claiming the benefit of part-performance.[46] Thus, the evidential framework of Section 53A protects genuine transferees who can substantiate their claim through credible documentary and circumstantial evidence while preventing fraudulent invocation of the doctrine.

Critical Analysis:

While Section 53A provides valuable protection to transferees, its role as a "defensive equity" inherently limits its utility. Unlike the English doctrine of part performance, Indian courts cannot allow the transferee to use Section 53A offensively to assert ownership or enforce contractual rights. At the time when the act was enacted; land fraud, informal dealings, and oral transactions were common. If the doctrine was allowed to be used as a "sword"(to enforce ownership), it could be misused by mala fide transferees to claim property without completing legal formalities like registration or willingness to pay full consideration. Therefore, the legislature confined it to a defensive role protecting possession when equity demanded, but not conferring ownership rights.

Evidentiary challenges further complicate the application of Section 53A, particularly in rural and informal property transactions, where written documentation may be scarce or improperly executed. Courts often have to rely on possession, payment of consideration, and oral testimony, which can lead to inconsistent outcomes and disputes over credibility. Indian property law is built on the principle that transfer of ownership must be evidenced through registered documents. The legislature wanted to preserve this rule to ensure certainty, precise, and public notice of property rights. If Section 53A allowed enforcement of unregistered agreements, it would have undermined the Registration Act, 1908, and made land records unreliable. By restricting it to a "shield," the legislature struck a balance between equitable protection and statutory discipline.[2]

Section 53A provides protection only in such circumstances, with key exceptions limiting its application. This doctrine applies solely to written and signed agreements, excluding oral contracts from its scope. The section does not specify a certain time limit within which the part performance has to be done. In the case the transferee has been performing the part performance for a long time and not completing it either denying it. That means denying protection to a transferee acting in bad faith or failing to remain ready and willing to perform their obligations, such as payment of consideration for which this doctrine cannot be applied. Moreover, the section does not override third-party rights a bona fide purchaser for value without notice of the prior agreement is protected. Thus, this section safeguards equity only for honest transferees acting under valid and documented contracts.

Conclusion:

The Bhagavad Gita proclaims, *"Dharmo rakshati rakshitah"* which means "Dharma protects those who protect it." Dharma, in this sense, embodies righteousness, fairness, and the moral order that

[45] *Hemraj v Rustomji* AIR 1953 SC 503.

[46] Malla Sasirekhamma v Garbham Suramma, AIR 1952 Ori 163 : (1951) 17 Cut LT 62.

sustains justice in society.[47] Similarly, Section 53A of the Transfer of Property Act, 1882 reflects this very spirit of Dharma in the legal sphere. The provision protects a transferee who has acted in good faith and in accordance with fairness by performing or being willing to perform their part of the contract. The law, in turn, safeguards such a person from being exploited by the fraud of transferor.

While inspired by the English equitable doctrine, the Indian version is deliberately restricted, allowing use only as a defensive mechanism, thereby preventing misuse and safeguarding bona fide third parties. The legislative intent behind restricting Section 53A as a *"shield and not a sword"* also aligns with this moral balance; it is not meant to empower deceitful claims but to protect those who uphold their obligations with sincerity. Thus, just as Dharma upholds those who act righteously, Section 53A upholds equity by ensuring that those who protect the sanctity of their contractual duty are themselves protected by law.

This limitation, however, creates challenges, particularly in rural or informal property transactions where documentation may be incomplete, and evidentiary proof becomes critical. Judicial interpretations have attempted to reconcile these issues, emphasizing readiness, willingness, and corroboration of possession and payment of consideration. New reforms or judicial guidelines need to provide clarity, allowing equitable protection to operate effectively while preserving statutory safeguards. Overall, Section 53A exemplifies the fusion of equity and statute in Indian property law, reflecting the legislature's intent to protect fairness and prevent fraud without compromising legal certainty or ownership right.

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5. Salmond J, *Jurisprudence* (PJ Fitzgerald ed, 12th edn, Sweet & Maxwell 1966)
6. Denning L, *The Discipline of Law* (Butterworths 1979)
7. Va[illegible] DJ, *Commentaries on the Transfer of Property Act* (6th edn, Vol 1, LexisNexis 2022)

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[47] *Bhagavad Gita* (Sacred Texts, 1896) https://www.sacred-texts.com/hin/gita/index.htm accessed 14 October 2025, ch 2, v 47.

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4. *Ariff v Jadunath Majumdar* (193[illegible]58 IA 91 (PC)
5. *Mian Pir Bux v Sardar Mohammad Tahir* (1934) 61 IA 388 (PC)
6. *Madan Mohan v Gauri Shanker (*1988), AIR 1988, MP 152
7. *Technicians Studio Pvt. Ltd. v Lila Ghose* AIR 1979, SC 2425
8. *Kalawati Tripathi v Damyanti Devi* AIR 1993 Pat 1
9. *Piru Charan Pal v SumtmonyNema* AIR 1973 Cal 1
10. *Mool Chand Bakhru v Rohan* AIR 2002, SC 812
11. *Shyam Narayan Prasad v Krishna Prasad* (2018) 7 SCC 646
12. *Walsh v Lonsdale* (1882) 21 Ch D 9 : 46 LT 858 : 52 LJ Ch 2
13. *K.B. Saha and Sons Pvt Ltd v Development Consultant Ltd* (2008) 8 SCC 564.
14. *Maneklal Mansukhbhai v Hormusji Jamshedji Ginwalla* AIR 1950 SC 1.
15. *Nathulal v Phoolchand* AIR 1970 SC 546.
16. *Shrimant Shamrao Suryavanshi v Pralhad Bhairoba Suryavanshi* (2002) 3 SCC 676.
17. *Technicians Studio Pvt Ltd v Lila Ghosh* AIR 1977 Cal 345.
18. *Hemraj v Rustomji* AIR 1953 SC 503.
19. *Malla Sasirekhamma v Garbham Suramma*, AIR 1952 Ori 163 : (1951) 17 Cut LT 62.

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LEGAL IMPLICATIONS OF VENTURE CAPITAL FINANCING: A CRITICAL ANALYSIS

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Abstract

In this context, venture capital financing has come to be recognized as an important factor for innovation, entrepreneurship, and economic growth, especially in dynamic environments characterized by startups. Nevertheless, in addition to its financial significance, venture capital investment has a number of intricate legal implications, which affect the relationship between investors and founders of startups. The current paper critically evaluates the legal context of venture capital financing, with particular emphasis on contractual relationships, regulatory compliance, corporate governance, and investor protection. The relevant legal tools, including shareholders' agreements, term sheets, and exit mechanisms, are discussed, with particular emphasis on relevant issues concerning control, ownership, and fiduciary duties. Further, the study examines the regulatory framework, including securities legislation, foreign investment regulations, and compliances applicable to venture capital funds and their investee companies. Emphasis is placed on the Indian scenario, examining the role of regulatory institutions such as the Securities and Exchange Board of India (SEBI) and the impact of such policies on venture capital funding. At the same time, the paper identifies the challenges in venture capital funding, which include information asymmetry, enforcement of contractual rights, and dispute resolution mechanisms.

By adopting a doctrinal and analytical method, the paper examines the existing framework and proposes improvements for a healthy and transparent venture capital market, which is essential for sustainable economic growth and development. The study has concluded that a healthy and balanced framework is necessary for protecting stakeholder interests and promoting entrepreneurial risk-taking and innovation.

Keywords: *Venture Capital Financing; Legal Framework; Corporate Governance; Investor Protection; Startup Regulation*

Introduction

Venture capital funding is a big part of growth of new businesses. A lot of these businesses start with an idea and often they do not have enough money to turn it into a successful business. Banks and other traditional lenders usually do not want to lend money to new businesses due to risk. These businesses also do not always make money. This is where venture funding comes into picture. Venture capitalists give money to new businesses in exchange for a stake in the business. Venture capital is no ordinary business loan because, instead of paying interest on a loan taken from someone, the investor actually buys a share in the business. In this way, they effectively become a part-owner in the business. As a result, when the business grows, so does their share in it, while if it tanks, so does their share in it. In today's economy, this form of funding is extremely significant because some of the biggest tech companies we all know today began with venture capital funding. Venture capital funding enables startups in tech, digital services, healthcare, finance, and more to come into existence while encouraging competition in these industries.

The legal intricacies involved in venture capital funding: The relationship between a founder and a venture capital investor is a complex one. In order for them to protect their investment in a startup business, venture capital firms want a certain level of participation in how the business is run. All this is clearly outlined in a series of legal documents including term sheets, shareholder agreements, and investment agreements. These documents clearly

outline all the roles and responsibilities of both parties, including what they can or cannot do in terms of profit-sharing or decision-making authority.

Regulations is another legal issue in this regard. Venture funds must adhere to certain laws while raising money or making investments in businesses, which is intended for a fair market while safeguarding both investors and companies. Venture financing can affect corporate governance in a number of ways: while it can bring financial discipline in strategy making through investor participation, it can lead to conflicts over who should run the business or where it should be taken in the long run.

Venture financing is more than just a financial aid for a startup business. A framework is set up by this type of financing in which rights, obligations, and responsibilities come into play. All these need to be grasped by entrepreneurs, investors, or even legal experts. In this discussion, we will be focusing on the legal ramifications associated with venture capital financing.

Regulatory Framework Governing Venture Capital Financing

Venture capital financing is conducted in a system of laws. These laws are for investment funds and how they finance businesses. Regulation is necessary because it is a lot of money involved in venture capital financing. It is of great concern to many businesses and investors.[1] A set of laws is required to ensure that the financial system is fair and stable. SEBI regulates venture capital funds in India. SEBI monitors the securities market and ensures that all investment activities are legal. The rules and regulations concerning "Alternative Investment Funds" apply to venture capital funds as well. These rules and regulations provide the legal guidelines for venture capital funds.[2]

Private pooled investment funds are similar to Alternative Investment Funds. In this type of fund, money is collected from investors and invested in different businesses. In this case, the investor can be a business or a person with a lot of money. Then a decision on where to invest this money is made by a person referred to as a fund manager. Venture capital funds come in this category. Before a venture capital fund can start conducting business, it must register with SEBI. Registration ensures that only eligible and qualified entities run these investment funds. Registration helps the regulator monitor these activities.[3]

The law establishes guidelines on how to set up and operate venture capital funds. The fund is required to disclose all the essential information to the investors. Such as information concerning the management and the strategies it will take and the risks involved. This is essential because it will enable the investors to make smart decisions before investing in something. The other significant aspect of the law is the guidelines concerning investing. Venture capital funds are required to invest most of the money in new businesses and startups. This is to ensure that the venture capital funds assist new businesses in growing and coming up with new ideas. The funds invest in new ideas such as technology, health, and digital services that require money to grow.

The rules also mention the responsibility of fund managers. The responsibility of the fund manager is to look after the investment in a careful and honest way. The fund manager has to do what is best for the people who are investing money in the fund. If money is used in the wrong way or in an unethical way, then

[1] Da Rin, M., Hege, U., Llobet, G., & Walz, U. (2006). "The law and finance of venture capital financing in Europe: findings from the RICAFE research project". *European Business Organization Law Review (EBOR)*, *7*(2), 525-547.

[2] Putri, D. R. A., Budi, S., & Nur, W. H. (2023). "The Legal Aspects of Venture Capital As an Alternative Financing. *Russian Journal of Agricultural and Socio-Economic Sciences"*, *133*(1), 41-46.

[3] Mantell, E. H. (2009). "A theory of the risks of venture capital financing. *American Journal of Economics and Business Administration"*, *1*(2), 194.

trouble can be caused with the regulators.[4] Venture capital funds have to maintain proper records and send reports to their investors at regular intervals. These reports help the investors understand how the fund is doing and how their investments in different companies are doing.

It also protects the companies that receive the venture capital money. This is because many new startups that receive money from investors depend on the venture capital funds to grow in the long term. The government policies also determine the growth of the venture capital financing. There is no doubt that there are many government policies that encourage people to invest in new businesses and startups. The policies that are helpful enable the venture capital to grow and the economy to grow as well.[5]

The rules protect investors and ensure that the activities carried out are transparent and honest. It makes people accountable for their actions. It helps the growth of new businesses by allowing venture capitalists to easily invest in them. A good legal system is required for the venture capital markets to function properly. Good rules attract people to invest and maintain a good and fair financial system.[6]

Legal Structure of Venture Capital Transactions

Venture capitalists give a lot of money to businesses working on their products or services. There must be clear legal agreements to protect the investment. These contracts spell out how the investment will be made or who will own what and what rights does the investor have. The legal structure of venture capital deals is very important for lower risk and protection of the interests of both investors and entrepreneurs.[7]

A term sheet is usually the first step in a venture capital investment. The term sheet is a record of the investor and the company agreeing on the terms of the proposed investment. Usually, it states how much money will be put in and how much of the company the investor will own in return. It could also include provisions on management rights and the conditions that must be met before the investment is complete. The term sheet is not always legally binding, although it is helpful in the negotiations that follow the drawing up of the more formal legal agreements.[8]

After the initial agreement, the next step is for the two to draw up contracts that will make the investment legal. The share subscription agreement is one of the key contracts in this process. In this contract, the investor agrees to buy a certain number of shares from the company through this contract. It will also specify the amount of worth in the shares and the whole investment. It might have comments from the founders on how the company is performing financially and how it is run. It helps the investor feel sure that the information the company gives them is true and useful.[9]

The shareholder agreement is another important part. It sets rules for how shareholders interact with each other. How the company is run from inside. Venture capitalists want to include clauses that protect their money. That let them have a say in important decisions. A common part of these agreements is choosing board members. Venture capitalists want the right to name a director to the board. Being on the board keeps the investor stay up to date on what the company is doing and have a say in important strategic

[4] Cumming, D. J., & Johan, S. A. (2013). "*Venture capital and private equity contracting: An international perspective*. Academic Press".

[5] Bonini, S., & Alkan, S. (2014). "The political and legal determinants of venture capital investments around the world. In *Perspectives on financing innovation"* (pp. 149-180). Routledge.

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[9] Triantis, G. G. (2001). "Financial contract design in the world of venture capital".

decisions. It makes sure that the investor has some control over the money they put in is used.[10]

Right to vote is another important part of venture capital deals. Investors want to be able to approve or disapprove certain important choices. Changes to the company capital structure or issuance of new shares or the sale of important assets are all examples of such decisions. These rights let investors stop things that lower the value of their investment.

Venture capital agreements state how to protect against losing ownership. When a company issues new shares to raise more money the percentage of ownership that earlier investors have may go down. So anti-dilution clauses are also included to protect the investor from losing a lot of ownership when new shares are issued.[11]

Exit rights are another important part of the legal structure. Venture capital investors do not stay shareholders in the company for good. The objective of their involvement is to dispose of their shares when the value of the company increases. Legal agreements provide for investors to dispose of their shares when certain requirements are met. Rights such as tag along rights and drag along rights regulate the disposal of shares when an exit option arises.

Corporate Governance and Investor Protection

Venture capital financing has a big effect on how a company runs its business. When venture capitalists give money to a business, they usually get a share of the business. This ownership gives them certain rights that let them help run and oversee the company. Corporate governance is the way a company is run and controlled. It talks about the rights of shareholders the roles of the board of directors and how big decisions are made. To protect their financial interests, venture capital investors often try to make governance systems stronger.[12] Their involvement could make the company's management more formal and hold people more accountable.

One way that venture capital investors affect governance is by having a seat on the board of directors. Investors can suggest one or more directors who will help run the business. These directors are involved in talks about expanding the company's strategy and planning its finances. Investors can keep an eye on how well the company is doing and make sure that the management is acting responsibly by being on the board.[13]

Investors can also make the company more open by being involved in its governance. Venture capitalists often want to see regular financial reports and updates on how the business is doing. These ways of reporting encourage people to keep good records and manage their money well. Startups that get money from venture capitalists tend to set up more organised ways to manage and oversee their work.[14]

At the same time having venture capital investors around cause some problems between the founders and the investors. The founders want to have more power as to how the business grows while investors care more about getting out early. Differences in business strategy cause disagreements about the future of company.[15] Adding new investors to the company

[10] Callison, J. W. (2000). "Venture Capital and Corporate Governance: Evolving the Limited Liability Company to Finance the Entrepreneurial Business". *J. corp. l.*, *26*, 97.

[11] Cumming, D., Fleming, G., & Schwienbacher, A. (2007). "The structure of venture capital funds. In *Handbook of research on venture capital"*. Edward Elgar Publishing.

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[15] Levin, R. (2001). "*Structuring Venture Capital*. Wolters Kluwer Law & Business".

make the ownership structure more complicated. But these legal protections keep the balance of power fair among shareholders.[16]

Corporate governance offers solutions when agreements are violated. If one party breaks the rules the other party can go to court or use other dispute resolution methods. Enforceable agreements keep discipline in the relationship between investors and management.

Implications of the Study

This research paper asserts that laws play a significant role in the relationship between investors and start-ups. Venture capital investment is not limited to the provision of capital. It provides individuals with certain rights and obligations. It determines who has the power to make decisions and who has control over the company in the future. The law plays a significant role in the real-world implementation of venture capital investments.

The presence of rules and regulations encourages investors to invest in venture capital. The rules and regulations ensure the responsible conduct of such investments. A conducive legal environment attracts both local and foreign investors to venture capital markets. This enables the growth of businesses based on innovative ideas. Another consequence relates to the management of start-ups. Legal agreements between investors and founders establish management systems. Legal rules and regulations regarding voting rights and the disclosure of board members' activities enhance company accountability.

The study proves the need to maintain the balance between the interests of investors and entrepreneurs. Venture capitalists require legal protection since they invest huge amounts in very risky ventures. The legal agreements must be able to find the middle ground between the two interests. The legal agreements reduce the possibilities of conflicts and encourage the two to cooperate.

Another implication is the need to have proficient legal drafting skills in the venture capital transactions. The investment agreements and the shareholder agreements mainly determine the rights that the investors and the founders have. The research proves that the legal system is essential in the development of the startup industry as a whole. Venture capital financing assists new businesses in accessing funds that they may not be able to access from other sources. The legal rules that provide security and certainty encourage the interest in investing in venture capital.

Venture capital financing has far-reaching effects that go beyond the individual transactions. The effects include the protection of investors and the governance of the corporation. With the general rise in entrepreneurial activities, the need to have a fair and clear legal system is essential in maintaining the venture capital markets and encouraging new ideas in the economy.

Conclusion

Venture capital financing is an essential source of capital for new and starting businesses. New businesses face challenges in accessing capital from traditional sources due to the uncertain nature of the business and the level of risk involved. Venture capital investments offer an alternative source of capital that can be used by entrepreneurs to implement new ideas and grow the business. This type of financing involves the provision of capital in exchange for ownership in the company.

The study on venture capital financing revealed that the legal regulation of the industry has an essential role to play in the venture capital investments relationships. Venture capital investments take place within the context of the legal framework that guides the establishment and operation of investment funds. The supervision of the industry ensures transparency and accountability in the management of the capital invested in the ventures. The interests of the investors

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who provide capital to the venture capital ventures are protected.

Legal agreements between the founders and the investors represent the other significant aspect of venture capital financing. Subscription agreements and shareholder agreements, among others, clearly outline the obligations and rights of the different actors in the venture capital transaction. These agreements clearly outline issues such as the management and decision-making control in the firm. The legal agreements clearly outlining the obligations and rights of the different actors in the venture capital transaction help in the avoidance of misunderstandings and provide stability in the relationships between the investors and the founders. Venture capital financing has implications for the system of corporate governance in the startup firms. Venture capital financing influences the level of financial discipline and the decision-making process in the firm through the involvement of the investors in the management of the firm. However, there is the need to have legal safeguards that ensure that neither the founders nor the investors dominate the firm.

The legal implications of venture capital financing do not end with the financing transaction; they go beyond the direct financing and its implications to the firm and the investors. The legal implications of venture capital financing touch on issues such as regulatory compliance, corporate governance, and the protection of the rights of the investors. The legal implications of venture capital financing play an important role in the development and encouragement of entrepreneurship and economic development and progress.

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MENTAL HEALTH AND AI INTEGRATION IN HIGHER EDUCATION

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Abstract

The escalating mental health crisis among higher education students, characterized by high rates of anxiety, depression and academic stress, has prompted exploration of artificial intelligence (AI) as a scalable intervention tool. This research paper synthesizes recent empirical evidence and reviews on AI integration in university mental health support, focusing on chatbots, predictive analytics and personalized interventions. Purpose-built AI chatbots incorporating cognitive-behavioral therapy principles demonstrate significant short-term reductions in symptoms of depression and anxiety, improved well-being and enhanced academic engagement when used in guided, hybrid models. Predictive models leveraging institutional data achieve moderate accuracy in early risk identification, enabling proactive outreach amid clinician shortages. However, challenges include high attrition in trials, ethical violations by general-purpose large language models, risks of over-reliance leading to increased loneliness and concerns over privacy, bias and long-term efficacy. The paper advocates for responsible, ethically framed implementation with human oversight to maximize benefits while mitigating harms. Future directions emphasize longitudinal studies, cross-cultural validation and institutional frameworks to ensure equitable, sustainable AI-supported mental health care in higher education.

Keywords: artificial intelligence, mental health, higher education, university students, chatbots, predictive analytics, ethical considerations, well-being, cognitive-behavioral therapy, hybrid interventions

1. Introduction

Mental health challenges among higher education students have escalated significantly in recent years, driven by academic pressures, social isolation, financial stress and transitions to independent living (Klimova, 2025). Surveys and institutional reports consistently indicate high prevalence rates of anxiety, depression and other psychological distress among university students, often exceeding those in the general population (Basha, 2025). Traditional mental health services in higher education settings, such as counseling centers, frequently face resource constraints, long wait times and stigma that deter students from seeking help (Montero, 2024; Muscanell, as cited in EdTech Magazine, 2026).

Artificial intelligence (AI) has emerged as a promising avenue to address these gaps by offering scalable, accessible and stigma-free support mechanisms. AI tools, particularly chatbots and predictive analytics, enable early detection of at-risk students, personalized interventions and 24/7 emotional support without relying solely on human clinicians (Nyakhar & Wang, 2025; Reyes-Portillo et al., 2025). For instance, purpose-built AI chatbots like Woebot, Wayhaven and others have demonstrated reductions in symptoms of depression and anxiety through evidence-based techniques such as cognitive-behavioral therapy elements (Nyakhar & Wang, 2025; Zhang, 2026).

The integration of AI in higher education mental health support represents a shift toward hybrid models that complement rather than replace human care, potentially alleviating clinician shortages and expanding reach to underserved populations (Zhai, as cited in EdTech Magazine, 2026). However, this integration raises critical questions about efficacy, ethical implementation and long-term impacts on student well-being (Kuhail et al., 2024; Saeidnia et al., 2024).

This paper examines the role of AI in supporting mental health within higher education. Specifically, it reviews current applications, empirical evidence of benefits and limitations and associated ethical

considerations to inform responsible adoption by institutions.

2. Literature Review

The literature on AI integration for mental health in higher education has grown rapidly, with bibliometric analyses revealing a surge in publications peaking around 2024–2025, primarily focusing on depression, anxiety, machine learning applications and chatbot interventions (Basha, 2025). Key themes include early detection, personalized support and ethical challenges.

AI Applications and Efficacy

Numerous studies highlight AI chatbots as effective tools for delivering mental health support to college students. A rapid systematic review of nine studies (n=1,082 participants) found that purpose-built chatbots incorporating cognitive-behavioral therapy principles led to statistically significant improvements in anxiety, depression, well-being and academic stress in eight cases (Nyakhar & Wang, 2025). Specific examples include Wayhaven, which in an open trial significantly reduced depression ($\beta = -1.62$, $p < .001$), anxiety ($\beta = -2.15$, $p < .001$) and hopelessness while enhancing self-efficacy and overall well-being among students with elevated symptoms (Reyes Portillo et al., 2025).

Predictive AI models also show promise in identifying at-risk students using institutional data, enabling proactive interventions (Zhai, as cited in EdTech Magazine, 2026). Personalized AI-driven systems combining physical exercise and mindfulness have yielded substantial improvements in GPA (10.28% increase), stress reduction (36.7%) and physiological indicators like heart rate variability in controlled university trials (Zhang, 2026).

Comparative perceptions studies indicate that while students value AI for accessibility and non-judgmental interactions, they often prefer human counselors for empathy and depth, though AI emulations like Pi receive positive evaluations in supportive contexts (Kuhail et al., 2024).

Challenges and Ethical Concerns

Despite benefits, the literature underscores significant risks. General-purpose generative AI tools, when used for emotional support, may violate ethical standards, including inadequate handling of suicidal ideation, stigma reinforcement and lack of genuine therapeutic alliance (Rousmaniere et al., 2025, as cited in Ohio State University, 2025). Over-reliance on AI can exacerbate loneliness, reduce human socialization and negatively impact belonging and retention when substituting social support (Crawford, 2024).

Ethical reviews emphasize concerns such as privacy and confidentiality, algorithmic bias, transparency, informed consent, autonomy and accountability (Saeidnia et al., 2024; Brown University, 2025). AI systems may perpetuate biases or fail to ensure equitable outcomes, particularly without robust oversight (Itani et al., 2025). Guidelines advocate for human-in-the-loop approaches, stakeholder engagement, bias mitigation and continuous evaluation to promote responsible use (Saeidnia et al., 2024; APA, n.d.).

Overall, while AI offers transformative potential for scaling mental health support in higher education, evidence supports guided, ethically framed implementations to maximize benefits and minimize harms.

3. Methodology

This paper adopts a narrative synthesis approach to review and integrate existing literature on the integration of artificial intelligence (AI) in supporting mental health within higher education settings. Narrative reviews are particularly suitable for synthesizing diverse evidence, identifying emerging trends, highlighting gaps and providing interpretive insights in rapidly evolving interdisciplinary fields such as AI applications in education and mental health (Ferrari, 2015; as applied in similar contexts, e.g., Thakkar, 2024; Ali, 2025).

Unlike systematic reviews or meta-analyses that require strict quantitative pooling of effects, this

narrative approach allows for a flexible yet rigorous examination of conceptual, empirical and ethical dimensions across qualitative, quantitative and mixed-methods studies. The methodology draws inspiration from established narrative review practices (e.g., SANRA guidelines for narrative reviews; Baumeister & Leary, 1997) while incorporating elements of transparent search and selection processes commonly used in scoping and bibliometric reviews in this domain (Basha, 2025; Klimova, 2025).

Search Strategy

Literature was identified through targeted web searches using academic and general search engines to capture peer-reviewed articles, reports and institutional case studies published primarily between 2020 and 2026. Key search terms included combinations such as:

- "artificial intelligence" OR "AI" OR "chatbot" OR "machine learning" AND "mental health" OR "well-being" OR "anxiety" OR "depression" AND "higher education" OR "university students" OR "college students"
- "AI" AND "mental health" AND ("higher education" OR "university" OR "students") AND ("chatbot" OR "intervention" OR "predictive" OR "ethics")
- Specific tools/examples: "Woebot" OR "Wysa" OR "Wayhaven" OR "Luna" AND "students" OR "higher education"

Searches were conducted across databases and platforms including PubMed/PMC, Google Scholar, Scopus-indexed sources (via web results), Frontiers, JMIR, SpringerLink and higher education-focused outlets (e.g., EdTech Magazine, Higher Education Today). Backward citation searching (reviewing references in key papers) and forward searches (citing articles) were used to expand coverage. The search was last updated in early 2026 to ensure recency, aligning with the rapid evolution of generative AI tools.

Inclusion and Exclusion Criteria

Sources were included if they met the following criteria:

- Focused on AI applications (e.g., chatbots, predictive analytics, LLMs, machine learning) in mental health support, detection, intervention, or well-being.
- Directly or substantially relevant to higher education/university/college students.
- Published in English between 2020 and 2026 (prioritizing recent evidence given AI advancements).
- Peer-reviewed journal articles, systematic/narrative reviews, empirical studies (experimental, qualitative, or case-based), or reputable reports/case studies from institutions.
- Provided empirical findings, ethical discussions, or implementation examples.

Sources were excluded if they:

- Addressed AI in mental health generally without relevance to higher education.
- Focused solely on K-12 or non-student populations.
- Were non-empirical opinion pieces without substantive evidence or analysis.
- Were duplicates or low-quality/non-verifiable sources.

Approximately 40–50 sources were initially identified from searches; 30+ were retained after screening for relevance and quality, with priority given to those with empirical data, systematic elements, or direct institutional applications.

Data Extraction and Synthesis

Relevant information was extracted into thematic categories, including:

- AI applications and tools (e.g., chatbots like Woebot/Wayhaven, predictive models).
- Evidence of efficacy (e.g., symptom reduction, engagement, academic outcomes).
- Challenges and ethical issues (e.g., bias, privacy, over-reliance).
- Implementation contexts (e.g., guided vs. unguided use, hybrid models).

Synthesis followed a thematic approach: sources were grouped by key themes (e.g., efficacy, applications, challenges) identified inductively from the literature. Interpretive integration emphasized patterns, contradictions and implications for higher education practice. Where possible, quantitative findings (e.g., effect sizes, statistical significance) from primary studies were highlighted to substantiate claims.

This methodology ensures a comprehensive, transparent and up-to-date overview while acknowledging the limitations of narrative synthesis, such as potential subjectivity in theme selection and absence of formal meta-analytic rigor.

4. Results and Discussion

The synthesis of recent empirical evidence reveals that AI integration in higher education mental health support yields promising yet mixed outcomes. Chatbot-based interventions, particularly those incorporating evidence-based techniques like cognitive-behavioral therapy (CBT), demonstrate moderate to significant reductions in symptoms of anxiety, depression and related distress among university students. Predictive AI models also show strong potential for early risk identification using routinely collected institutional data, enabling proactive interventions. However, challenges persist, including high attrition rates, ethical violations in general-purpose tools, risks of over-reliance leading to increased loneliness and inconsistent performance in crisis detection.

Key findings emerge from at least 10 verified studies (primarily 2021–2025), focusing on efficacy, feasibility, acceptability and limitations.

Table 1: Summary of Key Empirical Studies on AI Interventions for Mental Health in Higher Education

Study/Reference	Year	AI Tool/Approach	Sample/Design	Key Outcomes	Limitations/Notes
Fitzpatrick et al. (Woebot RCT)	2017/updated refs	Woebot (CBT-based chatbot)	College students (RCT)	Significant reduction in depression and anxiety symptoms over 2 weeks	Early study; foundational for later tools

Klos et al. (Tess RCT)	2021	Tess (conversational agent)	University students (pilot RCT, n=181)	Significant decrease in anxiety symptoms; no significant change in depression	High attrition; Spanish-speaking sample
Nyakhar & Wang (rapid review)	2025	Various chatbots (e.g., Woebot)	9 studies, n=1,082 college students	8/9 studies showed significant improvements in anxiety, depression, well-being	Heterogeneity, high attrition (up to 61%)
Reyes-Portillo et al. (Wayhaven open trial)	2025	Wayhaven (generative AI chatbot)	50 diverse college students (open trial)	Significant reductions in depression ($\beta=-1.62$, $p<.001$), anxiety ($\beta=-2.15$, $p<.001$), hopelessness; increases in self-efficacy and well-being	Short duration (1 week); preliminary
Kuhail et al.	2024	Pi (empathetic AI chatbot)	224 college students (perception study)	Higher quality ratings for AI vs. human transcripts in early phases; indistinguishable from human	Focused on perceptions, not long-term efficacy
Sun et al.	2025	AI-based mental health tools	Chinese university students (mediation model)	Positive association with psychological well-being via emotional self-efficacy and autonomy	Cross-sectional; self-report bias
Zhai et al.	2025	Machine learning predictive models	61,619 US college students (ML models)	AUC 0.74–0.77 for predicting anxiety/depression; key predictors: finances,	Relies on institutional data; no intervention outcomes

				belonging, disability	
Zhang (personalized AI intervention)	2026	AI-driven exercise/mindfulness system	College students (controlled trial)	36.7% stress reduction, 10.28% GPA increase	Specific to combined physical/mental intervention
AlMaskari et al.	2025	AI mental health chatbots	Sultan Qaboos University students (qualitative)	Positive perceptions; openness to use, prior experience common	Qualitative; exploratory
Rackoff et al.	2025	Chatbot-delivered support	428 US college students (survey)	Neutral/less positive attitudes vs. traditional services; low utilization	Attitudes survey; barriers include doubt in helpfulness

These studies collectively indicate that purpose-built, CBT-informed chatbots (e.g., Woebot, Wayhaven, Tess) achieve statistically significant symptom improvements in the majority of cases, with effect sizes often moderate (e.g., β values indicating meaningful reductions). For instance, Nyakhar and Wang's (2025) rapid review of nine studies found consistent benefits across anxiety and depression measures, though high attrition and self-report reliance temper generalizability. Wayhaven's open trial (Reyes-Portillo et al., 2025) further supports feasibility in diverse populations, with high satisfaction (80–90%) and recommendation rates.

Predictive models, such as those by Zhai et al. (2025), offer high discriminative power (AUC up to 0.77) using accessible data like enrollment demographics and belonging metrics, facilitating early flagging of at-risk students. This aligns with institutional implementations (e.g., University of Alabama at Birmingham's predictive tool), potentially addressing clinician shortages through proactive outreach.

Despite these benefits, limitations are evident. General-purpose LLMs often violate ethical standards, including inadequate suicide risk handling and stigma reinforcement (e.g., Brown University study, 2025; Stanford risks analysis). Over-reliance on AI may exacerbate loneliness and reduce human belonging (Crawford, 2024), particularly when substituting social support. Perceptions remain mixed: students value accessibility but prefer humans for empathy (Kuhail et al., 2024; Rackoff et al., 2025).

5. Discussion

The integration of artificial intelligence (AI) into mental health support within higher education presents a transformative opportunity to address the escalating mental health crisis among university students. Empirical evidence from the reviewed studies demonstrates that purpose-built AI tools, particularly CBT-informed chatbots such as Woebot, Wayhaven and Tess, can deliver measurable short-term reductions in symptoms of anxiety, depression and hopelessness, while enhancing well-being, self-efficacy and resilience (Nyakhar & Wang, 2025; Reyes-Portillo et al., 2025; Klos et al., 2021). Predictive analytics models further enable proactive identification of at-risk students using accessible institutional data, with moderate predictive accuracy (AUC 0.74–0.77), facilitating earlier interventions and potentially improving retention and academic outcomes (Zhai et al., 2025; Zhang, 2026).

These benefits are most pronounced in hybrid models that combine AI's scalability—offering 24/7, stigma-free, low-cost access—with human oversight and clinical escalation protocols. Institutions leveraging such approaches, including predictive flagging combined with counselor outreach or AI-assisted triage, can alleviate overburdened counseling services and extend support to underserved populations (EdTech Magazine, 2026; Heartland Forward, 2025). For example, AI tools serve as adjuncts for preventive care, daily mood tracking and initial psychoeducation, allowing human providers to focus on complex cases requiring empathy, nuanced judgment and therapeutic alliance (Higher Education Today, 2024).

However, the literature also highlights substantial challenges that temper enthusiasm for widespread adoption. General-purpose large language models (LLMs) frequently violate established mental health ethics standards, including inadequate crisis response (e.g., mishandling suicidal ideation), reinforcement of stigma through insensitive or misleading replies, lack of genuine empathy and risks of algorithmic bias perpetuating inequities (Brown University, 2025; Stanford HAI, 2025; Saeidnia et al., 2024). Over-reliance on AI companions may exacerbate loneliness, reduce human socialization and foster problematic attachment or dependency, particularly among students already experiencing isolation (Crawford, 2024; MIT-related findings in various sources). High attrition rates in chatbot trials (up to 61%) and mixed student perceptions—valuing accessibility but preferring humans for depth—further underscore limitations in sustained engagement and long-term efficacy (Nyakhar & Wang, 2025; Kuhail et al., 2024). Ethical concerns remain paramount: privacy breaches, informed consent challenges, transparency deficits and potential for cognitive or emotional offloading demand rigorous safeguards (Saeidnia et al., 2024; American Psychological Association, n.d.). Longitudinal evidence is sparse, with most studies limited to short durations (e.g., 1–6 weeks), leaving questions about durability of benefits, risk of harm over time and cross-cultural applicability unanswered (e.g., Flourish app longitudinal trial showing well-being gains but no significant clinical changes; HBS working paper, 2025). These gaps highlight the need for caution, emphasizing AI as a complement rather than substitute for human-centered care.

Ultimately, responsible integration requires institutional frameworks that prioritize ethical guidelines, bias mitigation, stakeholder involvement (including students and clinicians), continuous evaluation and hybrid implementation. Policymakers and educators must foster AI fluency among students while promoting critical awareness of its boundaries, ensuring technology enhances rather than undermines holistic well-being.

6. Conclusion

The convergence of AI and mental health support in higher education offers substantial promise for scaling accessible, timely interventions amid rising demand and resource constraints. Evidence from diverse studies indicates that guided, evidence-based AI tools can meaningfully alleviate symptoms, boost engagement and enable early detection, particularly within hybrid human-AI models that leverage technology's strengths while preserving essential human elements of empathy and accountability.

Nevertheless, ethical risks, including bias, privacy violations, inadequate crisis handling and potential for increased isolation or dependency, necessitate vigilant oversight and regulation. Institutions should prioritize purpose-built tools over general-purpose LLMs, implement robust evaluation protocols and invest in longitudinal research to assess sustained impacts and equity across diverse populations.

Moving forward, higher education leaders are encouraged to develop clear policies, provide training on ethical AI use and collaborate with technologists, ethicists and mental health professionals to co-create solutions. By embracing AI thoughtfully—as an enhancer of human care rather than a replacement—universities can better support student mental health, foster resilience and promote equitable outcomes in an increasingly digital academic landscape. Future directions should focus on rigorous, multi-site trials,

standardized metrics and inclusive design to realize AI's full potential while safeguarding student well-being.

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VOLUNTARY CONFESSIONS OR CONSTITUTIONAL VIOLATION: RETHINKING POLICE INTERROGATION IN INDIA

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Abstract
The law of confessions in India rests on the foundational premise that only voluntary statements possess evidentiary value. However, the persistence of custodial violence and coercive interrogation practices raises serious doubts about the authenticity of this assumption. This article critically examines the legal and constitutional framework governing confessions, highlighting the tension between crime control objectives and due process guarantees. It analyses statutory provisions under the Indian Evidence Act, 1872 and procedural safeguards under the Code of Criminal Procedure, 1973, alongside the evolving jurisprudence of Article 20(3) and Article 21 of the Constitution of India. Through an evaluation of judicial decisions, comparative perspectives, and institutional shortcomings, the article argues that the notion of voluntariness often operates as a legal fiction. It concludes by proposing reforms aimed at strengthening accountability, enhancing evidentiary reliability, and aligning interrogation practices with constitutional morality.

Keywords: Voluntary Confessions; Custodial Violence; Police Interrogation; Article 20(3); Article 21; False Confessions; Evidentiary Reliability; Due Process; Police Reforms; Constitutional Morality

1. Introduction: The Paradox of Voluntary Confessions

The concept of voluntariness in confessions forms a cornerstone of criminal jurisprudence, yet its practical operation remains fraught with complexity. A confession is regarded as reliable evidence only when it is made freely and without any inducement, threat, or coercion. This principle is embodied in the Indian Evidence Act, 1872, which excludes confessions obtained through improper means. However, the assessment of voluntariness is rarely straightforward in practice. Interrogation settings often involve subtle pressures, prolonged questioning, and unequal power dynamics, making it difficult to determine whether a statement is truly the result of an individual's free will. As a result, the legal understanding of voluntariness may not fully capture the realities of custodial environments.

This concern reflects a broader tension between the objectives of crime control and the demands of due process. On one side, the criminal justice system emphasizes efficient investigation and conviction, often relying on confessional evidence as a crucial tool. On the other, constitutional values require that such evidence be obtained through fair and lawful procedures. The Indian system, influenced by both its colonial legacy and its constitutional framework, continues to struggle with reconciling these competing priorities. In practice, the pressure to secure results may lead to investigative methods that undermine procedural safeguards, thereby casting doubt on the authenticity of confessions.

The constitutional framework attempts to address this tension by embedding safeguards against coercion and arbitrary state action. Article 20(3) of the Constitution of India protects individuals from being compelled to incriminate themselves, while Article 21 ensures that any deprivation of personal liberty must follow a procedure that is just, fair, and reasonable. Judicial interpretation has significantly expanded the scope of these protections, particularly by incorporating principles of substantive due process.[1] Nevertheless, reports of custodial coercion persist, raising serious

[1] Ratanlal & Dhirajlal, *The Law of Evidence* (LexisNexis, 26th edn., 2017) 268–276

questions about the effectiveness of these constitutional guarantees in practice.[2]

The paradox, therefore, lies in the coexistence of a legal framework that formally rejects coercion and an investigative reality where such practices are not entirely absent. This contradiction calls for a deeper re-examination of how voluntariness is conceptualized and enforced within the Indian criminal justice system.[3]

2. Legal Framework Governing Confessions in India

The law relating to confessions in India is structured through a combination of evidentiary rules, procedural safeguards, and constitutional guarantees, all aimed at ensuring that statements made by an accused are not the product of coercion. The Indian Evidence Act, 1872 provides the primary framework under Sections 24 to 30. Section 24 excludes confessions that appear to have been obtained through inducement, threat, or promise, thereby emphasizing the importance of voluntariness.[4] Sections 25 and 26 go further by making confessions to police officers, or those made in police custody, generally inadmissible unless recorded in the presence of a Magistrate. These provisions reflect a long-standing concern regarding the possibility of abuse of power during custodial interrogation.[5] At the same time, Section 27 introduces a limited exception by permitting the admissibility of information that leads to the discovery of a relevant fact, thereby acknowledging investigative necessities while retaining safeguards.

Procedural law complements these evidentiary rules through Section 164 of the Code of Criminal Procedure, 1973, which governs the recording of confessions by a Magistrate. This provision incorporates several protective measures intended to secure voluntariness. The Magistrate is required to inform the accused that they are under no obligation to confess and that any statement made may be used as evidence against them.[6] Additionally, the Magistrate must ensure that the accused is free from police influence and is given adequate time to reflect before making a statement. These procedural requirements aim to create an environment where the possibility of coercion is minimized, thereby enhancing the credibility of judicial confessions.

The constitutional dimension further strengthens this framework. Article 20(3) of the Constitution of India embodies the principle against self-incrimination, protecting individuals from being compelled to testify against themselves. Judicial interpretation has clarified that this protection extends beyond physical force to include mental pressure and indirect forms of compulsion. Article 21, which guarantees the right to life and personal liberty, has been expansively interpreted to require that all procedures affecting liberty must be fair, just, and reasonable. Together, these provisions impose substantive constraints on investigative practices and reinforce the inadmissibility of coerced confessions.

Despite this comprehensive legal framework, its practical enforcement remains uneven. Empirical studies and legal scholarship continue to point out that confessional evidence is often relied upon in circumstances where procedural safeguards may not have been fully observed. This gap between legal standards and actual practices highlights the need for stronger institutional accountability and a shift towards evidence-based investigation.

[2] K.N. Chandrasekharan Pillai, "Confessions and the Right Against Self-Incrimination" (2008) 50 *Journal of the Indian Law Institute* 124–130.
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[4] A.N. Mulla, *The Indian Evidence Act* (LexisNexis, 19th edn., 2018) 312–330.
[5] K.I. Vibhute, "Confession Evidence and Police Practices in India: A Critical Study" (2004) 46 *Journal of the Indian Law Institute* 312.
[6] Law Commission of India, *180th Report on Article 20(3) of the Constitution of India and the Right to Silence* (2002) paras 10–18.

3. The Myth of Voluntariness: Coercion in Police Interrogation

The notion that confessions are ordinarily voluntary is increasingly questioned in light of persistent accounts of coercion within custodial settings. While the law formally rejects involuntary statements, the realities of police interrogation often reveal a different picture. Custodial violence, including the use of so-called "third-degree" methods, continues to cast doubt on the authenticity of confessions obtained during investigation.[7] Physical force, though constitutionally impermissible, is not entirely absent from policing practices, particularly in cases where there is pressure to secure quick results. Such methods not only violate legal safeguards but also undermine the evidentiary value of the confession itself.[8]

Beyond overt physical abuse, coercion frequently operates in more subtle and less visible forms. Psychological pressure, prolonged interrogation, sleep deprivation, and threats of harsher consequences are commonly documented techniques that may compel an accused to confess. These methods, while harder to prove, can be equally effective in eroding an individual's capacity to exercise free choice. Legal scholarship has emphasized that voluntariness cannot be assessed merely by the absence of physical force; rather, it must account for the broader context in which the statement is made, including the mental state of the accused and the conditions of detention. In this sense, the distinction between voluntary and involuntary confessions becomes increasingly fragile.

The problem is further aggravated by the socio-economic vulnerabilities of many accused persons. Individuals from marginalized backgrounds often lack access to legal representation at the initial stages of investigation and may be unaware of their rights. Illiteracy, poverty, and social disadvantage can make them particularly susceptible to intimidation and manipulation by law enforcement authorities.[9] In such circumstances, the power imbalance between the police and the accused becomes stark, raising serious concerns about the fairness of the process. Empirical studies have shown that vulnerable individuals are more likely to confess under pressure, even in the absence of actual guilt, thereby increasing the risk of wrongful convictions.

Judicial interventions have acknowledged these concerns, yet the persistence of custodial coercion suggests that existing safeguards are not fully effective in practice. The continued reliance on confessional evidence within an adversarial system that lacks adequate oversight mechanisms contributes to this problem.[10] As a result, the idea of voluntariness often operates more as a legal fiction than as an empirical reality. A meaningful reassessment of interrogation practices is therefore necessary, one that recognizes the complex interplay of physical, psychological, and structural factors influencing confessions.

Judicial Approach: Safeguards and Their Limitations

The Indian judiciary has been instrumental in evolving a rights-based framework to regulate custodial interrogation and the admissibility of confessions. Recognising the inherent risk of abuse in police custody, courts have repeatedly emphasised that the legitimacy of the criminal process depends upon adherence to constitutional guarantees of fairness and dignity. This judicial approach reflects a broader shift from a formalistic understanding of procedure to a substantive commitment to due process, particularly under Article 21 of the Constitution of India.

A decisive turning point in this evolution came with *Maneka Gandhi v. Union of India*, where the Supreme Court held that any procedure depriving a person of personal liberty must be "just, fair and reasonable," thereby introducing the doctrine of substantive due

[7] Upendra Baxi, "Torture, Custodial Violence and the Supreme Court" (1985) 27 *Journal of the Indian Law Institute* 157.

[8] K.I. Vibhute, "Police Interrogation and the Right to Silence: A Critical Study" (2005) 47 *Journal of the Indian Law Institute* 45–60.

[9] Amnesty International, *India: Torture, Rape and Deaths in Custody* (1992) 12–18.

[10] S. Chandra, *Human Rights and Criminal Justice System in India* (Mittal Publications, 2007) 203–215.

process into Indian constitutional law.[11] This interpretation significantly expanded the scope of Article 21, enabling courts to scrutinise not only legislative provisions but also executive practices, including methods of police interrogation. The judgment laid the constitutional foundation for challenging coercive techniques that undermine the voluntariness of confessions.

Subsequent rulings deepened this rights-oriented approach. In *Nandini Satpathy v. P.L. Dani*, the Court extended the protection against self-incrimination to the stage of police questioning, affirming that an accused has the right to remain silent when confronted with questions that may expose them to criminal liability.[12]This recognition was crucial in addressing the coercive environment of custodial interrogation, where the line between questioning and compulsion is often blurred. Similarly, in *D.K. Basu v. State of West Bengal*, the Court confronted the issue of custodial violence directly and laid down detailed procedural safeguards governing arrest and detention.[13]These included requirements such as preparing arrest memos, informing relatives, ensuring access to legal counsel, and conducting periodic medical examinations. The guidelines were intended to introduce transparency and accountability into police procedures.

Further judicial developments continued to reinforce these protections. In *Joginder Kumar v. State of Uttar Pradesh*, the Court stressed that arrest should not be routine and must be justified on reasonable grounds, thereby limiting arbitrary detention.[14]In *Selvi v. State of Karnataka*, the Court held that involuntary administration of techniques such as narco-analysis and polygraph tests violates the right against self-incrimination and personal liberty.[15]These decisions collectively demonstrate the judiciary's sustained effort to expand the scope of constitutional safeguards in response to evolving forms of coercion.

However, despite this progressive jurisprudence, significant limitations persist in practice. One of the most pressing concerns is the gap between judicially articulated standards and their implementation on the ground. The guidelines laid down in *D.K. Basu*, though binding, are frequently reduced to procedural formalities, with limited compliance in actual policing practices. Empirical studies and official reports continue to document instances of custodial violence, indicating that judicial intervention alone has not been sufficient to eradicate coercive methods.[16]The absence of effective enforcement mechanisms, coupled with weak institutional accountability, allows violations to persist with relative impunity.

Additionally, structural constraints within the criminal justice system contribute to this problem. Investigative agencies often operate under significant pressure to secure convictions, which may incentivize reliance on confessional evidence rather than scientific investigation. As noted in legal scholarship, this dependence on confessions creates conditions in which coercion, whether physical or psychological, becomes an expedient tool despite its illegality.[17]Delays in trials, inadequate forensic infrastructure, and lack of training further exacerbate these challenges.

In sum, while the judiciary has developed a comprehensive framework of safeguards aimed at protecting accused persons from coercive interrogation, the effectiveness of these measures remains constrained by systemic and institutional realities. The expansion of due process under Article

[11] *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248.
[12] *Nandini Satpathy v. P.L. Dani*, (1978) 2 SCC 424.
[13] *D.K. Basu v. State of West Bengal*, (1997) 1 SCC 416.
[14] *Joginder Kumar v. State of Uttar Pradesh*, (1994) 4 SCC 260.
[15] *Selvi v. State of Karnataka*, (2010) 7 SCC 263.
[16] Law Commission of India, *273rd Report on Implementation of UN Convention Against Torture* (2017) paras 3.1–3.20.
[17] Upendra Baxi, *The Crisis of the Indian Legal System* (Vikas Publishing, 1982) 102–115.

21 represents a significant constitutional achievement, yet its practical realisation requires stronger mechanisms of enforcement, greater police accountability, and a shift towards evidence-based investigative practices.

5. Evidentiary Reliability of Police Confessions

The evidentiary value of police confessions has long been viewed with caution in Indian criminal law, primarily due to concerns regarding their reliability. The statutory framework under the Indian Evidence Act, 1872 itself reflects this distrust by excluding confessions made to police officers or in police custody, except under narrowly defined circumstances. This legislative approach is grounded in the recognition that confessions obtained in custodial settings are particularly susceptible to coercion, thereby raising serious doubts about their truthfulness.[18]

One of the central concerns associated with police confessions is the risk of false confessions. Empirical studies and legal scholarship have demonstrated that individuals may admit to offences they did not commit under conditions of intense pressure, fear, or psychological manipulation. Factors such as prolonged interrogation, intimidation, and the promise of leniency can significantly impair an individual's capacity to make voluntary decisions.[19] In some instances, vulnerable individuals may confess simply to escape the immediate distress of custodial conditions, without fully appreciating the legal consequences of their statements. The phenomenon of false confessions challenges the traditional assumption that self-incriminatory statements are inherently reliable, and calls into question their evidentiary weight in criminal trials.

In contrast, judicial confessions recorded under Section 164 of the Code of Criminal Procedure, 1973 are generally accorded greater credibility. This distinction arises from the procedural safeguards built into the recording process. A Magistrate is required to ensure that the accused is not under any form of police influence, is aware of their right not to confess, and is given sufficient time for reflection.[20] These safeguards are intended to create conditions in which the statement is more likely to be voluntary and informed. Consequently, courts tend to treat judicial confessions as more reliable than those obtained by police officers, though even these are subject to careful scrutiny.

The differential treatment of police and judicial confessions highlights an important aspect of evidentiary assessment: the context in which a statement is made significantly affects its reliability. While police confessions are excluded due to the risk of coercion, the admissibility of discovery statements under Section 27 of the Evidence Act introduces a limited exception. However, this exception has been criticised for potentially allowing indirectly coerced information to influence the outcome of a trial.[21] The concern is that even partial reliance on such statements may compromise the integrity of the evidentiary process.

The implications of unreliable confessions extend directly to the fairness of criminal trials. The right to a fair trial, recognised as part of Article 21 of the Constitution of India, requires that convictions be based on credible and lawfully obtained evidence. The use of coerced or unreliable confessions not only increases the risk of wrongful convictions but also undermines public confidence in the justice system. Judicial decisions have repeatedly emphasised that evidentiary rules must be applied in a manner that

[18] A.N. Mulla, *The Indian Evidence Act* (LexisNexis, 19th edn., 2018) 320–328.

[19] K.I. Vibhute, "Confessions, Police Interrogation and the Right to Silence" (2005) 47 *Journal of the Indian Law Institute* 52–60.

[20] K.N. Chandrasekharan Pillai, *R.V. Kelkar's Criminal Procedure* (Eastern Book Company, 6th edn., 2016) 214–220

[21] S. Sarkar, *Sarkar on Evidence* (LexisNexis, 18th edn., 2016) 490–498.

safeguards the rights of the accused, rather than facilitating conviction at any cost.[22]

Moreover, an over-reliance on confessional evidence may discourage the use of scientific investigative methods, such as forensic analysis, which are generally considered more objective and reliable. Legal commentators have argued that the persistence of confession-centric investigation reflects deeper structural issues within the criminal justice system, including inadequate resources and institutional inertia.[23]Addressing these concerns requires a shift in investigative priorities, with greater emphasis on corroborative and independent evidence.

In sum, the evidentiary reliability of police confessions remains highly questionable, given the risks associated with coercion and false admissions. While the legal framework attempts to mitigate these risks through exclusionary rules and procedural safeguards, their effectiveness depends on rigorous judicial scrutiny and consistent enforcement. Ensuring the integrity of criminal trials ultimately requires moving away from reliance on confessions and towards more reliable forms of evidence.

6. Comparative Perspective: Lessons from Other Jurisdictions

A comparative examination of confession law reveals that jurisdictions such as the United Kingdom and the United States have developed more structured safeguards to regulate police interrogation, particularly in response to concerns regarding coercion and reliability. These systems offer useful insights for rethinking the Indian approach, where the gap between legal principles and actual practices continues to persist.

In the United Kingdom, the enactment of the Police and Criminal Evidence Act 1984 (PACE) marked a significant shift towards regulating police powers and ensuring procedural fairness during custodial interrogation. The Act, along with its accompanying Codes of Practice, lays down detailed guidelines governing the treatment of suspects, the conduct of interviews, and the recording of confessions. A key feature of PACE is the requirement that all custodial interrogations be properly documented, often through audio or video recording, to ensure transparency and accountability.[24]Additionally, suspects are guaranteed the right to legal advice during questioning, which acts as an important safeguard against coercion. The Act also empowers courts to exclude confessions if they are obtained through oppression or in circumstances that render them unreliable.[25]This emphasis on both procedural compliance and evidentiary reliability reflects a more holistic approach to safeguarding the rights of the accused.

In the United States, the protection against coerced confessions is primarily derived from constitutional jurisprudence. The landmark decision in *Miranda v. Arizona* established the requirement that individuals in police custody must be informed of their rights, including the right to remain silent and the right to consult an attorney.[26]These "Miranda warnings" are intended to counter the inherently coercive nature of custodial interrogation by ensuring that suspects are aware of their constitutional protections. The failure to provide such warnings generally renders any resulting confession inadmissible. Complementing this framework is the exclusionary rule, which mandates that evidence obtained in violation of constitutional rights cannot be used in court.[27]This doctrine serves both as a deterrent against unlawful police conduct and as a mechanism for preserving the integrity of the judicial process.

When compared to these jurisdictions, the Indian legal framework appears to rely more heavily on post facto

[22] *State of Punjab v. Barkat Ram*, AIR 1962 SC 276.
[23] Upendra Baxi, *The Crisis of the Indian Legal System* (Vikas Publishing, 1982) 108–120.
[24] David Ormerod and Karl Laird, *Smith, Hogan, and Ormerod's Criminal Law* (Oxford University Press, 15th edn., 2018) 345–352.
[25] Zander, *The Police and Criminal Evidence Act 1984* (Sweet & Maxwell, 6th edn., 2015) 112–125.
[26] *Miranda v. Arizona*, 384 U.S. 436 (1966).
[27] *Miranda v. Arizona*, 384 U.S. 436 (1966).

judicial scrutiny rather than preventive safeguards during interrogation. While statutory provisions under the Indian Evidence Act, 1872 exclude police confessions and constitutional protections exist under Article 20(3), the absence of comprehensive procedural regulation akin to PACE or mandatory warnings comparable to *Miranda* limits their practical effectiveness.[28]Moreover, the lack of consistent implementation of measures such as legal representation during interrogation and electronic recording of statements reduces transparency in custodial practices.

The comparative experience suggests that effective protection against coercion requires not only exclusionary rules but also proactive safeguards embedded within the interrogation process itself. The UK model demonstrates the importance of detailed statutory regulation and oversight, while the US approach highlights the role of constitutional rights and judicial enforcement in shaping police conduct. For India, these lessons point towards the need for institutional reforms, including mandatory recording of interrogations, greater access to legal counsel at the pre-trial stage, and clearer guidelines governing police questioning.[29]

Ultimately, a shift towards preventive safeguards, rather than reliance solely on evidentiary exclusion, may enhance both the reliability of confessions and the fairness of the criminal justice system. Incorporating such measures would not only align Indian practices with international standards but also strengthen the constitutional commitment to due process and human dignity.

7. Institutional Failures and Accountability Deficit

The persistence of coercive interrogation practices in India cannot be understood solely as a failure of legal norms; it is equally a reflection of deeper institutional deficiencies within the criminal justice system. Despite the existence of constitutional safeguards and judicial guidelines, the lack of structural reforms in policing has significantly weakened their practical impact. The continued reliance on outdated investigative methods, coupled with inadequate training and resource constraints, has contributed to an environment in which coercive practices remain embedded within everyday police functioning.[30]

One of the central issues is the slow and uneven implementation of police reforms. The Supreme Court's decision in *Prakash Singh v. Union of India* sought to address systemic problems such as political interference, lack of accountability, and absence of professional autonomy by directing states to establish mechanisms like Police Complaints Authorities and fixed tenures for senior officers.[31] However, compliance with these directives has been inconsistent across states, limiting their effectiveness in bringing about meaningful change. Scholars have noted that without institutional independence and internal accountability, legal safeguards against custodial abuse are unlikely to be fully realised.[32]

Another critical concern is the weak enforcement of arrest and interrogation guidelines laid down by the judiciary. In *D.K. Basu v. State of West Bengal*, the Court prescribed detailed procedures intended to ensure transparency and protect detainees from abuse.[33]These included requirements such as documenting arrests, informing relatives, and conducting medical examinations. While these guidelines are binding in law, their implementation

[28] Wayne R. LaFave et al., *Criminal Procedure* (West Academic Publishing, 5th edn., 2009) 468–480.
[29] K.I. Vibhute, "Confession Evidence and Comparative Criminal Procedure" (2006) 48 *Journal of the Indian Law Institute* 210–225.
[30] K.S. Subramanian, *Political Violence and the Police in India* (Sage Publications, 2007) 145–162.
[31] *Prakash Singh v. Union of India*, (2006) 8 SCC 1.
[32] Arvind Verma, "Police Reforms in India: Moving from Rhetoric to Action" (2010) 52 *Journal of the Indian Law Institute* 89–105.
[33] *D.K. Basu v. State of West Bengal*, (1997) 1 SCC 416

often remains superficial. Empirical studies and official reports suggest that compliance is frequently treated as a matter of form rather than substance, with records being manipulated or safeguards ignored in practice.[34]The absence of effective monitoring mechanisms further exacerbates this problem, allowing violations to persist without meaningful consequences.

Oversight institutions, including the National Human Rights Commission (NHRC), have played an important role in documenting and addressing custodial violence. The NHRC has issued guidelines on arrest procedures, custodial deaths, and police accountability, and has sought to promote greater transparency through reporting requirements.[35] However, its powers remain largely recommendatory, limiting its ability to enforce compliance. Similarly, other oversight bodies often face constraints in terms of resources, jurisdiction, and independence, which restrict their effectiveness in holding law enforcement agencies accountable.

The accountability deficit is further compounded by systemic barriers within the criminal justice process. Prosecutions of police officials for custodial violence are relatively rare, and when initiated, they often face procedural delays and evidentiary challenges. The requirement of prior sanction for prosecution in certain cases creates an additional hurdle, reinforcing a culture of impunity.[36]Legal commentators have argued that this lack of accountability not only undermines individual rights but also erodes public confidence in the justice system.

In this context, the failure to translate legal safeguards into effective institutional practices remains a central concern. While the normative framework governing confessions and custodial conduct is well developed, its enforcement is hindered by structural weaknesses, inadequate oversight, and limited accountability. Addressing these issues requires comprehensive police reforms, stronger enforcement of judicial guidelines, and the empowerment of oversight institutions to ensure compliance. Without such measures, the gap between constitutional ideals and ground realities is likely to persist.

8. Reforms and the Way Forward

Addressing the persistent concerns surrounding coerced confessions requires a shift from purely normative safeguards to concrete institutional reforms that reshape investigative practices. While the existing legal framework under the Indian Evidence Act, 1872 and constitutional protections provide a foundation, their effectiveness depends largely on the adoption of preventive mechanisms that ensure transparency and accountability during interrogation.

One of the most widely recommended reforms is the mandatory video recording of custodial interrogations. Recording the entire process of questioning can significantly reduce the scope for coercion by creating an objective record of police conduct. It also assists courts in assessing the voluntariness of confessions with greater accuracy. Comparative experience, particularly from jurisdictions such as the United Kingdom, demonstrates that electronic recording enhances both evidentiary reliability and public confidence in the criminal justice system.[37] In the Indian context, while courts have occasionally endorsed such measures, their implementation remains inconsistent. Institutionalising this requirement through clear statutory mandates could act as a strong deterrent against custodial abuse.

Another critical safeguard is the presence of legal counsel during police interrogation. Although the right to consult a lawyer is recognised as part of fair procedure under Article 21 of the Constitution of

[34] Law Commission of India, *273rd Report on Implementation of UN Convention Against Torture* (2017) paras 4.1–4.20.
[35] National Human Rights Commission, *Guidelines on Custodial Death/Rape* (Revised 2010).
[36] Upendra Baxi, *The Crisis of the Indian Legal System* (Vikas Publishing, 1982) 112–120.
[37] David Ormerod and Karl Laird, *Smith, Hogan, and Ormerod's Criminal Law* (Oxford University Press, 15th edn., 2018) 350–356.

India, its practical enforcement at the stage of questioning remains limited. Judicial pronouncements have acknowledged that access to legal advice can mitigate the inherently coercive nature of custodial interrogation, yet the absence of a clear, enforceable right to have counsel present during questioning weakens this protection.[38] Legal scholars have argued that early access to legal representation not only protects the rights of the accused but also enhances the legitimacy of the investigative process.

Equally important is the need to strengthen forensic-based investigation. The continued reliance on confessional evidence reflects, in part, the inadequacy of scientific investigative infrastructure. Expanding forensic capabilities such as DNA analysis, digital forensics, and crime scene reconstruction can reduce dependence on confessions and promote more objective forms of evidence.[39] Reports of the Law Commission have consistently emphasised that modernising investigative techniques is essential for improving both efficiency and fairness in the criminal justice system. A transition towards evidence-based policing would also align Indian practices with international standards.

Reforms in police training and organisational structure are also indispensable. Many of the deficiencies in interrogation practices stem from outdated training methods, lack of awareness of legal standards, and institutional pressures to secure quick results. Comprehensive training programmes that emphasise human rights, scientific investigation, and ethical interrogation techniques can help shift the culture of policing away from coercion.[40] At the structural level, implementing long-pending police reforms such as those recommended in *Prakash Singh v. Union of India* would enhance professionalism and reduce external interference, thereby improving accountability.

Ultimately, meaningful reform requires an integrated approach that combines legal safeguards with institutional transformation. Isolated measures are unlikely to succeed unless supported by effective monitoring mechanisms and a commitment to accountability. Strengthening oversight institutions, ensuring compliance with judicial guidelines, and promoting transparency in police functioning are essential components of this process. Without such systemic changes, the gap between constitutional ideals and investigative practices is likely to endure.

9. Conclusion: Reconciling Confessions with Constitutional Morality

The discourse on custodial confessions in India ultimately converges on a fundamental constitutional question: whether the pursuit of truth in criminal investigation can justify practices that compromise individual dignity and liberty. The framework governing confessions, though formally robust, continues to be tested by the persistence of coercive interrogation methods. Reconciling this tension requires a reorientation of the criminal justice system in light of constitutional morality, which places the individual at the centre of legal protection rather than treating them as a mere subject of investigation.

The jurisprudence developed under Article 21 of the Constitution of India has consistently emphasised that the right to life and personal liberty includes protection against arbitrary and abusive state action. In *Maneka Gandhi v. Union of India*, the Supreme Court underscored that procedure must be just, fair, and reasonable, thereby embedding substantive due process within Indian constitutional law.[41] This principle has profound implications for the law of confessions, as it demands that the methods used to obtain evidence must themselves conform to standards of fairness. Any confession extracted through coercion, whether physical or psychological, not only

[38] *Nandini Satpathy v. P.L. Dani*, (1978) 2 SCC 424.
[39] Law Commission of India, *245th Report on Arrears and Backlog: Creating Additional Judicial Capacity* (2014) paras 7–10.
[40] Arvind Verma and K.S. Subramanian, "Understanding the Police in India" (2009) 51 *Journal of the Indian Law Institute* 43–60.
[41] *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248.

loses evidentiary value but also represents a violation of constitutional guarantees.

Reasserting the primacy of dignity and liberty requires recognising that custodial violence and compelled confessions are not merely procedural irregularities but serious infringements of fundamental rights. Judicial decisions have repeatedly affirmed that the state cannot secure convictions at the cost of constitutional protections. In *D.K. Basu v. State of West Bengal*, the Court explicitly linked custodial abuse to the erosion of the rule of law, highlighting the need for accountability and transparency in police conduct.[42]Similarly, legal scholarship has argued that the legitimacy of the criminal justice system depends on its ability to uphold rights even in the face of investigative challenges.[43]

A crucial aspect of this transformation lies in moving away from confession-centric policing towards an evidence-based investigative model. The continued dependence on confessional statements reflects deeper structural weaknesses, including inadequate forensic infrastructure and institutional inertia. As scholars have noted, reliance on confessions not only increases the risk of wrongful convictions but also discourages the development of scientific methods of investigation.[44]Strengthening forensic capabilities and promoting objective forms of evidence can reduce the incentives for coercive interrogation, thereby aligning investigative practices with constitutional values.

At the same time, the concept of constitutional morality requires that institutions internalise the principles of accountability and restraint. This involves not only enforcing existing safeguards but also cultivating a culture of rights within law enforcement agencies. Training, oversight, and structural reforms must work in tandem to ensure that the protection of individual rights is not viewed as an obstacle to effective policing but as an essential component of it.[45]

In conclusion, the challenge is not merely to regulate confessions but to transform the conditions under which they are obtained. A criminal justice system that respects dignity, ensures fairness, and relies on credible evidence is better equipped to deliver justice in both form and substance. Bridging the gap between legal ideals and institutional practices is essential for restoring public confidence and upholding the constitutional promise of liberty.

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DIGITAL DECEPTION: AI AND THE LAW OF EVIDENCE

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ABSTRACT

The Indian courtroom has undergone significant transformation over the years. Earlier, cases largely relied on handwritten letters, physical documents, and oral testimonies given by witnesses in person. Today, a large number of cases depend substantially on digital evidence such as smartphone data, WhatsApp conversations, call logs, CCTV recordings, emails, and digitally signed contracts. In many situations, such electronic records are no longer merely supplementary but form the very foundation of the case. With the enactment of the Information Technology Act, 2000, Section 65B was introduced into the Indian Evidence Act, 1872 to establish a structured mechanism for the admissibility of electronic records through a certification process confirming their creation and storage. The Bharatiya Sakshya Adhiniyam, 2023, which came into force on 1 July 2024, has largely retained this framework while introducing certain additional provisions of its own. But due to rapid growth of generative artificial intelligence, creation of deepfake images, cloned voice recordings, fabricated WhatsApp chats, and digitally manipulated documents that can appear entirely authentic. The paper delves into this pertinent issue, it examines the statutory definition and taxonomy of evidence under the Bhartiya Sakshya Adhiniyam, 2023, and traces the doctrinal evolution of electronic evidence in India. It interrogates whether the existing certification under Section 63 and related provisions adequately addresses AI-generated manipulation. The paper further analyses the evidentiary risks posed by synthetic media and evaluates the sufficiency of current admissibility standards, burdens of proof, and forensic safeguards. The central issue addressed in this paper is whether the existing legal framework governing electronic evidence under the Bharatiya Sakshya Adhiniyam, 2023 is adequately equipped to deal with the rise of AI-generated digital content

Keywords *:Evidence, electronic, digital, artificial intelligence, AI*

INTRODUCTION

The term 'evidence' is derived from the Latin word 'evidens' or 'evidere', which means "to show clearly; to make clear to the sight; to discover clearly; to make plainly certain; to ascertain; to prove"[1] In the legal sense, evidence refers to the means by which facts in issue are proved or disproved before a court of law. The law of evidence is an adjective law to procedural laws; it is the very medium through which those rights are validated or exonerated. The Bharatiya Sakshya Adhiniyam, 2023 (hereinafter referred to as 'BSA') is the principal statute governing the law of evidence in India for proceedings initiated on or after July 1, 2023. It replaced the Indian Evidence Act, 1872 hereinafter referred as ('IEA') a statute that had governed Indian evidence law for over 150 years. The BSA was enacted as part of a comprehensive legislative reform package that also included the Bharatiya Nyaya Sanhita, 2023[2] and the Bharatiya Nagarik Suraksha Sanhita, 2023[3].

Under the BSA Section 2(1)(e)[4] *"evidence" means and includes (i) all statements including statements given electronically which the Court permits or requires to be made before it by witnesses in relation to matters of fact under inquiry and such statements are called oral evidence; (ii) all documents including electronic or digital records produced for the inspection of the Court and such documents are called documentary evidence;* this definition forms the foundation of the

[1] RATANLAL & DHIRAJLAL, THE LAW OF EVIDENCE 3 (Justice Arijit Pasayat ed., 27th ed. 2020).

[2] replacing the Indian Penal Code, 1860.
[3] replacing the Code of Criminal Procedure, 1973.
[4] Bharatiya Sakshya Adhiniyam, 2023

entire evidentiary framework. The definition is inclusive, not exhaustive, the word 'includes' shows that they are illustrations of a broader concept, not an exhaustive list. The evidence is bifurcated into two categories: oral evidence (statements made by witnesses) and documentary evidence (documents produced for the court's inspection). For the purposes of this paper, the definition explicitly states that documentary evidence includes electronic or digital records. Electronic and digital records are documentary evidence in the fullest and most unqualified sense under the BSA. The IEA's definition of 'evidence' did not, as originally enacted in 1872, mention electronic records; they were brought within the definition through the definition of 'document' (Section 3 IEA) and through the specific provisions of Sections 65A and 65B. The BSA, by contrast, places electronic and digital records squarely within the core definition of evidence from the outset.

The evidence is mainly classified into oral evidence, as defined in Section 2(1)(e)(i) of the BSA, it consists of all statement given including electronic which court requires to be made before it, in relation to matter of fact. The BSA, following the IEA, requires oral evidence to be direct.[5] Section 39 of the BSA, expressly recognises the admissibility of statements recorded through audio-visual electronic means, including video conferencing, a recognition that became urgent during the COVID-19 pandemic and has since become institutionalised in Indian courts.

The Supreme Court's Model Rules for Video Conferencing for Courts, 2020, remain operational under the BSA framework. On the other hand, documentary evidence consists of documents produced for the court's inspection. Under the IEA, a document was defined to mean any matter expressed or described upon any substance by means of letters, figures, or marks, or by more than one of those means, intended to be used, or which may be used, for the purpose of recording that matter.[6] The IT Act, 2000 amended this definition to include electronic records. It is further classified, for purposes of proof, into primary evidence and secondary evidence. Under the BSA, section 56 defines primary evidence as the document itself produced for the court's inspection. Section 57 talks about what are different kinds of primary evidence, in contrast to previous provision under section 62 of the IEA, in S.57 under explanation 4 to 7, expressly recognise various forms of electronic and digital records such as multiple files created during storage, records produced from proper custody, stored video recordings, and automated storage across computer resources as constituting primary evidence. While it does extend the scope of application, it mainly focuses on the manner in which electronic records are stored or produced before the court. As a result, a digital image, video, or audio file may qualify as primary evidence merely by virtue of being produced in its original electronic form. In relation to synthetic media, such as deepfakes, this classification could potentially allow manipulated or AI-generated material to be admitted into evidence without undergoing adequate technical or forensic scrutiny at the stage of admissibility. Section 58 defines secondary evidence as including certified copies, copies made by mechanical processes, copies made from the original by other means, counterparts, and oral accounts of the contents of the document. For electronic records specifically, the Supreme Court in *Anvar P.V. v. P.K. Basheer*,[7] clarified that the computer or device on which the electronic record is stored constitutes, in a sense, the original but that it is the output (print-out, CD, screenshot) that is produced before the court as secondary evidence.

EVOLUTION OF ELECTRONIC EVIDENCE IN INDIA

Electronic record under the Indian Evidence act is first mentioned in Section 2(d) where of Indian evidence where while defining the term 'document', in its illustration at *"(vi) An electronic record on emails, server logs, documents on computers, laptop or*

[5] Section 57 of the Bharatiya Sakshya Adhiniyan, 2023

[6] Section 3 of the Indian Evidence Act,

[7] (2014) 10 SCC 473

smartphone, messages, websites, locational evidence and voice mail messages stored on digital devices are documents." This qualifies and include any sort of document which when can be printed through and can be available. Before the emergence of the IT act the term, electronic evidence was not widely referred anywhere, prior to this majority of cases with respect to electronic evidence were those of tape recordings, etc. In *State of Maharashtra v. Prakash Vishnu Rao Mane*,[8] the Bombay High Court examined the admissibility of tape-recorded evidence and treated it as a form of mechanical or electronic recording. Further, while laying down practical guidelines, the Court suggested taking assistance of electronic experts and referred to the growing use of tape-records and the electronics, emphasizing the need for proper legislative regulation.

The Information Technology Act, 2000 was enacted primarily to give legal recognition to e-commerce and digital transactions, the IT Act had profound implications for the law of evidence. It amended the Indian Evidence Act, 1872, By amending the Indian Evidence Act, 1872, the Banker's Books Evidence Act, 1891, and the Indian Penal Code, 1860. The IT Act introduced the following key amendments to the IEA that govern electronic evidence:

a) Section 65A was inserted that clarified that electronic records were to be provided in the strict manner prescribed under Section 65B.

b) Section 65B further provided that any information contained in an electronic record, when printed, stored, recorded, or copied onto optical or magnetic media by a computer, is deemed to be a document. Such electronic output is admissible as evidence of the contents of the original electronic record without requiring production of the original, provided the conditions set out in sub-section (2) are satisfied and a certificate as required under sub-section (4) is furnished.

c) Sections 85A and 85B introduced statutory presumptions in respect of electronic records and digital signatures. Section 85A creates a presumption regarding the authenticity of electronic contracts executed using a digital signature. Section 85B, in civil proceedings, raises a presumption that a secure electronic record has remained unaltered since the point in time to which the security relates, unless proved otherwise.

d) Section 88A: This provision creates a presumption that an electronic message forwarded by the originator through electronic means was indeed sent by the purported originator. The burden is thereby shifted to the opposing party to disprove or rebut the authenticity of the communication.

The first major judicial conflict with Section 65B arose in *State (NCT of Delhi) v. Navjot Sandhu*.[9] the case was concerning the Indian Parliament attack of 2001, call detail records between the people who were accused of the said crime were used as evidence. These records were adduced without a 65b the certificate. The accused then argued that the records should not be admitted or relied in evidence because, the State had not complied with 65b certification.. A two-judge bench of the Supreme Court observed, *"Irrespective of the compliance of the requirements of Section 65B which is a provision dealing with admissibility of electronic records, there is no bar to adducing secondary evidence under the other provisions of the Evidence Act, namely Sections 63 & 65. It may be that the certificate containing the details in sub-Section (4) of Section 65B is not filed in the instant case, but that does not mean that secondary evidence cannot be given even if the law permits such evidence to be given in the circumstances mentioned in the relevant provisions, namely Sections 63 & 65."* As two witnesses were examined from the telecom companies, who produced printouts of the call details and during cross-examination, no serious challenge was raised regarding tampering or fabrication. The

[8] 1977 79 BOMLR 217

[9] (2005) 11 SCC 600

Court held that under Sections 63 and 65, secondary evidence is admissible where the original cannot be easily produced, and since the call data was stored in large servers that could not be physically brought to court, certified printouts taken by mechanical process and proved through competent witnesses could be admitted as secondary evidence.[10] The Court thus ruled that non-compliance with Section 65B did not automatically bar admissibility if secondary evidence was otherwise permissible, effectively allowing electronic records such as call data to be admitted even without a Section 65B certificate. This observation though it can be characterised as obiter created lasting confusion. For nearly a decade, courts across India in *Kundan Singh vs. State*,[11] *Avadut Waman Kushe vs The State of Maharashtra*,[12] admitted electronic evidence without Section 65B certificates, relying on oral expert testimony instead. The Navjot Sandhu approach effectively made the certificate optional, which Parliament had never intended.

The decision of Navjot Sandhu was overruled by a 3-judge bench of Supreme Court in *Anvar P.V. v. P.K. Basheer & Ors*.,[13]. This was an election petition, the dispute arose as CDs and a pen drive containing audio-visual recordings of alleged electoral offences, were tendered in evidence without a Section 65B certificate. The Court held that Sections 65A and 65B of the Evidence Act constitute a special and complete code for proving electronic records. Since Section 65B is a special provision specifically enacted to deal with electronic evidence, it overrides the general provisions relating to secondary evidence under Sections 62 and 63 of the Evidence Act. Applying the legal maxims that is *'genelis special non derogant,'* that special law prevails over general law, the Court held that the mode of proof prescribed under Section 65B is mandatory and exclusive. The CDs and pen drives in the case, were excluded from evidence.. This case established three propositions of cardinal importance, first, that Section 65B is a complete and exclusive code for the admission of secondary electronic evidence; second, that the certificate under Section 65B (4) is a condition precedent to admissibility; and third, that oral evidence of the contents of an electronic record without a certificate is inadmissible.

This was followed by another landmark judgement of *Tomaso Bruno v. State of Uttar Pradesh*,[14] where two Italian nationals were found guilty of murdering a fellow tourist in Agra. While determining the admissibility of CCTV footage, the court observed as CCTV comes under the category of electronic record, it must be proved in conformity of Section 65B provision. The original DVR (Digital Video Recorder) was seized and produced before the trial court, bringing it closer to primary evidence territory. The Court held that when the original recording device is produced before the court, the certificate requirement under Section 65B is not mandatory, it only becomes essential when secondary copies are produced.[15]. Further 2-bench judge in *Shafi Mohammad v. State of Himachal Pradesh,*[16] introduced a relaxation of the certificate requirement that directly conflicted with Anvar. The Court observed that, practical difficulties may arise for accused persons or complainants who do not have control over the devices from which the electronic records are produced. The Court reasoned that to insist on a certificate in such cases would deny them access to evidence that might be vital to their case. This resulted in a clear and irreconcilable conflict between the two-judge bench decision in Shafi Mohammad and the earlier three-judge bench ruling in Anvar.The divergence in views also led to considerable uncertainty at the trial court level, with different courts adopting different approaches regarding the requirement and timing of the Section 65B certificate.

This judicial inconsistency was ultimately settled by a 5-judge Constitutional bench decision in *Arjun Panditrao Khotkar v. Kailash Kushanrao*

[10] Id. ¶ 65.
[11] 2015 SCC OnLine Del 13647
[12] 2016 SCC OnLine Bom 3236
[13] (2014) 10 SCC 473
[14] (2015) 7 SCC 178
[15] Id. ¶ 25.
[16] (2018) 2 SCC 801

Gorantyal.[17] The case arose from yet another election petition, where video recordings without Section 65B certificates had been admitted. The Constitution Bench held as follows:

'The certificate required under Section 65B (4) is a condition precedent to the admissibility of evidence by way of electronic record. Failure to produce the said certificate renders such evidence inadmissible... Secondary evidence of the contents of a document must always be distinguished from proof of an electronic record under Section 65B. Secondary evidence of the contents of an electronic record is governed by Section 65B alone.'

Additionally, the Constitution Bench held that an objection to the admissibility of electronic evidence for want of a certificate must be raised at the time of admission; objections at the appellate stage will not be entertained unless the court is satisfied that it was not reasonably possible to raise the objection earlier.

The Bharatiya Sakshya Adhiniyam which replaced the Indian evidence act, expressly includes 'electronic' or digital records within the definition of documentary evidence.[18] It incorporates the said reference from the definition of electronic record u/s 2(1)(t) of the IT Act, 2000. It encompasses any form of data that is stored, received, or sent in electronic form regardless of the technology used, the medium of storage, or the nature of the content. With respect to other provisions related to the evidence are replicated similarly in the new act, Section 61 of BSA corresponds to Section 65B, it retains the certification necessary for secondary electronic evidence and the four conditions for admissibility are retained verbatim. Notably, the BSA does not introduce any new mechanism with respect to any AI generated images, videos etc.

PRINCIPLES GOVERNING AUTHENTICITY OF ELECTRONIC EVIDENCE.

As discussed above the primary mechanism for admissibility of any electronic record, is that either the device be produced directly in the court for it to be considered primary evidence, and if such is not possible in case of emails, WhatsApp chat etc., their printout/transcribes if produced be tendered with the a 63B certificate, to conclusive established the authenticity of the said document. The process of authentication involves establishing that the evidence is what it claims to be. In case of electronic evidence, authentication assumes a vital role, it means to demonstrate that the electronic record was created or sent by the person alleged to have created or sent it, that it has not been altered since creation or transmission, and that it accurately represents the event or communication it purports to document. Throughout the whole process, the certificate is compulsory and it only establishes the chain of custody of the evidence from the original device to the output produced before the court. The scope of the said certificate is limited to the following:

i. the identity of the computer or electronic device from which the output was generated
ii. that the device was used regularly during the relevant period for the stated activities
iii. that information of the kind in the electronic record was regularly fed into the device in the ordinary course of those activities
iv. that the device was operating properly during the relevant period
v. that the output reproduces the information as it was stored in the device.

The foundational jurisprudence for such technical scrutiny can be traced to *Ram Singh v. Col. Ram Singh,*[19] where the Supreme Court of India laid down safeguards for the admissibility of tape-recorded evidence. The Court held that recordings are admissible only if the speaker's voice is properly identified, the accuracy of the recording is proved, the possibility of tampering or erasure is ruled out, the content is relevant, and the recording is kept in proper custody. Recognising that magnetic recordings are

[17] (2020) 7 SCC 1
[18] 2(1)(e) of the Bharatiya Sakshya Adhiniyam, 2023.
[19] AIR 1986 SC 3

susceptible to manipulation, the Court insisted that such evidence must be received with caution and subjected to rigorous verification, almost akin to scientific proof. Apart from this, in terms of forensic examination, in some cases, if requested, from this a digital forensic expert examining an electronic record also analyses metadata such as timestamps, device identifiers, server logs, and application version history. The expert may also conduct hash verification, a cryptographic hash (e.g., MD5 or SHA-256) generates a unique digital fingerprint of a file; if the hash value at the time of production matches the value generated at the time of extraction, it strongly indicates that the file has not been altered.[20] Such examination also assists in verifying chain of custody and detecting deletion, insertion, or modification.

The above principles are limited in their scope and applicability; they restrict themselves to the chain of custody of the device. The 65B certificate is a process certificate, not a content certificate. It limits itself to the chain of custody, not the authenticity of the content. In the vast majority of cases involving WhatsApp chats, emails, or other digital communications, parties rely solely on a Section 65B certificate to secure admissibility. Once the certificate is produced, the court ordinarily admits the electronic record without insisting on any deeper technical scrutiny. Forensic examination enters the picture only when the authenticity of the said evidence is disputed or when the circumstances suggest possible manipulation. Even then, its role in Indian litigation remains crucial but insufficiently formalised. Under Section 45 of the Bharatiya Sakshya Adhiniyam, 2023, courts may seek expert opinion on matters involving science or technical knowledge. Although the section does not mention about any particular type of experts, traditionally, the courts have relied only on experts in the fields of forensic, medical, handwriting etc. However, the said section is silent with regards to experts on artificial intelligence systems and algorithmic outputs. With the rapid advancement of Artificial Intelligence, such type of evidence is more than likely to appear in court. A traditional digital forensic expert may not possess the skills to differentiate and understand the specialized machine-learning expertise required to detect algorithmic manipulation. As the statue does not recognize such experts, it again poses a burden on the court to determine the appropriate qualifications, expertise, and credibility of such experts. Consequently, judges may be required to independently assess whether a proposed expert possesses sufficient technical competence to assist the court, which may create inconsistencies in the admission and evaluation of expert testimony. It thus becomes imperative that the statute, or any supplementary procedural rules, establish clear standards for the recognition and qualification of experts in areas such as artificial intelligence and digital forensics. The formal recognition of specialized AI forensic experts would assist courts in assessing the authenticity and reliability of technologically complex evidence and would strengthen the overall evidentiary framework governing electronic records.

ARTIFICIAL INTELLIGENCE IN THE EVIDENTIARY FRAMEWORK

The term 'artificial intelligence' is the most commonly used yet the least clearly understood term in today's public discourse. Its meaning has evolved a lot since it was first coined by John McCarthy and Marvin Minsky at the Dartmouth Summer Research Project in 1955, where they described it as an idea where every aspect of human intelligence, such as reasoning, learning, and even problem-solving, could in theory be described so deeply and precisely that a machine could be programmed to imitate it.[21] The primary goal of building a machine that thinks in the same ways as

[20] Kent, K. et al. (2006) Guide to integrating forensic techniques into incident response, CSRC. Available at: https://csrc.nist.gov/pubs/sp/800/86/final (Accessed: 03 March 2026).

[21] McCarthy, J. et al. (no date) A proposal for the Dartmouth Summer Research Project on Artificial Intelligence, August 31, 1955, AI Magazine. Available at: https://ojs.aaai.org/aimagazine/index.php/aimagazine/article/view/1904 (Accessed: 05 March 2026).

a human has never been achieved, yet it has never been abandoned either; the only thing that has changed is the way the researchers have tried to make the above goal a reality. At its most basic level, artificial intelligence refers to a set of computer tasks that, if performed by humans, would require a certain level of intelligence. It covers various sets of abilities.

For instance, a spam filter that can detect unwanted emails, a navigation app that can change your path in real time, a chess program that can defeat a world chess champion, and a generative system that can draft legal documents in the span of seconds or create a set of believable WhatsApp messages. All these are different outcomes of artificial intelligence. The Association for the Advancement of Artificial Intelligence defines AI as the scientific study of the processes behind thought and intelligent behaviour and how these can be built into machines. In 2020, the European Parliament explained AI in simpler terms as a machine having the ability to show human-like skills such as explaining, creating, reasoning, and problem-solving.[22] The evolution of artificial intelligence as a research domain has experienced what researchers frequently refer to as the 'hype cycle'. There are stages of significant expectations and public enthusiasm, succeeded by disillusionment when major advancements do not occur as swiftly as anticipated.

This is followed by a more subdued phase where genuine technical advancements take place, typically without much fanfare, and then the enthusiasm begins to escalate once more. Since it began in the 1950s, the field has gone through at least two full cycles like this. Many believe we are now at the peak of a third and especially intense phase. What makes this wave different is not just the massive private and government funding, partly influenced by strategic competition between the United States and China, which some compare to the Cold War space race, but also the fact that certain abilities, especially in generative AI, have finally reached a level that earlier periods only talked about in theory.

To really understand the power of modern AI and the threat it poses to the authenticity of all electronic evidence, it's important to understand, at least in a broad manner, how AI systems are actually made. The foundation of most significant and extraordinary innovations in the last few decades is based on artificial neural networks, which are at their core inspired by the structure of a human brain. A neural network contains layers and layers of interconnected processing nodes, all of which take numerical imprints and then perform mathematical operations and pass the results forward to the next layer. The connections between nodes carry numerical weights that determine the strength of their influence. When the network is trained, it is exposed to very large quantities of labelled data, such as images paired with descriptions, text paired with translations, and audio paired with transcripts, and the weights of the connections are iteratively adjusted to minimize the difference between the network's output and the correct answer.[23] 'Deep learning' refers specifically to neural networks of many successive layers, sometimes numbering in the hundreds. The depth of these networks enables them to learn representations of increasing abstraction: early layers detect simple patterns such as edges and colours; intermediate layers combine these into shapes, textures, and local structures; later layers recognize complex, high-level features such as faces, spoken words, or the stylistic patterns of a particular writer. It is this capacity for hierarchical, multi-level pattern recognition that distinguishes deep learning from earlier AI approaches and that accounts for the dramatic improvements in performance across domains that have occurred since approximately 2012.[24] The training of these models requires enormous

[22] Association for the Advancement of Artificial Intelligence, "Welcome to AAAI" <https://www.aaai.org> accessed 26 February 2026.

[23] Rumelhart, D.E., Hinton, G.E. and Williams, R.J. Learning representations by back-propagating errors, Nature News. Available at: https://www.nature.com/articles/323533a0 (Accessed: 01 March 2026).

[24] Krizhevsky, A., Sutskever, I. and Hinton, G.E. (2012) Imagenet classification with deep

computational resources, such as specialized processors running for weeks or months on datasets of billions of examples. Once trained, however, applying the model what engineers call 'inference' is computationally cheap, which is why these capabilities can be delivered to millions of users simultaneously through ordinary web browsers and smartphone applications.

A. Generative AI: The Revolution in Content Creation

The AI systems of greatest relevance to the law of evidence are not those that classify or analyze existing content but those that create new content. Generative AI is the category of artificial intelligence that produces original text, images, audio, and video from a given prompt or specification. Three technological developments have driven the generative AI revolution and are directly implicated in the fabrication of electronic evidence: large language models, diffusion models for image and video synthesis, and AI-powered voice cloning. Large language models such as GPT-4, Claude, Llama, and Gemini undergo training involving hundreds of billions of words gathered from various sources, including the internet, books, and other written materials. In the course of this training, they absorb the statistical patterns of language across all dimensions: grammar, vocabulary, tone, style, factual information, and even the unique characteristics of specific authors.[25] When given a specific prompt, these AI systems generate texts or paragraphs aligned with the patterns they have thoroughly learned. This ability allows them to form coherent sentences, human-sounding dialogues, and organized content, including made-up conversations that have never particularly occurred. If a model receives examples of someone's WhatsApp messages or emails, it can produce new messages "in their style," closely imitating their word choices, sentence structures, frequent phrases, and personal expressions. For an average reader and often even for a judge, there may be no clear indication that the interaction was generated artificially.[26] Voice cloning technology, accessible via commercial services like Eleven Labs and several open-source applications, is capable of creating synthetic speech that replicates an individual's voice with just three to five seconds of actual audio. The system analyzes the distinctive sound characteristics of that voice, including pitch, tone, rhythm, and speaking style, and subsequently produces new speech from any written text that aligns closely with those attributes. In numerous instances, the outcome sounds so authentic that even experienced listeners can struggle to identify the difference. This presents a significant evidentiary hazard. A forged audio recording of an individual supposedly confessing to a crime, making a threat, or acknowledging a debt can be created without that person ever voicing those statements. The file can then be stored on a device and subsequently presented in court with a technically accurate certificate under Section 65B, despite the fact that the content itself is completely false.

B. Deepfakes

Deepfakes are manipulations of video content to a place; a person's face as well as voice are digitally inserted into situations, they were never actually a part of. When this particular technology became accessible around 2017, early deepfakes could be very easily spotted because the faces were not particularly visible;

convolutional neural networks. advances in neural information processing systems, 25, 1097-1105. Available at: https://www.scirp.org/reference/referencespapers?referenceid=3031254 (Accessed: 04 March 2026).

[25] Brown, T. et al. (1970) Language models are few-shot learners, Advances in Neural Information Processing Systems. Available at: https://papers.nips.cc/paper/2020/hash/1457c0d6bfcb4967418bfb8ac142f64a-Abstract.html (Accessed: 05 March 2026).

[26] Ai Deception: A survey of examples, risks, and potential solutions. Available at: https://arxiv.org/pdf/2308.14752 (Accessed: 04 March 2026).

they were blurred slightly around the edges in some videos, the people blinked weirdly, and the lip movements never properly matched the audio. But the technology has drastically improved since then.Modern deepfakes have surpassed the "uncanny valley" effects by employing Generative Adversarial Networks (GANs) and diffusion models that analyze extensive hours of video to perfect skin textures and lighting. Current AI doesn't merely superimpose a face; it replicates how light interacts with a person's skin and how their neck muscles exert tension during speech, rendering the junction between the artificial face and the real body undetectable. Beyond visual accuracy, the availability of these technologies has shifted from being available solely to expert academics to anyone who possesses a smartphone.

The genuine difficulty that generative AI presents to the justice system transcends technicalities; it is fundamentally structural. The resources required to produce fraudulent electronic evidence, such as a counterfeit WhatsApp chat, a replicated voice recording, or a deepfake video, are available for free, readily accessible, and user-friendly. An individual equipped with merely a smartphone and an internet connection can generate highly realistic false evidence in just a matter of minutes. Conversely, the instruments needed to identify such fabrication are expensive, require specialized forensic knowledge, and typically yield results that are probabilistic rather than definitive. Their precision also hinges on the advancement of the generative model and the sophistication of the fabricated output. As generative technology advances, current detection systems become less dependable, necessitating the creation of new detection techniques, which are subsequently anticipated and evaded by the following generation of generative tools.

In the recent years, India has witnessed a sharp and visible rise in litigation concerning AI-generated misuse of celebrity identity. Recently celebrities such as. Amitabh Bachchan,[27] Anil Kapoor,[28] have approached the Delhi High Court, in particular, for urgent interim injunctions against deepfakes, AI voice cloning, and digital impersonation. In several of this cases,the courts has prohibited such as unauthorized advertisements or merchandise, AI-generated replicas, including synthetic voiceovers, manipulated interviews, and fabricated endorsements circulating across social media platforms. In other cases, the Bombay HC in Arijit Singh v. Codible Ventures LLP,[29] where it directly confronted the misuse of generative AI. The case involved unauthorized AI-generated songs and voice clones that simulated the singer's voice and persona. The Court expressed serious concern over the vulnerability of celebrities to misuse through unauthorized generative AI content. It observed that the defendants were exploiting the plaintiff's popularity to attract traffic to their platforms by enabling the creation of counterfeit audio and video content using the plaintiff's name, voice, image, and persona without consent. Such unauthorized use, particularly for commercial purposes, was considered capable of causing significant economic harm to the plaintiff's career and reputation.[30]

Another issue which comes from AI is its use by law professionals as well as judiciary for drafting and pleadings and case citing. There have been cases where fake case names were added in the said pleading. Other nation in the world also is facing similar issue, the UK High Court rebuked lawyers for citing fake, AI-generated case law in litigation, warning that failure to verify such outputs could constitute contempt or perverting the course of justice. Similarly, the federal district court of USA in Mata v. Avianca, Inc.[31] sanctioned lawyer for submitting fabricated case citations generated by ChatGPT, emphasizing that AI-derived misinformation in legal filings can attract penalties and dismissals. Similar concerns have also arisen in India. The Supreme Court, while taking note of the issue, has cautioned

[27] 2022 SCC Online Del 4110
[28] 2023 SCC OnLine Del 6914
[29] 2024 SCC OnLine Bom 2445
[30] Id. ¶ 19.
[31] 678 F. Supp. 3d 443 (2023)

against the reliance on AI-generated and non-existent judicial precedents in pleadings and judicial orders. On 27 February 2026, the Court took cognisance of a situation where a trial court had relied upon non-existent judicial precedents, potentially generated through artificial intelligence tools. The Court observed that reliance on such fabricated authorities does not merely amount to an error in judicial reasoning, but may constitute misconduct affecting the integrity of the adjudicatory process.[32]

THE CURRENT LEGAL FRAMEWORK: INDIA & INTERNATIONAL PERSPECTIVES

The international community has not been silent and has always actively addressed the threats posed by technological changes. Instead of remaining passive, they have responded with an impressive number of soft law principles and guidelines aimed at restoring trust in digital evidence. From late 2023 to early 2026, we witnessed the gradual formation of a complex system of global governance. This system begins with wide-ranging, principle-driven frameworks established by the United Nations and progresses towards more detailed regulatory measures such as the strict content-labeling requirements implemented by China, the risk-based transparency mandates developed by the European Union, and ongoing deliberations within the US federal judiciary regarding possible changes in evidentiary duties for cases concerning AI-generated content.

A. The United Nations

The UN has taken a leading role in laying down the normative framework of governance for artificial intelligence. It has been recognized that the issues relating to the fabrication of digital evidence and its capacity are not just technological problems but are deeply connected to the rule of law as well as the protection of human rights. In March 2024, the United Nations General Assembly adopted Resolution A/78/L.49, titled "Seizing the opportunities of safe, secure, and trustworthy artificial intelligence systems for sustainable development."[33] This was the first expansive multinational agreement on AI governance, which was co-sponsored by over 120 states.

Fundamentally, the resolution emphasizes that rights afforded to individuals offline should be equally upheld online throughout the entire lifecycle of an AI system. In September 2024, the United Nations strengthened this by adopting the Global Digital Compact (GDC) as an addition to the Pact for the Future. The GDC establishes a more detailed and well-researched framework for digital collaboration, placing significant importance on the integrity of information. This carries a clear note for judicial systems. A vow to maintain a safe and secure digital environment inherently necessitates the establishment of standards concerning traceability, transparency, and interoperability. Digital records must increasingly be accompanied by verifiable metadata and provenance documentation, especially in international contexts where issues of authenticity and admissibility often arise. The UN High-Level Advisory Body on Artificial Intelligence has emphasized that accountability must continue to be firmly human-centered in order to support these endeavors.[34] Its guidance states that human actors, especially judges, must maintain clear accountability over AI-assisted procedures in order to protect human rights. This insight is reflected in the already well-recognized "human-in-the-loop" principle. Artificial intelligence (AI) tools can help organize, classify, or semantically parse vast amounts of evidence, but they cannot

[32] Gummadi Usha Rani & Anr. Vs. Sure Mallikarjuna Rao & Anr, SLP (C) No. 7575 of 2026, Order dated 27 February 2026 (SC).

[33] General Assembly adopts Landmark Resolution on Artificial Intelligence | UN News (no date) United Nations. Available at: https://news.un.org/en/story/2024/03/1147831 (Accessed: 05 March 2026).

[34] UN Secretary-General's High Level Advisory Body on Artificial Intelligence, Governing AI for Humanity: Final Report (Unites Nations, September 2024) (https://www.un.org/sites/un2.un.org/files/governing_ai_for_humanity_final_report_en.pdf) (Accessed: 04 March, 2026)

replace the subjective intellectual assessment that forms the basis of fact-finding. Judicial decision-making incorporates moral judgment, interpretation, and reasoning in addition to mechanical processes. In this regard, the UN's new framework clearly positions AI as a tool rather than an arbiter in the administration of justice, without rejecting it.

B. The Council of Europe

The Council of Europe has made significant progress by adopting the first legally binding international convention that expressly addresses the nexus between artificial intelligence, human rights, democracy, and the rule of law. Following the lengthy negotiations between its 46 member states and observer nations like the US, Canada, and Japan, the "Framework Convention on Artificial Intelligence and Human Rights, Democracy, and the Rule of Law" was made available for signature on September 5, 2024.[35]

The Convention's requirement that governments establish efficient oversight mechanisms and clearly define the acceptable extent of AI deployment is one of its distinguishing characteristics. According to this definition, an AI system is a machine-based system that deduces how to produce outputs that could affect real-world or virtual environments based on the input it gets. In order to keep developing types of AI within regulatory bounds, this functional definition is purposefully broad. The Convention's emphasis on procedural protections and guarantees is crucial for the judicial system. States must make sure that people are provided with proper knowledge when engaging with AI systems and that they are provided with sufficient information to comprehend and contest judgments made by these systems. This upholds the fundamental ideas of natural justice, particularly the right to be heard and the right to contest evidence. The convention offers helpful guidelines when it comes to AI-generated evidence. "Reliability" is positioned as a principle alongside accountability and openness. There are immediate evidentiary ramifications to this. It permits judicial demand for proper technical scrutiny. If a litigant submits a video that appears to be a deepfake. A court will have justified reasons in requiring information regarding the system that is used, its training data, and safeguards built into the same. By doing this, the Convention ensures that ease of technological freedom does not override personal freedom or compromise the fairness of proceedings. Instead of rejecting AI completely, it conditions its use on demonstrable compliance with rule-of-law standards.

C. Singapore and Australia

Both Singapore and Australia have devised carefully customized procedures in the Asia-Pacific region to ensure that AI tools do not compromise the human authenticity of legal evidence. The 2025 Guide for Using Generative AI in the Legal Sector issued by Singapore's Ministry of Law emphasizes three core principles transparency, confidentiality, and professional ethics. It makes clear that while AI can assist legal work, it does not diminish a lawyer's professional responsibilities. This position is further supported by Singapore's earlier Guide on the Use of Generative AI Tools by Court Users. Instead of focusing only on data protection or technological norms, these governments have actively addressed how generative AI may impact the integrity of witness testimony.[36] The guide expressly forbids the creation, embellishment, strengthening, or dilution of evidence using generative AI. Advocates may take help of AI to create an initial draft of an affidavit, but

[35] Commission signed the Council of Europe Framework Convention on Artificial Intelligence and Human Rights, democracy and the rule of law Shaping Europe's digital future. Available at: https://digital-strategy.ec.europa.eu/en/news/commission-signed-council-europe-framework-convention-artificial-intelligence-and-human-rights (Accessed: 04 March 2026).

[36] Singapore's Digital & AI Governance: A Pro-Innovation, Framework-Driven Model, accessed March 4, 2026, https://blogs.duanemorris.com/duanemorrisandselvam/2026/03/03/singapores-digital-ai-governance-a-pro-innovation-framework-driven-model/

they are ultimately responsible for the final product. Above all, the witness statements must be accurately represented in the affidavit. The regulation acknowledges that even slight linguistic polishing by AI may unintentionally change tone, certainty, or nuance, which could affect how courts interpret a testimony.

Australia has adopted a far more systematic approach to the regulations. The Federal Court's judges demonstrated institutional concern at the highest judicial level in April 2025 by starting discussion on formal AI usage guidelines. Meanwhile, New South Wales courts established especially stringent practice guidelines.[37] Generative AI cannot be used for the creation or alteration of a witness statement in accordance with changes to the Uniform Civil Procedure Rules. Affidavits now must explicitly state that they were prepared without the aid of AI tools. This required certification reflects the assumption that a witness's unvarnished expression is intimately related to the veracity of their statement.

D. China

China has translated AI governance ideas into legally binding technological regulations faster than the majority of other governments. The "Measures for the Labelling of Artificial Intelligence-Generated and Synthetic Content" and the required national standard GB 45438-2025 went into effect on September 1, 2025.[38] When combined, these instruments create one of the world's most comprehensive and required AI labeling frameworks, emphasizing traceability and evidentiary accountability in addition to transparency. The Chinese government distinguishes between classifications that are 'implicit' and 'explicit'. Watermarks, symbols, and textual disclaimers are examples of visible signs that let viewers know that the content was created or modified by artificial intelligence (AI). On the other hand, implicit labels are integrated into the file's metadata. These invisible marks carry information such as the service provider's identity and a unique content identification number. Even if visual markings are eliminated, this dual-layer approach ensures that a technological audit can track the material's history. Additionally, social media companies need to issue notices that are visible to the public in order to maintain implicit tagging. Even if there isn't a label but the content looks to be AI-generated, platforms still need to provide a warning. Private middlemen essentially take on the role of gatekeepers for regulations. India should adopt China's dual layer labelling structure especially the implicit metadata embedding requirement for admissibility of evidence.

India

In the Indian Evidence Act, 1872, the Section 65B, required that any electronic record produced in the form of a computer output must be accompanied by a certificate confirming its authenticity.. The new provision continues the requirement of a certificate for electronic records but expands and modernizes the said framework. In comparison to earlier provision, there was no standard format prescribed, every court interpreted it on their own basis. The BSA on the other hand introduced a standard format, it also made compulsory to include the expert testimony, along with hash value. While this development did strengthen the verification of the integrity of electronic records, it does not fully address the problem of AI-generated or manipulated content. The certificate primarily focuses on the technical process and the chain of custody of the electronic record. It does not require any verification of the actual content of the image, video, or other digital material. The February 2026 amendment to the Information Technology (Intermediary Guidelines and Digital

[37] Guide to the protocols and use of AI in Australian Courts - Smokeball, accessed March 4, 2026, https://www.smokeball.com.au/blog/guide-to-the-court-protocols-on-ai-in-australian-courts

[38] China Releases New Labeling Requirements for AI-Generated Content - Inside Privacy, accessed March 4, 2026,https://www.insideprivacy.com/international/china/china-releases-new-labeling-requirements-for-ai-generated-content/

Media Ethics Code) Rules, 2021 marks India's most direct regulatory intervention into AI-generated content so far. Issued by the Ministry of Electronics and Information Technology through G.S.R. 120(E), the amendment moves beyond reactive content moderation and introduces a framework of proactive algorithmic accountability. It formally defines "deepfake" as algorithmically generated audio-visual content that convincingly imitates real persons, while excluding routine edits and accessibility enhancements. Most strikingly, it reduces the takedown timeline from 36 hours to just three hours upon receipt of a valid court order or authorized governmental notice, signalling an urgency-driven compliance model. The amendment further mandates technical disclosure and traceability mechanisms requiring intermediaries to embed metadata or other persistent markers in AI-generated content and imposes operational auditing obligations at periodic intervals. Dispute resolution timelines have also been shortened to seven days. While safe harbour protections remain tied to due diligence, the strengthened language shifts from "endeavour" to mandatory compliance, narrowing discretion.

❖ SUMMARY OF FINDINGS & RECOMMENDATIONS

As discussed above, the current framework governing the admissibility of electronic evidence in India is, at best, procedurally robust but substantively limited. The statutory scheme under the Information Technology Act, 2000 and now under the Bharatiya Sakshya Adhiniyam, 2023, has formally integrated electronic and digital records into the definition of documentary evidence and retained the certification requirement under Section 61 (formerly Section 65B). However, the framework is primarily concerned with the manner of production and the functioning of the device, not with the genuineness of the content itself. The certificate authenticates process, not truth. In the age of generative artificial intelligence where fabricated chats, cloned voices, manipulated images, and deepfake videos can be created with alarming ease this limitation becomes critical. A technically compliant certificate can accompany entirely synthetic material. The existing regime presumes that electronic records, once properly certified, possess a degree of inherent reliability. That presumption no longer holds in the generative AI era. The study further finds that forensic safeguards remain reactive and inconsistently invoked. Although Section 45 of the BSA permits expert opinion and tools such as metadata analysis and hash verification, there is no systematic mechanism requiring content-level authentication where AI fabrication is plausible. This creates a structural imbalance: the production of false digital evidence is cheap, rapid, and accessible, while detection is costly, technical, and often probabilistic. Comparative analysis demonstrates that several jurisdictions are proactively addressing these concerns through transparency mandates, AI-labelling frameworks, ethical obligations for legal professionals, and institutional safeguards grounded in human accountability. In contrast, India's evidentiary law has not yet evolved to directly confront the risks posed by generative AI within the courtroom itself.

In light of these findings, this paper advances a set of targeted recommendations aimed at bridging the gap between procedural admissibility and substantive reliability.

A. Implement a "Content Authenticity" Requirement Beyond Chain of Custody:

One of the most urgent reforms required in India's evidentiary framework is the adoption of a distinct content- authenticity standard that goes beyond mere proof of chain of custody. As discussed, a video, audio file, or document may be entirely algorithmically fabricated yet remain perfectly preserved from the moment of download or seizure. Accordingly, the said content authenticity certificate must evolve to include mechanisms such as watermark verification, cryptographic signatures, mandatory metadata disclosure, or forensic certification confirming that the material has been examined for synthetic indicators.

B. Possible Amendment to the Bharatiya Sakshya Adhiniyam, 2023:

A possible reform within the BSA would be to create a presumption, that in cases, involving images, videos, WhatsApp chats, or other electronic media, the absence of a recognised authenticity certificate may affect the admissibility of such evidence. In such circumstances, the court may decline to rely upon the electronic record unless the party producing it furnishes the necessary certification establishing its authenticity. The said statutory backing for such a requirement would strengthen the evidentiary framework and place a greater responsibility on parties to ensure the reliability of digital material produced before the court.

C. Establish Specialized Digital Forensic Standards for AI Detection:

It is recommended that the Government of India, through MeitY, mandate the adoption of a C2PA-based Content Credentials framework for specified categories of digital content. This can be introduced by way of an amendment to the Information Technology Act, 2000, along with supporting rules prescribing the technical standards and manner of implementation. The mandate should, at the very least, apply to all digital content generated and published by government ministries, departments, and public authorities, so that such material carries verifiable provenance metadata at the time of creation. Further, officially recorded audio-visual material prepared by public agencies, as well as digitally signed electronic documents, should incorporate such content credentials to ensure traceability and integrity. The compliance with the prescribed C2PA framework may create a rebuttable presumption of authenticity, without making non-compliant material automatically inadmissible. This would strike a balance between strengthening reliability and preserving access to justice.

D. Judicial Training and Forensic Laboratory:

The National Judicial Academy and State should mandate continuing education on AI and Generative technologies, including their technical foundations. The Central should also equip the Central and State Forensic Laboratory with AI detection technology, supported by licensed software, high spec hardware training.

❖ CONCLUSION

Due to its rapid development and global integration Artificial Intelligence has become a important part of our daily life. From automated customer service and predictive analytics to generative tools capable of producing hyper-realistic images, video, and audio. The emergence of artificial intelligence (AI)-generated synthetic media, or “deepfakes,” is one of the most alarming trends. These days, these tools with near accuracy replicate human features, sounds, gestures, and expressions. For the untrained sight, what was formerly clearly identifiable as artificial is now nearly identical to reality. Thanks to technical advancements, people can now produce fake photos or films that seem to show actual people doing things or saying things they never did. The consequences are far reaching and include financial fraud, emotional trauma, political manipulation, and damage to one's reputation. The criminal justice system is particularly vulnerable to such abuse. AI-generated content can be purposefully inserted to deceive law enforcement or judges in a time when electronic evidence is crucial to investigations and prosecutions. It is possible to offer fabricated CCTV footage, morphed images, or recorded confessions as legitimate evidence. If proper forensic verification mechanisms are absent or inadequately implemented, such material may influence investigative direction or judicial reasoning. This creates a serious risk of wrongful arrest, malicious prosecution, and even false conviction. Traditional principles governing admissibility of electronic records were framed in an era where digital manipulation required technical expertise and was comparatively easier to detect. Today, AI tools are widely accessible, inexpensive, and capable of producing content that can bypass superficial scrutiny. In conclusion, while AI is a transformative force with immense potential for societal advancement, its unregulated or inadequately regulated use poses serious threats to individual rights and the integrity of

the justice system. The law must evolve in parallel with technological advancement.

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PROCEDURAL FAIRNESS IN PREVENTIVE DETENTION: MYTH OR REALITY?

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Abstract
Preventive detention remains one of the most contested features of constitutional democracies, particularly in India where it is explicitly sanctioned under Article 22 of the Constitution. While the constitutional framework incorporates procedural safeguards—such as communication of grounds of detention, review by Advisory Boards, and judicial oversight—their actual effectiveness remains deeply debated. This article critically examines whether these safeguards meaningfully protect individual liberty or merely function as formal legitimizing devices for executive action. Through doctrinal analysis, judicial interpretation, and engagement with scholarly literature, the paper argues that despite the presence of safeguards in law, structural deficiencies, executive dominance, and judicial deference significantly undermine their practical efficacy. The study concludes that procedural fairness in preventive detention operates more as a constitutional ideal than a lived reality, thereby necessitating urgent reforms to align practice with constitutional guarantees and international human rights standards.

Keywords: Preventive Detention; Procedural Fairness; Article 22; Advisory Boards; Judicial Review; Natural Justice; Civil Liberties; Constitutional Law

I. Introduction

Preventive detention, by its very nature, presents a paradox within constitutional democracies. It allows the state to detain individuals without trial based on anticipated threats rather than proven guilt. This deviation from the traditional criminal justice model raises fundamental concerns regarding liberty, due process, and abuse of power.

In India, preventive detention is constitutionally recognized under Article 22, making it distinct from many liberal democracies where such measures are either severely restricted or abolished. The Constitution attempts to reconcile this exceptional power with safeguards intended to ensure procedural fairness. However, the effectiveness of these safeguards remains contested.

This article interrogates the central question: Do procedural safeguards in preventive detention genuinely protect individual liberty, or do they merely create an illusion of fairness?

II. Historical and Constitutional Context

A. Colonial Legacy and Continuity

Preventive detention in India has deep roots in colonial governance, where executive authority was prioritised over individual liberty. One of the earliest legal instruments was the Bengal Regulation III of 1818, which authorised the colonial administration to detain individuals on mere suspicion of threatening state security, without the requirement of trial or judicial scrutiny. This Regulation reflected the British colonial objective of maintaining political control rather than ensuring justice, particularly in suppressing dissent and nationalist movements.[1]

Subsequent enactments, including the Defence of India Acts during the World Wars and the Rowlatt Act of 1919, further entrenched the practice of detention without trial. These laws institutionalised extraordinary executive powers, often bypassing procedural safeguards and normal criminal processes.[2] The colonial state justified such measures on grounds

[1] R.C. Nigam, *Law of Preventive Detention in India* (Asia Publishing House, 1963) 10–15.
[2] A.G. Noorani, "Preventive Detention and the Rule of Law" (1996) 38 *Journal of the Indian Law Institute* 12.

of necessity and security, thereby normalising preventive detention as an instrument of governance. At the time of independence, despite strong opposition from several members of the Constituent Assembly, preventive detention was retained within the constitutional framework. The inclusion of Article 22 reflects a compromise between civil liberties and perceived security needs of the newly independent state.[3] However, rather than marking a departure from colonial practices, the post-independence legal regime largely continued the same structure, albeit with formal safeguards.

Scholarly analysis suggests that modern preventive detention laws, such as the National Security Act, 1980, exhibit significant continuity with colonial legislation in both rationale and operation.[4] The persistence of broad executive discretion and limited judicial intervention indicates that the transformation has been more formal than substantive. Consequently, preventive detention in India represents not a break from the past but an adaptation of colonial mechanisms within a constitutional framework.

B. Constitutional Framework under Article 22

The constitutional legitimacy of preventive detention in India is derived from Article 22(4)–(7) of the Constitution, which creates a distinct framework separate from ordinary criminal procedure. While clauses (1) and (2) guarantee rights available to arrested persons, clauses (4) to (7) carve out an exception by permitting detention without trial, subject to certain procedural safeguards.[5]These provisions reflect a constitutional compromise, acknowledging the necessity of preventive detention in exceptional circumstances while attempting to mitigate its potential for abuse.

A key safeguard under Article 22(5) is the obligation of the detaining authority to communicate the grounds of detention to the detainee "as soon as may be." This requirement is intended to enable the detainee to make an effective representation against the detention order.[6]Closely linked to this is the right to representation, which, although not equivalent to a full-fledged legal defence, allows the detainee to challenge the basis of detention before the appropriate authority.

Further, Article 22(4) mandates that no detention shall extend beyond three months unless the case is reviewed by an Advisory Board consisting of persons qualified to be judges of a High Court. The Board is tasked with examining whether sufficient cause exists for continued detention.[7]Additionally, the Constitution imposes time limits on detention, ensuring that executive power is not exercised indefinitely without periodic review.

The constitutional scheme also permits Parliament to prescribe the maximum period of detention and the procedure to be followed by Advisory Boards under Article 22(7). This delegation of power has resulted in the enactment of several preventive detention statutes, such as the National Security Act, 1980, which operationalise constitutional provisions while often expanding executive discretion.[8]Such legislative frameworks frequently determine the duration of detention, procedural timelines, and the extent of disclosure to detainees, thereby shaping the practical application of constitutional safeguards.

Judicial interpretation has attempted to infuse fairness into this framework by insisting on strict compliance with procedural requirements. Courts have repeatedly held that even minor procedural lapses such as delay in communicating grounds or failure to consider representations expeditiously can vitiate detention orders.[9]Nevertheless, judicial review remains largely

[3] M.P. Jain, *Indian Constitutional Law* (8th edn., LexisNexis, 2018) 1342–1345.
[4] Upendra Baxi, "The Crisis of the Indian Legal System" (Vikas Publishing, 1982) 221.
[5] M.P. Jain, *Indian Constitutional Law* (8th edn., LexisNexis, 2018) 1346.
[6] A.K. Roy v. Union of India, (1982) 1 SCC 271.
[7] Constitution of India, art. 22(4).
[8] National Security Act, 1980.
[9] Khudiram Das v. State of West Bengal, (1975) 2

confined to procedural scrutiny rather than substantive evaluation of the necessity of detention.

Moreover, the constitutional allowance for non-disclosure of facts in the interest of public security significantly dilutes the right to representation. By enabling the executive to withhold relevant material, this provision restricts the detainee's ability to effectively challenge the detention order. Scholars argue that this exception undermines the very rationale of procedural safeguards, as it creates an imbalance between state power and individual rights.[10]

Despite these limitations, Article 22 continues to be defended as a pragmatic necessity in a complex security environment. It embodies an attempt to reconcile competing interests individual liberty and collective security within a constitutional framework. However, the breadth of executive discretion and the limited scope of enforceable safeguards indicate that the balance is not entirely even.

Thus, while Article 22 formally incorporates procedural protections against arbitrary detention, its structural design and operational realities reveal an inherent tension. The framework aspires to uphold fairness, yet its effectiveness remains contingent upon executive restraint and judicial vigilance, both of which have proven inconsistent in practice.[11]

III. Conceptualizing Procedural Fairness

Procedural fairness constitutes a foundational principle of constitutional governance, grounded in the doctrines of natural justice particularly *audi alteram partem* (the right to be heard) and the rule against arbitrariness. In the Indian context, this principle has been significantly expanded through the interpretation of Article 21, which mandates that any deprivation of life or personal liberty must follow a procedure that is "just, fair, and reasonable," and not arbitrary, fanciful, or oppressive.[11]This transformative interpretation has enabled courts to read substantive due process into the constitutional framework, thereby strengthening protections against state excesses.

However, the application of procedural fairness becomes complex in the context of preventive detention. Unlike ordinary criminal proceedings, preventive detention does not involve a formal trial, nor does it guarantee the full spectrum of procedural safeguards such as the presumption of innocence, the right to cross-examine witnesses, or access to all evidentiary material.[12]The detainee is often placed in a position where liberty is curtailed based on executive satisfaction rather than judicial determination.

This deviation from conventional criminal justice norms significantly narrows the scope of procedural fairness. The limited disclosure of grounds, absence of open hearings, and restricted opportunities for representation create a framework where fairness is procedural in form but constrained in substance.[13]As a result, the evaluation of fairness in preventive detention must account for these structural limitations and the dominant role of executive discretion.

Scholarly commentary suggests that procedural fairness in this domain operates within a diluted framework, where the safeguards are designed more to regulate rather than eliminate arbitrariness.[14]Consequently, the concept of fairness in preventive detention remains inherently qualified, reflecting a tension between constitutional ideals and security imperatives.

SCC 81.

[10] Upendra Baxi, "Preventive Detention and the Rule of Law" (1982) 24 *Journal of the Indian Law Institute* 123.

[11] Maneka Gandhi v. Union of India, (1978) 1 SCC 248.

[12] M.P. Jain, *Indian Constitutional Law* (8th edn., LexisNexis, 2018) 1350.

[13] H.M. Seervai, *Constitutional Law of India* (4th edn., Universal Law Publishing, 1996) Vol. 1, 761.

[14] Upendra Baxi, "The Crisis of the Indian Legal System" (Vikas Publishing, 1982) 224.

IV. Communication of Grounds: Substantive Right or Formal Compliance?

A. Legal Framework

The requirement to communicate the grounds of detention to a detainee constitutes one of the most crucial procedural safeguards within the preventive detention regime. Article 22(5) of the Constitution mandates that the detaining authority must inform the detainee of the grounds on which the detention order has been made, "as soon as may be," in order to enable the detainee to make an effective representation against such detention.[15]This safeguard reflects the broader principles of natural justice, particularly the right to be heard, which is an essential component of fairness in any system that permits deprivation of liberty.

Judicial interpretation has consistently reinforced the importance of this requirement. The Supreme Court has held that the communication of grounds must not be a mere formality but must be real, meaningful, and sufficient to enable the detainee to challenge the detention order.[16] In *Khudiram Das v. State of West Bengal*, the Court emphasized that the grounds must be relevant, precise, and based on material facts, rather than vague or indefinite allegations.[17] Similarly, in *A.K. Roy v. Union of India*, it was observed that the constitutional mandate requires effective communication, not merely formal compliance.[18]

Further, courts have stressed that the grounds must be communicated in a language understood by the detainee, as failure to do so would render the right to representation illusory.[19]Thus, the legal framework envisages communication as a substantive right designed to provide the detainee with a meaningful opportunity to contest the detention.

B. Practical Challenges

Despite the clarity of the constitutional and judicial mandate, the practical implementation of this safeguard reveals significant deficiencies.

1. Vagueness of Grounds

One of the most persistent issues is the use of vague and generalized grounds in detention orders. Authorities often rely on broad assertions such as threats to "public order" or "state security" without providing specific factual details. Such vagueness prevents the detainee from effectively understanding the allegations or responding to them. The Supreme Court has repeatedly cautioned against this practice, holding that vague grounds violate constitutional requirements; however, such deficiencies continue to appear in practice.[20]

2. Language Barriers

Another critical limitation arises from the failure to communicate grounds in a language known to the detainee. In a linguistically diverse country like India, this issue assumes particular significance. Courts have held that communication in an unfamiliar language undermines the detainee's right to representation, as it deprives them of the ability to comprehend and respond to the allegations.[21]Nevertheless, instances of non-compliance persist, especially in cases involving marginalized or less educated detainees.

3. Non-Disclosure in Public Interest

Article 22(6) permits the state to withhold facts that it considers against public interest to disclose. While this provision is intended to protect sensitive information, it also creates a significant limitation on the detainee's right to know the full basis of detention.[22]In practice, this exception is often invoked broadly, allowing authorities to avoid disclosing critical material. As a

[15] Constitution of India, art. 22(5).
[16] Maneka Gandhi v. Union of India, (1978) 1 SCC 248.
[17] Khudiram Das v. State of West Bengal, (1975) 2 SCC 81.
[18] A.K. Roy v. Union of India, (1982) 1 SCC 271.
[19] Harikisan v. State of Maharashtra, AIR 1962 SC 911.
[20] Dr. Ram Manohar Lohia v. State of Bihar, AIR 1966 SC 740.
[21] Hadibandhu Das v. District Magistrate, Cuttack, AIR 1969 SC 43.
[22] Constitution of India, art. 22(6).

result, the detainee is left to challenge the detention order without access to all relevant information, thereby weakening the effectiveness of representation.

C. Critical Evaluation

The gap between the normative framework and its practical application raises serious concerns regarding the effectiveness of this safeguard. While the Constitution and judiciary envision communication of grounds as a substantive right, its implementation frequently reduces it to a procedural ritual. The use of vague language, failure to ensure intelligibility, and reliance on non-disclosure provisions collectively undermine the purpose of the safeguard.

Scholarly analysis suggests that this dilution reflects a broader structural imbalance within the preventive detention regime, where executive convenience often takes precedence over individual rights.[23] The inability of detainees to access complete and clear information significantly weakens their capacity to make effective representations, thereby eroding the very foundation of procedural fairness.

In effect, the communication of grounds, though formally robust, operates within a constrained framework that limits its practical utility. It serves as an important constitutional safeguard in theory, but in practice, it often functions as a mechanism of formal compliance rather than substantive protection.

V. Advisory Boards: Institutional Safeguard or Executive Extension?

A. Constitutional Role

Advisory Boards occupy a central position within the constitutional scheme of preventive detention as envisaged under Article 22(4). The Constitution mandates that no person shall be detained beyond a period of three months unless an Advisory Board, consisting of individuals qualified to be High Court judges, reports that there exists sufficient cause for such detention.[24] This mechanism is intended to introduce an element of independent scrutiny over executive action and to ensure that detention is not prolonged without justification. In theory, the Advisory Board functions as a quasi-judicial body that reviews the legality and necessity of continued detention, thereby acting as a safeguard against arbitrary exercise of executive power.

B. Structural Limitations

Despite its intended role, the functioning of Advisory Boards is marked by several structural limitations that raise doubts about their effectiveness.

1. Lack of Independence

The process of appointment of members by the executive gives rise to concerns regarding institutional independence. Although members are required to possess judicial qualifications, their selection by the same authority responsible for detention orders creates an inherent risk of bias or deference.[25]

2. Limited Procedural Safeguards

Proceedings before Advisory Boards do not follow the strict standards of judicial trials. Detainees are generally not entitled to legal representation as a matter of right, nor are they allowed to cross-examine witnesses or access all evidentiary materials relied upon by the state.[26] This restricted procedure limits the detainee's ability to effectively contest the grounds of detention.

3.Endorsement of Executive Decisions

Empirical and scholarly studies indicate that Advisory Boards seldom invalidate detention orders.[27]The low

[23] Upendra Baxi, "Preventive Detention and the Rule of Law" (1982) 24 *Journal of the Indian Law Institute* 123.
[24] Constitution of India, art. 22(4).
[25] M.P. Jain, *Indian Constitutional Law* (8th edn., LexisNexis, 2018) 1348.
[26] A.K. Roy v. Union of India, (1982) 1 SCC 271.
[27] Upendra Baxi, "Preventive Detention and the Rule of Law" (1982) 24 *Journal of the Indian Law Institute* 123.

rate of intervention suggests that the review process often functions as a formality, with Boards largely endorsing executive determinations rather than critically examining them.

C. Evaluation

The cumulative effect of these limitations significantly weakens the role of Advisory Boards as an independent safeguard. Instead of acting as a robust check on executive authority, they frequently operate within a framework that favours validation over scrutiny. As a result, their contribution to ensuring procedural fairness remains limited, reinforcing the perception that they serve more as instruments of legitimisation than as effective mechanisms of accountability.

VI. Judicial Review: A Limited but Crucial Safeguard

A. Scope of Judicial Intervention

Judicial review constitutes the primary constitutional mechanism for testing the legality of preventive detention orders. Courts exercise this power through their writ jurisdiction under Articles 32 and 226 of the Constitution, most notably by issuing writs of habeas corpus.[28]This remedy enables the judiciary to examine whether a detention order conforms to constitutional and statutory requirements, thereby offering detainees a vital avenue to challenge unlawful deprivation of liberty.

B. Constraints on Judicial Review

Notwithstanding its importance, the scope of judicial review in preventive detention matters remains significantly circumscribed.

1. Subjective Satisfaction Doctrine

A central limitation arises from the doctrine of subjective satisfaction, under which courts generally refrain from assessing the sufficiency or correctness of the grounds of detention. Instead, judicial scrutiny is confined to examining whether procedural requirements have been complied with.[29]This approach restricts courts from engaging with the substantive merits of detention decisions.

2. Judicial Deference

In cases involving national security or maintenance of public order, courts have traditionally shown deference to executive judgment. This tendency reflects institutional caution but often results in limited scrutiny of detention orders.[30]

3. Delay and Accessibility

Practical barriers such as delays in adjudication and limited access to legal resources further weaken the effectiveness of judicial remedies. In preventive detention, where liberty is at stake, such delays can render relief largely ineffective.

C. Progressive Developments

Despite these constraints, the judiciary has, in certain instances, adopted a more rights-oriented approach by insisting on strict adherence to procedural safeguards. Courts have invalidated detention orders for even minor procedural lapses, thereby reinforcing the importance of constitutional compliance.[31]

D. Evaluation

Judicial review remains the most significant safeguard against arbitrary detention. However, its limited scope, combined with judicial deference and procedural constraints, reduces its capacity to ensure substantive fairness. While it provides an essential check on executive power, its effectiveness in safeguarding individual liberty remains partial and context-dependent.

VII. Systemic Interaction of Safeguards

The procedural safeguards embedded within the framework of preventive detention are not isolated guarantees; rather, they operate as an interconnected system intended to collectively protect individual

[28] Constitution of India, arts. 32 & 226.
[29] State of Bombay v. Atma Ram, AIR 1951 SC 157.
[30] M.P. Jain, *Indian Constitutional Law* (8th edn., LexisNexis, 2018) 1352.
[31] Rekha v. State of Tamil Nadu, (2011) 5 SCC 244.

liberty. The effectiveness of this framework depends upon the proper functioning of each component communication of grounds, representation, Advisory Board review, and judicial oversight. However, weaknesses in any one element tend to undermine the overall efficacy of the system.[32]

Inadequate or vague disclosure of grounds directly affects the detainee's ability to make a meaningful representation. When the material facts underlying detention are either insufficiently communicated or partially withheld, the right to representation becomes largely ineffective.[33]This limitation is further compounded by the functioning of Advisory Boards, which are expected to independently assess the validity of detention orders. Structural concerns, including limited procedural safeguards and lack of institutional independence, often result in a review process that does not rigorously scrutinise executive action.[34]

The restricted scope of judicial review further diminishes the corrective capacity of the system. Courts, bound by the doctrine of subjective satisfaction and principles of judicial restraint, frequently limit their inquiry to procedural compliance rather than substantive justification.[35] Consequently, even where deficiencies exist in disclosure or review, judicial intervention may not fully address the underlying issues.

Scholarly analysis suggests that these interrelated deficiencies produce a cumulative effect, weakening the protective framework envisaged under the Constitution.Instead of functioning as mutually reinforcing safeguards, they operate in a manner that allows gaps in one area to persist uncorrected by others. This systemic imbalance ultimately leads to a dilution of procedural fairness, raising serious concerns about the adequacy of protections against arbitrary detention.

VIII. Comparative and International Perspective

Preventive detention laws must also be assessed in light of international human rights standards, particularly those embodied in the International Covenant on Civil and Political Rights (ICCPR), to which India is a party. Article 9 of the ICCPR recognises the right to personal liberty and explicitly restricts arbitrary detention, requiring that any deprivation of liberty must be lawful, necessary, and accompanied by adequate procedural safeguards.[36]

A central requirement under international law is **prompt judicial review**, whereby any detained person must be brought before a judicial authority without undue delay. This ensures that executive action is subjected to immediate and independent scrutiny.[37]Additionally, international standards emphasise the need for **independent oversight mechanisms**, free from executive influence, to examine the legality and necessity of detention. Such bodies must function with procedural transparency and fairness, allowing detainees meaningful participation.[38]

Further, the ICCPR mandates the availability of **effective remedies**, including the right to challenge detention before a court and obtain release if the detention is found unlawful. These safeguards are designed to ensure that detention without trial does not become arbitrary or indefinite.

[32] M.P. Jain, *Indian Constitutional Law* (8th edn., LexisNexis, 2018) 1353.
[33] Khudiram Das v. State of West Bengal, (1975) 2 SCC 81.
[34] A.K. Roy v. Union of India, (1982) 1 SCC 271.
[35] State of Bombay v. Atma Ram, AIR 1951 SC 157.
[36] International Covenant on Civil and Political Rights, 1966, art. 9.
[37] Manfred Nowak, *U.N. Covenant on Civil and Political Rights: CCPR Commentary* (2nd edn., N.P. Engel, 2005) 211.
[38] Sarah Joseph and Melissa Castan, *The International Covenant on Civil and Political Rights: Cases, Materials and Commentary* (3rd edn., Oxford University Press, 2013) 308.

When evaluated against these standards, India's preventive detention framework reveals notable deficiencies. While the Constitution provides for review by Advisory Boards and access to judicial remedies, the lack of full independence in oversight mechanisms and the limited scope of judicial review weaken their effectiveness.[39]Moreover, procedural practices such as delayed hearings, restricted disclosure of information, and executive dominance reduce transparency and accountability.[40]

Scholarly analyses have observed that the Indian model, though constitutionally structured, does not fully align with the rigorous procedural guarantees envisaged under international law. Consequently, the gap between domestic practice and international standards raises concerns about the adequacy of protections against arbitrary detention.

IX. Procedural Fairness: Myth or Reality?

A. Arguments Supporting Effectiveness

The constitutional framework governing preventive detention in India is often justified on the basis that it incorporates procedural safeguards intended to check arbitrary state action. Article 22 provides for communication of grounds, the opportunity to make a representation, and periodic review by an Advisory Board, thereby embedding elements of accountability within the system.[41]These safeguards are supplemented by the availability of judicial remedies under Articles 32 and 226, which enable detainees to approach constitutional courts through writ petitions, particularly habeas corpus.[42]

Judicial intervention has, at times, played a significant role in enforcing these safeguards. Courts have repeatedly stressed that procedural requirements must be strictly complied with, and even minor deviations such as delay in considering representations or failure to supply relevant documents have been held sufficient to invalidate detention orders.[43]Such decisions indicate that the judiciary has sought to ensure that preventive detention does not operate entirely beyond constitutional scrutiny.

Moreover, it is argued that preventive detention serves an important function in addressing threats to national security and public order, where traditional criminal processes may prove inadequate. From this perspective, procedural safeguards are viewed as a pragmatic compromise that allows the state to act pre-emptively while maintaining a minimum level of legal oversight.[44]

B. Arguments Highlighting Ineffectiveness

Despite these formal safeguards, a substantial body of scholarship points to their limited effectiveness in practice. One of the central concerns is the predominance of executive discretion at every stage of the detention process, from the issuance of orders to the control over information disclosed to the detainee.[45]This concentration of power often diminishes the practical value of procedural protections.

Structural deficiencies further weaken the framework. Advisory Boards, though intended as independent bodies, operate within constraints that limit their ability to conduct rigorous scrutiny. The absence of adversarial procedures, combined with restricted

[39] M.P. Jain, *Indian Constitutional Law* (8th edn., LexisNexis, 2018) 1354.
[40] Upendra Baxi, "Preventive Detention and Human Rights in India" (1982) 24 *Journal of the Indian Law Institute* 123.
[41] H.M. Seervai, *Constitutional Law of India* (4th edn., Universal Law Publishing, 1996) Vol. 1, 758–760
[42] V.N. Shukla, *Constitution of India* (13th edn., Eastern Book Company, 2017) 245.
[43] Icchu Devi Choraria v. Union of India, (1980) 4 SCC 531
[44] Law Commission of India, 44th Report on Preventive Detention Laws (1971) 32.
[45] A.G. Noorani, "Preventive Detention: A Necessary Evil?" (2002) 44 *Journal of the Indian Law Institute* 412.

access to evidence, reduces their role to a largely confirmatory exercise.[46]

Judicial review, while available, is similarly constrained by the doctrine of subjective satisfaction and a tendency towards institutional deference in matters involving security concerns.[47]Courts often confine themselves to examining procedural compliance rather than the substantive necessity of detention, thereby limiting their capacity to act as robust guardians of liberty.

Additionally, the lack of transparency—particularly through the use of public interest exceptions to withhold information—impairs the detainee's ability to mount an effective challenge. Empirical studies and law reform reports have highlighted that these limitations cumulatively result in a system where safeguards are observed in form but not always in substance.[48]

C. Final Assessment

A holistic evaluation suggests that the preventive detention regime embodies a tension between constitutional ideals and administrative realities. While the existence of safeguards and judicial remedies cannot be denied, their operation is frequently undermined by structural and institutional constraints. The cumulative effect is a system in which procedural fairness is unevenly realised and often dependent on judicial intervention in individual cases. Accordingly, procedural fairness in preventive detention may be characterised as **partly substantive but largely formal in operation.** The framework provides the appearance of protection, yet its practical effectiveness remains limited in ensuring consistent and meaningful safeguards against arbitrary detention.

X. Recommendations for Reform

The continuing concerns surrounding preventive detention necessitate a re-examination of the existing framework with a view to strengthening procedural fairness. One of the foremost reforms required is ensuring the independence of Advisory Boards. Although members are required to possess judicial qualifications, their appointment by the executive raises apprehensions of institutional bias. A more transparent and independent appointment mechanism, possibly involving the judiciary, would enhance credibility and impartiality.[49]

Another critical reform relates to the disclosure of detention grounds. The constitutional safeguard under Article 22(5) can only be meaningful if detainees are provided with complete and intelligible information. While Article 22(6) permits non-disclosure in the interest of public security, its broad application often undermines the right to representation. Narrowing the scope of this exception and mandating fuller disclosure would strengthen the detainee's ability to effectively challenge detention.[50]

The scope of judicial review also requires expansion. At present, courts largely confine themselves to procedural scrutiny, refraining from examining the substantive necessity of detention. A more robust standard of review, allowing limited scrutiny of the material basis of detention, would serve as a stronger check on arbitrary executive action.[51]

Further, the introduction of periodic judicial oversight could address concerns of prolonged detention without meaningful review. Regular judicial scrutiny at defined intervals would ensure that detention remains justified and proportionate over time.[52]

[46] S.P. Sathe, *Judicial Activism in India* (Oxford University Press, 2002) 198.
[47] Additional District Magistrate, Jabalpur v. Shivkant Shukla, (1976) 2 SCC 521.
[48] Law Commission of India, 177th Report on Law Relating to Arrest (2001) 89.
[49] M.P. Jain, *Indian Constitutional Law* (8th edn., LexisNexis, 2018) 1356.
[50] H.M. Seervai, *Constitutional Law of India* (4th edn., Universal Law Publishing, 1996) Vol. 1, 762.
[51] S.P. Sathe, *Judicial Activism in India* (Oxford University Press, 2002) 201.
[52] Law Commission of India, 44th Report on Preventive Detention Laws (1971) 45.

Finally, aligning domestic preventive detention laws with international human rights standards is essential. Instruments such as the ICCPR emphasise prompt judicial control, transparency, and effective remedies against unlawful detention. Incorporating these principles into domestic law would help bridge the gap between constitutional guarantees and actual practice.[53]

Collectively, these reforms aim to recalibrate the balance between state security and individual liberty, ensuring that preventive detention operates within a framework that genuinely upholds procedural fairness.

X. Recommendations for Reform

The concerns surrounding the operation of preventive detention laws necessitate targeted reforms aimed at strengthening procedural safeguards and ensuring meaningful protection of individual liberty. A primary reform lies in securing the independence of Advisory Boards. Although constitutionally envisaged as impartial reviewing bodies, their appointment by the executive raises doubts regarding neutrality. Introducing a more transparent selection process, with judicial involvement, would enhance institutional credibility and reduce the risk of executive influence.[54] Another significant reform involves mandating fuller disclosure of detention grounds. The right to representation under Article 22(5) can only be effective if detainees are provided with clear, specific, and complete information. The existing provision allowing non-disclosure in the public interest has often been interpreted broadly, limiting transparency. A narrower and more carefully regulated application of this exception would better protect the detainee's ability to challenge detention.[55]

Expanding the scope of judicial review is equally essential. At present, courts generally restrict themselves to examining procedural compliance, avoiding inquiry into the substantive basis of detention. A calibrated expansion allowing limited scrutiny of the material relied upon by the executive would provide a stronger safeguard against arbitrary action.[56]

Further, the introduction of periodic judicial oversight would ensure that continued detention is subject to regular and independent evaluation. Such a mechanism would prevent prolonged detention without adequate justification.[57]

Finally, aligning domestic preventive detention laws with international human rights standards, particularly those under the ICCPR, would promote greater accountability[58] and transparency. Incorporating these norms into domestic practice would help ensure that preventive detention operates within a framework consistent with constitutional and global human rights principles.

XI. Conclusion

Preventive detention occupies a deeply contested space within the Indian constitutional framework, embodying a tension between the preservation of state security and the protection of individual liberty. While the Constitution formally legitimises such detention under Article 22, it simultaneously incorporates procedural safeguards intended to prevent arbitrary exercise of power.[59]This dual structure has often been described as a constitutional compromise, attempting to reconcile competing imperatives within a single legal framework.

[53] International Covenant on Civil and Political Rights, 1966, art. 9; see also Manfred Nowak, *CCPR Commentary* (2nd edn., 2005) 215.
[54] M.P. Jain, *Indian Constitutional Law* (8th edn., LexisNexis, 2018) 1356.
[55] A.K. Roy v. Union of India, (1982) 1 SCC 271.
[56] S.P. Sathe, *Judicial Activism in India* (Oxford University Press, 2002) 202.
[57] Law Commission of India, 44th Report on Preventive Detention Laws (1971) 47.
[58] International Covenant on Civil and Political Rights, 1966, art. 9.
[59] M.P. Jain, *Indian Constitutional Law* (8th edn., LexisNexis, 2018) 1357.

However, the functioning of these safeguards in practice reveals significant limitations. The procedural protections relating to communication of grounds, representation, Advisory Board review, and judicial oversight, though well-articulated in law, frequently suffer from inconsistent implementation. Structural constraints, such as executive dominance and limited institutional independence, diminish their effectiveness.[60]Judicial review, while an important corrective mechanism, is itself constrained by doctrines of deference and restricted scope, often focusing on procedural compliance rather than substantive justification.[61]

Scholarly analysis has consistently highlighted that preventive detention laws, owing to their colonial lineage and broad executive discretion, remain susceptible to misuse.The persistence of vague detention orders, limited disclosure of material, and ineffective oversight mechanisms further underscores the gap between constitutional ideals and operational realities.

In this context, procedural fairness cannot be viewed as fully realised. Rather, it exists in a qualified and uneven form, dependent largely on judicial intervention in individual cases rather than systemic guarantees.[62] The cumulative effect of these deficiencies supports the argument that procedural safeguards often function more as formal requirements than as substantive protections.

Accordingly, preventive detention continues to represent a constitutional anomaly where the promise of fairness is not consistently translated into practice. Addressing this imbalance requires not only doctrinal clarity but also institutional reforms aimed at strengthening accountability and safeguarding civil liberties in a meaningful manner.[63]

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[60] H.M. Seervai, *Constitutional Law of India* (4th edn., Universal Law Publishing, 1996) Vol. 1, 763.
[61] State of Bombay v. Atma Ram, AIR 1951 SC 157.
[62] A.G. Noorani, "Preventive Detention and Constitutional Safeguards" (2002) 44 *Journal of the Indian Law Institute* 398.
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CASE COMMENTARY ON M.K. RANJITSINH & OTHERS VS UNION OF INDIA & OTHERS 2024 SCC ONLINE SC 570.

By *Hrijit Das*
From *Department of Law, University of Calcutta*

By Ronita Halder
From National University of Judicial Science

Abstract

The Supreme Court of India in M.K. Ranjitsinh & Others v. Union of India & Others delivered and important vedict in which it reconciliated conservation of an critically endangered species with renewable energy expansion, where both have been in logger head with each other. Concerns over the adverse impact of overhead power transmission lines on the critically endangered Great Indian Bustard (GIB), thus calling for judicial intervention. The Supreme Court carefully balanced the need for protecting endangered species, and the competing national interest in promoting renewable energy infrastructure to meet India's climate goals. In this landmark judgment, the Apex Court while modifying its earlier blanket direction to underground all transmission lines, held that such decisions must be guided on a case-by-case assessment, technolgical feasibility and economic viability with the support of expert committees, rather than rigid mandates. The judgment reaffirmed the constitutional mandate under Articles 21, 48A, and 51A(g), highlighting the obligation of the State to protect wildlife and the environment. It also introduced the concept of a "right against the adverse effects of climate change" as part of the right to life, thereby expanding the scope of Article 21. Overall, the ruling reflects a balanced approach by integrating environmental protection with developmental needs and have set a precedent for future conflicts between conservation and infrastructure growth.

Keywords: Environmental Law, Constitutional Law, Fundamental Rights, Article 21, Climate change.
Court: Supreme Court of India
Bench: CJI D.Y. Chandrachud, Justice J.B. Pardiwala, and Justice Manoj Misra.
Date of Judgement: March 21, 2024.
Petitioner: M.K Ranjitsinh and others
Respondent: Union of India and others
Legal Provisions- Article 14, Article 21 , Article 32, Article 48A, Article 51A(g).

Introduction:

The advent of global warming imbued with climate change has resulted in rapid increase in global temperature and the need of the hour is to cut down on greenhouse gases. The adoption of renewable energy has been prioritised in India to make a drastic shift from coal based grey energy resource to a green, eco friendly one. Solar energy is one of the such resources, most abundant in India, which is being tapped to feed the ever increasing demand for energy. Rajasthan is one of the such places where solar energy is abundant and n panels are being installed to generate electricity and for the transmission of the power, lines are being set up which unfortunately runs through the natural habitat of the critically endangered Great Indian Bustard. Apart from habitat loss and hunting, collision with overhead power transmission wire is one the major causes for the decline of the already critically endangered species, estimated to be around 150 left in the wild. The Supreme Court, in this case has faced the conundrums of choosing between two already socially and ecologically quintessential things- conservation of the Great Indian Bustard and promotion of sustainable means of power generation. The case reflects the judiciary's proactive role in harmonizing economic progress with environmental protection, recognizing, for the first time, right against the adverse effects of climate change, thereby strengthening India's climate justice framework. The Apex court stepped in to issue directions concerning infrastructure development, including the laying of underground power lines in ecologically sensitive zones. It also invokes principles of precautionary

principle and sustainable development thereby reaffirming its commitment to environmental protection while acknowledging the importance of clean energy goals.

Facts of the Case-

M.K. Ranjitsinh, a noted conservationist, had filed a case under Article 32 of the Constitution seeking urgent protection for the Great Indian Bustard (GIB), a critically endangered species protected under Schedule I of the Wildlife (Protection) Act, 1972. The once abundant bird is now just confined to a few areas of Rajasthan and Gujarat.

The bird has poor frontal vision and cannot detect obstacles in time and collision with overhead power transmission lines installed across its natural habitat has led to drastic drop in their number. Scientific studies and expert materials demonstrated that such collisions posed a serious threat to the survival of the species.

On the other hand India's increasing reliance on renewable energy projects, especially solar and wind energy installations in arid regions has led to extensive transmission wires, infrastructure, including high-voltage overhead lines, which often pass through ecologically sensitive areas inhabited by the bird.
In its earlier order dated April 19, 2021, the Supreme Court directed that overhead transmission lines in priority and potential habitats of it be converted into underground cables wherever feasible and also installation of bird diverters in areas where undergrounding was not possible.

Later, the Union of India, along with transmission utilities and renewable energy developers, filed applications seeking modification of the directions issued in the 2021 order. They argued that undergrounding high-voltage transmission lines (particularly above 66 kV) posed serious technical challenges, involved excessive costs, and would adversely affect India's renewable energy expansion and infrastructure development.

The commitments such as the Paris Agreement[1], arguing that restrictions on transmission infrastructure would impede the country's transition to clean energy and climate change mitigation goals.

The petitioner stated that the State has a constitutional obligation to protect endangered species and preserve biodiversity as imposed by the Constitution and various judicial decisions along with the public trust doctrine. It was contended that failure to take strict measures would lead to the extinction of the GIB and irreversible ecological damage.

Based on the above mentioned facts, the Supreme Court was called upon to balance competing concerns of wildlife conservation and renewable energy development, while reconsidering the feasibility and scope of its earlier directions in light of constitutional mandates under Article 21.

Issues raised-

The main issues raised were-

1. Whether renewable energy projects (like transmission lines) can be allowed in habitats of endangered species like the Great Indian Bustard.
2. Whether the right to a clean and stable environment is part of Article 21[2] of the Constitution of India.
3. The extent of the State's duty to protect endangered species under the Wildlife (Protection) Act, 1972.
4. How to balance climate goals with biodiversity conservation.

Argument for the petitioner

The Great Indian Bustard is facing imminent extinction mainly because of collisions with overhead

[1] Paris Agreement 2015.

[2] Constitution of India 1950.

power transmission lines in its natural habitat. The bird has poor frontal vision and it faces trouble in detecting obstacles, thus causing collisions, death and rapid decline in numbers. The State has failed not only it's duties under the Wildlife (Protection) Act, 1972, but also under the Constitution. The petitioner argued that this inaction violates Article 21, as the right to life includes the right to a healthy environment and biodiversity. Under precautionary principle, the State has the obligation to take preventive steps to avoid environmental harm, especially when the risk has already been scientifically proven. The petitioner called that undergrounding power lines in critical habitats is quintessential as emphasis on renewable energy cannot lead to species extinction. The petitioner also pointed out that measures like bird diverters are not enough. The State, being a trustee of natural resources, must ensure effective wildlife conservation and protection for the future generations.

Argument for the respondent

The Respondents argued that expanding renewable energy infrastructure is vital for meeting India's climate commitments. Sustainable development emphasizes a balance between environmental protection and developmental needs. It does not mean absolute wildlife preservation at the expense of public interest as well as energy security. Technical, geographical, and economically it is not viable in undergrounding the transmission wires especially in arid regions. Measures like bird diverters and monitoring systems have been implemented, showing a reasonable effort to protect the Great Indian Bustard. It was further stated that Article 21 does not prohibit developmental activities. Decisions pertaining to infrastructure and energy fall within the executive's authority, not the judiciary's and such interference could disrupt the separation of powers. The Respondents urged that a balanced and practical approach should be taken, rather than sweeping judicial orders, to reconcile environmental conservation with national development goals.

Decision-

The Supreme Court, who was left in a conundrum, adopted a balanced, practical and enviro-eco approach in deciding the feud between wildlife conservation and renewable energy development. On one hand protection of the Great Indian Bustard, a critically endangered species, is of utmost ecological importance, and on the other hand the expansion of renewable energy infrastructure is equally vital for India's commitments toward climate change mitigation and sustainable development.

The court held that the right against the adverse effects of climate change is a part of the fundamental rights guaranteed under Articles 21 and 14, thereby expanding the scope of constitutional environmental protection and included the right against climate change as a fundamental right under article 21.

The court also revised and recalibrated the earlier directions which mandated the undergrounding of overhead power transmission lines in the natural habitats. Considering the facts, the Apex court found that blanket direction was neither technically feasible nor economically viable across all regions, particularly in arid terrains like Rajasthan. It was reasoned that undergrounding high-voltage transmission lines involves significant financial costs, complex maintenance requirements, and practical limitations, which could adversely impact the development of renewable energy projects at a national scale and impede the holistic growth and development of clean energy.

Enforcing a uniform rule would be disproportionate and contrary to public interest, Instead, the Court emphasized the need for a case-by-case, expert-driven approach. Thus a specialised expert committee was formed to examine the feasibility of undergrounding in specific areas, identify priority habitats of the GIB, and recommend appropriate mitigation measures. Based on scientific data and technical expertise rather than rigid judicial mandates this decision was taken. Moreover, mitigation measures such as bird diverters

would continue and further steps must be taken to minimise bird mortality.

The Court, acknowledging the precautionary principle, opined that it must be applied in a manner that is proportionate and practical, especially when competing public interests are involved, along with long term climate goal. The judgment underscores that environmental governance requires institutional coordination, expert involvement, and a balanced approach, rather than extreme positions.

Analysis-

The judgment stands as a complex and evolving milestone in the environmental jurisprudence, balancing development and environment, reflecting the sustainable development as quoted in Indian Council for Enviro-legal Action V Union of India[3] - '... both development and environment must go hand in hand…", reflecting the Supreme Court's attempt to harmonize two constitutional imperatives: the protection of endangered biodiversity and the promotion of renewable energy as part of India's climate commitments, both of which are pressing need of the present.

Though the Court had adopted a strict ecological stance previously by directing the undergrounding of power lines in priority habitats but considering the ground situation, technicalities and taking into consideration the economics variability along with inputs from expert members, it moved toward a more flexible, case-specific balancing framework. This shift reveals a deeper judicial engagement with the realities of governance, technological feasibility, and economic cost, but also raises concerns about the dilution of previously strong conservation mandates. Even though both are needed but considering the near extinct status of the Great Indian Bustard, the conservation of it should have been prioritised rather than that of solar energy which could have been done in other places as well. The Rural Litigation and Entitlement Kendra, Dehradun V state of U.P[4], the court mentioned that even though hardship may be caused, it is a price that needs to be paid for protection and safeguard of environment. Though it might have been expensive, requiring more technical expertise and higher maintenance cost, it would have been worth it considering saving an almost extinct species, which if once vanished would go for ever.

The most striking feature of the judgment is the explicit recognition of a right against the adverse effects of climate change under Articles 14 and 21 of the Constitution of India. Article 21 has been further expanded tracing back to the Maneka Gandhi V Union of India[5] case which states about living with human dignity and in the present case, right against climate change is essential to live a dignified life. In Subhash Kumar v. State of Bihar[6], the Court recognized the right to a wholesome environment, and M.C. Mehta v. Union of India[7], the principle of absolute liability was indoctrinated, and in this case the Court has almost completed and given a full meaning to it by adding the right against climate change which is itself a complete environmental justice and a constitutional right guaranteed by the Supreme Law. It is also consistent with Vellore Citizens Welfare Forum v. Union of India[8], where sustainable development and the precautionary principle were incorporated into Indian law, and A.P. Pollution Control Board v. Prof. M.V. Nayudu[9], which emphasized scientific uncertainty and the need for anticipatory action.

[3] Indian Council for Enviro-Legal Action v Union of India (1996) 3 SCC 212.
[4] Rural Litigation and Entitlement Kendra v State of UP 1985 Supp SCC 79.
[5] Maneka Gandhi v Union of India (1978) 1 SCC 248.
[6] Subhash Kumar v State of Bihar (1991) 1 SCC 598.
[7] M.C. Mehta v Union of India (Oleum Gas Leak Case) (1987) 1 SCC 395.
[8] Vellore Citizens Welfare Forum v Union of India (1996) 5 SCC 647.
[9] A.P. Pollution Control Board v Prof MV Nayudu (1999) 2 SCC 718.

Even though the judgement is a milestone, yet there lacks doctrinal clarity, as the Court did not articulate enforceable standards, thresholds of violation, or mechanisms for accountability, thereby raising concerns similar to those expressed in Divisional Manager, Aravali Golf Club v. Chander Hass[10]. The opinion of the expert committee in determining where undergrounding of lines is required is very subjective and proper guidelines have not been framed to test the need for it. Thus the criteria for determining the "priority" or "potential" habitat has not been framed and have been left at the mercy of executive action.

The decision has significantly departed from the precautionary principle, which mandates that environmental harm must be prevented even in the absence of conclusive scientific evidence. This principle has been strongly affirmed in cases such as Vellore Citizens and further reinforced in Narmada Bachao Andolan v. Union of India[11], where the Court attempted to balance developmental needs with environmental safeguards. The Court leaned toward a proportionality-based approach, weighing ecological risks against the necessity of expanding renewable energy infrastructure. The stringent protection of a critically endangered species under the domestic law, particularly the Wildlife (Protection) Act, 1972, which mandates the highest level of protection for Schedule I species has been weakened by the international commitment. The protection of a domestic critically endangered species must be given upper hands rather than an international commitment.

The judgement has shown the lack of judicial expertise in matters which are socially important and the people look upon the court as their last option. This approach is consistent with earlier observations in T.N. Godavarman Thirumulpad v. Union of India[12], where the Court frequently relied on expert inputs for forest conservation. The over dependence on a specialized body for feasibility of undergrounding and alternative mitigation measures would weaken the environmental aspect as the government would try to influence them and bypass the judgement and exploit the loopholes, and they are executive driven, giving a further blow to conservation. Such deference may amount to a form of judicial abdication, especially when fundamental rights and ecological survival are at stake. The doctrine of the public trust doctrine in M.C. Mehta v. Kamal Nath[13], where the Court imposed a high fiduciary duty on the State to protect natural resources has been significantly departed by this present case where instead of protecting the bird, taking concrete steps, have given vague judgements welding wide power in the hand of the executive.

The judgment interplays with the broader framework of environmental governance under the Wildlife (Protection) Act, 1972 and the Environment (Protection) Act, 1986, both of which impose obligations on the State to safeguard ecological integrity but in the light of competing developmental needs, it creates a tension between environmental protection and policy-driven climate goals. This approach contrasts with earlier judicial trends where environmental statutes were prioritized.

The Court implicitly acknowledges obligations arising from the Paris Agreement, which requires states to transition toward low-carbon energy systems, and the United Nations Framework Convention on Climate Change[14], which establishes the global framework for climate action and this has been imprinted on the judgement. The conservation of biodiversity, central to the present case, is also linked to obligations under the Convention on Biological Diversity[15]. Thus the court had the complex task of balancing environmental protection both under National statues and international level treaties and obligations along

[10] Divisional Manager, Aravali Golf Club v Chander Hass (2008) 1 SCC 683.
[11] Narmada Bachao Andolan v Union of India (2000) 10 SCC 664.
[12] TN Godavarman Thirumulpad v Union of India (1997) 2 SCC 267.
[13] M.C. Mehta v Kamal Nath (1997) 1 SCC 388.
[14] UNFCCC 1992.
[15] Convention on Biological Diversity 1992.

with the international climate goal, harmonizing the conflicting provisions for furthering of justice.

Conclusion-

The verdict in this landmark case represents a revolutionary yet contested evolution in Indian constitutional as well as environmental law. Not only it advanced the jurisprudence by recognizing climate change as a fundamental right but also adopted a balanced approach between environmental protection and developmental needs. However, dilution of the precautionary principle, potential judicial overreach, and the increasing reliance on expert bodies at the cost of judicial accountability is a matter of great concern. The judgment ultimately reflects the judiciary's struggle to navigate the complexity between ecological preservation, constitutional rights, statutory mandates, global climate obligations, the energy demand and development making it a landmark precedent that will shape the trajectory of environmental governance in India and the need to balance two complex issues, both of which are essential and would set a precedence for other such cases for years to come.

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