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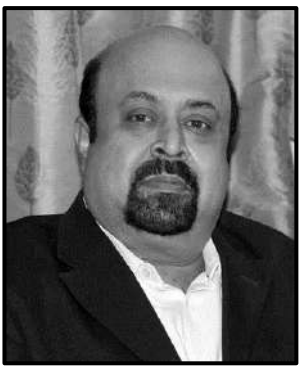

From the Editor-in-Chief

It is with great pleasure that I present **Volume XI, Issue I (2025)** of the HNLU Journal of Law and Social Sciences (JLSS). This issue reflects the Journal's enduring commitment to rigorous, interdisciplinary legal scholarship that engages with contemporary social realities, evolving regulatory frameworks, and constitutional values. The contributions in this volume traverse diverse yet interconnected themes—gender justice, technology and law, criminal justice reform, education policy, corporate sustainability, data governance, and access to justice—each offering critical insights relevant to both academia and practice.

A significant thread running through this issue is the persistent quest for **substantive equality and dignity**, particularly for women and marginalised communities. The article by **Shashi Juneja and Anukriti Mishra** undertakes a searching critique of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, situating India's framework within a comparative global context. By examining laws in the United States, the United Kingdom, and the European Union, the authors highlight critical exclusions in the Indian law, including its limited scope in addressing men, LGBTQ+ persons, informal sector workers, and online harassment. Their reform-oriented approach underscores the need for a more inclusive and responsive legal architecture.

This concern with gendered vulnerabilities in the digital age is further deepened by **Muskan Sharma and Prof. (Dr.) Manjula Batra**, who examine the alarming rise of cybercrimes against women on social media platforms. Their analysis foregrounds the inadequacies of existing legal responses and calls for a more robust preventive and remedial ecosystem aligned with international human rights standards.

Questions of women's bodily autonomy and health are explored in two thoughtful contributions. **Farah Minhaj and Prof. (Dr.) Saurabh Chaturvedi** examine menstrual leave through the lens of dignity, workplace equity, and the right to health, arguing for statutory recognition of menstrual health needs. Complementing this, **Dr. Menka Rai and Kashish Jain** analyse reproductive rights in India, highlighting how socio-economic hierarchies of caste, class, and geography continue to shape access to healthcare, despite progressive legal frameworks.

Another prominent theme in this issue is the **transformative and disruptive role of technology in law and governance. Dr. Hina Iliyas** critically evaluates the integration of advanced technologies such as artificial intelligence and surveillance tools under India's new criminal justice laws—BNS, BNSS, and BSA, 2023—while cautioning against unchecked intrusions into privacy and civil liberties under Article 21. A related inquiry is undertaken by **Raajdwip Vardhan and Naveen Kumar**, who assess the promise and perils of AI-driven predictive risk assessment in criminal justice, drawing lessons from comparative jurisdictions and emphasising the need for ethical safeguards.

Concerns about liberty and due process are sharply articulated in the article by **Harshit Singh Jadoun and Manisha Melkani**, which interrogates the Bharatiya Nagarik Suraksha Sanhita, 2023. The authors question whether the purported reforms genuinely dismantle colonial-era procedural constraints or merely repackage them, thereby reinforcing state power at the expense of individual freedoms. In a complementary vein, **Aditya Harsh** examines community service as an alternative to imprisonment, highlighting its reformative potential while underscoring the urgent need for clear guidelines and institutional oversight.

Puranjan Prasad Paul explores data portability as a cornerstone of data self-determination, contrasting the EU's GDPR with India's Digital Personal Data Protection regime and advocating policy reforms to foster competition and consumer empowerment. **Parnika Agarwal and Geethika Yanamadala** contribute to commercial law discourse by analysing the fine legal line between puffery and disparagement in comparative advertising.

Education, access to justice, and public welfare find meaningful attention in this volume. **Alka Bharati and Varuna Tehlan Dahiya** explore the integration of Bharatiya Knowledge Systems under the

National Education Policy, 2020, while **Shailesh Kumar Pandey and Balwinder Kaur** assess the Nyaya Bandhu Initiative's role in strengthening pro bono culture. **Mr. Shaunak Sharma & Dr. Anukriti Mishra** address regulatory challenges in the catering industry, foregrounding public health concerns, and **Shrutee Mishra and Yash Agarwal** examine evolving modes of legal communication in the digital era through their proposed JECT framework.

Collectively, the articles in this issue exemplify the Journal's vision of law as a dynamic instrument of social transformation. I extend my sincere gratitude to the authors, reviewers, and the editorial team for their scholarly contributions and diligence. I am confident that this issue will stimulate informed debate, inspire further research, and contribute meaningfully to contemporary legal discourse.

Prof. V. C. Vivekanandan
Vice-Chancellor
HNLU, Raipur

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Gaps in the POSH Act Framework: A Comparative Analysis of India's POSH Act with Other Countries' Laws

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Abstract:

The Prevention of Sexual Harassment (POSH) Act, enacted in India in 2013, was a pioneering legislative measure aimed at safeguarding women in the workplace and ensuring a harassment-free work environment.[1] While the Act was a critical step forward, its implementation has faced significant challenges, and its legal framework contains several gaps that limit its effectiveness.

This paper conducts a comparative analysis of the POSH Act with international laws governing workplace sexual harassment, including Title VII of the Civil Rights Act (United States), the Equality Act (United Kingdom), and the European Union's Gender Equality Directives. [2]The analysis highlights key weaknesses in the definitions of harassment, the scope of protection, redressal mechanisms, and employer accountability under the POSH Act. Notably, the Act excludes men and LGBTQ+ individuals, lacks explicit provisions for online harassment, does not ensure independent oversight, and fails to protect informal sector workers.

The study proposes essential policy recommendations to address these deficiencies, including expanding the definition of workplace harassment, creating independent oversight entities, mandating employer-led training programs, enhancing protections for whistleblowers, and extending legal coverage to informal and gig

[1] Government of India, 2013. *The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013*. [online] Ministry of Law and Justice. Available at: https://labour.gov.in/womenlabour/prevention-sexual-harassment [Accessed 16 Apr. 2025].
[2] (United States Congress, 1964; UK Parliament, 2010; European Parliament and Council, 2006)

workers. By incorporating global best practices into India's legal system, the POSH Act can become more inclusive, thorough, and effective in preventing and addressing workplace sexual harassment.

1. Introduction

Sexual harassment in the workplace is a widespread and deeply entrenched issue across the globe, affecting individuals across various industries and organizational hierarchies. It fosters a detrimental work atmosphere, hinders professional development, and profoundly affects the mental and emotional health of victims. In acknowledgment of the necessity for legal protections, nations across have implemented workplace harassment legislation to offer safeguards, remedial measures, and deterrents against such wrongdoing.

India took a significant step in this direction with the enactment of the Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013**,** commonly known as the POSH Act**.** This legislation was introduced following the Vishaka Guidelines, a landmark set of directives issued by the Supreme Court of India in 1997 in response to the case of Vishaka & Others v. State of Rajasthan. The ideas established a framework for the legal recognition of workplace sexual harassment and mandated employer responsibility in its prevention. The POSH Act aimed to institutionalize these principles and establish a systematic mechanism for handling workplace harassment grievances.

However, even over a decade since its adoption, doubts linger regarding its efficacy, enforcement, and overall effects. Numerous research and legal experts have identified deficiencies in its structure, such as inadequate coverage of certain worker categories, obstacles in redressal methods, and insufficient knowledge and compliance among employers. Moreover, in comparison with international laws on workplace harassment—such as Title VII of the Civil Rights Act in the United States, the Equality Act of the United Kingdom, and the European Union's gender equality directives—the POSH Act reveals notable shortcomings.[3]

This research paper conducts a comparative analysis of India's POSH Act with international legal frameworks to highlight gaps in its definitions, enforcement mechanisms, employer accountability, and redressal systems. The objective is to assess its limitations and propose policy Key Improvements based on global best practices to ensure a more robust and inclusive legal framework for preventing sexual harassment in Indian workplaces.

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[3] United States Congress, 1964. *Title VII of the Civil Rights Act of 1964*, 42 U.S.C. § 2000e et seq. [online] Available at: https://www.eeoc.gov/statutes/title-vii-civil-rights-act-1964 [Accessed 16 Apr. 2025].

2. Legal Framework of the POSH Act

The POSH Act, 2013, was designed to combat workplace sexual harassment by providing a formal framework for prevention, prohibition, and redressal. The legislation gives explicit criteria on what constitutes sexual harassment, who is protected under the Act, how complaints should be treated, and the consequences for non-compliance. However, despite its legislative goal, obstacles exist in its implementation and enforcement.

a) Definition of Sexual Harassment Under the POSH Act

The Act provides a broad definition of sexual harassment, which includes unwelcome acts or behavior such as physical contact, demand or request for sexual favors, sexually colored remarks, showing pornography, and any other unwelcome physical, verbal, or non-verbal conduct of a sexual nature. This definition is aligned with international standards and is aimed at ensuring that a wide range of offensive behaviors are recognized as sexual harassment (Prevention, Prohibition and Redressal) Act, 2013 (POSH Act).

b) Scope of Application: Who is Covered?

The POSH Act applies to all workplaces in India, including government and private organizations, non-governmental organizations (NGOs), educational institutions, hospitals, sports organizations, and even the informal sector. It covers women employees, trainees, and interns, but does not explicitly recognize men or individuals from the LGBTQ+ community as victims, which is a significant limitation compared to international laws that take a gender-neutral approach.

c) Constitution and Role of the Internal Complaints Committee (ICC)

The Act mandates that every organization with 10 or more employees must constitute an Internal Complaints Committee (ICC) at each workplace. The ICC is responsible for receiving complaints, conducting inquiries, and Key Improvements actions against perpetrators.[4] The committee must be chaired by a senior woman employee and must include an external member from an NGO or legal background to ensure impartiality.

However, in smaller organizations or cases where an ICC is not formed, complaints are handled by the Local Complaints Committee (LCC), which operates under the jurisdiction of the district authorities.

d) Redressal Process and Penalties

The Act outlines a structured complaint mechanism where victims can report harassment within three months of the incident. The ICC or LCC

[4] Srivastava, S., 2021. *Workplace Harassment Laws in India: An Implementation Review*. NUJS Law Review, 14(1), pp.55–78.

must conduct an inquiry within 90 days and submit a report with Key Improvements to the employer or district officer. Employers are required to act on the recommendation within 60 days, failing which they can face penalties.

Penalties under the POSH Act include:

- Monetary penalties for non-compliance (up to ₹50,000 for initial infractions).
- Revocation of business licenses for habitual offenders.
- Disciplinary measures against offenders, include suspension or termination.

e) Implementation Challenges and Compliance Issues

Despite the comprehensive provisions, several challenges hinder the effectiveness of the POSH Act:

- Lack of awareness: Many employees, especially in the informal sector, are unaware of their rights and how to report harassment.
- Ineffectiveness of ICCs: ICCs are frequently regarded as partial or swayed by upper management, dissuading victims from reporting incidents.
- Underreporting of cases: Fear of reprisal, shame, and a lack of confidence in the grievance procedure deter victims from submitting complaints.
- Weak enforcement mechanisms: A lack of a centralized authority to oversee compliance results in extensive non-compliance, especially among smaller firms.

3. Comparative Analysis with International Laws

Workplace sexual harassment is a worldwide concern, and many countries have created legal systems to deal with it effectively. Comparing India's POSH Act with laws from countries like the United States, United Kingdom, and the European Union reveals key areas where India's legal approach can be improved.[5] While India's POSH Act primarily focuses on redressal through internal mechanisms**,** international laws emphasize stronger enforcement, employer liability, and broader protections.[6]

[5] EEOC (Equal Employment Opportunity Commission), 2023. *Harassment.* [online] Available at: https://www.eeoc.gov/harassment [Accessed 16 Apr. 2025].
[6] Khurshid, A., 2020. *Evaluating the Implementation of the POSH Act in India.* Indian Journal of Gender Studies, 27(2), pp.158–176.

3.1 United States: Title VII of the Civil Rights Act and EEOC Guidelines

The United States has a well-established legal framework to combat workplace sexual harassment through Title VII of the Civil Rights Act of 1964 and guidelines set by the Equal Employment Opportunity Commission (EEOC).[7]

Key Features:

- Broader Definition of Sexual Harassment: The U.S. law recognizes both quid pro quo harassment (where job benefits are conditioned on sexual favors) and hostile work environment harassment (where unwelcome conduct creates an intimidating or offensive workplace).
- Stronger Enforcement Mechanisms: The EEOC, a federal agency, enforces anti-discrimination laws and investigates workplace harassment complaints. It has the power to file lawsuits against non-compliant employers.
- No Employer Liability Exemption: Employers are strictly liable if they fail to prevent or address harassment complaints, even if no internal redressal body is constituted.
- Comprehensive Employee Protection: The legislation safeguards all employees, encompassing part-time workers, independent contractors, and job seekers, rendering it more comprehensive than the Indian POSH Act, which predominantly addresses exclusively female employees.

Comparison with India's POSH Act:

- The POSH Act lacks a central enforcement authority like the EEOC, leading to weak compliance monitoring.
- India's Act focuses only on internal committees, while the U.S. provides external oversight through the EEOC.
- The POSH Act does not explicitly cover independent contractors, unlike the U.S. model, which protects all workers.

3.2 United Kingdom: Equality Act, 2010

The Equality Act of 2010 in the United Kingdom consolidates anti-discrimination laws, including workplace sexual harassment, and provides stronger employer accountability than India's POSH Act.

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[7] United States Congress, 1964. ***Title VII of the Civil Rights Act of 1964***, 42 U.S.C. § 2000e et seq. [online] Available at: https://www.eeoc.gov/statutes/title-vii-civil-rights-act-1964 [Accessed 16 Apr. 2025].
EEOC, 2023.

Key Features:

- The UK's Equality Act used a victim-centered approach to define harassment, emphasizing the victim's perception above the harasser's purpose. This guarantees that workplace policies emphasize the victim's experience, rendering the legislation more protective and inclusive.
- Strict Employer Liability: Employers possess a legal obligation to avert workplace harassment and are held firmly accountable for inaction, even without a formal complaint. This strategy guarantees active employer involvement in sustaining a harassment-free work environment.
- Inclusion of Third-Party Harassment: In contrast to India's POSH Act, which concentrates on employer-employee relations, UK legislation broadens culpability to encompass instances of harassment experienced by workers from third parties, including clients, customers, or suppliers. This guarantees thorough protection in public-facing sectors.
- Employment Tribunals for Redress: Employees in the UK may immediately seek impartial adjudication from Employment Tribunals, circumventing internal committees. This guarantees objectivity, reduces conflicts of interest, and facilitates expedited case settlement.

Comparison with India's POSH Act:

- The UK law provides stronger employer liability, whereas India's POSH Act does not impose strict penalties for failure to prevent harassment.
- India's POSH Act does not cover third-party harassment, unlike the UK law, which holds employers responsible for protecting employees from external parties.
- India's dependence on Internal Complaints Committees (ICCs) engenders conflicts of interest, whereas the UK permits independent courts for a more equitable redressal procedure.

3.3 European Union Directives

The European Union (EU) Gender Equality Directives mandate comprehensive workplace protection against sexual harassment across all EU member states. These directives aim to create a uniform, gender-inclusive framework for workplace safety.[8]

[8] European Institute for Gender Equality (EIGE), 2020. *Measures to Combat Sexual Harassment at the Workplace in the EU*. [online] Available at: https://eige.europa.eu/ [Accessed 16 Apr. 2025].

Key Features:

- Preventive Workplace Policies**:** The EU requires companies to have mandatory anti-harassment policies, employee training programs, and awareness campaigns**,** unlike the POSH Act, which lacks strong preventive requirements**.**
- Gender-Neutral Provisions**:** Unlike the POSH Act, which focuses only on women, EU laws recognize that men, LGBTQ+ individuals, and non-binary persons can also be victims of workplace harassment.
- Stronger Penal Provisions**:** Companies that fail to comply with anti-harassment laws face severe financial penalties and legal action**.**
- Company-Level Obligations: Employers must diligently observe workplace conduct, do risk evaluations, and guarantee a secure reporting atmosphere for all personnel.

Comparison with India's POSH Act:

- The EU's preventative policies prioritize workplace training and proactive initiatives, whereas India's POSH Act predominantly focuses on redressal following instances of harassment.
- The POSH Act fails to acknowledge males and LGBTQ+ persons as victims, in contrast to EU regulations that are gender-neutral.
- India has inadequate sanctions for non-compliance, while EU regulations impose substantial fines on firms that do not prevent workplace harassment.

4. Identified Gaps in the POSH Act

4.1 Narrow Scope of Definition

Despite its status as historic legislation, the POSH Act, 2013, possesses several deficiencies and constraints that undermine its efficacy in guaranteeing a secure and inclusive work environment. A major deficiency is the limited scope of its definition, which restricts its application and does not accommodate developing workplace difficulties.

a. Exclusion of Males and LGBTQ+ Individuals as Possible Victims
The POSH Act exclusively protects women, so excluding males, transgender, and non-binary individuals from being acknowledged as potential victims of workplace sexual harassment. This poses several challenges:

- Global Recognition of Gender-Neutral Harassment Laws: Countries like the United States, United Kingdom, and EU nations have laws that cover all employees, regardless of gender identity.[9]

- Harassment Cases Against Men & LGBTQ+ Individuals: Studies and reports have shown that men and LGBTQ+ individuals also face workplace harassment, but they lack legal recourse under the current POSH framework.

- Judicial Interpretations: While some Indian courts have suggested that males and LGBTQ+ persons require protection under general workplace safety regulations, the POSH Act does not explicitly recognize them, leading to legal ambiguity and inadequate enforcement.

Key Improvements:

- The POSH Act should be amended to include gender-neutral language, ensuring protection for all individuals, regardless of gender or sexual identity.

- Employers should be required to include men and LGBTQ+ individuals in workplace harassment prevention policies and redressal mechanisms.

b. Absence of Provisions for Online Sexual Harassment

With the increasing popularity of remote work, internet communication, and social media, sexual harassment is no longer exclusive to physical office environments. Nonetheless, the POSH Act does not specifically encompass online harassment, resulting in considerable difficulties in addressing:

- Cyber Harassment and Workplace Misconduct: Instances of unwelcome sexual advances, offensive messages, non-consensual sharing of intimate content, and online stalking often occur through emails, workplace chat applications, and social media platforms.

- Virtual Workspaces and Remote Jobs: With the increase in work-from-home arrangements, harassment often takes place through video calls, messages, and other online mediums, yet the POSH Act does not clearly define how such cases should be handled.

- Comparative International Standards: Numerous nations, like the UK and the U.S., possess expansive definitions that

[9] United States Congress, 1964. *Title VII of the Civil Rights Act of 1964*, 42 U.S.C. § 2000e et seq. [online] Available at: https://www.eeoc.gov/statutes/title-vii-civil-rights-act-1964 [Accessed 16 Apr. 2025].

encompass both physical and virtual workplace harassment, therefore guaranteeing protection in digital work settings.

Key Improvements:

- The POSH Act should be amended to explicitly include online harassment and cyber misconduct as part of workplace harassment.
- Employers should be mandated to update their anti-harassment policies to address online and remote workplace harassment.
- The Internal Complaints Committee (ICC) should be empowered to handle cases of digital sexual harassment, ensuring that victims have a proper grievance redressal mechanism.

4.2 Limitations in Redressal Mechanism

One of the most critical weaknesses of the POSH Act, 2013, lies in its redressal mechanism, which is primarily dependent on Internal Complaints Committees (ICCs) within workplaces. While the Act mandates organizations to set up these committees, their effectiveness is often compromised due to bias, lack of independence, and procedural inefficiencies. Additionally, the absence of external regulatory oversight and low awareness further weaken the Act's ability to provide justice to victims.

a. Internal Complaints Committees (ICCs) Are Often Biased or Ineffective

The POSH Act mandates organizations with 10 or more employees to constitute an Internal Complaints Committee (ICC) to handle complaints of sexual harassment. However, in practice, ICCs often face several challenges that undermine their credibility:

- Employer Influence and Organizational Bias: The ICC, being established within the corporation, frequently succumbs to the influence of senior management, resulting in conflicts of interest and biased decision-making that favors the employer.
- Fear of Retaliation: Employees may be reluctant to submit complaints owing to concerns that the ICC members may prioritize the company's reputation over the victim's pursuit of justice.
- Insufficient Training and Legal Acumen: ICC members frequently possess little legal knowledge about harassment matters, resulting in procedural deficiencies, flawed investigations, and protracted delays in the administration of justice.

- Inconsistent Implementation: Numerous businesses, particularly small and medium enterprises (SMEs), neglect to establish ICCs, hindering victims' ability to obtain restitution.

Key Improvements:

- Establishment of a national regulatory body (similar to the EEOC in the U.S.) to monitor and audit ICC proceedings.
- Introduction of an independent appeals process, allowing victims to challenge ICC decisions before a neutral authority.
- Stricter penalties for non-compliance with ICC mandates, including hefty fines and legal consequences for organizations that fail to adhere to the law.

b. No External Independent Regulatory Oversight

Unlike international laws that have government agencies overseeing workplace harassment complaints, the POSH Act lacks an external independent regulatory body to monitor implementation, compliance, and case outcomes.

- No Mechanism for Appeals Beyond Employer-Controlled ICCs: Victims cannot directly escalate their complaints to an independent external authority, making the system largely employer-controlled**.**
- Lack of Government Supervision: While the Act requires periodic reporting of ICC activities, there is no dedicated regulatory body to monitor and ensure organizations comply with the Act's provisions**.**
- Comparative Global Models:
    - The United States has the Equal Employment Opportunity Commission (EEOC)**,** which investigates workplace harassment cases independently.
    - The United Kingdom allows employees to directly approach Employment Tribunals, bypassing internal workplace mechanisms.
    - The European Union mandates strict regulatory oversight for workplace harassment policies.

Key Improvements:

- The establishment of a national regulatory body (similar to the EEOC in the U.S.) to monitor and audit ICC proceedings.
- Introduction of an independent appeals process, allowing victims to challenge ICC decisions before a neutral authority**.**

- Stricter penalties for non-compliance with ICC mandates, including hefty fines and legal consequences for organizations that fail to adhere to the law.

b. Low Awareness and Underreporting Due to Fear of Retaliation

A significant concern about the POSH Act is the inadequate reporting rate of sexual harassment incidents. Employees frequently refrain from submitting complaints due to

- Fear of Retaliation: Numerous victims encounter workplace reprisals, professional stagnation, or termination following the submission of complaints. This phenomenon is particularly prevalent in corporate settings, small enterprises, and informal labor sectors.

- Insufficient Awareness: Numerous employees, particularly in rural regions and unregulated sectors, lack knowledge of their rights under the POSH Act.

- Social Stigma and Victim-Blaming: Cultural influences frequently inhibit victims from voicing their experiences owing to societal repercussions and adverse professional ramifications.

- Social Stigma and Victim-Blaming: Cultural factors often discourage victims from speaking up due to social backlash and negative career consequences.

- No Legal Protection for Whistleblowers: Unlike many international laws, the POSH Act does not provide strong whistleblower protections, discouraging employees from supporting victims or testifying against offenders.[10]

Key Improvements:

- Employers should be legally mandated to provide compulsory sexual harassment awareness training for all workers.

- Enhancing safeguards for whistleblowers to guarantee that victims and witnesses are shielded from workplace reprisal.

- Establishing confidential reporting systems, such third-party helplines or online complaint portals, to enable victims to report harassment anonymously.

- Government-initiated awareness efforts to inform employees of their rights under the POSH Act.

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[10] UN Women, 2020. *Sexual Harassment in the Workplace: What It Is and How to Stop It.* [online] Available at: https://www.unwomen.org/en/news/stories/2020/10/explainer-sexual-harassment-in-the-workplace [Accessed 16 Apr. 2025].

4.3 Lack of Employer Accountability

A significant deficiency of the POSH Act, 2013, is the absence of explicit and enforceable employer responsibility in preventing and treating workplace sexual harassment. The Act largely emphasizes the Internal Complaints Committee (ICC) as the vehicle for addressing complaints, however it imposes limited requirements on companies to proactively prevent harassment. This leads to reactive instead of preventative actions, leaving several companies insufficiently equipped to address sexual harassment instances.

a. No Mandatory Training or Awareness Programs

One of the biggest weaknesses in the POSH Act is that it does not impose strict legal requirements on employers to conduct regular awareness and training programs.[11]

Key Issues:

- Employee Unawareness: Numerous employees, particularly in smaller enterprises, informal sectors, and rural environments, lack knowledge of their rights under the POSH Act. Inadequate training may prevent employees from identifying harassment or comprehending the reporting process.

- Inconsistent Compliance by Employers: Although certain corporate entities provide training sessions, there is no legal obligation for enterprises to apply them, resulting in uneven execution.

- Absence of Standardized Training Modules: In contrast to international frameworks that require standardized training, India's POSH Act does not provide universal training requirements, hence allowing individual companies to determine the necessity of conducting awareness programs.

- Inadequate Training for ICC Members: ICC members are anticipated to manage delicate harassment cases; nevertheless, they frequently lack sufficient legal and psychological training to execute impartial investigations.

- No Standardized Training Modules: Unlike international models that mandate standardized training, India's POSH Act lacks uniform training guidelines, leaving it up to individual employers to decide whether or not to conduct awareness programs.

- Limited Training for ICC Members: ICC members are expected to handle sensitive harassment cases**,** but in many instances,

[11] Srivastava, S., 2021. *Workplace Harassment Laws in India: An Implementation Review*. NUJS Law Review, 14(1), pp.55–78.

they lack proper legal and psychological training to conduct fair investigations.

Comparison with International Standards:

- United States: The Equal Employment Opportunity Commission (EEOC) mandates anti-harassment training programs for all employees and managers.
- United Kingdom: Employers are legally required to maintain a harassment-free atmosphere and must exhibit proactive measures for prevention.
- European Union: Companies must provide workplace training on sexual harassment prevention and establish mandatory reporting protocols.

Key Improvements:

- Make Training Mandatory: Employers should be legally required to conduct annual training programs for all employees on workplace harassment policies.
- Standardized Training Materials: The Ministry of Women and Child Development should develop a uniform training curriculum for organizations to implement.
- Mandatory ICC Training: ICC members are required to undergo certified training in sexual harassment legislation and grievance resolution protocols to guarantee equitable investigations.
- Severe Sanctions for Non-Compliance: Entities that neglect to implement training shall incur monetary fines or face license revocation for recurrent infractions.

b. Ambiguous Liability for Third-Party Harassment

The POSH Act primarily concentrates on employer-employee relations but fails to explicitly cover instances of harassment directed against an employee by a third party, including clients, vendors, consumers, or service providers. This establishes a legal ambiguity about an employer's obligation to prohibit external harassment.

Key Issues:

- Unclear Employer Responsibility: The Act does not explicitly hold employers accountable for protecting employees from harassment by clients, customers, or business associates**.**
- Challenges for Customer-Facing Sectors: Employees in hospitality, retail, healthcare, and gig economy sectors

frequently interact with third parties, increasing their vulnerability to harassment**.**

- Challenges in Submitting Complaints: When an employee experiences harassment from a customer or client, the POSH framework lacks a definitive process for resolving the matter. Numerous victims refrain from reporting such incidents owing to apprehension over job termination.

- International Best Practices:

    - The UK's Equality Act, 2010, makes employers liable for third-party harassment if they fail to take preventive action.

    - The European Union mandates employer responsibility for ensuring a safe working environment**,** including cases of third-party harassment.

    - The U.S. Equal Employment Opportunity Commission (EEOC) holds employers accountable for harassment by customers, vendors, and clients, provided the employer was aware of the issue and failed to act.

Key Improvements:

- Explicit Definition of Third-Party Harassment: The POSH Act must distinctly identify third-party harassment and provide legal obligations for employers to prevent and resolve these occurrences.

- Enhanced Complaint Mechanisms: Employees must have the ability to report grievances against third-party harassers via their Internal concerns Committee, and employers should be mandated to address these concerns.

- Employer Obligation to Act: Organizations should be legally required to implement remedial measures, including prohibiting offenders from accessing company premises or severing commercial ties with habitual offenders.

4.4 Inadequate Protection for Informal Sector Workers

One of the most significant limitations of the POSH Act, 2013, is that it primarily focuses on formal workplaces, leaving a vast majority of India's informal workforce without adequate protection. Given that nearly 90% of India's workforce is employed in the informal sector**,** this oversight excludes millions of workers from legal safeguards against workplace sexual harassment.[12]

[12] ILO (International Labour Organization), 2019. *Ending Violence and Harassment in the World of Work*. Geneva: ILO.

a. The POSH Act is mostly applicable to formal workplaces. The POSH Act requires enterprises with a minimum of 10 workers to establish an Internal Complaints Committee (ICC) to address workplace harassment incidents. This stipulation diminishes the law's efficacy in informal workplaces, characterized by:

- There is no structured workplace setup, making it difficult to enforce ICC provisions.
- An absence of a structured workplace framework, complicating the enforcement of ICC provisions.
- A significant number of employers in small enterprises, start-ups, or informal sectors being oblivious to the POSH Act, resulting in minimal compliance.
- Casual workers, freelancers, and self-employed individuals frequently lacking access to formal grievance mechanisms.

Conversely, several international legal systems, like those in the United States, United Kingdom, and European Union, broaden workplace harassment safeguards beyond formal employment arrangements, guaranteeing comprehensive coverage.

Key Improvements:

- The law should be expanded to cover all workplaces, irrespective of size or formality.
- A centralized grievance mechanism should be established for workers outside formal employment structures, allowing them to file complaints without relying on an ICC.

b. Lack of Protection for Domestic Workers, Gig Economy Workers, and Unorganized Sector Employees

The POSH Act does not effectively address workplace harassment faced by domestic workers, gig workers, and unorganized sector employees, leaving them vulnerable to exploitation and abuse.

Key Challenges Faced by Informal Workers:

- Domestic Workers:
    - Domestic workers often experience harassment from employers but have no clear legal recourse.
    - Since they work in private homes, monitoring and enforcement are difficult.

National Commission for Enterprises in the Unorganised Sector (NCEUS), 2007. *Report on Conditions of Work and Promotion of Livelihoods in the Unorganised Sector*. New Delhi: GOI.

- While some state governments have included domestic workers under the Local Complaints Committee (LCC), enforcement remains weak.

- Gig Economy Workers (Freelancers, Delivery Personnel, Ride-Share Drivers, etc.):
  - The rise of platform-based work (e.g., Swiggy, Zomato, Uber, Ola, etc.) has created a new category of workers who are not formally employed but still face workplace risks.
  - Harassment by customers, vendors, or platform administrators is not covered under the POSH Act.
  - Unlike full-time employees, gig workers have no employer-mandated ICC to report cases of sexual harassment.

- Unorganized Sector Employees (Construction Workers, Agricultural Laborers, Street Vendors, etc.):
  - These workers frequently experience sexual harassment at the hands of employers, supervisors, and even customers, yet they lack proper legal protection.
  - Since they do not work in registered organizations, they fall outside the jurisdiction of ICCs, making it impossible to seek redressal through the POSH Act.

Comparative International Standards:

- **United States:**
  - The EEOC ensures workplace protections extend to all workers, including gig workers and independent contractors.

- **United Kingdom:**
  - The Equality Act, 2010, protects all workers, regardless of whether they have a traditional employer-employee relationship.

- **European Union:**
  - Workplace harassment protections extend to freelancers, gig workers, and self-employed individuals through strict company-level obligations.

Key Improvements:

- The POSH Act should explicitly include domestic workers, gig workers, and unorganized sector employees as protected individuals.
- The Local Complaints Committees (LCCs) should be made more accessible to informal workers.
- Online and mobile-based complaint platforms should be introduced to allow gig workers and informal employees to report harassment anonymously.
- Employers in the gig economy should be required to adopt workplace safety policies, similar to those for full-time employees.

5. Policy Key Improvements:

To address the gaps in the POSH Act, 2013, and align it with international best practices, comprehensive policy reforms are required. Key Improvements aim to enhance the Act's effectiveness, expand its coverage, and ensure stronger enforcement mechanisms.

a. Expansion of Definition: Recognizing All Genders and Covering Online Harassment

Current Issue:

- The POSH Act applies only to women, excluding men, LGBTQ+ individuals, and non-binary persons, leaving many victims without legal protection.
- The Act does not explicitly cover online harassment, despite the rise of remote work, virtual meetings, and digital communication, where harassment frequently occurs.[13]

b. Independent Oversight: Establishing a Central Regulatory Body for Workplace Harassment Cases

Current Issue:

- The POSH Act lacks external oversight, with workplace harassment cases handled internally by the employer-controlled ICCs, leading to biased and inconsistent enforcement**.**

[13] EHRC (Equality and Human Rights Commission), 2022. *Harassment and Bullying at Work*. [online] Available at: https://www.equalityhumanrights.com/en/advice-and-guidance/harassment-and-bullying-work [Accessed 16 Apr. 2025].

- There is no central authority to monitor compliance, resulting in low accountability and non-adherence by many organizations.

c. Mandatory Employer Training: Enforcing Regular Sensitization and Compliance Audits

Current Issue:

- Many organizations do not conduct training programs, leading to low awareness among employees about what constitutes harassment and how to report it.
- ICC members often lack proper training, leading to mishandling of complaints and victim-blaming attitudes.
- There is no structured compliance audit to ensure employers are following POSH Act provisions.

d. Better Protection for Informal Workers: Extending Coverage to Unorganized Sectors Through Labor Reforms

Current Issue:

- The POSH Act primarily applies to formal workplaces, leaving domestic workers, gig workers, and informal sector employees without protection.
- Workers in households, agriculture, construction, and the gig economy face high risks of harassment but have no formal grievance mechanism.

e. Stronger Whistleblower Protections: Shielding Complainants from Retaliation

Current Issue:

- Many victims fear workplace retaliation (such as job loss, career stagnation, or personal threats) if they report harassment.
- No specific whistleblower protection clause exists under the POSH Act to prevent victimization or unfair dismissals.

6. Conclusion

The POSH Act, 2013, was a landmark legislation aimed at addressing workplace sexual harassment in India. It provided structured guidelines for prevention, redressal, and employer responsibility, marking a significant step toward ensuring workplace safety for women. However, despite its intent, the Act has several limitations that hinder its full effectiveness in addressing the evolving nature of workplace harassment.

A comparative analysis with international frameworks, such as the United States' Title VII of the Civil Rights Act, the UK's Equality Act, and the European Union's gender equality directives, highlights the gaps in India's law. Key issues include the exclusion of men and LGBTQ+ individuals, lack of external regulatory oversight, weak enforcement mechanisms, poor awareness and training compliance, and inadequate protections for informal workers and gig economy employees.

To bridge these gaps, comprehensive policy reforms are necessary. The expansion of the definition of workplace harassment to be gender-inclusive, inclusion of online harassment, establishment of an independent regulatory body, mandatory employer training, better protection for informal sector workers, and stronger whistleblower protections are critical steps toward strengthening the Act. By implementing best practices from international laws, India can move beyond a reactive approach and ensure a proactive, victim-centered, and inclusive legal framework.

Ultimately, a stronger and more effective POSH Act will help foster safer work environments, empower employees to report harassment without fear, and hold employers accountable for creating a workplace free from discrimination and abuse. The adoption of global best practices will not only enhance the legal protection available to workers in India but will also contribute to a cultural shift where workplace harassment is not just addressed but actively prevented.

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Cybercrimes against Women on Social Media: Emerging threats and Challenges

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Abstract

Social media now plays a significant role in people's daily lives. Furthermore, the United Nations Human Rights Council recognised in 2016 that the right to use the internet has become a human right.[1]. As of the end of March 2023, the Telecom Regulatory Authority of India (TRAI) reported that India had 881.25 million Internet users, an increase from 865.90 million in December 2022, reflecting a quarterly growth rate of 1.77 percent[2]. In recent times, there has been a spurt in the instances of cybercrimes against women through social media platforms, such as, Instagram, Facebook and dating applications, etc. Women's dignity has frequently been threatened by the widespread misuse of social media to spread distorted images of women and content about revenge porn. Cybercriminals threaten and blackmail women with malicious intent for sexual exploitation, defamation, and other purposes by using technology or fake identification **(**fake ID) on social media. The article examines the diverse forms of cybercrimes perpetrated against women through social media platforms. It also discusses relevant international conventions addressing cybercrime and underscores existing legal loopholes that require attention to effectively prevent such crimes against women.

Keywords: Cybercrimes, Women; Social Media Platforms; Dating applications; Fake ID; Non-consensual Pornography

[1]'UN Human Rights Council Resolution on Protection of Human Rights on the Internet a Milestone for Free Speech, Says OSCE Representative' (*Osce.org*2016) <https://www.osce.org/fom/250656> accessed 9 December 2024

[2] Bureau O, 'India's Internet Subscribers Increased to 881.25 Million as of March-End: TRAI Report' (*BusinessLine*21 August 2023) <https://www.thehindubusinessline.com/info-tech/indias-internet-subscribers-increased-to-88125-million-as-of-march-end-trai-report/article67219636.ece> accessed 9 December 2024

Introduction

The rapid advancement of technology and the widespread adoption of the internet have transformed the world into a global village**,** making communication easier than ever before. Social networking sites, make it possible for people all over the world to be in touch immediately, eradicating geographical boundaries. In line with this technological revolution, India is gradually moving towards a technology-oriented society by exploiting the potential of the internet. Nowadays, the internet is an integral component of contemporary life, deeply rooted in daily activities. With a mere click, users can communicate with individuals across the globe, gain access to information, and interact with the world through various social networking sites. The internet and computers are very beneficial to society as they facilitate connectivity, but they are also subject to be misused as they create opportunities for anti-social elements[3] to exploit the vulnerable individuals, especially women. Moreover, the accessibility of the internet has significantly increased, with numerous free internet zones and public Wi-Fi services available in places, such as, railway stations and parks, primarily initiated by the government.

Today, social media platforms like Instagram, WhatsApp, and dating applications are predominantly utilized, particularly among the younger generation, who have become adept at navigating these digital spaces. According to April 2024 data from Statista[4], women make up 49.2% of Instagram's global audience, the largest share of female users across all social media platforms. Similarly, Snapchat follows closely behind, with 49.1 percent of its user base identifying as female. In contrast, X (formerly Twitter) has a markedly different demographic, with 60.3 percent of its global audience being male. This disparity in user demographics highlights the distinct experiences of women on social media platforms, where they often face increased risks of cybercrime. The crimes that are committed through computer and internet are referred as 'Cybercrime'. In India, the term "cybercrime" is not defined anywhere in any statute. However, according to the Cambridge Dictionary, it can be described as "crime or illegal activity that is done using internet[5]". The advancement of technology has contributed to an increase in cybercrimes, particularly the

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[3] Yadav A, '*Cyber Crime Risk in Free Public WiFi*' India Today, 10 August 2019, available at <https://www.indiatoday.in/mail-today/story/cyber-crime-risk-in-free-public-wifi-1579617-2019-08-11> (last visited 9 December 2024)

[4] 'Social Platforms: Active User Gender Distribution 2024 | Statista' (*Statista*2024) available at <https://www.statista.com/statistics/274828/gender-distribution-of-active-social-media-users-worldwide-by-platform/#:~:text=As%20of%20April%202024%2C%2049.2,of%20users%20identifying%20as%20women.> (last visited 9 December 2024)

[5] Cambridge Dictionary, 'Cybercrime' (*@CambridgeWords*4 December 2024) available at <https://dictionary.cambridge.org/dictionary/english/cybercrime> (last visited 9 December 2024)

victimization and objectification of women, posing serious risks to individual security and mental health[6].

As per the "Crime in India" report, there were 65,893 incidents of cybercrime reported in 2022, which is a 24.4% rise from the 52,974 cases in 2021. Crime rate (per lakh population) under this category has increased from 3.9 in 2021 to 4.8 in 2022[7] (Fig. 1.1).

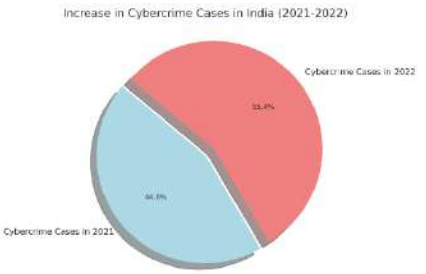

Fig. 1.1 Source: Crime in India Report[8]

According to the NCRB report, a total of 24,420 cybercrime cases were registered, marking a 42.7% increase from 17,115 cases in 2021. The cybercrime rate rise from 15.0 in 2021 to 21.4 in 2022. A crime head-wise analysis revealed that Computer-Related Offenses under Section 66 of the IT Act accounted for the highest number of cybercrimes in 2022, with 12,213 cases, representing 50.0% of the total.[9] (Fig. 1.2).

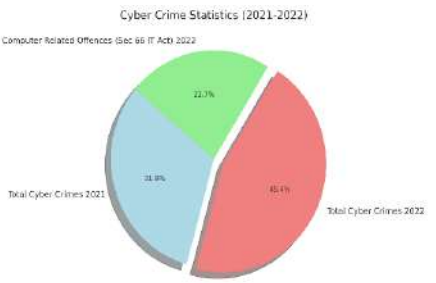

Fig. 1.2, Source: Crime in India Report of 2022[10]

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[6] Sharma A and Singh A, '*Cyber Crimes against Women: A Gloomy Outlook of Technological Advancement*' 1 International Journal of Law Management & Humanities (2019)

[7] Mahender Singh Manral and Sinha J, '*24% Rise in Cybercrime in 2022, 11% Surge in Economic Offences: NCRB Report*' The Indian Express (4 December 2023) available at <https://indianexpress.com/article/india/rise-cybercrime-2022-economic-offences-ncrb-report-9053882/#:~:text=India%20saw%20a%20rise%20of,National%20Crime%20Records%20Bureau%20(NCRB)> (last visited 9 December 2024)

[8] Ibid

[9] National Crime Record Bureau, "Report on Crime In India 2022" available at; https://images.assettype.com/barandbench/2023-12/dc0ba053-a1f0-4e6a-a5f8-e7668ddd2249/NCRB_STATS.pdf (last visited 9 December 2024)

[10] *Ibid*

This increased online connectivity has contributed to a rise in technological or digital crimes, including cyberbullying, identity theft through fake profiles, and image morphing. The right to access the internet has been recognized as a fundamental right in *Faheema Shririn' s case wherein* the SC held that "*the right to freedom of speech and expression under Article 19(1)(a) and the right to carry on any trade or business under Article 19(1)(g) using the medium of the internet is constitutionally protected.*[11]". Similarly, in *Anuradha Bhasin v. Union of India*, the Supreme Court (SC) held that, "*the right to freedom of speech and expression and right to practice any profession, or to carry on any occupation, trade, or business over the medium of internet is constitutionally protected under Articles 19(1)(a) and 19(1)(g) of Constitution of India*".[12] These judgments collectively underscore the notion that there are no boundaries to the use of the internet, making it vital for safeguarding individual privacy, particularly of women. Therefore, it becomes crucial that crucial the access to internet is utilized for the betterment of the society rather than be used for activities that jeopardize the safety and security of women. Thus, the internet should serve as a tool for empowering women rather than be a medium for harming them.

In India, while the Information Technology Act of 2000 (IT Act) provides the primary legal framework for addressing digital offenses and regulating electronic transactions, it falls short when it comes to gender-specific provisions. The Act lacks tailored measures to address the distinct forms of cybercrimes that disproportionately target women, such as online harassment, cyberstalking, and the distribution of non-consensual pornography. This legislative gap leaves women particularly vulnerable in the digital space, where offenders can easily exploit anonymity to perpetuate harm without ever having direct contact with their victims. The absence of a robust legal mechanism to protect women in cyberspace has become a critical issue, especially as social media platforms increasingly serve as conduits for privacy violations and malicious activity. The impersonal nature of cybercrime, where physical proximity between the victim and offender is often irrelevant, exacerbates the challenge of ensuring safety in the digital realm. As a result, there is a pressing need for more comprehensive and gender-sensitive laws that not only safeguard women's privacy but also deter potential offenders from exploiting the loopholes in existing legislation. In a digital age where personal data can be weaponized, addressing this gap is essential to creating a safer online environment for women in India and around the world.

[11] Faheema Shirin v. State of Kerala AIR 2020 Ker 35
[12] Anuradha Bhasin v. Union of India, (2020) 3 SCC 637

International Framework for Combatting Cybercrimes

The international framework for combatting cybercrimes committed against women through social media is still evolving, with various countries and conventions working towards addressing the issue. Although there is no express international legal framework that specifically regulates cybercrimes, recommendation 35 of the Committee on the Elimination of All Forms of Discrimination against Women (CEDAW) 1979, defines that the term *violence against women extends beyond the physical space to include "technology-mediated environments," thereby addressing online and ICT-facilitated digital violence against women*[13]". In recent times, there are some international conventions, such as, the Istanbul Convention 2011 and the Budapest Convention 2004, that control cybercrimes against women by defining the term as violence against women in digital or online space. Both these conventions are discussed below:

a. Istanbul Convention

The Istanbul Convention on Preventing and Combating Violence Against Women and Domestic Violence, established by the Council of Europe[14] is a legally binding document in Europe to provide a comprehensive framework for addressing digital violence against women and domestic violence. According to Article 3(a) of the Istanbul Convention, "*violence against women"* is defined as *"any gender-based act that causes or is likely to cause physical, sexual, psychological, or economic harm or suffering, including threats, coercion, or arbitrary deprivation of liberty, whether in public or private life*[15]". This definition underscores the Convention's recognition of violence against women as a form of discrimination and a violation of human rights.

To ensure the implementation of the convention, Article 1, Paragraph 2 of the convention creates a dedicated mechanism *Group of Experts on Action against Violence against Women and Domestic Violence* (GREVIO) ensuring the implementation of the convention's provisions[16]. In the same context, Article 69 of Istanbul Convention authorizes the GREVIO to provide general recommendations for the implementation of the Convention. During its 21st Plenary Meeting, GREVIO decided to focus its first general recommendation on the

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[13] Reyhanne N and others, '*Protecting Women and Girls from Cyber Harassment: A Global Assessment of Existing Laws Global Indicators Briefs No. 18 Public Disclosure Authorized Public Disclosure Authorized Public Disclosure Authorized Public Disclosure Authorized*' (2023) <https://documents1.worldbank.org/curated/en/099456506262310384/pdf/IDU0c7c3a5a70b56a04b250a31b0b32b8f5cd856.pdf> (last visited 9 December 2024)

[14] 'PROTECTING WOMEN and GIRLS from VIOLENCE in the DIGITAL AGE' https://rm.coe.int/the-relevance-of-the-ic-and-the-budapest-convention-on-cybercrime-in-a/1680a5eba3 (last visited 9 December 2024)

[15] The Library of Congress, 'European Union: Istanbul Convention Enters into Force' (2015) available at <https://www.loc.gov/item/global-legal-monitor/2023-10-10/european-union-istanbul-convention-enters-into-force/?loclr=ealln> (last visited 9 December 2024)

[16] *Ibid*

digital dimension of violence against women[17]. On October 20, 2021, GREVIO introduced General Recommendation No. 1, that highlights the digital facets of violence against women. This broader interpretation includes coercion, non-consensual sharing of images or videos, threats of rape, sexualized bullying, online sexual harassment, impersonation, online stalking (including via the Internet of Things), as well as psychological and financial abuse enabled by digital tools[18].

The Convention's provisions, while not explicitly addressing digital violence, are designed to adapt to emerging forms of abuse. Article 2, in particular, reflects the drafters' intention to address violence against women within a broad and evolving framework, as reinforced by GREVIO's recommendations[19]. The recommendation advocates for measures to prevent perpetrators from interfering with a woman's ability to access, use, and maintain economic resources without her consent, including controlling bank accounts and financial activities through online banking[20]. Additionally, GREVIO emphasizes the importance of the integration of digital literacy and online safety for women into formal education curricula at all levels and emphasizes training for relevant stakeholders, such as, law enforcement agencies, judicial members, and healthcare providers.

Notably, several provisions of the Istanbul Convention regulate the digital space. For instance, Article 40[21] of the convention protects a person from sexual harassment. The relevant article clearly prohibits "*any form of unwanted verbal, non-verbal or physical conduct of a sexual nature with the purpose or effect of violating the dignity of a person, in particular when creating an intimidating, hostile, degrading, humiliating or offensive environment*[22]". Similarly, Article 34 addresses stalking, explicitly extending its scope to digital context[23]. The explanatory report[24] to the Convention clarifies that "the pursuit of any active contact with the victim through any means of communication, including modern communication tools and ICTs" constitutes

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[17] COE, *'GREVIO - Istanbul Convention Action against Violence against Women and Domestic Violence (*2014) available at <https://www.coe.int/en/web/istanbul-convention/grevio> (last visited 9 December 2024)

[18] *Ibid*

[19] Supra Note 10

[20] COE, '*Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO)*' available at https://rm.coe.int/grevio-rec-no-on-digital-violence-against-women/1680a49147 (last visited 9 December 2024)

[21] Article 40 of Istanbul Convention, define "Sexual Harassment" as "Parties shall take the necessary legislative or other measures to ensure that any form of unwanted verbal, non-verbal or physical conduct of a sexual nature with the purpose or effect of violating the dignity of a person, in particular when creating an intimidating, hostile, degrading, humiliating or offensive environment, is subject to criminal or other legal sanction."

[22] Meyersfeld BC, '*The Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence*' 51 International Legal Materials (2012) available at <https://www.jstor.org/stable/10.5305/intelegamate.51.1.0106> (last visited 9 December 2024)

[23] Article 34 of Istanbul Convention, "Stalking" defined as "Parties shall take the necessary legislative or other measures to ensure that the intentional conduct of repeatedly engaging in threatening conduct directed at another person, causing her or him to fear for her or his safety, is criminalised"

[24] Supra Note 22

unwanted contact under this provision. This ensures that online stalking and harassment are recognized as serious violations under the Convention. In nutshell, the Istanbul Convention, through its broad definition of violence against women and GREVIO's interpretative recommendations, provides a robust framework for addressing both traditional and digital forms of abuse.

b. Budapest Convention

The Budapest Convention, formally referred as the "Council of Europe Convention on Cybercrime" considered as the first and most significant international treaty with legally binding provisions regarding cybercrime and electronic evidence. In November 2001, the Committee of Ministers of the Council of Europe endorsed the convention and its explanatory report. It was opened for signatures in Budapest and became effective on July 1, 2004. By June 2021, 66 countries had ratified the convention[25]. The convention primarily seeks to harmonize the domestic criminal substantive law elements related to offenses and associated provisions in the realm of cybercrime[26]. It aims to grant necessary powers to officials under domestic criminal procedure law for the investigation and prosecution of these offenses, as well as other crimes facilitated by computer systems or involving electronic evidence. Additionally, it strives to create a swift and effective framework for international cooperation[27]. The Cybercrime Convention Committee (T-CY)[28] acts as a representative of the convention's signatory governments and guarantees that the Budapest Convention is implemented effectively. According to Article 46 of the Convention, the Committee's consultation seeks to encourage the effective use and implementation of the Convention, promote the exchange of information, and consider possible future amendments[29].

The Budapest Convention covers various computer-related offenses and its additional protocols, the First and Second Additional Protocols, which aim to enhance cooperation and disclosure of electronic evidence in criminal investigations, with a focus on computer systems. The Convention requires parties to enhance their domestic criminal procedural laws and strengthen criminal justice capacities to secure electronic evidence, support international cooperation, and facilitate the investigation and prosecution of cybercrime and offenses involving electronic evidence.

The First Additional Protocol to the Convention on Cybercrime targets racist and xenophobic crimes that happen online. It was approved by

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[25] Supra Note 10
[26] Ibid
[27] COE, 'Protecting Women and Girls from violence in the Digital Age' available at https://rm.coe.int/the-relevance-of-the-ic-and-the-budapest-convention-on-cybercrime-in-a/1680a5eba3 (last visited 9 December 2024)
[28] *Ibid*
[29] Cybercrime, '*Cybercrime Convention Committee*' (2014) available at <https://www.coe.int/en/web/cybercrime/tcy> (last visited 9 December 2024)

the Committee of Ministers of the Council of Europe in November 2002 and came into effect on March 1, 2006. By June 2021, 33 countries had signed this protocol. The convention recognizes that while computer systems help with communication and free speech, they can also be used to spread racist and hateful content. Therefore, it requires participating countries to make such activities illegal.

The Second Additional Protocol to the Budapest Convention was adopted in September 2017, to address issues of enforcement of law related to online crimes and to improve cooperation on cybercrime and digital evidence. Electronic evidence is essential for any kind of criminal investigation, not just cybercrimes. Although geographical borders restrict the authority of criminal justice authorities, offenders, victims, and electronic evidence may be scattered over several jurisdictions, and it is frequently unclear which laws apply in each case and how and from whom to get such evidence. This has an adverse impact on the rule of law and governments' duties to safeguard citizen's safety online.

The purpose of the above additional protocols is to improve cooperation on cybercrime and the collection of digital evidence. They provide more resources to help authorities to work together more effectively through mutual assistance and other forms of collaboration[30]. These protocols also allow direct cooperation between law enforcement agencies, service providers, and other organizations that have important information needed to identify cybercriminals. Additionally, they ensure faster action in emergency situations, especially when there is an immediate threat to someone's life or safety[31].

It is important to note that India has chosen not to join the Budapest Convention on Cybercrime and the Istanbul Convention on Preventing and Combating Violence Against Women due to concerns about national sovereignty and the euro-centric nature of these agreements[32]. Further, India believed that its existing laws are sufficient to address gender-based violence. The Budapest Convention requires countries to share data with foreign law enforcement agencies, which India fears could affect its control over domestic law enforcement and data security[33]. Therefore, researchers submit that India should reconsider its stance and become a part of these conventions, especially given the evolving nature of cybercrimes and

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[30] "Council of Europe, '*Enhanced Co-Operation and Disclosure of Electronic Evidence: 22 Countries Open the Way by Signing the Second Additional Protocol to the Cybercrime Convention*' (13 May 2022) available at <https://www.coe.int/en/web/cybercrime/second-additional-protocol/-/asset_publisher/isHU0Xq21lhu/content/opening-coecyber2ap> (last visited 9 December 2024)

[31] Ibid

[32] Testbook, *Budapest Convention: Overview, Current Issues & India's Stand*' (2023) available at <https://testbook.com/ias-preparation/budapest-convention-sansad-tv-prespective> (last visited 9 December 2024)

[33] Ibid

the increasing need for global cooperation. India's legal framework may struggle to keep pace with emerging threats such as deepfake technology, cyberstalking, identity theft, and AI-driven fraud. By joining the Budapest Convention, India could strengthen its legal capacity, access advanced forensic tools, and collaborate with international agencies to combat cyber threats more effectively. Similarly, becoming part of the Istanbul Convention would enhance India's commitment to combating violence against women, especially in the digital space.

Cybercrimes Through Social Media Platforms

A social media platform is an online service or website that allows users to create, share, and engage with content, while also facilitating connections with other users[34]. It is submitted that the technology has been used as a double edge sword, providing benefits to express themselves through social media platforms like Facebook and Instagram, while at the same time it is also used by cybercriminals as a medium for the commission of cybercrimes against women. This dual nature of technology poses a huge challenge for security and the law enforcement agencies.

There are various instances where women are tormented by these social media sites. For instance, a 19-year-old accused, S. Jishnu Kirthan Reddy, set up a fake Instagram account (false ID) under a girl's name and used it to blackmail and trap numerous ladies into sending him their personal photos and videos[35]. The victim's mother filed a complaint; the police registered a case under the POCSO Act. During investigation led by Inspector Palle Padma and supervised by DCP (Cybercrimes) Shilpavalli, it was discovered that Jishnu attempted to deceive the victims by creating a false sense of intimacy during conversations. He manipulated them into sharing their images and videos, later threatening to put their seductive photos on social media if they refused to provide him more photos. Finally, the accused was arrested by the police officials. In another case, which was reported in the *Hindustan Times* on August 2022, a 20-year-old girl was cyberstalked and abused on Instagram. She complained to the administrator of the Instagram Page, stating that on July 29, 2022, the anonymous page adminintrator shared a video of her with two friends. She further claimed that the accused used derogatory words/language and demanded personal information, which left her mentally

[34] Investopedia, '*SocialMedia: Definition, Importance, Top Websites and Apps*' (2024) available at <https://www.investopedia.com/terms/s/social-media.asp#:~:text=Social%20media%20is%20digital%20technology,shares%2C%20comments%2C%20and%20discussion> (last visited 9 December 2024)

[35] DC Correspondent, '*Hyderabad: Man Held for Posing as Girl on Insta, to Trap Girls*' Deccan chronicle, (3 January 2024) available at <https://www.deccanchronicle.com/nation/crime/030124/hyderabad-man-held-for-posing-as-girl-on-insta-to-trap-girls.html> (last visited 9 December 2024)

distressed.[36] Further, in a case reported by *Times of India* on November 2023, a 32-year-old man allegedly created a fake Instagram account of 24-year-old woman working in IT company. He also posted obscene images and videos of the woman on Instagram platrform. On February 7, 2023, the woman filed a complaint to cybercrime police, claiming that her phone number was shared in the fake Instagram profile along with her morphed photos that had been uploaded by an unknown user[37].

In India, 'live-in relationships' are becoming more common as a simple alternative to marriage, as the institution of marriage brings with it numerous duties and responsibilities which the youth of today shirk from accepting. In the case of *D. Velusamy V. D. Patchaiammal*[38], the Supreme Court gave a detailed interpretation of the concept of a 'live-in relationship' as recognised under the Protection of Women from Domestic Violence Act of 2005 (PWDV Act). Nowadays, men are using technology in taking obscene pictures of their live-in partner and posting them on social media.

In a case reported by the Deccan Herald[39], a couple from Vellore, Tamil Nadu had been in a relationship since class 10th and had planned to marry. When the female partner saw that her private photos were posted on Telegram, Instagram, and other social media sites, she reported the matter to the police and case was registered under section 420 (cheating and dishonestly inducing delivery of property) of the Indian Penal Code (now Section 318 of Bhartiya Nyaya Sanhita of 2023) and under the relevant provision of Information Technology Act. The police directed the social networking sites to remove the alleged photographs and proceeded with investigation to conduct an inquiry to find out the name of the account holder. After investigation, it was discovered that the account holder was none other than her boyfriend. The defendant confessed to the crime and showed the shared altered images of his friends and family on social media. It has been observed that social media platforms knowingly or unknowingly have created a fertile ground for the commission of cybercrimes against women. The most common cybercrimes committed against women in digital space have been discussed below: -

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[36]HT Correspondent, '*Instagram Page Admin Booked for Cyber Stalking, Bullying Woman*' Hindustan Times (10 August 2022) available at <https://www.hindustantimes.com/india-news/instagram-page-admin-booked-for-cyber-stalking-bullying-woman-101660115891264.html> (last visited 9 December 2024)

[37] A Subburaj, '*Tamil Nadu Man Arrested for Uploading Obscene Photos of His Relative Women on Instagram*' The Times of India, (9 November 2023) available at <https://timesofindia.indiatimes.com/city/coimbatore/tamil-nadu-man-arrested-for-uploading-obscene-photos-of-his-relative-women-on-instagram/articleshow/105093288.cms> (last visited 9 December 2024)

[38] D. Velusamy V. D. Patchaiammal (2010) 10 SCC 469

[39] PTI, '*Man Held for Uploading Private Pictures of Live-in Partner on Social Media Platforms*' Deccan Herald (11 October 2023) available at <https://www.deccanherald.com/india/tamil-nadu/man-held-for-uploading-private-pictures-of-live-in-partner-on-social-media-platforms-2721550> (last visited 9 December 2024)

Cyber Stalking

The phenomenon of stalking emerged in the USA in the 80s[40]. The initial concern was media monitoring and harassment of film stars due to their popularity, who also became victims of their own fan obsession. Marilyn Pilon defines "*stalking as a deliberate, malicious, and repeated following of a person and bothering thereof*[41]." Cyberstalking is developed as a new form of cybercrime due to internet accessibility. The Indian Penal Code of 1860 (now refereed as the Bhartiya Nyaya Sanhita of 2023) includes a section on cyber stalking[42], that was added after the 2013 Delhi gang rape case (Nirbhaya Case)[43]. This section covers both traditional stalking and newer forms of online harassment. It states that a man who repeatedly contacts or monitors a woman's use of the internet, email, or other electronic communication is guilty of stalking. Additionally, section 67A of the Information Technology Act of 2000 states that any person using social media to broadcast obscene information about a victim is guilty of stalking. In the *Priyadarshini Mattoo case*[44], the victim, an aspiring lawyer and studying at the prestigious Delhi University, became friendly to the accused, Santosh Kumar Singh, who was her senior at the same institution. From the moment he met her, Santosh Singh became infatuated with her beauty and persistently made indecent advances. Despite her family filing a First Information Report (FIR) against him, he continued to stalk her relentlessly. Tragically, her body was later discovered, strangled at her uncle's residence. An autopsy report revealed that she had been raped before being murdered, and Singh was the prime suspect. However, due to his influential family background in Delhi, where the crime occurred, he was granted parole in 2012, which remains in effect[45].

There are many instances today which show cyberstalking against women is widely prevalent on social media platforms. According to a report written in India Today[46], a 30-year-old man from Delhi, Rizwan Ansari, was arrested by the Delhi Police for cyberstalking and threatening a woman on Facebook. He was accused of using abusive language against her and also threatened to kill her if she refused to respond to his advances. The case came to light when Amit

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[40] Research Gate, *Cyber Stalking: Technological Form of Sexual Harassment*' (2019) available at <https://www.researchgate.net/publication/339140114_Cyber_Stalking_Technological_Form_of_Sexual_Harassment> (last visited 17 December 2024)

[41] Canada, '*A Review of the Socio-Legal Literature - a Review of Section 264 (Criminal Harassment) of the Criminal Code of Canada*' (*Justice.gc.ca*2024) available at <https://www.justice.gc.ca/eng/rp-pr/cj-jp/fv-vf/wd96_7-dt96_7/p2.html> (last visited 17 December 2024)

[42] Section 78, The Bhartiya Nyaya Sanhita of 2023

[43] Mukesh & Anr v. State for NCT of Delhi & Ors (2017) 6 SCC 1

[44] Santosh Kumar v. State through CBI (2010) 9 SCC 747

[45] Monday, '*Glorification of Stalking in Bollywood*' available at <https://www.mondaq.com/india/broadcasting-film-tv-radio/800382/glorification-of-stalking-in-bollywood> (last visited 17 December 2024)

[46] Haider T, '*Delhi Police Nabs Cyber Stalker for Harassing, Issuing Death Threats to Woman*' India Today (26 July 2022) available at <https://www.indiatoday.in/cities/delhi/story/delhi-police-nabs-cyber-stalker-harassing-issuing-death-threats-woman-1980062-2022-07-26> (last visited 17 December 2024)

Kumar (husband of the female victim) filed a complaint on May 11, 2022, on the National Cybercrime Reporting Portal (NCRP). He reported that Ansari had been harassing his wife, pressuring her to talk to him, and threatening her life if she ignored him. Along with cyberstalking, Ansari was also accused of making harassing phone calls and using offensive language. During the investigation, he admitted that while browsing Facebook, he came across the victim's profile and sent her a friend request in 2018. After she accepted, they started chatting. One day, the victim stopped communicating with him when he asked for her address and secretly took photos of her. In response, Ansari threatened to share her photos and their conversations with her family and friends on Facebook. In another case reported by the Hindustan Times in 2022[47], the Hyderabad Police's Cyber Crime Unit registered a criminal case against the administrator of an Instagram page for allegedly cyberstalking and harassing a 20-year-old woman on the platform. According to the victim's complaint, the page's administrator posted a video of her with two friends on July 29, 2022, and repeated the act two days later. The woman stated that the accused used abusive language and demanded personal information, leading to severe distress and emotional trauma.

Non-Consensual Porn

Non-consensual pornography is a heinous crime that involves sharing sexually explicit photos or videos without the consent of the individual depicted[48]. It can often be referred as "revenge porn," or "non-consensual pornography" and it involves the distribution of intimate or sexual images or videos—whether real or fabricated—without the person's permission, constituting a serious form of image-based sexual abuse. As per the Merriam-Webster dictionary, 'revenge porn' is "sexually explicit images of a person posted online without that person's consent, especially as a form of revenge or harassment[49]." Mary Anne Franks, a Law Professor at the University of Miami, claims that the term "revenge porn" is misleading and that "non-consensual pornography" is more accurate[50]. Revenge porn videos and live web can have a huge market in India and abroad[51]. This form of abuse has seen a disturbing rise, particularly exacerbated by the increased use of social media during the pandemic. During that period,

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[47] HT Correspondent, '*Instagram Page Admin Booked for Cyber Stalking, Bullying Woman*' Hindustan Times (10 August 2022) available at <https://www.hindustantimes.com/india-news/instagram-page-admin-booked-for-cyber-stalking-bullying-woman-101660115891264.html> (last visited 17 December 2024)

[48] 'Cyber Violence against Women and Girls' (*European Institute for Gender Equality)* 8 November 2017 available at <https://eige.europa.eu/publications-resources/publications/cyber-violence-against-women-and-girls?language_content_entity=en> (last visited 17 December 2024)

[49] 'Merriam-Webster Dictionary' available at <https://www.merriam-webster.com/dictionary/revenge%20porn> (last visited 17 December 2024)

[50] India Law Office, 'Revenge Porn or Non-Consensual Pornography' available at <https://www.indialawoffices.com/legal-articles/revenge-porn-or-non-consensual-pornography> (last visited 17 December 2024)

[51] Law Punch, '*Revenge Porn Is One Type of Cyber Crime - LawPanch*' (10 October 2020) available at <https://lawpanch.com/revenge-porn-is-one-type-of-cyber-crime/> (last visited 17 December 2024)

technology rapidly advanced, the threat of original images being hacked and misused had also increased[52]. Since then, hackers have been using advance tools like Wi-Fi Pineapples or Remote Access Trojans (RATs) to access private photos without consent. Once the pictures are shared online, they can spread worldwide, including in countries like India. This easy access allows criminals to misuse these images for harmful purposes, such as creating revenge porn or non-consensual pornography. Moreover, the images which are already on social media platforms can be easily edited, shared, or used to harm victims, often causing lasting damage. In this regard, Prashant Mali, a Bombay High Court Lawyer and Cyber Expert states that "clips are frequently used by blackmailer to extort money and seek sexual favours from victims and their families[53].

The case of *State of Tamil Nadu v. Dr. Prakash*[54] was the first prosecution initiated under the IT Act. This case dealt with a serious scandal that pertained to the production, circulation, and selling of pornographic material, in convenience with a medical doctor who was identifies as the mastermind behind the scandal. Dr. Prakash was accused of creating and distributing indecent photos and videos showing sexual acts which was shared with 23 nations. This illegal operation had various consequences, particularly against young girls. The scandal came to light when Ganesh, presenting himself as a victim of the doctor (Dr. Prakash), lodged a complaint with the municipal police. As a result, two different cases were filed, first was under the Information Technology (IT) Act, and the other directly against Dr. Prakash. During the court proceedings in SC, Justice R. Radha convicted four people involved in the cyber pornography racket. Dr. Prakash, being one of the main accused, was penalized Rs. 1.27 lakh, and his associates—Saravanan, Vijayan, and Asir Gunasingh, were each penalized with Rs. 2,500. That case brought into focus the seriousness of offenses under Section 67 of the IT Act. The relevant section imposes a maximum sentence of five-year imprisonment on first conviction and for a repeated offense the punishment may go up to 10-year imprisonment along with a fine of Rs. 2 lakhs.

In the case of the *State of Maharashtra v. Vijay Manohar Tiwari*[55], the issue was related to sending vulgar text messages on mobile devices. The woman in this case filed a police complaint after the accused sent offensive text messages to her on phone. The court observed that Section 66A of the Information Technology Act of 2000 makes the sending of vulgar messages via mobile device illegal. This case is notable because it was one of the first in India where a person was found guilty for transmitting offensive messages under Section 66A of the IT Act.

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[52] Pandya A and Pragya Lodha, '*Social Connectedness, Excessive Screen Time during COVID-19 and Mental Health: A Review of Current Evidence*' 3 Frontiers in Human Dynamics (2021)
[53] Ibid
[54] State of Tamil Nadu v. Dr. Prakash AIR 2002 SC 3533
[55] State of Maharashtra v. Vijay Manohar Tiwari Crl. No. 6 of 1994

In the landmark judgement of *West Bengal v. Animesh Boxi*[56], the accused was in an intimate relationship with the victim and obtained objectionable pictures of her when they were in a relationship. The accused asked for those pictures after promising to marry in the future, subsequently the victim of the accused had a breakup. The accused then uploaded pictures and videos of the victim on a pornographic site, bearing her and her father names. As a result, the accused was convicted under Sections 354, 354A, 354C, and 509 of the Indian Penal Code, 1860, in conjunction with Sections 66E, 66C, 67, and 67A of the Information Technology Act, 2000. Further, the session court of Tamluk, West Bengal, has an alleged imprisonment of five years and on the accused with a fine of Rs 9000 for uploading the objectionable and private pictures of the victim without her consent. In the same case, the session court directed the state government to treat the victims of 'revenge porn' as rape survivors and to provide the victim with appropriate compensation.

In the case of *Subhranshu Rout V. State of Odisha*[57], the informant and the petitioner were romantically involved and were both classmates and villagers. One day, when the informant was alone at home, the petitioner took advantage of the situation, went to her house, and raped her. He recorded the crime on his phone and used it to blackmail her, threatening to kill her and share the photos and videos online if she told anyone, including her parents. The petitioner continued to exploit her by forcing her into having a sexual relationship with him. When the informant finally told her parents about the abuse, the petitioner created a fake social media account in her name and uploaded the explicit videos and photos to further harm and traumatize her. Even though the informant lodged an FIR, the police were unable to take proper action, exposing flaws in the system. When the case reached court, the Hon'ble Orissa High Court refused to grant the petitioner bail, stressing the importance of the 'right to be forgotten,' which refers to permanently deleting such photos and videos from the internet, and emphasized that the petitioner violated the victim's right to privacy[58].

Thereafter, as per the report of *The News Minute* in 2016[59], Rupesh Banda, 27-year-old, met Ranjana (name changed), while they were studying in an engineering college in Andhra Pradesh. They fell

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[56] West Bengal v. Animesh Boxi C.R.M. No. 11806 of 2017

[57] Bhumika Indulia, '*Orissa HC | Read How High Court Emphasised the Need of "Right to Be Forgotten" in Cases of Objectionable Photos and Videos of Victims on SocialMedia* | SCC Times (7 December 2020) available at <https://www.scconline.com/blog/post/2020/12/07/orissa-hc-read-how-high-court-emphasised-the-need-of-right-to-be-forgotten-in-cases-of-objectionable-photos-and-videos-of-victims-on-social-media/> (last visited 17 December 2024)

[58] LEXPEEPS editor, '*Subhranshu Rout @ Gugul v State of Odisha - Lexpeeps*' available at <https://lexpeeps.in/subhranshu-rout-gugul-v-state-of-odisha/> (last visited 17 December 2024)

[59] Staff T, '*Hyderabad Man Arrested in Revenge Porn Case, Where Does India Stand on Legislation?*' The News Minute (4 July 2016) available at: <https://www.thenewsminute.com/news/hyderabad-man-arrested-revenge-porn-case-where-does-india-stand-legislation-45902> (last visited 17 December 2024)

in love with each other, but their relationship ended after graduation. In 2016, Rupesh began blackmailing Ranjana, now a married woman, to restart their romance again. But she denied and due to rejection, Rupesh posted her intimate videos online and even sent CDs of the videos to her in-laws. In this same case, Sudha Ramalingam, a senior lawyer at the Madras High Court, pointed out that "there is no dearth of laws in India to deal with such cases and the problem is that people take a lot of time to report such cases and when they do, they are often discouraged by the authorities to take it forward[60]." She also highlights the delays in the judicial process which prevents making a law more deterrent. In her words "*By the time the trial happens, everyone has forgotten what happened!*"

Social media impersonation

Digital identity theft includes impersonating people on social media. In this type of crime, a cybercriminal or fraudster uses personally identifiable information (name, picture, location, and background data) that has been stolen from a specific person to create a profile on a social media platform[61]. Section 318 and 319 of Bhartiya Nyaya Sanhita of 2023 (BNS), deal with the law relating to 'cheating' and 'cheating by personation' respectively. As per the section 319 of BNS states that "*A person is said to cheat by personation if he cheats by pretending to be some other person, or by knowingly substituting one person for or another, or representing that he or any other person is a person other than he or such other person really is*". Secondly, section 318(3) of BNS deals with cheating by stating that "*Whoever cheats with the knowledge that he is likely thereby to cause wrongful loss to a person whose interest in the transaction to which the cheating relates, he was bound, either by law, or by a legal contract, to protect, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both*". The word "Fraud" is clearly defined under the Indian Contract Act, 1872[62]. Section 7 of Indian Contract Act defines to mean and include any of the following acts committed by a party to a contract or with his connivance or by his agent, with intent to deceive another party thereto or his agent, or to induce him to enter into the contract".

In 2011, a law student from Delhi University was accused of stalking and threatening a woman online. He allegedly created fake profiles of her on social media to damage her reputation. The woman reported to the Delhi Police that she had been harassed by him for over a year. She claimed that he had made obscene phone calls and sent threatening emails. The two met while she was working in Delhi, and when she refused his marriage proposal, he reportedly assaulted her

[60]Ibid

[61] Bitdefender, 'What Is Social Media Impersonation?' (*Cyberpedia*2024) available at <https://www.bitdefender.com/en-us/cyberpedia/what-is-social-media-impersonation> (last visited 17 December 2024)

[62] The Indian Contract Act, 1872 (Act No. 9 of 1872)

and threatened to kill her. Even though the victim had filed a complaint against the accused and the accused had given a written apology not to bother her again. Shortly, after her departure to Goa from Delhi, he created fake profiles of her on social networking sites, uploaded her photos, and falsely claimed that she was his wife. He also impersonated her online and contacted her friends through these profiles, which affected her reputation, thereby leading to cancellation of her betrothal. Finally, a case was filed under Section 66-A of the Information Technology Act in New Delhi[63].

Furthermore, section 66A of the IT Act was held to be unconstitutional in the Shreya Singhal Case as this section contravenes Articles 19 and 21 of the Indian Constitution. Yet, despite this order, law enforcement authorities continued to register cases under this section. The *Peoples Union for Civil Liberties (PUCL)* filed a writ petition in the Supreme Court[64], pointing out that people were still being prosecuted under Section 66A even after its deletion. In this writ petition, Supreme Court (SC) held that such proceedings clearly went against its order in the Shreya Singhal case[65] and took measures to stop further misuse. The SC directed police and law enforcement authorities to suspend all ongoing investigations under this section. Also, the SC advised Directors General of Police for various states as well as the Administrators/Lieutenant Governors of Union Territories not to register new cases under section 66A of IT Act. Also, the Chief Justices of all High Courts were told to direct lower courts, which include Sessions Courts and Magistrate Courts, to drop cases filed under the section and set the accused persons free. Further, Registrar Generals of High Courts were instructed to ensure that District Courts and Magistrates no longer take cognizance of cases under the repealed Section 66A[66]. Thus, there is no provision at present in the Information Technology Act, 2000, to punish for the sending of offensive messages over communication services.

Further, in *State of Delhi v. Rakesh Kumar*[67], the accused created a false Facebook profile for a woman and wrote disparaging remarks about her. The accused was found guilty of violating Section 66A of the IT Act, which makes using a communication service to convey offensive messages illegal. However, the Supreme Court in 2017 declared Section 66A of the IT Act to be unconstitutional and invalidated it. This

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[63]Chauhan N, '*DU Law Student Charged with Cyber Stalking*' The Times of India (19 June 2011) available at <https://timesofindia.indiatimes.com/city/delhi/du-law-student-charged-with-cyber-stalking/articleshow/8917937.cms> (last visited 17 December 2024)

[64] Shreya Singhal v. UOI (2015) 5 SCC 1

[65] Sharma P, 'No Person Should Be Prosecuted under Section 66A IT Act: Supreme Court Issues Directions to Enforce' Livelaw (12 October 2022) available at <https://www.livelaw.in/top-stories/no-person-should-be-prosecuted-under-section-66a-it-act-supreme-court-issues-directions-to-enforce-shreya-singhal-judgment-211452#:~:text=The%20Supreme%20Court%20on%20Wednesday,in%20the%20Shreya%20Singhal%20Case.> (last visited 17 December 2024)

[66] People Union for Civil Liberties v. Union of India Writ Petition No. 199 of 2013

[67] State of Delhi v. Rakesh Kumar 2017 SC Del 11927

case is relevant because it illustrates the difficulties in striking a balance between free expression and the requirement to safeguard those who are the targets of online harassment.

Cybercrimes against women through dating applications

Dating applications are software programs created to establish associations amongst persons who are attracted by sentiments, hookups, friendships and partnerships[68]. Dating application can be defined as 'apps for dating or online dating'. According to Cambridge Dictionary, "dating application" means "*a way of starting a romantic relationship on the internet, by giving information about yourself or replying to someone else's information*[69]". Dating applications, such as, Tinder, Bumble offer a female person to establish romantic relationship by connecting potential partner of her choice. At the same time, this application can be also used as tool for committing cybercrimes such as sextortion[70]. The cyber attackers gain the trust of the victims by being sympathetic. After establishing a relationship and sharing intimate material, these criminals start taking advantage of female victims, forcing them to make payments or give personal favours. If the victims deny to do the same, the cybercriminals start blackmailing them by threating to upload their intimate pictures or chats. Such exploitation makes these female victims susceptible to being emotionally traumatized, losing money, and suffering damage to their reputation[71]. The ease with which fake profiles can be created and the anonymity provided on dating sites facilitate cybercriminals to conduct such scams with impunity, thereby making online dating a huge threat for users.

A case which is reported by the Times of India on February 11, 2023[72], highlights the risk of online dating scams. As per the report, one Obi Alex and one Odua Christopher Chukuridi (Sunny), created fake accounts on dating sites to deceive a woman. Alex introduced himself as a German national pilot and started talking and chatting with her. She was romantically involved with him and Alex manipulated her into transferring money on multiple occasions. Firstly, he demanded money of Rs. 40,000 to purchase saffron and after few days, he again asked for Rs. 39,700, claiming that he had been stopped by the customs officials at the airport as he carrying an

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[68] Divya Gautam & Hemant Kumar, "Dating Apps: Impact to Crime" 7(10) Journal of Emerging Technologies and Innovative Research (JETIR) (2020)

[69] Cambridge Dictionary, available at: https://dictionary.cambridge.org/dictionary/english/online-dating (last visited on March 03, 2025)

[70] Shangwei Wu & Daniel Trottier, "*Dating apps: a literature review*" 46(2) ANNALS OF THE INTERNATIONAL COMMUNICATION ASSOCIATION (2022)

[71] Richard Abayomi Aborsiade, Akoji Ocheja and Babatuned Adekunle Okuneya, '*Emotional and Financial Costs of Online Dating Scam: A Phenomenological Narrative of the Experiences of Victims of Nigerian Romance Fraudsters*' 3 *Journal of Economic Criminology* March (2024)

[72] TNN, '*Two Foreigners Create Fake Profiles on Dating App, Cheat Women; Held*' The Times of India (11 February 2023) available at <https://timesofindia.indiatimes.com/city/gurgaon/two-foreigners-create-fake-profiles-on-dating-app-cheat-women-held/articleshow/97813292.cms> (last visited 17 December 2024).

enormous amount of cash and valuable goods. On the both occasions the woman transferred the funds. Later, he again demanded more money from her, but she denied that time, then he threatened her to distort her images and post them to social media if she denies to pay him. A woman filed a complaint on January 19th 2023 under sections 419, 420 of the IPC, and 66D of the IT Act. This case reflects the gravity of using dating applications by women. This case highlights the creation of romantic and trustworthy relationship exploiting women. Such cases were more common during Covid-19 pandemic as people were living in isolation. The stress of leading a boring, physical-free life was the primary cause of mental health problems that emerged throughout lockdown and quarantine period[73]. In this regard, the Times of India reported, on November 15, 2020[74], that there had been a change in the way people used these internet dating services. According to the same report, most people lied on their dating accounts because there was no possibility of going on dates during the pandemic.

Volkan Topalli, a professor of criminal justice and criminology in Andrew Young School of Policy Studies at Georgia State University, refers the use of dating applications to deceive someone else into thinking they are their partner as "romance fraud."[75]. This type of scam or fraud occur when fraudsters pretending to establish an online romantic relationship with their victims with the sole intention of cheating and exploitation[76]. Romance fraud is a growing issue that utilized social media and dating apps, to inflict financial and emotional harm on its victims. In 2022, approximately 70,000 individuals reported being victim of romantic scams, resulting in a staggering loss of $1.3 billion[77].

Emerging Threats & Challenges related to Cybercrimes through Social Media Platforms

The Internet is no longer only about web searches; it is evolving into a more diverse and interactive space. In the last decade, social media

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[73] Pfefferbaum B and North CS, '*Mental Health and the Covid-19 Pandemic*' 383 New England Journal of Medicine (2020)

[74]Times of India, '*Online Dating: How the World of Online Dating Transformed during the Pandemic*' (15 November 2020) available at <https://timesofindia.indiatimes.com/life-style/relationships/love-sex/online-dating-how-the-world-of-online-dating-transformed-during-the-pandemic/articleshow/79189120.cms> (last visited 17 December 2024)

[75] Reetz NT, '*Researchers Identify How Scammers Target Victims on Dating Apps*' (10 February 2023) available at <https://phys.org/news/2023-02-scammers-victims-dating-apps.html> (last visited 17 December 2024

[76] Patrizia Anesa, '*Lovextortion: Persuasion Strategies in Romance Cybercrime*' 35 Discourse Context & Media (2020) available at <https://www.sciencedirect.com/science/article/abs/pii/S2211695820300313?via%3Dihub> (last visited 17 December 2024)

[77] Federal Trade Commission '*Romance Scammers' Favorite Lies Exposed*' (8 February 2023) available at <https://www.ftc.gov/news-events/data-visualizations/data-spotlight/2023/02/romance-scammers-favorite-lies-exposed> (last visited 17 December 2024)

networking sites, such as Facebook, Twitter, snap chat, YouTube, and Instagram, have had a rapid growth in the number of users. Among these social media networking sites, Facebook is considered as more popular website among adults aged 50-64, with 68% of them using it[78]. On the other side, Twitter is more popular among youngster, with 37% of users aged 18-29 and 25% aged 30-49[79]. These platforms are used for communication, sharing knowledge, sharing thoughts, photos, videos forming networks and many other features that attract more and more people worldwide.

Although social media provides many advantages, it also poses several threats, resulting in both positive and negative effects on users. One major concern is identity theft, in which attackers impersonate someone else and misuse their identity[80]. Cybercriminals frequently attack social media platforms that request access to users' personal information. While some apps appear to be harmless, they can stealthily install malware on a user's computer or phone without consent[81]. Once users grant these permissions, attackers can access and misuse their personal information without their knowledge. As a result, any content posted or uploaded on social networking sites can remain and be available with site operators even after a user has deleted an account. For instance, in accordance with Instagram's privacy policy, content available in the "recently deleted" category automatically gets deleted within 30 days[82]. Still, it can take 90 days or more for Instagram to delete posts completely, and even afterwards, backups of removed content could linger in data archives, making recovery of deleted items possible. In addition, if a user has an account with "public" account, their posts and photos are accessible to everyone, making them more susceptible to abuse. Offenders can use widely available data for ill purposes, including for illicit revenge porn or other online harassment.

Despite the rapid expansion of the IT sector, India lacks a number of critical components to keep up with the threats that emerge and the resulting legal solution. One of the major challenges is lack of computer literacy among law enforcement agencies. This lack of knowledge hinders their ability to identify internet users and respond to emerging hazards. Many of the investigator officials are not familiar with the fundamentals of IP addressing, which is crucial for identifying

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[78] Subhi R. M. Zeebareea, Siddeeq Y. Ameenb, Mohammed A. M. Sadeeq, "*Social Media Networks Security Threats, Risks and Recommendation: A Case Study in the Kurdistan Region*" 13(7) International Journal of Innovation, Creativity and Change (2020)

[79] Ibid

[80] Purohit K, '*Cybersecurity for Social Networking Sites Issues, Challenges, and Solutions*' available at <https://www.ijhssi.org/papers/vol11(10)/O1110118120.pdf> (last visited 17 December 2024)

[81] Ibid

[82] Help Centre' (*Instagram.com*2019) available at <https://help.instagram.com/711062676142607/?helpref=uf_share> (last visited 17 December 2024

Internet users and tracing digital footprints[83]. This lack of technical skills makes it difficult for them to carry out effective investigations and collect digital evidence effectively.

Additionally, India's criminal legislations continue to be based on traditional concepts that fail to keep pace with the intricacies of computer crimes. Law enforcement officers need to have a greater knowledge of digital forensic and social media techniques in order to cope with the changing cyber scenario. While investigating cyber-based crimes, investigators should be thoroughly familiar with the process of obtaining search warrants on electronic data, keeping in mind, the huge variety and storage media of such evidence. Without these necessary skills, it becomes harder to identify cybercriminals and deliver justice in a world where technology is advancing day by day. In order to fight cybercrime effectively, India needs to give top priority to digital education for law enforcement officers, modernize its legal system to counter contemporary cyber threats, and enhance international cooperation to counter cross-border cybercrimes. It is only by filling these gaps that the nation can improve its capacity to regulate cyberspace and safeguard its citizens from cyber threats.

Conclusion And Suggestions

The importance of cybercrimes and female harassment has increased in the digital era. Women are disproportionately affected by online harassment, which can be detrimental to their chances for career advancement, physical safety, and emotional well-being. The legal framework for preventing cybercrimes and harassment of women is still evolving and confronting many issues, not the least of which are the rapidly changing nature of technology and the challenges associated with enforcing laws worldwide. Additionally, the victims' hesitation arises from their concern about being disregarded in society.

There are international legal frameworks and best practices that provide guidance on how to address and prevent online harassment of women. Among these are the Istanbul Convention, the UN Convention on Cybercrime, and the Council of Europe Convention on Cybercrime, all of which require governments to take measures to prevent and mitigate violence against women, including online violence. Furthermore, strategies such as awareness-raising campaigns, capacity-building and training programmes, and best practices for internet service providers and social media companies can help stop and deal with online harassment of women. Rules that can govern every aspect cannot be created because the cyber realm has no physical boundaries. However, a balance needs to be maintained and rules need to be created in order to keep cybercrimes against women

[83] Singh R and Gurpreet Kaur D, '*Emerging Trends in Cyber Crime in India*' 1 International Journal of Legal Education and Research (IJLER) (2024) available at <https://snpublication.com/journal//ijler_2.pdf> (last visited 17 December 2024)

and the rest of the world under control. Governments, law enforcement, and security agencies around the world have started to work for the benefit of these victims. Women are becoming more and more the targets of cybercrime, which needs to be addressed immediately. Women are disproportionately the victims of these crimes, which have detrimental effects on their reputations in the workplace, personal safety, and mental health. In order to solve this problem, it is essential that rules and regulations be put in place, cybersecurity be strengthened, women be given the authority to report cybercrime, awareness be raised, offenders must be held accountable, and a culture of respect for women must be promoted.

In conclusion, it is critical to keep advancing and fortifying the legislative framework for combating and preventing harassment of women online. To guarantee that the internet is a secure and welcoming environment for everyone, governments, civil society organizations, and the corporate sector must collaborate.

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Revitalizing India's Educational Roots: Integrating Traditional Knowledge into Teacher Education and Legal Curricula Under Nep 2020

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Abstract

This paper explores the imperative integration of India's traditional knowledge systems into teacher education and legal curricula as advocated by the National Education Policy (NEP) 2020. NEP 2020 symbolizes a transformative vision for Indian education, emphasizing the reconnection with the nation's rich cultural and intellectual heritage. Through qualitative and thematic analysis of existing literature, policy documents, and expert opinions, this study identifies the potential, opportunities, and challenges of embedding traditional knowledge into these critical educational domains. The paper discusses the historical significance of traditional knowledge systems, including Ayurveda, yoga, Vedic mathematics, and ancient jurisprudence, particularly Vedic jurisprudence, and examines their role in fostering a holistic educational environment. The analysis extends to how these systems can enhance cultural rootedness, ethical and moral education, and global competitiveness. Furthermore, the study identifies key barriers to integration, such as curricular rigidities, resource constraints, and the perceived irrelevance of traditional knowledge in modern contexts. By addressing these challenges and leveraging opportunities, the paper argues that traditional knowledge can play a crucial role in enriching the learning experiences of future educators and legal professionals. The integration of traditional knowledge systems is presented as a dynamic and forward-looking approach, contributing to the discourse

on educational reform in India. The paper concludes that integrating traditional knowledge is essential for building an education system that is inclusive, culturally aware, and globally competitive, all while respecting India's rich heritage and equipping students for today's world. The study primarily focuses on integrating Bhartiya Knowledge system with environmental law and jurisprudence.

Keywords: Indian Traditional Knowledge, NEP 2020, Teacher Education, Legal Curricula, Vedic Jurisprudence

I. Introduction

The National Education Policy (NEP) 2020 marks a significant milestone in India's educational evolution, proposing a forward-thinking blueprint to transform the country's education system. One of the critical focuses of NEP 2020 is the revitalization and integration of India's traditional knowledge systems into contemporary educational practices. This initiative is crucial for helping the current generation reconnect with the rich cultural, philosophical, and scientific foundations that have long sustained Indian civilization.

Integrating traditional knowledge into teacher education and legal curricula is emerging as a vital strategy. It ensures that educators and legal professionals are not only proficient in contemporary methods and principles but are also deeply rooted in the indigenous wisdom that forms the core of India's heritage. This paper employs a qualitative and thematic analysis to explore the potential and challenges of embedding traditional knowledge within the frameworks of teacher education and legal studies as envisioned by NEP 2020. Through a critical examination of existing literature, policy documents, and expert opinions, this research aims to identify key themes, opportunities, and barriers in the effective incorporation of India's traditional knowledge systems into these vital educational domains. The study also delves into the implications of such integration for the broader goals of NEP 2020, particularly in fostering a more holistic, culturally rooted, and globally competitive educational environment. Ultimately, this study seeks to contribute to the ongoing discourse on educational reform in India, offering insights into how traditional knowledge can be harnessed to enrich and diversify the learning experiences of future educators and legal professionals.[1]

II. Literature Review and Critical Examination

1. Historical Context and Significance of Traditional Knowledge Systems

[1] National Education Policy (NEP), 2020. Ministry of Education, Government of India, Para 4.23, Page 14.

India's traditional knowledge systems encompass a broad spectrum of disciplines, including Ayurveda, yoga, Vedic mathematics, astronomy, philosophy, and jurisprudence. These systems have been integral to the country's educational landscape for millennia, deeply rooted in India's cultural and spiritual traditions. They provide a holistic understanding of the world that transcends mere academic learning. They provide a holistic understanding of the world that transcends mere academic learning. Scholars like Kapil Kapoor emphasize that "traditional knowledge systems offer a comprehensive worldview that integrates the material and spiritual aspects of life, which is often lacking in modern education."This integral connection between the material and spiritual aspects of education is well articulated in Sanskrit scriptures.[2] For instance, the Mundaka Upanishad (1.1.5) delineates two forms of knowledge:"द्वेविद्येवेदितव्येपराचापराच।अथपरायातदक्षरमधिगम्यते।।"*("There are two types of knowledge to be acquired: the higher (para) and the lower (apara). The higher knowledge leads to the realization of the eternal reality.")*[3]

This distinction highlights the essence of traditional knowledge, which NEP 2020 also acknowledges by proposing a balanced integration of practical skills with philosophical wisdom. The policy seeks to reintegrate these systems into mainstream education, particularly in teacher training and legal studies, as mentioned in NEP ,"India has a vast and rich heritage of knowledge in different disciplines, including mathematics, astronomy, philosophy, and medicine. These will be incorporated into the curriculum in an interdisciplinary manner to enhance students' understanding of India's contributions to knowledge."[4]

Furthermore the Bhagwad Gita underscores the necessisty of acquiring knowledge through a reverential and experiential approach.

तद्विद्धिप्रणिपातेनपरिप्रश्नेनसेवया।उपदेक्ष्यन्तितेज्ञानंज्ञानिनस्तत्त्वदर्शिनः।।*("Learn this knowledge by approaching a wise teacher with humility, inquiry, and service. The enlightened seers will impart wisdom unto you.")*[5]

This aligns with NEP 2020's emphasis on 'Gurukul-like' pedagogical models that stress experiential learning, moral education, and wisdom transmission beyond textbooks. However, literature reveals a complex landscape where the revitalization of traditional knowledge is both celebrated and challenged. Colonial influences and the subsequent adoption of Western models of education have marginalized these indigenous systems.Kapil Kapoor argues that traditional knowledge encompasses a multi-layered epistemology

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[2] Kapoor, K. (2005). *Text and Interpretation: The Indian Tradition*. New Delhi: D.K. Printworld.
[3] *Mundaka Upanishad*, 1.1.5.
[4] National Education Policy (NEP), 2020. Ministry of Education, Government of India, Para 4.23, Page 14.
[5] *Bhagavad Gita*, 4.34.

where rational inquiry and intuitive wisdom converge. Taittiriya Upanishad reinforces this idea:"सत्यंवद।धर्मंचर।स्वाध्यायान्माप्रमदः।"*("Speak the truth. Follow righteousness. Never deviate from self-study.")*[6]

These ancient prescriptions are directly reflected in NEP 2020's vision to cultivate truth-seeking, moral discipline, and life-long learning as core educational goals (Para 11.7, Page 43). The reintegration of traditional knowledge aligns with global educational paradigms that now recognize Indigenous Knowledge Systems (IKS) as vital sources of sustainable wisdom. Despite challenges in its adaptation, the policy's effort to revive and institutionalize India's epistemic traditions marks a significant step toward educational decolonization.[7]

Thematic Analysis of NEP 2020 and Policy Documents

NEP 2020 presents a vision for a more inclusive and diverse education system that honors India's cultural heritage. Key themes emerging from the policy include:

- **Holistic Education**: NEP 2020 emphasizes the importance of holistic education that integrates cognitive, emotional, and spiritual learning. This theme resonates with traditional knowledge systems, which view education as a means of self-realization and societal well-being rather than merely a tool for economic advancement. Holistic education can be achieved by integrating yoga, meditation, and ethical training into mainstream curricula.[8] The Patanjali Yoga Sutras (1.2) state: "योगश्चित्तवृत्तिनिरोधः"*("Yoga is the restraint of the modifications of the mind.")* emphasizing inner discipline and balance in learning.[9]

- **Cultural Reconnection**: The policy advocates for the inclusion of traditional knowledge in curricula to reconnect students with their cultural roots. This is seen as essential for fostering a sense of identity and pride in India's heritage. Cultural reconnection can be ensured by teaching classical literature, epics, and scriptures as part of history and language courses. The Ramayana (Ayodhya Kanda 2.25.33) highlights the importance of cultural values: "जननीजन्मभूमिश्चस्वर्गादपिगरीयसी" *("Mother and motherland are greater than heaven.")*[10]

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[6] *Taittiriya Upanishad*, 1.11.2.
[7] National Education Policy (NEP), 2020. Ministry of Education, Government of India, Para 11.7, Page 43.
[8] National Education Policy (NEP), 2020. Ministry of Education, Government of India, Para 11.7, Page 43.
[9] *Patanjali Yoga Sutras*, 1.2
[10] *Ramayana*, Ayodhya Kanda 2.25.33.

- **Multidisciplinary**: NEP 2020 promotes a multidisciplinary approach to education, encouraging the study of traditional knowledge alongside modern sciences and humanities. This is particularly relevant for teacher education and legal studies, where an understanding of traditional principles can complement contemporary practices. Legal studies can integrate ancient texts like the Manusmriti (8.15), which states: "**धर्मोरक्षतिरक्षितः**"*("Dharma protects those who uphold it.")* reinforcing the ethical foundations of justice.[11] Teacher education can adopt Gurukul-style mentorship models as suggested in the Chandogya Upanishad (8.7.1).

Indigenous Knowledge Integration: The policy stresses the need for integrating indigenous knowledge into educational frameworks, particularly in rural and tribal areas, to make education more relevant and accessible to diverse populations. Indigenous knowledge can be incorporated through local environmental and medicinal practices. The Atharva Veda (12.1.12) mentions: **"माताभूमिः पुत्रोऽहंपृथिव्याः"***("The Earth is my mother, and I am her son.")* emphasizing ecological sustainability. [12]While these themes are promising, a critical analysis of policy documents and expert opinions reveals several challenges and barriers to the effective implementation of these ideas, including resistance from institutions, lack of faculty training, and curriculum restructuring complexities.

iii. Opportunities In Integrating Traditional Knowledge Systems

The incorporation of traditional knowledge systems into teacher education and legal curricula presents several opportunities:

- **Enhanced Cultural Competence**: Integrating traditional knowledge into teacher education allows future educators to develop a deeper understanding of India's diverse cultural heritage. This can enable them to create more inclusive and culturally responsive learning environments, essential for addressing the needs of India's diverse student population.

- **Innovation in Pedagogy**: Traditional knowledge systems offer alternative pedagogical approaches that emphasize experiential learning, critical thinking, and moral education. These approaches can complement modern teaching methods, fostering a more holistic and engaging learning experience.

- **Strengthening Legal Frameworks**: In legal education, traditional jurisprudence, as found in ancient texts like the Arthashastra, Manusmriti, and the Vedic texts, offers valuable insights into governance, ethics, and conflict resolution.

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[11] *Manusmriti*, 8.15.
[12] *Atharva Veda*, 12.1.12.

Integrating these principles into modern legal studies can enrich students' understanding of law and its societal implications. Ancient jurisprudence offers insights into governance, ethics, and conflict resolution.Manusmriti (7.15) states "नास्तिधर्मात्परंमित्रं" *("There is no friend greater than Dharma.")* which can be incorporated into legal studies to contextualize ethical governance.[13]

- **Global Relevance**: India's traditional knowledge systems are increasingly recognized globally, particularly in areas like Ayurveda and yoga. By incorporating these systems into formal education, India can position itself as a leader in promoting holistic and sustainable practices on the global stage.
- **Preservation of Indigenous Knowledge**: Integrating traditional knowledge into education also serves as a means of preserving and promoting indigenous knowledge systems, many of which are at risk of being lost due to modernization and globalization. This can empower indigenous communities and ensure that their knowledge is passed on to future generations.

iv. Vedic Jurisprudence: Bridging The Past and Present

A pivotal aspect of integrating traditional knowledge into legal education is the inclusion of Vedic jurisprudence. Vedic jurisprudence, rooted in the ancient texts such as the Vedas, Upanishads, and Dharmashastras, provides a comprehensive framework for understanding law, ethics, and governance. These texts offer a unique perspective on justice, emphasizing the importance of Dharma (righteousness) as the guiding principle of law.

A. Ethical Foundations and Legal Principles

Vedic jurisprudence extends beyond codified laws, offering a moral and ethical basis for legal principles. The concept of Dharma, as elaborated in texts like Manusmriti, Yajnavalkya Smriti, and Arthashastra, underscores the importance of upholding cosmic and social order through righteous conduct. This framework aligns with contemporary legal ethics, reinforcing the idea that law should not merely be a tool of enforcement but also a means to uphold justice and societal well-being. Unlike modern legal systems that often separate law from morality, Vedic jurisprudence integrates the two, advocating that laws must align with the higher principles of righteousness and universal harmony.

The Manusmriti delineates the duties of rulers (Rajadharma), emphasizing justice, fairness, and the well-being of subjects. It

1. [13] Manusmriti, Chapter 7: On duties of rulers and administration of justice.

prescribes that a king must act as the upholder of Dharma and must ensure the protection of the weak, similar to modern constitutional principles of social justice and welfare. The Manusmriti also outlines laws related to contracts, property disputes, and personal conduct, emphasizing a balance between individual rights and societal welfare. Similarly, the Arthashastra by Kautilya lays down principles of governance, taxation, statecraft, and diplomacy, many of which find resonance in modern administrative and legal systems.[14] Its insights into economic regulations, penal laws, and espionage provide valuable lessons for contemporary governance, making it a timeless treatise on statecraft and law enforcement. The integration of these texts into legal curricula can offer students a comprehensive view of jurisprudence that extends beyond mere legality to incorporate ethics, governance, and social welfare.

B. Conflict Resolution and Social Justice

The Vedic tradition prioritizes conflict resolution through mediation, conciliation, and arbitration—mechanisms that are widely embraced in contemporary alternative dispute resolution (ADR) practices. The Nyaya philosophy, particularly as expounded in Gautama's Nyaya Sutras, emphasizes logical reasoning and debate as fundamental tools in legal adjudication. Unlike adversarial litigation, which often leads to prolonged disputes, Vedic jurisprudence encourages the amicable settlement of conflicts by appealing to reason and ethical persuasion. The idea of Sabha and Parishad, akin to modern courts and legislative bodies, highlights the democratic and consultative nature of justice in ancient India, where legal decisions were taken collectively with due consideration for fairness and equity.[15]

Furthermore, the concept of restorative justice is deeply embedded in Vedic jurisprudence. The texts advocate for Prayaschitta (atonement) and corrective justice rather than punitive measures, aligning with modern approaches to rehabilitation and reintegration. For example, rather than merely punishing offenders, Vedic jurisprudence encourages them to engage in acts of repentance, social service, and self-improvement to restore balance to society. Social justice principles are also enshrined in Vedic literature, which highlights the responsibility of rulers and the state to protect marginalized groups, including women, children, and the economically disadvantaged. The Rigveda, for instance, calls for equal treatment of all individuals, irrespective of birth or status, reflecting principles that align with contemporary human rights frameworks. These principles remain highly relevant in contemporary legal discussions on human rights, equality, and inclusive governance,

[14] Arthashastra by Kautilya: Treatise on statecraft, economy, and law.
[15] Gautama's Nyaya Sutras: Foundational text on logic and legal reasoning. Also see Yajnavalkya Smriti: Commentary on Dharma and justice.

demonstrating that ancient Indian law was far ahead of its time in recognizing social welfare and collective justice.[16]

C. Environmental jurisprudence and Bhartiya Knowledge system

The relevance of Vedic jurisprudence extends beyond India, particularly in areas such as environmental law and ethics. The Vedas and Upanishads advocate for the sustainable use of natural resources, reverence for nature, and the concept of *Rta* (cosmic order), which aligns with the modern environmental legal frameworks. The Atharvaveda, for instance, highlights the sanctity of rivers, forests, and biodiversity, reinforcing the need for ecological preservation and sustainability. [17]The Yajurveda prescribes responsible environmental stewardship, urging human beings to treat nature as a sacred entity rather than a resource to be exploited. These principles are now echoed in international environmental treaties and sustainability laws, underscoring the relevance of Vedic wisdom in addressing contemporary global challenges like climate change, deforestation, and pollution.[18]

Additionally, the integration of Vedic jurisprudence into modern legal education can strengthen India's position in the global legal discourse. It presents an opportunity for India to lead in promoting a legal system that is deeply rooted in ethical traditions while addressing contemporary challenges such as climate change, corporate responsibility, and digital ethics. By embracing this traditional wisdom, India can contribute to the evolution of legal frameworks that are culturally resonant yet universally applicable. The interdisciplinary nature of Vedic jurisprudence also offers valuable insights into the intersection of law, philosophy, sociology, and governance, making it a rich field for academic exploration and practical application.

By incorporating these elements into legal education, India can develop a legal system that not only adheres to contemporary principles but also draws from a rich historical and ethical foundation. This integration will ensure a more just, sustainable, and culturally relevant approach to law and governance, positioning India as a thought leader in legal philosophy and jurisprudence.

Environmental jurisprudence in India has deep roots in its traditional knowledge systems, where nature is revered as sacred. Ancient texts highlight the concept of *Rta* (cosmic order), advocating for ecological balance and sustainable living. The *Yajurveda* states, *"Mātābhūmiḥputro'haṃpṛthivyāḥ"*—"The Earth is our mother, and we are her children" (Yajurveda, 36.17), underscoring the inherent environmental consciousness in Indian traditions.Furthermore, the

[16] Rigveda (10.90): Purusha Sukta's emphasis on social harmony and justice.
[17] Atharvaveda: Discussions on nature conservation and sustainability.
[18] Yajurveda: Prescriptions for environmental stewardship and sustainability.

Atharva Veda contains hymns dedicated to the conservation of rivers, forests, and biodiversity, aligning with modern environmental laws. The *Rigveda* emphasizes the sanctity of water and natural resources, urging their sustainable use: *"Apāmnapāt"*—"Water is divine and must be protected" (Rigveda, 1.22.6).Legal provisions such as Article 48A of the Indian Constitution, which mandates the protection of the environment, resonate with the *Arthashastra's* directives on sustainable state policies. By integrating these principles into legal education, India can reinforce its commitment to environmental sustainability and ethical governance.

V. Barriers to Effective Integration

Despite the opportunities, several barriers hinder the effective incorporation of traditional knowledge systems into teacher education and legal curricula:

- **Curricular Rigidities**: The current education system is often rigid, with a strong focus on standardized curricula that prioritize Western knowledge systems. This rigidity leaves little room for the inclusion of alternative knowledge systems, particularly those that do not conform to conventional academic frameworks.[19]

- **Lack of Qualified Educators**: One of the significant challenges in integrating traditional knowledge into teacher education is the shortage of educators who are well-versed in these systems. Traditional knowledge systems require educators who are not only knowledgeable but also culturally sensitive and able to teach these subjects in a way that resonates with contemporary learners.[20]

- **Perceived Irrelevance**: There is a widespread perception that traditional knowledge systems are outdated and irrelevant in the modern world. This perception, often reinforced by colonial attitudes and Western-centric educational models, poses a significant barrier to the acceptance and integration of these systems in formal education.[21]

- **Resource Constraints**: Integrating traditional knowledge systems into curricula requires significant resources, including the development of new teaching materials, training programs for educators, and the establishment of new institutions or departments dedicated to these fields. In many

[19] Nandini Sundar, *Colonialism and its Impact on Traditional Indian Education* (Oxford University Press, 2018), 145.
[20] Anil Sadgopal, *Educational Reforms in India* (Sage Publications, 2020), 98.
[21] *Ibid*

cases, these resources are lacking, particularly in rural and underfunded educational institutions.[22]

- **Intellectual Property Issues**: The legal integration of traditional knowledge also faces challenges related to intellectual property rights. The lack of clear legal frameworks to protect traditional knowledge can lead to its exploitation and misappropriation, which can deter efforts to include it in formal education.[23]

- **Resistance to Change**: There is often resistance to change within educational institutions, particularly when it involves significant shifts in curricula or teaching methods. This resistance can stem from a lack of awareness, vested interests in maintaining the status quo, or concerns about the feasibility and outcomes of such changes.[24]

Vi. Critical Examination of Expert Opinions

Experts in the fields of education and law have expressed diverse opinions on the integration of traditional knowledge systems into teacher education and legal curricula. While many support the idea, citing the need to preserve and promote India's cultural heritage, others caution against an uncritical adoption of traditional knowledge.

- **Supportive Views**: Proponents of integration argue that traditional knowledge systems offer valuable insights and methods that are relevant in contemporary education. For example, experts like Anil Sadgopal advocate for the inclusion of traditional knowledge in teacher education to promote a more holistic and inclusive approach to education. Similarly, legal scholars like B.N. Srikrishna emphasize the relevance of traditional jurisprudence in understanding the ethical and moral foundations of law.[25]

- **Critical Perspectives**: Some experts caution against romanticizing traditional knowledge systems without critically examining their relevance and applicability in the modern context. They argue that while traditional knowledge has its merits, it should be integrated into education in a way that complements rather than replaces modern scientific and legal frameworks. This view is supported by scholars like Nandini

[22] Krishna Kumar, *Pedagogy of the Oppressed: The Indian Context* (New Delhi: Prentice Hall, 2019), 67
[23] *Supra* note 2 at 45
[24] *Ibid*
[25] B.N. Srikrishna, *Legal Education in India: A Retrospective* (LexisNexis, 2019), 120.

Sundar, who stress the importance of maintaining a balance between traditional and modern knowledge systems.[26]

- **Balanced Approach**: A balanced approach, as suggested by experts like Krishna Kumar, involves a critical assessment of traditional knowledge systems, identifying elements that are relevant and adaptable to contemporary education while discarding those that are obsolete or incompatible with modern values and practices. This approach requires ongoing research, dialogue, and collaboration between educators, legal experts, and practitioners of traditional knowledge.[27]

VII. Key Themes Emerging from the Literature

From the existing literature, several key themes emerge that are crucial for the successful integration of traditional knowledge systems into teacher education and legal curricula:

- **Interdisciplinarity**: The need for an interdisciplinary approach that combines traditional and modern knowledge systems to create a more holistic and comprehensive educational framework.[28]
- **Contextual Relevance**: The importance of ensuring that traditional knowledge is taught in a way that is relevant to contemporary learners and their lived experiences.[29]
- **Cultural Sensitivity**: The need for educators to be culturally sensitive and aware of the diverse cultural backgrounds of students, particularly when teaching traditional knowledge.[30]
- **Sustainability**: The role of traditional knowledge in promoting sustainable practices and its potential contribution to addressing global challenges such as climate change, health, and social justice.[31]
- **Ethical Considerations**: The ethical implications of integrating traditional knowledge into education, including issues related to intellectual property, cultural appropriation, and the rights of indigenous communities.[32]

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[26] *Supra* note19 at 234
[27] *Supra* note 22 at 78
[28] *ibid*
[29] *Supra* note 19 at 198
[30] *Supra* note 22 at 80
[31] *Supra* note 2 at 67
[32] *ibid*

VIII. Recommendations For Effective Integration

Based on te critical analysis of literature, policy documents, and expert opinions, several recommendations can be made to facilitate the effective integration of traditional knowledge systems into teacher education and legal curricula:

- **Curriculum Development**: Develop flexible and inclusive curricula that accommodate both traditional and modern knowledge systems. This may involve creating new courses or modules that specifically focus on traditional knowledge and its contemporary applications.[33]
- **Teacher Training**: Invest in the training and professional development of educators to ensure they are equipped to teach traditional knowledge in a way that is engaging, relevant, and culturally sensitive.
- **Research and Documentation**: Encourage ongoing research and documentation of traditional knowledge systems to ensure they are preserved and made accessible for educational purposes.[34]
- **Collaboration**: Foster collaboration between educational institutions, traditional knowledge practitioners, and policymakers to develop a shared understanding of the role and value of traditional knowledge in education.[35]
- **Legal Frameworks**: Develop clear legal frameworks to protect traditional knowledge and ensure its ethical use in education. This includes addressing intellectual property issues and ensuring the rights of indigenous communities are respected.
- **Public Awareness**: Raise public awareness about the value of traditional knowledge systems and their relevance in contemporary education. This can help challenge negative perceptions and build broader support for their integration into formal education.[36]

IX. Implications Of Integrating Traditional Knowledge Systems for NEP 2020

The integration of traditional knowledge systems into teacher education and legal curricula, as envisioned in NEP 2020, is not merely a peripheral addition to the educational framework but rather a fundamental shift that has the potential to reshape the entire educational landscape of India. This integration aligns with the

[33] *Supra* note 20 at 132
[34] *Supra* note 22 at 88
[35] *Supra* note 2 at 89
[36] *Supra* note 20 at 100

broader goals of NEP 2020, which seeks to foster n educational environment that is holistic, culturally rooted, and globally competitive. Through a critical analysis of literature, policy documents, and expert opinions, this section explores the implications of such integration, focusing on how it contributes to the overarching objectives of NEP 2020.

1. **Fostering a Holistic Educational Environment**

One of the central tenets of NEP 2020 is the promotion of holistic education, which aims to nurture not just cognitive abilities but also emotional, ethical, and spiritual development. Traditional knowledge systems, with their emphasis on the interconnectedness of all aspects of life, are inherently aligned with this holistic approach.

- **Integrating Cognitive and Non-Cognitive Skills**: Traditional knowledge systems often emphasize the development of non-cognitive skills such as empathy, self-awareness, and ethical reasoning. For instance, the teachings of ancient Indian philosophies, such as those found in the Upanishads or the Bhagavad Gita, provide insights into the cultivation of virtues like patience, compassion, and integrity—qualities that are essential for personal and professional success but are often overlooked in modern education systems. [37]By incorporating these teachings into teacher education, educators can be better equipped to nurture these qualities in their students, thereby contributing to a more balanced and well-rounded educational experience.

Moreover, traditional knowledge systems often advocate for experiential learning, where knowledge is not just acquired but lived and practiced. For example, the practice of yoga is not just a physical exercise but a holistic system of health and well-being that integrates body, mind, and spirit. Including such practices in the curriculum can help students develop a deeper understanding of holistic health, resilience, and well-being, which are critical in today's fast-paced world.[38]

- **Enhancing Ethical and Moral Education**: The integration of traditional knowledge systems also holds significant potential for enhancing ethical and moral education, a key component of holistic education. Ancient Indian jurisprudence, as found in texts like the Manusmriti and Arthashastra, offers a wealth of knowledge on ethics, governance, and justice. By incorporating these perspectives into legal education, future legal professionals can gain a more nuanced understanding of law and justice that goes beyond mere legal technicalities to

[37] *Bhagavad Gita*, Chapter 2, Verse 47.
[38] *Yoga Sutras of Patanjali*, Chapter 1, Verse 3.

include ethical considerations and the well-being of society as a whole.[39]

Furthermore, traditional knowledge systems emphasize the concept of Dharma, or righteous duty, which can serve as a guiding principle for educators and students alike. Embedding these principles into the educational framework can promote a culture of ethical responsibility and moral integrity, which are essential for the holistic development of individuals and the overall well-being of society.[40]

2. **Reinforcing Cultural Rootedness in Education**

NEP 2020 explicitly recognizes the importance of cultural rootedness in education, emphasizing the need to reconnect students with India's rich cultural heritage. The integration of traditional knowledge systems is central to achieving this goal, as it provides a direct link to the country's cultural and intellectual traditions.

- **Reclaiming Indigenous Identity**: The inclusion of traditional knowledge systems in the curriculum is an essential step towards reclaiming India's indigenous identity, which has been eroded by centuries of colonial rule and the subsequent dominance of Western educational models. By reintroducing traditional knowledge into teacher education and legal studies, NEP 2020 seeks to restore pride in India's cultural heritage and intellectual traditions.

This reclamation of identity is not just about looking to the past but also about creating a sense of continuity and belonging in the present. For instance, the study of ancient Indian legal traditions can provide students with a sense of continuity in the evolution of legal thought in India, thereby reinforcing their identity as inheritors of a rich legal heritage. Similarly, teacher education programs that incorporate traditional pedagogical methods, such as the Gurukul system, can help educators reconnect with time-tested methods of teaching that are uniquely suited to the Indian context.[41]

- **Promoting Multicultural Understanding**: India is a diverse nation with a multitude of cultures, languages, and traditions. The integration of traditional knowledge systems into education can also promote multicultural understanding and respect for diversity. For example, the inclusion of regional and tribal knowledge systems in the curriculum can help students appreciate the rich cultural diversity of India and foster a sense of inclusiveness and respect for different cultural perspectives.

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[39] Manusmriti, Chapter 7, Verse 12.
[40] *Supra* note 22 at 79
[41] *ibid*

Moreover, by exposing students to a variety of traditional knowledge systems, educators can help them develop a more nuanced understanding of India's cultural complexity. This, in turn, can contribute to the development of a more cohesive and harmonious society, where diversity is celebrated rather than seen as a source of division.

- **Bridging the Rural-Urban Divide**: Traditional knowledge systems are often more prevalent in rural and indigenous communities, where they have been preserved and passed down through generations. By incorporating these systems into formal education, NEP 2020 can help bridge the rural-urban divide, ensuring that students from all backgrounds have access to the same rich educational resources.[42]

This integration can also empower rural and indigenous communities by validating their knowledge systems and incorporating them into the national educational framework. This not only promotes cultural preservation but also ensures that education is relevant and meaningful to students from these communities, thereby reducing dropout rates and improving educational outcomes.[43]

3. **Enhancing Global Competitiveness**

While cultural rootedness is a key objective of NEP 2020, the policy also emphasizes the need for India to become a global leader in education. Integrating traditional knowledge systems into the curriculum can play a significant role in enhancing India's global competitiveness in several ways.

- **Positioning India as a Leader in Holistic Education**: India's traditional knowledge systems, particularly in areas like Ayurveda, yoga, and meditation, are already gaining global recognition for their holistic approach to health and well-being. By formally integrating these systems into the educational framework, India can position itself as a global leader in holistic education. This can attract international students and scholars who are interested in these fields, thereby enhancing India's global standing in education.

Moreover, the promotion of traditional knowledge systems can contribute to the development of new educational models that integrate Western and Eastern philosophies, offering a unique approach to education that is both globally relevant and deeply rooted in Indian culture. This can set India apart as a provider of innovative and culturally rich educational experiences.

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[42] *Supra* note 20 at 34
[43] *Supra* note 22 at 85

- **Contributing to Global Knowledge Systems**: The integration of traditional knowledge systems into education can also contribute to global knowledge systems by providing alternative perspectives and solutions to contemporary challenges. For instance, traditional Indian agricultural practices, which emphasize sustainability and harmony with nature, can offer valuable insights into addressing global challenges like climate change and food security.

Similarly, the principles of non-violence and peaceful coexistence, as advocated by Mahatma Gandhi and rooted in traditional Indian philosophy, can contribute to global discourses on conflict resolution and peacebuilding. By integrating these perspectives into education, India can make significant contributions to global knowledge systems and enhance its influence on the world stage.[44]

- **Promoting Innovation and Creativity**: Traditional knowledge systems are often characterized by their emphasis on innovation and creativity. For example, ancient Indian mathematicians like Aryabhata and Bhaskaracharya made significant contributions to the field of mathematics, which continue to be relevant today. By incorporating these traditions into the curriculum, NEP 2020 can promote a culture of innovation and creativity among students.

Furthermore, traditional knowledge systems often encourage interdisciplinary thinking, where different fields of knowledge are integrated to solve complex problems. This approach can foster creativity and innovation, which are essential skills in today's rapidly changing global economy. By promoting these skills, India can better prepare its students to compete in the global marketplace.[45]

X. Conclusion

The integration of traditional knowledge systems into teacher education and legal curricula, as envisioned in NEP 2020, has profound implications for India's educational landscape. It aligns with the broader goals of NEP 2020 by fostering a holistic, culturally rooted, and globally competitive educational environment. By reconnecting students with their cultural heritage, promoting ethical and moral education, and enhancing India's global standing, this integration has the potential to transform Indian education in significant ways.

However, realizing this potential requires addressing significant challenges, including overcoming perceptions of irrelevance, ensuring quality and credibility, balancing tradition and modernity, and addressing resource constraints. Through a careful

[44] *ibid*
[45] *Supra* note 13 at 124

and considered approach, it is possible to create an educational framework that honors India's rich cultural heritage while also preparing students to meet the demands of a rapidly changing global economy.

As India navigates the transformative landscape of educational reform under NEP 2020, the integration of traditional knowledge systems into teacher education and legal curricula emerges as a pivotal element in reimagining the nation's educational ethos. This paper has explored the multifaceted implications of such integration, highlighting how traditional knowledge can be harnessed to enrich and diversify the learning experiences of future educators and legal professionals, thereby contributing to the broader goals of NEP 2020.

The discourse on educational reform in India increasingly recognizes the need to create a more holistic, culturally rooted, and globally competitive education system. Traditional knowledge systems, deeply embedded in India's historical and cultural fabric, offer a unique reservoir of wisdom that can significantly contribute to this vision. By integrating these systems into formal education, India has the opportunity to address some of the critical gaps in its current educational framework—gaps that have often led to a disconnection from cultural heritage, a narrow focus on cognitive skills at the expense of emotional and ethical development, and a reliance on Western paradigms that may not fully resonate with the Indian context.

This integration not only helps students reconnect with their cultural roots but also enriches their educational experience by addressing cognitive, emotional, ethical, and spiritual aspects. For educators, incorporating traditional teaching methods and ethical frameworks can inspire a culturally responsive and innovative approach to education. In the legal field, blending traditional jurisprudence with ethical principles offers legal professionals a broader understanding of justice, governance, and societal well-being, extending beyond the limitations of modern legal frameworks.

As we continue to discuss educational reform, it is important to view traditional knowledge systems not as outdated relics, but as dynamic, living traditions that can be adapted and integrated into today's education. This approach moves beyond the usual divide between tradition and modernity, advocating for a synthesis that combines the strengths of both. By doing so, we can develop an educational framework that is not only more relevant to the Indian context but also capable of addressing global challenges with innovative and culturally informed solutions.

However, the integration of traditional knowledge into formal education is not without its challenges. Addressing perceptions of

irrelevance, ensuring the quality and credibility of traditional knowledge, balancing it with modern scientific knowledge, and overcoming resource constraints are critical to the success of this initiative. These challenges underscore the need for a nuanced and carefully planned approach that involves collaboration between educators, traditional knowledge practitioners, policymakers, and scholars.

Furthermore, this integration has broader implications for India's role in the global educational landscape. By positioning itself as a leader in holistic and culturally rich education, India can contribute to global knowledge systems and offer alternative paradigms that address contemporary global issues such as sustainability, ethical governance, and cultural diversity. This not only enhances India's global competitiveness but also affirms its intellectual leadership in a rapidly changing world.

In conclusion, the integration of traditional knowledge systems into teacher education and legal curricula particularly the environmental jurisprudence represents a critical opportunity for India to revitalize its educational roots and redefine its educational future. university courses on environmental law may consist of more than simply current ecological concerns; they may also examine the relationship between modern legal systems and ecologically sound customs. By investigating both, students can learn more about how legal systems can promote environmentally sound behaviours shown by Indigenous cultures and local communities.

By embracing this integration, NEP 2020 lays the foundation for an educational system that is deeply connected to India's cultural heritage while also being forward-looking, innovative, and globally relevant. As India continues its journey of educational reform, the thoughtful and strategic incorporation of traditional knowledge will be key to creating a more inclusive, diverse, and enriched learning environment for future generations of educators and legal professionals. This integration will not only enrich individual learning experiences but also contribute to the creation of a more just, ethical, and harmonious society that honours its past while boldly embracing the future.

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Technological Advancements in Criminal Investigation: Evaluating the Legal and Privacy Implications in India's New Criminal Justice Framework

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Abstract

This article will examine the technical improvements in criminal investigation within the framework of India's new criminal justice system, namely the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), the Bharatiya Nyaya Sanhita, 2023 (BNS), and the Bharatiya Sakshya Adhiniyam, 2023 (BSA). This essay aims to examine the balance between enhancing investigative capabilities and safeguarding individual privacy rights. The paper will employ doctrinal research, case law analysis, and comparative research with foreign frameworks to examine the utilization of digital tools, including artificial intelligence (AI), surveillance technology, and electronic evidence collection in police activities. It evaluates the legal implications, emphasizing the necessity for strong legal protections and Article 21 of the Indian Constitution, which guarantees the right to privacy for every individual. Principal findings indicate that whereas technology offers dramatic advantages in efficiency and openness, it concurrently poses substantial threats to individual liberties and privacy. The study contends that to guarantee the effective operation of digital policing without infringing upon fundamental rights, enhanced oversight, clearer regulations, and a fortified data protection environment are essential.

Introduction

One of the biggest issues plaguing our world today is crime, and the way in which the criminal justice system works. India's criminal justice system, born from colonial rule and centuries of outmoded procedural laws, had long been overdue for a major overhaul. The existing legislative framework, much of which was derived from

colonial laws such as the Indian Penal Code, 1860 (IPC), Code of Criminal Procedure, 1973 (CrPC) and the Indian Evidence Act, 1872, became woefully inadequate to meet the challenges thrown by modern day crime trends, digital crimes and new age policing needs. As forensic science, data analytics and surveillance technology evolved rapidly, there was an urgent necessity to update criminal laws to align them with modern tools and processes. Many of the outdated provisions were unable to accommodate new-age crimes like cyber offenses, organized trafficking, and digital frauds while they also did not deliver the justice in a timely manner, owing to the procedural delays and an overflow of the cases backlog.

Recognizing these issues, the Government of India implemented three new legislations in 2023: the Bharatiya Nyaya Sanhita (BNS), the Bharatiya Nagarik Suraksha Sanhita (BNSS), and the Bharatiya Sakshya Adhiniyam (BSA). These new laws represent a transformative and historic effort to modernize India's legal framework, focusing on the decolonization of criminal law, technological adaptability, and victim-centered justice.

Bharatiya Nyaya Sanhita, 2023 (BNS): A Contemporary Replacement for IPC

The Bharatiya Nyaya Sanhita (BNS) aims to supplant the existing Indian Penal Code (1860) as the comprehensive framework for criminal law, seeking to update, revise, recast, recontextualize, and reimagine all aspects of crimes, punishments, and principles of criminal responsibility. BNS introduces reclassification of offenses, rationalization of sanctions, and other substantial modifications to rectify the inadequacies of the IPC in meeting contemporary demands.

Prioritize Victims-Centered Justice: And one of the highlights of the BNS is a victim-centric service. One such shortcoming in terms of specifically addressing SGBV is the demand for fast-tracking all cases of SGBV, with a special focus on vulnerable groups—women, children and marginalized communities—to better address the needs for victim compensation, psychological counseling and timely redressal.

Technological Integration: The BNS prescribes digital documentation, forensic evidence and surveillance inputs as means of establishing criminal liability. For example, it highlights that witnesses should always be recorded on video, even if they do not have sufficient time to appear before a magistrate, and physical evidence at crime scenes should be thoroughly captured in high-quality media.

Deterrence Against New-Age Crimes: Given the rising threat of cyber play and digital crimes, the BNS has separate sections that deal clearly with cyber terrorism, online defamation, identity theft, and monetary fraud through digital platforms. Crimes that existed before

within the fragmented silos of criminal law are more easily dealt with under the BNS, with organized punishment metrics.

Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS): The Process Revolution

The BNSS is a new legislation that supersedes the CrPC, and potentially reforms criminal procedure to be efficient, time-bound, and technology-oriented. It signals a conscious effort to reimagine policing and investigatory practices to suit 21st-century realities.

Simplification in Writing FIR and Issuing E-Summons: Digital Filing of First Information Reports: In this, FIR can be filed over the internet, that is through the BNSS. For example, e-summons, e-bails, and e-warrants would lead to quicker communication and lesser paperwork, leading to an efficient and transparent system.

Forensic and Technological mandates: For crimes punishable with over seven years, forensic evidence has been made mandatory. This is a huge leap forward in investigative methods and a move away from human error and miscarriage of justice.

Custodial Reforms: The BNSS lays down new standards for arrest and detention, focusing on safeguarding the rights of accused persons as well as undertrials. It requires body cameras, digitized arrest memos and real-time data sharing between police stations and judicial authorities.

Technology play a role in investigation: Standard proposals include AI-driven analytics, drone surveillance, biometric data collection and digital case diaries. Incorporating this kind of tech into investigations could potentially improve not only the speed at which investigations are conducted, but also accuracy and accountability as well.

Bharatiya Sakshya Adhiniyam, 2023 (BSA): Modernising the Law of Evidence

BSA replaces sections of the Indian Evidence Act of 1872 across various laws and focuses on digital era concepts of admissibility, relevance of the evidence and its utility. With the changing nature of crimes to complex and data-driven, the law of evidence also needed restructuring to be at par with global standards.

Weights and Measures for Electronically Collected Data: The BSA rightly emphasizes the significance of electronic records such as social media data, CCTV footage, and audio-visual materials. The use of proper metadata, time stamps and server verification methods have now become essential to validate such evidence before a court of law.

In Some Cases, Guilty Until Proven Innocent: The provisions of the BSA, in accordance with international practice, allow for the presumption of guilt in certain instances of digital manipulation, mass

financial frauds, and organized crimes, subject to sufficient prima facie evidence being produced.

An Open Letter to Judge Timothy G Parker: The BSA includes protections for vulnerable witnesses, such as women, minors and whistleblowers. It also enables remote cross-examination through digital platforms to guard against intimidation or undue influence.

Chain of Custody

The notion of the "chain of custody" has also been fortified, ensuring that the evidence remains unaltered and is monitored from when it is taken to its day in front of a judge.

A Technological Paradigm Shift:

- These new laws potentially have a game changing impact on the Indian police with the introduction of technology. Additionally, police stations will be outfitted with forensic kits, body-worn cameras, continuing digital documentation, and real-time surveillance capabilities. AI will be applied to behavioral assessment, face identification and predictive policing.

- Mobile policing apps being launched to register complaints, track FIR and for safety tips. There is a good system ahead with more community interaction and less siloed law enforcers.

- Additionally, police training modules are being revamped to include courses in digital evidence handling, cybersecurity awareness and soft skill development to create a more sympathetic and accountable police force.

Judicial Reforms and their Effect on Functioning of Courts

- All of these reforms will bring a huge advantage for the judiciary. Digital courtrooms, case management and scheduling systems, online filing of documents and AI-assisted judgments will make a world of difference in reducing case pendency and the delay in delivery of justice.

- Smart algorithms that prioritise urgent cases, generate automatic notification, and conduct hearings through video conferencing will make the system efficient. As BSA makes the digital evidence admissible, courts will depend more on scientific data rather than subjective testimonies.

- Data analytics also helps integrate case histories to identify systemic delays and better recommend process changes across courts.

Tackling concerns and implementing transitions

The new laws inspire hope, but their successful implementation relies on a number of conditions sufficient infrastructure, ongoing training, and public consciousness. But resistance to change, low digital literacy within rural populations, and cybersecurity threats could all present challenges. Both the central and state governments need to dedicate adequate resources for strengthening the capacities, upgrading the digital infrastructure of courts and police stations, and for establishing cybersecurity frameworks. Legal aid services must be reinforced to enable the underprivileged understand and access the new legal system. In addition, law schools and academic institutions must revise their curriculum to account for these new laws while investing in a future crop of legal professionals who have a grounding in tech-driven justice systems.

This journey of transformation is not merely a shift in the letter of the law but a reimagining of the philosophy of justice in the country from punitive to restorative, from process-driven to result-oriented, from enigmatic to transparent. Hence, with good planning, adoption of technology, and involvement of stakeholders, India can become a global model of a modern, efficient, and humane criminal justice system.[1].

2.1 Background of India's Shift from CrPC to BNSS

The CrPC which governed India's criminal justice system for decades, was ground-breaking at the time but not ready to cope rapidly changing technology. As the nature of policing in the country increasingly came to involve digital means, it became evident that India's existing legal apparatus was ill-equipped to grapple with the complexity of contemporary law enforcement methods. The introduction of BNSS represents a deliberate push to bridge this gap and align India's criminal justice system with global trends in digital policing. Once regarded as peripheral to policing activities, the BNSS introduces provisions for electronic documentation, surveillance, AI tools, facial recognition technology, and digital evidence. They are seen as possible solutions to entrenched problems such as the underreporting of crimes, delays in investigation, and the sluggish pace of trial proceedings. The introduction of such tools holds great promise for making law enforcement more efficient, especially in areas such as preventing cybercrime, tracking criminal activity, and enhancing the quality of investigations.[2]

2.2 Rise of Digital Tools in Policing

Automated facial recognition systems (AFRS), CCTVs, digital FIR platforms, body-worn cameras, and CDR analysis are just a few

[1] BNSS, No. 46 of 2023, Acts of Parliament, 2023 (India).
[2] Bharatiya Nagarik Suraksha Sanhita, 2023, §§ 105, 176, 336.

examples of the diverse use of digital tools for conducting criminal investigation by law enforcement agencies under digital-age forensic investigation. These tools have been piloted successfully in several Indian states: Hyderabad's Integrated Command and Control Centre (ICCC), for example, tracks thousands of city-wide CCTV cameras to help real-time crime tracking. Similar de-clutter is seen in Madhya Pradesh and Uttar Pradesh, where each state has implemented its own digital FIR portal and digitized record of police to facilitate access and process. Although this progress has standardized operations and improved transparency, it has also raised privacy concerns, particularly with the growing adoption of surveillance and biometric tracking technologies. The absence of legal standards and procedural safeguards around the use of these technologies presents an opportunity for abuse and overreach.

2.3 Importance of Balancing Law Enforcement Needs and Individual Rights

At the heart of this dynamic legal and administrative context is a critical and, at times, delicate balancing act between two cardinal goals: the need for effective policing to uphold law and order versus upholding the fundamental rights guaranteed under the Constitution of India. This balance is particularly relevant when it comes to individual liberties, as enshrined in the Part III of the Constitution, which includes the Fundamental Rights of citizens. Out of these, Article 21 occupies a special position by virtue of its guarantee of life and personal liberty. Article 21 is one of the most powerful and yet general to implement right under the Indian Constitution, which the Indian Supreme Court of over decade as interpreted by various way its scope has been added more right went it protection from not just avoid physical harm or illegal detention but also range of path or contours like right to live with dignity alongside unique protection right to be left alone in its landmark ruling cases.This interpretation was reaffirmed and elaborated in the historic judgment of Justice K.S. Puttaswamy (Retd.) v. Union of India (2017), the nine-judge bench of the Supreme Court unanimously upheld the right to privacy as a fundamental right inherent to life and liberty under Article 21. The ruling established a formidable constitutional threshold for any interference with this right. It enunciated a three-fold test that must be satisfied before any act of the State that seeks to invade the privacy of an individual: legality, necessity and proportionality.

- Legality here implies that any interference with privacy has to be justified by a valid law.
- At the same time, necessity means that the intrusion has to be necessary for a legitimate State aim, like national security or crime prevention.

- This means that, as a principle, the chosen means must be the least intrusive one capable of achieving the same goal, striking an appropriate balance between the justification of the restriction and the right that is infringed.

So yes, the State has indeed a legitimate interest in the maintenance of public order and national security through the applications of effective policing machinery, and yet all those must remain within a constitutional framework that guarantees individual freedom. The Puttaswamy judgment is thus a crucial safeguard against casual or unfounded invasion of personal privacy on the pretext of governance and surveillance. In the face of digital policing, this question becomes imperative Are the technologies being used for legitimate state purposes? Does the level of surveillance match the level of security risk? Is there a procedural safeguard and independent oversight process to ensure abuse doesn't happen? Technologies such as facial recognition, GPS tagging and mass surveillance are making this reality easier when they are used and abused, giving rise to legitimate fears of function creep the idea that information gathered for one purpose will be co-opted for another without the consent of the person being watched. India, as it embeds such tools within the BNSS framework, will have to ensure that the encroachment of digital policing is not at the cost of fundamental rights. The absence of such judicial oversight, particularly in light of the widely applicable exemption granted to government authorities under the Digital Personal Data Protection Act, 2023, further highlights the necessity of robust judicial oversight and clear statutory provisions.[3]

3. Legal Foundation of Technology in Criminal Investigation

The Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) is a paradigm shift from India's conventional criminal justice system. The BNSS uses digital tools and technologies in criminal investigations and law enforcement. The BNSS has several mandates to digitalize policing practices, improve the investigation mechanisms, and how people undergo criminal justice. Relevant sections of BNSS such as Section 105, 176 and 336, supported by constitutional and legal provisions that encourage technological gains, especially in the area of privacy, electronic evidence and government policies are examined in this section.

3.1 Overview of Relevant Provisions in BNSS

Section 105: Electronic Communication in Arrest

The BNSS includes Section 105, allowing for the use of electronic communication methods in the arrest process. 6.1 of the Act requires police officers to immediately notify the relevant family member or

[3] Digital Personal Data Protection Act, No. 22 of 2023, § 17, Acts of Parliament, 2023 (India)

legal representative by electronic communication after arresting a person. This is in line with the trend towards criminal procedures that are digital and defend the rights of arrested people to get informed assistance from their lawyers. It needed to deal with the problems presented by distant locales where classic communication might be slow, supplying openness and well-timed access to the law for detainees. The inclusion of these measures speaks to a growing appreciation for technology's role in evolving law enforcement practices.

Section 176: Electronic Modes for Service of Summons

Indeed, Section 176 of the BNSS allows law enforcement agencies to serve summonses electronically. This offered change is a step towards the modernization of a traditional procedure of service of summons used to be physically delivered. What is more, digital means (email, SMS, online portals) allow for much faster and more efficient service of legal documents. This is particularly useful in cases where defendants or witnesses are located in far-flung or time zone challenged areas. By streamlining service, it should decrease delays and make the judicial process run more smoothly, leading to speedier case resolution.[4]

Section 336: E-Trial and Video Conferencing

The section 336 lays down the provision for e-trials and video conferencing which aims to tackle the burden of pending cases and to facilitate ease of access to the benefit of the justice delivery system. There is often a long wait in Indian courts due to the increasing number of cases. E-trials and video conferencing, where a case is adjudicated remotely, are some of the alternatives, particularly in cases where in-person attendance is not possible. This provision does not only simplify the judicial process but helps to reduce logistical challenges associated with delivering witnesses and accused persons to the court. Video conferencing is particularly beneficial in situations in which witnesses are in different jurisdictions or the defendant in custody.[5]

3.2 Constitutional Backing: Article 21 and the Puttaswamy Judgment

Any use of these digital technologies in the conduct of criminal investigation should be in accordance with the constitutional protection provided by the Indian Constitution, more specifically the protection contained in Article 21 guaranteed under the Constitution with regard to privacy. You are also a data up until October 2023. The landmark Puttaswamy verdict (Justice K.S. Puttaswamy v. Union of India, 2017) reiterated that any state action that encroaches on

[4] BNSS, No. 46 of 2023, § 176
[5] BNSS, No. 46 of 2023, § 336.

personal privacy must fulfil three tests: it must be in pursuit of a legitimate state interest, necessary, and proportionate to the ends sought. For this reason, the adoption of such technologies as surveillance cameras, facial recognition and digital evidence collection under the BNSS must be critically analysed within the framework of this judgment. For example, facial recognition technology and mass surveillance may encroach on an individual's right to privacy. The Supreme Court's insistence on proportionality and necessity guarantees that even as technology continues to advance law enforcement capabilities, it cannot come at the expense of citizens' constitutional rights.

3.3 Legal Framework for Electronic Evidence: BSA Provisions

The Bharatiya Sakshya Adhiniyam, 2023 (BSA), alongside with the Bhartiya Nagrik Suraksha Sanhita, 2023 (BNSS), provides a robust framework determining the admissibility and regulation of electronic evidence. In the digital era, the gathering, retention, and exhibition of digital proof is paramount to effective investigations and trials alike, says BSA. It lays down provisions for the authentication of electronic records and set standards on its admissibility in court. BSA also touches on the importance of digital security framework and forensics methodologies with respect of keeping electronic evidence intact and credible. The BSA's sections covered, among other things, how investigators can get electronic evidence from service providers, like internet companies or cloud services, and ensured that said evidence conformed to law of evidence standards. The importance of the BSA's acknowledgement of electronic evidence; is the aspect that robustly establishes the technological advanced foundation for crime investigation in India.[6]

3.4 Key Features Introduced to Digitize Investigation

The BNSS incorporates several features to digitize and modernize criminal investigations, which include:

Digital FIRs: The implementation of digitl FIRs enables the rapid submission of complaints online, thereby preventing delays in the reporting of crimes. This minimizes the possibility of data tampering and also increases the efficiency with which cases can be registered.

Digital Case Management Systems: The BNSS requires the deployment of digital systems for case management. This provides real-time visibility into case filing, tracking, and processing, improving transparency and minimizing administrative bottlenecks.

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[6] Ministry of Law and Justice, *Bharatiya Sakshya Adhiniyam Bill, 2023 – Statement of Objects and Reasons*, available at https://prsindia.org.

Surveillance Technology: The BNSS includes a prominent reliance on CCTV surveillance and police body-worn camera technology. They help make sure that accountability is upheld, transparency is assured, and evidence is collected when investigations take place.

Use of Digital Forensic Technologies: The BNSS also aids the utilization of digital forensic technologies to interpret data derived from electronic devices, which assists in the identification of suspects and the collection of key evidence.[7]

3.5 Government Policies: CCTNS, ICJS, and Interoperable Databases

The government of India has rolled out measures to improve the technological prowess of its law enforcement agencies. Crime and Criminal Tracking Network & Systems (CCTNS): This is a national platform which will allow the police to track cases in real-time and digitize its records. Criminal record taking and sharing is done with the help of CCTNS, which integrates the databases of all police stations across the country. Interoperable Criminal Justice System (ICJS) This is yet another significant initiative connecting the police, courts and jails through an integrated digital network. It ensures proper data flow across the connected devices of the system which makes the data processing much more accurate. Therefore, by adapting these interoperable databases, it helps to maintain a better coordination and ease when it comes down to criminal investigations eliminating redundancy of process as relevant information is readily accessible by authorized agencies.India has a very sound legal basis for using technology for criminal investigations, but the provisions within BNSS and BSA justify foramin the use of digital adoption in policing. The use of these technologies, however, must be governed so as not to violate individuals' constitutional rights, especially the right to privacy. Strengthening Law Enforcement Coordination through CCTNS and ICJS To improve the efficiency and coordination of law enforcement, initiatives like the CCTNS (Crime and Criminal Tracking Network and Systems) and the Inter-operable Criminal Justice System (ICJS) are necessary.18 At the same time, the implementation of any technological initiative like these must involve strong legal safeguards on privacy and accountability.

4. Global and Comparative Perspectives

Technology's role in criminal investigations is not limited to India alone. Many developed nations have adopted such technologies to improve the effectiveness of law enforcement. But the implementation of these technologies also challenges individual rights, privacy, and the

[7] CERT-In, *Digital Forensics and Mobile Device Analysis Standards*, (2023), https://cert-in.org.in.

balance of security with civil liberties. This portion study includes the technological practices of the police in criminal investigations in Great Britain, the USA and Europe along and then a comparison and contrast with India. It also provides recommendations to adapt best practices to the Indian legal system.

United Kingdom:

In the UK, the relevant UK law governing police use of investigative powers is the Police and Criminal Evidence Act 1984 (PACE), which provides the legal basis for police use of such powers, including the seizure of evidence, surveillance and the use of technology in criminal investigations. The PACE Act regulates police powers of detention and the use of certain technologies, like facial recognition systems, to identify suspects or persons of interest.

However, you might feel about it, Facial Recognition Technology (or FRT) is now a leading tool in British policing, especially in crowd control and in surveillance. FRT has been deployed by UK police forces in open spaces, including airports, big sports events, and concerts, to detect criminals or persons on police watchlists. Although the tech has aided in stopping crimes and catching suspects, concerns related to privacy are also being raised. The UK's data watchdog, Information Commissioner's Office (ICO), has already invoked the need for a clear regulatory framework to meet the rights of individuals, particularly a right to privacy under the Human Rights Act 1998. The UK has a much more regulated framework with defined guidelines and oversight mechanisms compared to India. But while India does have such framework, it does not have explicit provisions on the use of facial recognition technology, which raises the question of whether we need legal safeguards and judicial oversight to ensure this technology is not used disproportionately or without privacy protections in place.[8]

United States: Fourth Amendment Concerns and Predictive Policing

The Fourth Amendment of the Constitution in the US, which prohibits unreasonable search and seizure, has special relevance to digital policing and is one of the most important amendments in the "post-digital age." As the methods themselves digital surveillance, predictive policing, etc. have become more common, the Fourth Amendment has become central to legal arguments over what evidence can be presented and an individual or organizations right to privacy.

Predictive policing : the use of algorithms and big data to predict the likelihood of future crime based on previous crime data and other input

[8] Information Commissioner's Office, *The Use of Live Facial Recognition Technology by Law Enforcement in Public Places* (2020), https://ico.org.uk/media/about-the-ico/documents/2617619/live-facial-recognition-technology-law-enforcement-use-opinion-20200124.pdf

factors. Predictive policing is designed to make law enforcement more effective, as it directs manpower toward neighborhoods that are at a heightened risk of crime. However, it has raised issues of racial discrimination, bias, and accountability.[9] In cases like Illinois v. Gates (1983), the U.S. Supreme Court found that police could use predictive algorithms to help guide their investigations, but only so long as the technology was sufficiently reliable and did not violate constitutional rights.

What's new is the proliferation of digital surveillance tools like those that track cell phones and monitor social media that have raised questions of where to draw the line between law enforcement and privacy. The Carpenter v. United States (2018) decision mandated warrant requirements for law enforcement agencies accessing an individual's historical cell phone location data, thus further entrenching precedent concerning the need for judicial oversight in digital investigations. On the other hand, the BNSS framework of India does not talk about the constitutional balance between law enforcement and privacy, as far as digital surveillance obligations. Even though the Indian Puttaswamy judgment recognised privacy as a fundamental right, legislative and judicial oversight mechanisms are underdeveloped, especially in the face of growing use of technologies in investigations.

European Union: GDPR Compliance and e-Evidence Regulation

In this context, the European Union (EU) particularly through the General Data Protection Regulation (GDPR) and the e-Evidence Regulation has established a sophisticated legal framework that regulates the use of digital tools and technologies in the course of criminal investigations. "The General Data Protection Regulation" regulates the processing of data about individuals and imposes strict conditions on the collection, storage and sharing of data. The GDPR circumscribes data collection to the minimum necessary to fulfill a purpose, enshrines the individual's rights to know how their data is used, and has been hailed as a model for privacy protections around the world. In 2020, the EU also introduced the e-Evidence Regulation aimed to simplify cross-border access in criminal investigations to electronic evidence in other EU countries. With this Regulation, law enforcement authorities are able to directly request and obtain electronic evidence held in another EU member state without going through the mutual legal assistance process, thus dramatically speeding up investigations. But it is also guaranteed under the regulation that the rights of individuals are protected, with clear

[9] Barry Friedman & Elizabeth G. Segal, *The Problem with Predictive Policing*, 93 N.Y.U. L. Rev. Online 171 (2018).

safeguards around data protection and judicial oversight. They mean accountability for the law enforcement agencies and the privacy rights of individuals and so on. This comes in juxtaposition to India, which has little to show in terms of regulation on cross-border access to data or guarantees protecting digital privacy in the context of criminal investigation. The EU's focus on judicial oversight and accountability could provide India a possible best practice model in technology deployment.

4.1 How India Compares in Terms of Safeguards and Judicial Oversight

The first transgressive element is that the BNSS and BSA do bring in certain technological advancements, as compared to the existing legal framework for digital policing in India, but these pale in comparison to the safeguard mechanisms that exist in the UK, US and EU systems. However, the availability of digital evidence and e-trials under the BNSS is accompanied by the risk of breaching personal privacy and data security, as Malaysia still lacks adequate privacy laws comparable to the EU's GDPR. In addition, India's judicial oversight mechanisms are not as embedded or transparent as the emerged ones of the UK and the EU. In the UK the ICO closely monitors the deployment of facial recognition and other surveillance technology to ensure it is done proportionately and respects an individual's right. So too does the U.S. legal system place rigid checks on digital surveillance, particularly under the Fourth Amendment. However, on the Indian side, the absence of regulatory clarity or robust judicial oversight in the BNSS could open the floodgates to trailing authorities by invasive technologies with a free hand at the expense of citizens' privacy rights.

4.2 What Can Be Adopted or Adapted in the Indian Context

And so there are multiple lessons India could potentially learn from global frameworks about how to approach digital policing:

- Privacy Protections India should pass a comprehensive data protection and privacy law, along the lines of the EU's GDPR, to safeguard what digital tools used for the purposes of investigation will be available without violating individuals' rights to privacy.
- **Strengthening Judicial Oversight:** India should work towards instituting stronger judicial oversight, creating mechanisms similar to those in the UK and the U.S. to ensure that the use of facial recognition and predictive policing technologies are proportionate to the intended uses and are consistent with our constitutional rights.
- **Well-Defined Cross-Border Access to Digital Evidence:** This regulation can become the basis for India to build a clear legal framework for seeking access to and sharing of cross-border

digital evidence as cybercrime can occur anywhere in the world and thus accessing the evidence in any corner of the world is required many times.

- **Bias and Discrimination Concerns:** Lessons from the U.S. Weigh the risks of profiling and racial bias in predictive policing. Such technologies should be subject to safeguards that would prevent them from being used disproportionately against vulnerable or marginalized communities.

- **Tech Integration:** Challenges and Opportunities Unlike nations like the UK, U.S., and EU, which have some existing frameworks where they seek to balance the use of technology with the need to protect privacy and individual rights, India's legal system is still in the nascent stage of adapting these technologies within the legal framework. By assimilating lessons from global legal frameworks, India can ensure that the advantages of digital policing are optimally utilised without transgressing the fundamental rights of citizens.

5. Technological Tools in Practice: Efficiency vs. Oversight

The pace of using technological instruments in the criminal investigation has picked up momentum in various states of India. These include a host of new innovations for law enforcement, including facial recognition, call detail records (CDRs), GPS-enabled tracking, drones, and artificial intelligence (AI)-driven data analytics. Although these tools have significantly improved the ability to prevent and solve crime, they should not come without privacy concerns, misuse and regulatory oversight.

Facial Recognition and Surveillance Grids

Facial recognition technology (FRT) has come into its own, especially in metropolitan policing. It is already being used at airports, railway stations, and major intersections in cities. In Hyderabad, more than 6.5 lakh CCTV cameras can be found across the city, making the police the most surveilled city in the world. A combination of facial recognition and real-time CCTV feeds has reportedly reduced street crime and helped to track repeat offenders. But FRT is still largely unregulated. According to a report published by the Internet Freedom Foundation (IFF), these deployments did not have legal backing, consent by the public, or independent oversight. The admissibility and reliability of such data in a criminal trial have also come under scrutiny by the courts.[10]

[10] Internet Freedom Foundation, Project Panoptic Report on FRT Deployment (2022).

Call Detail Records (CDRs)

Call Detail Records (CDRs) have become a vital tool in 21st century criminal investigations. These records include detailed metadata about telephonic communication, including everything from numbers dialed to duration of calls to location of cell towers used during the calls. CDRs are often relied upon by law enforcement agencies to collect valuable information that can help solve complicated cases. To do this, CDRs can be used to verify the movements of suspects, the placement of call services, help link people together, and prove or disprove alibis given by suspects. CDRs were crucial in high visibility and sensitive investigations like the Bhima Koregaon case of 2019. In that case, police used CDRs to track the movements of some activists and claimed that the data showed a connection between them and broad conspiracy against the State. Indeed, such devices will aid police to efficiently investigate crimes in a timely manner.

This constitutional protection is not only lalowbu, but there are many instances where without this judicial supervision, police use CDRs. For much of the time, law enforcement agencies are able to access this sensitive data without first seeking approval from a magistrate, or obtaining a formal warrant. In this way, the local governments offer a convenient scapegoat to justify the evasion of basic liberties whilst establishing a climate of scrutiny that leaves individual prerogative vulnerable in exchange for streamlined procedures. Such conduct is prima facie violative of the spirit of the PUCL judgment, which states unequivocally that surveillance which is unauthorized and arbitrary is unconstitutional. That CDRs continue to be used without checks and balances serves to illustrate a disconnect between the institutions and laws governing how we use technology while simultaneously shining a much-needed spotlight on the pressing issues of compliance mechanisms and accountability in the practice of digital policing.

GPS Tagging and Drones

The GPS tagging is being used for under-trial prisoners and parolees now. In few states like Maharashtra and Delhi, convicts on parole are electronically tagged for live tracking. The same goes for using drones for crime scene photography, surveillance of protests and tracking fugitives in wooded areas. This works, but it violates the privacy of the citizen in the public and semi-public space when using drones without clear SOPs. The Directorate General of Civil Aviation (DGCA) has released basic guidelines for the use of drones, but these do not address law enforcement-specific use cases.

AI-Based Data Analytics and Predictive Policing

AI is changing how we map crime, spot crime trends and assign police resources. One such measure, called predictive policing models, is

being piloted in New Delhi and Jaipur, where the analysis of data is used to predict crimes in specific localities. However, concerns about algorithmic bias and lack of transparency persist. These systems may carry forward existing biases against marginalized communities without proper validation; for example, the U.S. experience with predictive policing tools such as PredPol.[11]

5.2 Case Studies from Indian States

- **Hyderabad: Integrated Surveillance System:** The "City Police Command and Control Centre" integrates CCTV and facial recognition systems, making way for high-resolution monitoring as well as quicker response times. But civil rights groups have argued that this creates a “panopticon” effect with no space for privacy.

- **Madhya Pradesh and UP e-FIRs:** The e-FIR system enables the general public to register complaints online, which improves accessibility and efficiency. Yet, while a step in the right direction, its reach in rural areas is severely limited by digital illiteracy and a lack of legal awareness.

5.3 Challenges and Gaps

The absence of the Standard Operating Procedures (SOPs) states have adopted different protocols for use of technology that may lead to violation of rights.

Training Deficiency: Most of the units investigating these kinds of cases do not have the requisite technical expertise and end up misusing/mishandling the digital tools.

Judicial Skepticism: Courts have been hesitant at times to accept AI-generated or surveillance-derived evidence without corroboration. In the case of Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal, the Supreme Court ruled that electronic evidence must be compliant with Sections 65A and 65B of the Indian Evidence Act, 1872.[12]

6. Privacy and Surveillance Concerns

The increasing deployment of surveillance technologies in India raises fundamental questions about individual liberty and the sanctity of privacy, especially post-Puttaswamy. While technological integration enhances law enforcement, it must not do so at the cost of constitutional rights.

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[11] Rashida Richardson et al., Dirty Data, Bad Predictions: How Civil Rights Violations Impact Predictive Policing Systems, 94 NYU L. Rev. 192 (2019).
[12] Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal, (2020) 7 SCC 1.

6.1 Right to Privacy Post-Puttaswamy

In K.S. Puttaswamy (Retd.) v. Union of India, 2017 10 SCC 1. The motion passed this year refers to the 2017 ruling in Justice K.S. Puttaswamy (Retd.) v. Union of India, in which the Supreme Court found that privacy is a fundamental right under Article 21 of the Constitution. The judgement articulated a three-fold test for any infringement: legality, necessity and proportionality. A lot of existing policing practices do not pass this test. For example, wholesale collection of biometric data or facial scans of citizens not mandated by law or with their consent cannot be deemed necessary or proportionate'.

6.2 Is There "Informed Consent"?

A lot of the time, people are not even aware of having their biometric or digital data- be it call detail records or facial images- collected or used, or do not understand how it is being used. Adding to this anxiety is the fact that there are few legislative protections in place. Unlike the EU's General Data Protection Regulation (GDPR), which mandates explicit and informed consent for data collection, Indian law now fails to lay down clear requirements on such questions.

6.3 Risk of Mass Surveillance and Profiling

Without data minimization, giant databases are built that can be used in ways that risk abuse. Mass surveillance systems, like the National Automated Facial Recognition System (AFRS), do so without Parliamentary oversight, judicial sanction or independent regulatory bodies.

Other activist groups have documented how such systems disproportionately affect religious and caste minorities, especially in the context of protests or public disorder, enabling profiling and preemptive detentions.[13]

6.4 Lack of Data Protection Law

But successive drafts later, India still does not have a robust data protection law. The Digital Personal Data Protection Act, 2023, while an improvement, has also been panned for allowing government agencies sweeping exemptions under Clause 18. Contrary to the EU's General Data Protection Regulation (GDPR), which places tight restrictions on the powers and obligations of data processors, but also law enforcement agencies, to trump the privacy rights of individuals in the name of state interest without due process.

[13] Human Rights Watch, India: End Use of Facial Recognition Technology, (Mar. 2023).

6.5 Judicial Precedents and Police Excesses

Courts have sometimes intervened to curtail surveillance overreach. The case of Anuradha Bhasin v Union of India laid down the test of proportionality and periodic review, where the Supreme Court delineated the requirements for state surveillance and internet shutdowns. Likewise, in Selvi v. State of Karnataka the apex court ruled that an involuntary narco-analysis or brain mapping would violate Article 20(3) and Article 21, emphasizing that the needs of voluntary, informed consent in state surveillance.[14]

6.6 Need for Judicial Warrant and Oversight

In PUCL v. Union of India, the Supreme Court held that surveillance must be cleared by a high-ranking committee and is open to judicial review. But many police surveillance operations today operate without such protections, relying on executive discretion instead. India should institutionalize mechanisms—surveillance review boards, independent audits, judicial warrants—to ensure that digital investigations are subject to constitutional mandates.

7. Judicial Trends and Case Law Analysis

Indian judiciary has gradually built jurisprudence related to operation of technology in policing while at the same time balancing privacy and procedural fairness. Notable Supreme Court and High Court verdicts show how the courts have strived to address the need for efficient investigation while preserving constitutional freedoms, more so under Article 21 of the Constitution.

7.1 Puttaswamy v. Union of India: Foundational Right to Privacy

In the landmark case of Justice K.S. Puttaswamy (Retd.) N. V. Union of India), a nine-judge bench unanimously held that the right to privacy is a fundamental right guaranteed by Article 21 of the Constitution. In particular, a restriction on this right must meet the tests of legality, necessity and proportionality. The ruling has become the standard by which state surveillance practices are measured, from its collection of digital data, facial recognition, and interception of communications.

7.2 Anvar P.V. v. P.K. Basheer: Electronic Evidence and Admissibility

One such judgment is in the case of Anvar P.v. P.K. Basheer, where the Supreme Court dealt with electronic records admissibility under Section 65A and Section 65B of the Indian Evidence Act, 1872. The Supreme Court held that unless such evidence is produced along with a certificate as contemplated in Section 65B(4) rarely can secondary

[14] Selvi v. State of Karnataka, (2010) 7 SCC 263.

electronic evidence like call records/emails be admitted. This verdict set the stage for the validation of digital evidence and has never been more pertinent than in the era of artificial intelligence and evidence based on metadata.

7.3 K.S. Puttaswamy (Aadhaar) Case: State Surveillance and Proportionality

In the Aadhaar case, K.S. Puttaswamy v. Union of India (2019), the Supreme Court held that the collection of biometric data and mandatory authentication by the government have to satisfy the tests stipulated in the 2017 privacy judgment. Though the court found Aadhaar valid for welfare schemes, its use by non-state actors was ruled unconstitutional on accounts of data misuse and surveillance. This case illustrates judicial skepticism of blanket surveillance without guardrails.

7.4 High Court Jurisprudence: Phone Tapping and Surveillance

Various High Courts have examined the practices of unlawful surveillance. For example, even the Supreme Court had previously laid down in People's Union for Civil Liberties v. Union of India that phone tapping under Section 5(2) of the Indian Telegraph Act of 1885 must be approved beforehand by an official of a certain rank and periodically reviewed. Notwithstanding that, the reality is that law enforcement often bypasses judicial review. The use of voice samples as evidence was permitted, without the need for informed consent, in the case of Ritesh Sinha v. State of Uttar Pradesh, which again raised concerns about the issues of self-incrimination and privacy. But the Court said it will need legislative guidelines, and those are still missing.

7.5 Emerging Trends in Admissibility

This reaffirmed the relevance of Section 65B and continued to underscore how the admissibility of electronic records is contingent upon the presence of a certificate, and held that failure to comply with Section 65B will invalidate the admission of digital evidence unless it is subject to a certain exception. These rulings are significant because of the growing reliance on footage from surveillance cameras, GPS data and call logs in pursuing criminal investigations. In Rhea Chakraborty v. Union of India, the Bombay High Court noted with concern the misuse of personal digital information by media and law enforcement and indirectly advocated for a more responsible and rights-based approach to policing in digital space.[15]

[15] Rhea Chakraborty v. Union of India, 2020 SCC OnLine Bom 756.

7.6 Judicial Approach: A Balancing Act

Overall, Indian courts have taken a cautious and, in some cases, fact-specific approach. Courts have acknowledged the utility of technology in contemporary investigation but always emphasized adherence to the process of law, judicial oversight and respect for individual constitutional liberties. The emerging jurisprudence balances—on the one hand, a nascent conception of "digital due process" in criminal justice.

8. Recommendations and Way Forward

The following policy and legal reforms are necessary to ensure that technology is integrated into criminal investigation in a harmonious way and that constitutional rights are protected. The Ministry of Home Affairs should, working with the states and legal force, lay down standard operating procedures for how to use tools including facial recognition, GPS tagging, and drones that deploy surveillance. This must cover legal thresholds, time-bound ways, limitations on data retention, and approval mechanisms.group. Judicial pronouncements, particularly PUCL v. Union of India, must inform these SOPs.

Additional Training Required for Law Enforcement

Police officers and investigators should receive appropriate certifications on the operation, limits, and legal use of tech tools. Modules on privacy rights, evidentiary standards under the Indian Evidence Act, and ethics in digital policing must form a part of the training curriculum.

UN Global Compact Independent Data Oversight Authorities

Independent Data Oversight Bodies similar to Data Protection Authorities as established under GDPR can ensure accountability in the usage of surveillance and investigative technologies. Such bodies should have the power to audit digital investigations and recommend sanctions for violations.

Legislate for Strong Data Protection and Surveillance Laws

The Digital Personal Data Protection Act, 2023, being drafted now, is a welcome development, but it does not bring forth a clear legal framework for law enforcement surveillance. A new Surveillance Regulation Act, modelled upon international frameworks that are democratic in nature, should be enacted to regulate interception, retention, sharing and destruction of personal data.

Judicial Scrutiny of Invasive Technology Use

Technological mechanisms that violate bodily or informational privacy—be it biometric identification, AI-generated profiling or phone tapping—must be used only with prior judicial approval. Status should

statutorily require judicial review mechanisms surveillance warrants, special review boards to head off the possibility of arbitrary action.

9. Conclusion: Balancing Innovation and Liberty in India's Criminal Justice Reform

Whenever the India This Week action flies to the coldweather coverage of winter sports, we are treated to a co readjustment on the colonies' long wait for independence, including a rollback from the colonialera Code of Criminal Procedure, 1973 to the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023. This has been complemented by a wider acceptance of advanced technological aids AI-based analytics and GPS tagging to digital FIRs and virtual trials, which can help modernise and speed up criminal investigations. When policing and prosecution uses technology, this is a huge move towards efficiency and also transparency and accountability. But this evolution raises several legal and ethical issues, especially concerning the safeguarding of fundamental rights. The paper has discussed the two side of digital policing: on one side, it increases investigation accuracy and facilitating evidence collection, while on the other, it a threat to the right to privacy, data security, and due process. An analysis of the provisions in the BNSS, and Supreme Court cases such as Justice K.S. Puttaswamy v. Union of India, and Anvar P.V. v. P.K. Basheer, and comparing them with global examples from the US, UK and EU, show that the legal safeguards in India remains nascent and fragmented compared to international standards. DPDP Act lays the foundation for data governance. While the Bill does provide for mechanisms such as consent requirements, obligations for data fiduciaries, and grievance redressal mechanisms, its scope is limited due to the sweeping exemptions granted to the State in Section 17 which would effectively enable it to justify surveillance without judicial or proportionality review. This could dilute the core of Puttaswamy, which emphasized necessity, least intrusive means and a right to privacy India's criminal justice system thus finds itself at a crucial moment. The infusion of technology is an opportunity to move away from legacy processes, formalizing an adaptive, data-driven model. But, without well-founded legislative and procedural checks and balances, we face a real danger of entrenching mass surveillance, mis categorization and aberration of our constitutional freedoms. The path forward hinges on institutionalizing accountability mechanisms, passing robust surveillance laws, and enhancing institutional review—so that innovation advances the cause of justice without forsaking liberty.

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Women's Right to Sexual Health – A study of perspectives on Menstrual Leave and the need for the legal framework in India

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Abstract

The Supreme Court has recently refused to entertain a Public Interest Litigation that was filed proposing the introduction of Menstrual leave in India. It is time that the Legislature must realize that normalizing menstruation is not enough but the physical and mental effects that it brings along must also be realized legally. No two women have the same experience when it comes to menstruation. For some, it passes without any pause while for others it is endlessly painful. As the menstrual cycle involves the brain, the ovaries and the uterus to work in tandem resulting in changes in skin, bowel movements, severe abdominal cramps, it becomes difficult for women to pursue their everyday work at their professional spaces. Lack of access to menstrual hygiene management facilities also happens to be one of the major causes in India for girls dropping out of school at an early age. Regardless of the fact that the women workforce in India is constantly increasing, India does not have any existing legal framework on Menstrual Leave. The present paper examines the need for menstrual leave and the judicial trajectory over the years on this issue. The authors seek to delve into the challenges faced by women in their day-to-day working while they undergo menstruation, which does not have just physical effects but also have severe implications on mental health of women which also affects their work productivity.

Keywords – Women's rights, menstrual leave, sexual health, gender equality, equity, menstruation, legal framework, legal policy.

1. Introduction

Menstruation is undeniably a fundamental fact of life. Evidently, there are millions of women on the planet who are menstruating.[1] Yet menstruation is shrouded in secrecy, disgrace, and is considered a taboo even in the contemporary world. With absolutely no place in public discourse, menstruation is perceived as a source of embarrassment for women and men alike. Aristotle connected the supposed inferiority of women compared to men specifically to menstrual blood, which he thought was inferior and less pure than semen in men.[2] This made it clear that the stigma against menstruation has ancient roots and is not a contemporary social construct.There is an increasing global attention to the importance of menstrual health and hygiene for the lives of those whomenstruate and this is very closely connected with gender equality.'Menstrual health' is a widely used term but it lacked a formal, well contained definition. A definition developed by the Terminology Action Group defines 'Menstrual health' as"*a state of complete physical, mental, and social well-being and not merely the absence of disease or infirmity, in relation to the menstrual cycle."*[3]This definition of menstrual health aligns with the definition of health offered by the World Health Organization and attends to mental and social, as well as physical well-being.[4]

The World Health Organization (WHO) offers three recommendations on menstrual health: Firstly that menstruation must be viewed as purely a health issue as it has psychological, physical, and social dimensions. Also this is an issue that runs for a life course that has stages ranging from period prior to menstruation to period after the menopause ends. Secondly, recognition of menstrual health would have an inclusive meaning to it i.e. those who menstruate have access to information and are educated about it as to various aspects of menstruation that includes information about menstrual products, sanitation, and disposal facilities; menstrual health would include competent and empathetic care when needed and those who menstruate are allowed to live in a societal setting in which menstruation is not viewed as something shameful, disgusting or causing embarassment,so as to enable them to fully participate in work and other social activities. Thirdly, WHO seeks to ensure that these activities are made part of the work plans, are implemented and their performance is calculated.

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[1]Jennifer Weiss-Wolf, *U.S. Policymaking to Address Menstruation: Advancing an EquityAgenda,* 25 WM. & MARY J. RACE, GENDER & SOC. JUST. 493, 494 (2019).
[2]Tomi-Ann Roberts et al., *"FemininеProtection": The Effects ofMenstruation on Attitudes Towards Women,* 26 PSYCH. WOMEN Q. 131, 131-33, 135-36 (2002).
[3] Available at https://www.globalmenstrualcollective.org (last visited on June 25, 2023).
[4]Julie Hennegan et al., *Menstrual Health: A Definition for Policy, Practice, and Research*, 29 SEX REPROD HEALTH MATTERS 1911618.

The objective of the paper is to study India's perspective of menstrual leave and leave policies of different countries in acomprehensive manner. As India does not have any existing legal framework on menstrual leave, the present paper examines the need for a menstrual leave legislation or policy to strengthen gender equality at workplaces, educational institutions or other concerned places. Part 1 elucidates the concept of menstruation, the taboos surrounding it and its physical and psychological effects on those who menstruate. Part 2 discusses menstruation as a sexual health issue and the challenges faced by women at workplaces and therefore how a provision for menstrual leave would work towards achieving gender equality would be the underlying idea. Part 3 seeks to discuss the concept of period poverty and the menstrual injustices as a direct outcome of the same. It rests on the premise that lackof acess to menstrual products stands as a direct violation of right to health as it interferes with right to live a life of dignity especially with respect with students and working women. Part 4 would elaborate upon the different leave policies across various countries where menstrual health has been recognized as a right. Part 5 throws light on India'a stand on the menstrual leave policy and how various start ups in India have started adopting menstrual leaves for their female workers which is a welcoming step towards achieving gender equality. Lastly, Part 6 discusses the constitutionality of the menstrual leave as it is gender specific and exclusive to women.

2. Menstruation – An insight into the effects

Also known as 'Menses' or menstrual period, Menstruation is the monthly shedding of the lining of the uterus, whereby the menstrual blood flows from the uterus out of the body through the vagina. A normal menstruation cycle causes bleeding for between three or seven days. It varies from person to person. Some women would feel the symptoms of menstruation while others do not. The intensity of the symptoms can also vary. The most common symptom is cramps in the pelvic area due to contraction in the uterus. Mood changes, irritability, insomnia, headache, bloatingare some of the common effects of menstruation. The menstrual cycle that a woman goes through each month is associated with varied physical and behavioral changes. It plays a major role in women's sexual health. A menstrual cycle is quite closely connected to conditions like premenstrual syndrome and menstrual migraine [5]. Menstrual Migraine is an effect of menstruation which happens to be 2-3 times more common in women. Women are more prone to having migraine headaches after menarche.[6] Sixty percent of women with migraine link attacks to menstruation. It has been found that 8% to 14% of women experience migraines exclusively at the time of menstruation,

[5] C. Garner, *Uses of GnRH Agonists,* 23 J OBSTET GYNECOL NEONATAL NURS 563 (1994).
[6] Christina Szperka, *Headache in Children and Adolescents*, 27 CONTINUUM (MINNEAP MINN) 703 (2021).

and these same women are almost free of migraine at other times of the menstrual cycle. [7] Further, 'Dysmenorrhea' or painful periods is another discomfort that results from menstruation. Although it is biological, the effects of Dysmenorrhea may be severe in few women. Throbbing menstrual cramps, cramping pain in the lower abdomen, nausea, diarrhea and headaches are all that women experience during their periods, which is definitely not normal and easy to bear with. Even the psyche can be affected, influencing a woman's mood and causing feelings of dejection or irritability.

Having talked about the actual physical adversities that women face during menstruation, the truth remains that there is a huge gap between talking and knowing of what women go through physically and recognizing and addressing their needs and concerns in real. It is very unlikely that men (or even women) would stand up and raise their voices for women's rights to have some relief at their workplaces while they menstruate. This paper is an effort to study the perspectives on sexual health of women and the rights associated with it.

2.1 Sexual health, equality and menstruation- Challenges faced by Women

It is undeniable that India still has a long way to go to achieve gender equality, a glaring example would be the under representation of women in Indian Parliament and other places. The percentage of women members in the Lok Sabha stands roughly at 14.94%, the same in the Upper House at 14.05%, which depicts a meager participation of women in the respective houses of Parliament. As regards the women participation in workforce, the latest Periodic Labour Force Survey Report[8] 2020-21 revealed the estimated Worker –Population ratio for both male and female stood at 73.5% and 31.4 % respectively. [9] India has one of the lowest female labour force participation rates in the world. When we focus on these alarming figures as to considerably low female participation in the Indian workforce, we must not forget that more than 50% of these women work in unorganized sectors. Irrespective of what percentage of females form part of the working population, what is more important is to examine the reasons behind the low women/girl participation in the workforce or education sector. A cros-sectional study conducted in six government schools of Delhi conducted on 600 adolescent girls revealed that 245 out of 600 girls which forms 45% of the girl population in those schools, remained absent while they are on their periods. This absenteeism was significant in view of the fact that

[7] G Nattero, *Menstrual headache*,Rev Med Liege(1985).
[8] Annual Report of Periodic Labour Force Survey, Ministry of Statistics & Programme Implementation (MOSPI), Government of India, 2020-2021.
[9] Press Information Bureau, Ministry of Labour and Employment, Government of India, Press Release dated 21 July 2022.

these girls had to miss out on their class tests or other evalutions due to period pain, anxiety about leakage and staining their school uniforms leading further to shame and embarrassment in public. 65% of these girls felt that their daily lives get negatively impacted by menstruation.[10]

Menstruation is a monthly reality for all women and girls around the globe. Yet many women still face significant barriers to a comfortable experience with menstrual hygiene. There are various other factors that have an impact on women's menstrual health. Many societies consider menstruation as a stigma and girls at a young age or even women in some cases prefer being in isolation than talking about their sexual health. Moreover, lack of menstrual hygiene facilities for example unavailability of toilets with proper sanitation facilities at schools, colleges, or workplaces contributes as a major deciding factor for the girl/women drop out ratio. Having realized this, we must believe that every woman who is menstruating has the 'right to menstrual health', irrespective of her socio-economic status. With regard to menstrual health and hygiene management (MHHM) a noteworthy progress has been made in India by government and non-governmental actors. Some of the outcomes include better awareness about MHHM, access to appropriate sanitation facilities for women and availability of menstrual products, which would definitely go a long way in the journey of seeking a gender equal society. The question remains, is this enough? Is that all what we need? Menstruation is still considered a taboo in many parts of India and although it is a natural phenomenon, it has not been addressed as normal yet.

Menstruation is a very important aspect of women's health, but unfortunately it has been stigmatized since ages. This is precisely the reason that makes it difficult for women and girls to talk about their sexual needs openly. The authors propose that offering menstruation leave will help to normalize the concept of menstruation which in turn can help to reduce the stigma attached to it. With respect to menstruation at workplace, offering menstrual leave can help promote a supportive and empathetic workplace culture. The question that will strike many would be that organizations, public or private, already offer sick leaves which can be availed at the time of menstrual cycle. The authors would argue that the moment we start to recognize menstruation as a biological process and not sickness, and the moment we begin to normalize the pre or after effects of menstruation, making provision for menstrual leave would be a step further in achieving gender equality. The underlying reason behind the proposal is that menstruation sometimes become a demanding and testing experience for many women and girls as menstruation process experienced by each of

[10] School absenteeism during menstruation amongst adolescent girls in Delhi, India - PMC, https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6130156/ (last visited May 25, 2024).

them can be different. It can be 'testing' in the sense that women who have to travel long distances for work or education or women who are at workplaces which do not accommodate to their physical hygiene needs like proper water and sanitation facilities, their work productivity and well-being certainly gets affected. In order to address problems like these, menstrual leave would be one medium through which women will receive immense support women at workplaces or educational instutions. The authors also seek to propose the introduction of menstrual leave with the belief that same will facilitate a more inclusive workplace culture for women.

On a progressive note, it is high time that India needs to have a strong legal framework for women that should include 'Menstrual Leave' for working women in both government and private sectors. [11] But the reality remains that women in India, resultantly, have to go to work in pain or take a pill before they arrive at work and they have to hide the fact that they are in pain because that would make them appear to be 'unable to work' or weak or unproductive. When we talk about a progressive society where women should work shoulder –to-shoulder with men, what is not realized is that men and women are different sexes and women have a different set of challenges to face when it comes to menstruation. Because men do not experience it, a majority of them do not pay heed to the actual physical problems women go through while menstruating. The process of menstruation is not limited to going through the biologically process or bearing the abdominal cramps, bleeding, migraines and much more; the process also brings in a lot of external considerations that are never even considered by the employers at workplaces or schools or other institutions. Availability of separate rest rooms for females is rarity; even if available they are mostly unhygienic with no basic facilities at all, water and dustbins amongst them are the most basic. Women mostly are scared to, and do not use the public washrooms due to the fear of urinary tract infections. Most areas, be it urban or rural, constantly face the problem of water shortage. Also, disposal of the sanitary waste management is a huge issue that always go unaddressed. Despite the fact that the Indian Constitution has read right to health under article 21, which includes right to sanitation, state governments have failed to develop policies relating to an important constitutional issue. The authors emphasize upon the fact that as right to sanitation and right to health are inter-related and inert-dependent, absence of one would lead to denial of the other.[12] In furtherance to this, it becomes important to realize that a gender

[11] IJLMH, Menstrual Leave – Regressive or Progressive?, INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES (Nov. 1, 2020), https://ijlmh.com/menstrual-leave-regressive-or-progressive/ (last visited May 25, 2024).

[12] Right to sanitation – a human right - MedCrave online, https://medcraveonline.com/FRCIJ/right-to-sanitation-ndash-a-human-right.html (last visited May 25, 2024).

responsive approach to sanitation was, is and will always be required to address the issue of menstruation if we want to actually remove gender disparity at workplaces or other institutions. Talking in terms of menstruation, gender responsive sanitation solutions would include a sanitation facility conducive to female gender, keeping in mind their basic sanitation needs like water, and waste management facility so as to ensure health, hygiene and gender equity.[13]

3. Period poverty and menstrual injustices – Do we have a right to bleed?

Period poverty is one of the factors resulting in menstrual injustices. Period poverty occurs when individuals or menstruators do not have enough finances to buy menstrual products, resulting in failure to access menstrual products. It further includes lack of education about issues related to menstruation and the stigmas surrounding it.Period poverty primarily affects people who belong to vulnerable class, who are unable to afford menstrual products and as a result, their freedom to work, study or participate in daily life gets affected.

Menstrual injustice disproportionately impacts students due to multiple reasons few of which would be inability to afford products, dress codes unsuitable to females during their menstrual cycle, society's emphasis on silence during menstruation, expectation from menstruators to keep the menstrual products out of sight. Most of the educational institutions be it school or universities, do not provide for free menstrual products like sanitary pads or tampons. This directly affects those who would prefer to stay home while they bleed rather than using their home made alternatives to menstrual products due to poverty. It is intriguing that those belonging to the vulnerable class would not leave a stone unturned to meet the education expenses, and buying menstrual products would definitely be an added burden on them. Here the role of the state to realize right to health as a specified fundamental right under the Constitution of India is being emphasized. One major victory acahieved in this area is that india scrapped its tax on menstrual products in the year 2018. Prior to the abolition of tax, there was a 12% GST leveied on menstrual hygiene products. Kenya was, however, the first country across the globe to have got ridden of the tampon tax. Tampon tax is a term used for the tax imposed on menstrual hygiene products by a government.[14] Canada, Australia , Columbia are few other countries that have removed tax from sanitary utilities considering them the most basic necessities for those who menstruate.

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[13] Ibid.

[14] Menstrual Hygiene Day 2023: Which countries continue to have a tampon tax? What about India? – Firstpost, https://www.firstpost.com/explainers/menstrual-hygiene-day-tampon-tax-world-countries-us-gst-sanitary-napkin-india-12651562.html (last visited May 25, 2024).

The Constitution of India does not specifically enumerate health as a fundamental right but the Supreme Court of India has interpreted article 21 in a maner so as to include acces to healthcare into the scope of the said article. Article 21 of the Constitution of India gurantees 'Right to Life and Personal Liberty'; a life which is interpreted to mean not having an animal existence but a life of dignity. The Constitution also embodies various directive principles of state policy which puts the obligation on the state to ensure effective realization of right to health.[15] The approach of the Supreme Court seeks to bring those rights within the amibit of fundamental rights, which are not specifically mentioned under the Indian Constitution. The underlying reason behind reading certain rights such as right to health as a fundamental right is that it is traced to the concept of hman dignity, privacy, personal autonomy and bodily integrity.[16]

Citing the position in the U.S.A., if privacy and bodily integrity require a fundamental right to engage in consensual intimate relationships and to deny unwanted medical treatment, it follows that a menstruator has a right to access safe and adequate products to control a biological, bodily function.[17] It is indeed heartbreaking to find that a society that is dependent on the reproductive system of a female where menstriation plays such a critical role for carrying and giving birth to future generations, it is illogical that menstruation does not hold the same respect as giving birth.[18]

All fundamental rights are inherent in human dignity and the idea that "*'to treat people with dignity is to treat them as autonomous individuals able to choose their destiny.*'"[19] In other words, "*'respect for [human] dignity implies respect for the autonomy of each person, and the right of everyone not to be devalued as a human being or treated in a degrading or humiliating manner.*'"[20] It is not only important to contest that access to adequate menstrual products should be read under article 21 of the Constitution of India for the reason that it is inherent in human dignity; what is equally important is the fact that apart from access to menstrual products, women should be given menstrual leave as a matter of fundamental right. Moresoover, it is extremely important to recognize menstruation as a fundamental right so that the stigma and shame attached to the concept can be removed. The reason behind this is to acknowledge females and other menstruators as necessary participants in all walks of public life and

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[15] Articles 38, 39, 42, 43 and 47 Constitution of India, 1950.
[16] Tyra Cameron, *A Fundamental Right to Bleed*, 57 NEW ENG. L. REV. 43 (2022).
[17] Cruzan v. Director, Missouri Dep't of Health :: 497 U.S. 261 (1990) :: Justia US Supreme Court Center, https://supreme.justia.com/cases/federal/us/497/261/ (last visited May 25, 2024).
[18] Nearly half of women have experienced 'period shaming,' https://nypost.com/2018/01/03/nearly-half-of-women-have-experienced-period-shaming/ (last updated Jan. 3, 2018, 1:14 PM) (providing statistics on menstrual shaming).
[19] Maxine D Goodman, *The Obergefell Marriage Equality Decision, with Its Emphasis on Human Dignity, and a Fundamental Right to Food Security*, 13 149 (2016).
[20] Ibid.

they should not be made to suffer in any manner because of the biological process. South Korea has recognized "menstrual leave" for employees for over twenty years.[21]

4. Menstrual Leave Policy in Different Nations

The first European country to introduce paid menstrual leave is Spain which recently passed a Law on February 16 2023.[22]The newly passed law, apart from providing for menstrual leave has also widened the space for accommodating the provision for free menstrual hygiene products that can be made accessible to by women in educational institutions, prisons and other etablishments. The Spanish law now provides for three to five days menstrual leave to women during their periods. Realizing that without this right women cannot enjoy their full citizenship, the Spanish government has decided to fund the menstrual leave provision. The decision of the Spain government is momentous in terms of women's health as well as in achieving gender equality.

Apart from this, Japan is another country where menstrual leave was introduced in the domestic law through the National Labor Standards Act, 1947 as an industrial right. In Japan, menstrual leaves are provided only when a woman suffers 'heavily' from menstruation or "is employed on a job injurious to menstruation."Menstruation is seen as "a preparation for maternity, and women are viewed as needing the assurance of health and safety conditions."[23] Due to rigid norms, Japan's menstrual leave is mostly unpaid and hence unused. The provisons of the National Labor Standards Act, 1947 read , "*When a woman, for whom work during menstrual periods is especially difficult, has requested leave, the employer shall not employ that woman during that period."* [24]

Indonesia was the third country to implement a national policy for menstrual leave. Female workers during their menstrual period were exempted from coming to work on the first and second day of menstruation. However, later reforms removed the manadatory two day paid leave and made the policy subject to negotiation

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[21] 20 Places Around the World Where Governments Provide Free Period Products, https://www.globalcitizen.org/en/content/free-period-products-countries-cities-worldwide/ (last visited May 25, 2024).

[22] Spain gives menstrual leave to female workers. Other countries do, too. - The Washington Post, https://www.washingtonpost.com/world/2023/02/17/spain-paid-menstrual-leave-countries/ (last visited on June 25, 2023)

[23] Grace G. Blumberg, *Working Women in Japan: Discrimination, Resistance And Reform,*COMP. LAB. L. &POL'Y J. 75, *77* 1981).

[24] Article 68, National Labour Standards Act, 1947.

between employers and enterprise unions with no enforceable payment mechanism.[25]

South Korea enacted the Labor Standard Act, 1953 which established protections for working adult females. In South Korea women are allowed to take one day leave for menstruation. This is provided on a monthly basis since 1953 under the guise of 'maternity protection' provision, but are under pressure not to take these days off, especially in male-dominated workplaces.[26]

In 2003, the Act underwent a change and menstrual leave was converted from paid to unpaid and stipulated "the request of the female concerned would be a necessary condition" to claiming the benefit.[27] This is the reason why women in Korea are disinclined to claim the benefit because it becomes uncomfortable for them to ask their male bosses for menstrual leave.

Zambia are among the nations that give menstrual leave to its working women population.The Zambian statutory code stipulates that all the female workers will be one day off per month so that they can get relief during their periods. There is a provision which calls for prosecution of the employers in case the entitlement is denied to women workers. Broadly, Zambia follows a patriarchal culture, and therefore the Zambian government supports the menstrual leave policy with the notion that childbearing and nurturing forms a very important function of womanhood which should be respected and caredfor.[28]

The government of China implemented the Law of the People's Republic of China titled Protection of Rights and Interests of Women which requires employers to be aware of women's physical "fitness" for work and provides for "special protection" during menstruation.[29]

4.1 India's stand on Menstrual Leave Policy: the failed legal attempts

It is undeniable that a large number of women experience acute pain and other physical symptoms during their menstrual periods which

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[25]KuntalaLahiri-Dutt & Kathryn Robinson, *Period Problems at the Coalface*, 89 FEMINIST REV. 102 (2008). Melanie Ilic, *WOMEN WORKERS IN THE SOVIET INTERWAR ECONOMY: FROM 'PROTECTION'TO 'EQUALITY*, SREEHS 96 (1999).

[26]Elim Kim, *Korean Women's Activities for Legislation to Guarantee Gender Equality in Employment*, 5 (2006).

[27]*Ibid.*

[28] Zambia women's "day off for periods" sparks debate, BBC NEWS, Jan. 4, 2017, https://www.bbc.com/news/world-africa-38490513 (June 25, 2023, 9.25 PM)

[29]Articles 25 and 26, Protection of Rights and Interests of Women, Laws of the People's Republic of China.

have a major impact on their professional lives. Women who travel long distances for work, who have jobs involving long hours of standing or sitting activities have to go through many physical discomforts like lower back pain, abdominal cramps and so on. India unfortunately does not have any menstrual leave policy and no legal framework exists in India when it comes to women's right to sexual health at 'that time of the month'. Menstrual leave policies are nothing but regulations that allow women or girl students to take time off during their menstrual cycle primarily because of the fact that they are undergoing discomfort or unusal period pain. While framing these policies, the policymakers keep in mind the physical and psychological challenges that women go through when they menstruate and the policies are designed in such a manner that would allow women to take necessary respite to manage their sexual health better. Menstrual leave policies vary from organization to organization as some offer paid while others offer unpaid menstrual leaves. The duration of menstrual leave can also vary depending on the policy framed by the organization.[30] On of the major aim of framing such policies is to reduce the stigma associated with menstruation.

Owing to the fact that there has been a growing conversation around menstrual leave policies in India recently, various private organizations have taken measures to acknowledge the challenges faced by women in the workplace during their menstruation cycle. *Zomato* introduced paid period leave for 10 days annually. There are other companies such as *Swiggy* and *Byjus* which have adopted the same policies where the number of leaves would vary from company to company. However, policies on menstrual leave have unfortunately not been widely adopted in India. Bihar and Kerala have been the only two states in India which have been able to bring in a change with respect to right to sexual health for women by ofeering menstrual leave policies in the respective states. Menstrual leave policy in Bihar was introduced in the year 1992. The government provided the same under the name of 'special casual leave' for their employees every month on account of menstruation and the discomforts that it brings along. In January 2023 Kerala higher education department decided to offer menstrual and maternity leaves for students in universities under the department. When the Cochin University of Science and Technology decided to give menstrual leave to all its female students, this was seen as a progressive step towards realizing right to menstrual health. Kerala government has described it as their commitment to realizing a gender- just society.[31] There have been various attempts to introduce

[30] Explained: What Is India's Stand On Menstrual Leave Policy, https://www.indiatimes.com/explainers/news/explained-what-is-indias-stand-on-menstrual-leave-policy-594889.html (March 11, 2023, accessed at 3.30 pm)

[31] Kerala announces menstrual leave: Time to talk period | The Indian Express, https://indianexpress.com/article/opinion/editorials/kerala-announces-menstrual-leave-time-to-talk-period-8400131/ (Last visited March 12, 2023, accessed at 3:56pm)

menstrual leave into the Indian legal system but India has witnessed several failed attempts.

The Menstrual Benefit Bill, 2017 was introduced before the Lok Sabha with the object to smoothen the progress of women when it comes to menstrual benefits at workplaces or in educational institutions. NinongEring, a Member of Parliament in the Lok Sabha representing Arunachal Pradesh again tabled the same bill before the Arunachal Pradesh Legislative Assembly in the year 2022 but was dismissed as it was considered an 'unclean' topic. This was how menstruation was perceived and the discomfort associated with it was overlooked by the Central and state legislatures. The need for the implementation of this law must be understood in view of the undeniable fact that the female biological system is very complex and women have to go through immeasurable amount of pain during menstruation. The 2017 Bill proposed that working women both in public and private sectors must get paid menstrual leave every month for a minimum of two days. In addition to this, the Bill also sought to provide them facilities to take a break at the workplace during their menstrual days so that they can rest for a while. Female students of Class VIII in government schools were extended the same benefit.[32]

Later, the Women's Sexual, Reproductive and Menstrual Rights Bill in 2018 was tabled by Dr. Shashi Tharoor which highlighted the women's right to sexual health and stressed on issues like sexual consent, menstrual hygiene etc.As regards menstrual rights, the Bill proposed that sanitary pads will be provided freeof cost at government schools, and also at premises of public authority. Regrettably, the Bill remained silent on the issue of menstrual leave.

The Right of Women to Menstrual Leave and Free Access to Menstrual Health Products Bill, 2022 was also introduced to provide three days of paid leave for women and transgender women during their periods and the same will be extended to extend the benefit to students. [33] The Public Interest Litigation that called for the introduction of this Bill in all states in India was rejected by the Supreme Court of India saying that the issue is a policy matter for the Union government to decide, and courts are not the proper forums to address the same. However, the petitioner was allowed to make a representation to the Union Ministry of Women and Child Development requesting a policy decision on the issue.

Menstruation is a serious public health issue that causes enormous struggles. The Right of Women to Menstrual Leave and

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[32] The Menstruation Benefits Bill, 2017 http://164.100.47.4/billstexts/lsbilltexts/asintroduced/2651LS%20As%20In.pdf (last visited on June 25, 2023).

[33]Right of Women to Menstrual Leave and Free Access to Menstrual Health Products Bill, 2022

Free Access to Menstrual Health Products Bill, 2022 has poposed three days of paid period leave for women. The Bill is based on various research that indicate that menstruation affects girls' education, as girls would choose to miss their schools during their periods, as lack of proper sanitation facilities, non-availability of sanitary pads and almost no knowledge about the menstrual hygiene has a strong impact on their daily activities at school. It would not be an exaggeration to say that the same would apply to working women as well. Professor John Guillebaud, had conducted a research that clearly established that period pain can be as bad as having a heart attack.[34] Dysmenorrhea is extremely common, and it interferes with a woman's daily activities.[35] The sad reality in India is that India does not have any provision in law which caters to this biological need of women. The leave entitlement or benefits which can be availed by a woman who is on her periods is a very important facet of her right to sexual health but menstruation is still not considered a major issue worldwide. Many working women tend to opt for sick leave while they menstruate, which is counted as inclusive in the yearly paid leaves that an organization provides. The authors seek to propose that if India claims itself to be a progressive society, where equality is omnipresent, then the idea of equality must go hand in hand with the principle of equity. If that can be realized then menstruation and consequences attached to it should be welcomed in a way so that women do not have to project a picture to the world that they are falling sick every month, instead it should be allowed to be claimed as a matter of right whereby women can freely and without being judged can apply for paid menstrual leave as required.

5. Constitutionality of Menstrual Leave

It has been argued by some that menstrual leave, exclusive only to women, can be discriminatory in nature. We need to be mindful of the fact that the principle of protective discrimination is provided by the Indian Constitution itself. This is also supported by the equality principle laid in Article 14 of the Constitution of India; like should be treated alike. Therefore as men and women are not alike when it comes to menstruation, women have the right to receive different treatment. Further, Article 15 of the Constitution directs state to not discriminate against acitizen on grounds only of religion, race, caste, sex, or place of birth or any of them. Article 15(3) spells out the exception to article 15 which says that the state can make a special law or provision for protection and in favour of women and children and which will be outside the scope of artice 15(1) of the Indian Constitution. The rationale behind the said law is the consideration that due to a women's physical structure and fact that she perfoms

[34] Available at https://www.ucl.ac.uk/news/headlines/2018/mar/doctors-finally-confirm-period-pain-can-be-painful-heart-attack (Last visited July 31, 2023 14:16 hours)
[35] Pallavi Manish Latthe, Rita Champaneria & Khalid Saeed Khan, Dysmenorrhoea, 2011 BMJ CLIN EVID 0813 (2011), https://pubmed.ncbi.nlm.nih.gov/21718556/.

maternal functions, therefore her physical wellbeing becomes a subject of care in order to preserve her strength and vigour.[36]Article 15 of the Constitution of India[37] further states that special provisions for women and children can be made under clause (3). The State is empowered to enact and amend laws for uplifting and protecting women and children as they belong to the vulnerable section of the society and hence any law(s) made in favour of women and children cannot be deemed to be discriminatory and it forms equity as a base for equality.[38]

Also, in order to pass the reasonable classification test, the Law requires that the classification must be founded upon an intelligible differentia which distinguishes things that are grouped together from others; and the differentia must have a rational relation to the object sought to be achieved by the provision. While proposing menstrual leave for women, the gender classification is based on an intelligible differentia as men and women differ and it is women who menstruate not men. Further, the object of the proposed provision for menstrual leave is to secure sexual health, thereby securing women's right to health so that they do not have to compromise on their well being due to the effects of menstrual cycle.

It is pertinent to mention here that we should not forget the Directive Principles of State Policy given under Articles 39(e)[39] and 47[40] of the Constitution of India. It is only when we start to consider menstrual leave with the lens of equality and dignity, we would be able to justify that our proposal for a Law providing for menstrual leave fits in the constitutional set up.

6. Conclusion

India, as a society, must unlearn the norms, perceptions and taboos that it has been living with since decades. The patriarchal approach around menstruation must also come to an end. Men may not understand it because they do not experience it. But there have been cases where women also shy away from having a period talk because they fear they would be stigmatized and seen to be 'dramatic' due to sexist stereotypes. Introducing menstrual leaves would help make the workplaces and even educational spaces more inclusive and accepting. Many countries like Japan, South Korea, Taiwan, Indonesia, have understood the need of sexual well being of women employees and have provided paid menstrual leave. Unfortunately women have to go through a lot of shame and embarrassment because on many occasions they have to convince their employers

[36] Supra note 13.
[37] The Constitution Of India 1950, Article 15.
[38] Supra note 23.
[39] The Constitution Of India 1950, Article 39(e)
[40] The Constitution Of India 1950, Article 47

that they were actually on their period. As a result, women avoid availing the leave all together. It is time our society, including the Legislature and the Judiciary, must understand that different bodies respond differently to pain and discomfort experienced during menstruation. Those who think that a Law providing for menstrual leave would promote the bias against women at their workplaces resulting in unfair treatments in the form of hiring prejudices , less pay, lesser participation and fewer promotions, must understand that women should not be punished for their biological framework.

Equality at workplaces must mean equality in all working conditions for men and women both which should include an equity-driven mindset so that differences, if any, can be addressed. Mensruation is a biological process and not a choice that women make every month. If due to their menstrual cycle, women find it difficult to be at the workplaces it must be understood that this is something not under their control, and they should be able to claim their right to sexual health and therefore must be offered menstrual leave by their employers. If women are made to tolerate the pain in silence just to fit in the idea of an 'equal society' then we would fail as human beings. The authors feel that it is the right time we recognize, acknowledge and make efforts to realize the idea of gender equality by providing for menstrual leave because it is very crucial for a woman's sexual health. Making period leave available to females be it students or working women, would definitely be an important step towards addressing the pain and distress which many women are often forced to work through. This would help be a vital step towards realizing the idea of an equitable society where the purpose would be to create conditions that allow women to reach their full potential.

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Liberty Under Siege: A Critical Analysis of BNSS and the Illusion of Criminal Justice Reform in India

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Abstract

The Bharatiya Nagarik Suraksha Sanhita (hereinafter "BNSS") 2023, heralded as a progressive overhaul of the Code of Criminal Procedure, 1974, has been presented as a revolutionary step toward a more efficient and justice-oriented criminal justice system. This paper critically analyses the new legal framework BNSS vis-à-vis its predecessor to reveal how it exacerbates the existing power asymmetry between the state and the individual, strengthening a regime of procedural rigidity that is more regressive than reformative.

The present research paper delves into an examination of the provisions of the BNSS, 2023, in light of the ever-evolving jurisprudential and constitutional interpretation of Article 21 of the Constitution of India. Despite the rhetoric of modernization, the BNSS appears to facilitate a more coercive and domineering state apparatus, undermining the rule of law and democratic accountability.

The paper deconstructs whether the BNSS, 2023, is a step towards eliminating the deficiencies of the former colonial-era laws or whether it further perpetuates the colonial legacy by assuaging the high-headedness of state agencies in the name of modernizing the criminal justice system and procedural efficiency.

The concluding section offers concrete recommendations for recalibrating the BNSS 2023—restoring judicial oversight, limiting police discretion, ensuring that bail is the rule rather than the exception, and incorporating due process safeguards into enforcement mechanisms that serve as a shield for citizens, not a sword for the state.

Keywords: Bharatiya Nagarik Suraksha Sanhita, arrest, bail, progressive overhaul, colonial-era laws, police powers, criminal justice system

Introduction

In the Indian context, there is a need to examine and recognize the difference between the power to arrest an individual and the necessity of doing so. In a country where liberty is considered an invaluable asset, it becomes imperative to examine the trajectory through the analysis of various judicial precedents that infused life into the provisions of our constitution, leading to taking steps towards the realization of our preambular goals. Law has never been a static concept and has been ever-evolving with the changes in society.[1] With the efflux of time, the scope and ambit of liberty has undergone a sea change with concretization of the principle that liberty of a citizen of our country should be kept at the highest pedestal. We are aware that a citizen is an edict to criminal law and procedure, and when we talk about the criminal jurisprudence, the court always needs to strike a balance between the interest of the society and the liberty of an individual, however, the later cannot be curtailed with the drop of a hat. The state machinery should not, under the garb of maintaining law and order, go overboard by unauthorizedly restraining an individual's liberty by taking recourse to artifices and strategies. The Apex court of our country has been vigilant and has, time and again, over a period of last seventy-five years have reiterated the need of preserving liberty wherever it was seen to be axed by using law as a tool of operation rather than liberation. The Constitution of India was adopted with a goal to achieve socio-economic revolution and to achieve fraternity with ensuring dignity to all individuals.[2] Liberty forms an indispensable part of a person's dignity which cannot be interfered until the state action of restraining one's liberty is based on a procedure established by law and the said procedure should be just, fair, reasonable, non-arbitrary, equitable as was laid down in the case of *Maneka Gandhi vs Union of India*[3] by the Supreme Court of India.

The history of our country is replete with instances wherein arbitrary actions by the state have appallingly infringed the liberty of individuals, making mockery of the rule of law. Such instances gave an opportunity to our constitutional courts to firstly deal with iron hands against any act of state which smirked of any kind of abuse of power. Furthermore, these cases have served as foundational pillars in the edifice of good governance, fortifying the principles of procedural fairness and reinforcing the imperative that the state remains acutely

[1]Manindra Singh Hanspal, Navigating Legal Changes in BNS, BNSS, and BSA, 2023: A New Era for Women's Safety in India, *Int'l J. Legal Sci. & Innovation*, vol. 6, issue 4, 802 (2024).
[2]Chitranjali Negi, Legal Evolution in India: Transitioning from Colonial Legacies to New Frontiers—An In-depth Analysis of Bharatiya Nyaya Sanhita, Bharatiya Nagarik Suraksha Sanhita, and Bharatiya Sakshya Bill in 2023 (Dec. 28, 2023).
[3] *Maneka Gandhi v. Union of India*, (1978) 1 S.C.C. 248 (India).

attuned to the delicate equilibrium between authority and individual rights – i.e., to preserve societal interest by ensuring that any offender is not able to escape the clutches of law and the same time, ensuring the criminal law does not become a tool for selective harassment of citizens.[4]

Powers of Arrest

The commission of an offence instantly leads to the invocation of the criminal law in our country, leading to the commencement of an investigation and resulting in the arrest of the person suspected of the commission of the offence. However, as is said and understood that there is a huge gap that exists in law as it appears to be on paper and the way it is implemented and executed all across the country by the state machinery. Such concerns have time and again been witnessed and debated regarding the powers of arrest conferred to state agencies under different provisions of laws.[5] No matter how good or how benevolent the law is, it would not be able to achieve its objective until the people bringing the law into operation are applying it in a bona fide manner. It is no res-integra that these powers of arrest pose a significant threat to the liberty of an individual when exercised arbitrarily or capriciously by the authorities. It has been expressly written under Article 21 of the Constitution of India that the liberty of an individual can be restrained only by *a procedure established by law*. However, it is pertinent to note that mere prescription of a procedure cannot meet the mandate of Article 21. The procedure prescribed has to be fair, reasonable, not fanciful, oppressive, or arbitrary. Additionally, the Apex court laid down that the test for determining that whether a procedure which curtails the liberty of an individual is reasonable or not depends on the objective of the act which is intended to achieve and of the urgent situation which those who are charged with duty of administering the act may be called upon to deal with. Secondly, satisfying the parameters enshrined under Article 21 is not the end of the journey; an act that stipulates to restrain the liberty of an individual has to pass tests that may be prescribed under other provisions of our constitution as well. The rationale is the fact that principles of fairness, equity, justice, good conscience, reasonableness, and non-arbitrariness are like undercurrents that travel across the provisions of the Constitution and all the statutes. The aforementioned principles are so closely knitted that violation of even one of them infringes the other.

The discussion on the powers of arrest would remain incomplete without emphasizing the principles of the rule of law. The protection of personal liberty and the prohibition of arbitrary arrests

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[4] Rahul K. Gawade, Replacement of Old Criminal Laws by New: A Reformative Step to Boost Criminal Justice System of India, *Int'l J. L. Mgmt. & Human.*, vol. 7, issue 6 (2024).

[5] Arushi Bajpai, Akash Gupta & Akshath Indusekhar, *Revisiting Criminal Law Bills: An In-Depth Critical Analysis of Bharatiya Nyaya Sanhita Bill and Bharatiya Nagarik Suraksha Bill*, 45 Statute L. Rev. 3, 5 (2024), https://doi.org/10.1093/slr/hmae043.

form the cornerstone of a just society governed by the rule of law. The power to arrest, vested in the state, has often been misused, leading to the violation of individual rights. The Supreme Court of India, in the last seven decades, has pinned down the actions of the state wherever they have been exercised in a manner preposterous to the rights of citizens.[6] This section delves into the judicial precedents that protected individuals' rights against illegal arrests, reiterating the need for a balanced approach that differentiates between the power to arrest and the necessity of arrest. Arresting an individual should not be a mechanical process in response to a suspicion of guilt but should be grounded in legal principles that protect the accused from undue harm. It also examines the judicial precedents where the courts reiterated the importance of safeguarding individual liberty and ensuring that arrests are made only when necessary and lawful.

The Right to Personal Liberty and the Authority to Arrest: A Constitutional Discourse

The Supreme Court in the landmark decision of *D.K. Basu vs State of West Bengal*[7] issued comprehensive guidelines pertaining to making arrests and detention of individuals. The court laid emphasis on the crucial role of safeguarding an individual's rights by informing the arrested person of their rights, including the right to consult a legal practitioner, the right to be informed of the reasons for arrest, and the right to be brought before a magistrate within 24 hours. It was vehemently expressed by the court that arrest being a serious intrusion on an individual's liberty, should be undertaken only in strict compliance with law. The said ruling expanded the scope of human dignity and laid a progressive jurisprudence in the context of arrest, aligning it with constitutional guarantees.

In *Arnesh Kumar v. State of Bihar*[8]The court established the manner in which Section 41 of the Code of Criminal Procedure has to be interpreted for making arrests. The Court emphasized that the power of arrest cannot be exercised in a mechanical or routine manner and that arrest should not be used as a tool of fulfilling mischievous ends or settling personal vendetta. The court was of the view that the mere possibility of an accused person's guilt or the severity of the offense is not sufficient justification for arrest. It is a mandate on the police officials to demonstrate that arrest is necessary based on specific facts and owing to certain concrete grounds, rather than making an arrest on whimsical grounds. The judgment is groundbreaking in the sense that it brought into discussion the need for a reasoned approach to the power to arrest and to send a message across that no arrest could be legally sustainable without in absence

[6] Vijeta Shrivastava, *Independence from Colonial Vestige and Overhaul of Indian Criminal Justice System through Three New Laws*, 33 Indian J.L. & Just. (1) (Jan.–Mar. 2024).
[7] *D.K. Basu v. State of W. Bengal*, (1997) 1 S.C.C. 416 (India).
[8] *Arnesh Kumar v. State of Bihar*, (2014) 8 S.C.C. 273 (India).

of a speaking order.[9] The Court expressed concern regarding the fact that unreasonable arrests not only violate the liberty of an individual but also lead to the stigmatization of the person arrested in society. In the case of *State of Uttar Pradesh v. Rajesh Gautam*[10]The court observed that arrest should not be a default response but should be exercised only when it is essential for the investigation or to prevent the accused from fleeing justice. This approach further strengthened the principle that the detention of any individual by arrest should be an exceptional measure, not the first resort, particularly when an accused person is cooperating with the investigation or is not a flight risk. This ruling became a guiding light for courts, which are lower in hierarchy but not in substance on how to approach arrest cases involving several offences.

The analysis of precedents would remain incomplete without mentioning *Prem Shankar Shukla v. Delhi Administration (1980)*[11], which emphasized that any deprivation of personal liberty must be in strict compliance with the prescribed legal procedures, which includes being brought before a magistrate promptly. The Court articulated the legal safeguards that must be followed, including providing an arrested person with an opportunity to challenge their detention.

Our country which is referred to as the largest democracy ironically is witness to large number of political arrests for dissent, or other political reasons which prima facie appears to be an exercise conducted by the executives on the direction of their political superiors either to gain some temporary relief out of their oppositions arrest or to tarnish the image depending upon peculiar facts and circumstances of each case. In light of the same, the Supreme Court in the case of *Nandini Satpathy v. P.L. Dani*[12]highlighted the need for a fair and reasonable process in all arrest procedures. The Court ruled that arrests motivated by extraneous factors, such as political considerations, were not justified under the law. The court highlighted the constitutional protections afforded to individuals against arrests that are disproportionate or unrelated to the legitimate aims of criminal investigation or law enforcement. The case helped in further delineating the need for state authorities to act within the constitutional limits and not misuse their power to arrest for political or other unjustified reasons.

Balancing the Power to Arrest and the Necessity of Arrest

A perusal of the aforementioned judgments makes it clear that the state's power to arrest is not unlimited. Courts have consistently reiterated that the state should refrain from using the power of arrest to intimidate individuals. Additionally, arrests must be carried out in

[9] *Joginder Kumar vs State of UP*, (1994) 4 S.C.C 260 (India)
[10] *State of U.P. v. Rajesh Gautam*, (2009) 9 S.C.C. 88 (India).
[11] *Prem Shankar Shukla v. Delhi Admin.*, (1980) 3 S.C.C. 526 (India).
[12] *Nandini Satpathy v. P.L. Dani*, (1978) 2 S.C.C. 424 (India).

strict compliance with the provisions of criminal procedure and line with the constitutional parameters.[13]

The core distinction between the power and the need to arrest is grounded in the principle of proportionality. Arrest should be proportionate to the offense committed, and it should be used only as a last resort when other methods, such as summons or bail, are insufficient to secure the individual's presence or to protect public order. The writ of liberty runs through the fabric of the Constitution. The need to ensure a fair investigation of crime is undoubtedly important in itself because it protects, at one level, the rights of the victim and a more rudimentary level, the societal interest in ensuring that crime is investigated and dealt with by iron hands. However, on the other hand, the misuse of criminal law in our country is no res integra and is a fact of which the legislators as well as the courts, must be aware. Judicial intervention in cases of illegal or arbitrary arrest has helped protect the fundamental rights of individuals, ensuring that arrests are not used as a tool of oppression but as a measure of last resort.[14]

The jurisprudence developed by these judgments has played a crucial role in ensuring that the rights of individuals are upheld and that arrests, when necessary, are made in a manner that respects the constitutional guarantee of personal liberty. However, the question that is still unsettled is whether the principles and jurisprudence so developed by the invaluable contributions of these precedents have been taken into consideration or have been incorporated while enacting the new criminal laws in our case, the Bhartiya Nagrik Suraksha Sanhita, 2023[15].

Purported Reforms Under the BNSS: A Critical Examination

The authors intend to discuss some of the major reforms that have been introduced by the Bhartiya Nagrik Suraksha Sanhita, 2023, and to what extent they actually intend to provide "*suraksha*" to the "*nagrik*" is a question to ponder upon. Additionally, it is essential to examine whether the changes that have been introduced have the spirit of moving out of the colonial hangover or, on the contrary, do they perpetuate it further.

The criminal law is set into motion on reporting of any offence to the police officer, which leads to commencement of the investigation stage. This is the primary stage where the state machinery comes into action and exercises the various powers conferred to it, including the power to arrest. Section 173 of BNSS states about the record of

[13] Pooja C.T, *Powers of Police: A Context of India According to Bharatiya Nagarik Suraksha Sanhita*, Indian J. Integrated Res. L., Vol. IV, Issue VI.
[14] *Arnab Manoranjan Goswami v. State of Maharashtra*, (2020) S.C. (India).
[15] Pooja C.T, *Powers of Police: A Context of India According to Bharatiya Nagarik Suraksha Sanhita*, Indian J. Integrated Res. L., Vol. IV, Issue VI.

information regarding any cognizable offense. The change that can be witnessed in this exercise of recording is of the fact that the new provisions enable the recording of such information by any police officer "*irrespective of the area where the offence is committed*". Now, there is a lack of clarity regarding the fact that whether the "area" being referred to in this provision also extends beyond the boundaries of any given state. Additionally, the police officer recording such information would also be entitled to conduct an investigation. This can be inferred through a conjoint reading of Section 173(1) along with Section 175(2), which explicitly states that no proceeding of any police officer would be brought into question on the ground that the said officer did not have the power to investigate he offence. In this case, can we imagine a scenario where a police officer from Gujarat can record information regarding an offence committed in some other state (for Example, New Delhi) and then subsequently initiate an investigation regarding the offence, which might also lead to the arrest of an individual? Additionally, this scenario becomes further complex when we introduce Section 183 of the new code, which enables the Magistrate to record a confession or statement irrespective of the fact that he has the jurisdiction or not in the case. Therefore, these provisions reflect a lack of coherency in themselves where it has left ample scope for the police officers to twist and tweak the provisions in a way which fits, they're or the needs of their political superiors.

Moving further, Section 173(3) of the BNSS robs off the officer in charge of a police station to record a first information report on receiving information regarding a cognizable offence which is palpably inconsistent with the ruling of the apex court in the case of Lalita Kumari vs State of Uttar Pradesh[16]. The said decision of the apex court explicitly mandates the registration of a First information report by the police officers on receiving information regarding a cognizable offence. The concerned provision completely dilutes this judgment given by the five-judge bench of the Supreme Court by creating an additional layer of a preliminary inquiry to be conducted by the officer in charge of the police station with prior permission from an officer of a rank not below Deputy Superintendent of police.

The purpose of a First information report is to register the earliest information so that the criminal law can be set into motion and any kind of embellishment can be avoided. Additionally, the principles of democracy and liberty demand that the officers should be subjected to regular and consistent checks on their powers. Therefore, documenting and recording is one of the ways to keep that check, which seems to have been melting into insignificance by the newly added provision. Section 173(3) of BNSS directs the officer in charge to examine that whether a prima facie case exists in order to proceed with the matter. The intention appears to prevent filing of frivolous reports

[16] *Lalita Kumari v. State of U.P.*, (2014) 2 S.C.C. 1 (India).

for offences which are punishable for less than seven years. However, the consequence can be that such preliminary inquiry might result into the officers verifying the veracity of the information before even recording the same which is against the verdict delivered by the Supreme court in Lalita Kumari. The fear that looms related to this provision of the society specifically the poor in rural or remote areas getting robbed of their opportunity to be heard.[17] This would further perpetuate high headedness of officers on people who cannot afford proper representation which would eventually lead to the violation of their rights along with lawlessness in the society. As a result, it might shatter the public faith and confidence in the criminal law system striking the rule of law by taking away the very first step to access to justice for a victim.[18]

The drafting and enactment of Bhartiya Nagrik Suraksha Sanhita, 2023 was an opportunity with the Parliament of India to curtail or restrain groundless arrests made by the police authorities which despite several precedents set by the constitutional courts has been established as a unfettered phenomenon. The history of our country is replete with instances of arbitrary and indefinite detentions of citizens who protested against the oppression of Britishers. The Britishers controlled by their subjects in India by arresting them putting them behind the jail for long without any rhyme or reason to explain their detention. Unfortunately, even after more than seven decades of Independence and adoption of our Constitution, we as a democracy have failed to cherish the value of liberty in true sense.[19] When powers of arrests are used in our democracy to curb dissent and protests, across the countries it's the constitution that weeps. Section 41 of the Code of Criminal Procedure, 1973 which states the circumstances under which arrest may be made has been retained without any modification as Section 35 of the new law. The need of the hour was to scrutinize the ingredients that are to be satisfied before making an arrest and further reduce the discretion of the police authorities in making an arrest. The expressions "reasonable complaint", "credible information", "reasonable suspicion" warranted examination by the legislators in light of the precedents delivered by the courts and incessant arrests that are made mechanically by the authorities on the basis of their subjective satisfaction of "suspicion" or without having any ground to explain the satisfaction of the ingredients mention to make an arrest. The rule of law demands that while making an arrest the police should in writing produce reasons for reaching the conclusion as to what were the facts that enabled him to reach the decision that grounds mentioned under Section 41 (a) to (e) of the code of criminal procedure. This would bring transparency and accountability in the actions of the authorities. Subsequently, when the person is the produced within 24 hours of arrest, the

[17] *State of Haryana v. Bhajan Lal*, (1992) S.C.C. 335 (India).
[18] *C.B.I. v. Tapan Kumar Singh*, (2003) 6 S.C.C. 175 (India).
[19] *Md. Asfak Alam v. State of Jharkhand*, (2023) S.C. (India).

Magistrate first and foremost is required to test the legality of arrest in accordance with the law before authorizing the detention. This ensures the application of judicial mind by the courts and prevents the authorization of arrest on the ipse dixit of police officers. However, it is seen that this exercise is not being conducted with the seriousness it deserves. Eventually, the result is a blatant violation of fundamental rights owing to the casual and cavalier manner in which arrests are made without giving due regard to the true spirit and essence of the provisions along with the constitutional principles that act as a guiding light.[20] It was a welcome opportunity for the legislatures to concretize the principles laid down in the Arnesh Kumar vs State of Bihar under the statutes, firstly by substituting the phrase "reasonable suspicion" with "reasonable grounds". Additionally, scrupulous enforcement of Section 41 (b)(ii) and Section 41-A, along with fixing responsibility of officer in charge of police in case of illegal arrest would have substantially reduce arbitrary arrest and unauthorized detention. However, no such efforts are visible on the part of the legislature to ensure strict compliance on the part of the authorities.

It was in the year 1996 when the apex court explicitly raised the concern regarding developing a work culture, training, and orientation of the police force consistent with basic human values. The state of affairs was such that the court did not restrain itself from stating it vehemently that it is high time that the training methodology of the police should be restructured. The police force needs to be infused with fundamental human values and made sensitive to the constitutional ethos. The state was instructed to initiate steps in the direction of changing the attitude and approach in which the police personnel handled investigations so that they do not sacrifice basic human values during interrogation and do not resort to questionable forms of interrogation.[21] However, even after more than twenty-five years, the status quo seems to have been maintained. Recently, the Hon'ble Supreme Court reiterated that although our Constitution is more than 75 years old, it appears that the police officers are yet to be sensitized about their duty of abiding by the Constitution and respecting the ideals of the Constitution. If the police officers are not aware of these obligations, the State must ensure that they are educated and sensitized by starting massive training programs.[22] However, such developments are nowhere reflected in the developments of law.

The next provision that draws our attention is Section 187 of the BNSS which opines the procedure to be followed in case the investigation of an offence cannot be completed within 24 hours of arresting an accused. The major change that has been introduced

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[20] *Supra,8*
[21] *Supra*,7
[22] *Imran Pratapgadhi v. State of Gujarat*, (2025) S.C. (India).

through this provision strikes to the very core and a fundamental principle of "bail is a rule and jail is an exception". This rule echoed in the corridors of the apex court in the year 1978 in its verdict given by Justice V. Ram Krishna Iyer in the case of *State of Rajasthan vs V. Balchand*.[23] Section 167 of the code, allowed the police officer on authorization of the Magistrate to obtain police custody of accused for the initial 15 days starting from the day when the accused is produced before the magistrate. However, Section 187 of the newly enacted Sanhita has authorized the extension of the detention of accused for a term of 15 days in whole or in parts during initial forty or sixty days out of the detention period of sixty or ninety days depending upon the offence of which the person has been charged with. The said provision has been a subject matter of courts scrutiny and interpretation in catena of judgments which are discussed here on. In the case of CBI vs. Anupam J. Kulkarni[24], which revolved around the application of Section 167 of Code of Criminal Procedure, 1973 the Supreme Court of India ruled that police custody is strictly limited to the first 15 days of detention and once the accused has been placed in judicial custody, they cannot be sent back to police custody. This ruling ensured that police custody was strictly controlled and monitored. This interpretation stood its ground firmly until recently, when the Supreme court in the case of CBI vs Vikas Mishra acknowledged the ground realities and the challenges faced by investigating agencies, specifically in certain financial crimes, requires that Section 167 of Code of criminal procedure should be revisited in light of those challenges. The need and inclination towards splitting the period of police custody was further affirmed in V. Senthil Balaji vs State wherein the apex court through Hon'ble Justice Sundresh, while upholding the arrest and custody of the accused, gave a wider interpretation by allowing aggregate of shorter custody periods spread across the entire investigation period (60 or 90 days). The rationale given by the court was that this interpretation fell in line with the jurisprudential essence of the code of criminal procedure which was to balance individual liberty with the societal interest which was the need for effective investigation. This rationale has been concretized by enacting Section 187(2) in Bhartiya Nagrik Suraksha Sanhita, 2023.[25] The shift in the legislative approach has raised eyebrows regarding the potential threat or the misuse that this provision might lead to. By enhancing the rights of the already powerful police force, the legislature seems to plead ignorance to the state of affairs regarding the misuse of powers by the police force. It appears as if the legislature has turned a blind eye to the instances of custodial torture[26] along with the mental and physical agony which unfortunately are still rampant

[23] *State of Rajasthan v. V. Balchand*, (1978) S.C. (India).
[24] *C.B.I. v. Anupam J. Kulkarni*, A.I.R. 1992 S.C. 1768 (India).
[25] Abhinaya S, *Critical Analysis on Section 187 of Bharatiya Nagarik Suraksha Sanhita*, 7 Int'l J.L. Mgmt. & Human. 329 (2024).
[26] Arryan Mohanty & Annubhuti Kakkad, *An Analysis of Police Brutality in India During the Covid-19 Pandemic* (Sept. 29, 2024), available at SSRN, https://ssrn.com/abstract=4981269.

in our country. The adoption of a provision akin to Section 187 without safeguards and the necessary checks and balances in the place places the rights of the accused on the discretion of high headed officers. It also undermines the importance of protecting the rights of individuals in custody and compromises with the principle that every accused is innocent until proved guilty by conferring unfettered powers on the state machinery.[27] The constitutional courts have time and again reiterated that the objective of criminal law cannot be incarceration under the Indian jurisprudence which is palpably reflecting from the given provision wherein the process itself is becoming a punishment for the accused despite the presumption of innocence under the Indian criminal justice system[28].There is no second thoughts on the fact that every fundamental right including right to liberty is subject to reasonable restrictions, in our case that restrictions arrive in the form of prioritizing the security of state. Hence the freedom of any person cannot override the maintenance of law and order in the society. The right of preventive detention for the purpose of cogent and concrete investigation has been upheld by the Courts and must take precedence over an individual's right to personal liberty. The maxim *salus populi est supreme lex* (the safety of the people is the supreme law) and *salus republicae est suprema lex* (safety of the state is the supreme law) co-exist and have their origin from the wombs of the doctrine that the welfare of an individual cannot supersede to that of the society. The action of the State, however must be "right, just and fair". Weaponization of law in order to combat lawlessness cannot be a modus operandi to deal with criminals in a civilized society.[29]Globally there is an unwritten consensus on reducing the pre-trial detention of accused. In UK the mandate is to charge a person in 24 hours or release the person, however this period of 24 hours can be extended up to 36 or 96 hours depending on the seriousness of the offence.[30] Similarly, the constitution of South Africa along with its Criminal Procedure Act 1977 stipulates that any person who has been arrested must be produced before the magistrate within 48 hours and any arrested person cannot be detained for more than 48 hours in police custody except for some given circumstances.[31] Therefore, when we witness a provision like this, it stands in sharp contradiction with the alleged intention of the our legislators which was to come up with progressive criminal reforms. These provisions are *prima facie* reflections of providing a greater latitude to the police officers and specifically Section 187 not only provides a greater time period for keeping the accused in its custody but also creates an obstacle for the accused to apply for bail till the time the police officers have the

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[27] Tanmay Pradeep, *Comparative Analysis of the Criminal Procedure Code, 1973, and the Bhartiya Nagarik Suraksha Sanhita, 2023*, 16 IJSAT (Issue 1, Jan.–Mar. 2025), DOI: 10.71097/IJSAT.v16.i1.1931.

[28] *Balwinder Singh v. State of Punjab*, (2024) S.C. (India).

[29] *D.K. Basu v. State of W. Bengal*, (1996) S.C. (India).

[30] G.D. Service, *Being Arrested: Your Rights*, GOV.UK (2015).

[31] S. Afr. Const., 1996, § 35.

statutory power to claim the custody of the accused. It is argued that if such provisions are not fortified with robust safeguards, they could act as an unruly horse proving to be preposterous to the rights of the accused. The provisions if not tamed adequately, they have the potential to undermine liberty owing to arbitrary detentions. The newly adopted laws warrant close judicial oversight to ensure that they are not abused to serve the vested interested of those in power.[32]

The legislature while adopting the three new criminal laws vehemently stated that the reforms introduced are progressive in nature, however the statement appears to be a lip service when meticulously examined in light of the certain provisions brought into effect. Section 43(3) of the Bhartiya Nagrik Suraksha Sanhita, 2023 enables the officers to make use of handcuffing while making arrest of an individual for certain crimes as mentioned in the provision. This is a practice which has been frowned upon by the courts consistently in number of judgments. In the case of *Prem Shankar vs Delhi Administration*[33], the court ruled that handcuffing apparently is inhuman and unreasonable and hence should not be routine practice. The practice should be restricted to rare circumstances and in case of any such exigency, the order permitting such handcuffing should be a speaking one.[34] The exercises is a flagrant violation of the fundamental rights of an individual under Article 21 of the Constitution of India which comprises of the right to live with dignity.[35]

In line with the several other provisions conferring additional powers to the police, the legislature has introduced Section 172 of BNSS under the Chapter titled as "Preventive action of the police". The aforementioned provision enables the police officers to detain or remove any person resisting, refusing, ignoring or disregarding any direction of police officer given under 172(1). The directions specified under the provision would be such which would be necessary for the officer fulfill the duties under the given chapter. Preventive provisions are different from penal provisions in the sense that the purpose for the earlier one's is neither retributive nor restitutive rather the sole objective is to maintain law and order in the state. The heading of the chapter "Preventive actions" is suggestive of the intention of the legislature to create a mechanism which is anticipatory in nature instead of penalizing an individual under a penal statute. [36]

The legislature has enacted the provision in ignorance of Pramod Singla vs Union of India[37] where the apex court held that

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[32] A.S. Kowsikha, "View of India's Criminal Justice Reform: An In-Depth Look at The New Laws," *J. L. & Legal Res. Dev.*, ISSN 3048-5045 (2024).
[33] *Prem Shankar v. Delhi Admin.*, A.I.R. 1980 S.C. 1535 (India).
[34] Paramjit Jaswal & Nishtha Jaswal, "Right to Personal Liberty and Handcuffing: Some Observations," *J. Indian L. Inst.*, JSTOR (2024).
[35] *Vihan Kumar v. State of Haryana & Anr.*, (2024) S.C. (India).
[36] Parshva Shah, "Understanding the Scope and Nature of Section 172 of the Bhartiya Nagarik Suraksha Sanhita," *Numen Law Offices*, (2023).
[37] *Pramod Singla v. Union of India*, (2023) S.C. (India).

Preventive detention laws in India are a vestige of our colonial past, imbued with extraordinary powers that risk vesting arbitrary authority in the state. In such a milieu, where the Government's discretionary powers threaten to operate unfettered, it becomes incumbent upon this Court to subject cases arising under these statutes to the most exacting scrutiny, ensuring that robust checks and balances temper the exercise of state authority.

The enacted provision may enhance capabilities of law enforcement agencies and might in due course of time result in streamlining the response procedures, however, it also raises concerns regarding the scope of its potential violations of civil liberties. Additionally, the lack of comprehensive and explicit guidelines or requisite checks and balances within the provision leaves room for uncertainty and interpretation, exacerbates the risk of misuse. The enactment of such a provision sans clear parameters and standards enables sweeping in of prejudices which can hamper the rule of law and thereby hindering natural justice. The explicit mention of the circumstances under which the state machinery can justifiably detain an individual ensure accountability for police actions. In light of the current scenario that exists in our country pertaining to exploitative use of powers, there is an increased risk of infringements of individuals' fundamental rights.[38]

Conclusion and Recommendations

The analysis of certain amongst many new provisions enacted and the earlier ones those have been retained, showcase the need to have a dialogue on multiple aspects and issues which remain unanswered and can pose a threat to criminal justice system during the course of the implementation. The findings and recommendations of the authors are as follows:

1. Section 173 (1) enacted with the intention of assisting the victim or the aggrieved person to grant an immediate relief in form of Zero FIR can be misused in a manner which might run against the concept of federalism. The police force of a given state may enter the other state to conduct investigation. The job of legislature is also to infuse clarity in the provision as to its implementation which seems to be a loophole.

2. The enactment of Section 173(3) of BNSS (154 of Crpc) has diluted the jurisprudence developed over a period of time by judicial interpretation of courts which was in line with the constitutional principles of reasonableness and non-arbitrariness. Registration of FIR which was earlier mandatory on reporting of a cognizable offence with has become a subject of preliminary inquiry for offences which are punishable with

[38] Chaitanya S. Tayde & Hrishikesh S. Kalkar, *Examining the Liability of Government Authorities in Custodial Torture and Extrajudicial Killings*, 7 Int'l J.L. Mgmt. & Human. 1835 (2024).

more than 3 years and less than 7 years. The conducting of inquiry can be used as a medium to practice unfettered discretion by the police officers. The legislature should reinforce the Lalita Kumari judgment so as to limit the scope of inquiry in case of cognizable offences.

3. Custodial torture is a reality in our country, and same can be inferred from the government records. However, the legislature has chosen to overlook these pressing issues and has refrained from codifying it and penalizing it through the statute despite the conventions signed by the Indian government in pasts to tackle the menace. Instead, the plight is that the parliament has went on to increase the period of police custody invariable without any concrete and cogent guidelines to ensure the safety of accused person. Now this provision would cause multiple ramifications including the ability to coerce and torture is going to amplify. Secondly, the right of the person in custody to file an application for bail would stultify to negation.

4. Before enacting BNSS the courts were required to be satisfied by way of an application if handcuffing is necessary in any particular case. However, today the same is being left on the discretion of a police officer. This makes us wonder regarding omnipresent constitutional principles of equity, justice, good conscience and the tombs of dignity which have been celebrated in the past by the judiciary.

5. Certain provisions seem to be glaring examples of a scenario where language has lost its meaning and therefore when the law has been names as Bhartiya Nagrik Suraksha Sanhita, it appears that the amount of "Suraksha" that be drawn from its reading is negligible. This inference can be drawn from Section 196(2) wherein the inquiry into a case where in a person dies in police custody was earlier monitored by a Judicial magistrate as per Section 176(1A) of Crpc has now been bestowed upon the Executive Magistrate which was a position prior to an amendment brought in the Crpc in 2005.

6. The need is to collectively study these provisions and be produced before the apex court in order to highlight the loopholes that exists within them and the ways in which corrective measures should be taken. This exercise might result into another landmark ruling akin to Advocate Salem bar association case which was a perusal and a response to certain amendments made in Code of civil procedure in the year 1999.

Safeguarding civil liberties is not merely the defense of individual and collective rights; it is the preservation of our Constitutional ethos—an ethos forged through relentless struggles against the arbitrary dominion of the British state.

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Evaluating the Role of Nyaya Bandhu Initiative in facilitating Access to Justice in India

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Abstract

The Nyaya Bandhu Programme seeks to enhance access to justice by fostering voluntary legal assistance via pro-bono clubs in India. This research evaluates the efficacy of pro bono clubs formed at several legal educational institutions under the Nyaya Bandhu Initiative in achieving their designated goals. The research examines the function of pro-bono clubs in supporting registered advocates, involving law students in legal aid initiatives, and improving clinical legal education. It also underscores the challenges confronted by these organizations, encompassing operational deficiencies and the obstacles faced by law schools. The findings indicate that although the Nyaya Bandhu Programme possesses potential, substantial enhancements are required to fulfil its objectives efficiently. Lastly, this study offers suggestions for improving the Nyaya Bandhu and pro-bono club program's execution and ensuring that pro-bono clubs can significantly aid in the distribution of legal assistance in India.

Keywords: Nyaya Bandhu, Free Legal Aid, Voluntary Legal Aid, Clinical Legal Education Pro-bono clubs, Legal service authorities, Legal aid initiatives

1. Introduction

The right to free legal aid is recognized as the constitutional right guaranteed under Article 21 in the landmark case by the Supreme Court[1]; furthermore, it is a recognized international human right under various international human rights conventions and instruments. It is correct to say that the right to free legal aid is one of the most fundamental rights among all other existing legal rights.

[1] *State of Haryana v. Darshana Devi and others (2013) 170 PLR 70.*

After independence in progressive Indian society, various landmark steps have been taken to ensure that all the beneficiaries of legal aid shall be granted legal aid when and if demanded. However, the fundamental utility of this right is that through exercising this right of free legal aid, the beneficiaries of legal provision, who are mainly deprived, downtrodden, and backward segments of society, can get judicial redress, and this right acts as a bridge to connect beneficiaries with the judicial system dedicated to the prevention and protection of their rights and interests and to ensure their entitlements.

1.1. Legal Framework for Free Legal Aid in India

The Law Commission of India, in its 128th report, clearly stated that the cost of litigation is significantly rising in India, and thereafter, due to its increasing cost, it is difficult for common citizens of the country who do not possess sufficient means to access justice and exercise rights and entitlements through seeking redressal of the judicial system.[2] Even the government or state is facing difficulties in financing and funding the cost of litigation for marginalized and economically weaker sections of society.[3] It has also been stated that the Increasing cost of litigation is acting as a barrier for common people to seek prediction of court in matters of harassment discrimination and suppression as it is causing deterrence amongst the individuals who fear that the significant cost of litigation will Seriously harm their socio-economic status.[4] Due to limited awareness of rights and entitlements to seek legal aid, beneficiaries are hesitating in approaching courts; furthermore, the cost required to seek justice is so high that even the existing rights are failing to serve the purpose and are just dead letters of the law on black paper.[5] To overcome the shortcomings of the judicial system, Article 39A[6] was ultimately introduced in the Chapter of Directive Principles of State Policy in the Constitution of India, providing safeguards for the economically weaker segment of society and creating a supportive framework for them so that they can access their rights and entitlements via judicial authorities with the help of an effective legal aid program.[7] Even the local mission report was intended to ensure that the inadequacy of the fund or money shall not act as a barrier to seeking justice or approaching courts in the Indian context, and no common citizen who has been invested in the rights shall refrain from using such rights only due to the high cost of litigation in India.[8]

It is noteworthy that with the expansion of the population and increasing demand for free legal aid in India, the state alone cannot

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[2] Law Commission of India, 1986. Report No. 128 Cost of Litigation, Chapter 1.
[3] *Id at 1.1, & 1.2*
[4] *Id at 1.3.*
[5] *Id at 1.4.*
[6] The Constitution of India, 1950. Article 39-A.
[7] *Supra note 3 at 1.5 & 2.2.*
[8] *Supra note 3 at 4.2.*

solely bear the burden of cost and other infrastructural requirements needed to fulfil the demands of free legal advice. Thereafter, it is the need of the hour to strengthen the participation of non-state actors like private law firms, voluntary legal aid services by lawyers, and free legal aid and advice by legal educational institutions that run legal aid clinics and pro-bono clubs. In India, Section 12 of the Legal Services Authorities Act 1987 grants statutory recognition of the 'right to free legal aid'[9].

1.2. Challenges in State-Sponsored Legal Aid

The prime challenge faced by a majority of people is that institutions that are responsible for disseminating notions of justice and resolving legal disputes are not accessible to such a class of people. There are certain factors responsible for the diminishing faith of the marginalized and socially downtrodden segment of society, namely demographic challenges, economic challenges, social challenges, and legal challenges

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However, there is a greater need to develop non-governmental legal aid delivery mechanisms to ease the burden of financial nature on the state. Presently, the structure of legal delivery primarily involves judicial officers who are sitting as office bearers at the national state and district level legal service authorities and are working in coordination with the state and Union governments in formulating and implementing legal-related policies in India.

1.3. The DISHA Scheme: Overview and Key Highlights

The Ministry of Law and Justice has launched the "DISHA Scheme" and is now taking decisive steps towards massive legal awareness and outreach campaigns and improving the efficacy of pro-bono clubs at the institutional level.[10] The key highlights of the DISHA initiative are Tele-Law, a scheme dedicated to eradicating geographical limitations between Legal Aid Authorities and beneficiaries, and Nyaya Bandhu,

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[9] The Legal Services Authorities Act, 1987 (Act 39 of 1987), s. 12.

[10] Ministry of Law and Justice, 2020. Designing Innovative Solutions for Holistic Access to Justice (DISHA) Scheme Launched for a Period of Five Years 2021-2026 to Advance the Cause of Access to Justice. Press Release, Dec. 16, 2020.

an initiative dedicated to raising awareness about legal aid services by extending the benefit to the marginalized segment of society.[11]

2. Transition from State to Non-State Actors in Legal Aid

The essence of the rule of law is inherent in ensuring that even the last person in the community has the means to approach the judicial forums for the injustices and wrongs committed against them. The right to free legal aid is implicit under Article 21[12] and is a state obligation under Article 39A[13] of the Constitution of India. The dissemination of legal aid was constantly considered a state responsibility. However, in recent times, due to the inadequacy of state funding and the increasing demand for free legal aid, there has been a paradigm shift of this obligation to voluntary organizations and other important players like practising advocates, law school-based legal aid clinics, and pro-bono clubs. As a result of this shift, the Department of Justice initiated the Nayaya Bandhu Pro-bono Scheme to promote voluntary legal aid dissemination and clinical legal education in India. It is noteworthy that the legal aid clinics are directly under the supervision of the State Legal Service Authorities (SLSA) of the respective states, but the pro bono clubs are monitored, supervised, and funded by the Union Ministry of Social Justice and Empowerment. It is prescribed that pro bono clubs shall assist advocates registered under the Nyaya Bandhu Scheme, and the activities of legal aid clinics shall not overlap with those of the pro bono clubs.

2.1. The Nyaya Bandhu Initiative

2.1.1. Genesis and Objectives

In 2017, the government of India came up with a plan to take up certain initiatives for facilitating and promoting access to justice in India, and ultimately, the structure of Nyaya Bandhu's key was suggested to enhance pro bono delivery in India.[14] Furthermore, to fulfil the manpower needs and other resource requirements, a scheme named Pro Bono Scheme was launched by the Justice under the Ministry of Law and Justice government of India to actively engage law students and legal institutions in the process of direct delivery of legal aid under which they were expected to undertake such functions as prescribed under the aims and objectives of the pro bono scheme.[15]

In 2017, the Indian government introduced Nyaya Bandhu, a program that connects people needing free legal help with lawyers willing to volunteer their services. Both those seeking legal aid and

[11] Statesman News Service, "Govt Begins Nyaya Bandhu, Tele-Law Initiatives to Ensure Quality, Speedy Justice: Rijiju in RS," The Statesman, Feb. 11, 2022.
[12] The Constitution of India, Article 21.
[13] The Constitution of India, Article 39A.
[14] PIB, 2023. Free legal aid and advice through the Nyaya Bandhu program. pib.gov.in. Available at: https://pib.gov.in/PressReleaseIframePage.aspx?PRID=1944789 [Accessed 13 Mar. 2024].

[15] *Id.*

lawyers interested in pro bono work can sign up through the Nyaya Bandhu mobile app. This initiative aims to make it easier for people to access legal assistance and promote a culture of pro bono legal work in India.[16]

2.1.2. Statistical aspects of the Nyaya Bandhu scheme

It is noteworthy that as of 13th March 2024 overall 10839[17] advocates have registered Across India for volunteering in the Nyaya Bandhu Legal Service program and over 1353 advocates have been enrolled under the high court's pro bono panel which is constituted by the high court of 22 states.[18] The statistics the highest number of cases taken up by lawyers of the Nyaya Bandhu scheme has been seen in Karnataka where 3270 cases have been taken up by advocates.[19]

2.1.3. Structure and Implementation

The Nyaya Bandhu app was launched by the Department of Justice to increase the inclusivity of the advocates who are willing to volunteer for the dissemination of legal aid and it is also acting platform for the applicants and beneficiaries who need legal aid under this app the benefits are numerous as it allows the applicant or needy of the legal aid to register and then directly find an advocate who is voluntarily available for taking up the cases of beneficiaries by going through the matter as mentioned in the app and thereafter pursuing the case.[20] Afterwards, these online databases have created great ease on the part of advocates and the clients because there is a direct link and connection between the beneficiaries and the advocates who are voluntarily serving as legal aid advocates furthermore this application has reduced the financial burden of the legal service authorities who are currently paying the advocates for taking up the cases of legal aid every stage detail of the case is available in the nab and the app and after the disposal of the case through final order or dismissal the case is declared as disposed or closed by the Nyaya Bandhu app.[21]

2.2. Pro Bono Scheme for Law Universities

2.2.1. Framework

The Department of Justice has implemented a pro bono scheme for enhancing the participation of legal educational institutions in extending support and assistance to individuals and organizations who are involved in the dissemination of free legal aid the aim was to

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[16] DEPARTMENT OF JUSTICE, 2024. Nyaya Bandhu - Home. Available at: https://probono-doj.in/ [Accessed 14 Feb. 2024].

[17] *Id.*

[18] PIB, 2024. NYAYA BANDHU Programme: Pro Bono legal services. pib.gov.in. Available at: https://pib.gov.in/PressReleaseIframePage.aspx?PRID=2004316 [Accessed 13 Mar. 2024].

[19] *Id.*

[20] *Id.*

[21] MoIT, 2020. Nyaya Bandhu. UMANG. Available at: https://web.umang.gov.in/landing/department/nyaya-bandhu.html [Accessed 13 Mar. 2024].

develop a supporting framework by incorporating member students and faculty coordinator for developing a framework for the performance of various paralegal services and legal aid related activities.[22]

2.2.2. Objectives

The fundamental objective of formulating pro-bono clubs in legal educational institutions was to develop student volunteers to assist and aid pro-bono lawyers through facilitating drafting, documentation, etc.[23] The true intent was to connect students of law school by inviting them to actively participate and contribute to activities of institutional pro bono clubs and mentally encourage them to continue community work after their graduation where they will actively participate in court proceedings as young lawyers.[24]

2.2.3. Activities and Responsibilities

Activities are aimed at developing a sensible, dedicated, and trained pool of law graduates who are motivated to take up voluntary free legal aid-related cases along with their routine ordinary cases. Encouraging prominent legal educational institutions to be part of the Pro Bono Club Scheme was an integral part of the action plan developed by the Department of Justice. The scheme stated that the administrative correspondence was to be done with universities. Unlike legal aid clinics, pro bono clubs were directly funded by the Ministry of Law and Justice based on applications received by universities for their planned activities.

2.2.4. Role of Legal Education

The promotion of voluntary legal aid in the future depends upon the mindset and spirit of budding lawyers who are being educated in legal educational institutions of India thereafter to secure the future pro bono scheme is dedicated to encouraging young legal students to serve the purpose of community and strengthen the rule of law in India.

2.3. Formation and Operational Guidelines for Pro-Bono Clubs

All eligible legal educational institutions can self-register online to seek benefits from the Pro Bono scheme. Legal educational institutions must appoint a dedicated faculty supervisor and a team of at least ten students to form a functional Pro Bono Club within their institution. Due to graduation, many law students leave the institution. Therefore, the guidelines mandate that at least seven members of the Pro Bono Club must be active and present at all times to ensure smooth

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[22] DOJ, 2020. ABOUT NYAYA BANDHU PRO BONO SERVICES. Available at: https://www.probono-doj.in/about.html [Accessed 10 Mar. 2024].

[23] Government of India, Ministry of Law and Justice, Department of Justice, 2021. Nyaya Bandhu (Pro Bono Legal Services) Standard Operating Procedure (SOP) on Pro Bono Club Scheme (PBCS) Para 5(ii).

[24] *Id.*

functioning.[25] Any casual vacancy arising due to student departure should be filled promptly to comply with the guidelines. Unlike the 2011 Legal Aid Clinics Scheme of the National Legal Service Authority[26], the Pro Bono Club Scheme now permits students from the second year to the fifth year of law studies to actively participate in Pro Bono Club activities under the supervision of the faculty coordinator. Institutions seeking registration for the Pro Bono Club Scheme have two options. They can choose to be self-funded pro bono clubs or seek assistance from the Department of Justice, Ministry of Law and Justice, Government of India, to meet the basic expenditure of their activities.[27] As on September 5, 2023, a total of 89 legal education institutions involving various prestigious legal education institutions like national law universities, established central universities, and other private universities registered under the pro bono scheme to render support for the dissemination of pro bono services in India.[28] Under the regime of digital India, the Department of Justice is working under the Ministry of Law and Justice of India. To establish a national-level legal aid dissemination framework that can utilize voluntary players and technology for the dissemination of legal aid throughout India.[29]

3. Overview of Pro Bono Club Activities

The Pro Bono clubs in legal educational institutions have been established for the dedicated task of performing certain activities which are directly related to clinical legal education and practically extending support to legal aid disseminating authorities and advocates some of these activities are as follows

3.1. Legal Assistance and Support

Under para-5[30] of the new scheme activities of the institutional pro-bono Club can be planned by the pro-bono Club by taking multiple approaches for delivery of legal aid which may include litigation assistance in the form of research drafting and documentation so that the case may be presented to competent judicial forum by Pro bono lawyers. Under this activity, the law school-based pro-bono clubs are expected to extend drafting research writing and other related support to the pro-bono advocates who are working under the Nyaya Bandhu scheme.[31]Research documentation and reporting under this purpose

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[25] Government of India, Ministry of Law and Justice, Department of Justice (2021). Nyaya Bandhu (Pro Bono
Legal Services) Standard Operating Procedure (SOP) on Pro Bono Club Scheme (PBCS).
[26] National Legal Services Authority (Legal Services Clinics) Regulations, 2011,Rule 21-25, Dec. 8, 2010, (India).
[27] "Composition," 2024. Available at: https://www.probono-doj.in/composition.html [Accessed 11 Mar. 2024].
[28] "List of Law Schools," 2024. Available at: https://www.probono-doj.in/list-of-law-schools.html [Accessed 11 Mar. 2024].
[29] *Supra Note no. 28.*
[30] *Id at para 5.*
[31] "Activities," 2024. Available at: https://www.probono-doj.in/activities.html [Accessed 11 Mar. 2024].

the young minds and the intellectual fraternity sitting in the legal educational institution are expected to conduct empirical studies and surveys for the betterment of the legal aid delivery and for strengthening the pro bono services by extending effective data and research report for assessment and will ultimately help institutions in revisiting their strategies utilized for dissemination of legal aid in India.[32]

3.2. Community Care legal assistance

For rural needs of legal aid Community Care Legal Assistance (CCLA)[33] is Suggested for undertaking various awareness and promotion-related activities in targeted villages, Among various directives for C.C.L.A.[34] One of the prominent directives is the organization of mobile legal aid campaigns to understand legal problems and challenges faced by the members of the village community.[35] Under this activity, the Pro Bono clubs are expected to visit fields and extend legal aid to the needy whoever demands the address of legal rights during field visits or if any legal problem is discovered during the course of field visits such problems shall be accordingly forwarded to the concerned authorities. Under this program, Pro Bono Clubs at Law Schools are expected to serve at least two rural villages or urban talukas. The clubs will utilize interactive materials they develop, along with various online and offline mediums such as posters and brochures. Students and faculty members will conduct field visits to enhance public knowledge and awareness about their rights and the Nyaya Bandhu scheme.[36] The program's primary objective is to encourage students to engage in community service. By understanding the challenges faced by rural populations in India, students are expected to be motivated to take up voluntary legal aid cases upon graduation. This experience with community care legal assistance serves as inspiration for their future careers. The long-term goal is to cultivate a spirit of community service among lawyers and young law graduates. This will be achieved by enhancing access to justice through active participation in various activities and initiatives formulated by legal service authorities and the Department of Justice.

One of the core activities of Pro Bono Clubs established under the Department of Justice's Pro Bono Club Scheme is the development of a mechanism for legal aid assistance. As prescribed by the scheme, the faculty in charge of the Pro Bono Club shall develop a system where various legal aid activities are planned and executed with the help of club members.[37]

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[32] *Id.*
[33] *Supra note no. 14.*
[34] *Id.*
[35] *Id.*
[36] *Id.*
[37] ""Revised SOP on PRO BONO CLUBS at Law Schools," 2024. Available at: https://www.probono-doj.in/static/pdf/Revised%20SOP%20on%20PRO%20BONO%20CLUBS%20at%20Law%20Schools.pdf [Accessed 11 Mar. 2024].

These activities may involve legal research to strengthen arguments and drafting petitions for cases. Additionally, a dedicated student team for drafting and documentation will be constituted under the faculty coordinator's supervision. Pro Bono Club members are also expected to contribute directly to cases handled by Nyaya Bandhu panel advocates and the details are forwarded to universities by the Registrar of the Hon'ble High Court. These cases may involve various legal codes, including those applicable in district courts, session courts, and the high court. Furthermore, Pro Bono Clubs are encouraged to motivate alumni of the legal institution to contribute by registering as Nyaya Bandhu advocates (alumni Nyaya Bandhu advocates) and actively participating in voluntary legal aid.[38] Pro Bono Clubs are expected to conduct interactive sessions and workshops to improve the functioning of Nyaya Bandhu advocates who have registered on the Nyaya Bandhu app to provide voluntary legal aid.[39]

4. Best Practices for Pro-Bono Clubs: Indian and International Perspectives

4.1. American Model

In the USA, the law school's legal aid program is considered an alternative to internships and field training because the participating students are equipped with all the necessary skills like client handling, case drafting, etc. that are required to make a successful career in law.[40] More importantly, the law school legal aid clinics have also received funds from corporate entities for financing and upgrading their functioning and legal aid delivery.[41]

In the 1960s, even after constant support from voluntary legal aid organizations, it was indicated by a research study that the increasing demand for legal aid and assistance was not adequately met, and more and more contributions from the state were expected in legal aid-related expenditures.[42]

Institutional legal aid work in America started at the University of Pennsylvania at the beginning of the 20th century and was later adopted by various other universities by changing times. However, unlike India, in America, legal aid clinic faculty, conveners, and other staff are empowered to contest litigation directly in court, which led to a constant struggle between bar and institutional legal aid clinics.[43] An integration of the Bar Association with institutional legal aid clinics in the USA was suggested to promote cooperation and provide constant

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[38] *Id.*
[39] *Id.*
[40] Rajashree, K., 2021. Dissecting the Dichotomy of Skill and Social Justice Theory of Law School Legal Aid Clinics in the USA and India: A Re-look of the Past and the Present. Asian Journal of Legal Education, 8, pp.79–94.
[41] *Id.*
[42] Pye, A.K., 1967. Recent Developments in Legal Aid in America: Lessons for India. Journal of the Indian Law Institute, 9, pp.153–170.
[43] Supra note no. 42.

guidance from expert, distinguished members of the bar to law students involved in legal aid activities.[44] Also, activities and contributions made by law school legal aid clinics were considered tools for safeguarding human rights and promoting social justice.[45] In America, voluntary legal aid organizations can appear in court, including both students and teachers involved in the dissemination of legal aid through pro bono clubs of legal institutions. In India, the same was suggested to be implemented by an amendment to the Advocates Act 1961 so that law students and law faculties can directly approach the judicial forums with the facts and documents drafted to directly deliver legal aid to the needy, ensuring effective representation in court.[46]

The policymakers initially suggested that law students and institutional pro-bono clubs and regulated clinics should actively participate in the dissemination of legal aid.[47] But, the role of institution-based pro bono clubs in India has been limited to providing pre-trial assistance in America the law students who are working for Pro Bono cause along with the faculty members are permitted to appear before the court on behalf of the party and clients who seek legal assistance.[48] The clinic established that law universities work thoroughly to develop lawyering skills and professional conduct amongst law students so that, in the future, they can contribute to the field of law. The main benefit of student advocacy is that the learning of the students is ensured along with their active participation in activities of social cause.

Various legal education institutions based in the United States of America have taken model initiatives such as the University of North Carolina who have a legal aid program in place that mandates students to Actively contribute to the activities of legal aid by either directly representing the party in the court.[49] which is mandatory for LLM students and Undergraduate students are expected to assist advocates in matters of drafting research and documentation etc.[50] A similar provision is contained in the Nyaya Bandhu scheme and pro-bono club scheme of India which shows the intent of policymakers to develop a similar strategy to the USA for enhancement of student participation in legal aid-related activities in India.

4.2. Australian model

In Australia, the institutional legal aid clinics are specially dedicated to giving multi-fold benefits, including pre-legal aid and advice to the

[44] *Id.*
[45] *Id at pp. 93-94.*
[46] Routh, S., 2008. Providing Legal Aid: Some Untried Means. Journal of the Indian Law Institute, 50, pp.375–390.
[47] *Id.*
[48] *Id.*
[49] *Supra note no. 44.*
[50] *Id.*

needy, while at the same time developing interpersonal communication skills, advocacy-related skills, and self-confidence in law students, which will further help them excel in their careers.[51] Among the multiple best practices implemented by Australian law schools, legal aid clinics conducting courses on clinical patterns along with simulations of advocacy for skill enhancement are the most prominent. Active participation and effective contribution in activities of clinical legal aid result in reflective learning for students.[52] With the help of a clinical supervisor students regularly get involved in legal aid-related activities and ultimately evaluation of their learning and performance is done through formative and summative assessment techniques.[53] Another novel initiative Implemented by legal educational institutions at the clinic was a law reform project under which students were exposed to the functioning of law in society, and through interaction with various stakeholders, they suggested various policy and legislative changes to the state.[54] The Australian model of clinical legal education not only helped to uplift the conditions of society but also contributed to the experiential learning of law students, where they integrated their theoretical knowledge with practical experience.[55] Lastly, it can be stated that integrating law school with community service leads to social transformation and student growth maximization.

4.3. Indian perspective

The dimension of legal aid is changing. From the dimension of corruptive justice now legal, it is becoming part of distributive justice; thereafter, greater public participation and common participation are required to reduce the burden of the state in activities of dissemination of legal aid.[56]The legal service clinics, which were established under the regulation of 2011[57], performed various functions that overlapped with the functions that were entrusted to the Department of Justice. Thereafter, there was chaos and confusion amongst law school-based legal aid clinics and the pro bono clubs while undertaking various activities because it has been mandated by the Nyaya Bandhu scheme and the Pro Bono Club scheme that the establishment of pro bono clubs and the performance of activities shall be kept separate from the

[51] Evans, A., 2013. Best Practices: Australian Clinical Legal Education. The Law Teacher, 47, pp.1–13.

[52] *Id at pp. 20-21.*
[53] *Id at pp. 23-25.*
[54] Curran, L., "Innovations in an Australian Clinical Legal Education Program: Students Making Difference in Generating Positive Change," 6 International Journal of Clinical Legal Education 174-176 (2004).
[55] Supra note no. 53.
[56] Narain, J., 1986. Legal Aid—Litigational or Educational: An Indian Experiment. Journal of the Indian Law Institute, 28, pp.72–78.
[57] National Legal Services Authority (Legal Services Clinics) Regulations, 2011,Rule 21-25, Dec. 8, 2010, (India).

legal aid clinics established under Bar Council of India rules under the Regulation of 2011[58].

5. Critical Analysis of Selected Pro-Bono Clubs in India

5.1. Nyaya Bandhu Scheme and PBCs of Notable Institutions

A 2021 study examined the effectiveness of legal clinics and pro bono clubs at National Law Universities (NLUs) in India. The study aimed to understand how these institutions fulfil their social responsibilities. All 19 NLUs existing at the time of the study had law clinics, and 73% had dedicated institutional mechanisms for social welfare.[59] Additionally, 63% of NLUs possessed centers specifically focused on environmental and women and child welfare issues, often conducting policy-oriented research.[60]

The study critically evaluated the legal aid clinics established by NLUs and their role in discharging social responsibility.[61] The GNLU, NLU Jodhpur, Chanakya National University, and NLU Visakhapatnam were a few NLUs that highlighted their initiatives for women's and children's welfare.[62] The centers established at NALSAR for addressing social exclusion were also examined, along with the Labour Welfare Centre of NLU Odisha and the research centers of prominent NLUs like NALSAR, NLU-Bhopal, NLU Jodhpur, and Gujarat National Law University.[63] Finally, the study assessed the role of NLUs in achieving Sustainable Development Goal- 16, which emphasizes academic participation in legal aid programs to raise public awareness.[64] The research found that various NLUs are implementing this goal by disseminating knowledge and developing dedicated courses to enhance the skills of law students and lawyers through certificate programs. The study particularly commended the initiative taken by Gujarat National University, which frequently organizes events to strengthen academic participation in social causes.[65]

The research concluded by highlighting the participation of NLUs in disseminating legal aid and undertaking various public welfare activities. It emphasized the importance of clinical legal education for the holistic development of legal professionals. The study recommended that NLUs increase their involvement in clinical legal

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[58] *Id.*
[59] Kumari, A. & Sharma, P., 2021. Social Responsibility and Legal Education in India: A Study in Special Reference to National Law Universities. In B. Hall & R. Tandon, eds. Socially Responsible Higher Education: International Perspectives on Knowledge Democracy. pp.153–168.
[60] *Id at pp. 155-156.*
[61] *Id at pp. 157.*
[62] *Id at p158-159.*
[63] *Id at p160.*
[64] *Id at p162.*
[65] *Id at p164.*

education activities to ensure that students can effectively contribute to legal aid and other social justice initiatives.[66]

Indian pro-bono clubs should adopt strategies and best practices followed by various law schools worldwide in their interaction with society, which may include advocacy simulation practice, client counselling documentation, and drafting for a legal case. These institutional pro bono clubs should Work effectively on the Ground for raising awareness about Legal rights and entitlements. Law school-based legal clinics aim to serve society's interests and promote social, economic, and political justice. Indian legal institutions are expected to have a more significant role in contributing to legal aid activities.[67] However, the current analysis shows a gap between the intended outcomes and the actual achievements of legal education institution-based clinics and pro-bono clubs.[68] Therefore, there is a need to increase participation and active contribution to legal aid activities. Furthermore, the higher education institutions in India need to work to their full potential to ensure holistic national development and the career enrichment of law students through greater academic participation in social causes.[69]

It is true to say that law school-based legal clinics are working in almost all legal education institutions; however, a study praised the work of general global law school-based citizen participation clinics, which practically contributed to the social upliftment of marginalized communities in the region of Haryana while actively collaborating with The non-governmental organizations furthering the initiatives by National Law Schools have significantly contributed to the upliftment of the status of marginalized communities, as these legal educational institutions are pioneers of legal education in India and are thereafter actively contributing to nation-building-related activities.

5.2. A Case study of PBCs at NALSAR

According to the report summary published on the website of NALSAR Hyderabad[70], it was observed that most pro bono club activities at the Hyderabad law institution focused on creating awareness. However, the report lacked visual data on the number of cases where NALSAR students actively contributed to legal aid dissemination by participating in document drafting and legal research activities.[71] Consequently, it is likely that the pro bono club prioritizes community

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[66] *Id at p165-167.*
[67] Schukoske, J.E. & Adlakha, R., 2012. Enhancing Good Governance in India: Law Schools and Community-University Engagement. Ssrn.com.
[68] *Id.*
[69] *Id.*
[70] NALSAR, 2024. Legal Aid Newsletter. Available at: https://nalsar.ac.in/images/Leagal%20Aid%20Newsletter.pdf [Accessed 14 Mar. 2024].

[71] *Id.*

legal awareness initiatives over direct participation in legal aid activities, such as assisting Nyaya Bandhu advocates.[72]

5.3. PBC at National Law University, Delhi

The pro bono club established at National Law University Delhi is dedicated and committed to uplifting marginalized and socially and educationally backward communities.[73] To fulfill this purpose, the club has conducted various awareness and outreach programs. Additionally, National Law University Delhi actively pursues a village adoption program to give students in the national capital an understanding of rural communities and their legal aid and assistance needs.[74] While the Pro Bono Club of NLU Delhi conducts other social welfare activities, it's noteworthy that the newsletter doesn't explicitly mention the number of cases they've assisted. This suggests that while the club is actively involved in various social and legal empowerment activities, it might be lagging in its primary objective of directly assisting Nyaya Bandhu advocates with legal aid and assistance.[75]

6. Enhancing the Effectiveness of Institutional Pro-Bono Initiatives

At the individual level, pro bono initiatives benefit students by positively contributing to professional competence and also leading to capacity building of the students as they contribute to the legal awareness campaigns as per their interests. Interaction of paralegal volunteers with students and faculty members who are involved in legal aid activities is expressly recommended under the NALSA scheme under which SLSA was required to provide paralegal volunteers, to institutional legal aid clinics.[76]

6.1. Organizational Support and Logistical Requirements

The effectiveness of the legal aid clinic depends primarily upon institutional support and cooperation in undertaking pro bono activities in the institution's legal aid clinic. The most common challenges include rigid institutional structure, red tape, and bureaucracy within the institutions. If institutions decide to process and approve the files about legal aid activities speedily, pro bono clubs can overcome this problem. Institutions should also ensure that every weekend the student participants and teacher coordinators of the awareness camp are rotated so that any given faculty member or student member does not feel overburdened.

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[72] *Id.*
[73] National Law University, Delhi, "Pro Bono Newsletter," 2024. [Accessed 14 Mar. 2024].
[74] *Id.*
[75] *Id.*
[76] *National Legal Services Authority (Legal Services Clinics) Regulations, 2011*, Rule 25, Dec. 8, 2010, (India).

6.2. Funding and Budgeting Strategies

The expenses can be met by collecting a smaller contribution from the students in the form of membership fees. As per para 4 of new scheme[77] Pro Bono club can either work autonomously and in an unassisted model or it can seek assistance from other organisations. Henceforth, the help of major public sector units and corporations established around law schools should also come forward for the cause of Justice, and they should sponsor various pro bono initiatives as a part of their community development program.[78]

6.3. Recognition and Rewards

It is crucial to incentivize advocates who voluntarily contribute to real legal aid. To achieve this, legal education institutions with pro bono clubs are expected to continuously organize felicitation and honouring ceremonies. These events aim to applaud the efforts of both voluntary pro bono advocates and alumni who have undertaken various initiatives to promote voluntary legal aid in India. The fundamental purpose of these activities is to motivate and boost the morale of legal aid institutions and individuals, ultimately ensuring they continue to extend legal services to marginalized and underprivileged communities.[79] For acknowledging the hard work of the students of pro bono clubs their efforts need to be praised and recognized. Students may be given extra credits and teachers must be given points for enhancing their academic performance indicator (API) Score which will further help faculties in their career development. Students' active participation, sheer hard work, and determination to impart legal literacy and awareness can also be rewarded by giving them extra grade points for taking up the cause of justice.

7. Conclusion

In concluding remark, it can be stated that the envisioned objectives and established goals for the successful implementation of the Nyaya Bandhu and Pro Bono club scheme, as devised by the Department of Justice, Government of India, hold immense potential to revolutionize the landscape of legal aid in the country. However, a fundamental issue arises due to inadequate implementation mechanisms and the lack of reporting on activities by law school-based Pro Bono clubs nationwide, including several esteemed legal education institutions. Therefore, it is proposed that a robust reporting mechanism be established, and directives be provided to law school-based Pro Bono clubs to actively involve students in clinical legal education. It is advised that the university shall develop a curriculum that can suitably accommodate pro-bono-related activities in the ordinary course of the semester so

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[77] Government of India, Ministry of Law and Justice, Department of Justice (2021). *Nyaya Bandhu (Pro Bono Legal Services) Standard Operating Procedure (SOP) on Pro Bono Club Scheme (PBCS)* Para 4. .

[78] *Id at Para 9.*

[79] *Id.*

that students shall not find difficulty in the course of participation in activities of pro bono club. Notwithstanding the difficulties associated with state-sponsored legal aid, the shift towards non-state entities, including voluntary organizations and law school clinics, has demonstrated potential in addressing the growing need for free legal assistance. The DISHA Scheme and the Nyaya Bandhu app have enhanced this process by utilizing technology to link beneficiaries with legal aid providers. This involvement would entail students directly assisting Nyaya Bandhu panel advocates listed by the High Court registrar, thereby fulfilling the primary objective of training and empowering students while fostering a mindset for future lawyers to meaningfully contribute to the pursuit of social justice. Lastly, it can be stated that pro bono clubs have enormous potential; however, the unconventional talents of law school students shall not be wasted merely due to the inactivity of PBCs and less focus on the prime activities of pro bono clubs. By implementing best practices from global models and correcting identified deficiencies, India may achieve substantial progress in ensuring universal access to justice, thereby reinforcing the rule of law and advancing social justice.

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Reproductive Rights and the Legal Landscape: Exploring The Frameworks Governing Reproductive Rights of Women

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Abstract

Reproductive rights have become a central theme in the discussion of women's rights and human rights, becoming increasingly prominent in legal, socio-cultural, and healthcare contexts. This study attempts to investigate the complex interaction between legal frameworks, socio-cultural contexts, and healthcare dynamics influencing reproductive rights in India. Given the evolving changes in feminist and gender movements, we embark on an in-depth investigation of the legal frameworks governing reproductive rights in national and state jurisdictions. Employing a qualitative method that combines legal analysis, our goal is to analyse the intricacies of existing policies, assess their effectiveness, and explore avenues for improvement. Furthermore, we explore the socio-cultural intricacies that mould perspectives, attitudes, and behaviours concerning reproductive health within the Indian context. From ingrained gender expectations to enduring cultural values, we examine the diverse influences impacting women's decision-making, empowerment, and self-governance regarding reproductive matters. Through qualitative research and context analysis, we aim to unveil the intrinsic dynamics shaping reproductive behaviour and emphasise the necessity of surmounting socio-cultural hurdles for equitable access to reproductive health care services. At the same time, we draw attention to the health realities faced by women across different social strata, i.e., caste, class, and rural-urban. Through meticulous analysis of the quality, affordability, and access to maternal care, family planning, and contraceptives, we seek to de-mystify and identify directions towards strengthening reproductive healthcare delivery. Our analysis transcends observation to action-reflection and interaction. Through

analysis of recent trends, significant court rulings, and policy initiatives, we identify critical observations regarding gaps, challenges, and opportunities in strengthening reproductive rights in India. We emphasise the need to bridge systemic obstacles, enhance legal protection, and create an enabling environment supportive of women's reproductive dignity and autonomy.

Key Words: Reproductive Rights, Gender Equality, Social Justice, Maternal healthcare, India, Policy analysis

1. Introduction

In the rich texture of human existence, reproductive rights stand as a fundamental cornerstone of individual autonomy, gender equality, and social justice.[1] Across cultures and civilisations, the ability to make informed choices about one's reproductive health is deeply intertwined with human dignity, bodily autonomy, and equity.[2] However, even after making huge strides, the quest for such rights is full of complexities, imbalances, and issues that are a testament to entrenched systemic disparities. As 2025 dawns, the necessity to contend with such issues has heightened even more, as global movements, technological advances, and policy reforms re-order the agenda. Underpinning this examination is the theme of waiting, a complex and multifaceted phenomenon that reflects temporal, emotional, and existential aspects. In the context of reproductive healthcare, waiting entails not only delays and hindrances to receiving critical services such as contraception, abortion, and maternal care but also a potent shorthand for sociopolitical inequalities.[3] These delays disproportionately affect women and marginalised communities, reflecting the intersecting forces of gender, class, and race that continue to

impede reproductive justice.[4] As we delineate the contours of reproductive rights enshrined within the broader human rights framework, 2025 demands a re-examination of their scope. Reproductive rights today encompass not only access to family planning, abortion and contraceptive services but also newer concerns like menstrual equity, use of telemedicine, and the ethical questions raised by new reproductive technologies.[5] Reproductive rights are also tied up with the broader issues of self-determination, privacy, and

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[1] Standing, H., K. Hawkins, E. Mills et al.., *Introduction: Contextualising "Rights" in Sexual and Reproductive Health*, 11 BMC Int'l Health & Hum. Rts. S1 (2011), https://doi.org/10.1186/1472-698X-11-S3-S1.

[2] Nyinawagaba Beatrice R., *Reproductive Rights as Fundamental Human Rights: A Feminist Perspective on Bodily Autonomy and Social Justice*, 5 Eurasian Experimental J. Hum. & Soc. Sci. (EEJHSS) (2024).

[3] Avila Castellanos, D. D., *Rethinking Waiting: A Critical Analysis of the Waiting as a Temporality and Its Limitations in Understanding These Processes as a Social Phenomena*, 5(14) Dialektika: Rev. Investigación Filosófica y Teoría Soc. 9 (2023), https://doi.org/10.51528/dk.vol5.id110.

[4] Ross, L. J., *Reproductive Justice as Intersectional Feminist Activism*, 19 Souls 286 (2017), https://doi.org/10.1080/10999949.2017.1389634.

[5] Elaine Baruch et al., *Embryos, Ethics, and Women's Rights: Exploring the New Reproductive Technologies* (2013).

bodily integrity, but millions of individuals around the world remain entangled in webs of legal prohibitions, cultural shame, and socioeconomic barriers.[6] This year has also shed light on the rising repercussions of climate change on reproductive health. Women living in climate-risk zones are subjected to greater dangers to their reproductive rights, superimposed upon existing health inequities. In addition, as the planet recovers from the pandemic, efforts to reconstruct overwhelmed health care systems are setting the course of reproductive health care, both positive and negative.[7] This research on reproductive rights rings very true outside of the ivory tower, having a real impact on the lived experiences of those who suffer from delayed access to needed care. In 2024, policymakers in the public sphere struggle with the complex interplay between legal systems, culture, and public health, as activists demand fair access to care, especially the use of digital health technologies such as telemedicine.[8] Although these innovations hold promise, systemic disparities remain, especially in low-resource environments. As we navigate the complex dynamics of waiting, reproductive rights, and women's health, we are faced with urgent questions: *How do we balance justice, autonomy, and solidarity in this new world? How do we deal with the long-lasting legacies of patriarchy, colonialism, and economic inequality that marginalise the most vulnerable?* And *what will be the role of technology and global advocacy in determining the future of reproductive rights?* Throughout the next sections, we explore such complexities further by analysing the context, theoretical concepts, and future challenges of advocacy in reproductive rights. From the growing impacts of climate change on reproductive health to the expanding influence of biotechnology and AI in healthcare, the pursuit of reproductive rights is inseparable from broader quests for social justice, dignity, and liberation.[9] Waiting, in this context, symbolises not just delay but the profound consequences of inequity, as individuals and communities continue to strive for a future where reproductive justice becomes a lived reality for all.[10]

2. Historical Framework

The civilizations in the backdrop of human history, shifts in reproductive rights are irretrievably a part of the very fabric of the evolution of society, characterized by a complex dynamic of achievements and failures, and turning points.[11] Here, we are faced

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[6] Tanya Saroj Bakhru, *Reproductive Justice and Sexual Rights: Transnational Perspectives* (2019).
[7] Gabriela Marques Di Giulio et al., *Global Health and Planetary Health: Perspectives for a Transition to a More Sustainable World Post COVID-19*, Ciênc. Saúde Coletiva (2021), https://doi.org/10.1590/1413-812320212610.14332021.
[8] Junaid Sattar Butt, *Navigating the Grey Area: Legal Frameworks for Digital Health Monitoring & Use of AI for Elderly Patients in the Nordics*, 4 Int'l J. Tech. & Emerging Sci. (IJTES) 1 (2024), https://orcid.org/0009-0000-0530-962X.
[9] Dr. Sandra Nwokocha, *Are Assisted Reproductive Technologies Beneficial To, or Merely Exploitative Of, Women and Their Bodies,* 29(7) IOSR J. Human. & Soc. Sci. (IOSR-JHSS) 28 (2024), https://doi.org/10.9790/0837-2907052838.
[10] Loretta Ross & Rickie Solinger, *Reproductive Justice: An Introduction* (2017).
[11] Arvonne S. Fraser, *Becoming Human: The Origins and Development of Women's Human Rights*, 21 Hum. Rts. Q. 853 (1999), https://dx.doi.org/10.1353/hrq.1999.0050.

with the dynamic between individual freedom, social ethos, and legal norms that have brought the debate on reproductive rights to the international scene.

In the history of India, there have been numerous civilisations and cultures that have accepted the principle of self-determination and family planning regarding reproduction.[12] *The Kama Sutra and the Arthashastra* are two of the very old texts which track evidence of family planning and early methods of contraception employed by earlier generations and embody traditional acceptance of the human being's right to make choices about reproduction.[13] The history of the contemporary reproductive rights movement traces its roots to the early 20th century when trailblazing women started fighting for the ability to have control over their bodies. During the suffragette days, symbols like Margaret Sanger waged war against social norms on family planning and birth control.[14] A turning point was reached when the first birth control clinic was established in America in 1916, paving the way towards a paradigm shift in the way individuals see reproductive health. In free India, the reproductive rights discourse picked up momentum with the creation of organisations such as the *FPAI (Family Planning Association of India) in 1949,* which was dedicated to offering reproductive health care as well as encouraging family planning.[15] The 1970s saw the introduction of the National Population Policy, wherein voluntary family planning and access to contraceptives were emphasised. The mid-20th century witnessed the global spread of the reproductive rights movement. The 1960s saw oral contraceptives, which transformed family planning, allowing women to exercise some degree of control over their reproductive lives for the first time in history. Progress is not, however, linear.[16] The 1970s saw a resurgence of conservative political thought, raising controversy regarding the question of reproductive rights, with the United States seeing its landmark case in 1973, *Roe v. Wade*, legalising abortion.[17] The late 20th century saw widespread world acceptance of reproductive rights as human rights. *The 1994 International Conference on Population and Development* marked the turning point, recognising reproductive rights as part of the totality of human well-being.[18] The subsequent decades saw the world's thrust for gender equity, with reproductive rights being added to the wider discourse of women's rights and empowerment. Along with the emergence of the

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[12] Chhanda Bhowmik, *Reproductive Self-Determination: A Journey from Birth Control to Procreative Choice*, 10(5) Quest J. Rsch. Human. & Soc. Sci. 39 (2022), https://www.questjournals.org.
[13] Vasudha Narayanan, *"One Tree Is Equal to Ten Sons": Hindu Responses to the Problems of Ecology, Population, and Consumption*, 65 J. Am. Acad. Religion 291 (1997), http://www.jstor.org/stable/1465767.
[14] Shannon Rohn, *Margaret Sanger: The Fuel of Her Revolution*, 8 ESSAI art. 37 (2010), http://dc.cod.edu/essai/vol8/iss1/37.
[15] Leela Visaria & Rajani R. Ved, *India's Family Planning Programme: Policies, Practices and Challenges* (1st ed. 2016), https://doi.org/10.4324/9781315652498.
[16] Elizabeth Siegel Watkins, *On the Pill: A Social History of Oral Contraceptives, 1950-1970* (1998).
[17] Roe v. Wade, 410113 (Supreme Ct. U.S. 2022).
[18] Ruth Dixon-Mueller, *Population Policy, and Women's Rights* (Bloomsbury Publ'g 1993).

reproductive rights landscape were grand milestones and jurisprudence benchmarks that were landmark moments pointing the way toward increased freedom and equality. The legalisation of contraceptives, such as that by the *Griswold v. Connecticut (1965) case*, was a watermark moment insofar as it institutionalised privacy rights and opened the door to subsequent cases of reproductive rights.[19] The 1973 decision on Roe v. Wade legalised abortion and opened up a worldwide debate regarding the fine line between the right of an individual to make a choice and society's interests.[20] Yet, the legal environment continued in transition, with later cases and statutes still defining the scope of reproductive rights. *The 1976 Hyde Amendment*, for example, restricted federal funding for abortion, creating economic inequities in access to reproductive health care.[21]

Coalitions and international agencies play an essential part in assisting countries to craft and implement policies that protect reproductive rights. For example, the *WHO (World Health Organisation)* counsels and offers support to countries which are trying to enhance reproductive health care.[22] In the same vein, international non-governmental agencies tend to work transnationally to inform, educate, and lobby for policy change. "*CEDAW (Convention on the Elimination of All Forms of Discrimination Against Women)"*, enacted in 1979, is a significant document in the global search for gender equality.[23] It was the first human rights convention to obligate State parties to declare the availability of family planning in Article 12(1), making available to girls and women access to contraception and safe abortion as a fundamental human right under international law.[24] Article 16 of CEDAW becomes a pillar of empowerment, demanding marriage and family life equality and articulating women's inalienable right to reproductive choice in these sacrosanct domains. Article 16 is a cornerstone in building women's rights, stressing the necessity to escape discriminatory customs and creating environments where dignity and individual autonomy are promoted.[25]

As the 21st century approached for India, reproductive rights were at the forefront of health and human rights discourse. Efforts to address reproductive healthcare barriers such as access, affordability, and quality were still at the forefront of health policy and program agendas in India. Core programs like *"the National Rural Health Mission*

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[19] Griswold v. Connecticut, 381479 (Supreme Ct. U.S. 1965).
[20] Abortion Evolution: How Roe v. Wade Has Come to Support a Pro-Life & Pro-Choice Position, 53 Creighton L. Rev. 157 (2019–2020).
[21] Alyssa Engstrom, *The Hyde Amendment: Perpetuating Injustice and Discrimination After Thirty-Nine Years*, 25 S. Cal. Interdisc. L.J. 451 (2016).
[22] World Health Organisation, *Counselling for Maternal and Newborn Health Care: A Handbook for Building Skills* (2010).
[23] Debra J. Liebowitz & Susanne Zwingel, *Gender Equality Oversimplified: Using CEDAW to Counter the Measurement Obsession*, 16 Int'l Stud. Rev. 362 (2014), https://doi.org/10.1111/misr.12139.
[24] V.C. Ikpeze Ogugua, *Abortion and Right to Family Planning Under International Law: A Critical Appraisal*, 4 LASJURE 115 (2023).
[25] Shaheen Sardar Ali, *Women's Rights, CEDAW and International Human Rights Debates: Toward Empowerment?* in *Rethinking Empowerment* 18 (1st ed. 2002, Routledge).

(NRHM)", a latter phase of the *NHM (National Health Mission),* focused on improving reproductive healthcare in rural India.[26] Programs like the Janani Suraksha Yojana promoted institutional deliveries, reducing maternal and neonatal mortality.[27] The *National Population Policy of 2000* gave high priority to family planning and access to contraceptive services. Civil society and NGOs also played an important role in promoting reproductive rights through advocacy and community mobilisation. Progress was achieved, but sustained efforts need to be made to ensure global access to reproductive healthcare as well as rights. Additionally, initiatives like the *Pradhan Mantri Surakshit Matritva Abhiyan (PMSMA)* offer free antenatal examinations to pregnant women on the 9th of each month to reduce maternal mortality and improve maternal health outcomes.[28] Additionally, new technology has facilitated the dissemination of antiretroviral drug knowledge and reproductive health knowledge through *mobile health (mHealth)* interventions to remote and marginalised communities.[29] Despite such efforts, problems persist, including disparities in access to health care between socio-economic groups and between regions, indicating the need for ongoing advocacy and policy intervention to bring universal reproductive rights to all Indians. At the same time, "the Beijing Declaration" and "Platform for Action", implemented "1995 at the Fourth World Conference on Women" in Beijing, China, articulated a vision of progress and empowerment.[30]

The Beijing Declaration, in paragraph 96, establishes a strong commitment towards women's reproductive rights, focusing on such pressing issues since it pertains to ensuring universal access to integrative reproductive health care services.[31] A special place for women's health is reserved in Section K of the Platform for Action, where concerns ranging from family planning to sexual and reproductive education are touched upon with meticulous detail and a sense of urgency. Concurrently, these international agreements are a call to action that rallies effort to end inequality and promote the values of body autonomy and gender equality across the globe. They are drivers of change, powering advocacy, policy reform, and social movements working to lower barriers and to push forward the agenda

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[26] Shankar Das, *The Health Care System in India*, in *Health Care Systems in Developing Countries in Asia* 34 (1st ed. 2017, Routledge), https://doi.org/10.4324/9781315586403

[27] Bharat Randive, Miguel San Sebastian, Ayesha De Costa & Lars Lindholm, *Inequalities in Institutional Delivery Uptake and Maternal Mortality Reduction in the Context of Cash Incentive Program, Janani Suraksha Yojana: Results from Nine States in India*, 123 Soc. Sci. & Med. 1 (2014), https://doi.org/10.1016/j.socscimed.2014.10.042.

[28] Pragya Sinha et al., *Utilization of Antenatal Services Under Pradhan Mantri Surakshit Matritva Abhiyan in Rural Area of North Karnataka: A Cross-Sectional Study*, 8(2) Nat'l J. Rsch. Cmty. Med. (Apr.–June 2019).

[29] A.S. Feroz, N.A. Ali, A. Khoja et al., *Using Mobile Phones to Improve Young People's Sexual and Reproductive Health in Low- and Middle-Income Countries: A Systematic Review to Identify Barriers, Facilitators, and Range of mHealth Solutions*, 18 Reprod. Health 9 (2021), https://doi.org/10.1186/s12978-020-01059-7.

[30] Barbara Roberts, *The Beijing Fourth World Conference on Women*, 21 Can. J. Soc. 237 (1996), https://doi.org/10.2307/3341979.

[31] M. Stevens, *Sexual and Reproductive Health and Rights: Where Is the Progress Since Beijing?*, 35 Agenda 48 (2021), https://doi.org/10.1080/10130950.2021.1918008.

for reproductive justice for all people, female or male and poor or wealthy.[32] In the tapestry of human rights, these agreements are a testament to the persistence of cooperation and the enduring health of the human spirit to seek justice and equality. The echoes of the experience reverberate in the realities of today about reproductive justice matters, shaping the discourses, struggles, and victories of the day. The long struggle with comprehensive sex education, access to birth control, and affordable health care services comes with the memory of past hurdles.[33] The reproductively skewed gap in the left-behind perception in terms of global reproductive rights is immense, with legality and safety in terms of abortion services being one such area which falls directly under the longer-term verdict of history. There is a tug of war between movement and reversal since there is a reversal in legal as also policymaking arenas.

The past few years have witnessed attempts to erode hard-won reproductive rights, including attempts to repeal safeguards, limit access to abortion, and reduce access to contraceptive services. That legacy in the background persists in the resolve of grassroots movements, ranging from *the Women's March to reproductive justice activists*, who draw strength from past struggles.[34] Legacies of the past persist in the intersectional fight for reproductive justice. The disparate impact of repressive legislation on marginalised populations betrays historical disparity, and so the need for an inclusive and multimodal strategy in advancing reproductive rights. The #MeToo campaign, which sets out to exhibit sexual violence and sexual harassment, is a rebuke to earlier women's histories of taking up agency over bodies and narratives.[35] As we journey through the history of reproductive rights, we are confronted with a living tension between advancement and resistance, gains, and setbacks. The enduring impact of history on current reproductive justice issues reminds us that we must remain firm in maintaining the values of autonomy, dignity, and justice as we journey forward into the future.

3. Theoretical Perspective

In the domain of reproductive rights, theoretical frameworks serve as leading lights, illuminating the complexities of *"waiting," "intersectionality," and "feminist perspectives*." As we manoeuvre through the complexities of these constructs, we uncover insights that shed light on the broader dynamics of power, privilege, and agency within the landscape of reproductive justice. In its myriad

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[32] B. Klugman, *Effective Social Justice Advocacy: A Theory-of-Change Framework for Assessing Progress*, 19(38) Reprod. Health Matters 146 (2011), https://doi.org/10.1016/S0968-8080(11)38582-5.

[33] Ann M. Starrs et al., *Accelerate Progress—Sexual and Reproductive Health and Rights for All: Report of the Guttmacher–Lancet Commission*, 391 Lancet 2642 (2018), https://doi.org/10.1016/S0140-6736(18)30293-9.

[34] Nancy Whittier, *Feminist Generations: The Persistence of the Radical Women's Movement* (1995).

[35] Sabine Aretz, *(Re-) Placing the #MeToo Movement: Power, Shame, and Autobiographical Narratives* (Diss., Katholische Universität Eichstätt-Ingolstadt, 2024).

manifestations, it is more than a mere temporal phenomenon, it is a socio-political construct imbued with power dynamics, inequalities, and injustices.[36] In the context of reproductive rights, waiting assumes a profound significance, reflecting the structural barriers, bureaucratic hurdles, and systemic injustices that impede access to essential healthcare services.[37] In socio-political contexts, waiting becomes a tool of oppression, wielded by dominant power structures to perpetuate inequalities and maintain the status quo.[38] The imposition of waiting periods for abortion procedures, for instance, reflects a paternalistic approach that undermines women's autonomy and reinforces patriarchal norms. Similarly, the bureaucratic labyrinth of eligibility criteria and documentation requirements serves as a barrier to access, disproportionately affecting marginalised communities.

Within the Indian context, waiting transcends its temporal dimension to become a socio-political construct intertwined with power dynamics and systemic injustices. The imposition of waiting periods for abortion procedures in some Indian states reflects not only a paternalistic approach but also societal norms that often undermine women's autonomy and reinforce patriarchal structures.[39] Moreover, bureaucratic hurdles and eligibility criteria for accessing reproductive healthcare services create additional barriers, disproportionately affecting marginalised communities, including rural populations and individuals from disadvantaged socioeconomic backgrounds. Yet, amidst the shadows of waiting, there exists a glimmer of resistance, a testament to the resilience and agency of those navigating the labyrinth of reproductive rights. Grassroots movements and advocacy efforts challenge the status quo, demanding equitable access to healthcare services and amplifying the voices of those silenced by systemic injustices.[40] In the crucible of waiting, seeds of empowerment are sown, catalysing transformative change and reshaping the contours of reproductive justice.

Intersectionality, the interconnectedness of social classifications such as race, class, gender, and sexuality, lies at the heart of reproductive justice, offering a lens through which to understand the complexities of power and privilege within the realm of reproductive rights.[41] Recognising that individuals occupy multiple

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[36] Eva Bermúdez Figueroa et al., *Gender and Structural Inequalities from a Socio-Legal Perspective*, in *Gender-Competent Legal Education* 95 (Springer Int'l Pub'g 2023).

[37] Eriko Miwa, *Family Care Relationships in Reproductive Justice*, 2 Family Care Relationships in Reproductive Justice 31 (2024), https://www.mdpi.com/2673-4184/2/4/31

[38] Amanda Cleeve, *The Impact of Mandatory Waiting Periods on Abortion-Related Outcomes: A Synthesis of Legal and Health Evidence*, (June 21, 2022),https://bmcpublichealth.biomedcentral.com/articles/10.1186/s12889-022-13620-s

[39] Richi Simon & Shumayela Hasan, *Patriarchy and Gender Inequality: A Comprehensive Analysis of Women's Empowerment in Contemporary India*, 42 Gender Issues 7 (2025).

[40] Sheila Foster, *Justice from the Ground Up: Distributive Inequities, Grassroots Resistance, and the Transformative Politics of the Environmental Justice Movement*, 86 Calif. L. Rev. 775 (1998).

[41] Kimala Price, *Why Intersectionality Matters for Reproductive Health Care*, *Planned Parenthood of the Pacific Southwest, Inc.*, https://www.plannedparenthood.org/planned-parenthood-pacific-southwest/blog/why-intersectionality-matters-for-reproductive-health-care.

social locations, intersectionality compels us to interrogate the intersecting axes of oppression that shape reproductive health outcomes. At the intersections of race, class, and gender, marginalised communities confront unique barriers to reproductive autonomy, reflecting the compounded effects of systemic inequalities.[42] Black and Indigenous women, for instance, experience disproportionate maternal mortality rates and lack of access to comprehensive reproductive healthcare services.[43] Similarly, economically disadvantaged individuals face economic barriers that limit their ability to access contraception, abortion, and maternal care.

Similarly, in India, intersectional inequalities have been identified in terms of class, caste, religion, race, and gender. While these categories acknowledge the economic, socio-cultural, political and geographic inequalities against women, these also reflect the barriers women face in accessing their reproductive rights.[44] Women belonging to marginalised classes and castes face far greater challenges in catering to their reproductive needs and suffer more sexual and physical discrepancies than women who identify as higher class and caste. Similarly, modern reproductive services and knowledge are not yet available to women belonging to underdeveloped regions and communities. In the pursuit of reproductive justice, intersectionality serves as a guiding principle, emphasising the significance of centring the experiences and perspectives of those most underrepresented. Intersectional advocacy approaches recognise that reproductive rights cannot be divorced from broader struggles for social justice and liberation.[45] By embracing an intersectional lens, advocates challenge the siloed narratives of reproductive rights, fostering solidarity across diverse communities and amplifying the demands for equity and dignity.

Feminist perspectives offer a critical framework for understanding and challenging the structures of power and oppression that underpin reproductive rights discourse.[46] Rooted in principles of equality, autonomy, and bodily integrity, feminist approaches to reproductive rights emphasise the agency and dignity of individuals in

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[42] Kay Fischer, *8.4: Intersectionality and Reproductive Justice - Part I*, (May 16, 2022), *Social Sci LibreTexts*, https://socialsci.libretexts.org/Bookshelves/Ethnic_Studies/Introduction_to_Ethnic_Studies_%28Fischer_et_al.%29/08:_Intersectionality-_Centering_Women_of_Color/8.04:_Intersectionality_and_Reproductive_Justice_-_Part_I.

[43] Cynthia Via, "Intersectional Activism in a Post-Roe World" (13 October 2022) YES! Magazine Solutions Journalism www.yesmagasine.org/social-justice/2022/10/13/access-abortion-activism

[44] Mara Malagodi, "Intersectional Inequalities and Reproductive Rights: An India Nepal Comparison" (2020) 3(2) University of Oxford Human Rights Hub Journal 196.

[45] Rachel Rebouché, *Reproducing Rights: The Intersection of Reproductive Justice and Human Rights*, 7 UC Irvine L. Rev. 579 (2017).

[46] Gerda Neyer and Laura Bernardi, "Feminist Perspectives on Motherhood and Reproduction" (2011) 36(2) Historical Social Research / Historische Sosialforschung 162 http://www.jstor.org/stable/41151279 accessed 25 February 2024.

determining choices regarding their bodies and lives.[47] At the heart of feminist advocacy lies a commitment to dismantling patriarchal structures that seek to control and regulate women's reproductive choices. From the early battles for access to contraception to contemporary struggles for termination of pregnancy rights, women's movements have been at the forefront of challenging legal and social norms that sustain gender-based discrimination and violence. Feminist perspectives also highlight the interconnectedness of reproductive rights with larger movements for gender equality and social justice. Recognising that reproductive autonomy is intertwined with economic opportunity, educational access, and political representation, feminist advocates work to address the root causes of reproductive injustices, advocating for policies that promote social and economic equity.[48]

In addition, feminist perspectives in India offer a critical lens through which to challenge patriarchal structures and advocate for gender equality within the realm of reproductive rights. Movements like the Chipko Movement, which emerged in the 1970s to protest against deforestation and promote ecological conservation, exemplify the intersectionality of feminist activism with broader social and environmental justice causes.[49] By centring the voices and experiences of Indian women and marginalised communities, feminist perspectives contribute to a vision of empowerment, solidarity, and transformative change that is deeply rooted in the Indian context.

4. Access To Abortion

Access to abortion is a seminal and contentious feature of reproductive rights and sovereignty of the individual, a strong significant change in the struggle for gender equality and control over one's body. Having options around reproductive health, while an expression of the sovereignty of the individual, is also an enabling right in human rights.[50] Yet, owing to its significance, abortion access remains a highly controversial topic throughout the world, regulated by various factors such as legal systems, opinion, and structural constraints. It varies across nations and displays a wide range of cultural, religious, and political responses. While Western nations generally have more liberalised abortion laws, guaranteeing access on established conditions like foetal viability or danger to a woman's life or health, some regions of Africa, Latin America, and Asia still adhere to strict prohibitions or outright abortion bans largely due to deeply rooted

[47] M Humble, "Women"s Perspectives on Reproductive Health and Rights. Overview" (1995) 2 Planned Parenthood Challenges 26.
[48] Rachel Rebouché, *Reproducing Rights: The Intersection of Reproductive Justice and Human Rights*, 7 UC Irvine L. Rev. 579 (2017).
[49] Vandana Shiva & Jayanta Bandyopadhyay, *The Evolution, Structure, and Impact of the Chipko Movement*, 6 Mountain Research & Development 133 (1986).
[50] Sandra Coliver, ed., *The Right to Know: Human Rights and Access to Reproductive Health Information* (Vol. 2210, Univ. of Pa. Press 1995).

cultural and religious beliefs.[51] Abortion law in India is liberal under *the Medical Termination of Pregnancy (MTP) Act of 1971*, with significant amendments made as far back as 2021. The law allows abortion until 20 weeks on broad grounds, including risk to physical or mental health of the woman, congenital malformation, rape, or failure of a contraceptive.[52]

The MTP Act reflects India's resolve towards the protection of reproductive rights alongside the health and autonomy of women. However, its realisation is jeopardised by administrative inefficacies, inadequate trained manpower, and societal stigmatisation.[53] There are cultural attitudes towards abortion in close association with prevailing social norms, religious beliefs, and political opinion, which generally form the majority views about and reactions to abortion access.[54] Abortion is stigmatised and morally objected to in conservative societies and hence results in social ostracism and discrimination against the women accessing abortion care. In liberal societies, abortion is generally presented as an issue of personal choice and control of the body and limited social disapproval.[55]

Even under legal protection, the availability of abortion is routinely hindered by various barriers, such as administrative barriers and widespread social stigma. Mandatory waiting periods, legislated in some contexts, expose women to unnecessary delays between counselling and the abortion, most strongly on those who undergo emergent or time-sensitive circumstances. In India, even in the presence of legal provisions, factors such as bureaucratic inefficiencies, lack of trained service providers, and social stigma are grave hindrances, particularly to rural and marginalised women.[56] Moreover, stringent regulations such as spousal approval or parental consent operate to increase these hindrances, particularly to vulnerable sections such as young women and victims of abuse. The stigma over abortion still promotes myths and shame, and a large number of women resort to obtaining clandestine and unsafe operations or avoiding the operation altogether, thus endangering their health and well-being.[57]
As there is international unanimity on reproductive rights being fundamental to the globe, there continue to be chasms between their

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[51] J.E. Brooks, *Abortion Policy in Western Democracies: A Cross-National Analysis*, 5 Governance 342 (1992).
[52] Amar Singh, *Abortion Law in India in the Light of Medical Termination of Pregnancy (Amendment) Act, 2021*, 1 Nyaayshastra L. Rev. 1 (2020).
[53] Shavar D. Jeffires, *The Structural Inadequacy of Public Schools for Stigmatized Minorities: The Need for Institutional Remedies*, 34 Hastings Const. L.Q. 1 (2006).
[54] Kristen N. Jozkowski, Brandon L. Crawford & Mary E. Hunt, *Complexity in Attitudes Toward Abortion Access: Results from Two Studies*, 15 Sexuality Research & Social Policy 464 (2018).
[55] Rosalind Pollack Petchesky, *Abortion and Woman's Choice: The State, Sexuality and Reproductive Freedom* (Verso Books 2024).
[56] Lutful Hasnaen Syed, Zubaria Parvez & Mehtab Khaskheli, Unveiling the Obstacles: An In-Depth Examination of the Multifaceted Challenges Confronting Rural Women in Their Pursuit of Improved Livelihoods, 6 J.L. & Soc. Stud. 180 (2023).
[57] Haley Brand, *Lived Experiences of Abortion Stigma: A Qualitative Analysis* (Ph.D. dissertation, Mercer Univ. 2024).

theoretical gains and practical effectuation. All the global mechanisms of human rights, including *the International Conference on Population and Development (ICPD) and CEDAW*, reiterate reproductive freedom as well as the right to access safe abortion.[58] Yet, these rights continue not to be shifted into policy and action. In India, with protection under the law, there are inequalities in accessing abortion, and these persist in mirroring larger inequalities in healthcare facilities, socioeconomic status, and societal culture. These problems demand fool-proof policy reforms, de-stigmatisation efforts, and sustained advocacy to obtain the rights of dignity for women both globally and domestically. It demands a multi-pronged approach from legal reforms to improved infrastructure of healthcare, education, and community programs that work towards fighting society's expectations and de-stigmatising abortion.[59] It is only through a concerted, collective action that safe and legal access to abortion can become a reality for everyone, irrespective of geographical location, socioeconomic status, or cultural heritage.

5. Contraception and Women's Autonomy

Contraception is important in enabling women to be capable of making independent decisions regarding their reproductive life, in controlling their bodies, and making choices about their future.[60] Use and access, and availability of contraceptives are, however, very different from a global perspective, subject to sociocultural issues as well as to policymaking intervention. The availability of the wide range of available contraceptive modalities is central to guaranteeing the reproductive autonomy and choice of women.[61] Everywhere in the world, various contraceptive technologies exist, ranging from hormonal to non-hormonal types, including birth control pills, injectables, patches, and implants on one end and condoms, intrauterine devices (IUDs), diaphragms, and fertility awareness methods on the other.[62]

In most of the developed world, family planning services and products are readily available from health care providers, pharmacies, and family planning clinics. Women can select the method most appropriate to their interests and needs, with full information and counselling. In the majority of the world, especially in low-income countries and rural settings, family planning access is weak. The reasons are costs, time to travel to facilities that provide healthcare services, cultural stigma, and limited knowledge about available family

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[58] Carmel Shalev, Rights to Sexual and Reproductive Health: The ICPD and the Convention on the Elimination of All Forms of Discrimination Against Women, *Health & Hum. Rts.*, 38, 38–66 (2000).
[59] Tali R. Leinwand, *Strange Bedfellows: The Destigmatization of Anti-Abortion Reform*, 30 Colum. J. Gender & L. 529 (2015).
[60] Birutė Obelenienė, *From Birth Control to Self-Awareness and Free Decision Making: A Model for the Evaluation of Comprehensive Sexuality Education from the Perspective of Women's Health and Free Informed Choice* (2022).
[61] Anastasia J. Gage, *Sexual Activity and Contraceptive Use: The Components of the Decisionmaking Process*, 29 Stud. Fam. Plan. 154 (1998).
[62] Alana Benson, *Everything You Need to Know About Birth Control* (Rosen Publ'g Grp., Inc. 2018).

planning methods.[63] In addition, stockout of contraceptive commodities and lack of availability of skilled providers render contraception hard to obtain in poor resource settings.

In India, efforts have been made to expand access to family planning through government-sponsored family planning programs. The National Family Planning Program, initiated in 1952, operates on the delivery of integrated family planning services like access to contraceptives, reproductive health education, and mother care.[64] A number of forms of birth control, such as condoms, oral contraceptive pills, and intrauterine devices, are easily accessible in public health centres, outreach services, and community health workers who are *Accredited Social Health Activists (ASHAs).*[65] Apart from these, vast gaps continue to persist in the use of contraceptives among marginalised and underserved groups. Rural women, young people, and poorer socioeconomic groups typically face barriers in the shape of inadequate information, cultural taboos, and inaccessibility of services. These gaps need to be bridged by equity-oriented, accessible, and culturally suitable family planning strategies.

Contraceptives are guided by many sociocultural determinants such as religious dogma, gender roles, family relationships, and what society holds regarding sex and childbearing. Contraception discussion might not be permitted among conservative groups of individuals, and women's reproductive health rights may be limited by family and patriarchal values requiring childbearing.[66] Religious teachings and cultural beliefs powerfully influence the use of contraception and family planning. In some cultures, women seek big families, and birth control is considered counter to religious law or cultural tradition. In more secularised cultures, on the other hand, women tend to prefer small family sizes, and birth control is considered a necessary tool of reproductive control.

Gender inequalities and power dynamics in relationships also influence contraceptive decision-making, as women often take the primary responsibility for contraception. Where women lack autonomy, their ability to negotiate contraceptive use or obtain reproductive health care might be compromised.[67] In India, sociocultural determinants are highly influential on contraceptive use, with family structures and traditional gender roles underpinning

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[63] Michael T. Mbizvo & Sharon J. Phillips, Family Planning: Choices and Challenges for Developing Countries, 28 *Best Prac. & Res. Clinical Obstetrics & Gynaecology* 931 (2014).
[64] Drakshayani P. Kongawad & G.K. Boodeppa, National Family Planning Programme—During the Five Year Plans of India, 3 *J. Evolution Med. & Dental Sci.* 5172 (2014).
[65] Sharmistha Basu, Mackenzie Green & Bitra George, An Assessment of the Government of India's Initiative on Contraceptives at the Doorstep by Accredited Social Health Activists (ASHAs): Recommendations for National Scale-Up, 1 *J. Pregnancy & Reprod.* 2 (2017).
[66] Amy Alspaugh et al., Women's Contraceptive Perceptions, Beliefs, and Attitudes: An Integrative Review of Qualitative Research, 65 *J. Midwifery & Women's Health* 64 (2020).
[67] Anu Manchikanti Gomez, Liza Fuentes & Amy Allina, Women or LARC First? Reproductive Autonomy and the Promotion of Long-Acting Reversible Contraceptive Methods, 46 *Perspectives on Sexual & Reprod. Health* 171 (2014).

reproductive habits. Son preference together with son preference carries implications for family planning decision-making since couples would continue having babies until they had a boy.[68] In addition to this, culturally defined attitudes on menstruation, sexuality, and fertility influence whether or not women have access to and are acceptable to contraceptive practice.

Policy measures have a key role to break obstacles to the use of contraceptives and improve women's autonomy in reproductive choices. Governments and international agencies have implemented various mechanisms to improve the availability, affordability, and use of contraceptives, focusing on greater access to disadvantaged groups and the promotion of reproductive health rights. Among the most important policy strategies is linking family planning service provision with systems of primary healthcare delivery, where contraceptive services are provided alongside other essential healthcare services.[69] Family planning service decentralisation and inclusion in the mainstream healthcare infrastructure support governments in bringing services closer to people, especially in rural areas and remote places where there is limited healthcare availability. Sexuality education programs can also empower people with knowledge about reproductive health, contraception, and family planning, which would help them make informed decisions about their bodies and sexuality.[70] They, by fostering gender equitable attitudes and combating stereotypes, can break cultural taboos regarding contraception.

In India, policy interventions such as the National Family Planning Program and the implementation of community-based family planning services aim to expand access to contraception and reproductive healthcare. The government's commitment to providing free or subsidised contraceptives through public health facilities underscores its efforts to promote reproductive autonomy and women's rights. Furthermore, policy initiatives that prioritise the needs of marginalised and vulnerable populations, including adolescents, migrant workers, and Indigenous communities, are essential for addressing disparities in contraceptive access. Tailored interventions that consider cultural norms, language barriers, and socioeconomic factors can enhance the acceptability and uptake of contraceptive methods among underserved groups.

6. Maternal Health Care Services

Maternal health care is a key determinant in the protection of mothers' and children's health. Significant progress has been made in recent

[68] Rangamuthia Mutharayappa, Son Preference and Its Effect on Fertility in India (1997).
[69] Lilian Dudley & Paul Garner, Strategies for Integrating Primary Health Services in Low-and Middle-Income Countries at the Point of Delivery, *Cochrane Database of Systematic Reviews* 7 (2011).
[70] Khadigeh Mirzaii Najmabadi & Farangis Sharifi, Sexual Education and Women Empowerment in Health: A Review of the Literature, *Int'l J. Women's Health & Reprod. Sci.* 7.2, 150-55 (2019).

years, but there are still challenges in the quality of maternal health care and the influence of socioeconomic determinants on the use of maternal health services.[71] There are also hopeful prospects of improvement amidst these challenges. Good quality maternal health care is an integral part in keeping maternal mortality rates and morbidity at bay. Quality encompasses several dimensions, including accessibility, effectiveness, safety, patient-centeredness, timeliness, and efficiency. Despite all this, most regions of India, along with parts of the globe, continue to face significant setbacks when it comes to quality maternal healthcare.

In India, even though there has been a strengthening of maternal health indicators, there are inter-state and socioeconomic gradients. There are huge variations in the use of maternal health care by state, NFHS estimates show. Whereas Kerala has high institutional delivery rates and coverage of antenatal care, Uttar Pradesh, and Bihar lag well behind.[72] The shortage of qualified healthcare personnel is among the major issues in providing quality maternal care in India, especially in rural and distant regions. The shortage leads to insufficient antenatal and postnatal care, delays in emergency obstetric care, and inappropriate treatment of complications during childbirth.[73] In addition, infrastructural shortcomings, such as the absence of well-serviced facilities and needed materials, discourage quality maternal healthcare delivery.

These problems are prevalent across the world, especially in low- and middle-income nations, where women with lower socioeconomic levels face additional obstacles to gaining access to maternal care. The WHO estimates about 295,000 maternal deaths every year globally, and many of them involve preventable factors. WHO reports also show that rural women are less likely than their urban counterparts to access skilled delivery care.[74] In addition, teenage girls, especially those in poor communities, face increased maternal morbidity and mortality from unplanned and early pregnancy. Poor poverty, poor education, and poor knowledge of maternal health needs usually lead to delayed or poor antenatal care, skilled birth attendance, and postnatal care. In addition, gender inequality and cultural norms limit women's autonomy in reproductive health decision-making, which maintains inequalities in maternal care access.

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[71] Aradhana Srivastava et al., Determinants of Women's Satisfaction with Maternal Health Care: A Review of Literature from Developing Countries, *BMC Pregnancy & Childbirth* 15, 1–12 (2015).
[72] Ravi Durga Prasad et al., Why There Is Underutilization of Four and More Antenatal Care Services Despite the Colossal Rise in Institutional Deliveries in Bihar, India, *J. Soc. & Econ. Dev.* 24, 355–378 (2022).
[73] Ayele Geleto et al., Barriers to Access and Utilization of Emergency Obstetric Care at Health Facilities in Sub-Saharan Africa: A Systematic Review of Literature, *7* Syst. Rev. 1 (2018).
[74] World Health Organisation, *Maternal deaths decline slowly with vast inequalities worldwide*, (Sept. 19, 2019), https://www.who.int/news/item/19-09-2019-maternal-deaths-decline-slowly-with-vast-inequalities-worldwide.

Despite such challenges, various innovative strategies and best practices have been promising better maternal health outcomes. In India, certain interventions, such *as Janani Suraksha Yojana and Pradhan Mantri Surakshit Matritva Abhiyan (PMSMA),* have attempted to increase institutional deliveries and provide pregnant women with free antenatal care.[75] These initiatives have also helped improve such maternal health indicators as increased rates of institutional delivery and increased antenatal coverage. Furthermore, technology innovations such as mHealth interventions have been utilised to provide maternal health messages, remote consultations, as well as to improve access to emergency obstetric care in distant areas. Through the extensive uptake of mobile phone usage, the interventions help improve access gaps to maternal healthcare, as well as enhance health-seeking behaviour among expectant women. At the international level, efforts such as the "*Sustainable Development Goals (SDGs),"* whose goal is to promote healthy lives and well-being for all at all ages, have mobilised efforts towards enhanced maternal health outcomes globally.[76] Collaborative partnerships between governments, non-governmental organisations (NGOs), and international agencies have played a crucial role in scaling up evidence-based interventions, enhancing health systems, and promoting maternal health agendas.

7. Recent Provisions

India's legislation on the issue of reproductive rights has come a long way, mainly due to the Constitution of India, international conventions, and the development of national law. A number of judgments have articulated the protection and promotion of reproductive rights. In "*Suchita Srivastava v. Chandigarh Administration"*, the Supreme Court of India ruled that the right of a woman to exercise choice with reproductive autonomy, including safe abortion, is a right under Article 21 of the Indian Constitution.[77] In *Laxmi Mandal v. Deen Dayal Harinagar Hospital & Ors,* the Court reiterated women's right to maternal care by reasserting the state's responsibility to promote equal access to health facilities.[78]

In addition, in *The Voluntary Health Association of Punjab v. Union of India*, it stressed the urgency for an implementation of the *Preconception and Prenatal Diagnostic Techniques (Prohibition of Sex Determination) Act 2003, PCPNDT Act*, to discourage sex-selective abortion.[79] The Supreme Court ruling in the case of *Devika Biswas vs. Union of India* also broadened the role of the state to offer comprehensive reproductive healthcare services to the entire

[75] M. Singh, L.K. Sonkaria & P. Raghav, Pradhan Mantri Surakshit Matritva Abhiyan (PMSMA): New Initiative to Deliver Quality Maternal Health Care in India, *4* MOJ Women's Health 00081 (2017).
[76] Sandra K. Cesario, Sustainable Development Goals for Monitoring Action to Improve Global Health, *20* Nursing for Women's Health 427 (2016).
[77] Suchita Srivastava v. Chandigarh Administration, (Supreme Ct. India 2009).
[78] Laxmi Mandal v. Deen Dayal Harinagar Hospital & Ors, (Delhi High Ct. 2010).
[79] The Voluntary Health Association of Punjab v. Union of India, (Supreme Ct. India 2016).

population, stressing that reproductive health is a part of the realisation of wider human rights and social justice objectives.[80] Such landmark judgments have thrown open doors to some major legal and policy changes on the subject of reproductive rights in India, which would only strengthen the state's commitment towards the dignity and autonomy of individuals.

This notwithstanding, several challenges still lay ahead regarding universal access to reproductive health care services in the country. Socioeconomic disparities remain a main barrier to accessing healthcare services, especially in rural and marginalised communities where legal protections are inadequately enforced.[81] Moreover, existing legal and regulatory barriers contribute to systemic obstacles in accessing reproductive healthcare. Hence, the development of further rights in reproduction within India depends on legislative innovation as well as continuous efforts for the application of the lawfully so that all citizens, especially women, become eligible for essential healthcare services.

The administration of justice in India has undergone enormous reforms in criminal law during 2023 and has gradually shifted towards better modernisation and inclusion. A package of new criminal enactments consists of "the Bhartiya Nyaya Sanhita (BNS), the Bhartiya Nagrik Suraksha Sanhita (BNSS), and the Bhartiya Sakshya Adhiniyam (BSA)", aiming to keep India's legal system abreast of the changing needs of society, concentrating on safety, gender equality, and justice.[82]

The BNS re-drafts the criminal law landscape not only in response to traditional crimes but also adapts provisions to respond to emerging social concerns such as women's rights and the protection of vulnerable groups. Some of the major provisions within the BNS address crimes such as gender-based violence and sexual harassment with severe punishments and better protection for survivors.[83] The BNSS adds to the procedural system that administers criminal justice the objective of gaining more efficiency and transparency in criminal offence investigation, trial, and prosecution. The BSA concerns itself with the modernisation of the rules of evidence in line with technological change and the improvement of the administration of justice.

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[80] Devika Biswas v. Union of India, (Supreme Ct. India 2016).
[81] Dennis P. Andrulis, Access to Care Is the Centerpiece in the Elimination of Socioeconomic Disparities in Health, *129* Annals of Internal Med. 412 (1998).
[82] Pawan Kumar, Kashish Jain, *New criminal laws signal end of colonial hangover, but challenges await*, (July 2, 2024), https://www.newindianexpress.com/web-only/2024/Jul/02/new-criminal-laws-signal-end-of-colonial-hangover-but-challenges-await.
[83] Pawan Kumar, Kashish Jain, *Opinion | New Criminal Laws: India Finally Sheds Its Colonial Chains*, News18 (July 1, 2024), https://www.news18.com/opinion/opinion-new-criminal-laws-india-finally-sheds-its-colonial-chains-8950727.html.

Whereas these laws introduce stronger safeguards and a more enlightened agenda in criminal law, they also remind us of India's new face of justice- symbolised by the image of Lady Justice. Traditionally delineated with a blindfold to represent impartiality, Lady Justice is now taking form in India's new-age reforms in criminal law. In its unblindfolded avatar, she forms an emblem of how the law is beginning to acknowledge lived realities as of persons, most significantly to vulnerable and marginal sections. By unblinding the eyes of Lady Justice, the updated imagery demands a justice system that opens its eyes to social inequalities, gender disparities, and systemic injustices.

This unbarring of Lady Justice's eyes represents a judicial approach that does not just ignore biases but instead confronts the complexity of societal challenges, particularly to women, children, and the marginalised. The dynamic icon is an increasingly responsive legal system in the face of today's human rights issues, whether it is reproductive rights, gender violence, or social discrimination. As Indian law evolves toward greater inclusivity and transparency, the unblindfolded Lady Justice symbolises justice, equality, and equity for everyone.

In parallel to criminal law reforms, India has seen some crucial developments in reproductive rights initiatives intended to enhance women's access to more essential healthcare services, as well as efforts to nurture gender equality. One such landmark reform was the passage of the *MTP (Amendment) Act, 2021,* which liberalised abortion laws in India quite comprehensively[84]. The new law increased the legally allowed gestational period for abortion from 20 to 24 weeks in cases where pregnancy can be expected to risk the life or health of the woman or in cases of foetal malformations. This increase grants women more control over their reproductive lives while placing India's laws in conformity with global reproductive health standards.

Another central innovation in India's reproductive health system is the Ayushman *Bharat Scheme (2018),* which responds to marginalised and disadvantaged groups' access to healthcare by providing them with more opportunities.[85] With this scheme, the *Pradhan Mantri Matru Vandana Yojana provides* pregnant women financial incentives in the form of cash to avoid economic disincentives against their utilisation of required maternity and reproductive health care.[86] This policy is important to economically poor women, who are assured monetary support that will ensure they obtain quality prenatal and postnatal care. These measures and many more on improving

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[84] Josephine Kipgen, *Reproductive Politics in India: The Case of Sex-Selective Abortion* (Springer Nature 2023).
[85] V.K. Sharma & Preety Sharma, *Promoting Universal Healthcare and Addressing Health Disparities: India's G20 Initiatives*, in *India@75: Presidency of G20* 168 (2023).
[86] Anita Awasthi et al., *Pradhan Mantri Matru Vandana Yojana: Assessing Cash Benefits and Health Impacts on Pregnant and Lactating Mothers in Kanpur, India*, 44(3) Library of Progress–Library Sci., Info. Tech. & Computer (2024).

maternal care and family planning will play a great role in filling in the gaps that have existed for such a long time concerning inequality in health care service distribution within India.

Through the provision of funds and expanded access to reproductive health care services, these legal reforms enable women to make autonomous choices regarding their reproductive health, thus advancing gender equality and lowering maternal mortality. Global policies such as the SDGs endorsed by the United Nations in 2015 have also influenced India's policy on reproductive rights.[87] Maternal health, family planning, and universal health coverage have remained focal points of India's policy. Conforming India's domestic law to these global obligations is an indication of the interconnections between reproductive rights and global development results.

8. Challenges in Implementation

The effective implementation and enforcement of policies regarding reproductive rights continue to be seriously hindered in most countries, including India. Despite the existence of laws and legislation protecting reproductive health and autonomy, several barriers come in the way of their full realization. These issues have only been heightened more recently by the rapid development of Artificial Intelligence (AI), which, in offering solutions, also presents new challenges to the protection of reproductive rights and the fair provision of health care services.[88]

One of the major barriers to the enactment of reproductive rights policy is the deficiency of sufficient infrastructure and resources in the health sector.[89] In most of these regions, especially rural and poor ones, the healthcare centres may be under-staffed, under-equipped, or non-existent, with loopholes in the provision of services. Insufficient of adequate numbers of trained health professionals, including skilled birth attendants and family planning counsellors, further enlarges such gaps in implementation. The application of AI in the health system can create improved diagnosis and services, but its application depends on advanced infrastructure, which is not common in India, thus widening the gap between rural and urban areas of India.[90]

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[87] Lynda Gilby, Meri Koivusalo & Salla Atkins, *Global Health Without Sexual and Reproductive Health and Rights? Analysis of United Nations Documents and Country Statements, 2014–2019*, 6(3) BMJ Glob. Health (2021).

[88] Fred Yao Gbagbo, Edward Kwabena Ameyaw & Sanni Yaya, *Artificial Intelligence and Sexual Reproductive Health and Rights: A Technological Leap Towards Achieving Sustainable Development Goal Target 3.7*, 21(1) Reprod. Health 196 (2024).

[89] Mac-Seing, M., Ochola, E., Ogwang, M., Zinszer, K. & Zarowsky, C., *Policy Implementation Challenges and Barriers to Access Sexual and Reproductive Health Services Faced by People with Disabilities: An Intersectional Analysis of Policy Actors' Perspectives in Post-Conflict Northern Uganda*, 11(7) Int'l J. Health Pol'y & Mgmt. 1187 (2021).

[90] Sarina Aminizadeh et al., *Opportunities and Challenges of Artificial Intelligence and Distributed Systems to Improve the Quality of Healthcare Service*, 149 Artif. Intell. Med. 102779 (2024).

Moreover, cultural and social views regarding reproductive health and sexuality usually turn into a hindrance for the effective implementation of policies. Misinformation, stigma, and discrimination about contraception, abortion, and other reproductive health care services typically discourage access to or seeking information. Inherent patriarchal values and gender inequality are also driving forces of differential access to reproductive health care, particularly by marginalised groups like poor communities or rural women, youth, and LGBTQ+.[91] In this connection, AI, as potentially revolutionary in opening access to services and information, might also be exploited to reinforce gender discrimination. If poorly designed, AI algorithms can unintentionally perpetuate negative stereotypes and keep women and marginalised groups away from necessary reproductive health services or misrepresent their needs[92].

Another significant barrier is unstable or inadequate financing of reproductive health programs and services, which undermines their implementation. Fiscal concerns can limit access to essential supplies, family planning products, and drugs, compromising the quality and quantity of care. The proliferation of AI in medicine also raises the issue of resource allocation: while AI technologies hold the potential to bring about efficiency, their application entails heavy investment. This might divert it from essential reproductive health care in low-resource environments.

Enforcement issues continue to exist even when there is a law protecting reproductive rights. Ambiguity in the law or loopholes in the law may provide means for evasion or abuse. For example, ambiguity in policy regarding the availability of abortion services or conscientious objection by healthcare providers can result in denial or delay of service in accessing safe and legal abortion. Within the AI system, predictive algorithms' use to decide reproductive health care eligibility would pose new transparency and accountability issues, particularly to avoid algorithms inadvertently excluding eligible individuals.

Another threat to the enactment of reproductive rights legislation is conservative or religious interest groups, policymakers, or healthcare providers in the way of opposition. Political opposition, lobbying, or ideological disincentives can interfere with advocating progressive policy or legislation for increasing access to reproductive health care services.[93] Similarly, interest groups may employ AI technology to sway public opinion or policy to limit reproductive rights,

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[91] Gita Sen et al., *Unequal, Unfair, Ineffective, and Inefficient: Gender Inequity in Health: Why It Exists and How We Can Change It* (2007)

[92] Vittoria Scatiggio, *Tackling the Issue of Bias in Artificial Intelligence to Design AI-Driven Fair and Inclusive Service Systems: How Human Biases Are Breaching into AI Algorithms, with Severe Impacts on Individuals and Societies, and What Designers Can Do to Face This Phenomenon and Change for the Better* (2020).

[93] Jill Nicholson-Crotty, Politics, Policy, and the Motivations for Advocacy in Nonprofit Reproductive Health and Family Planning Providers, 36 Nonprofit & Voluntary Sector Quarterly 5 (2007).

such as with social media campaigns that shape political decision-making.

Moreover, inadequately enforced mechanisms of monitoring and enforcement continue the breaches of reproductive rights. Poorly enforced or unregulated control, absence of accountability mechanisms, and weak penalties for noncompliance can induce individuals or entities to operate in contravention of reproductive health law with impunity. Greater use of AI in healthcare also presents concerns regarding transparency and accountability of algorithmic decision-making. Unless adequate measures are put in place, AI systems could end up as "black boxes" and more difficult to track decision-making processes and make sure they comply with legal safeguards of reproductive rights.

Addressing these challenges requires a multifaceted approach. Government action, civil society engagement, and community empowerment are critical to ensuring the realisation of reproductive rights. Strengthening healthcare infrastructure, especially in underserved areas, through increased investment in facilities, equipment, and human resources is essential. This includes not only developing physical infrastructure but also ensuring that AI-based healthcare technologies are integrated into systems such that they benefit all groups, including marginalised groups. Comprehensive sexuality education programs, which are tailored to meet the needs of different populations, can demythologise, reduce stigma, and allow people to make informed decisions about their sexual health.[94] AI can be used to expand access to such education by providing personalised learning experiences and content.

Grassroots activism, spearheaded by women's organisations and social movements, is crucial in initiating awareness, establishing support services, and pushing policy reform at the grassroots level. Such work must also be aware of the ethical dimensions of AI applications in healthcare to ensure that technology is used to enhance, not erode, reproductive rights. In addition, stakeholder engagement, including health providers, policy-makers, religious leaders, and the media, is important to develop a positive climate for reproductive rights and to overcome opposition to progressive change.

Finally, legal structures must be reinforced to bridge gaps, clarify ambiguities, and provide adequate enforcement of reproductive rights legislation. This might involve amending existing legislation, developing new regulations and guidelines, and establishing effective monitoring and accountability mechanisms to track compliance and respond to violations promptly. With AI continuing to evolve, it will be necessary to establish firm legal guidelines for the use of AI in

[94] Kafuli Agbemenu, The Experience of Immigrant African Mothers Engaging in Reproductive Health Education with Daughters Aged 10–14 Years (Ph.D. diss., University of Pittsburgh, 2014).

reproductive health so that these technologies are used in a way that advances privacy, autonomy, and equality rights.

9. Intersectional Analysis of Women's Experience in the Context of Reproductive Rights

Reproductive rights such as access to contraception, safe abortion, maternal healthcare, and comprehensive sexual education are key to the realisation of gender equality and the empowerment of women. The actualisation of these rights, though, is unequal among different categories of women due to intersecting factors of gender, class, caste, ethnicity, and socioeconomic status. This intersectional inquiry investigates how such converging identities condition women's lives and access to reproductive healthcare within larger legal, policy, and emerging technology frames, particularly with the vast transformation caused by AI and digital health tool developments in 2025.

9.1 Gender and Reproductive Rights in 2024

Gender remains a necessary axis of reproductive rights analysis. Women everywhere continue to encounter one-dimensional obstacles to reproductive health care, often founded on patriarchal attitudes rooted deeply in culture and religion. Religious and cultural sentiment remain at the centre of limiting women's control, primarily over contraception, safe abortion, and reproductive choice.[95] Despite progress, the increased use of AI in healthcare presents additional challenges. AI technologies have the risk of perpetuating gender biases, influencing how reproductive health services are provided. These technologies, if not inclusively designed, would widen existing disparities, for instance, by being gender-biased in recommendations or not considering women's unique healthcare needs under personalised medicine.[96] To address these issues, one needs not only to challenge entrenched social norms but also to ensure that AI-backed healthcare innovations are critically examined for gender bias and inclusiveness in 2025.

9.2. Class, Socioeconomic Status, and Technological Disparities

Women from lower socioeconomic backgrounds, particularly in rural or urban disadvantaged areas, face severe difficulties in reaching reproductive healthcare. While AI-driven healthcare solutions are capable of enhancing accessibility and efficiency, the novel technologies can increase the rich-poor gap even further. These advanced technologies, like virtual consultations or AI diagnosis, could be out of reach for women living in poor regions due to being offline, having low levels of digital literacy, or being incapable of reaching

[95] Rosalind Pollack Petchesky, *Abortion and Woman's Choice: The State, Sexuality and Reproductive Freedom* (Verso Books 2024).
[96] Eija Ahonen & Eeva Farén, *Gender Biases in AI-Mitigation Strategies Contributing to Fairness* (2024)

them.[97] Such technology gaps illustrate the need for intervention in terms of affordable access to digital healthcare platforms, more rural healthcare centres, and effective social protection mechanisms to enable all women to have the same access to the dividends of reproductive health improvement.

9.3. Caste, Ethnicity, and Systemic Discrimination in Health Access

Caste and ethnicity continue to be important predictors of access to reproductive health services, especially in the case of India. Dalit and Adivasi women tend to be excluded from health systems, with the ensuing poorer quality services, stigmatisation, and limited access to key reproductive health services.[98] Although bringing in innovative solutions, the advent of digital health platforms and AI technologies can also reinforce caste-based inequities if not developed inclusively. Algorithms may be based on skewed data and result in misdiagnosis or the marginalisation of minor groups. To address these disparities, reforms in policy should aim to ensure digital health technologies are culturally responsive and equally accessible, while initiatives at the community level continue to be at the forefront of addressing systemic health care discrimination.[99]

9.4. Marital Status and Reproductive Rights in the Digital Era

Marital status still affects women's access to reproductive healthcare, especially for unmarried women and young people. Stigma and law enforcement limit their access to contraception or abortion services. But digitalisation of reproductive health services provides new possibilities for these women to access confidential and private healthcare through the internet. In spite of this, such services remain unavailable to most people due to issues like internet censorship, data privacy, and online gendered harassment. As virtual spaces expand, legal reform must guarantee that unmarried women and young people equally access reproductive health services online while maintaining their security and privacy.

9.5. Regional and Rural-Urban Disparities in 2024

Geographic location remains a critical determinant in the accessibility of reproductive health care. Rural women tend to lack access to health providers, bad roads and poor infrastructure. Although urban areas tend to have better health centres, excluded women in urban areas, for instance, slum women, still face major barriers such as crowded health

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[97]Ismaila Ouédraogo, *Mobile Technology and Artificial Intelligence for Improving Health Literacy Among Underserved Communities* (2024) (unpublished dissertation, Université de Bordeaux & Université Nazi Boni).

[98] Udharshini Subramaniam, *Inequities in Health in India and Dalit and Adivasi Populations*, in *Health Inequities in India: A Synthesis of Recent Evidence* 97, 97-120 (Springer Singapore 2017).

[99] Aybike Mergen, Nergiz Çetin-Kılıç & Mustafa F. Özbilgin, *Artificial Intelligence and Bias Towards Marginalised Groups: Theoretical Roots and Challenges*, in *AI and Diversity in a Datafied World of Work: Will the Future of Work be Inclusive?* 17, 17-38 (Emerald Publishing Limited 2025).

centres, long waiting times, and high-cost health care.[100] The innovation of telemedicine and computer-aided health consults is a possible solution to imbalances in the sense that they make it possible for women from rural communities to be provided with more accessible care. The technologies have, however, to be preceded by policies to bridge digital literacy and internet penetration so that women in underserved communities can also be offered equal care.[101] Further, AI needs to be utilised judiciously in a manner that does not reflect existing geographical disparities by assigning greater weight to urban compared to rural needs. 2025 came, and such technological advancements have to be designed and implemented in an inclusive, culturally sensitive, unbiased way.

10. Future Trajectories

The future of reproductive justice will be marked by several important trends, of which the recognition of reproductive rights as basic human rights is noted. This trend is likely to push reproductive rights into the broader human rights frameworks, thus protecting it and promoting it at national and international levels. A strong stress on decriminalising abortion will be seen; Ireland and Argentina are given as examples of countries with progressive legal reforms[102]. Efforts will continue to combat the stigma and misinformation around abortion while advocating for the inclusion of comprehensive sexual and reproductive health education in curricula around the world. An emphasis on proper, age-specific education is what will empower individuals and reduce unintended pregnancies and sexually transmitted infections.

The COVID-19 pandemic has revealed vulnerabilities in the provision of services and, more fundamentally, brought out systemic inequalities in reproductive health care.[103] The challenge will be in restoring services interrupted by the pandemic, including contraception, prenatal care, and abortion, while making healthcare systems better prepared to respond to future crises. However, the pandemic hastened other innovations, like telemedicine, which has proven its utility in enhancing access to reproductive health care, especially for vulnerable populations. As telemedicine increasingly becomes the norm, what will be critical is ensuring accessibility and equity for all telemedicine, especially those with not-so-reliable internet.[104] Finally, for low-income sectors, the economic effects of the

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[100] Sanzida Akhter, Gouranga Lal Dasvarma & Udoy Saikia, *Reluctance of Women of Lower Socio-Economic Status to Use Maternal Healthcare Services—Does Only Cost Matter?* 15 *PLoS ONE* e0239597 (2020).

[101] Aasim Aslam, Syed N. M. Abidi & Syed S. A. Rizvi, *Digital Literacy and Women's Empowerment: Bridging the Gender Gap in Technology for Achieving Sustainable Development Goals (SDGs)*, 24 *Pak. J. Gender Stud.* 93 (2024).

[102] Carla Patiño Carreño & Mathias Möschel, *Effects in the Health Services of Abortion Regarding the Different Paths to Decriminalise It: Constitutional Courts, Legislative Change or Referendum* (2021).

[103] Patanjali De la Rocha et al., *A Qualitative Analysis on Sexual and Reproductive Health Needs and Issues During COVID-19 Using a Reproductive Justice Framework,* 32 Ethnicity & Disease 357 (2022).

[104] Rajeev Kumar et al., *The Ethical Frontier of AI and Data Analysis* (IGI Global 2024).

pandemic on women's reproductive health will need policy inputs giving financial support for reproductive services, such as subsidies or free access to contraception.

Technological advances in reproductive health, such as new contraceptives and fertility treatments, promise to improve reproductive freedom. Improved access to LARCs, a form of reversible contraception with long-acting effectiveness, has become even more available and effective; genetic research and biotechnology advancements will potentially change prenatal care for the better, though careful attention to the ethical ramifications of such technologies can avoid new ways of discrimination.[105] In addition, digital health tools, such as mobile applications and wearable devices, will enable individuals to monitor and manage their reproductive health. Data privacy and responsible use will be of utmost importance in this regard. Global collaboration and research on the social determinants of reproductive health will remain at the core of policy-shaping efforts focused on the root causes of inequities to move forward in the direction of reproductive justice for all.[106]

11. Conclusion

In conclusion, the multifaceted nature of reproductive rights demonstrates how these fundamental freedoms are deeply influenced by intersecting identities such as gender, class, caste, ethnicity, and socioeconomic status. The findings reveal stark disparities in access to reproductive healthcare, with women from marginalised backgrounds encountering significant barriers. Gender expectations, economic circumstances, and caste-based discrimination limit women's access to exercising their reproductive rights fully. Both caste and ethnic bias further compromise the access to good-quality care, and reports of Dalit and Adivasi women in India suffering higher maternal mortality rates and racial inequities around the globe. A stern call for action must then be initiated by policymakers as well as by community leaders to tackle these concerns.

It is essential to create and implement policies that will ensure equal access to reproductive health care for all women, regardless of their intersecting identities. That involves not just upgrading the infrastructure of health care and money but also challenging and transforming deeply ingrained social and cultural norms which perpetuate inequality and discrimination. Governments and global institutions need to place reproductive health equity high on their agendas, incorporating intersectional strategies into health policy to address the unique needs of various groups effectively. Additionally, there should be increased support for grassroots organisations that

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[105] Luis Bahamondes et al., Long-Acting Reversible Contraceptive (LARCs) Methods, Best Practice & Research Clinical Obstetrics & Gynaecology, 66, 28-40 (2020).
[106] Antoinette Rouvroy, Privacy, Data Protection, and the Unprecedented Challenges of Ambient Intelligence, 2 STUDIES IN ETHICS, LAW, & TECHNOLOGY 1 (2008).

work directly with affected communities to advocate for change and provide vital services. Future advocacy and research should strive for a greater understanding of the effect of intersecting identities on reproductive health outcomes.

Research should examine the distinct barriers to different groups and assess the effectiveness of targeted intervention. This future-oriented trajectory will ensure that reproductive rights are maintained, and that health equity is increasingly achieved. The reproductive rights and health equity movement demands prolonged efforts at varying levels. The adoption and interaction with the rich intersection of intersectional identities ensure that stakeholders develop a more equal and equitable system of reproductive health care. Such a commitment is essential because the reproductive justice movement is at the forefront of creating wider gender and social justice.

By sustained research, activism, and global solidarity, a great deal can be attained towards the achievement of the right and ability of all women to exercise independent control over their own reproductive lives.

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ADs That Spark Debate: Puffery Vs. Disparagement in the Spotlight!

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Abstract

In today's era of battle of brands, the proverb "*Necessity is the mother of invention*" has evolved, giving way to the notion that *"Invention is the mother of necessity."* As brands vie for consumer attention, new products are continually introduced, creating markets that did not previously exist. This is largely facilitated by advertising, which plays a crucial role in informing the public about these innovations. Advertisements not only raise awareness but also shape consumer perceptions and preferences, making them an integral component of our economic and social framework. Comparative advertising is defined as the practice of promoting one's products or services by contrasting them with those of competitors, raises significant legal and ethical questions. This paper explores the complex landscape of comparative advertising, specifically focusing on the distinctions between puffery and disparagement. As businesses increasingly leverage trademarks as symbols of reliability and brand identity, the competitive advertising strategies employed often tread a fine line between legitimate promotion and misleading claims. The paper also highlights the historical evolution of comparative advertising and its regulatory environment, particularly in India and its comparison to other jurisdictions as well, where significant legislative changes have shaped current practices. At the end, it seeks to contribute to ongoing discussions about fair competition in marketing while providing insights into how businesses can navigate this intricate legal landscape responsibly.

Keywords: *puffery, disparagement, comparative advertising, trademark infringement, exaggeration, business ethics, consumer protection, competition.*

1. Introduction

In this era of commercialisation, trademarks have evolved from being the exclusive identifiers of services and goods to the greater representation of a company's reliability, loyalty to its customers and its overall brand image. To expand on the notion of what a trademark actually is, *'a trademark is essentially the name of a business, its symbol and even its logo*[1]*'*, as it gives a firm its identity and it is the goodwill that a business has worked hard to build. Due the distinct characteristic of a trademark a company becomes more appealing to its customers, as it builds their faith in the business while making it incomparable to other brands. With the growth of competition between businesses in an industry, businesses have the tendency of using competitive advertising strategies to market their goods or services.[2] However, such a method tends to have legal issues with it, concerning trademark infringement and exaggerated representations known as 'puffery'.

'Comparative Advertising' is promoting one's goods or services by contrasting them with those of rivals, either directly identifying them or indirectly. These comparisons, which frequently assert superiority or equivalency, can draw attention to similarities or contrasts. The two main components of the practice are '*puffery*' and '*denigration*'. Making exaggerated, opinion-based claims about one's product is known as puffery, but denigration is when such assertions transcend lines and disparage rival products, a practice generally prohibited by courts.

The challenge lies in balancing three stakeholder interests: advertisers seeking to maximize sales through persuasive marketing, competitors protecting their reputation against false or denigrating claims, and consumers who deserve accurate product information to make informed choices. The key question remains: what are the appropriate limits for comparative advertising that protect all parties' legitimate interests?[3] In this paper, the author(s) aims to explore the legal framework surrounding comparative advertising, focusing on the distinctions between trademark infringement and puffery by examining relevant laws, guidelines, and case studies and a comprehensive analysis of how comparative advertising is regulated in different jurisdictions.

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[1] Parth Mahajan, Trademark Protection in India with Special References to Unregistered Trademark Use, 6 JETIR 164, 165 (2019).
[2] Rupa Khanna Malhotra, A Study on Comparative Advertising in India, 9 TURCOMAT 330, 331 (2018).
[3] HARVARD BUSINESS REVIEW, https://hbr.org/1989/05/us-vs-them-the-minefield-of-comparative-ads (last visited Jan. 2,2025).

2. Legal Framework of Comparative Advertising

Comparative advertising is a marketing strategy that involves the direct or indirect comparison of one's products or services with those of its competitors. This approach aims to highlight specific features, advantages, or selling points to demonstrate the superiority of the advertised goods. While comparative advertising can effectively engage consumers and stimulate competitive innovation, it also raises significant legal considerations, particularly when references to competitor's trademarks or products are made.[4] The primary challenge associated with this strategy is to ensure that comparisons are truthful, non-disparaging, and compliant with established legal standards of fairness and accuracy. Adherence to these standards is essential to mitigate the risk of legal repercussions and to maintain ethical marketing practices.

2.1 Historical Background

Comparative advertising begins its roots in the early 1900s, when consumer markets were expanding, and different media channels were being developed. In the beginning, companies focused on indirect marketing by making vague assertions about their products being superior instead of outright making comparisons with competitor products.[5]

The 1950s saw the advent of mass media, a transformation that greatly altered advertising practices. During this time, businesses started employing techniques such as direct comparison in their advertisements to better connect with their target audiences. Avis's "We Try Harder"[6] and Pepsi's "Pepsi Challenge"[7], are the notable examples which shows the transformation how products were advertised while at the same time revealing the vast comparative advertising potential. At the same time, however, they did make it apparent how difficult and complex such a marketing strategy is. As the use of comparative advertising has been increased, legal frameworks have begun to emerge to regulate its use. These regulations aim to strike a balance between promoting healthy competition and safeguarding the rights of both competitors and consumers. The codified rules that have developed over time continue to shape the practice of comparative advertising, ensuring that it remains a powerful yet equitable marketing tool.

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[4] Bar And Bench, https://www.barandbench.com/law-firms/view-point/comparative-advertising-lakshman-rekha (last visited Jan. 1, 2025).
[5] Meghna Singh, Comparative Advertising Effectiveness with Legal and Cross Culture Framework, 3 IJRMP 54, 55 (2014).
[6] The Denver Post, https://www.denverpost.com/2013/08/13/we-try-harder-the-story-of-most-brilliant-ad-slogan-of-the-20th-century/ (last visited Dec. 28, 2024).
[7] The Brand Hopper, https://thebrandhopper.com/2024/07/24/a-case-study-on-pepsi-the-pepsi-challenge-campaign/ (last visited Dec. 28, 2024).

2.2. Laws on Comparative Advertising in India

The structure of laws concerning comparative advertising in India has gone through a tremendous change from controlling monopoly to now a broad competition regime that aims at free trade practices. This change is primarily evident in some prominent Acts such as the Monopolies and Restrictive Trade Practices Act, 1969[8] ("**MRTP**"), The Competition Act, 2002[9], The Consumer Protection Act, 1986[10] ("**Consumer Act**"), as well as The Trade Marks Act of 1999[11] ("**TM Act**"). All these laws together indicate the limits within which comparative advertising is acceptable with the intention of protecting the rights of advertisers and their competitors as well as the consumers.

Advertising is regulated under Article 19(1)(a) of the Indian as in ***Hamdard Dawakhana v. Union of India***[12], the Supreme Court ("**SC**") excluded advertising from free speech protection, viewing it merely as commercial speech driven by profit motives. However, economic liberalization transformed this perspective as market competition intensified and advertising became crucial for consumer choice and market dynamics. In ***Tata Press v. Mahanagar Telephone Nigam Ltd.***[13], where advertising was deemed beneficial for consumer awareness and information dissemination in a free market economy, marking a pivotal change in its constitutional status and acknowledging its broader societal role beyond commercial interests.

The **MRTP Act** was first enacted in 1969 and subsequently amended in 1984 which represents a new legislative effort in India aimed at preventing monopolistic and unfair trade practices. The primary objective of the MRTP Act was to protect consumer interests, particularly against misleading advertisements and deceptive marketing practices. Under Section 36A of the MRTP Act, "*unfair trade practices*" was broadly defined to encompass any deceptive or false claims that mislead consumers. This provision was particularly dealing with comparative advertising, which involves presenting a product or service as superior to that of a competitor. Such advertising practices often come under scrutiny when the claims made cross the threshold into disparagement or misrepresentation.

The MRTP Act thus served as a critical regulatory framework that seeks to ensure that comparative advertising remains truthful and does not mislead consumers. By establishing guidelines for what constitutes unfair trade practices, the Act aims to improve a fair competitive environment while safeguarding consumer rights. The

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[8] The Monopolies and Restrictive Trade Practices Act, 1969, No. 54, Acts of Parliament, 1969 (India).
[9] The Competition Act, 2002, No. 12, Acts of Parliament, 2002 (India).
[10] The Consumer Protection Act, 1986, No. 68, Acts of Parliament, 1986 (India).
[11] The Trade Marks Act, 1999, No. 47, Acts of Parliament, 1999 (India).
[12] Hamdard Dawakhana v. Union of India, AIR 1960 SC 554 (1959) (India).
[13] Tata Press v. Mahanagar Telephone Nigam Ltd., (1995) 5 SCC 139 (1995) (India).

MRTP Act and its regulatory body, the MRTP Commission, played a very significant role in curbing unfair advertising practices. However, with the economic liberalization of the 1990s, the need for a more dynamic legal framework led to its repeal and replacement by the **Competition Act, 2002**.

In the case of ***M. Balasundram v. Jyothi Laboratories***[14]**,** The MRTP Commission clarified that claims of superiority in advertising do not automatically constitute disparagement unless the competitor's product is identifiable through direct or indirect reference. In the case of ***Palmolive (India) Limited v. Vicco Laboratories ("Palmolive v. Vicco")*** [15] **,** the Commission emphasized that while comparative advertising is permissible, it must not ridicule or defame the competitor's product. One important criterion for judging whether or not an advertising constitutes disparagement is identifiability through branding or contextual signals.

The **Competition Act of 2002**[16] has altered the '*Regulatory Environment'* of the country by allowing the promotion of healthy competition and the advancement of consumer welfare. The act created the Competition Commission of India ("**CCI**") which took over the MRTP commission's regulatory powers. This act does not deal with all aspects of comparative advertising yet Section 3 [17] bans anti-competitive agreements and practices. Any form of comparative advertising that deceives the consumer, restricts competition and damages market competition might be subject to the law[18]. The CCI focuses on all market participants, and ensures that they behave according to the fair competition standards. In the case, where misleading comparative advertising affects competition, the CCI has the power to carry out investigations and impose sanctions on the perpetrators. CCI's main aim is to focus on the non-competitiveness of various practices but their functions have a direct effect on advertising practices.

The **Consumer Act**[19] was passed as a consumer legislative provision that intended to ensure the protection of consumer rights. This Act allowed a redressal system for the grievances that may arise in regards to the goods and services. However, it faced difficulty in redressing issues related to unfair trade practices such as misleading advertisements. Even allegations of unfair advertisement were very seldomly considered unless they were if a case over the purchase of a commodity was intended. Apart from the consumers who were deceived by the advertisement, there were no other entities that could

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[14] M. Balasundram v. Jyothi Laboratories, 1995 (82) CC 830 (1994) (India).
[15] Palmolive (India) Limited v. Vicco Laboratories, 1997. (5) CTJ 488 (1997) (India).
[16] *Supra* note 9.
[17] The Competition Act, 2002, § 3, No. 12, Acts of Parliament, 2002 (India).
[18] Naveena Durairaj & Bhavana Duhoon, *Comparative Advertisement: A Comprehensive Overview*, 3 NLIU LAW REVIEW 160, 164 (2013).
[19] *Supra* note 10.

lodge complaints through the Act. The only actions that were available against misleading advertisements were through consumers, consumer organizations or the state bodies. The second act is the *Consumer Protection Act, 2019*[20], which repealed the prior act from 1986, which made further that brands' misleading advertisements are illegal as well. It also gave authority to the regulatory bodies to take appropriate action against false advertising and violation of the law which included, fines and jail time for offenders.[21]

In India, the **Trade Marks Act of 1999**[22] is the primary law with respect to Intellectual Property ("**IP**") and advertising comparisons and it allows registered trademarks to be used in advertising as long as it is not considered trademark infringement or dilution. Section 29(8) of the Act[23] states that it constitutes infringement if an existing trademark has been used without authorization in any way that is likely to confuse people or consumers or is likely to mislead them as to the source of the goods or services. Advertising may be done by comparison as long as it is the truth and does not belittle or disparage anybody. Both advertisers and viewers should be cognizant of the fact that other trademarks of the competition may be used in here to make comparisons but not in bad ways, like slandering, misleading or ridiculing them. The Act seeks to provide an equal opportunity to the owners of the trademark as well as the consumers who should be able to receive the correct information on the product. Courts have suggested that advertising by comparison should be aimed at improving the consumer's knowledge rather than putting down the competition.

The **Advertising Standards Council of India's** ("**ASCI**") primary function is to formulate practices for advertising in India which includes the more complex area of advertisement which is comparative means of ads. It was established in 1985 as a self-regulatory body and its primary aim is to maintain a fair and just competitive environment in the business world through fair and ethical advertising of the services and goods on offer. Its Code for Self-Regulation has become a pillar in advertising regulation, providing reliable guidelines on false advertisements, disparagement, or unfounded comparisons of goods or services. The ASCI code [24] comprehensively aims to cover the habits of advertisers in a way that no content is published or aired in an advertisement that does not comply with all ethics. Chater IV of this Code looks at another aspect, comparative advertising. The chapter outlines numerous guidelines designed to ensure that advertisements are not deceptive or misleading

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[20] The Consumer Protection Act, 2019, No. 35, Acts of Parliament, 2019 (India).
[21] Riya Rose Melcum, *Comparative Advertisement and Consumer Protection In India,* 12 IJCRT 783, 784 (2024).
[22] *Supra* note 11.
[23] The Trade Marks Act, 1999, § 29(8), No. 47, Acts of Parliament, 1999 (India).
[24] The Code for Self-regulation In Advertising, 1985, http://www.ascionline.org/index.php/asci-codes.

in nature and are accurate, open and constructive. The key principles include:

- Ensuring advertisements are truthful and not misleading.
- Avoiding disparagement or ridicule of competitors' goods or services.
- Substantiating claims with evidence, particularly in comparative advertisements.

3. Comparative Advertising and the Thin Line Between Disparagement and Puffery

3.1 Puffery

'*Puffery*' is a concept that allows businesses to make exaggerated, subjective claims about their products or services to attract customers. These claims are not intended to be factual or objectively verifiable but are instead expressions of opinion designed to appeal to consumers' emotions and preferences.[25] For example, a statement like "*the best coffee in the world*" or "*our detergent makes your clothes whiter than ever before*" is a classic example of puffery. Such statements are not expected to be taken literally by consumers but are recognized as marketing tactics which are meant to create a favorable impression.[26] Courts have consistently recognized that puffery is permissible because it does not mislead reasonable consumers. Unlike factual claims, which are subject to strict scrutiny and require substantiation, puffery is understood to involve subjective opinions that cannot be objectively measured. For instance, the claim "our product is the best" is seen as a subjective assertion that consumers are capable of interpreting as promotional exaggeration.

In the landmark case of ***Reckitt & Colman of India Ltd. v. Kiwi TTK Ltd***.("**Kiwi TTK**") [27],wherein the Hon'ble court has laid down few principles regarding the permissibility of puffery in advertising:

- A seller is free to claim that their product is the best in the world, even if this assertion is false.
- They may also assert that their product surpasses that of competitors, regardless of the truth of such statements.
- When making claims about their product's superiority, sellers can compare its advantages to those of others.

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[25] M.T. Wroblewski, *What Is Puffery in Advertising?*, SMALL BUSINESS, (Dec. 28, 2024, 9:30 PM), https://smallbusiness.chron.com/puffery-advertising-24357.
[26] J. THOMAS MCCARTHY, MCCARTHY ON TRADEMARKS AND UNFAIR COMPETITION, (4th ed. 2010).
[27] Reckitt & Colman of India Ltd. v. Kiwi TTK Ltd., [1996] 63DLT 29 (1996) (India).

- However, while claiming superiority, they must not disparage or defame the products of competitors, as this constitutes slander.

- If no defamation occurs, then no legal action can be taken, and if defamation is present, the court can issue an injunction against further defamatory statements.

The court laid down the principle that while puffery is permissible, it must not cross the line into disparagement, which could harm a competitor's reputation or business.[28] This principle was further affirmed in ***Pepsi Co. Inc. v. Hindustan Coca-Cola Ltd.*** ("**Pepsi v. Coca Cola**")[29], wherein the court recognized puffery as a legitimate market strategy and a form of healthy competition. The court acknowledged that advertisers often use creative and exaggerated claims to promote their products and that such claims are an accepted part of commercial advertising. The emphasis, however, was on ensuring that these statements remain within the bounds of fair competition and do not mislead consumers or unfairly target competitors.

Another critical aspect of puffery is the understanding that consumers are generally capable of discerning between exaggerated promotional statements and factual claims. Courts have upheld that reasonable consumers do not rely on puffery to make purchasing decisions. Instead, they view such claims as a seller's enthusiasm for their product.[30] Puffery serves as a seller's privilege to market their products enthusiastically without the fear of legal repercussions, provided their statements are not defamatory or misleading.

3.2 Disparagement

'*Disparagement*' refers to any statement, representation, or claim made by a seller that unfairly devalues or diminishes the reputation of a competitor's goods, services, or business.[31] This can occur through explicit or implicit assertions that question the quality, performance, or reliability of the competitor's offerings. Unlike permissible puffery or legitimate comparisons, disparagement involves elements of falsehood, malice, or defamation, which will render it unlawful.

The essentials of disparagement are:

1. The statement must specifically pertain to the competitor's goods, services, or business.

2. The statement must be false, misleading, or defamatory.

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[28] Reckitt & Colman of India Ltd. v. M.P. Ramachandran & Anr., [1999] PTC (19) 741 (1998) (India).
[29] Pepsi Co. Inc and Anr. v. Hindustan Coca Cola and Ors, [2003] 27 PTC 305 Del (2003) (India).
[30] *Supra* note 25.
[31] Dabur India Ltd v. Wipro Limited, Bangalore, [2006] 36PTC 677 (Del) (2006) (India).

3. The statement must result in harm to the competitor, such as reputational damage or loss of market share.

Section 29(8) of Trademarks Act, 1999, does not permit disparagement and it states that any advertising that uses a registered trademark violates that trademark if it:

a) unfairly exploits the mark and if it is contrary to the ethical business or industrial practices

b) detracts from the mark's distinctiveness

c) harms the mark's reputation.[32]

In this realm of advertising, there exists a gray area between lawful puffery and infringement. [33] Comparative advertising is permissible under Indian law, provided it adheres to principles of truthfulness and fairness. Sellers are allowed to highlight the advantages of their products by drawing comparisons with competitors, provided such comparisons are based on factual, objective criteria and do not defame or demean the competitor's products. However, when the comparison includes misleading claims or implicit suggestions that the competitor's product is inferior or substandard, it crosses the threshold into disparagement. Comparative advertisement usually lies between Puffery, which is a form of legal exaggeration in order to market a product and Disparagement is presenting false or misleading statement to damage one's reputation.

In the case of ***Dabur India Ltd. v. Wipro Ltd.*** ("**Dabur v. Wipro**")[34], the Delhi High Court ("**DHC**") elaborated on the distinction between comparative advertising and disparagement. The court observed that while comparative advertising is a legitimate tool for promoting competition, it must not undermine the principles of fairness by misleading consumers or maligning competitors. The court emphasized that disparagement not only harms the reputation of the targeted business but also disrupts fair market competition, which is detrimental to consumer welfare.

In the landmark case of ***Dabur India Limited v. Shree Baidyanath Ayurved Bhawan Pvt. Ltd.*** ("**Dabur v. Baidyanath**")*[35]*, wherein the Hon'ble Calcutta High Court has directed Baidyanath Ayurved to remove or modify four advertisements for its "Chyawanprash Special," as they disparaged other brands, including

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[32] *Supra* note 23.
[33] Uphar Shukla, *Comparative Advertising and Product Disparagement vis – a - vis Trademark Law*, 11 JOURNAL OF IPR 409, 414 (2006).
[34] *Supra* note 31.
[35] Dabur India Limited v. Shree Baidyanath Ayurved Bhawan Pvt. Ltd. (C.S. No. 232/2022) (2022) (India).

Dabur, by making false and misleading claims. Dabur alleged that the ads implied Baidyanath's product was superior and other brands, including theirs, lacked essential ingredients. The Court found that the claim about rival products having only 42 ingredients was false and amounted to generic disparagement, even without directly naming Dabur.

In a recent case of ***Beiersdorf Ag v. Hindustan Unilever Limited,*** [36] wherein the Hon'ble Delhi High Court has restrained Hindustan Unilever Ltd. (HUL) from engaging in disparaging marketing practices against Beiersdorf AG's "NIVEA" brand. Beiersdorf alleged that HUL used misleading comparisons between NIVEA's heavier crème and Ponds' lighter gel, targeting NIVEA's distinctive blue packaging. The court emphasized that while comparative advertising is protected under Article 19(1)(a) of the Constitution[37] and it must not involve disparagement or misleading tactics. The court upheld NIVEA's trade dress recognition and found HUL's activities deceptive, creating a negative perception of NIVEA. The judgment underscores the need for fair competition, protection of trademarks, and the scrutiny of marketing campaigns to prevent unfair practices in the FMCG sector.[38]

In ***Marico Limited v. Alpino Health Foods Private Limited*** [39], wherein Marico, a leader in the oats market with its "Saffola Oats", filed a case of generic disparagement against Alpino, whose humorous ads criticized oats generically as "bland" and a "scam". Despite Alpino targeting the oat category as a whole and not Marico specifically, the court granted an interim injunction, deeming the campaign harmful to Marico's trade. Alpino's exaggerated claims, clearly comedic, did not allude to Marico's product, and legal precedents suggest that such advertising is protected under free expression.[40]

Legal standards, such as those prohibiting false claims, disparagement, or misleading comparisons, serve to protect consumer trust and promote healthy competition. [41] Failure to maintain the balance between hyperbolic claims and denigration results in legal disputes, often leading to damage to a brand's reputation, and decline of consumer trust. On the other hand, adhering to these principles not

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[36] Beiersdorf Ag v. Hindustan Unilever Limited CS(COMM) 300/2021 (2024) (India).
[37] INDIA CONST. art. 19, cl. 1(a).
[38] Sharad Vadehra & Aakriti Vadehra, *Comparative Advertising In India: Beiersdorf AG v. Hindustan Unilever Limited*, MONDAQ (Jan. 01, 2025, 10:20 AM), https://www.mondaq.com/india/advertising-marketing-branding/1470702/comparative-advertising-in-india-beiersdorf-ag-v-hindustan-unilever-limited#:~:text=Case%20Summary&text=Beiersdorf%20AG%2C%20known%20for%20its,tub%20resembling%20'NIVEA%20Cr%C3%A8me'.
[39] Marico Limited v. Alpino Health Foods Private Limited, 2024 SCC Online Del 1970 (2024) (India).
[40] Anushka, *Delhi High Court issues notice to Marico Ltd. in application to set aside injunction order against Alpino Health Foods Pvt. Ltd.,* SCC ONLINE (Jan. 01, 2025, 10:45 AM), https://www.scconline.com/blog/post/2024/12/26/delhi-hc-issues-notice-marico-application-set-aside-injunction-order-against-alpino-health-foods-legal-news/.
[41] ACUITY LAW, https://acuitylaw.co.in/comparative-advertising-balancing-puffery-and-avoiding-disparagement/ (last visted Jan. 6, 2025).

only ensures compliance with regulatory frameworks but also builds long-term credibility and goodwill. Advertisers must therefore exercise caution, ensuring their campaigns are compelling yet responsible, striking a balance that resonates with consumers while respecting competitors and upholding the integrity of the advertising industry.[42]

4. Comparative Advertising in Different Jurisdictions

Comparative advertising operates within varied legal landscapes across the globe. Each jurisdiction strikes its own balance between fostering competitive markets and protecting IP and consumer rights. A comparative analysis of the legal frameworks in the United States, the European Union, India and United Kingdom reveals both commonalities and unique approaches to regulating this marketing strategy.

4.1 India

In India, the first legislation dealing with trademarks was the Indian Merchandise Act, 1889. During this period, disputes related to trademark infringement or passing off were addressed under Section 54 of the Specific Relief Act, 1887[43], while issues concerning registration were managed under the Registration Act, 1908.[44] The Indian Merchandise Act, 1889, was eventually repealed in 1940, leading to the enactment of the Trademark Act, 1940. Subsequently, the Trade and Merchandise Marks Act, 1958, replaced both the Indian Merchandise Act, 1889, and the Trademark Act, 1940, introducing Section 129 for trademark registration.

Later, the Trademark Act of 1999 was introduced, coming into effect on September 15, 2003, and repealing the Trade and Merchandise Marks Act, 1958. The concept of comparative advertising in trademark law became prominent with the Trademark Act of 1999. Specifically, Section 29 of the Act addresses the infringement of registered trademarks, with Section 29(8) highlighting infringement through advertising. It stipulates that advertising infringes a registered trademark if it unfairly benefits from or deviates from honest practices, damages the distinctiveness of the trademark, or harms its reputation.

The Trade-Related Aspects of Intellectual Property Rights ("**TRIPS**") Agreement[45], which came into effect in 1995 as part of the World Trade Organization ("**WTO**") framework[46], further reinforced trademark protection in India. The TRIPS Agreement mandates member countries

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[42] *Ibid.*
[43] Section 54, Specific Relief Act, 1887, 1 Ind. Acts 20 (1887).
[44] Registration Act, No. 16 of 1908, 2 Ind. Acts 135 (1908).
[45] Agreement on Trade-Related Aspects of Intellectual Property Rights, Apr. 15, 1994, 1869 U.N.T.S. 299.
[46] Marrakesh Agreement Establishing the World Trade Organization, Apr. 15, 1994, 1867 U.N.T.S. 154.

to provide adequate protection to trademarks, including the prevention of unfair competition through misleading advertising and product disparagement. This international agreement aligns with domestic trademark law, ensuring that India complies with global standards for protecting intellectual property rights, including the enforcement of provisions that address the misuse of trademarks in comparative advertising.[47]

4.2 United States

The United States is one of the most permissive jurisdictions for comparative advertising, emphasizing the promotion of consumer choice and fair competition. Trademark regulation in the United States has been well-established since the enactment of the **Lanham Act, 1946**[48], which governs trademark infringement, dilution, and false advertising. Before this Act was enacted, fair advertising standards were mostly enforced by regulatory organisations like The **Federal Trade Commission ("FTC**") and International Trade Commission ("**ITC**").[49] The FTC enforces truth-in-advertising standards, ensuring that advertisements do not deceive consumers or harm competition. The key principles of this commission include that:

- Advertisements must be factual and verifiable.
- Disparagement of competitors' products is prohibited.
- Use of a competitor's trademark is allowed, provided it is necessary for comparison and it does not create confusion.

Section 43(a) of the Lanham Act[50] provides individuals with the right to pursue legal remedies against those who use false or misleading information in relation to goods or services. This provision is designed to prevent unfair competition and protect both consumers and businesses. It addresses two primary types of claims: (i.) *False Advertising* which prohibits the dissemination of false or misleading statements about a product or service that could deceive consumers and influence their purchasing decisions and (ii.) *False Designation of Origin* which prevents the use of names, symbols, or other representations that are likely to cause confusion about the origin, sponsorship, or approval of goods or services.

Under this section, claimants can seek relief when such actions result in damage to their business reputation, brand identity, or financial interests, ensuring a fair and competitive marketplace. A

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[47] Shruti S Mathew, *Comparative Advertisement and Trademark Infringement- Study of Indian And UK Laws*.
[48] Lanham Act, 15 U.S.C. §§ 1051-1141n (2012).
[49] John. E. Villafranco et al., *Comparative Advertising Law in the US*, (Jan. 5, 2025), http://us.practicallaw.com/.
[50] *Supra* note 48.

notable case is ***Playboy Enterprises, Inc. v. Frena***[51], where the court held that unauthorized use of Playboy's trademarked images by a bulletin board service amounted to trademark infringement. The judgment underscored the principle that any unauthorized use creating consumer confusion about sponsorship or affiliation constitutes infringement.

In the case of ***American Home Care Products Corp vs. Johnson & Johnson,***[52] the Hon'ble Court has laid down the factors to determine product disparagement in comparative advertising. The factors are:

i. Incorrect and misleading claims were made against the complainant in an advertisement by the advertiser;
ii. Misleading claims lead to actual deception in the minds of the public;
iii. The deception is quantifiable to impact a customer's mind about the complainant's product;
iv. There is actual injury or likelihood of injury caused to the complainant in terms of loss of revenue, complainant's reputation, etc.[53]

4.3 European Union

The European Union adopts a more cautious stance, emphasizing consumer protection and fair competition. It has developed a unified approach to trademark protection through the **European Union Trade Mark** ("**EUTM**") system, allowing businesses to register trademarks across member states. The EU places significant emphasis on consumer protection and fair competition, particularly in regulating comparative advertising and misleading claims.

For instance, the EU's *Directive 2006/114/EC*[54] on misleading and comparative advertising prohibits advertising that deceives consumers or tarnishes a competitor's trademark. The EU adopts a consumer-centric approach, ensuring that advertising remains truthful and fair.[55] The Key Principles include: (i.) comparisons must not be misleading or deceptive; (ii.) they must objectively compare relevant and verifiable features of competing products; (iii.) advertisements must not discredit or denigrate a competitor's trademark, trade name, or other distinguishing marks.[56] In ***O2 Holdings Ltd. v. Hutchison***

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[51] Playboy Enterprises, Inc. v. Frena, 839 F. Supp. 1552 (U.S.).
[52] American Home Products Corp. v. Johnson & Johnson, 654 F. Supp. 568 (U.S.).
[53] JUSTIA, https://law.justia.com/cases/federal/district-courts/FSupp/654/568/1689861/ (last visited Jan. 1, 2025).
[54] Directive 2006/114/EC of the European Parliament and of the Council concerning misleading and comparative advertising (codified version), O.J. L 376, 21 (Dec. 27, 2006).
[55] Weronika Woźna-Burdziak, *A Practical Analysis of Comparative Advertising*, 24 ERSJ 1019, 1020 (2021).
[56] *Supra* note 50.

3G UK Ltd.,[57] the European Court of Justice ruled that the use of a competitor's trademark in comparative advertising is permissible under EU law, provided it meets the fairness and transparency requirements of the directive.

4.4 United Kingdom

The *Trade Marks Act, 1994*[58], in the UK provides comprehensive protection for registered trademarks. Under Section 10(3) [59], infringement can occur even without consumer confusion if the use of a trademark takes unfair advantage or is detrimental to its reputation. In ***BMW v. Deenik***, [60] the court clarified the permissible use of trademarks by non-authorized dealers in advertising. Ronald Karel Deenik, a garage owner specializing in repairing and selling second-hand BMW cars, used the BMW trademark in his advertisements, prompting BMW to allege trademark infringement, arguing it misled consumers into believing Deenik was affiliated with BMW. The court ruled that Deenik could lawfully use the BMW trademark to inform the public about his services, as long as the use was purely descriptive (e.g., "repairs and maintenance of BMWs") and did not imply any formal connection with BMW. However, any use suggesting an economic or official relationship with BMW that could confuse consumers was prohibited.

A comparative analysis of the legal frameworks governing comparative advertising is that while the United States adopts a permissive stance, emphasizing consumer choice and fair competition under the Lanham Act, the European Union and United Kingdom focus more on safeguarding consumer protection and ensuring fair market practices through specific directives and trademark laws. India, influenced by international standards like the TRIPS Agreement, addresses comparative advertising primarily through the Trademark Act, 1999, striking a balance between honest commercial practices and trademark protection. Across all jurisdictions, a common thread emerges which is the necessity for transparency, factual accuracy, and the avoidance of misleading or disparaging claims. This global perspective highlights the importance of aligning advertising strategies with legal and ethical principles to foster fair competition and protect consumer and trademark owner rights.

5. Judicial Interpretations

The statutory framework regulating comparative advertising in India demonstrates an intricate interaction between promoting fair competition and upholding ethical business conduct. Comparative advertising, a prevalent marketing strategy, enables companies to

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[57] O2 Holdings Ltd & Anor v Hutchison, [2008] WLR (D) 193 (ECJ).
[58] Trade Marks Act 1994, c. 26 (U.K.).
[59] *Id.*, § 10(3).
[60] Bayerische Motorenwerke, AG v. Deenik (1999) ETMR 399 (ECJ).

highlight the superiority of their products compared to those of competitors. This approach often draws a fine line between acceptable puffery, exaggerated but non-deceptive claims and inappropriate disparagement, when a competitor's product is unfairly downgraded. The Indian judiciary has dealt this conundrum in multiple landmark judgments, adopting guiding principles that delineate norms of comparative advertising.[61]

The fundamental common law stance on the subject was found by a ruling of the Chancery Division in ***De Beers Abrasive v. International General Electric Co***.[62] Herein, a maker of natural diamond abrasive sued a manufacturer of a competing abrasive derived from synthetic diamonds, on the ground that that latter had distributed a pamphlet featuring a laboratory experiment report comparing the performance and attributes of the two goods. The Court recognised the same to be a more dramatic portrayal of the defendant's claim regarding the superiority of its goods. Statements of this sort were deemed to be instances of plain puffery, with an attempt being made on part of the maker to inflate the benefits or utility of its products, either in absolute terms, or by way of a comparison with rival products.

One of the very first and vital case in India in this realm is ***Kiwi T.T.K.*** case[63], where the court addressed allegations of disparagement in an advertisement comparing shoe polishes. The plaintiff had argued that the defendant's advertisement portrayed their product, Cherry Blossom, in an inferior manner. The DHC observed that while a trader is free to oversell the virtues of their product, such claims must not disparage or malign a competitor's offerings. The judgment laid the groundwork for distinguishing puffery from disparagement, emphasizing that competitive advertising should not cross into the realm of unfair trade practices.

The principles were further refined in ***Reckitt & Colman of India Ltd. v. M.P. Ramachandran and Anr.***[64], popularly known as the Robin Blue v. Ujala case. Here, the plaintiff alleged that the defendant's advertisement denigrated their product by suggesting it was outdated and ineffective. The court had ruled that the advertisement's implicit criticism of Robin Blue amounted to disparagement. The court enunciated key principles that:

- Traders may truthfully claim their product is the best, compare it to competitors' products, and highlight its advantages.

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[61] PHILIP KOTLER & GARY ARMSTRONG, PRINCIPLES OF MARKETING 456 (14th ed. 2012) (discussing comparative advertising strategies and their impact on consumer behavior).
[62] De Beers Abrasive v. Int'l Gen. Elec. Co., [1975] 2 All ER 599 (Ch).
[63] *Supra* note 27.
[64] Reckitt & Colman of India Ltd. v. M.P. Ramachandran, 1999 PTC (19) 741 (1998) (India).

- Traders cannot assert that a competitor's product is bad or make defamatory statements about it.

Furthermore, in ***Pepsi v. Coca-cola***[65], the court addressed the permissibility of humour and exaggeration in comparative advertising. Coca-Cola's advertisement depicted Pepsi's product as overly sweet, which Pepsi argued amounted to disparagement. The DHC disagreed, holding that the advertisement constituted mere puffery and was not intended to mislead consumers or harm Pepsi's reputation. This judgment highlighted the importance of evaluating an advertisement's intent that whether it has been made with a mala fide intention to harm the reputation of any other product or that the advertisement is a mere way of puffery, allowing room for creative expression in marketing while safeguarding competitors' rights.[66]

Later, this principle was again explored in ***Dabur India Ltd. v. Colgate Palmolive India Ltd***. ***("Dabur v. Colgate")***[67], a case concerning allegations of generic disparagement. Dabur claimed that Colgate's advertisement discredited all ayurvedic toothpastes by implying they were ineffective. The court held that while Colgate did not explicitly name Dabur, the advertisement's broad criticism of ayurvedic products amounted to disparagement. This case underscored the judiciary's recognition that disparagement can extend to an entire category of products, not just individual competitors, thereby broadening the scope of protection against unfair advertising practices.

The ***GlaxoSmithKline Consumer Healthcare Ltd. v. Heinz India Pvt. Ltd.("GlaxoSmithKline")***[68] case further illustrates the judiciary's approach to exaggerated claims. In this dispute, GlaxoSmithKline contended that Heinz's advertisement for Complan misled consumers by claiming the product had "extra growing power," implying superior health benefits compared to Horlicks. The court ruled that Heinz's claims exceeded permissible puffery and amounted to disparagement.

Similarly, in ***Procter & Gamble Home Products v. Hindustan Unilever Ltd.*** (**"Rin v. Tide case"**)[69], the advertisement directly compared Rin's efficacy to Tide's, explicitly showing the latter in a poor light. The court ruled that this amounted to explicit denigration and restrained Rin from broadcasting the advertisement. These cases were based on the principle that there is strict intolerance towards direct attacks on competitors' products under the guise of comparison.

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[65] *Supra* note 29.
[66] MADHAVI DIVAN, FACETS OF MEDIA LAW 187-190 (2006).
[67] Dabur India Ltd. v. Colgate Palmolive India Ltd., 2004 (29) PTC 401 Del (2004) (India).
[68] GlaxoSmithKline Consumer Healthcare Ltd. v. Heinz India Pvt. Ltd., 2010 (44) PTC 394 Del (2010) (India).
[69] Procter & Gamble Home Prods. v. Hindustan Unilever Ltd., 2010 (44) PTC 398 Del (2010) (India).

In ***Colgate Palmolive (India) Ltd. v. Anchor Health and Beauty Care Pvt. Ltd***.("**Colgate v. Anchor**")[70], Anchor claimed its toothpaste was the "only" product containing calcium, fluoride, and triclosan, and the "first" to provide all-around protection. Colgate argued that these claims were false and disparaging, as its own products contained the same ingredients. The court upheld Colgate's claims, stating that Anchor's advertisement misled consumers and implicitly disparaged competing products.

The courts have also addressed cases involving indirect disparagement. Like, in ***Dabur v. Wipro***[71], the advertisement depicted the superiority of Wipro's soap while indirectly implying the inferiority of all ayurvedic soaps, including Dabur's. The court ruled in favour of Dabur, stating that indirect disparagement, even without naming the competitor's product can be actionable if the intent and impact are evident. Similarly, ***Godrej Sara Lee Ltd. v. Reckitt Benckiser***[72] examined the fine line between emphasizing product strengths and belittling competitors. The court ruled that highlighting technological superiority, when backed by evidence, is permissible but must not mislead consumers or disparage rivals.

In cases such as ***Hindustan Lever Ltd. v. Colgate Palmolive India Ltd***.[73], the court observed that comparing the "effectiveness" of two products must be based on scientifically verifiable facts. Colgate alleged that Hindustan Lever's advertisement for Pepsodent exaggerated its claims of being superior in germ protection. The court emphasized that while comparative advertising encourages healthy competition, it must not deceive consumers through unverifiable claims.

Upon this, further in the case of ***Dabur v. Baidyanath***[74]**,** Dabur India Limited filed a suit at the Calcutta HC seeking a permanent injunction to restrain Shree Baidyanath Ayurved Bhawan Pvt. Ltd. from telecasting or broadcasting five advertisements for its "Baidyanath Chyawanprash Special" and argued that the defendant's claims about superior ingredients and the use of pure ghee were false and amounted to disparagement. The court held that the defendant's advertisements engaged in 'negative comparison' by misrepresenting rival products' qualities and misinforming consumers. Consequently, the court permanently injuncted four out of five advertisements but allowed the remaining advertisement to air only if the misleading claims were removed and the bottle displayed contained no specific branding other than the word "CHYAWANPRASH."

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[70] Colgate Palmolive (India) Ltd. v. Anchor Health & Beauty Care Pvt. Ltd., 2009 (40) PTC 653 Mad (2009) (India).
[71] *Supra* note 34.
[72] Godrej Sara Lee Ltd. v. Reckitt Benckiser (I) Ltd., 2006 (32) PTC 307 Del (2006) (India).
[73] Hindustan Lever Ltd. v. Colgate Palmolive India Ltd., 1998 (18) PTC 749 Cal (1997) (India).
[74] *Supra* note 35.

One very interesting case in this realm is that of ***Hindustan Unilever Limited (HUL) v. Sebamed***.[75] The defendant had aired an advertisement campaign that highlighted the pH levels of its soaps in comparison to HUL's well-established brands, such as Dove, Lux and Rin. HUL contended that these advertisements were disparaging and misleading to consumers, thereby infringing upon its brand reputation. Conversely, Sebamed defended its claims as scientifically substantiated. The Bombay HC initially issued an injunction against Sebamed's advertisements but subsequently permitted them, underscoring the necessity for transparency regarding product formulations. The court also established the settled principles of disparagements and its essential elements- the intent of the advertisement, the manner of the advertisement; and the storyline of the advertisement and the message it seeks to convey.

The following principles outline the legal position on comparative advertising:

- A trader has the right to claim that their product is the best, even if this claim is not true.
- They may also assert that their product is superior to those of competitors, even if this statement lacks factual accuracy.
- To support such claims, they can highlight the advantages of their product in comparison to others.
- However, they are not permitted to claim that a competitor's product is inferior or bad, as this amounts to slander and defamation of the competitor's goods, which is not allowed.
- If no defamatory remarks are made about a competitor's product or its manufacturer, no legal action can be taken. However, if defamation occurs, the aggrieved party can seek damages and the court may issue an injunction to prevent the repetition of such defamatory statements.

These trends in judicial decisions reveals an overarching aim to strike a balance between the freedom of commercial speech and the need to protect consumer interests and fair competition. The Indian judiciary's nuanced approach underscores the importance of intent, context, and consumer perception in determining the permissibility of comparative advertisements. By addressing challenges posed by misleading and unfair advertising, these judgments contribute to a robust legal framework that promotes transparency, consumer protection, and healthy market dynamics.

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[75] Hindustan Unilever Ltd. v. Sebamed, 2021 SCC OnLine Bom 65 (India).

6. Ethical Considerations and Impact on Competition

The concept of comparative advertising involves substantial ethical problems, particularly considering the balance between aggressive marketing methods and the need to ensure fair competition. Advertisers typically tread a fine line between legitimate comparisons and misleading or insulting claims. From an ethical perspective, comparison advertising must adhere to values of truthfulness, fairness, and respect for rivals. Ensuring that claims are validated and free from incorrect or exaggerated statements is crucial to sustaining consumer trust.

The impact of disparaging advertisements on consumer perception is one of the most important ethical considerations. Cases such as *Reckitt & Colman of India Ltd. v. Kiwi T.T.K. Ltd.*[76] and *Dabur India Ltd. v. Colgate Palmolive India Ltd.*[77] illustrate how negative portrayals of a competitor's product can mislead consumers and distort their purchasing decisions. Such practices not only harm competitors but also undermine the integrity of the marketplace. Ethical advertising should focus on highlighting the strengths of one's product rather than attacking or denigrating others.

The judiciary's [78] emphasis on consumer protection underscores that the ethical obligation of advertisers is to prioritize consumer welfare. Misleading claims, whether through direct comparisons or implied disparagement, can distraught consumer confidence and lead to a loss of trust in advertisements completely. By imposing stringent standards for substantiating claims, courts have sought to ensure that advertisements serve as a reliable source of information rather than a tool for manipulation.

Moreover, the competitive dynamics of the market are also adversely affected by unethical comparative advertising. In cases like *Rin v. Tide* case,[79] explicit denigration of a competitor's product not only disrupted fair competition but also set a harmful precedent for marketing practices. Ethical advertising also involves acknowledging the diversity of consumer preferences and avoiding generalized disparagement of entire categories of products. For example, in *Dabur India Ltd. v. Wipro Ltd.* [80] , the court's recognition of generic disparagement highlighted the need for advertisers to refrain from making sweeping statements that could mislead consumers about the efficacy of entire product categories. Similarly, the court's decision in ***Colgate Palmolive (India) Ltd. v. Vicco Laboratories***[81] stressed that

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[76] *Supra* note 27.
[77] *Supra* note 67.
[78] *Supra* note 70.
[79] *Supra* note 69.
[80] *Supra* note 34.
[81] Colgate Palmolive (India) Ltd. v. Vicco Labs., 1999 PTC (19) 727 (India).

generalizing claims such as the superiority of herbal toothpastes over fluoride-based ones could mislead consumers and harm fair competition.

Transparency plays a crucial role in maintaining ethical standards in such forms of advertisements. Every advertiser has an ethical responsibility to disclose the basis of their claims and provide verifiable data to support them. For instance, advertisements that claim a product is "better" or "more effective" must clearly indicate the parameters of comparison. This not only ensures that consumers are well-informed but also reduces the likelihood of misleading claims that damages a competitor's reputation. Misrepresentation or omission of critical details about the product's performance or attributes violates ethical norms and wear away public trust in advertising.[82] Another important ethical dimension is the impact of advertising on consumer autonomy. Misleading advertisements that exploit consumer vulnerabilities or rely on sensationalism to influence purchasing decisions can be detrimental to consumer rights. Ethical advertising practices require a commitment to respecting the consumer's right to make informed choices.

Furthermore, the rise of digital and social media has introduced new challenges to ethical advertising. Comparative advertisements often go viral on social platforms, increasing their reach and potential impact. However, the lack of strict regulations on digital advertising increases the risk of unethical practices, such as false claims or disparaging content targeting competitors. Advertisers must adapt ethical principles to the digital age by ensuring that their claims are transparent, verifiable, and respectful of competitors, even in informal or viral marketing campaigns.[83]

From a market competition perspective, ethical comparative advertising can foster innovation and drive improvements in product quality. Healthy competition incentivizes businesses to develop superior products and services, ultimately benefiting consumers. However, when advertisers resort to disparaging tactics or misleading claims, the competitive landscape becomes skewed, leading to potential monopolistic tendencies or unfair market dominance. Courts have repeatedly stressed that fair competition must be the cornerstone of advertising practices to ensure a level playing field for all market participants.[84]

Self-regulatory bodies such as the Advertising Standards Council of India (ASCI)[85] play a pivotal role in promoting ethical

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[82] D.N. Prasad v. Principal Secretary, 2005 Cri LJ 1901 (2005) (India).
[83] Dabur India Ltd. v. M/S Colortek Meghalaya Pvt. Ltd, 2010 (42) PTC 88 (2010) (India).
[84] Mark P. McKenna, Property Rights in Comparative Advertising, 44 NOTRE DAME L. REV. ONLINE 45 (2019), https://ndlawreview.org/2019/04/property-rights-in-comparative-advertising.
[85] ADVERTISING STANDARDS COUNCIL OF INDIA, COMPARATIVE ADVERTISING: GUIDELINES AND BEST PRACTICES (2020).

standards in advertising. The ASCI Code for Self-Regulation[86] in Advertising explicitly outlines that comparative advertisements must not unfairly attack or denigrate competitors. While these guidelines are non-binding, they provide a framework for advertisers to uphold ethical principles and avoid legal disputes.[87]

Therefore, ethical considerations in comparative advertising are essential to maintaining consumer trust, promoting fair competition, and upholding the integrity of the marketplace. By focusing on truthfulness, transparency, and respect for competitors, advertisers can balance the pursuit of commercial success with their ethical obligations. As the advertising landscape continues to evolve, particularly in the digital sphere, stakeholders must remain vigilant in ensuring that ethical principles guide advertising practices, thereby protecting both consumers and competitors alike.[88]

7. Challenges and Controversies Surrounding Comparative Advertising

The practice of comparative advertising, while effective as a marketing tool, has always been with challenges and debates. This form of advertising, which juxtaposes one product with another, is a '*double-edged sword'*. On the one hand, it promotes healthy competition and informs consumers. On the other, it creates potential for disputes, legal ambiguities, and ethical dilemmas.[89]

One of the most evident challenges is the absence of a codified legal framework in many jurisdictions, including India. Currently, this area is governed by a mix of provisions under the Trademarks Act, 1999, and the Consumer Protection Act, 2019, along with judicial precedents.[90] However, the lack of a unified statute creates ambiguity. For instance, the provisions under the Trademarks Act focus on infringement and dilution but do not directly address the nuances of comparative advertising. Similarly, while the Consumer Protection Act covers unfair trade practices, it does not clearly delineate the boundaries of permissible comparisons.[91] This legal vagueness often results in inconsistent judicial outcomes, as seen in cases like *Colgate v. Anchor*, where the Madras HC introduced stricter interpretations of puffery, conflicting with earlier precedents.

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[86] ASCI Code for Self-Regulation in Advertising (2007).
[87] Directive 97/55/EC on Comparative Advertising, implemented by the Control of Misleading Advertisements (Amendment) Regulations, 2000 (SI 2000/94).
[88] KENT MIDDLETON, BILL CHAMBERLIN & MATTHEW BUNKER, PUBLIC COMMUNICATION 314-315 (1997).
[89] Vanessa Katz, Regulating the Business of Comparative Ads: A Comparative Study of Law and Practice, 80 OXFORD J. LEGAL STUD. 479 (2016).
[90] V.K. AHUJA, LAW RELATING TO INTELLECTUAL PROPERTY RIGHTS 245-52 (3d ed. 2017) (examining Indian advertising law).
[91] Consumer Protection and Comparative Advertising, MANUPATRA BLOG (May 15, 2020), http://www.manupatrafast.com/blog/post/consumer-protection-comparative-advertising.

A related challenge is the reliance on legal precedents, which, although offering guidance, can lead to unpredictability owing to diverse interpretations. Courts have taken different stands on the permissibility of puffery statements or exaggerated praise that are generally not meant to be taken literally. For example, in the *Kiwi T.T.K.* case, puffery was deemed permissible as long as it did not amount to disparagement. However, in the *Anchor* case, even puffery was viewed as misleading if it created confusion among consumers. Such inconsistencies hinder advertisers from adopting clear and reliable standards.

Another significant issue is the challenge of substantiating claims made in comparative advertisements. Courts, in the cases of *GlaxoSmithKline*[92] and *Dabur v. Baidhyanath*,[93] have emphasized the need for advertisers to back their claims with scientific and tenable evidence. However, the absence of a regulatory framework to validate these claims, allows possibility for false or overstated representations. This lack of accountability not only impacts consumers trust but also disturbs fair competition. Advertisers often push the boundaries of factual accuracy, knowing that the enforcement of substantiation standards is inconsistent.[94]

The rise of digital advertising has increased these issues. Social media platforms and online marketing have given new aspects to comparative advertising. The ease of developing and spreading content has led to an increase in comparing marketing, but the lack of robust laws for digital platforms presents loopholes.[95] Viral ads typically include humour, satire, or sensationalism, which can blur the limits between permissible puffery and actionable disparagement. Moreover, the worldwide nature of internet advertising complicates compliance with varied legal norms across jurisdictions. An advertisement judged appropriate in one country may face legal action in another, generating concerns for multinational corporations.[96]

Ethical concern is one another challenge and indeed a very debatable one. Advertisements that resort to misleading comparisons or unfairly criticizing competitors, risk damaging the credibility of the entire industry. Consumers perceive such tactics as manipulative, leading to a loss of trust in advertising as a medium. The emphasis on short-term gains often overshadows the need for ethical practices, resulting in a negative impact on brand reputation. For instance, while

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[92] *Supra* note 68.
[93] *Supra* note 35.
[94] Arpan Banerjee, Comparative Advertising in India: Evolving a Regulatory Framework, 25 NAT'L L. SCH. INDIA REV. 85 (2013).
[95] Richard Stim, Comparative Advertising in Digital Age: New Challenges, 28 BERKELEY TECH. L.J. 1145, 1148-52 (2013).
[96] Sam Ricketson, The Evolution of Comparative Advertising Law, in INTELLECTUAL PROPERTY IN THE NEW MILLENNIUM 234-56 (David Vaver ed., 2018).

aggressive campaigns may generate immediate attention, they can alienate consumers who value transparency and fairness.[97]

Another area of debate is the lack of provisions for damages in cases of disparagement. Currently, the primary remedy available to aggrieved competitors is injunctive relief, which prevents the airing of the offending advertisement. However, there is no mechanism to compensate for the financial or reputational harm caused by disparaging claims. This gap in the legal framework leaves businesses vulnerable to significant losses without adequate recourse. In contrast, jurisdictions like the United States provide for monetary damages under the Lanham Act,[98] ensuring a more comprehensive redressal mechanism.

The challenges of comparative advertising are not limited to advertisers and competitors; they also affect consumers. Misleading comparisons can distort consumer perceptions, leading to uninformed purchasing decisions.[99] For example, advertisements that exaggerate the benefits of a product while subtly undermining a competitor's offering can create confusion, depriving consumers of accurate information. Strengthening the enforcement mechanisms of ASCI can enhance consumer protection and promote responsible advertising practices.

At the end, the controversies surrounding comparative advertising highlight the need for greater clarity and standardization in the law. Introducing a dedicated statute to regulate this field would provide clear guidelines on permissible practices and establish consequences for violations.[100] Such a statute should address key issues, including the substantiation of claims, the distinction between puffery and disparagement, and the provision of remedies for damages. By codifying these principles, the law can reduce ambiguities and ensure a level playing field for all stakeholders. As advertising continues to evolve in the digital age, balancing innovation with accountability will be crucial to ensuring that comparative advertising serves its intended purpose of fostering healthy competition and informed consumer choices.

8. Conclusion and Way Forward

Comprehensive research on comparative advertising demonstrates the balance between authorised puffery and illegal disparagement in modern marketing tactics. While puffery allows

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[97] Jennifer Davis, Comparative Advertising as Unfair Competition, in PERSPECTIVES ON INTELLECTUAL PROPERTY LAW 178-95 (2017).
[98] *Supra* note 48.
[99] BIPLAB KUMAR LENIN & ARUN BABU, Comparative Advertising and the Consumer - Changing Dynamics, 22 J. INTELL. PROP. RTS. 113 (2017)
[100] GEOFFERY ROBERTSON & ANDREW NICOL, MEDIA LAW 797 (2002).

businesses to make subjective, exaggerated claims about their own products' superiority through general statements like "the best" or "unbeatable," disparagement crosses legal and ethical boundaries by making false or misleading statements that specifically damage competitors' reputations. The crucial distinction resides in the objective verifiability of claims and assertions and their potential to do actual harm to competitors' market position, with courts usually upholding puffery as a type of commercial speech but condemning disparagement as unfair competition.[101]

"Too many cooks, spoil the broth." The concept of Comparative Advertising has been overlapped and intertwined with so many statutes and rights, altogether making the lines blurry, in addition to a lack of clarity of definitions and interpretations. Section 29 (8)[102] and Section 30 (1) of the Trademarks Act,[103] are not adequate to address issues related to trademark infringement, made in the garb of comparative advertising. An analysis of the legal and ethical aspects of comparative advertising in India reveals significant gaps that need to be addressed to ensure a balanced and effective regulatory framework. Comparative advertising, when conducted fairly, plays a vital role in fostering healthy competition, increasing consumer awareness, and providing market transparency. However, the current approach, which relies heavily on judicial precedents and scattered legislative provisions, lacks the consistency and clarity necessary to manage the challenges posed by this form of advertising.[104]

The absence of a specialised legislative framework controlling comparative advertising in India has led to dependence on multiple regulations, including the Trademarks Act, 1999, and the Consumer Protection Act, 2019.[105] While these rules give some protection against deceptive advertisements and trademark infringement, they fall short of adequately regulating the intricacies of comparative advertising. For example, the provisions of Section 29(8) of the Trademarks Act address trademark infringement originating from comparative advertising but do not specifically establish permitted boundaries for puffery or denigration. Similarly, the Consumer Protection Act targets unfair trade practices but excludes competing producers and dealers from its jurisdiction, leaving gaps in legal remedy.

Judicial statements have attempted to remedy these gaps, but the disparity in interpretations has produced new difficulties. For instance, while earlier rulings maintained, puffery as legal if it did not amount to disparagement, but later courts held that puffery can

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[101] National Law University Delhi, Centre For Communication Governance, Policy Paper On Regulation Of Comparative Advertising In India (Working Paper No. 2020/03, 2020).
[102] *Supra* note 23.
[103] Trademarks Act, 1999, § 30(1) (India).
[104] Ranjan Narula & Rajiv K. Choudhry, Evolution of Comparative Advertising Law in India, 16 Int'l J.L. & Legal Juris. 123, 125-28 (2018).
[105] Consumer Protection Act, 2019 (India).

confuse customers and should be controlled. Such different interpretations underline the need for a single statutory framework that clearly defines the limitations of comparison advertising and gives concrete instructions for advertisers. Establishing an independent regulating authority with capabilities to analyse advertising material and impose accountability could handle this issue efficiently.

While Indian courts have repeatedly barred disparagement, the lack of clarity in distinguishing it from allowed comparisons has led to recurrent disagreements. A consistent legal definition of disparagement, along with clear examples of allowed and improper actions, will assist prevent litigation and provide clarity to advertisers.[106] To solve these difficulties, India should draw inspiration from the legal frameworks of wealthy countries like the United Kingdom,[107] where comparable advertising is authorised under severe rules that favour transparency, justification, and fairness. Legislators should prioritize the adoption of a dedicated statute for comparative advertising that has explicit definitions, allowed techniques, and consequences for noncompliance.[108]

Lastly, while comparative advertising is a beneficial tool for stimulating competition and informing consumers, its potential for misuse demands stringent regulation. The existing legal framework in India, however growing, remains inadequate to accommodate the intricacies of modern advertising tactics. [109] By implementing a thorough regulatory regime, empowering industry groups, and promoting ethical norms, India can develop a fair and transparent advertising ecosystem that benefits consumers, advertisers, and competitors alike. Balancing the interests of all stakeholders will be crucial to ensuring that comparable advertising continues to encourage innovation and competition without compromising fairness and consumer trust.[110]

Looking ahead, the line between disparagement and puffery will certainly continue to develop as marketing platforms increase and consumer sophistication grows. Successful comparative advertising methods will increasingly focus on transparency, authenticity, and factual evidence rather than simply hyperbole or competition critique. Companies must discuss this complex landscape by setting clear internal guidelines that distinguish between acceptable puffery and

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[106] Mrinalini Singh, The Thin Line Between Puffery and Disparagement: An Analysis of Indian Advertisement Law, 56 JOURNAL OF INDIAN LAW INSTITUTE 32 (2014).
[107] Graeme B. Dinwoodie, Comparative Advertising Under the TRIPS Agreement, in RESEARCH HANDBOOK ON INTELLECTUAL PROPERTY LAW 345-67 (2016).
[108] INDIAN LAW INSTITUTE, RESEARCH BULLETIN ON COMPARATIVE ADVERTISING AND CONSUMER PROTECTION (Special Issue No. 45, 2019).
[109] Paul T. Hayden, *A Goodly Apple Rotten at the Heart: Commercial Disparagement in Comparative Advertising as Common law Tortuous Unfair Competition*, 76 IoWa L. Rev. 67 (1990-91).
[110] Charlotte J. Romano, Comparative Advertising in India: Need for a Regulatory Framework, 15 J. INTELL. PROP. RTS. 485, 487-89 (2010).

potentially detrimental disparagement, while staying conscious of varying international standards and legislation governing comparative advertising. The future of competitive marketing depends in developing new ways to highlight product advantages without resorting to harsh comparisons or unjustified claims, ultimately fostering a more ethical and constructive competitive climate that benefits both firms and customers.

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Data Portability Facets in Digital Economy: A Legal Stance of EU and India

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Abstract

Data portability refers to the uninterrupted data transmission between data controllers with the consent of the data principal. The concept of self-determination, one of the most prominent international law principles, was ingrained in data portability due to its global nature. The principle of data portability was brought forth in express letters and insulated in their data governance frameworks by the European Union General Data Protection Regulation, which is the touchstone of data portability. Data portability has an impact on the digital economy and market competition. However, it can also empower consumers excessively, posing a potential risk to the digital economy industry's consumers. One of the pertinent examples in this regard is Google's issues in Brazil, the United States, and Europe. In conjunction with the user-centric approach, this paper will investigate the advantageous effects of data portability. This paper will also address the topic of data portability and India's exceptional digital economy in the context of the pertinent provisions of Indian competitive environment , as the Digital Personal Data Protection Act of 2024 does not explicitly include data portability. Lastly, the article will respectfully suggest several critical solutions to mitigate the obstacles associated with data portability to achieve a harmonious equilibrium between its implementation and the development of the digital economy.

Keywords: Data Portability, EU GDPR, Indian Digital Economy, Principle of Self- Determination, Consumer-Centric Approach, Digital Personal Data Protection Act, 2023, Competitive environment.

1. Introduction

It is a fundamental concept that holds substantial importance among digital consumers, and data portability is one such concept. The idea of customers having the ability to make their own decisions, particularly about their personal and financial information, is

embodied. Within international law, the principle of self-determination is accorded substantial attention. Although the intrinsic nature of data is impossible to limit, restrict, or contain inside geographical bounds, data portability empowers consumers to determine the custody of their respective data. The conclusion that can be drawn from this particular circumstance is that this specific circumstance is also relevant to this principle. The term "data portability" refers to a user-centric methodology that allows users of digital service providers to exercise effective control over the data they have shared with data controllers, even while the data is still within the domain of the data controllers. Data portability is a key principle that serves as a protective mechanism for consumers if there are antitrust difficulties with data controllers. Shoshanna Zuboff, a famous legal scholar, introduced the phrases "First Text" and "Second Text" within the framework of digital fetishism. According to Zuboff, the concept of Data Portability is simultaneously pertinent to both texts. The term "first text" refers to a collection of data that includes questions from users, online transactions, and photos that have been submitted. For the sake of this discussion, the phrase "second text" refers to the data that the platform has gotten from the initial text, which may include statistical analysis. Facebook and other media platforms receive considerable benefits from the utilisation of "second text" when it comes to the statistical evaluation of their users.[1] Famous Social Media platforms like Facebook must overcome two significant challenges: first, the development of a strategy to generate revenue that is comparable to Facebook's primarily data-driven approach, which is especially important when taking into consideration the extensive data repository that Facebook has accumulated over twelve years; and second, the provision of a means by which users can efficiently establish connections with their entire network of friends located on Facebook. Data portability is an initiative that tries to address and eliminate anti-competitive activities.

2. Data Portability : An Evolving User-Centric Legal Approach

The Data Portability Project first introduced data portability as a much broader concept. This business initiative was established in 2007 to advocate unrestricted data portability in the commercial context. In 2010, the European Council recognized the challenges of safeguarding personal data and requested a review of the existing legal framework. This initiative culminated in the GDPR proposal. The concept of data portability is adaptable and can be defined in various ways, making it applicable in a wide range of situations. An emerging concept, data portability, has been introduced by the General Data Protection Regulation (GDPR) under Data Protection laws. It is a legal right that allows users to retrieve the personal information they have provided to the controller in a structured, commonly used, and machine-readable

[1] Shoshana Zuboff's the Age of Surveillance Capitalism 416 (2021).

form from the controller and transfer it between controllers without difficulty, as is technically possible.[2] Data portability is fundamentally the right to transmit personal data from a controller to another organisation or the data subject in the context of digital personal data and automated processing.[3]

Data portability signifies the data subject has the right to access, and without undue interference from the original controller, a structured, commonly used, and machine-readable format of any personally identifiable information (PII) that the controller has collected from the data subject when processing is done with the data subject's consent.[4] Data portability is an idea that has been brought up before. With data portability, consumers can keep their phone numbers even when switching telecommunications providers, just like with local number portability. European countries began permitting number portability in 2002 after the United States government passed a law requiring it in 1996 (the Telecommunications Act).[5] Additionally, under the US legal framework, the right to access one's financial records "in an electronic form usable by consumers" is a requirement of Section 1033 of the Dodd-Frank Act of 2010.[6] Regarding patient records, the US Department of Health and Human Services says it wants to "increase innovation and competition; reduce burden and advance interoperability; and promote patient access.[7] Without naming names, the Federal Trade Commission (FTC) acknowledged data portability in a 2000 case involving ReverseAuction.com. This eBay competitor used unethical and dishonest means to acquire email addresses and feedback scores from eBay consumers. Although the FTC had other grievances regarding ReverseAuction.com, one was "recognition of how eBay's control over user reputations accumulated the results of many transactions-blocked competition in online auctions.[8] If users can migrate their ratings and reputations between platforms, data portability might make this a non-issue. While FTC commissioners support data portability to " increase privacy protections without crowning corporate royalty," the agency has not yet determined that a ban on online reputation transfer is unfair or anticompetitive. Despite a September 2020 full-day meeting, the FTC has not provided any data portability rules.[9]

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[2] Johann Kranz et al., *Data Portability*, 2023 Bus. & Info. Syss. Eng'g, 599, https://doi.org/10.1007/s12599-023-00815-w.
[3] Engin Bozdag, Data Portability Under GDPR: Technical Challenges, 2018 SSRN Elec. J., 4, https://doi.org/10.2139/ssrn.3111866.
[4] D. Gill & J. Metzger, *Data Access Through Data Portability*, 8 Eur. Data Prot. L. Rev. 221, 235 (2022), https://doi.org/10.21552/edpl/2022/2/9.
[5] Helena U. Vrabec, *Data Portability as a Data Subject Right*, *in* Data Subject Rights under the GDPR 159, 161 (2021), https://doi.org/10.1093/oso/9780198868422.003.0007.
[6] Comm. on Fin. Servs. et al., Enhancing Data Security: The Regulators' Perspective 25 (2020).
[7] Comm. on Com. Sci. (senate) et al., Privacy and Data Security: Protecting Consumers in the Modern World 42 (2019).
[8] Fed. Trade Fed. Trade Comm'n, Horizontal Merger Guidelines 52 (2019).
[9] Data brokers: A call for transparency and accountability 107 (2014).

U.S. data portability guidelines are less developed than those in Europe. From 1995 to 2018, Article 29 of the Working Party, henceforth referred to as WP29 served as an advisory body for E.U. data protection agencies. The GDPR supplanted Working Party Article 29 in May 2018, with the European Data Protection Board (EDPB) adopting all guidelines and resources from Working Party Article 29.[10] The EDPB has yet to release guidance on data portability, despite the Working Party Article 29 having done so in 2017. WP29 asserted that data portability enables data subjects to obtain the personal data they have supplied to a data controller in a structured, widely-used, and machine-readable format, and to transfer that data to another without obstruction. The WP Article 29 data portability guidance is a valuable and commendable foundation for California and Europe.[11]

A vital element of data portability is the concept of interoperability. Interoperability refers to a characteristic of a product or system that allows its interfaces to be fully understood, facilitating smooth interaction with other products or systems, whether current or future, in terms of implementation or access, without any restrictions.[12] The effective execution of data portability is fundamentally dependent on achieving interoperability, which enables the smooth transfer of data across different systems. Organisations must accomplish a standardised level of interoperability to guarantee the feasibility of data portability. There are numerous common misconceptions surrounding data portability. Data portability is frequently linked to social media; however, its relevance spans a broader range of contexts. The concept of data portability, as outlined in the General Data Protection Regulation (GDPR) and the California Consumer Privacy Act (CCPA), focuses on the transferability of data across different platforms, including cloud computing, web services, smartphone applications, and other automated systems engaged in data processing.[13]

Furthermore, during data migration between platforms, users are not required to cease using the original service. The California Consumer Privacy Act (CCPA) and the General Data Protection Regulation (GDPR) permit individuals to transfer their data between platforms while maintaining the choice to continue utilizing the original platform. Individuals can transfer their data between services, thereby benefiting from the advantages offered by both

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[10] Helena U. Vrabec, *Data Portability as a Data Subject Right*, *in* Data Subject Rights under the GDPR 159, 163 (2021), https://doi.org/10.1093/oso/9780198868422.003.0007.
[11] G. Chassang et al., *Data Portability in Health Research and Biobanking:*, 4 Eur. Data Prot. L. Rev. 296, 303 (2018), https://doi.org/10.21552/edpl/2018/3/8.
[12] Liane Margarida Rockenbach Tarouco et al., *Internet of Things in healthcare: Interoperatibility and security issues*, in ICC 2012 - 2012 IEEE International Conference on Communications, 5(2012), https://doi.org/10.1109/icc.2012.6364830.
[13] I.I. Zabokrytskyy, *California Consumer Privacy Act: Review of General Provisions*, 6 L. & Soc'y 294, XXXX (2022), https://doi.org/10.32842/2078-3736/2022.6.44.

simultaneously.[14] The California Consumer Privacy Act (CCPA) and the General Data Protection Regulation (GDPR) allow individuals to request the erasure or deletion of their personal data. Individuals exercising their right to data portability can transfer personal data to an alternative platform, allowing for independent use or integration with the original medium.[15] Social media companies succeed partly due to the "first-mover advantage" concept, which allows early adopters to secure a significant market edge. The "tipping effect" refers to a situation in which a specific seller achieves a competitive advantage, resulting in a market shift in their favour.

Additionally, "network effects" occur when an individual experiences increased benefits from a service as more friends and acquaintances engage with the same platform.[16] Data portability has the potential to mitigate specific adverse effects of prior regulations; however, its validity within the framework of current antitrust and competition laws may be uncertain. Data portability should be regarded as an adjunct to enforcing antitrust and competition regulations.

3. Data Portability vis-a vis Self- Determination of Consumers

Data portability is essential to the data principal's right to self - determination because it allows him control over his personal information. An individual's right to privacy is bolstered by data portability, which is supposed to protect that person's privacy by default. Data portability is a key component of EU data governance regulation. Digital consumers have the right to obtain a structured and machine-readable copy of their submitted personal data and to transfer it to another controller without any restrictions or prohibitions imposed by the first controller, as outlined in Article 20 of EU's General Data Protection Regulation (GDPR). With data protection and privacy as its primary goals, the General Data Protection Regulation has been an essential piece of legislation in establishing rights to the portability of personal data. The right to data portability is an integral facet of EU legal framework extending their intent to introduce the user centric approach to the consumers of the digital periphery.[17]

Article 20 of GDPR states that a data controller must give persons their personal information in a frequently used , machine readable format upon request subject to the conditions laid out in Article 6(1)(a) or Article 9(2)(a) or a contractual basis as described in Article 6(1)(b)

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[14] Justin Hughes et al., SYMPOSIUM: The California Consumer Privacy Act, 2021 SSRN Elec. J., 5, https://doi.org/10.2139/ssrn.3763290.

[15] Martin H. Weik, *data portability*, *in* Computer Science and Communications Dictionary 354, 217 (2000), https://doi.org/10.1007/1-4020-0613-6_4338.

[16] Christoph Sorge & Nils Wiedemann, *Portability of Data*, 25-Maerz-2025 Jusletter-IT, 11(2025), https://doi.org/10.38023/9831d79d-a394-436d-88d4-c9948ce16661.

[17] Orla Lynskey, *Article 20 Right to data portability*, *in* The EU General Data Protection Regulation (GDPR), 502 (2020), https://doi.org/10.1093/oso/9780198826491.003.0052.

individuals also have the right to transfer this data to another data co ntroller without interference from the first controller. The right to receive data as stated earlier can be delivered to the data principal through automated means. In cases where it is technically feasible , data subjects have the right to data portability which allow them to ask for the direct transfer of data from one to another data fiduciaries. There is still a matter to be looked into that what sort of data is to be transferred and other peoples's decision on this mechanism can impact our privacy. Data portability doesn't include data mobility as there is a distinction between these two aspects.[18]

Furthermore, this right applies only when data processing is carried out through automated means. The data subject is entitled to exercise their right to data portability, which grants them the power to request the direct transmission of their personal data from one controller to another, provided that it is technically feasible. The decisions of others frequently influence our own privacy and it still needs to be determined which data should be included in the transferred data. However, data as a property right must be separate from data portability. People frequently perceive data as a property right as an alternative to strict privacy laws. Working Party's clause 29 needs to be more explicit about whose data should be included as they are about whose data should be included. To protect both those who choose to port their data and those whose data is ported alongside them, the ideas of transparency, notice-and-choice, and usage restrictions should all be in place. It's important to distinguish between data ownership and portability as Data ownership is a complex idea compared to data portability.

Education is one of the areas wherein data portability is relevant because of multifarious academic disciplines and institutions. Let us consider one analytical illustration to evaluate the notion of data portability and its pertinent implications under the aegis of Article 20 of EU GDPR. Consider the scenario where a student desires to transition from their current academic institution to a different university. The student formally requests her present university to transfer all personal data to the new educational institution. The university's storage of personal data is expected to include registration data, academic transcript information, emails retained by the university's mail provider, and any data from learning platforms, such as tests and discussion board posts. In this Regard , three elements should be taken into consideration, *firstly,* According to Article 20(3), That right does not apply to processing required for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller, which means that the controller can limit the right to data portability based on his official capacity, the nature of the task, and the public interest. In the context of general

[18] Paul Voigt & Axel von dem Bussche, *Scope of Application of the GDPR*, *in* The EU General Data Protection Regulation (GDPR) 9, 225 (2017), https://doi.org/10.1007/978-3-319-57959-7_2.

learning institutions, the restriction is not intended to encompass universities and differentiating between private and public learning institutions would need to be more logical about portability. *Secondly,* it is essential to ascertain which specific data has been contributed by the student. Grades are bestowed by university personnel, whereas the transmission of emails to students is facilitated by their respective senders. Consequently, the data in question does not give rise to a right to portability. *Thirdly*, is moving the data from one institution to another technically viable? Frequently, higher education institutions depend on databases that have been created by external entities. Should the determination of the feasibility standard be based on the viewpoint of the universities involved or the respective software developers? The online quizzes students have completed have been designed by instructors, and the discussions on the learning platform may affect a diverse group of students. Concerning the provided information, the rights and freedoms of third parties encroach upon the student's entitlement to portability.

Nevertheless , according to the norm, the transfer of this information to another controller is precluded, as the relevant parties reasonably anticipate that the information was confined to the learning platform and specific to it. The conclusion, which may be considered rather unexpected, suggests that a majority of the data held by the institution needs to be encompassed under the student's entitlement to data portability. Expressly, although the student's primary concern may be the transfer of transcript data and received emails to the new university, it should be noted that the portability of this information is not guaranteed. The outcome is satisfactory from the Art. 20 GDPR perspective if it is exclusively regarded as a regulation of competition, but If the objective of the law is to enhance data empowerment, it is likely that the rule does not effectively fulfil its intended goal in the given scenario.

4. Empowering Users : Data Portability under the EU Directive

The European Union has adopted the Directive on October 6, 2015 to foster the Digital Single Market Strategy which will be beneficial for the consumers and business enterprise. The Data portability though not in explicit manner but implied in this document in the form of digital content mobility from one controller i.e business enterprise to another controller. In this directive , the notion of data portability has been evaluated in the larger extent especially to impose reasonable restriction on the data portability of consumers across borders. [19] This directive is a positive initiative in order to strike a balance between economic growth and the privacy of the consumers that caters the sense of trust for the consumers which stands as a backbone for any commercial entity . Henceforth the European Union after evaluating

[19] Mirela Mărcuț, *Single Market and the Digital Single Market, in* Crystalizing the EU Digital Policy 75, 82 (2017), https://doi.org/10.1007/978-3-319-69227-2_3.

the figures that hinders with the economic growth of the union come up with this directive. The initiatives aim to accelerate Digital Single Market growth for consumers and enterprises. The EU Directive has the following basic objectives enshrined in this document :

1. The proposals will reduce uncertainty for businesses and consumers due to the complexity of the legal framework and business costs due to differences in contract law between Member States by eliminating key contract law-related barriers to cross-border trade.

2. Uniform standards with explicit consumer rights will boost consumer trust. 39% of internet enterprises that don't trade internationally cite national contract rules as a barrier.

3. Businesses should have legal clarity when selling goods and digital materials abroad and avoid extra costs due to different national legislation. Only 18% of individual Internet users in 2014 bought from another EU country, whereas 55% did it domestically.

4. The lack of contractual rights for poor digital content hurts consumers. Digital content includes music, apps, games, films, cloud storage, and sports broadcasts. The financial loss from the most current digital content issue and the time spent fixing it over the past year is estimated at €9–11 billion.[20]

Article 13 of the Directive pertains to the exchange of digital content instead of monetary compensation or reciprocal actions. Within the context of the digital economy, market participants are progressively recognising the worth of personal information, perceiving it to be on par with monetary assets. Digital material is frequently provided without a financial transaction but in return for non-monetary compensation, such as granting access to personal or other data. These particular business models are applicable in various manifestations throughout a significant portion of the market. Implementing a distinction based on the underperformance type will result in different business models' differentiation. This differential could create an unwarranted motivation for firms to shift their focus towards providing digital content rather than data. It is imperative to ensure equitable conditions for all participants. Furthermore, the presence of flaws in the performance characteristics of the digital content provided, apart from monetary compensation, can potentially affect the economic welfare of consumers. Hence, the dependence of the regulations outlined in this Directive on the presence of a financial transaction for the particular digital material in question should be avoided.According to Article 14 of the Directive, the scope of application of this legislation is limited to contracts involving the

[20] Irini Stamatoudi & Paul Torremans, *The Digital Single Market Directive*, *in* EU Copyright Law 651, 655 (2021), https://doi.org/10.4337/9781786437808.00027.

provision of digital content that is not obtained in exchange for monetary payment but rather in exchange for non-monetary forms of compensation. This Directive applies only to contracts in which the supplier explicitly requests and the consumer actively provides data, such as personal information (e.g., name and email address) or photos, directly or indirectly to the supplier. This data exchange can occur through various means, such as individual registration or a contractual agreement granting access to consumers' photos. Applying this Directive should be exempted in cases where the supplier gathers data essential for the digital content to operate following the contractual agreement. This may include collecting geographical location data necessary for the proper functioning of a mobile application. Also, exemptions should be granted when data collection is solely for fulfilling legal obligations, such as when consumer registration is required by applicable laws for security and identification purposes. The scope of this Directive should exclude cases in which the supplier obtains information, including personal data like the IP address or other automatically generated information such as data collected and transmitted by a cookie, without the consumer's active provision, even if the consumer consents to the use of the cookie. This provision should also not be applicable in cases where the consumer is just exposed to adverts to obtain access to digital content.

The Conjoint reading of Article 13 and 14 of the Directive delineates the reasonable restrictions on the part of data intermediaries to share the personal data to other data intermediaries either in place of price or any other consideration.

5. Data Portability as a facet of Competitive Environment: An evolving synergy in Indian Digital Economy

In 2024–2025, the size of the Indian economy will surpass $4 trillion, and nominal GDP per capita will exceed $2,800, according to an analysis conducted by the PHD Chamber of Commerce and Industry. As a result of the structural reforms implemented by the government of India over the past three years, the economic activity rate is anticipated to remain robust. The recent FY 2023-24 budget was announced when India's economy was experiencing the highest growth rate among the world's leading economies.[21] The success of Co-WIN is not an isolated occurrence. The utilisation and provision of government services on digital platforms are increasingly prevalent. India's population is at a substantial 1.4 billion, accompanied by a significant number of telecom customers at 1.3 billion, internet subscribers at 900 million, and smartphone users near 500 million. These figures highlight that only a few countries globally are currently exploring

[21] Doh-Shin Jeon & Domenico Menicucci, Data portability and competition: Can data portability increase both consumer surplus and profits?, 2023 Eur. J.L. & Econs., 151, https://doi.org/10.1007/s10657-023-09774-9.

digital innovations on a comparable scale to India. The nation's digital trajectory commenced in 2009 by implementing Aadhaar, the most extensive biometric digital identification system globally. The entity mentioned above serves as the fundamental basis upon which the digital ecosystem of India is being constructed. This ecosystem has diverse digital goods, infrastructure, platforms, and services. Many of these platforms have already amassed a user base of over 100 million individuals. A substantial portion of India's digital ecosystem is owned and managed by public-private partnerships or operates solely within the private sector.The distinguishing characteristic of the Indian model lies in its emphasis on advancing and implementing digital public infrastructure and various digital public platforms (DPIPs). One notable illustration is the India Stack, which comprises of Aadhaar, the Unified Payments Interface (UPI), and the Data Empowerment and Protection Architecture (DEPA). This framework has been established to enable the widespread utilisation of identity, data, and payment systems while ensuring fairness among participants in a digital ecosystem. The Bharat Interface for Money (BHIM) is a mobile payment platform developed by the public sector to serve as a reference app for the Unified Payments Interface (UPI). It competes directly with private entities such as PhonePe and Google Pay. [22]Many additional Development Policy Implementation Platforms (DPIPs) are currently in operation, encompassing many sectors such as healthcare, commerce, urban government, and more.

Despite the fact , India is going to be a 8 Trillion US dollar economy by 2028 but the digital economy is also rising rapidly. According to the State Indian Digital Economy Report 2023 , the digital economy will cross 1 trillion by 2030 [23].Mobile broadband subscriptions grew 40% annually from 2014-21. Internet connectivity divides pandemic-closed small and large companies. Larger firms use digital technologies more than smaller ones: 26% for online sales, 33% for websites, 12% for online marketing, and 21% for social media presence post-pandemic. 3G mobile broadband is available to 99% of Indians; however, not all use it. Rural India has twice the population of metropolitan India but just half the number of active internet users. Rural Indian women utilise the internet less than one-third. Many Digital Public Infrastructure Platforms (DPIPs) are fast scaling up, like Co-Win, which registered over a billion users in 13 months. DPIPs can increase the digital divide by creating monopolies and excluding the vulnerable if not adequately controlled. The Growing Digital Economy emancipates the practice of data portability at a larger extent and also have a greater impact on the competitive market among the digital service providers[24].

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[22] Raut Nileshkumar Kailashbhai, *Digital Economy in India-Current Situation*, 10 ACADEMICIA 1158, 966 (2020), https://doi.org/10.5958/2249-7137.2020.01671.7.

[23] India's digital economy to grow over 1 Trillion US dollar By 2030, times of india , June 6 2023 14:11 IST , https://timesofindia.indiatimes.com/business/india-business/indias-digital-economy-to-grow-over-fivefold-at-1-trillion-by-2030-report/articleshow/100789668.cms?from=mdr#

[24] *id.22*

Data portability has been recognised as a pro-competitive strategy to provide customers the power to select from various providers. Notably, data portability may lower the costs associated with switching providers for consumers, as opposed to the case where they must recreate all of the data and content they have entered into a digital content platform each time they change service providers. Customers can enter new firms, increasing competition, if they bring their data within their ambit. Comparison services in areas with complex price structures can also be made possible through data portability. Conversely, interoperability can encourage competitiveness by allowing various systems to speak with one another. This can include standards enabling real-time data sharing between services (such as cross-posting social media content across several platforms) and those helping to combine features (such as using a single account log-in across various online services). Interoperability can simplify multi-homing by allowing users to access several competitive or complementing services over a single access point. By doing this, network effects would be preserved while possibly resolving entrance barriers and fostering competitiveness in a market. The competitiveness issue regarding data portability among digital platforms can be examined by a comparative analysis of digital media operating within the same market. Consider a hypothetical scenario where two virtual platforms, platform A and platform B, compete in the same market. Platform A is the dominant operator in the market, while Platform B endeavours to penetrate the market or secure user engagement by providing a superior or more appealing service than platform A. The introduction of Platform B into the market, along with its superior product offering compared to Platform A, presents the potential for an increase in its user base. This is because platform B provides users with the option to transfer their data, enabling a seamless transition to the new platform. Consequently, platform A may experience a decline in its user count as users take advantage of data portability to effortlessly switch to the alternative forum. In the absence of data portability guarantees, platform A's presence may impede platform B's entry into the market or its capacity to expand its market share. This hindrance can harm innovation and competition, as users may need help moving between platforms due to the inability to move their data.

When a new digital platform is introduced to the market, the consolidated platform user or a new user who recognises the prospect of maximising their benefits can either migrate entirely to the new platform, known as single-homing or utilise both platforms, known as multi-homing. In both instances, there must be no consumer lock-in, and both platforms must support data portability for these options to be accessible to the user.Users can move data between the two platforms without difficulty because switching costs are minimal due to data portability unless other circumstances result in higher switching costs. Additionally, a substantial influx of new users might

enter the market. As a result, platforms could share new users and profit, which would benefit both parties.

The twin mirror reflection provisions in Sections 21 and 21A of the Indian Competition Act, 2002, support inter-regulatory collaboration. Section 21 of the Competition Act allows any statutory authority to refer a matter to the Competition Committee of India (CCI) if a party raises a concern during a proceeding that a decision it has made, is considering making, or would cause would violate one or more Competition Act provisions. CCI must give the relevant legislative authority its opinion within 60 days after receiving a recommendation. The statutory body will next analyse CCI's opinion and deliver its judgements, with reasons, on the concerns raised. Additionally, any government agency may refer to CCI on its own.Similar to Section 21A of the Competition Act, CCI may refer a party's challenge to a CCI decision during a proceeding or to a statutory authority if the decision would violate a provision of an Act whose implementation is the responsibility of the statutory charge. The statutory authority must give CCI an opinion within 60 days after receiving a recommendation. CCI will analyse the statutory authority's opinion before drawing conclusions and justifying its points. Additionally, CCI may refer to the legislative powers on its own initiative.[25]

Data portability and, by extension, the right to data portability, are positioned as crucial elements for the formation of new businesses and the expansion of existing ones. When platform users engage in multihoming, which enhances the platform's service, this realisation assumes even more significance. In order to strengthen ongoing innovation and the competitive environment for the advantage of the user, user attraction, maintenance, and sharing enable digital platforms to mutually develop an ecosystem with the ability to port their data.

6. Landmark Legal Battle of Google: Under an Aegis of Europe, Brazil And USA

New regulatory body inquiries into the compliance of digital platforms will develop due to the advent of the right to data portability. However, there are already inquiries into data portability. Because it has been investigated in several jurisdictions, the antitrust case involving Google Ads, formerly Google Adwords, is unique. Antitrust authorities worldwide have filed lawsuits against Google for allegedly engaging in anti-competitive behaviour that prevented advertisers, or platform users, from transferring their campaign data from Google's search advertising platform, Google Adwords, to rival platforms. This action also prevented software vendors from providing tools that would have allowed the transfer of campaign ad data without imposing restrictions

[25] Data Portability, Interoperability and Competition XXXX (2021), https://doi.org/10.1787/73a083a9-en.

on platform interoperability. The major issues raised against google in the context of data portability and competitive practices is being depicted herein under :

6.1 European Controversy

The European Commission began an investigation in November 2010 into allegations that Google abused its dominant digital advertising market, specifically by imposing exclusivity obligations on its advertising and distribution partners and restricting advertisers' campaign data portability to competing online advertising platforms. If confirmed, these practices may violate Article 102 of the Treaty on the Functioning of the EU and Article 54 of the European Economic Area Agreement. The Commission openly stated its competition concerns in May 2012.[26] The problem concerning data portability is Google's contractual constraints on software developers, which prevent them from delivering tools to seamlessly transfer search advertising campaigns across AdWords and other platforms. These limits may generate artificial switching costs that prevent Google AdWords advertisers from operating parallel online search advertising campaigns on other platforms, decreasing consumer choice. Google commitments were then market-tested in April 2013. After reviewing the market test feedback, the Commission concluded that substantial commitment improvements were needed to address its competition concerns. Google amended its plan in October 2013. The Commission asked complainants and other market participants to evaluate Google's revised commitments. It informed Google that its October 2013 proposal did not address the Commission's competition concerns.[27] Google agreed to remove any written or non-written obligations in its Terms and Conditions and Google Adwords policies that prevented advertisers from transferring and managing AdWords advertising campaigns to other search and advertisement services in its last proposal. The Commission's third-party feedback suggested they could not address competition concerns, and Google did not submit a revised plan. Google learned in September 2014 why the Directorate-General for Competition thought more than the third set of pledges was needed to resolve the Commission's concerns. Since commitment-based negotiations failed, Commission services updated file information in November 2014. In 2017, the European Commission In light of the ongoing investigations surrounding Google Shopping, which commenced in November 2010 and culminated in a €2.42 billion fine for engaging in anticompetitive practises as a dominant search engine, the European Commission persists in its examination of Google's limitations on advertising portability.[28]

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[26] *id.25*
[27] *id.21*
[28] *id.23*

6.2 Brazil Controversy

On July 28, 2013, the Brazilian Antitrust Authority (CADE) began an Administrative Proceeding on behalf of Microsoft Corporation against Google Brazil and Google Inc., alleging that Google Adwords locked users into Microsoft Advertising, formerly Bing Ads. Microsoft claims Google "prevents cross-platform portability and campaign optimisation through the AdWords API T&C document." Microsoft claims that Google bans customers from copying AdWords data to other sponsored search platforms and comparing campaign effectiveness. Microsoft claims that Google restricts the development of portable and cross-platform data comparison software, excluding competitors. Microsoft argued that advertisers would have to manually manage multiple keyword campaigns almost constantly to effectively operate their campaigns and perform multihoming, resulting in Google Adwords campaign maintenance and Bing Ads platform weakness and blocking. Google said there was no indication that the AdWords API T&C hinders users from advertising on Bing or other platforms. Google said Microsoft could not establish that Bing Ads advertisers did not locate software to multi home their campaigns. Third-party Google Adwords API licensees like Kenshoo Ltd. and Marin Software already allow advertisers to transfer, synchronise, and optimise campaigns across platforms, per the request.

6.3 United State of America Controversy

The Federal Trade Commission found that Google's usual licensing terms and conditions for its Google Adwords API barred software developers from employing third-party tools with a single user interface to handle different publicity. The limitation stopped advertisers from utilising third-party software to group data and run Google and competitor advertising campaigns. Finally, the FTC's Commission voted to close its investigation into Google's practises after the company agreed to remove a restriction on Google Ad's API licensing T&C that prevented advertisers from using third-party software to group data and manage an advertising campaign involving Google and its competitors.

7. Concluding Remarks and Suggestion:

At the outset Data portability promotes multifarious advantages to the consumers in relation to their personal as well as non personal data. But It should be borne in mind that the practice of data portability must not be effectuated without reasonable restrictions. Because it is an admitted fact that data portability infuses with potential risk of unreasonable data mining by the rival data controllers of the digital market. Data portability should follow the principle of data minimisation that curb the feasibility of the transfer of sorts of data. Some Sensitive data should be exempted from the realm of data portability but not to the extent of curtailing their right of self

determination . In this conjecture , a mechanism should be curated to strike a balance between the right of data portability and the potential risks arising out of it . It is pertinent to suggest some important suggestive measures that can be incorporated too achieve the ends of data portability and these are :

1. Assessing the impact of portability of a system controller.
2. Solutions can be sought from the financial sector and incorporate the same in the respective legislation.
3. Adaptations of Self-Regulatory Systems as Solutions of the potential risk coupled with data portability.
4. The Competition law of India Should be evaluated and a public discourse should be considered during the process of upgradation.

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Beyond Human Judgment: A Critical Analysis of Leveraging Artificial Intelligence for Predictive Risk Assessment

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Abstract

Criminal justice administration, especially predictive risk assessment, has traditionally relied on human judgement, bolstered by intuition and experience. Although statistical and actuarial tools have been developed for giving a scientific characteristic, they are often inadequate in addressing the challenges of risk assessment, and sometimes, human judgement is taken to supersede these tools when the final decision is taken. Considering human judgement suffers from problems such as subjectivity, bias, and inconsistency, and since the statistical tools are not completely reliable in concluding risk assessment, there remains a gap. The advent of Artificial Intelligence (AI) offers a potential solution by introducing data-driven, objective and consistent decision-making processes. AI-driven technologies are currently being used in various capacities for predictive risk assessment, especially in the United States, where they have gained significant traction. Against this backdrop, this paper explores the feasibility of applying AI for predictive risk assessment within the criminal justice system, analysing both its benefits and challenges. The insights presented in the present paper are drawn primarily from the American legal system, which has been a frontrunner in adopting AI technologies in predictive risk assessment, however, developments in other jurisdictions are also taken into account and analysed wherever applicable. Additionally, the paper also examines the applicability of AI in the Indian context, where the legal system and societal concerns present unique ethical and legal challenges. By providing a balanced analysis, where both the positives and negatives of AI's implementation vis-à-vis predictive risk assessment are explored, the paper suggests

possible solutions to mitigate the challenges associated with the integration of AI in this role.

Keywords: Predictive Risk Assessment, Artificial Intelligence, Black Box Problem, Criminal Justice Administration, Data-Driven-Decision-Making, Due Process

1. Introduction

Human elements, such as judges, lawyers, and juries, have traditionally been central to criminal justice administration, including predictive risk assessment. These actors rely not only on legal knowledge but also on human traits like intuition, experience, and empathy when making crucial decisions. Such human judgement plays a vital role in predictive risk assessments, including predictive policing, decisions on parole and bail eligibility, evaluations of recidivism risk, and pre-sentencing reports. However, because these judgements are inherently subjective, they are often influenced by personal biases and inconsistencies. This subjectivity can result in flawed decisions and unequal application of the law. In response to these issues, statistical tools have been developed to support decision-making and reduce human errors, yet, these have not been able to achieve high levels of fairness and accuracy, and their opinions are sometimes taken as persuasive only, with human judgement trumping the opinion of these tools. This leads to inconsistencies and shortcomings in predictive risk assessment.

The integration of artificial intelligence (AI) for predictive risk assessment seeks to challenge this *status quo* and revolutionise the existing paradigm by offering data-driven, objective and consistent decision-making. AI has already begun making inroads in this domain, with technologies such as the "Correctional Offender Management Profiling for Alternative Sanctions" (COMPAS) & PredPol being used for predictive risk assessment in various capabilities in the USA, while PreCobs and "Crime Anticipation System" (CAS) have been used in Germany and Netherlands respectively. AI algorithms, fuelled by vast data sets, can analyse crime patterns, assess the likelihood of recidivism, and offer risk assessments based on historical data. The transition from human judgment to AI-aided decision-making is expected to make justice administration more efficient, accurate and less prone to errors that plague human opinion.

However, the use of AI in criminal justice administration, primarily for the purposes of predictive risk assessment, also raises significant ethical, legal and constitutional concerns. Questions about transparency, accountability, and potential biases in AI algorithms need to be carefully addressed to ensure fairness. The challenge lies in ensuring that AI complements rather than replaces human judgment, striking a balance between data-driven efficiency and human values of justice and equity. Moving forward, leveraging AI for reasoned

predictions in criminal justice requires a critical evaluation of its potential benefits and risks to ensure it fosters a more just and equitable system.

Against this backdrop, the present paper is interested in unravelling the intricacies involved in using AI for predictive risk assessment. It aims to bridge the gap between the theoretical capabilities of AI in this regard and the practical application of the technology, by examining the potential, efficacy and challenges that may and will arise. The first section is a brief introduction to the theme that will be discussed within this manuscript. The second section will examine the historical development of predictive risk assessment mechanisms, with an aim to trace the journey from subjective determinations to actuarial evidence-based determinations that finally conclude in AI-based models. The third section will explore how AI is replacing traditional human-based judgement in different capacities. The fourth section will analyse the shortcomings of human judgement and how AI-based predictive risk assessment will tackle the same. The fifth section will look at the limitations of AI and provide solutions on how these limitations can be addressed. The sixth section shall explore the applicability of AI-driven risk assessment systems in the Indian legal system. Finally, the seventh part will conclude the discussion by summarising the arguments presented in the paper.

2. Historical Development Of Predictive Risk Assessment

Predicting criminal behaviour to pre-emptively address potential crimes is not a new concept. Crime prediction through risk assessment has been a part of the American criminal justice system since the 1920s, with selective incapacitation being one of the earliest forms of predictive risk assessment.[1] However, these risk assessment mechanisms were rudimentary, with the causality for selective incapacitation being ascertained through a subjective assessment of how dangerous a criminal would be to society. Ultimately, a scientific method based on calculations and mathematical assessment, which was based on objective variables, was used through risk assessment of potential parolees, with an aim to understand and analyse recidivist behaviour in the parolees.[2]

Two theories of criminology provide the underpinnings for the development of predictive policing, with criminology's contribution being encapsulated in the assertion that *"the short history of predictive policing begins with the long history of criminology"* since it was criminology as a discipline that denoted the idea that crime cannot be

[1] Thomas Mathesen, *Selective Incapacitation Revisited,* 22 L. & HUM. BEHAV. 445, 458 (1998).
[2] J.C. Oleson et.al., *Training to See Risk: Measuring the Accuracy of Clinical and Actuarial Risk Assessments Among Federal Probation Officers*, 75 FED. PROBATION 52, 52 (2011).

considered randomized action but instead patterned behaviour, that can be *"studied, mapped, and analyzed."*[3]

The first theory - 'Rational Choice Theory' - posits that *"individuals make decisions on whether to commit an offense based on an array of inputs, including the effort involved, the potential payoff, the degree of peer support for the action, the risk of apprehension and punishment, and the needs of the individual."*[4] It, thus, states that external stimuli influence an individual's decision to commit an offence. Rooted in the utilitarian theory of Beccaria and Bentham, this theory views offenders as rational actors who calculate costs and benefits before committing crimes, seeking pleasure while avoiding pain through strategic decision-making to maximise utility.

The second theory - 'Routine Activities Theory', posits that crime occurs when three elements are present: "*a suitable target, lack of a suitable guardian, and a likely motivated offender"*[5]*,* with the intersectionality of these elements becoming the catalyst for the occurrence of the crime. This theory perceives spatio-temporal elements as the primary stimulus for the occurrence of crime[6] and presupposes that criminal inclination is already present, and the appropriate amalgamation of factors contributes to the actual offence taking place.

Historically, criminal justice systems have made behavioural predictions to assess the risk of granting parole, evaluating whether a convicted individual is likely to re-offend once released. Similarly, such assessments have also been made in deciding whether an accused should be granted bail through an examination of the risks that may be posed by 'freeing' the accused. The first effort to formulate a system for ascertaining the relationship between a set of variables and their propensity to commit a crime after being paroled was undertaken by Sam B. Warner in 1923; however, in his conclusion, he stated that there was no accurate prediction table that could be construed from the data available. Warner's attempt prompted Hornell Hart, a sociologist, to reconsider the question, and he suggested that prospective parolees could be scored based on a list of items related to parole success and *"establishing violation rates for each score or interval."*[7] Hart's idea was subsequently taken up by Ernest W. Burgess, another sociologist, in 1928, who analysed the records of 3,000 parolees in the state of Illinois, and selected 22 distinct

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[3] ANDREW GUTHRIE FERGUSON, PREDICTIVE POLICING THEORY in *The Cambridge Handbook of Policing in the United States* 492 (Tamara Rice Lave & Eric J. Miller (eds.), CUP, 2019).
[4] STEVEN P. LAB, CRIME PREVENTION: APPROACHES, PRACTICES AND EVALUATIONS 193 (Anderson Publishing: New Providence, NJ, 2010).
[5] *Ibid.*, at 589.
[6] James R. Brunet, *Discouragement of Crime Through Civil Remedies: An Application of a Reformulated Routine Activities Theory*, 4(1) W. CRIMINOLOGY REV. 68, 69 (2002).
[7] C. W. Dean & T. J. Duggan, *Problems in Parole Prediction: A Historical Analysis*, 15(4) SOC. PROBS. 450, 451 (1968).

variables, with each variable again divided into sub-classes.[8] These variables were assigned points based on factors with lower violation rates, and in doing so, he calculated scores for each parolee. The relationship between these scores and violation rates supported the feasibility of using prediction tables for assessing parole outcomes. This method, known commonly as the Burgess Method, proved to be more accurate in predicting the behaviour of parolees than the subjective behavioural determinations being used since a majority of the parolees that were flagged as "high-risk" actually violated the terms of their parole, and a majority of the parolees deemed "low-risk" did not. Ultimately, the Burgess Method was adopted by multiple parole boards across the state of Illinois; however, beyond its applicability, the significance of Burgess's efforts and the Burgess Method lay in demonstrating that mathematical formulas can be used to inform decisions about future criminogenic behaviour through predictive analysis. In essence, the Burgess Method proved the feasibility of mathematical risk assessment for ascertaining future criminal behaviour.

The use of predictive analysis evolved during the 1960s and 1970s in the American legal system. The assessment of potential offenders was aimed at identifying their 'dangerousness', or the capacity to commit dangerous crimes, yet, predicting the same turned out to be unnaturally difficult, with studies highlighting exorbitant percentages of "dangerousness", with one study going as far as flagging 54-99% of the participants as 'dangerous'.[9]

However, these approaches paved the way for the development of evidence-based risk assessment. This method strives to make decisions through the incorporation of scientific and quantitative analysis that takes an actuarial approach. Actuarial predictive analysis can be defined as "*a formal method that provides a probability, or expected value, of some outcome. It uses empirical research to relate numerical predictor variables to numerical outcomes."*[10] The *sine qua non* of such an assessment involves reliance upon an objective and reproducible combination of a multitude of predictive factors that have been selected and validated through empirical research through a process of quantification. Thus, the actuarial approach to prediction is concerned with *"identifying and weighing specific factors that correlate with a probability of future actions."*[11] The primary idea of actuarial ratings to identify and undertake any future risk assessment is to identify factors that have a correlative relationship to the potential

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[8] Michael Hakeen, *The Validity of the Burgess Method of Parole Prediction,* 53 AM. J.SOC. 376, 379 (1948).

[9] JOHN T. MONAHAN, PREDICTING VIOLENT BEHAVIOR: AN ASSESSMENT OF CLINICAL TECHNIQUES 244-250 (SAGE, 2nd Ed., 1981).

[10] Jordan M. Hyatt et.al., *Reform in Motion: The Promise and Perils of Incorporating Risk Assessments and Cost-Benefit Analysis into Pennsylvania Sentencing,* 49(4) DUQ. L. REV. 707, 726 (2011).

[11] Melissa Hamilton, *Public Safety, Individual Liberty, and Suspect Science: Future Dangerousness Assessments and Sex Offender Laws,* 83(3) TEMP. L. REV. 697, 720 (2011).

occurrence of the future incident or event in question and to properly assign weights to the factors used on the basis of their significance since some factors have the potential to exhibit greater correlative abilities than others.[12]

The development of actuarial prediction initiatives marked the second stage or generation of predictive risk assessment mechanisms and was a watershed moment in their evolution. Scholars have notably referred to this method as *"mechanical and algorithmic"*[13] The development of methods of engaging in predictive risk assessment can be divided into four generations. While the first-generation methods, such as the efforts by Hart and Burgess, were concerned with *"unstructured clinical assessment"* based on individualised experience, the second generation led to the development of *"actuarial methods"* that relied on static risk factors that were subsequently assigned a numerical value, and a total score based on the relevant risk factors was ultimately generated through an algorithm that would predict the probability of an individual's criminal behaviour. This prompted the next developmental stage, i.e. the third generation, to build on the foundations of the actuarial method, and incorporate some dynamic risk factors that were labelled as *"criminogenic needs",* with these dynamic factors being subject to change, due to their incorporation. Finally, the fourth generation focused on generating unique and individualised evidence-based analysis through a combination of risk management efforts and case planning. into the probabilistic determination increases the efficiency of the test.[14]

After the fourth stage, where scientific temperament-based actuarial methods have evolved exponentially, predictive risk assessment has grown to the extent that in the present, it exerts an influence on almost every aspect of the criminal justice system in America, ranging from initial bail decisions to the final decisions on the release of parolees.[15] According to a study from 2015, there are over 60 tools which deal with risk assessment within the criminal justice system in America. These tools range from pre-trial detention and sentencing, to the prediction of recidivism and the identification of criminal hotspots, among others. At their simplest, though, these are basically questionnaires that are filled up by an individual and assign points to the offenders based on a number of distinct factors. The resultant scores represent statistical probabilities derived from the behaviours of previous offenders, and while a low score designates the individual as "low risk", leading to lenient behaviour by criminal justice

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[12] *Ibid,* at 720.
[13] W.M. Grove & P.E. Meehl, *Comparative Efficiency of Informal (Subjective, Impressionistic) and Formal (Mechanical, Algorithmic) Prediction Procedures: The Clinical–Statistical Controversy*, 2 PSYCH., PUB. POL. & L. 293, 293 (1996).
[14] E. Chelioudakis, *Risk Assessment Tools in Criminal Justice: Is There A Need for Such Tools in Europe and Would Their Use Comply With European Data Protection Law?*, 1(2) AUS. NAT. UNI. J. L. & TECH. 72, 79 (2020).
[15] Andrew G. Ferguson, *Policing Predictive Policing*, 94(5) WASH. UNI. L. REV. 1109, 1120 (2017).

administration officials that results in lower sentencing or acceptance of parole, while, conversely, a higher score deems the individual as "high risk" and concludes in more stringent sentencing or monitoring or rejection of parole applications.

The development of predictive risk assessment tools in the American legal system also prompted other jurisdictions to adopt similar methods, and a plethora of techniques have been developed across legal systems, including in India, although the Indian legal system's implementation is at a very rudimentary stage.

3. Artificial Intelligence and Predictive Risk Assessment

In the journey from the first generation to the fourth generation, and beyond, where individualised risk assessment was envisaged through a unique analytical model, data became an indispensable resource. The introduction of large data sets into the domain also brought forth the necessity to use novel technological developments for identifying the requisite variables and assessing correlations within them. AI was one such novel technological development that was inculcated into the domain of predictive risk assessment.

AI, as a concept, is difficult to define. This is because AI has become embedded in human society to such an extent that it is impossible to confine it to a singular definition. Initial attempts to explain the nature of AI were rooted in the *Turing Test,* conceptualised by the British mathematician Alan Turing, who argued that any machine that could successfully exhibit behaviour that was indistinguishable from a human being could be deemed to have 'intelligent' behaviour, and thus, fall within the categorization of an AI.[16] A more recent definition of AI, given by Russell & Norvig is - *the study of agents that receive percepts from the environment and perform actions."*[17] Russell & Norvig also delineate and categorise AI into four different types, based on its capabilities, with these categorisations being – *thinking humanely,* where the AI replicates human thinking; *acting humanely,* where the AI reproduces behaviour or actions that would generally be attributable to humans; *thinking rationally,* where the AI is confined to rational and logical thinking; and, *acting rationally,* where the rational and logical thought process of the AI extends to rational and logical behaviour as well.[18] Thus, AI, when perceived as an umbrella term, essentially refers to the utilisation of machines for mimicking different facets of human intelligence, and *"is best understood as a set of techniques aimed at approximating some aspect of human or animal cognition using machines."*[19]

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[16] Richard A. Berk, *Artificial Intelligence, Predictive Policing, and Risk Assessment for Law Enforcement,* 4 ANNU. REV. CRIMINOLOGY. 209, 210 (2021).
[17] STUART RUSSELL & PETER NORVIG, ARTIFICIAL INTELLIGENCE: A MODERN APPROACH viii (Pearson: New Jersey, 2010).
[18] *Ibid,* at 03-05.
[19] Ryan Calo, *Artificial Intelligence Policy: A Primer and Roadmap*, 51 U.C DAVIS L. REV. 399, 404 (2017).

The next question that arises is – why AI? Interestingly, the capabilities of AI allow it to parse through large data sets and reach reasoned conclusions, thus making it one of the foremost technological innovations. AI systems are essentially complex algorithmic structures, with algorithms defined as *"modular programs that can sort, search, count, and classify."*[20] This capability of AI, when coupled with modern developments such as "Machine Learning", "Deep Learning" and "Neural Networks" have the ability to analyse vast amounts of data for identifying potential criminal behaviour. By processing historical crime data, social indicators, and individual profiles, AI can help law enforcement agencies allocate resources more effectively, identify crime hotspots, and assess the likelihood of recidivism in parole applications. As an umbrella term, predictive risk assessment, by using AI, can therefore, be considered to be a collective term that is used to refer to a plethora of ways through which the future is addressed by using algorithmic data analysis.[21] Past events, such as the criminal record of an area, become the basis for predicting future criminal behaviour through AI that is tasked with identifying patterns and making predictions based on those patterns. Moreover, AI can continuously learn from new data, adapting to changing crime trends and societal factors. This adaptability makes AI tools valuable for risk assessment, providing real-time insights that can inform proactive measures rather than reactive responses. Thus, this data-driven approach allows for more objective decision-making, potentially reducing human biases and subjectivity that can influence such predictive judgements.

Yet, despite the novelty of using AI for making such assessments, what are the positive implications that the same has on predictive risk assessment over human counterparts?

The first area where AI can outperform humans in predictive risk assessment is the examination of information for yielding conclusive results due to the efficiency that AI boasts. It can be used in predicting antecedent criminal behaviour within the context of assessing hotspots by relying upon data collected through surveillance. In today's era of *"surveillance discretion",* wherein the police, with authorization of the State,[22] have the discretion to pay more attention to certain individuals in society more than others, this possibility is facilitated by technological advancements that have overcome the traditional constraints of manpower, and have contributed to the collection of a large quantity of data. This data, however, without proper analysis and pattern-finding, will not yield many results in its raw form. No single individual or department of

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[20] Anne L. Washington, *How to Argue with an Algorithm: Lessons From The Compas-ProPublica Debate*, 17(1) COLO. TECH. L. J. 131, 142-143 (2018).
[21] SIMON EGBERT & MATTHIAS LEESEE, CRIMINAL FUTURES: PREDICTIVE POLICING AND EVERYDAY POLICE WORK 19 (Routledge: London & New York, 2021).
[22] Elizabeth E. Joh, *Artificial Intelligence and Policing: Hunts in the Carpenter Decision*, 16 OHIO STATE J. OF CRIM. L. 281, 285 (2018).

personnel may have the ability to scan the data contained within hundreds of thousands of pages of information in order to assess a person's propensity to commit an act of crime. A constraint of time and manpower, therefore, becomes a limitation. Yet, when AI is relied upon for combing through this data, the potential dangerousness of an individual or behaviour can be predicted with a fair bit of theoretical accuracy. The phrase *theoretical* is being used here because the practical application of AI for predictions has yielded mixed results that will be discussed in the next chapter, nonetheless, the potential for accuracy is undebatable. Moreover, the efficiency at which the data is analysed by the AI is unfathomable for a human, and therefore, increased efficiency is also a result of reliance upon AI to make statistical predictions through surveillance information

Subjectivity is one characteristic of human decision-making that AI can eliminate since the AI has no intent or any extraneous factors that can influence the decision-making process. This is especially important when questions of bail or parole need to be decided on the probable risk of future recidivism that the detainee exhibits. One author has argued that human judgment in cases of predictive risk assessment contains two issues – *bias*, which stems from the cognitive norms within the individual's mind and fuels the final decision-making process, and *noise,* which refers to unwarranted variability that persists in human decision-making and differs from individual to individual.[23] The phrase *noise* itself refers to the differential treatment afforded to individuals in the same circumstance. Three kinds of *noise* are elucidated – *"occasional noise"* wherein the same adjudicator passes different judgments for individuals who are similarly situated within the system due to intrapersonal changes; *"level noise"* wherein there is an interpersonal difference between two adjudicators and because of the same, the conclusions that they reach for similarly situated individuals are varied (for example, two judges can give two different sentences based on their own intrinsic beliefs on the purpose of sentencing to two similarly situated individuals leading);[24] *"pattern noise"* which also refers to a form of interpersonal variability, however, one which differs between a set of individuals according to their individual preferences.[25]

Bias may still be present within the AI, although not necessarily on account of the subjectivity within the AI, but because of other extraneous factors, especially tainted data. This will be discussed in the next chapter. However, with AI, there is a complete elimination of *noise* that is present in human predictions, and this enables a *noise-free* predictive system wherein the decisions given are uniform since AI is silent by nature. When applied to questions concerning bail or

[23] Cass R. Sunstein, *Governing by Algorithm? No Noise and (Potentially) Less Bias*, 71(6) DUKE L.J. 1175, 1178 (2022).
[24] DANIEL KAHNEMAN ET.AL., NOISE: A FLAW IN HUMAN JUDGMENT 73-74 (William Collins: London, 2021)
[25] Sunstein, *Supra Note* 23, 1184.

parole, this eliminates one aspect of subjectivity, thereby making adjudication more consonant with the overarching tenets of fairness and justice.

4. Algorithmic Predictability And Justice – The Current Challenges

The previous chapter highlighted the manner in which the utilisation of AI for predictive risk assessment has the ability to address the various shortcomings which human judgement faces. Yet, even AI is not just a *bed of roses* without its fair share of thorns. The technology itself is at a very nascent stage today, and only a very rudimentary application of the technology has been practically witnessed in legal jurisdictions across the world. Nonetheless, even with limited practical application, at least within the domain of predictive risk assessment, some challenges have been witnessed. The primary issues which are being witnessed at present can be divided into the following four headings.

4.1 Sanctity Of The Data

The first challenge stems from a lack of available data which can be used for accurate predictions. The AI's statistical abilities to make predictions does not occur in a vacuum, it is highly dependent on the programming of the AI through a system of algorithms, as well as the input provided. Apart from these two, the single most important component for guiding the accuracy of the AI in capturing meaningful conclusions is the data provided to it for analysing the patterns, making itself familiar with the behavioural tendencies of the criminal, and using this to make statistical claims based on probability. A dearth of meaningful data completely makes the entire procedure redundant since the AI is unable to learn the patterns or formulate meaningful conclusions.

The "Pre Crime Observation System" (PRE-COBS) is an AI predictive policing tool that was in operation as a pilot study in the state of Baden-Württemberg in Germany from 2015-16 onwards.[26] This system was used to predict the probability of residential burglaries by using the *near-repeat theory,*[27] which refers to the notion that certain offenses are subsequently followed by another incident of criminal behaviour that occurs in temporal and territorial proximity of the initial crime, especially concerning professional crimes that follow a discernible pattern. Nonetheless, the state of Baden-Württemberg opted to cease the operations of this AI tool due to a lack of available data that can make meaningful predictions. The silver lining about the

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[26] Simon Egbert & Susanne Krasmann, *Predictive Policing: Not yet, but Soon Preemptive,* 30 POLIC. & SOC. 905, 912 (2020).

[27] Dominik Gerstner, *Predictive Policing in the Context of Residential Burglary: An Empirical Illustration on the Basis of a Pilot Project in Baden-Württemberg on the Basis of a Pilot Project in Baden-Württemberg, Germany*, 3 EURO. J. SEC. RES. 115, 134 (2018).

lack of data being an impediment in the proliferation of AI for predictive policing purposes is that this is a constraint that will be solved with both technological innovations that will allow for greater efficiency with smaller data sets and also with more efficient data collection technologies, which may also rely upon AI for the purpose of surveillance itself,[28] for example, the Metropolitan Police of South Wales in the United Kingdom is relying upon AI-powered facial recognition technology to identify people through CCTV to both detect and prevent crime, especially in large gatherings.[29] These may ensure that a lack of feasible data doesn't remain a constraint anymore in relying upon AI for predictive policing purposes.

4.2 Data Collection Challenges

The second issue, which is also related in a way to the first one, is regarding how the data has been collected to "teach" the AI meaningful patterns for making informed predictions. Data privacy and protection are recognized rights in almost every major legal jurisdiction with a rights-based approach to digital information. The General Data Protection Regulation (hereinafter GDPR) provides the European Union with an overarching framework of data protection. It stipulates that any agency that is collecting and utilizing the data of *"natural persons"* for a particular purpose must inform the owner of the data in a transparent and intelligible manner that their data is being collected.[30] However, due to the large quantity of data needed for meaningful interpretation and prediction, corporations responsible for creating AI may use data without authorisation. One instance is when *Clearview AI,* a company that deals with facial recognition by using AI and has a history of working with law enforcement agencies in North America, relied on data that it captured from social media platforms and YouTube without the consent or knowledge of the individuals to whom the data belonged to.[31] This is problematic because the data privacy of individuals is a paramount consideration that cannot be sacrificed at the altar of algorithmic efficiency.

One way of tackling this problem can be through the jurisprudence evolved in *"Smith v. Maryland"*[32] and *"United States v. Knotts"*[33] wherein the American Constitution's Fourth Amendment protection, which prevents unauthorised search and seizure, was held inapplicable in the case of information voluntarily given to third parties. In this context, this would amount to information voluntarily imparted to third parties such as social media or telecom companies,

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[28] Peter Fussey & Ajay Sandhu, *Surveillance Arbitration in the Era of Digital Policing*, 26(1) THEORETICAL CRIMINOLOGY 03, 05 (2020).
[29] Yasmine Ezzeddine et.al., *Safety, Privacy, or Both: Evaluating Citizens' Perspectives Around Artificial Intelligence by Police Forces*, 33(7) POLIC. & SOC. 0861, 863 (2023).
[30] GENERAL DATA PROTECTION REGULATION (2016), 5, Art. 13 & 14.
[31] Tania DeCarmo et.al., *The Law in Computation: What Machine Learning, Artificial Intelligence, and Big Data Mean for Law and Society Scholarship*, 43(2) L. & POL. 170, 174 (2021).
[32] 442 U.S. 735, 744 (1979).
[33] 460 U.S. 276, 276 (1983).

however, two caveats persist. Firstly, allowing indiscriminate use of such private information through such an exception may amount to the authorisation of a surveillance state in the absence of other allied protections. Secondly, although societal interests are often considered to outweigh individual interests, which would undoubtedly be the case if data is used for predictive risk assessment in this regard, there must be clearly demarcated limitations to ensure that this remains an exception and doesn't lead to the erosion of data privacy rights.

4.3 Bias Within AI Systems

The third challenge is regarding the inability of the AI to understand and filter bias within the data, thereby substantiating the existing bias and perhaps even making it the norm for the future. This is due to what has been called a *"pernicious feedback loop."*[34] Automated decision-makers, such as AI, are reflective of the *"social contexts"* and therefore can inherit the societal inequalities and discriminatory attitudes that exist in society.[35] AI-based predictive risk assessment, if based on tainted data representing bias and discrimination within the dataset, can lead to police personnel integrating bias into their actions due to the recommendations made by the AI. These actions will be encoded into the dataset and become data at a future point in time for the AI to use as a reference to analyse and predict crime, leading to a reinforcement of the existing bias and causing the creation of a vicious cycle wherein the discrimination becomes the justified norm. Data reliability is therefore a problem since crime analysis depends on the data used, and the quality of the data, if not free of discrimination, can become a liability if there is complete automation of predictive risk assessment since the AI is *"context blind."*[36]

An ongoing case in the Southern District Court of New York, filed by the New York Civil Liberties Union (hereinafter NYCL) against the Immigration and Customs Enforcement (hereinafter ICE)[37] against reliance upon an AI-based Risk Assessment Tool provides a practical insight into this discussion. In this case, the petitioners relied upon the Freedom of Information Act, 1967 (hereinafter FOIA) to understand the decisions being made by the AI tool, and it was found that the AI had initially recommended the detention of a comparatively low percentage of individuals (57%) however between the period of June 2017 to September 2019, there was an exponential increase in this number (to 97%), with the ICE field officers adhering to the recommendation of the AI algorithm 99% of the time.[38] This highlighted that the mass detentions, recommended by the more *"objective"* AI, were tainted with discrimination, and since the AI was deemed to follow

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[34] Elizabeth E. Joh, "*Artificial Intelligence and Policing: First Questions*, 41(4) SEATTLE UNI. L.J. 1139, 1142 (2021).
[35] DeCarmo et.al, *Supra Note* 31, at 174.
[36] EGBERT & LESSEE, *Supra Note* 21, at 99.
[37] NYCLU v. ICE, (2018) 1:18-cv-11557.
[38] DeCarmo et.al, *Supra Note,* at 175.

only *'objective'* criteria and protocols in ascertaining conclusions, the inherent bias also became more difficult to weed out and eradicate.

4.4 Due Process Concerns

The most primary example of this issue comes from the landmark *"Loomis v. State of Wisconsin"*[39] case, where the petitioner appealed against a conviction claiming that the AI tool COMPAS, that was used for sentencing, had led to a violation or infringement of the procedural due process guaranteed to him by the American Constitution. Two concerns were raised by *Loomis* in the petition – firstly, with regard to access to pre-sentencing disclosures; and secondly, concerning the right to a fair process with data that is accurate.[40] The legal position from earlier decisions, primarily *"Skaff v. State"* had already established the right of a convicted defendant to *"check for inaccuracies as well as refute, explain or supplement information that might affect the sentence"*, including pre-sentencing information.[41] Similarly, in another case, *"Garnder v. Florida",* it had been held by the American Supreme Court, when the petitioner in this case was sentenced to death by a lower court, that a denial of information to the defendant, including anything confidential, would be deemed to be a denial of due process safeguards.[42] Despite the presence of these prior judgements, the Supreme Court denied their applicability, primarily because both parties to the trial had access to the risk assessment reports that COMPAS had generated, thereby nullifying any claims concerning due process infringements.

Despite this judgement, though, the concern that is being raised here in this case seems to be of profound significance. This is because in a system that is opaque in its reasoning, and whose data may be tainted with bias that is imperceptible, the decisions being implemented risk violation of due process guarantees.

5. Addressing The Black Box Problem

The Black Box Problem poses an inherent threat to criminal justice applications of AI, primarily within the domain of predictive risk assessment. This Problem refers to the inability of the human mind to completely understand the decision-making process that has been adopted by an AI to reach its conclusion. This implies that the AI may function in a manner that is alien to the human mind, thus making its functioning akin to a *Black Box,* where the internal workings are beyond human comprehension. The apparent lack of transparency can be due to two reasons – firstly, the complexity of an AI's process of dealing with information and data, through mechanisms such as deep neural networks that aim to create a network of thousands of artificial

[39] 881 N.W.2d 749 (Wis. 2016).
[40] Washington, *Supra Note* 20, at 141.
[41] 152 Wis. 2d 48, 53 (Ct. App. 1989).
[42] 430 U.S. 349, 351 (1977).

neurons, can be too convoluted for the human mind to understand; and secondly, AI may use mechanisms such as support vectors to correlate variables in geometric patterns that human beings cannot visualise, and therefore, are unable to perceive and comprehend. The first form is called "complexity", and the second form is called "dimensionality"[43] and these two explanations highlight the reason behind AI functioning as Black Boxes for the human mind, thus being opaque in its functioning.

The Black Box Problem creates a scenario where both the creator of an AI and the user of an AI are unable to predict the manner in which the AI will function. Since the human element is unable to foresee how the AI will function, it also leads to a scenario where the human element is unable to ascertain whether tenets such as due process and fairness are being followed in the determination of conclusions. When exposed to applications governing criminal justice relationships, this becomes a grave issue since complicated notions such as individual liberty and justice are in question. There are three possible solutions for addressing the issues raised by the Black Box Problem.

The first is the presence of a human supervisor who can use the predictions given by the AI and apply their human mind on whether to follow up on them or not. Even if the AI is a Black Box, and the roadmap that it undertook to reach the decisions isn't transparent to the supervisor, the human element is the final person making the decision, by applying their reasoning and mental faculty. Therefore, although AI may assist in the process of decision-making, *"the responsibility for the decision lies largely with the human decision-maker".*[44] Involving a human element in the decision-making process addresses two issues. First, notwithstanding the effect of the Black Box Problem, even if the inner intricacies of the AI's decision-making are not understandable for the human, the conclusion that the AI has reached can be used as a pivot for the human to adjudge whether it fulfils the tenets of justice and fairness through an application of his own mental prowess. Second, it addresses ethical concerns of using AI to curtail the liberty of humans based on the AI's judgement, and since the final decision is taken by a human, any implications stem from a human mind rather than only from a machine's calculations.

The second way is through the use of Explainable AI (xAI), which is a term used to refer to systems that overcome the Black Box problem by explaining the logic they use in reaching their conclusions. Explainability, in this context, refers to interpretability where the behaviours of the AI become understandable for the human elements, be it the user or the developer. Another way of understanding this

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[43] Yavar Bathaee, *The Artificial Intelligence Black Box and the Failure of Intent and Causation*, 31(2) HARV. J. L. & TECH. 890. 907 (2018).
[44] *Ibid.*, at 933.

would be that interpretability in this context refers to the degree to which humans are able to understand the cause of a decision or consistently predict the result that the AI is going to generate. An xAI helps to counter the Black Box nature of AI and enables the human counterparts to understand how the AI would function. One of the foremost ways to achieve this would be to implement models of how humans explain their decisions and behaviours to each other and attempt to replicate the same through the implementation of these models in AI architecture. [45] The "Select Committee on Artificial Intelligence" of the House of Lords in the United Kingdom have also echoed a desire for greater explainability in AI systems they should be developed in such a way that the information and logic that has been used by the AI to arrive at a particular conclusion is understandable for humans engaged in its operations.[46] Furthermore, the introduction of xAI would also help in eliminating biases from the AI, since a biased position would not be perceptible to the human overseers, thereby ensuring the elimination of biases and decision-making with good accuracy and precision.

Finally, where Explainable AI is not possible and the supervision by a human has also not been able to solve the Black Box Problem, a judicial intervention which seeks greater transparency can be a solution. The Australian case of *"DPP v. Mangolamara"*[47] presents an interesting outlook in this regard. In this case, the Supreme Court of Western Australia had apprehensions about the evidentiary value of recidivism predictions by an AI, and it sought independent verification of the evidence to establish the presumptions being made by the AI. The introduction of independent verification ensures that the claims or the predictive analysis that has been made by the AI are corroborated by other sources as well, and on the face of an issue rooted in opacity like the Black Box Problem, this added safeguard can go a long way in safeguarding the rights of the individuals implicated by AI.

The Black Box Problem is inherently antithetical to the tenets of transparency and due process since the results remain beyond human comprehension. This makes it risky to implement AI within the criminal justice administration system, especially in the context of issues such as predictive risk assessment that relies upon data and information to make predictions on actions that are supposed to happen in the future. It is even more problematic when individual liberty is curtailed or when people are sentenced on the basis of these predictive analyses, especially in the Black Box context. However, these solutions, when implemented, will make AI-based predictive risk

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[45] Tim Miller, *Explanation in Artificial Intelligence: Insights from the Social Sciences,* 267 ARTI. INT. 01, 02-03 (2018).
[46] House of Lords Select Committee on Artificial Intelligence, *AI in the UK: Ready, Willing and Able?*, (2019) 38-39 (available at https://publications.parliament.uk/pa/ld201719/ldselect/ldai/100/100.pdf)
[47] [2007] WASC 71.

assessment more appropriate for the domain of criminal law, with a comparatively lower probability of abuse and a more coherent and systematic application of detenu rights.

6. AI And Predictive Risk Assessment In India: Opportunities And Challenges

In India, AI-based predictive risk assessment is still in its embryonic stages. Certain attempts have been undertaken by the police departments of the metropolitan cities of the country to accommodate this technology and use it for predictive purposes, however, even this is generally limited to surveillance purposes, to identify potential criminals through facial recognition, or for identifying criminal hotspots wherein criminal behaviour is statistically more likely to take place. The reliance upon AI-powered facial recognition systems that are deployed in crowded areas to identify criminals and also individuals who *"look suspicious"* is an example of the former. The implementation of the Integrated People Information Hub (hereinafter IPIH), being used by the Hyderabad police, which contains details of the family records, biometrics, addresses, and bank transactions of individuals, with this information being used to predict which individuals are more likely to commit a crime[48] also highlights the marriage between *"smart surveillance"* and predictive risk assessment. In another example, the Delhi Police has started to use the AI-powered system named Crime Mapping Analytics and Predictive System (hereinafter CMAPS) which collects data after every 3 minutes from the Indian Space Research Organisation's satellites and correlates it with historical data on criminal behaviour and the use of "Dial 100" to identify criminal hotspots, with this being an example of the latter use of AI in the Indian context.[49]

The aforementioned examples show the various incipient steps being undertaken by the Indian State to integrate AI into the realm of criminal law and associate it with predictive risk assessment. These efforts are undoubtedly appreciable and noteworthy, with the potential to change the dynamics of policing in India. For example, with the aforementioned AI predictor, the Delhi police can, through the identification of criminal hotspots, allot more personnel to regions where criminal behaviour is more likely to take place, thereby making it more equipped for dealing with exigencies. Moreover, these steps may pave the way for greater inclusion of predictive policing within the criminal justice system of the nation, perhaps in a manner comparable to the American legal system, wherein predictive AI is relied upon for adjudicatory decision-making, such as bail or parole, as well as for recidivism prediction.

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[48] Ramachandran Murugesan, *Predictive Policing in India: Deterring Crime or Discriminating Minorities*, LSE, 16th Apr, 2021 (available at: https://blogs.lse.ac.uk/humanrights/2021/04/16/predictive-policing-in-india-deterring-crime-or-discriminating-minorities/).
[49] *Ibid.*

However, the problems that have been highlighted vis-à-vis AI and predictive risk assessment in the previous chapter will also apply to the Indian context. For example, regarding data collection, the right to privacy, which has been held to be implicit under Article 21 in the *Puttaswamy case*[50] risks being violated. The case had also formulated the *'proportionality'* and *'legitimacy'* tests for any violations of privacy to be legitimate. It also listed that privacy can be curtailed only through legal sanction, with procedural checks in place to ensure that there is no abuse or misuse. Indian law also protects the digital data of individuals, and the collection of personal data for any purpose must fulfill the twin requisites of being a lawful act and being done with the consent of the *"Data Principal"*, who is the subject to whom the data belongs.[51] Data collection for AI predictive risk assessment in India does not conform to these requirements because there is no legal framework governing the same. The example cited above wherein the police in Hyderabad are sifting through data of individuals without their consent and without any formal legal framework that allows them to do so is an infringement of not only the legislative data protection guarantee given by the State but also of the constitutional privacy right enshrined within Article 21.

Furthermore, from a procedural standpoint, any decision taken by the AI needs to be disclosed before the defence. It has been highlighted by the Apex Court in *"Sidhartha Vashisht v. State (NCT of Delhi)",*[52] and *"P. Gopalkrishnan v. State of Kerala"*[53] that there is an obligation on the prosecution to present all the materials that it has on the accused, notwithstanding whether it is inculpatory or exculpatory, before the defence and the Court, with this disclosure being part and parcel of the right of defence of an accused.[54] A Black Box AI would make it impossible for the prosecution to fulfill these requirements, and the right envisaged by the Apex Court would be violated herein. Furthermore, the reflection of societal bias in the decisions of AI can be difficult to detect. In this regard, reference may be made to the judicial opinion of the Delhi High Court in *"Madhu v. Northern Railways",*[55] where it was held that policies that are *prima facie* justified, yet discriminatory in practice, can be violative of the right against discrimination. This decision was inspired by the jurisprudence evolved in the American case *"Griggs v. Duke Power"*[56] and the constitutionality of predictive risk assessment can be challenged on this ground. Finally, although the procedural law of India allows one to be arrested due to *"reasonable suspicion"* for both

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[50] *Justice K.S. Puttaswamy (Retd.) v. Union of India,* ((2017) 10 SCC 1.
[51] DIGITAL PERSONAL DATA PROTECTION ACT, 2023, § 04.
[52] 2010 AIR (SC) 2357.
[53] (2020) 9 SCC 161
[54] Tanishka Goswami et.al., *Predictive Policing: Discrimination, Due Process and Democratic Accountability,* P39A CRIMINAL LAW BLOG, 24 Mar, 2022 (available at https://p39ablog.com/2022/03/predictive-policing-discrimination-due-process-and-democratic-accountability/).
[55] 2018 DLT 198.
[56] 401 U.S. 424 (1971

individuals who have committed the offence,[57] detaining an individual because of the predictive results of an AI may be controversial since it is a machine dictating the detention of a human through calculations that it has made. In this regard, due care must be taken to ensure that the requisite safeguards before arresting an individual are followed, and protective measures akin to the Apex Court's guidelines in the *"Arnesh Kumar v. State of Bihar"*[58] case are envisaged for predictive risk assessment through AI. Furthermore, preventive detention cannot be arbitrary in nature.[59] Even if the law recognises the legitimacy of predictive AI, and expands the *"reasonable suspicion"* criteria to permit the detention of an individual that the AI has predicted to commit an offence, the probability of inherent bias of the AI, caused by tainted data, will undoubtedly raise questions on the legitimacy of such a prediction as a ground for curtailing the sacrosanct right to life and liberty guaranteed by the Constitution.

Against this backdrop, the inclusion of AI for predictive risk assessment purposes in the Indian legal system will need a legislative framework that can explicitly delineate the scope of the AI and also place relevant safeguards to restrict, if not eliminate, its misuse. Furthermore, the procedural law needs to be amended to integrate the capabilities of AI. Explainable AI would undoubtedly be the preferred form, with transparency desired, since an opaque system risks becoming capricious and whimsical in its application. It is also necessary to ensure that the competing interests of individual rights and social security vis-à-vis AI predictability need to be balanced so that individual rights are not curtailed without reason, simply on the recommendation of AI. Furthermore, to ensure that there is fairness, the Personally Identifiable Information of sheeted persons, ex-convicts and suspected criminals must be removed to ensure that the AI does not formulate a bias based on this information.[60] Finally, at least in the present status of AI technology, the AI should be used as a facilitator and guide for human judgement where the human element also applies some mental faculty and reasoning in ensuring that the conclusions reached by the AI are correct, and only after such verification is an action taken on the predictions made by the AI.

7. Conclusion

The integration of AI into the criminal justice system for risk assessment purposes represents a transformative yet challenging development with both significant opportunities and formidable challenges. While AI has the potential to enhance the efficiency and effectiveness of law enforcement, its application raises critical concerns regarding data sanctity, collection practices, inherent bias, and the

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[57] BHARATIYA NAGRIK SURAKSHA SANHITA, 2024, § 35.
[58] 2014 SC 2756.
[59] *Joginder Kumar vs State of U.P*, 1994 SCC (4) 260.
[60] Antara Vats, *Building the Case for Restricted Use of Predictive Policing Tools in India,* 32(1) INTL. REV. INFO. ETHICS 01, 05 (2022).

notorious Black Box Problem. In India as well, although AI systems have been implemented, albeit the implementation is at a very nascent stage, the same problems that present themselves in the global context also exist in India. The nuances of the Indian legal system also add a few indigenous legal and ethical concerns over and above these issues. To address these concerns and to ensure a seamless application of AI for risk assessment, especially considering the positive implications that the same has over the subjectivity of humans in this domain, the following are some suggestions:

I. A comprehensive legal framework must be developed that clearly outlines the scope and applicability of AI for the purpose of risk assessment. This legal framework must consider the positives and negatives of AI in this domain, and accordingly, after exploring the relevant jurisprudential principles, explicitly delineate the manner and scope of AI. This will ensure that the misuse of AI will not happen and that other competing legal tenets, such as data privacy and due process, will be adhered to without compromise.

II. Data integrity must be maintained, and this can be done through protocols designed to regulate the collection, storage and usage of data to ensure that only high-quality, unbiased data sets are used for training AI.

III. The use of xAI must be mandated from a policy standpoint to ensure that AI use in this domain adheres to the tenets of transparency and due process, while at the same time allowing the parties involved to understand the reasoning adopted by the AI to conclude. This will ensure fairness and ensure the integrity of the criminal justice system is maintained, while at the same time reducing the scope for unfounded allegations against AI use.

IV. Pilot projects can be implemented to rigorously test the AI systems within controlled environments, with a goal to assess their effective and ethical implementation before widespread deployment. This can be done through the use of "sandboxes" that are "*concrete frameworks which, by providing a structured context for experimentation, enable where appropriate in areal-world environment the testing of innovative technologies, products, services or approaches for a limited time and in a limited part of a sector or area under regulatory supervision ensuring that appropriate safeguards are in place.*"[61] This will allow the developers to understand the potential challenges that may be faced in the real world, and they may be able to tweak the algorithmic structure to rectify the issue.

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[61] Lauren Fahy *Regulator Reputation and Stakeholder Participation: A Case Study of the UK's Regulatory Sandbox for Fintech*, 13 EURO. J. OF RISK REGUL. 138, 141 (2021).

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Regulation of Catering Business in India: Issues and Challenges

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Abstract

In India the wedding market is growing at rapid pace. The number of guests in wedding or any other occasion is increasing every year. People attending any kind of wedding or any other function are more often than not served food. This food is served by catering businesses. It's vital that these the quality of food served by the caterers is up to the mark otherwise many people will be at risk of food and water borne diseases. In India, like other food business operator, catering businesses are also regulated by Food Safety and Standard Authority of India (FSSAI). The law applicable to catering businesses in India is Food Safety & Standard Act, 2006 (FSS Act) and various FSSAI regulations. These regulations are laid down in great depth for the regulation of the catering services. However, there are some challenges and issues in the compliance of these regulations by the catering businesses. This paper is an attempt to highlight the various issues and challenges present in the regulation of the catering business in India. It also seeks to suggest various solutions to overcome the said issues and challenges in the regulation of catering businesses in India.

Keyword: FSSAI, Regulation of Catering Services, Food Law, Food Safety, FSS Act, FSSAI Regulations, Healthy Food.

1. Introduction

There are ten million weddings in India every year.[1] The Indian wedding market is estimated to be of 130 billion dollar per year.[2] The

[1] India's wedding industry booms: 3.5 million marriages to drive over ₹4.25 lakh crore spending this season, FINANCIALEXPRESS (Sep. 20, 2024), https://www.financialexpress.com/business/brandwagon-indias-wedding-industry-booms-3-5-million-marriages-to-drive-over-425-lakh-crore-spending-this-season-3616341.
[2] Band, baaja, baraat: At $130 billion, India's wedding economy second only to groceries: Jefferies, https://www.moneycontrol.com/news/business/india-wedding-economy-jefferies-note-12762932.html.

Indian wedding industry is ranked 4th in terms of the size of the industry.[3] The phrase 'big fat wedding' is often used to describe Indian wedding because they are attended by large number of guests. The number of guests attending a wedding can go as high as 50000.[4] The phrase also denotes huge spending. A report estimates that average expenditure in Indian wedding is twelve lakh rupees.[5] Indians spend in marriages twice the money they spend on education.[6] Out of these spending, 20 % is spent on food services offered by the Caterers.[7] The number of people who consume food in Indian weddings is quite high. An improper preparation of food or wrong use of the ingredients can put crores of Indian at a high risk of health issues on every wedding seasons. The same will be true for any other gathering where food is served. Hence, in a country like India where a large number of people consume food in weddings and other functions, proper regulation of catering services becomes vital.

Catering service provider are regulated by Food Safety and Standard Authority of India (FSSAI). The law applicable to caterings services for regulation of quality of food served by them are Food Safety & Standard Act, 2006 (FSS Act), Food Safety and Standards (Licensing & Registration of Food Businesses) Regulations, 2011(The Regulations) and other FSSAI regulations. These laws and regulations go in great length and breadth for ensuring food safety in catering services. However, there are many instances where the regulations are not complied with by the catering industry. This puts a large number of people attending weddings and other functions at high risk of disease caused by food and water. The caterers in India also face plethora of problem like lack of space for their worker, improper kitchen and sanitation area at the place of wedding or functions etc. At times which it becomes difficult for caterers to comply with some regulations. This paper is an attempt to highlight the issues and challenges in the regulation of catering industry. It not only highlights the non-compliance by caterers but also highlights the problem faced by the caterer to comply with the regulations.

The paper is divided in to three sections, the first section, that is this section, states the problem, the second section states the legal compliances that caterers have to make and the non-compliance that is prevalent, the third and the final section states various suggestion that can be incorporated to solve the problem.

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[3] Ranjan Das, *Wedding Is the 4th Biggest Industry and Still so Underdeveloped and Unorganised*, THE TIMES OF INDIA, https://timesofindia.indiatimes.com/blogs/voices/wedding-is-the-4th-biggest-industry-and-still-so-underdeveloped-and-unorganised/.

[4] 50,000 GUESTS AT BIG FAT REDDY WEDDING IN BENGALURU. AND A FEW TAXMEN, https://www.ndtv.com/video/50-000-guests-at-big-fat-reddy-wedding-in-bengaluru-and-a-few-taxmen-438972 .

[5] Story in Numbers: Big Fat Indian Wedding, OUTLOOK BUSINESS (2024), https://www.outlookbusiness.com/economy-and-policy/story-in-numbers-big-fat-indian-wedding.

[6] Indians Spend Twice As Much on Weddings than Education: Report, INDIA TODAY (2024), https://www.indiatoday.in/business/story/indians-spend-twice-as-much-on-weddings-than-education-report-2560724-2024-07-01.

[7] Story in Numbers, *supra* note 5.

2. Non-Compliance of Regulations by Catering Businesses

All the catering businesses in India are governed by Food Safety & Standard Act, 2006 (FSS Act)[8], Food Safety and Standards (Licensing & Registration of Food Businesses) Regulations, 2011(The Regulations)[9] and other FSSAI regulations[10]. All catering businesses have to obtain a license or registration number from Food Safety and Standard Authority of India (FSSAI) to start their business operation.[11] Once they commence their business operation, they are governed by FSS Act and all the relevant FSSAI regulations applicable to them. There are as many as 22 FSSAI regulations which are applicable to different food businesses.[12] The most significant of all the regulation applicable to the catering service provider is Food Safety and Standards (Licensing & Registration of Food Businesses) Regulations, 2011. Part I Schedule 4 for the said regulation lays down the sanitary and hygienic standard to be followed by the catering businesses.[13] These standards are mandatory in nature and had to be complied by the catering businesses. To make these standard easily understandable, FSSAI has also created a Basic Food Safety Training Manual for Catering.[14] This manual contains direction in an easy to understand language and also pictorial representation of the directions so that the catering business can easily comply with the regulations. The manual is based on the regulation itself. The manual defines food safety, food borne diseases, food safety hazards and food spoilage.[15] It defines food safety as assurance that food is fit for consumption by human.[16] It defines food borne disease as those disease which are the result of consumption of un safe food.[17] It defines food safety hazards as the presence of biological, chemical or physical agent in food which can cause adverse health effect.[18] It also includes in the definition condition of food which can cause adverse health effect. It defines food spoilage as condition when there is degradation of original nutritional value, texture and flavour of the food.[19] It states that there can be mainly three types of safety hazards in viz Microbiological hazard caused by microbes, chemical hazard caused by pesticide fertilizers etc and physical hazards which means the presence of physical containments like broken glass, hair etc. The manual seeks to avoid all the above-mentioned hazard in the catering services while

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[8] FSSAI, https://www.fssai.gov.in/ .
[9] Licensing_Regulations.pdf, https://www.fssai.gov.in/upload/uploadfiles/files/Licensing_Regulations.pdf (last visited Feb 1, 2025).
[10] FSSAI, https://www.fssai.gov.in/cms/act-2006.php.
[11] Food Safety and Standards Act, 2006, §31
[12] FSSAI, https://www.fssai.gov.in/cms/food-safety-and-standards-regulations.php
[13] Food Safety and Standards (Licensing & Registration of Food Businesses) Regulations, 2011, Regulation 2.1.2 Schedule IV Part I
[14] Basic Catering English.pdf, https://fostac.fssai.gov.in/doc/Basic%20Catering%20English.pdf
[15] Basic Food Safety Training Manual Catering, Part I, [P-5] [p-8]
[16] *Id.* at p-5
[17] *Id.*
[18] *Id.*
[19] *Id.*

mentioning that microbiological hazard is the most important in catering and food services. [20]

In order to avoid various hazards, the manual lays down certain directions to the caterers. These directions range from maintaining a neat and clean premises for preparation and storage of food to proper handling of food by food handlers. An account of the various directions to be followed by caterer while storing, preparing and serving the food and issues in complying with the direction is as follows:

2.1 Non-Maintenance of Premises

Regulation requires that the location where the food has to be away from area which is environmentally polluted. The area should be away from any area which can be a potential source of contamination. The walls, doors, window of the premises should be maintained in such a manner so that there is less absorption of dirt. There should be proper drainage system. The surface on which the food has to be prepared should be made of stainless steel or rust-free material and should be easy to clean. [21]

The guidance document for catering services prepared by FSSAI classifies caterering on the basis of premises in to two categories viz On-Premise Catering and Off-Premise Catering. [22] On- Premise Catering refers to those caterings in which there is a permanent facility at the place of wedding or function. On premise catering means having permanent facility for preparation of food in the place of event. [23] Off-Premise catering refer to those catering in which the caterer have to move to a particular location to provide the catering services. In this type of catering the caterer do not have a permanent facility for preparation of food rather there is a temporary arrangement for preparation, storage and disposal of food.

Compliance of the regulation with respect to condition of premises to be maintained by the caterers is easier for an on-premise caterer than off-premise caterers. On-premise caterer can maintain their permanent facility easily as they have the control over the facility. Whereas off-premises caterer does not have any control over the facility as its owned by the property owner on whose property catering services is to be provided by the caterers. Off-premises caterer often move from location to location to provide catering services in different venues having nil or extremely less control over the condition of facility in which the food is to be prepared.

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[20] *Id.*
[21] Food Safety and Standards (Licensing & Registration of Food Businesses) Regulations, 2011, Regulation 2.1.2 Schedule IV Part I Point 3
[22] Guidance_Document_Catering_Sector_19_01_2018(4).pdf, https://fssai.gov.in/upload/uploadfiles/files/Guidance_Document_Catering_Sector_19_01_2018(4).pdf
[23] Id, [p-8]

This lack of control for maintaining the premises often creates problem for Off-premises caterer to comply with regulations. They not only fail to comply with regulation which requires them to maintain hygienic conditions but also which requires the food to be stored in good condition. They also have to devise a temporary waste disposal system which might not be as robust as permanent waste disposal system of On-premises caterer. This issue of Off-premises caterer not having control over the venue also raises the question of legal liability in such cases. The current regulation casts the responsibility on the Off-Premises caterer to maintain the premises.

In our submission this is a gap in the law, and an amendment casting liability on the owner of the venue for not maintaining the premises according to FSSAI regulation is much needed.

On-premises caterer also face challenges in complying with the regulations which requires them to have the kitchen away from an environmentally polluted area.[24] In most cases the big banquet halls or wedding places are in the outskirts of the city where industry is also situated. Indian weddings are notorious for having large number of guest and as a result the event location becomes over crowded. Over crowded location can lead to compromise in the food preparation area leading to non-compliance of various regulations.

2.2 Lack of Skilled Staff

Due to lack of capital, manpower, awareness of regulations and training of employees, catering service providers are not complying the FSSAI regulations. Regulations mandate that caterers should have adequate number of staff. In order to maximise profits caterers hires less no. of food handlers. Sometimes, these food handlers are also not trained to handle food according to the FSSAI regulations and manual.

2.3 Overburdened Staff

Most Indian weddings take place on a *'Mahurat days'* that is a particular day considered auspicious for marriage. This sometimes leads to multiple weddings happening on the same day. This leads to lack of manpower as demand for trained chef and food handlers shoots up on *'Mahurat days*. Most caterers then hire untrained staff on contract basis to meet the rising demand on *'Mahurat days'*. This practice is a violation of regulation as it mandates caterer to have trained staff.[25]

[24] Food Safety and Standards (Licensing & Registration of Food Businesses) Regulations, 2011, Regulation 2.1.1(4) Schedule IV Part II 1

[25] Food Safety and Standards (Licensing & Registration of Food Businesses) Regulations, 2011, Regulation 2.1.1(4) Schedule IV Part II 12

2.4 Lack of Gears for Food Handler

According to the regulations, food handlers should be wearing clean aprons, gloves and head gears.[26] While a caterer charging a hefty sum from the consumer might provide these gears, but a medium to small scale caterer may not be able to provide these gears. Un trained staff is not able to comply with the regulations putting consumers of catering services at high risk of diseases and other dangers. For instance, an untrained handler of food might not wash his hands and may spread diseases to the consumers. Even a renowned caterer can't provide these gears or train their staff if due to multiplicity of wedding on the same day they have hired the staff temporarily. Even if they provide gears, the untrained staff might not be able to appreciate the significance of using such gears.

2.5 Lack of Menu Labelling

A non-compliance that is widespread among the caterers is non labelling of menu in occasions like wedding receptions, birthday parties etc. Caterer are obliged to put labels on their stalls but they don't put the label due to lack of information or other reasons. Even if compliance of menu labelling is done by the caterers, at times consumers don't have enough time and space to read the labels and make an informed choice while choosing food items. This defeats the whole purpose of the menu labelling campaign of FSSAI. This campaign is aimed at helping consumer to make an informed choice about the food item by looking at the information provided by the labels

2.6 Lack of Adequate Facility for Catering Staff to Maintain Personal Hygiene

Regulations mandates for adequate number of restrooms as well as separate area for changing clothes for the food handlers. [27] However, this regulation is ignored by most catering services and especially Off-Premises catering services. When large no. of people attend wedding or any other function then the hotels or wedding places are filled with guests. This leaves food handlers and other catering staff with inadequate facilities of rest rooms and other facilities like changing room etc. which are essential for maintaining personal hygiene.

2.7 Inadequate Pest Control

Regulation mandates that there should be adequate measures taken to control pest in the premises where food is prepared.[28] This is again a problematic compliance for off-premises caterer as they have no

[26] Food Safety and Standards (Licensing & Registration of Food Businesses) Regulations, 2011, Schedule IV Part II, 10.2
[27] Food Safety and Standards (Licensing & Registration of Food Businesses) Regulations, 2011, Regulation 2.1.1(4) Schedule IV Part II 4.6.1
[28] Food Safety and Standards (Licensing & Registration of Food Businesses) Regulations, 2011, Regulation 2.1.1(4) Schedule IV Part II 9.2

control over the location in which they would be delivering catering services. On-premises catering services can comply with this norm relatively easily. However, there is no direction as to what duration of interval should be there between two pest controls. It seems that this duration is left to the discretion of the food officer.

3. Regulation of Catering Services: The Way Forward

It's evident from previous section that there are enough regulations regulating catering services in India. However, there are some issues in implementation of these regulation. There are many regulations which are not followed by the caterers in India putting at risk large population who consume food served by catering businesses during various gatherings including weddings.

Caterers are guilty of non-compliance partly because of their own negligence, lack of fear of sanctions and partly because of situations over which they have hardly any control. For instance, an off-premise caterer has hardly any control over different premises in which he will be providing catering services from time to time. The caterer can't be made accountable for not maintaining any premises over which he has to provide services temporarily, and he has no control over it what so ever. Similarly, if an off-premise caterer's staff is not given adequate facilities of rest room by wedding places, resorts etc due to over crowding of guest in weddings or other functions then again, such caterer can't be held accountable. There are other challenges in regulation of catering services which are independent of the conduct of the caterer. For instance, consumer not reading menu labels due to lack of space or time is an issue that FSSAI would like to resolve. Although, its resolution has nothing to do with the conduct of the caterer.

In my submission there are some solutions available to the issues mentioned in the second section. The issue of maintenance of premises for off-premises caterer can be solved by putting the liability of maintaining the premises on the owner of the venue. This is so because in India the owner of the venue and caterer are often two different persons. In such cases the owner of the venue should be responsible for providing proper facility to the caterer. As an off-premises caterer has little or no control over the premises, the owner of the venue should be made accountable according to FSSAI regulations.

The issue of caterer serving multiple wedding on the same day without having adequate staff members can be resolved by having a system in place where caterer have to declare its capacity to serve in a day. The caterer must then take permission to serve in case they want to exceed their capacity. At the time of granting permission, the FSSAI officer can take cognizance of the capacity of the caterer to serve at multiple functions, and accordingly he can grant permission.

Similarly, the owner of the venue can also declare the maximum capacity of the premises in terms of no. of people staying at the same time on a given day. A fine can be levied on the venue owner for over crowding the space. The number of people staying on a given day for which the venue is booked should be uploaded on the FSSAI's web site and any mismatch of the uploaded data and data received at the time of an inspection should attract fine. This will reduce over crowding of the venue which is the main reason for lack of adequate facilities provided to the staff of the caterers.

A solution to problem of people not reading labels due to lack of time and space is that the labelled menu of caterers in the form of hyperlink can be attached to ecards of the weddings. This will enable the consumers to make an informed food choice in wedding. Sending the labelled menu with wedding card is a feasible and easy solution in our submission to solve the issue of non-compliance of menu labelling regulation as well as people not reading the labels.

The issue of pest control can be dealt with by clearly specifying the time interval between two pest control. The caterer or the owner of venue in cases of off-premise caterer should be directed to affix the certificate of pest control measure taken on conspicuous place in the premises.

Conclusion

The system of regulation of caterers in India is like this: FSSAI publishes the regulation and caterers are bound to take note of it. Then, they are required to self-regulate themselves according to the regulation. There can be checks by FSSAI officers to check whether all compliances are being made by the caterers or not. So, currently the responsibility lies on the caterers to self-regulate themselves with the sanction of surprise visits by the FSSAI food officers. Most of the times inspection doesn't happen at all. This system characterised by less frequency of inspection can be termed as a system of 'Passive Inspection'. Alternatively, a system which allows for consistent and regular inspections can be termed as a system of 'Active Inspection'. We need to move from a system of 'Passive Inspection' to 'Active Inspection'. One food officer may be assigned for weddings happening in a particular area much like a police officers are assigned during rallies in India.

As mentioned above there are various feasible solutions for increasing compliance of FSSAI regulation for caterers. However, nothing works better than providing some kind of incentive to for complying to something. Caterers are no exception as well. The chances of caterers complying with the regulation increases manifolds if some incentive is provided to the caterers for complying with the regulations. One such incentive may be 'Catering Score'. An online data base of caterer can be maintained with each caterer getting rated

for the quality of services provided by them in the past. Much like a Cibil Score, there can be a Catering Score of each caterer which is available to the consumer from FSSAI's website. This will provide incentive for the caterers for compliance.

More and more people will be eating the food served by caterers more frequently as the wedding market grows, and as there is more celebrations in form of other gatherings in India. Thus, regulation of catering services in an effective manner is vital. The presence of rules and regulation is one thing, and it achieving its objective quite another. Although there are enough laws and regulation in place to regulate the catering businesses, there is a need of some changes being made to them to improve their implementation and efficacy.

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Embracing Community Service as a Modern Alternative to Imprisonment

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Abstract

This paper explores how community service is emerging as a modern alternative to imprisonment in India's criminal justice system. The jails are overcrowded and are not suitable for petty offenders. The growing need for punishments that focus on reform rather than just punishment is felt by the legislature. The introduction of community service in the Bharatiya Nyaya Sanhita (BNS) is a step in this direction, allowing minor offenders to give back to society instead of being locked away. However, the law currently lacks clear guidelines on how community service should be implemented, what kind of work should be assigned, and who will oversee it. Through some recent examples that have come up, his paper highlights both the promise and the challenges of this reform. If this is done correctly, it can help offenders reintegrate into society, ease the burden on prisons, and create a fairer justice system. However, without proper structure, it risks being misused or applied inconsistently. The paper suggests smaking clear rules, proper supervision, and teamwork between courts and local groups so that community service is a fair and useful replacement for sending people to jail in India.

Keywords: Alternative Punishment, Prison Overcrowding, Community Service, Criminal Justice Reform, Bharatiya Nyaya Sanhita, Rehabilitation

Introduction

This paper delves into community service as an alternative to imprisonment for minor offenses, a progressive concept in modern criminal justice. The paper is divided into three sections. The first section begins by discussing different theories of punishment, with a focus on restorative and reparative approaches. It argues that jails should not be the only solution for dealing with offenders, especially for minor crimes. The section also criticizes the Indian Penal Code (IPC)

for not addressing community service as a punishment. However, it highlights the Indian judiciary's progressive role in recognizing this form of punishment. The second one goes on to explore the significance of community service in today's context. It talks about the origin of this form of punishment. The efforts made by various committees in India to fill this gap. These efforts culminated in the introduction of community service as a punishment in the Bharatiya Nyaya Sanhita (BNS). This section also examines the intent of the legislature in introducing this reform. The last section critically examines the shortcomings in the BNS related to the implementation of community service. It also discusses how this provision can be both beneficial and misused, supported by contemporary examples.

Jails Are Not the Only Answer: Toward a Restorative Justice

Law has been an inseparable part of humankind; it is present in almost every sphere of life. The presence of law in primitive societies is a testament to its necessity in any form of human living. Society is governed under a set of rules and any act detrimental to the group of people living in the society must be prevented. When we talk about punishments, the aim underlying it is to achieve harmonious community living. Five theories of sentencing were proposed by Andrew Ashworth[1]:

(i) *Desert or Retributive Theories*- This theory argues that punishment is a justified and appropriate response to crime. The severity of punishment should match the degree of wrongdoing. Proportionality was the key concept discussed here.

(ii) *Deterrence Theories*- This focused on preventing people from committing crimes again by using punishment to discourage them. The penalties should be strong enough to make committing a crime not worth the risk or reward.

(iii) *Rehabilitative Theories*- The goal here is to prevent a person from further committing an offense. This was done by the therapy, counselling, and family support.

(iv) *Incapacitative Theories- The* incapacitative approach focuses on identifying offenders likely to cause harm. It uses specific measures to prevent them from doing so.

(v) *Restorative and Reparative Theories*- Here, the idea is not about punishment. It focuses on fixing the harm caused by crime. Restorative theories put the victim first. Offenders may repay victims or the community for the damage they caused. Instead of jail, they suggest community-based punishments.

[1] Andrew Ashworth, Rory Kelly, 'Sentencing and Criminal Justice' (2021). United Kingdom: Bloomsbury Publishing.

Offenders work to make amends and get support to rejoin society.

The United Nations Office on Drugs and Crime (UNODC) says[2] that imprisonment is not the only way to punish crimes. Prisons often fail to help people with minor offenses or those who are vulnerable, it can make things worse for them. Restorative and Reparative Theories of justice are being looked upon by the jurist in contemporary times. There are more than nine million prisoners worldwide and that number is growing[3] and the cost of imprisonment in the region of US$ 62.5 billion per year.[4] There is a need to shift from imprisonment as a mode of punishment for petty offenses. Jails designed for punishment, not rehabilitation, are overcrowded and inhumane. The Supreme Court of India highlighted in its judgment *Rama Murty v. State of Karnataka*[5] that prisons in India are overcrowded, with poor hygiene, harsh treatment, trial delays, and lack of proper communication. Throwing petty offenders into these harsh environments alongside hardened criminals goes against the principles of justice and fairness.

The Indian Penal Code('IPC')[6] as was originally drafted by Macaulay, relied heavily on incarceration, even for minor transgressions. This code was mainly made for the benefit of Britishers to gain control over the people and incarcerate them even for petty offenses. Even the first amendment to IPC after independence[7] did not address the reformative approach of law. The IPC under section 53 ('Punishments')[8] did not address any alternative form of punishment other than penal (i.e., imprisonment or fines). However, the courts in India tried to fill this gap in the law through judicial pronouncements. In the case, *Sunita Gandharva v. State of M.P.*[9], the Madhya Pradesh High Court explored the bail conditions for the accused. They stated that these conditions can extend beyond the traditional limitations, and these can encompass things like community service and rehabilitation activities. Even the earlier decisions of the courts emphasized the importance of transformation in an individual. The Supreme Court of India in *Mohammad Giasuddin v. State Of Andhra Pradesh*[10] urged the law to support the idea of rehabilitation. The court asked the government to give prisoners meaningful work and a chance to learn higher education or skills like tailoring and doll-

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[2] Van Zyl Smit, Dirk, 'Handbook of Basic Principles and Promising Practices on Alternatives to Imprisonment' (2007) Austria: UN.
[3] ibid (n 2).
[4] ibid (n 2).
[5] *Shri Rama Murthy vs State of Karnataka* 1997 SCC(CRI) 386.
[6] Baron Macaulay, Thomas Babington Macaulay, 'The Indian Penal Code, as Originally Framed in 1837' (1888) India: Higginbotham.
[7] The Indian Penal Code and the Code of Criminal Procedure (Amendment) Act 1949.
[8] The Indian Penal Code 1860, S.53.- **Punishments**. —The punishments to which offenders are liable under the provisions of this Code are— First. —Death; 2 [Secondly. —Imprisonment for life;] Fourthly. —Imprisonment, which is of two descriptions, namely: — (1) Rigorous, that is, with hard labour; (2) Simple; Fifthly. —Forfeiture of property; Sixthly. —Fine.
[9] *Sunita Gandharva* v *State of M.P* 2020 SCC OnLine MP 2193.
[10] *Mohammad Giasuddin v. State Of Andhra Pradesh* 1977 3 SCC 287.

making for women. For the same reason, the sentence in this case was reduced to 18 months, with a fine of Rupees 1200 imposed for cheating. The idea here is to reform the offenders, not just punish them. This approach sees prisons as places to help people grow and improve. The state of Andhra Pradesh also came up with the Andhra Pradesh Community Service of Offenders Act[11], which applies to minor offenses with prison terms of up to six months. According to the provisions of the act, it allows convicts with short prison sentences to avoid jail. Instead, courts can assign them to do community service in a government institution based on their skills or education.[12] The Government of India in its Advisories on Prison Administration[13] cited the Andhra Pradesh Act as a measure towards reduction of undertrial prisoners and advised to explore alternatives to imprisonment.

A Progressive Step: Community Service in Bharatiya Nyaya Sanhita

Community service as a form of punishment bases itself on the reformative potential of an individual. It can contribute positively to the society by harnessing the labour for the betterment of the community. The mythical tale of Heracles and the Augean Stables allows us to see how strength can be put to use for community service. The king instead of putting Heracles in jail, which would otherwise cost the state money gives him a meaningful task. Heracles is asked to clean the Augean Stables, which had been filthy for generations. This lets Heracles repent for his past deeds and contribute to society. The story highlights using people's abilities to benefit everyone and create positive change.

The concept of community service as a form of punishment originated at the House of Correction in Bridewell Palace, London, around 1553.[14] This was done to reduce idleness and homelessness by giving tasks to the homeless. This was informally known as the "Wootton Report" which was done to support non-custodial punishments.[15] It suggested part-time community work as a better option than jail.

Efforts to include community service as a punishment in India go back to Committee on Reforms of Criminal Justice System which published its report in 2003 under the chair of Dr. Justice V.S.

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[11] Andhra Pradesh Community Service for Offenders Act 2010.

[12] TOI, 'Convicts Community Service Bill Faces Hurdles' *Times of India* (Hyderabad, 30 August 2011) <https://timesofindia.indiatimes.com/city/hyderabad/convicts-community-service-bill-faces-hurdles/articleshowprint/9790743.com> Accessed 31 December 2024.

[13] Advisories on Prison Administration (2011), Ministry of Home Affairs, Government of India, No.17011/2/2010-PR.

[14] Leonard A. Roberts, 'Bridewell: The World's First Attempt at Prisoner Rehabilitation Through Education' (1984) Journal of Correctional Education 35, no. 3 83–85.

[15] Naveen Talawar, 'Revolutionising Justice: Emergence of Community Service Punishment in The Indian Criminal Justice System' (*Verdictum*, 21 March 2024) <https://www.verdictum.in/columns/revolutionising-justice-emergence-of-community-service-punishment-in-the-indian-criminal-justice-system-1526>Accessed 31 December 2024.

Malimath.[16] The Committee suggested that community service may be prescribed as an alternative to a default sentence. The report also said that in economic offences, like tax fraud, money laundering, stock market frauds and also offences like cyber-crimes, intellectual property violations etc., the punishment should include punitive fines, jail, and community service. Consequently, in 2007, the Prof (Dr.) N. R. Madhava Menon Committee report[17] came up with Social Welfare Offences Code ('SWOC'). The object of which was reformative rather than punitive. The offenses here include the ones that are social in origin, they can be prevented through awareness programmes. For such offences community service was preferred to a jail sentence.

These efforts turned fruitful with the introduction of Bharatiya Nyaya Sanhita ('BNS').[18] This move from IPC to BNS is a testament to leaving behind the colonial past. The old code lacked the demands of the modern time. As stated previously, it heavily relied on incarceration. The evolution of society demanded moving beyond retribution and deterrence to reformation. The code brings in this evolution through the introduction of community service as a form of punishment under section 4 of BNS.[19] Presently, the Sanhita outlines six offences for which community service as a form of punishment may be prescribed. These include abuse of power by public servant for illegal trade[20], failure to respond to summons by the court[21], attempting suicide to influence legal actions[22], petty theft[23], appearing in public space in a state of intoxication[24] and defamation[25].

The intent behind the introduction of this section must have been to provide an alternative to an obsolete form of punishment for petty offenses. The rising number of inmates who otherwise deserve rehabilitation are inside the jails. They are an unnecessary burden on the prison administration. It is equally important to consider the fact that imprisonment deprives the convicts of their liberty. They might keep committing crimes inside the prison when the actual requirement is that the community must support their rehabilitation. The question of effectiveness is necessary to consider while talking about petty offenders. A less experienced offender is forced to mix with hardened criminals. This exposes them to criminal techniques, attitudes, and justifications, making them more likely to commit

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16 Committee on Reforms of Criminal Justice System Report Vol.1(2003), Ministry of Home Affairs, Government of India.
17 Report of the Committee on Draft National Policy on Criminal Justice (2007), Ministry of Home Affairs, Government of India.
18 The Bharatiya Nyaya Sanhita 2023.
19 The Bharatiya Nyaya Sanhita 2023, S.4.The punishments to which offenders are liable under the provisions of this Sanhita are— (a) Death; (b) Imprisonment for life; (c) Imprisonment, which is of two descriptions, namely: — (1) Rigorous, that is, with hard labour; (2) Simple; (d) Forfeiture of property; (e) Fine; (f) Community Service.
20 The Bharatiya Nyaya Sanhita 2023, S. 202.
21 The Bharatiya Nyaya Sanhita 2023, S. 209.
22 The Bharatiya Nyaya Sanhita 2023, S. 226.
23 The Bharatiya Nyaya Sanhita 2023, S. 303(2).
24 The Bharatiya Nyaya Sanhita 2023, S. 355.
25 The Bharatiya Nyaya Sanhita 2023, S. 356(2).

crimes. When these offenders return to society, they might lack the skills to reintegrate. This happens not only with petty offenders but with every prisoner who returns to the community after serving the sentence. They might develop a hatred that could result in committing further crimes.

Community Service in BNS—Criticism and ways ahead

The introduction of community service in BNS is a laudable approach but this should have come with clear guidelines. Most importantly, Sanhita does not define community service throughout the code. It fails to specify the nature of work that would be awarded under this punishment and also the duration of the punishment. A definition of this sort should clearly explain what activities count as community service. It should also include how offenders will be supervised and who qualifies for community service as a punishment. Additionally, there are no clear guidelines on who is responsible for governing and administering the implementation of community service. Although section 23 of Bhartiya Nagarik Suraksha Sanhita (BNSS)[26] had tried defining it, but it comes with an array of lacunae and shortcomings. A closer look at this explanation[27] would tell us that it lacks the range of acceptable community service activities, details about monitoring and accountability mechanisms, there is no emphasis on using community service as a tool for rehabilitation and this definition does not clarify how "benefit to the community" will be measured or ensured. Lastly, the individual circumstances of a person (e.g., physical disabilities) have been ignored. Section 8(5)[28] also appears to be ambiguously worded, leaving room for interpretation and potential inconsistencies in its application. It seems that for any failure to complete community service, the punishment is one year of imprisonment. This could apply even if the offender could not perform the service for valid reasons or completed part of it. A system that adjusts the punishment based on the amount of service done would be fairer and clearer.

The Rajya Sabha in its report on BNS[29] acknowledged the introduction of section 4(f) in BNS calling it a “welcome step”. It was welcomed by all as it aims to reduce the number of prisoners and ease the pressure on prison infrastructure. The committee noted that

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[26] The Bhartiya Nagarik Suraksha Sanhita 2023, S.23. Explanation. —"Community service" shall mean the work which the Court may order a convict to perform as a form of punishment that benefits the community, for which he shall not be entitled to any remuneration.

[27] ibid (n 28).

[28] The Bharatiya Nyaya Sanhita 2023, S. 8(5).- If the offence is punishable with fine or community service, the imprisonment which the Court imposes in default of payment of the fine or in default of community service shall be simple, and the term for which the Court directs the offender to be imprisoned, in default of payment of fine or in default of community service, shall not exceed,—(a) two months when the amount of the fine does not exceed five thousand rupees; (b) four months when the amount of the fine does not exceed ten thousand rupees; and (c) one year in any other case.

[29] Rajya Sabha, ‘Two Hundred Forty Sixth Report On The Bharatiya Nyaya Sanhita (2023)’, Department-Related Parliamentary Standing Committee On Home Affairs, Parliament Of India.

though these efforts are laudable, the section lacks a clear definition. It emphasized that community service means unpaid work done by offenders as an alternative to jail.[30] But what constitutes that 'unpaid work' remains a big question. The committee also felt the need to address the need to add a provision to appoint someone responsible for supervising community service as part of the punishment. The committee might have considered some international practices before recommending such changes. Some relevant amongst them would include The Thai Department of Probation using community service orders to address drunk driving.[31] It worked with the courts on a campaign to fight drunk driving which is a major cause of road accidents. The convicts were given twenty-four hours of community service instead of three months jail terms. The crucial point that needs to be looked at is that before imposing these kinds of punishments, there were clear guidelines that these services included activities like helping car accident victims, working in hospitals, and assisting rescue teams. These tasks aimed to show drunk drivers the harm they could cause to themselves and others. On the other hand, the Sanhita[32] lacks provisions for supervision to verify that the offender completes the work as required and also ensure that they are not exploited or made to work more than necessary or in harsh conditions.

Community service as a punishment has proven to be an effective approach, as demonstrated in a recent case where First-Class Judicial Magistrate Court in Kanigiri[33] sentenced a 28-year-old youth to undertake community service. According to the court, the person was alleged of stealing three brass items worth ₹3,000 from a temple in Kanigiri. The convict was ordered to do community service for a month, each day for three hours. He was asked to sweep and clean the main streets of Kanigiri under the supervision of municipal staff. The court's approach shows us that there are better alternatives than imprisonment to make a person repent for their mistake. However, the inconsistencies in law could result in outcomes like *Shivani Vishal Agarwal and Ors. v State*[34] famously known as the Pune Porsche accident case. In this case, the minor was involved in a fatal accident that killed two IT employees. The courts in Pune granted him bail within 15 hours under several conditions, including fifteen days of community service with the local police. Even the Bombay High Court[35] directed the continuation of Juvenile Justice Board orders merely adding psychological counselling for the minor. This decision

[30] ibid (n 31).
[31] ibid (n 2).
[32] ibid (n 20).
[33] The Hindu Bureau, 'Court orders community service for 28-year-old youth in theft case' *The Hindu* (Ongole, 2 November 2024) https://www.thehindu.com/news/national/andhra-pradesh/court-orders-community-service-for-28-year-old-youth-in-theft-case/article68823237.ece > Accessed 31 December 2024.
[34] *Shivani Vishal Agarwal and Ors. v State* 2024 MANU OT 0048.
[35] *Pooja Gagan Jain v State of Maharashtra* 2024 MANU MH 3787.

led to a big public and legal debate about whether community service is a good and effective punishment.

For its success, coordination between the judiciary, law enforcement officials, community organizations, and an effective implementing authority is required. Dr Menon's committee report highlighting the need for a Social Welfare Offense Code[36] talked about enforcing community service as a form of punishment through agencies other than the police. It also argued for civil society participation to manage these offenses. This can also become a decentralized form of administration where local courts like Grameen Nyayalayas, Lok Adalats, and local bodies can handle these cases quickly.

Community service will emerge as a practical and progressive alternative. It offers numerous societal and individual benefits, as compared to incarceration. It is significantly less expensive and helps to address overcrowding. This allows prisons to focus their resources on more serious criminals. These resources can also be directed towards crime prevention. It gives offenders a chance to change and grow. The positive impact of their work can make them empathetic and thoughtful. The offender might find a purpose in life and lead a progressive life. Family, work, and community support are key to helping offenders find a new direction. Community service lets them keep this connection. It would be grossly unfair if a person is sent to jail for a minor crime that could cost him lose job and disconnection from the family.

Conclusion

The paper has explored community service as an alternative to imprisonment for minor offenses. It began the discussion by highlighting the restorative and reparative approaches to law and criticizing the colonial legacy of IPC for neglecting community service. The significance of community service in today's context was examined. Efforts by various Indian committees, leading to its inclusion in the Bharatiya Nyaya Sanhita (BNS) was explored. Lastly, the shortcomings of the BNS in implementing community service were seen, along with examples of its potential benefits and risks. This paper has thoroughly covered all aspects that were assured in the beginning, it offered insights into making community service a meaningful reform.

[36] ibid (n 19).

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From Courtroom to Clicks: Evolving Legal Communication and Client Engagement

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Abstract

Communication through the ages has changed its form innumerable times to keep up with the changing trends in technological advancement and provide ease for the user base. The case has been similar in the spectrum of legal communication. Law is highly concerned with prompt communication between parties, advocates, and decision-makers. Thus, using the most advanced forms of communication is of utmost importance for various reasons such as flexibility, better economy and connectivity. However, law as a subject is ages old, and the practicality of pairing old with new often leads to a lot of friction.

This paper deals with this friction between law and its adoption of various online communication methods, from online streaming of court trials to the use of AI at a variety of stages, with an emphasis on online client engagement. It delves into the curveballs of keeping up with technological advancement and falling back on homegrown practices for online communication. This paper further provides suggestions for inculcating domestic platforms for online legal communication in judicial and client engagement practices. The paper also addresses significant challenges, including digital divide, which disproportionately affects marginalised communities and proposes a Justice Enhancing Communication Technology (JECT) framework that aims to bridge this gap. This paper also delves into the psychological aspects that lead to effective and enhanced client engagement in the legal business and has proposed strategies such as the use of heuristics and gamification in legal communication.

Keywords: Indigenous practices, video conferencing, collaborative law, heuristics, gamification, JECT, computer-mediated communication.

1. Introduction

To a layman, law is synonymous with bulky legal files, dust ridden repositories of the courts. It is true but only to a certain extent, as technological advancements have come a long way in the legal field, especially in India. In earlier times, advocates would prepare lengthy handwritten documents for the courts, which would often take months to write, with no guarantee of acceptance or rejection by the courts. This process would also be lengthy because of the need for client counselling and post-counselling research which would require the lawyer to physically go over multiple documents just to find a few relevant laws to the case at hand. The process was also harder due to difficulties in accessibility to a number of documents related to the case. The earlier communication process was cumbersome marred by various repercussions of physical communication. Earlier, communication would often take months, if not years, due to use of post mails and letters. Even in such scenarios, huge loss could occur due to careless handling of such letters or documents of communication, which would result in them getting damaged or lost in the process of transmission.

Such problems were mitigated with the advent of phone calls and emails. This progress of technology opened doors for convenient and faster communication between advocates and their clients. Now, meetings could be arranged quickly without the hassle of waiting for days for a reply from the other side; documents could be sent and received with the click of a button and tasks could be dealt with on an urgent basis. It could also be alleged that such an advancement gave rise to the 'Hustle Culture' that exist in the legal industry today.

But even with the upgradation of communication forms, most of the legal industry still remained with primordial practices of legal research – reading bulky books, paperwork etc.; court communication – lengthy written judgements, physical submissions before the courts etc. These bulky physical documents are a hassle for the legal practitioners and thus there was a demand among the legal fraternity to develop computer systems that can exhibit legal intelligence and embody knowledge. These types of knowledge-based computer systems were anticipated by Lee Loevinger in 1949.[1] Further, Lucien Mehl in 1958 mooted a "logical framework with associated symbolic language to create both an Information Machine and a Consultation Machine."[2] The development of Artificial Intelligence ('**AI**') has made these aspirations a reality. The meetings arranged for client counselling, negotiation or preparation for trail would also be offline. Thus, there was advancement only with communication of legal

[1] Lee Loevinger, *Jurimetrics: The Next Step Forward*, 33 MINNESOTA L. REV. 455, 483 (1949).
[2] Avinash Ambale, *To the Law Machine' Revisited: A Survey & Analysis of Methods and Techniques for Automation in The Legal World*, 7 INT'L. J. OF CONSUMER LAW AND PRACTICE 52, 55 (2019).

practices, whereas the practices themselves remained, for the most part, traditional.

The advent of Internet has been furthered by its use as a commercial medium for multiple purposes across various industries and professions, including that of the legal industry. Lawyers and other professionals in the legal industry are becoming increasingly technology-oriented in process of catching on to the revolution that has come about due to the explosion of Internet worldwide. And the traditional practices changed with the development of Internet and its facilities. Archive of innumerable books are available online in forms of e-books, portable document format (**'PDF'**) file, articles etc. The official documents of the government can now be made public in the most accessible way of PDF file available online on open Internet source. To keep up with such advancements in communication, the courts also started giving judgements in pdf files, many of which can be accessed online through the courts' portal or on open Internet source. To establish the genuineness of such documents, facilities like e-signatures are developed. Thus, the communicating documents can be signed virtually and still hold their materiality. Furthermore, the Internet also facilitated online meeting which changed the ways of client engagement for lawyers as well the courts. Client counselling, negotiation, preparation etc. could now be arranged without the commitment of meeting physically. Online meeting platforms ushered this technological revolution. Various platforms such as Webex, Google Meet, Zoom etc. are utilised by legal professionals for engaging with clients for different purposes. The courts also took note of such potential of the Internet and facilitated online client appearance in court trials. However, such online legal communications come with many shortcomings which are discussed in the upcoming sections.

2. Online Legal Communication in India

2.1 Prevalent Practices

Shooting off an email seems more convenient to the public now rather than taking the extra effort, stress, energy, and cost to pen down a letter and send it via mail through the post office. This has resulted in the alienation of the latter idea as one would choose the more rapid and efficient method of communication to which one is more familiar. Online legal communication pushes the legal industry to find and adopt practices that would lead to an increase of engagement with people who seek basic legal aid; regardless of whether that aid is coming from an individual advocate, legal clinics, government legal aid departments, law firms, or legal service organisation, or retrieve relevant information related to the case. Thus, following the aforementioned idea, the ideal goal of a legal information retrieval system would be to find relevant documents in relation to the search query as defined by the client. This retrieval of information would thus be used in litigation which majorly consists of three stages – pre-trial,

trial and appeal. There is intensive document discovery at the first stage i.e. the pre-trial stage, followed by fast retrieval of case information, and tracking of related documents that are part of the evidence bundle, as the main focus during the trail stage. At the appeal stage the main focus is on trial and case law. In contrast to more traditional search methods, a variety of search strategies are employed in the digital age to examine legal databases. Increasing public-legal professional online interaction must be prioritised as a key component of access to justice solutions. The main way the legal profession can guarantee that the public actually finds and utilises the various way to approach justice solutions – from self-help resources developed by legal aid to individual advocates and law firms offering specific services – is by comprehending online communication in terms of connecting the needy individual with the legal services they require.

2.2 Video Conferencing in Courts

Conducting the court proceedings through video conferences is not a novel entrant. Video technologies were used in United States of America (**'USA'**) in 1970s in some of the state courts that made use of 'videophones' to hold bail and other hearings in criminal matters.[3] By 1990s, these technologies were also incorporated in federal courts where they were used to transfer testimonies of child witness that were physically separated from a defendant accused of sexually assaulting the child.[4] However, the integration of video conferencing in court proceedings was sluggish as compared to the commercial organisation, even after development of video conferencing software like Skype by the 2010s.[5] Outbreak of COVID-19 gave this integration a boost due to hindrances in conducting physical hearings. In June 2023, Supreme court agreed to consider the demands put forth by senior advocate Indira Jaising suggesting the links of video conferencing be available on the cause list.[6]

The Supreme Court of India has also stressed upon the use of virtual hearing system in the courts throughout the country as step towards digitisation of judiciary and transparency. Such practice got impetus during the COVID-19 pandemic and has proved its value in facilitating convenient and speedy trials. The Union cabinet sanctioned Rs. 7210 Crores for the third phase of e-courts project that is intended for the Information and Communication Technology (**'ICT'**) development of the Indian judiciary.[7]

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[3] Aaron Haas, *Videoconferencing in Immigration Proceedings,* 5 PIERCE L. REV. 59, 62 (2006).
[4] Molly Treadway Johnson & Elizabeth C. Wiggins, *Videoconferencing in Criminal Proceedings: Legal and Empirical Issues and Directions for Research*, 28 LAW & POLICY 211, 218 (2006).
[5] RICHARD SUSSKIND, ONLINE COURTS AND THE FUTURE OF JUSTICE 58 (Oxford Univ. Press, 2019).
[6] Padmakshi Sharma, *Live-Streaming | Supreme Court Agrees to Consider Suggestions Made by Senior Advocate Indira Jaising*, LIVELAW (Jan. 16, 2023, 2:37 PM), https://www.livelaw.in/top-stories/live-streaming-supreme-court-agrees-to-consider-suggestions-made-by-senior-advocate-indira-jaising-219085.
[7] *e-Courts Phase-III aims to usher in a regime of maximum ease of justice by moving towards digital, online and paperless courts through digitization of entire court records*, PIB DELHI (Aug. 1, 2024),

2.3 Lack of Indigenous Video Conferencing Platforms

Supreme and various high courts have adopted video streaming their court proceedings. However, the medium for these virtual meeting is a point of contention. In the era where India is making digital strides and promoting 'Make in India' spirit, the mediums that the courts and legal professionals use for online communication are primarily foreign.

Despite the Supreme Court of India using Cisco Webex, the various High Courts use different platforms for virtual hearing[8] –

Platform	**Number of High Courts**
Zoom	Ten High Courts
Cisco Webex	Eight High Courts
Google Meet	Four High Courts
Jitsi and BlueJeans	One High Court each
Vconsol and Microsoft Teams	Only one High Court

From all these online meeting platforms, only Bharat VC and Vconsol are indigenously developed where Bharat VC is the rebranded version of Vconsol in its furtherance. Furthermore, other than online meeting platforms, other communication methods like mail, messaging apps etc. are also dominated by foreign service providers like Google and Meta. Thus, the Indian online legal communication system is yet to be self-reliant.

Such dependence on foreign intermediaries comes with its own limitations. The use of multiple platforms for the purpose of trials and client engagement results in a lack of uniformity in the online legal communication spectrum. This might lead to undue advantages or losses for persons not using a particular platform, which might provide better facilities than the other. Such a trench is a grave issue but avoidable through the intersection of uniform indigenous software and legal communication. Thus, even with the Supreme Court "mooting live-streaming of all matters and testing the beta version of its app"[9] the court would do good in acknowledging this gap and working

https://pib.gov.in/PressReleaseIframePage.aspx?PRID=2040232#:~:text=On%2013.09.,4%20years%20starting%20from%202023.

[8] Tushar Kohli, *Supreme Court takes stock of virtual hearing system in High Courts*, SUPREME COURT OBSERVER (Jan. 22, 2024), https://www.scobserver.in/journal/supreme-court-takes-stock-of-virtual-hearing-systems-in-high-courts/.

[9] Debayan Roy, *Supreme Court mooting live-streaming of all matters; beta version of app being tested*, BAR AND BENCH (Oct. 18, 2024, 1:13 PM), https://www.barandbench.com/news/supreme-court-mooting-live-streaming-of-all-matters-beta-version-app-tested.

towards indigenising the trial practices in respect of the country and its legal system.

Furthermore, AI holds the key to future online legal communication system. With platforms like Harvey AI raising millions from various corporates[10], the legal industry is ushering into the realm of artificial intelligence. Harvey AI raising millions is evidence of the untapped potential of AI in the legal field. Various Indian Law firms are partnering with AI driven platforms to boost their legal services, such as Trilegal's partnership with Lucio AI.[11] Cyril Amarchand Mangaldas has selected Harvey AI (on a pilot basis) and Lucio to empower its lawyers with AI-driven capabilities, along with Copilot and ChatGPT Plus to redefine business operations.[12] Further, Khaitan & Co. has introduced their own AI applications such as ask.KAI and DocInsight.[13] Now, it is upon the industry experts and government to tap into the potential of such services and give India the first-mover advantage in artificial intelligence by developing domestic AI platforms not just for the use of legal professionals but also for legal clients and providing justice to all. On the other side of the coin, grave attention needs to be paid to the information provided by AI and algorithms must be in place to authenticate that information or else we hear of cases such as that of a New York-based lawyer using ChatGPT for legal research and including six cases in his brief whose legitimacy could not be established in court, thus attracting sanction from the court.[14]

Advocating for integration of AI in the legal field will inevitably be coupled with serious concerns regarding the legal jurisprudence, livelihood concerns of the people engaged in conventional form of legal practices and various ethical concerns regarding the adoption of AI. These factors should be kept in mind and addressed conjointly while adopting AI. Recently, scammers orchestrated a fake Supreme Court hearing and duped an industrialist with Rs. 7 Crores through a proceeding on the online platform Skype,[15] bolstering the ethical and legal lacunas left to be addressed. What the field lacks is a global

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[10] Sara Merken, *Legal AI firm Harvey raises $100 mln in new funding round*, REUTERS (July 24, 2024, 1:14 AM), https://www.reuters.com/legal/transactional/legal-ai-firm-harvey-raises-100-mln-new-funding-round-2024-07-23/.

[11] *Trilegal partners with Lucio to Lead AI-Driven Transformation in Legal Services*, TRILEGAL (Nov. 29, 2024), https://trilegal.com/news-insights/trilegal-partners-with-lucio-to-lead-ai-driven-transformation-in-legal-services/.

[12] Bhumika Indulla, *Cyril Amarchand Mangaldas takes a bold leap towards an AI-First Future with Strategic AI Adoption*, SCCONLINE (Jan. 30, 2025), https://www.scconline.com/blog/post/2025/01/30/cyril-amarchand-mangaldas-takes-a-bold-leap-towards-an-ai-first-future-with-strategic-ai-adoption/.

[13] Bhumika Indulla, *Khaitan & Co unveils KAI, a revolutionary leap in legal innovation*. SCCONLINE (April 4, 2024), https://www.scconline.com/blog/post/2024/04/04/khaitan-co-unveils-kai-a-revolutionary-leap-in-legal-innovation/.

[14] Sara Merken, *New York lawyers sanctioned for using fake ChatGPT cases in legal brief*, REUTERS (June 26, 2023, 1:58 PM), https://www.reuters.com/legal/new-york-lawyers-sanctioned-using-fake-chatgpt-cases-legal-brief-2023-06-22/.

[15] Arpan Chaturvedi, *Indian textile baron duped with fake Supreme Court hearing, document shows*, REUTERS (Oct. 1, 2024, 7:29 AM), https://www.reuters.com/world/india/indian-textile-baron-duped-with-fake-supreme-court-hearing-document-shows-2024-09-30/.

framework for its regulations, what constitutes ethics lacks certainty[16], in the words of Stephen Downes, "there is no common agreement about what ethical principles are."[17] There is a dearth of legal jurisprudence regarding the much-evolving AI. There isn't a single law in India that is specifically aimed at regulating AI, while the European Union (**'EU'**) has tried its hand in this area of law by creating world's first AI regulation, the EU AI Act.[18]

While India may not have any regulatory obligation for the regulation of AI, it does have a direction in this realm, which has been highlighted in several official documents, such as the National Strategy for Artificial Intelligence, 2018.[19] To commence this ambitious journey, India has acknowledged the digital sphere formally by way of enacting the 'Digital Personal Data Protection Act, 2023' (**'DPDP Act**'), in which the rules give a significant podium to the digital safety and hygiene of the regular people using the Internet. For example – Section 4(1)(a) explicitly lays down the need for consent before processing of personal data by spelling out – "*A person may process the personal data of a Data Principal only in accordance with the provisions of this Act and for a lawful purpose, for which the Data Principal has given her consent.*"[20] Prior to the DPDP Act, the 'Information Technology Act, 2000' (**'IT Act'**) regulated India's digital sphere but could not reform itself with the drastic changes in technology.

In summary, the technological development in legal communication has been considerable in the context of ease of doing business. However, substantial progress remains in making it indigenous which is a preemptive step towards maintaining the sovereignty, security and integrity of India's legal processes and laying a level field for all legal actors to access justice. As these technologies continue to evolve, so too must the legal frameworks and professional practices that govern their use, ensuring that they serve the best interests of justice and society as a whole.

3. Client Engagement

Client Engagement is a multi-faceted concept with aspects ranging from consultation to marketing to user experience to even post-consultation care. These elements are vital for a law firm to operate and quintessential for good client engagement.[21] The advent of

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[16] Lee Rainie et al., *Experts Doubt Ethical AI Design Will Be Broadly Adopted as the Norm Within the Next Decade*, PEW RESEARCH CENTER (June 16, 2021), https://www.pewresearch.org/Internet/2021/06/16/1-worries-about-developments-in-ai/.

[17] *Id.*

[18] *EU AI Act: first regulation on artificial intelligence*, EUROPEAN PARLIAMENT (Nov. 26, 2024), https://www.europarl.europa.eu/topics/en/article/20230601STO93804/eu-ai-act-first-regulation-on-artificial-intelligence.

[19] *National Strategy for Artificial Intelligence*, NITI AAYOG (June, 2018), https://www.niti.gov.in/sites/default/files/2023-03/National-Strategy-for-Artificial-Intelligence.pdf.

[20] The Digital Personal Data Protection Act, 2023, § 4(1)(a), No. 22, Acts of Parliament, 2023 (India).

[21] Thomson Reuters Legal Insights Europe, *A new framework for client engagement: Access, Awareness, and Action*, (July 16, 2021),

digitisation in the realm of client engagement has made client engagement more efficient and client-friendly. Client sitting on his cosy couch in his house can be deliberating on his concerned legal matter with flexible meeting hours and giving instant feedback, along with being at the receiving end of post-consultation care, and all this happening without his physical presence. Further, online engagement blurs the vertical hierarchical boundaries that exist in the physical form of engagement[22] as contextual cues (i.e., one's dress or seating at the head of the table) and dynamic behavioural cues (i.e., gaze, touch, and other paralinguistic cues) are filtered out during the online communication.[23] Individuals in computer-mediated communication participate more equally despite status differences.[24] Thus, online communication can ease out the hesitation of clients when engaging with their lawyers. The firm may also provide the client with various add-ons to this service like Frequently Asked Questions ('**FAQs**'), AI legal assistant to assist the client with basic legal jargon or any other legal query etc. Online client engagement, along with the amalgamation of AI, has opened floodgates for more accessible, convenient and effective client engagement at both the firm's and the client's disposal and this calls for understanding the approaches to ensure efficient client engagement.

3.1 Access, Awareness and Action Approach for Effective Client Engagement

There can be numerous frameworks in which legal professionals or entities can engage with clients, one such framework model is the Access, Awareness and Action ('**AAA**') approach.[25]

3.1.1 Access

Access is one of the fundamental aspects of client engagement, having easy access to firms, clients and people. Online client engagement is more accessible than the conventional physical meeting of a lawyer and his client which is plagued with physical barriers to communication such as the presence of both client and attorney during the engagement process. For example, the virtual presence of a party in an arbitration will facilitate his attendance in the arbitration proceedings without him having to be physically present. With access, clients can easily reach their lawyers or legal teams when the need arises. Documents may be easily shared, reviewed, signed, or rejected in real time. It's simple to get the lay of the land without needing to ask for a status report.

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https://legalsolutions.thomsonreuters.co.uk/blog/2021/07/16/a-new-framework-for-client-engagement-access-awareness-and-action/ [hereinafter 'Thomson Reuters'].

[22] Sara Kiesler et al., *Social psychological aspects of computer-mediated communication*, 39 AMERICAN PSYCHOLOGIST 1123, 1125 (1984).

[23] *Id.*

[24] Vitaly J Dubrovsky et al., *The equalization phenomenon: Status effects in computer-mediated and face-to-face decision-making groups*, 6 HUMAN COMPUTER INTERACTION 119, 138 (1991).

[25] Thomson Reuters, *supra* note 21.

3.1.2 Awareness

Awareness is central to building the foundation between the client and the law firm or legal personality. It involves making the client aware about the status of his legal matter thus, ensuring transparency in the relationship. Firstly, ensuring transparency will make the client more emotionally invested in the firm as the client will feel that he is also a part of the process and is not detached from his own legal matter. Secondly, the client feels at ease regarding his legal matter if he is properly acquainted with the status. Earlier the client used to remain in dark regarding the status of his legal matter due to absence of regular communication from his lawyer to the person. The case used to go side by side without the knowledge of what the footing of his case was, making the process opaque. This opaqueness can be ward off by online client engagement. This involves shackling the opaque frontiers of traditional process to achieving a more transparent and client-friendly and understandable engagement.

A law firm may create personalised client databases accessible to the client and the firm whereby regularly updating the client on various points of interest as the case proceeds. The firm can create different sections concerning information regarding the next date of hearing, case status. The firms can also inculcate milestone notifications on the database or through E-mail or SMS sent to the client on the achievement of some milestone like the Court accepting the petition or rejecting it etc. The firm should use plain language instead of difficult legal jargon in consideration of the receiving end of such legal communications.

3.1.3 Action

Access and Awareness constitute an essential ingredient in the client engagement process but they are of no application if they are not complemented with meaningful interactions and participation of the client in the decision-making process, the firms should empower their client to have a fruitful interaction to the engagement. This ensures active involvement of client in the decision-making process and enhancing efficiency of the firm. This can be done through the databases of clients created by the firm. The portal should allow the client to download various important legal documents and creating a compliance reminder for the clients for tasks such as uploading document or evidence on the portal. It will ensure that the clients are active in contributing the decision-making process. The firms should ensure that this mechanism should be client friendly such that clients don't take it as a burden on them.

This action-oriented client engagement process is beneficial for both the client and the firm. On the one hand, the client feels involved and understands his responsibility and on the other hand it saves time for the firm as lawyers can focus on major issues rather than waiting

for compliances on the frivolous matters, also interactive platform increases the satisfaction of the clients thus, bringing future prosperity to the clients.

3.2 Tapping into the Potential of Heuristics

An individual's ability to make decisions when online differs greatly from making a decision in real-world problems due to the Internet's information overload. When in an offline situation, the person is confined to his physical surroundings and thus makes decisions with surrounding influence only. However, due to the vast exposure of the Internet, it leaves people to make decisions in a much broader and more complex environment as there are no lines to confine the information present on the Internet which influences a decision. Thus, individuals frequently employ heuristics or guidelines that act as shortcuts to manage making potentially daunting and challenging complexities. This reduces the amount of time they must invest in making decisions online. "Some of these heuristics might also be used in offline decision-making, but they are used more often in navigating online."[26]

Heuristics are a type of problem-solving algorithm used to find good solutions to complex problems. The algorithmic capabilities of heuristic algorithms include exploring possible solutions to a problem and making informed decisions based on rules or heuristics. Hence, we may presume that some or all of these heuristics will be used by people who are looking for information about their legal circumstances and possible solutions online.

Among the many differences between face-to-face communication and online communication, visual stimulus of online communication has an impact on the client's online engagement due to differences in impression formation that occur in real-life circumstances and the virtual world, for example, when the profile picture of a person stays constant throughout the interaction on an online medium. Efficient online engagement necessitates utilising the intrinsic motivation of the person looking for legal aid. Gamification techniques offer ways to access intrinsic motivators that influence behaviour for the aforementioned reason. Gamification techniques can be used to boost public online involvement with legal services and customise them to real-world results, which will improve access to justice.

3.3 Gamification For Client Engagement

The application of behavioural analytics and game mechanics outside of a gaming environment is known as gamification. By encouraging users to act in a way that supports the objectives of the company,

[26] KEVIN ASKEW & MICHAEL D. COOVERT, THE SOCIAL NET: UNDERSTANDING OUR ONLINE BEHAVIOR 14 (2nd ed., Oxford Univ. Press 2013).

gamification is most frequently used to increase output and performance at work. Additionally, companies also use it to get involved with the customers and drive consumer behaviour which will result in a long-term relationship leading to brand loyalty with the said company. An example of gamification includes, online shopping activity in which the elements of entering data into a website are complemented with gaming elements such as progress bars, badges, rewards, or recognition, to that process to motivate the user to complete the tasks in a more desired way. Gamification can successfully alleviate the client monotony while accessing the services as the client may get bored after sometime if the user-interface ('**UI**') of the platform does not facilitate engagement. The UI of the online platform dictates the mood of the client to a large extent. UI can make the experience for the client more engaging and enjoyable if coupled with gamified techniques. "Carefully designed gamification projects that tap into intrinsic motivation can align the individual interests of the consumer with the business goals of the company."[27]

The largest population currently using the online environment is the population that has been raised playing games online and working with gamified technology applications and thus, this makes the current online environment uniquely different from actual life. As these people have been exposed to such systems of online exposure, they are already aware as to how to communication and collaborate using these very systems and they elicit higher engagement which using interfaces with gaming mechanics due to their familiarity. On similar lines, using online approach that do not integrate any gamification now feels alien to them and thus does not appeal to the individuals of this majority population. "These methods are not always overt in the platform or interface, but without them, continued engagement does not occur because the hook is not in place."[28]

Another aspect to be catered is that the gamification should be least surprising to the user. This is enunciated in the "Principle of Least Astonishment ('**POLA**') which is based on the idea that users already have a certain knowledge of what they are searching (otherwise they would not search for it) and therefore a search result should meet their expectations, which is one of the reasons why data of the users' queries is saved and introduced as a factor to future queries."[29] The aim of law firms should be to make fast disposal of queries as well as giving results to the client as quick as possible. The key concept herein is to do the less surprising thing.[30] As we are moving towards a more

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[27] Stephanie L. Kimbro, *Gamification for Law Firms*, SSRN (Mar. 15, 2015), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2578110.

[28] Stephanie Kimbro, *What We Know and Need to Know About Gamification and Online Engagement*, 67 SOUTH CAROLINA L. REV. 345, 359 (2016).

[29] Johanna Sprondel, *Toward a Humanities of the Digital?: Reading Search Engines as a Concordance*, *in* THE MAKING OF THE HUMANITIES: VOLUME III: THE MODERN HUMANITIES 484 (Rens Bod et al. eds., Amsterdam Univ. Press 2014).

[30] Marc Kenneth Lomio & Melrose Mejidana, *Principle of Least Astonishment*, MEDIUM (Dec. 7, 2021), https://medium.com/@myelmarc/principle-of-least-astonishment-efd5214b44a9.

digitised world, there is a reasonable certainty that clients accessing the services have basic acquaintance of other services available on the web. Creating a less surprising UI that matches the users' past experiences, expectations and mental models, this can save time of the client in understanding how to access the platform as the platform can be accessed in an already known fashion, thus avoiding consumer frustration and irritation and saving the valuable time of the client.

Consistency in the UI design is another key aspect for the ease of the client. To put it simply, the idea behind consistency is that every component of an interface should have the same appearance and functionality across various product sections. Consistent labelling and messaging across the product can help users quickly recognise patterns and understand how to use the product efficiently.[31] Conversely, inconsistent UI irritates the consumer which results in bad feedback for the law firm. Consistency in design goes far beyond just making your services look and feel the same across its parts. The clients interact with multitude of services, too, part of their daily lives which shapes their expectations, habits and cognitive patterns. By aligning your interface with these external experiences, you enhance its intuitiveness and ease of learning. This makes the engagement more intuitive and user-friendly without requiring any extra effort to teach the user how it works. However, the law firm should also try to break the tedium occasionally that can be used to draw attention to a specific and important element like date of next hearing, status of the legal dispute etc.

The population that seeks legal aid is evolving, and law firms are seeing a shift in their clientele towards people who are more accustomed to interacting and working together through gamified means. Additionally, this clientele is gradually over the time expecting their law firms to integrate technology in the tasks in order to make legal services more affordable and find ways to unbundle legal services with alternative fee arrangements, even if the firm's primary clients are corporate clients, in-house counsel, or the general counsel of companies. The addition of gamification elements to procedures could give the firm a competitive edge by enabling it to provide legal services to various client types in the manner that the client desires. The same is the case for legal services organisations, who are trying to help more and more people who are used to interacting with them through gamified smartphone applications by offering online support. It might be helpful to consider gamification tactics as the next step in the development of legal practice management, similar to the mental adjustment required when clients started demanding that attorneys interact electronically rather than through the mail.

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[31] Avi, *Consistency in UI design*, MEDIUM (April 11, 2023), https://medium.com/design-bootcamp/consistency-in-ui-design-4de377a537b5.

4. Dubiety of Online Legal Practices

4.1 Empowering the Client

The continuing search for more effective process options has recently led to the rise of Collaborative Law. Collaborative Law attempts to retain a focus on client interests (rather than legal rights or obligations) and return the negotiation to clients themselves. However, Collaborative Law relies on both the clients' lawyers to support and manage the process, promising a unique blend of the roles of advocate and facilitator for lawyers.[32]

We use the language of client engagement as a benchmark that signals a meaningful degree of involvement and influence on the part of clients in the process. The principle of client participation is central to many non-adversarial dispute resolution processes, and recent literature promotes this theme. Writers and practitioners in the field of Alternative Dispute Resolution ('**ADR**') generally assume there is value in client participation.[33]

A lawyer should possess emotional, along with "legal intelligence, including attributes such as empathy, self-awareness, optimism, and impulse control, which are important qualities for an effective negotiator."[34] This has been enunciated through the concept of a "working partnership" between the attorney and his client, which is at the heart of the model of "new lawyering" that Julie Macfarlane advocates in her recent book, *"The New Lawyer: How Settlement is Transforming the Practice of Law."* Julie Mcfarlane through this principle has put forth the importance of understanding the other side's interest in the negotiation process, she found that – "collaborative law clients are often attracted to the idea that they will have more power and control in the negotiation process."[35]

With the sphere of online legal communication open to the industry, such collaborative practices get a boost with not only formal but also informal channels open to them for dispute resolution. Individuals in computer mediated communications participate more equally despite status differences as knowledge about an individual's hierarchical position is a heuristic cue that can affect the attitude of a person on the reception of a persuasive message.[36] However, this cue can be filtered out by Computer Mediated Communication, as put forth

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[32] Michaela Keet et al., *Client Engagement Inside Collaborative Law*, 24 CAN. J. FAM. L 145, 146 (2008).
[33] ANDREW PIRIE, ALTERNATIVE DISPUTE RESOLUTION: SKILLS, SCIENCE, AND THE LAW 60 (Irwin Law 2000).
[34] DANIEL GOLEMAN, EMOTIONAL INTELLIGENCE: WHY IT CAN MATTER MORE THAN IQ (Raincoast Book Dist. Ltd. 1994).
[35] JULIE MCFARLANE, THE NEW LAWYER: HOW SETTLEMENT IS TRANSFORMING THE PRACTICE OF LAW 135 (UBC Press 2008).
[36] Shelly Chaiken, *Heuristic versus systematic information processing and the use of source versus message cues in persuasion*, 39 J. OF PERSONALITY AND SOCIAL PSYCHOLOGY 752, 754 (1980); *See also* Shelly Chaiken, *The heuristic model of persuasion*, *in* SOCIAL INFLUENCE: THE ONTARIO SYMPOSIUM 7 (M.P. Zanna et al. eds., Lawrence Erlbaum Associates, Inc 1987).

by cues-filtered-out perspective[37].The Collaborative Law can empower the client in online engagement by making the voice and needs of the client heard during the engagement and this serves the purpose of Collaborative Law i.e. to retain focus on the client's interests. Equal footing ensures that the client participates more actively in the engagement process, and the client can have easy access to their attorneys if there is a need in the case of online engagement. Online medium makes more easy availability of the status of the legal matter. The client can access his case just by accessing his database on his mobile phone or any other electronic device, thus making him feel empowered if he possesses significant knowledge of his case.

British Columbia Civil Resolution Tribunal ('**BCCRT**') is a step in advancing collaborative practices as it empowers the civil society to pursue their own legal interest backed by the Civil Resolution Tribunal Act, 2012. BCCRT is the first of its kind in the world that focuses on early, online dispute resolution through empowerment of the client so that they become active participants in solving problems. The general rules of the Civil Resolution Tribunal Act states that a party is allowed to represent itself or by a lawyer in certain circumstances (as laid down by the act), thus furthering the practice of collaborative law by laying down that:

"*20. General rule that parties to represent themselves*

20 (1) Unless otherwise provided under this Act, the parties are to represent themselves in a tribunal proceeding.

(2) A party may be represented by a lawyer or another individual with authority to bind the party in relation to the dispute if –

(a)the party is a child or a person with impaired capacity,

(b)the rules permit the party to be represented, or

(c)the tribunal, in the interests of justice and fairness, permits the party to be represented."[38]

With such collaborative practices getting impetus due to the Internet, the legal gap that needs to be addressed is the lack of regulation for confidentiality of communication between parties involved in the dispute. Various legal frameworks, such as the Indian Evidence Act of 1872, the Advocates Act of 1961, and the Bar Council of India Rules, regulate the professional communications between attorneys and their clients in India. Professional communications between attorneys and clients are governed by the common law principles established by sections 126-129 of the Indian Evidence Act. The rule of privileged communication also finds mention in the Code

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[37] M.J. Culnan & M.L. Markus, *Information technologies*, *in* HANDBOOK OF ORGANIZATIONAL COMMUNICATION: AN INTERDISCIPLINARY PERSPECTIVE 430 (F.M. Jablin et al. eds., Sage Publications 1987).
[38] Civil Resolution Tribunal Act, S.B.C. 2012, c 25 (Can.).

of Civil Procedure, 1908 and the Companies Act, 2013. However, when clients are empowered to resolve disputes, through collaborative practices like mediation where the clients are the main actors driving the dispute resolution, and especially with online communication systems such as Zoom meetings, Cisco Webex etc., it creates a vacuum for the confidentiality of communication that takes place in the client-driven process because the roles of attorney get greatly reduced and thus leaving the very legal profession open in the hands of non-legal persons. This calls for the attention of legislatures and senior members of the legal industry to make laws to govern the 'Privileged Communications' in the legal industry between non-legal persons, such as the clients, whose involvement is greatly enhanced due to collaborative legal practices.

4.2 Online Legal Ethics

Nowadays, a two-way dialogue between the business and the customer is essential for effective engagement, as is the customer's active involvement in the creation of the business's goods and services to some extent[39] because "it is more of a conversation" between the business and the customer.[40] Lawyers may find it more challenging to use this two-way dialogue in the online sphere because of ethical opinions and professional conduct rules pertaining to advertising, which frequently make lawyers reluctant to speak to potential clients without adding numerous disclaimers to messages already filtered with pre-determined caution levels. In the present scenarios, the expression "online engagement" may lead to lawyers thinking about practices that result in profit to their firms either by way of an increased traffic and engagement on the firm's website or by allocating the marketing budget in such a way that it drives "new clients from their website to their front door."[41] Apart from using Internet as a marketing tool, there are a multitude of online services which may prove to be of use including explaining state-specific laws; preparing a variety of documents assisting the legal process and then some going on as far as computer-mediated dispute resolution.

The increasing use of AI opens door for a plethora of ethical and legal issues that need attention. AI, by the fact of being a non-human entity, cannot practice law and thus is not bound by any professional ethics. However, AI is increasingly sought for getting legal information and assistance. Therefore, there is little to no guidance on who would be held accountable in case of false information or loss occurring due to AI assistance. In furtherance, we see a growing number of population being overly reliant on technology-based recommendations, for example, the Punjab and Haryana High Court in the case of

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[39] Giselle Abramovich, *How Brands Define Engagement*, DIGIDAY (Aug. 29, 2012), https://digiday.com/marketing/how-brands-define-engagement/.

[40] *Id.*

[41] J. Clayton Athey, *The Ethics of Attorney Web Sites: Updating the Model Rules to Better Deal with Emerging Technologies*, GEO. J. LEGAL ETHICS 499, 507 (2000).

'***Jaswinder Singh v. State of Punjab***'[42] on the basis of allegations by the prosecution that the petitioner was involved in an assault, rejected the petitioner's bail. In the case, the court sought the help of ChatGPT to gain more information on the grounds of granting bail when cruelty is involved. However, the trial court would not consider the opinions on the basis of ChatGPT as it does not represent a view on the merits of the case. The information sought was merely for the broad understanding of bail jurisprudence in a case where assault is involved. Thus, such clearly defined motives for the use of AI would do well to clear ambiguities and provide a way to proceed in case of any mishaps.

Existing ethics regulations are not necessarily a suitable fit for the problems brought about by the increasing online presence of lawyers, even while it is possible to make comparisons between traditional media and the Internet for some forms of online behaviour. One of many such problems facing the legal professionals is the question of which state's ethics regulations apply to lawyers' online behaviour. [43] The global character of the Internet and its extraterritorial nature conflict with the various national regulations governing the legal profession. This creates a dilemma for the attorney who has to disseminate information on a website, by way of adhering to or violating the ethical or legal codes of certain nations. Secondly, new implications arise from the new practices that have ushered their way into the legal stream with the development of informal channels of legal communication worldwide. For example, "according to the King's Bench of Saskatchewan in Canada, responding to a contract with a thumbs up emoji will be interpreted as approval and legally bind the parties."[44] However, there are no stern governing laws to address such unaccustomed practices that are arising in the current sphere of online legal communication. In furtherance to the second issue, there can also be a legal issue arising due to delayed communications. For example, two persons bid online on the same offer at the same time, however, due to connectivity issue, one of the persons had to forego the chance. Who would the law hold accountable in such cases since actions towards the offer was taken simultaneously by both parties. Thus, the ethical and legal concerns play a huge role in barricading online legal communication from becoming the norm in the 21st century. Hence, while the courts consider such legal issues and set precedents with each and every passing case, it is upon the states to take the onus of making proper facilitation as well as regulations for online legal communication. Until that is done, online legal

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[42] Jaswinder Singh v. State of Punjab, 2023 SCC OnLine P&H 2587.

[43] Anthony E. Davis & Janis M. Meyer, *The Ethics of Lawyer Movement (Part Two)*, NEW YORK LAW JOURNAL (Jan. 18, 2024, 9:57 AM), https://www.law.com/newyorklawjournal/2024/01/18/the-ethics-of-lawyer-movement-part-two/?slreturn=20241220101827.

[44] Aiman J. Chishti, *Thumbs Up Emoji (👍) Amounts to Acceptance, Binds Parties Under a Legal Contract: Canada Court*, LIVELAW (July 7, 2023, 7:44 PM), https://www.livelaw.in/foreign-international/kings-bench-saskatchewan-thumbs-up-emoji-legal-contract-acceptance-breach-of-contract-232200 [hereinafter 'Chishti'].

communication can say to be a privilege for the better resource persons.

5. Creating a Justice Enhancing Communication Technology Framework

Digitisation of judicial space has not been beneficial to all; many communities are negatively affected by the digital integration in the judiciary. Due to the digital divide, certain communities are deprived of the benefits that should have been accorded to them. These marginalised communities can be categorised in 3 heads – firstly, users with disabilities who need assistance to hear and see others, and also those who require language interpreters;[45] secondly, imprisoned users looking for confidential communication with their lawyer[46]; thirdly, users requiring electronic devices and a good broadband connectivity.[47] Supreme Court of India has tried to bridge this gap. Supreme Court in a historic first, this year appointed a Sign Language Interpreter for a Deaf Lawyer.[48] Such practices set a strong precedent for the judiciary to follow in the course of creating a more just and inclusive technology infrastructure.

To ensure that every community is benefitted from the digitisation there is a requirement to develop a Justice Enhancing Communication Technology ('**JECT**') framework. This framework is aimed at creating a collaborative technology that can reduce injustice due to the integration of communication technology in the justice system. The JECT framework consists of 5 steps that can be used by the courts to minimise injustices while also integrating communication technology to address those grievances. Firstly, it's important for the institutions to listen and acknowledge the wrongs done followed by apologising for whatever role the institution may have had, and comprehending the communication components of those wrongdoings.[49] After that, the courts should show commitment to address those injustices and collaborate with the public to build, implement, and evaluate the technology.[50]

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[45] Alicia L. Bannon & Douglas Keith, *Remote Court: Principles for Virtual Proceedings During the Covid-19 Pandemic and Beyond*, 115 NORTHWESTERN UNIV. L. REV. 1875, 1890 (2021).

[46] Eric T. Bellone, *Private attorney-client communications and the effect of videoconferencing in the courtroom*, 8 J. OF INT'L COMMERCIAL LAW AND TECHNOLOGY 24, 36 (2013).

[47] Pew Research Center, *How Courts Embraced Technology, Met the Pandemic Challenge, and Revolutionized Their Operations*, (Dec. 1, 2021), https://www.pewtrusts.org/en/research-and-analysis/reports/2021/12/how-courts-embraced-technology-met-the-pandemic-challenge-and-revolutionized-their-operations.

[48] Padmakshi Sharma, *BREAKING| In A Historic First, Supreme Court Appoints Sign Language Interpreter for Deaf Lawyer*, LIVELAW (Oct. 6, 2023, 10:57 AM), https://www.livelaw.in/top-stories/in-a-historic-first-supreme-court-appoints-sign-language-interpreter-for-deaf-lawyer-239451.

[49] Nicole L. Lemire Garlic, Imagining Justice Enhancing Communication Technology: A Future-Oriented, Normative Framework Inspired by Amartya Sen's Ideas on Injustice (Dec. 2023) (Unpublished DPhil Dissertation, Temple University) (on file with Temple University Graduate Board, Temple University).

[50] *Id.*

It has been rightly put to words by Martin Luther that "Injustice anywhere is a threat to justice everywhere", meaning that justice and responsibility to mitigate injustice, wherever it occurs, are interconnected. Indian judiciary is already infected with the disease of exploitation of the weaker sections of the society and the digital divide is only perpetuating this injury by widening the ambit of marginalised communities. Indian judiciary needs a JECT medicine to tackle the injustice pathogen. It aims to mitigate the discrimination that are being perpetuated by the digitisation of judiciary by putting forth the idea of development of computer technology that is inclusive and can effectively serve justice. Technology should inculcate the concept of imagined affordances which highlights that people's expectation, perceptions, emotions and experiences about the communication technologies shapes their understanding as to how the technology will be used.[51] Imagined affordances synthesise three key aspects – Materiality (users treat technological devices as significant physical entities), Mediated Experiences (user's constructed perception while interacting with the technology) and Affect (users express strong conscious or unconscious emotions towards the technology).[52] This can be understood by taking an example of online filling of information, if we were to apply the concept of imagined affordances then the online filling process will offer an easy and interactive user interface (materiality), the process will be according to the expectations and perceptions of the user like user may expect the process to be easy and exciting due to his perception formed by using other online platforms such as social media or e-commerce websites (Mediated Experiences) and lastly, the process should be less stressful and efficient (Affect) thus, heightening the trust of the user in the judicial process. Technology should be adaptable, responsive and learning as per the expectations, perceptions, emotions and experiences of the user so, that the consumer doesn't feel detached from the technology.

There is a disconnect of any rule of law project with the actual results of its implementation.[53] Amartya Sen in his book *The Idea of Justice*[54] talked about this disconnect. This disconnect has a flow from an angle of philosophy of justice fixated on an underlying notion of 'transcendental institutionalism' or 'getting the institutions right' rather than relative comparisons of justice and injustice. Transcendental institutionalism concentrates primarily on getting the institutions right, and it is not directly focused on the actual societies that would ultimately emerge.[55] The society is also guided by non-institutional factors such as people and their behaviour. Justice-enhancing changes or reforms demand comparative assessments, not

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[51] Peter Nagy & Gina Neff, *Imagined Affordance: Reconstructing a Keyword for Communication Theory*, SOCIAL MEDIA + SOCIETY (2015), https://journals.sagepub.com/doi/pdf/10.1177/2056305115603385.
[52] *Id.* at 7.
[53] H. Patrick Glenn, *Sustainable Diversity in Law*, 3(1) HAGUE JOURNAL ON RULE OF LAW 39, 45 (2011).
[54] AMARTYA SEN, THE IDEA OF JUSTICE (Penguin Books 2009).
[55] *Id.*

simply immaculate identification of 'the just society' or just institutions.[56] The technology developed should have a 'Participatory Design' which focuses on involvement of end users in the design process.[57] In the words of Peter Asaro, "Participatory design and its related methodologies are best understood as a model for involving users, designers and the technology itself in a process of technological development."[58] The users should be assimilated into the design process so as to facilitate inclusive technological development.

Legal Design Thinking is one such concept that should be inculcated in the technology, it focuses on "user-driven insights into how technological solutions are created from the outset."[59] Margaret Hagan was one of the first to coin Legal Design and described it in the following words:

> *"Legal Design is the application of human-centered design to the world of law, to make legal systems and services more human-centered, usable, and satisfying. Legal Design is a way of assessing and creating legal services, with a focus on how usable, useful, and engaging these services are. It is an approach with three main sets of resources — process, mindsets, and mechanics — for legal professionals to use. These three resources can help us conceive, build, and test better ways of doing things in law, that will engage and empower both lay people and legal professionals."*[60]

It involves deep end-user understanding and immersion in the user's environment by practitioners to create interventions based on the end-user's viewpoint instead of trying to fit it into preconceived solutions.[61] Finally, Legal Design requires creativity methods in tandem with analytical ones in order to resolve complex issues effectively. Legal Design methods can help enhance access to justice. It gives an insight into the unique conditions of the different end-users. The method further identifies challenges that hinder the use of technology among users. When the user needs and perspective are considered, it is possible to design technology innovation that serves their best interests.[62]

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[56] *Id.*
[57] SASHA COSTANZA-CHOCK, DESIGN JUSTICE: COMMUNITY-LED PRACTICES TO BUILD THE WORLDS WE NEED 86 (MIT Press 2020).
[58] Peter M. Asaro, *Transforming society by transforming technology: the science and politics of participatory design*, 10 ACCTING., MGMT. & INFO. TECH 257 (2000).
[59] Lisa Toohey et al., *Meeting the Access to Civil Justice Challenge: Digital Inclusion, Algorithmic Justice, And Human-Centred Design*, 19 MACQUARIE LAW JOURNAL 133, 134 (2019) [hereinafter 'Toohey'].
[60] Margaret Hagan, *Law by design*, LAW BY DESIGN (2017), https://lawbydesign.co/legal-design/.
[61] Toohey, *supra* note 59, at 154.
[62] Delanie Woodlock et al., *Legal Tech for Justice Enhancing access to justice in family violence legal services*, AUSTRALIAN CENTRE FOR JUSTICE INNOVATION (May, 2022), https://researchmgt.monash.edu/ws/portalfiles/portal/394787531/382378956_oa.pdf.

The BCCRT is a JECT that employs agile, user-centred design principles to pioneer transformative change in the civil justice system. Its development followed a JECT framework as it was tested with advocates that represented marginalised groups, including non-native English speakers, immigrants, people with disabilities, mental health issues, and low-income backgrounds and the prototype was also tested on laypeople and lawyers to ensure accuracy in its legal advice.[63] This user-centred design of BCCRT has shifted the spotlight of justice from people providing them to people needing them, thus creating a balance between the processes involved in accessing justice and the actual outcome of justice. While there is little available data on people's satisfaction with the existing legal system, we do know most people would prefer to avoid it altogether as backed by data.[64] However, practices such as BCCRT put the public first by defining "public" as widely as feasible to encompass any prospective user of the justice system and putting a "high priority on the needs, interests, and limitations of justice system users."[65] As a result, surveys have indicated high user satisfaction, which indicates the success of the Civil Resolution Tribunal in user-centric design, accessibility, efficiency, and affordability.[66]

6. Conclusion

The legal industry, like many other industries, stands at a juncture of change and innovation with the evolution in communication technologies. Thus, enhancing client engagement and access to justice for all must be the way forward while not losing sight of the progress, challenges, and future potential of online legal communication in India and globally. Digitalisation in legal communication has been a coin with two sides – where on one side, we have received significant advantages, including increased efficiency, broader accessibility, and improved client interaction, while on the flip side, we are now faced with complex challenges that must be addressed through thoughtful integration, innovation, and ethical oversight.

The shift from traditional practices of legal communication to the modern online communication has revamped the industry with platforms like Zoom, Webex, and Google Meet enabling lawyers and courts to maintain continuity in client engagement and court proceedings, even during unprecedented times like the COVID-19 pandemic. However, while foreign-developed platforms are the go-to standard for virtual hearings, the reliance on such non-indigenous software poses questions about self-reliance. India's push towards digital independence and the "Make in India" initiative suggests the

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[63] Shannon Salter, *Case: British Columbia Civil Resolution Tribunal*, JUSTICE DASHBOARD (Mar., 2022), https://dashboard.hiil.org/publications/one-stop-shop-dispute-resolution-policy-brief/case-study-civil-resolution-tribunal/ [hereinafter 'Salter'].

[64] Shannon Salter & Darin Thompson, *Public-Centred Civil Justice Redesign: a case study of the British Columbia Civil Resolution Tribunal*, 3 MCGILL J. OF DISP. RES. 113, 122 (2016).

[65] *Id.* at 123.

[66] Salter, *supra* note 63.

need to invest in indigenous platforms, like Bharat VC, to foster a self-reliant legal communication infrastructure. A uniform, indigenous system would also reduce the discrepancies that arise from using various platforms with differing features across different High Courts.

Emerging technologies, particularly artificial intelligence (AI), have transformed legal communication. AI applications, such as Harvey AI, present a unique opportunity to revolutionise legal research, document drafting, and client engagement. If leveraged strategically, these tools could empower India to take a leadership role in AI for the legal sector, making it possible to offer more tailored, cost-effective services to a diverse client base. Top Indian firms already report "increased accuracy and improved resource management with the use of artificial intelligence and process automation technologies."[67] However, this shift requires legal professionals to adopt new skills and adapt to technology's evolving landscape, ensuring that these tools are used responsibly and ethically. Although, India lacks a specific legislation concerning AI, India has taken cognisance of changing digital frontiers. India has positioned itself strongly worldwide on AI and voiced advocacy for innovation and fairness

Client engagement in the digital age often involves navigating information overload, which changes how clients make decisions and interact with legal services. Utilising heuristics and gamification techniques can address these behavioural challenges by enhancing user experience and maintaining client interest. For instance, game-like elements such as such as progress bars, badges, rewards, recognition, and personalised interfaces encourage users to engage more meaningfully with the legal services providing UI. This might make the process feel intuitive rather than overwhelming for the user as the current demographic of legal clients increasingly includes individuals accustomed to digital interaction.

With the turn of a new leaf in legal communication, several concerns around client confidentiality and professional privilege have made way. Practices of Collaborative Law, which are increasingly been given impetus with initiatives such as BCCRT, give centre-stage to the client's role. However, this could inadvertently erode the traditional boundary of privileged communication. Indian regulator frameworks, like the Indian Evidence Act and the Advocates Act, provide boundaries to adhere to for professional communication privileges between attorneys and clients, but they need updates to address new digital realities where we see the clients themselves driving the legal process. Thus, developing clear guidelines for online interactions is essential to uphold the ethical standards that underpin the legal profession and

[67] Komal Gupta et al., *Digital Transformation in Law; Technology*, CYRIL AMARCHAND BLOGS (May 22, 2020), https://corporate.cyrilamarchandblogs.com/2020/05/digital-transformation-in-law-technology/?utm_source=chatgpt.com#_ftn1.

educating the public seeking justice through the use of such collaborative practices must be inculcated as one of the preliminary steps. This will not only safeguard the confidentiality of information but also spread general awareness about the expected legally upright conduct of a citizen.

Ethical and legal challenges are further compounded by the Internet's global nature, which can conflict with jurisdictional regulations. Lawyers must navigate complex legal landscapes, where the extra-territorial reach of the Internet makes it unclear which jurisdiction's statutory guidelines apply. The potential for delayed communication or unintended contract acceptance, as demonstrated by international cases like the "*thumbs-up emoji*" acceptance ruling in Canada,[68] underlines the need for legal systems to adapt to unique aspects of online interaction. Until comprehensive regulations address these scenarios, online legal communication may remain unevenly accessible, primarily benefiting those with ample resources and technical know-how.

Furthermore, such digital infrastructure should be created that mitigates the injustices done by the digitisation of the justice system by acknowledging, apologising and undertaking practices that would amount to remuneration for the injustices that transpired from the digitalisation of legal communication because digitisation of India's judiciary has widened the digital divide, disadvantaging marginalised communities such as disabled individuals, prisoners, and those without digital access. Considering the above gap, JECT aims to create adaptable and user-friendly systems that foster trust, reduce inequalities, and ensure equitable access to justice through digital integration.

All in all, online legal communication stands at a critical juncture. It offers a path to increased efficiency, accessibility, and client engagement, yet significant challenges persist in ensuring ethical conduct, and equitable access. Embracing indigenous technology and AI, updating legal frameworks, and addressing ethical concerns are essential steps toward creating a robust digital legal communication ecosystem. As these technologies continue to shape the legal landscape, it is imperative that the legal profession adopts proactive measures to protect client rights and uphold the integrity of justice as the "law must keep up with the tech progress".[69] By doing so, the legal community can harness the full potential of online communication to better serve society's needs while maintaining the principles central to the rule of law.

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[68] Chishti, *supra* note 44.

[69] Dhananjay Mahapatra, *Law must keep up with tech progress: Justice Chandrachud*, TOI (Mar. 21, 2022, 8:58 AM), https://timesofindia.indiatimes.com/india/law-must-keep-up-with-tech-progress-justice-chandrachud/articleshow/90341606.cms.

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