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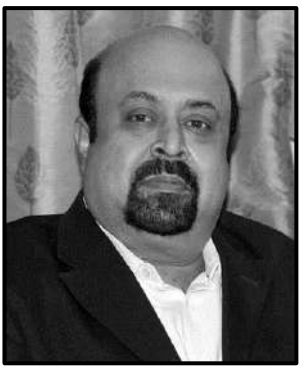

From the Editor-in-Chief

It gives me immense pleasure to present **Volume II (2025) of the HNLU Journal of Law and Social Sciences (JLSS)**, a scholarly platform that continues to foster rigorous legal inquiry and interdisciplinary engagement with contemporary social, constitutional, technological, and regulatory challenges. The present volume reflects the Journal's commitment to advancing critical scholarship that not only enriches academic discourse but also contributes meaningfully to public policy, governance, and the development of law in a rapidly changing world.

The contributions featured in this issue traverse a diverse spectrum of themes, underscoring the dynamic relationship between law and society. The volume opens with a thoughtful examination of the constitutional and political dimensions of India's delimitation process, highlighting the delicate balance between democratic representation, federalism, and regional equity. Questions of inclusion and social justice are further explored through an insightful study on the intersection of gender and disability, drawing attention to the need for a more responsive and accessible legal framework for women with disabilities.

The volume also engages with pressing constitutional and political issues. A critical analysis of the anti-defection regime revisits one of the most debated aspects of India's democratic framework and calls for reforms aimed at strengthening accountability and institutional integrity. In a related vein, a case note on Arvind Kejriwal v. Directorate of Enforcement (2024) examines the evolving contours of constitutional rights, judicial oversight, and anti-corruption enforcement in contemporary India.

Innovation, intellectual property, and economic regulation constitute another important strand of this edition. Contributions examining institutional support mechanisms for patent navigation and the comparative dimensions of patent linkage and Bolar exemption provide valuable insights into the challenges of fostering innovation while maintaining a balanced intellectual property ecosystem. The issue also addresses developments in financial regulation through an analysis of SEBI's interventions in the derivatives market, reflecting the growing significance of regulatory governance in safeguarding investor interests and ensuring market stability.

Recognising the transformative impact of technology on legal systems, the volume includes a timely discussion on the use of artificial intelligence in digital forensics. The article explores both the opportunities and ethical challenges associated with AI-driven investigative tools, highlighting the need for legal frameworks that can keep pace with technological advancement while preserving fundamental rights and due process guarantees.

The social dimensions of law receive equal attention through contributions addressing custody disputes under personal laws and the complex relationship between cult practices, manipulation, and criminal conduct. These studies illuminate the continuing relevance of legal scholarship in understanding human behaviour, social institutions, and the pursuit of justice in diverse contexts.

Collectively, the articles published in this volume demonstrate the richness of contemporary legal scholarship and its capacity to engage with issues that transcend traditional disciplinary boundaries. They reflect the intellectual curiosity, analytical depth, and commitment to public interest that lie at the heart of legal education and research.

I take this opportunity to place on record my sincere appreciation for the authors who have contributed their research and insights to this edition. Their scholarship enriches the academic dialogue that the Journal seeks to promote and sustains the tradition of critical engagement with law and society.

I also extend my warm congratulations to the Editorial Board, student editors, faculty advisors, reviewers, and the entire editorial team whose dedication, diligence, and professionalism have made the publication of this volume possible. The process of selecting, reviewing,

editing, and producing a quality academic journal demands patience, intellectual rigour, and collective commitment. Their efforts have ensured that the Journal continues to uphold high standards of academic excellence and scholarly integrity.

As HNLU continues its pursuit of excellence in legal education, research, and public engagement, the HNLU Journal of Law and Social Sciences remains an important vehicle for encouraging informed debate, innovative thinking, and interdisciplinary scholarship. It is our hope that the contributions contained in this volume will stimulate further research, inspire meaningful dialogue, and contribute to the continuing evolution of legal thought and social justice.

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

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Balancing Demographic Representation and Regional Equality in India's Delimitation Process

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Abstract

The main function of a democracy in a nation is to ensure that political representatives effectively represent and be a voice for their constituents. Delimitation is a process of drawing the limit of territorial constituency for election to representative bodies in India ranging from parliament to state legislation as well as urban and rural local bodies. Delimitation translates its periodical exercise because its primarily based on population. The study has completely aimed on understanding the importance on how to balance the demographical representation as well as regional equality in India's delimitation process. It is essential to strike a balance between population-based representation and federal consideration to maintain harmony among individuals. Key challenges in this process of balancing demographical representation where populated state which has more representation and regional equality, where less populated state should not be politically marginalised the tension between these objectives make the delimitation process complex and political sensitive issue.

Keywords

parliament, political representation, delimitation, justice, population, federalism.

1. Introduction

India as the world's largest democracy it is characterized by diversity in terms of religion, language, culture, and regional identities. Balancing demographic representation and regional equality in its delimitation process—a system of redrawing electoral boundaries is a complex task that underpins the functioning of its political system. This essay explores the challenges, principles, and implications of balancing these factors in India's delimitation process.

1.1 The Role of the Delimitation Process

Delimitation involves redefining the boundaries of constituencies for elections to ensure equitable representation based on population changes. It is guided by the principle of "one person, one vote" to maintain electoral fairness. However, in a country as diverse as India, this process cannot be reduced to a mere numerical exercise. It must also ensure that regional aspirations and minority voices are adequately represented while promoting national integration. the redrawing of electoral boundaries, is a cornerstone of India's democratic framework[1]. It ensures that every citizen's vote carries equal weight, reflecting the principle of “one person, one vote.” [2]However, the process in India has been mired in challenges, particularly in balancing demographic representation with regional equity. These challenges stem from the country's vast socio-cultural diversity and uneven population growth across regions.

1.2 Delimitation: Concept and Process

Delimitation[3] refers to the act of redrawing the boundaries of electoral constituencies to reflect changes in population distribution. In India, the Delimitation Commission, established by law, is entrusted with this task. Its mandate includes:

1. Allocating seats in the Lok Sabha and state assemblies proportionally to the population.
2. Ensuring uniformity in the population-to-seat ratio across constituencies.
3. Reconfiguring boundaries to account for demographic shift.

The exercise is informed by the decennial Census, making it a dynamic process sensitive to India’s population trends.

2. Historical Context

Pre-Independence: The concept of proportional representation was introduced during British rule but lacked focus on regional and demographic diversity.

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[1] Journal of Indian Law and Society (JILS). Various publications on delimitation and electoral representation. Available at: http://jils.ac.in.

[2] Reynolds v. Sims, 377 U.S. 533 (1964). The principle of "one person, one vote" refers to the idea that everyone’s vote should have equal weight in democratic elections. This concept is a cornerstone of electoral equity and is rooted in the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. The U.S. Supreme Court firmly established this principle in landmark cases such as Reynolds v. Sims (1964), which mandated that legislative districts must be roughly equal in population, ensuring fair representation.

[3] The Delimitation Act, 2002. India Code. Ministry of Law and Justice, Government of India. Available at: https://www.indiacode.nic.in.

Post-Independence: Delimitation has been carried out several times (1952, 1963, 1973, and 2002) with the latest freeze on seat allocation set to last until 2026. This was implemented to address concerns about penalizing states with successful population control measures. Article 82 of the Indian Constitution mandates the periodic delimitation of constituencies to ensure fair representation.

The Delimitation Commission, an independent body, is responsible for conducting the process, ensuring transparency and adherence to constitutional principles.

3. Challenges of Demographic Representation

India's population growth and uneven demographic distribution present a significant challenge. States in northern India, such as Uttar Pradesh and Bihar, have higher population growth rates, while southern states like Kerala and Tamil Nadu have seen a decline due to successful population control measures. Relying solely on population size to determine representation risks penalizing states that have implemented effective governance and policies, potentially leading to political imbalances and dissatisfaction.

Additionally, demographic representation must also accommodate the voices of marginalized communities. Scheduled Castes (SCs), Scheduled Tribes (STs)[4], and religious minorities often require reserved constituencies to ensure their political participation. However, overemphasis on these criteria could overshadow regional aspirations or create inter-regional conflicts.

3.1 Regional Equality: A Competing Priority

India's federal structure [5]emphasizes the importance of equitable representation for all states and regions. Regional equality ensures that smaller states or those with lower population density, such as those in the Northeast, do not lose their political influence. If representation were determined solely by population size, these regions could become politically marginalized, leading to a weakening of the federal spirit.

Regional equality also involves addressing historical injustices and disparities in resource allocation. States that have been traditionally underrepresented must be empowered to contribute effectively to national policymaking. However, achieving this balance without undermining the principle of population-based representation requires nuanced solutions.

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[4] Census of India Reports. Office of the Registrar General & Census Commissioner, India, Ministry of Home Affairs. Available at: https://censusindia.gov.in.

[5] Austin, Granville. The Indian Constitution: Cornerstone of a Nation. Oxford University Press, 1966.

3.2 Constitutional Framework

The Indian Constitution provides the legal foundation for delimitation:

1. Article 82: Mandates the periodic readjustment of seats for the Lok Sabha and state legislative assemblies.

2. Article 170: Governs the delimitation of constituencies for state assemblies.

3. Delimitation Commission: An independent body established under the Delimitation Act to ensure impartiality.

3.1.1 Demographic Representation: A Double-Edged Sword

India's population growth is uneven across regions. Northern states like Uttar Pradesh and Bihar have higher population growth rates, while southern states like Tamil Nadu and Kerala have successfully implemented population control measures.

Impact on Representation: States with slower population growth risk losing representation in Parliament despite their progress in governance and development.

Frozen Seats: To address these concerns, the 42nd Amendment (1976) [6]froze the allocation of Lok Sabha seats based on the 1971 Census, extended by the 84th Amendment (2001) until 2026.

3.1.2 Challenges:

1. Population Imbalance: Northern states like Uttar Pradesh and Bihar are growing faster than southern states, leading to potential overrepresentation in Parliament.

2. Ethnic and Religious Diversity: Minority groups, including SCs and STs, often require special consideration to ensure inclusivity.

3. Geographic Disparities: States with large geographic areas but lower populations (e.g., Northeastern states) may lose political influence.

4. Political Sensitivities: Delimitation can cause tension among states, with populous ones demanding more seats and smaller states fearing marginalization.

[6] . The Constitution of India. Ministry of Law and Justice, Government of India. Articles 82, 170, 42nd Amendment Act (1976), and 84th Amendment Act (2001). Available at: https://legislative.gov.in.

4. International Comparisons

Countries like the United States periodically redraw congressional districts based on population changes while also considering regional balance.

Germany uses proportional representation combined with constituency-based elections, balancing both demographics and regional representation.

Future Implications

Population Control Incentives: The upcoming delimitation in 2026 may significantly alter the distribution of seats, potentially affecting the balance of power between northern and southern states.

Federal Structure: An imbalance in representation could strain federal relations, fostering resentment and undermining cooperative governance.

4.1 Policy Recommendations

Implement a transparent formula incorporating population, geography, and socio-economic development.

Increase awareness and dialogue about the delimitation process to reduce misinformation and promote acceptance.

Regularly assess and update the delimitation process to ensure it remains fair and equitable in a rapidly changing demographic landscape.

This additional information provides context, historical grounding, and forward-looking perspectives to strengthen your essay.

4.3 Challenges of Regional Equity

- Disparity in Representation: States with larger populations may dominate the Lok Sabha, potentially marginalizing less populous but more developed states.
- Conflict of Interests: Southern states argue that rewarding higher population growth undermines their efforts in family planning and development.
- Economic Inequality: Unequal representation exacerbates the north-south divide, affecting resource allocation and political influence.

5. Balancing the Two: Demographic Representation and Regional Equality

- Use of Weighted Representation: One approach is to employ a system of weighted representation, wherein population size is combined with regional factors to determine the number of constituencies. This ensures that densely populated states have adequate representation while smaller or less populated states are not disadvantaged. Periodic Review and Adaptation: The delimitation process should be periodically reviewed to reflect changing demographics and regional dynamics. This ensures that the system remains fair and relevant over time.

- Incorporating Socio-Economic Indicators[7]: Beyond population, factors such as literacy rates, poverty levels, and infrastructure development could be included to create a more comprehensive representation formula. Strengthening Federal Mechanisms: The role of the Rajya Sabha (Council of States) can be enhanced to provide a platform for regional interests, reducing the pressure on the Lok Sabha to balance population and regional equality.

5.1 The Way Forward: Striking a Balance

Achieving a balance between demographic representation and regional equity requires thoughtful reforms:

1. Population-[8]Adjusted Representation: Introduce a hybrid model that considers both population and developmental indicators for seat allocation.

2. Decentralization: Strengthen local governance to ensure equitable resource distribution regardless of parliamentary representation.

3. Transparency in Delimitation: Use advanced technologies like Geographic Information Systems (GIS) for unbiased and accurate delimitation.

4. Political Consensus: Engage stakeholders across states to build consensus on reforms, avoiding regional polarization.

5. Periodic Reviews: Conduct delimitation exercises at regular intervals to address emerging demographic and political challenges.

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[7] Delimitation Commission Reports. Election Commission of India, Government of India. Available at: https://eci.gov.in.

[8] Census of India Reports. Office of the Registrar General & Census Commissioner, India, Ministry of Home Affairs. Available at: https://censusindia.gov.in.

5.2 Demographic Representation[9]: A Growing Challenge

India's demographic composition reveals stark differences in population growth across states.

Northern States: Uttar Pradesh, Bihar, and Madhya Pradesh exhibit higher population growth rates due to socio-economic factors like poverty, literacy, and healthcare access.

Southern States: Tamil Nadu, Kerala, and Karnataka have stabilized their populations through effective family planning and developmental policies.

5.3 Implications:

- Disparity in Representation: High-growth states gain more seats, potentially marginalizing states with lower but well-managed populations.
- Political Domination: Over-representation of populous states can shift political power, influencing resource allocation and national policies.

6. Regional Equity: A Constitutional Dilemma

1. Population Freeze:

The 42nd Amendment aimed to incentivize population control by freezing seat allocation based on the 1971 Census.

While this measure promotes regional equity, it creates a representational lag, with current electoral boundaries reflecting outdated demographic data.

2. Economic and Developmental Imbalances:

Southern states argue that their efforts in reducing population growth are penalized, while northern states benefit from their demographic expansion.

7. Controversies Surrounding Delimitation

- Gerrymandering Concerns: The process is often accused of being politically motivated, with ruling parties attempting to redraw boundaries for electoral gains.
- Socio-economic Disparities: Balancing representation between densely populated urban areas and sparsely populated rural regions remains a challenge.

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[9] International IDEA. Electoral System Design: The New International IDEA Handbook. Stockholm, Sweden: International Institute for Democracy and Electoral Assistance, 2005. Available at: https://www.idea.int.

- ST/SC Reservation: The allocation of reserved seats for Scheduled Tribes and Scheduled Castes often leads to disputes over fairness and proportionality.
- Judicial Challenges: Frequent litigation [10]reflects dissatisfaction with the impartiality and fairness of delimitation exercises.

7.1 Policy and Legislative Reforms

Hybrid Representation Models[11]: Combine population-based representation with developmental indicators such as literacy rates, GDP contribution, and healthcare access.

This approach would reward states for development rather than sheer population size.

Dynamic Seat Allocation: Allocate additional seats in Parliament rather than redistributing existing ones, allowing underrepresented states to maintain their influence.

Strengthening Local Governance: Decentralizing power to Panchayati Raj institutions and municipal bodies can reduce the over-dependence on Parliamentary representation for equitable resource allocation.

7.2 Technological and Administrative Innovations

1. Use of GIS and AI: Advanced mapping technologies can ensure impartiality and accuracy in defining constituency boundaries.
2. Regular Delimitation [12]Exercises: Conduct delimitation every decade, coinciding with the Census, to minimize demographic mismatches.

7.2.1 Building Consensus

1. National Dialogue: Engage all stakeholders, including state governments and political parties, to ensure transparency and acceptability
2. Awareness Campaigns: Educate citizens on the importance of delimitation to reduce misinformation and political exploitation.

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[10] . Journal of Indian Law and Society (JILS). Various publications on delimitation and electoral representation. Available at: http://jils.ac.in.

[11] Articles from Economic and Political Weekly (EPW) on the Delimitation Process. Available at: https://www.epw.in.

[12] Austin, Granville. The Indian Constitution: Cornerstone of a Nation. Oxford University Press, 1966.

8. Case Studies: Learning from Global Practice

1. United States[13]: The process of "redistricting" ensures population-based representation but faces challenges like gerrymandering.
2. Canada: Employs independent commissions for impartial boundary adjustments, balancing population and regional considerations.
3. South Africa: Uses a mixed system to allocate seats based on both population and geographic size, ensuring equity.

9. The issue of balancing demographic representation and regional equality in India's delimitation process is complex, but several solutions have been proposed or implemented to address the challenges. Below are some key solutions:

- Weighted Representation System

Combine population size with regional factors to allocate parliamentary seats. This ensures populous states are adequately represented while protecting smaller or less populated states from marginalization.

Example: Assign a fixed minimum number of seats to smaller states, irrespective of population, to safeguard their influence in policymaking.

- Freezing Parliamentary Seat Allocation

Temporarily freeze seat allocation based on population to maintain the existing balance between populous and less populous states. Example: India froze seat allocation in 1976 to incentivize states that had controlled population growth. Extending such freezes can maintain regional equality while states address population disparities.

- Socio-Economic Indicators [14]in Delimitation

Incorporate socio-economic factors such as literacy, poverty levels, and infrastructure development alongside population data to define constituencies.

Benefit: This approach allows equitable representation based on developmental needs, not just numbers.

- Multi-Member Constituencies:

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[13] Noorani, A. G. Constitutional Questions in India: The President, Parliament, and the States. Oxford University Press, 2000.

[14] International IDEA. Electoral System Design: The New International IDEA Handbook. Stockholm, Sweden: International Institute for Democracy and Electoral Assistance, 2005. Available at: https://www.idea.int.

Establish multi-member constituencies[15] in densely populated areas, where multiple representatives are elected from a single constituency.

Benefit: Ensures adequate representation of large populations while reducing pressure on smaller states to compete for additional seats.

- Strengthening Federal Representation:

Enhance the role and influence of the Rajya Sabha (Council of States), which represents states in India's federal system.

Proposal: Increase powers or ensure more equitable representation of states, compensating smaller states for their limited representation in the Lok Sabha.

- Decentralization and Empowerment of States[16]:

Provide greater autonomy and decision-making power to states. This reduces the reliance on central representation and empowers regions to address their unique challenges.

Outcome: Reduces resentment among states feeling underrepresented in central politics.

- Reserved Constituencies for Marginalized Communities

Description: Expand or adjust reserved constituencies for Scheduled Castes (SCs), Scheduled Tribes (STs), and minorities to ensure their voices are heard without impacting regional equality.

- Balanced Delimitation Formula[17]:Develop a comprehensive delimitation formula that combines:

I. Population Weightage: For populous states.

II. Geographic Weightage: For smaller states or regions with lower population densities.

III. Developmental Needs: To address historical underrepresentation or inequity.

- Increasing Total Parliamentary Seats

Expand the total number of seats in the Lok Sabha to accommodate both population growth and regional equality.

Benefit: Avoids the zero-sum problem where one state's gain leads to another state's loss.

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[15] Chaube, Shibani Kinkar. The Making and Working of the Indian Constitution. National Book Trust, 2009.
[16] Articles from Economic and Political Weekly (EPW) on the Delimitation Process. Available at: https://www.epw.in.
[17] Noorani, A. G. Constitutional Questions in India: The President, Parliament, and the States. Oxford University Press, 2000.

- Public Consultation and Expert:

Ensure transparency and inclusivity in the delimitation process by consulting stakeholders, including state governments, political parties, and the public.

Proposal: Form expert committees to recommend reforms that balance demographic and regional concerns.

- Gradual Transition Strategy

Implement changes incrementally to prevent sudden political or social disruptions. For example, adjust seat allocations in phases, allowing states to adapt to new dynamics

- Incentivizing Population Control

Reward states that effectively manage population growth with additional benefits, such as development grants or federal investments, to offset the loss of political representation.

By adopting these solutions, India can strive to balance demographic representation and regional equality while maintaining its democratic and federal structure.

10. Conclusion

Balancing demographic representation and regional equality in India's delimitation process is both a critical necessity and a challenging endeavour. The country's vast diversity in terms of population density, socio-economic development, and cultural identities demands a nuanced approach that goes beyond the simplistic application of population metrics. Striking this balance is essential not only for ensuring fair representation in Parliament but also for preserving the federal ethos and social harmony that underpin the Indian democratic system.

Unregulated reliance on population size risks over-representing populous states, potentially alienating smaller or less populated regions. On the other hand, prioritizing regional equality without accounting for demographic realities could undermine the principle of proportional representation. Therefore, a blend of solutions—such as weighted representation, socio-economic indicators, and phased implementation—can address these competing priorities effectively.

Furthermore, mechanisms like freezing seat allocation, increasing the total number of parliamentary seats, and strengthening the Rajya Sabha can provide interim and long-term measures to promote fairness. Transparency, inclusivity, and public engagement in the delimitation process are crucial to gaining the trust and cooperation of all stakeholders.

Ultimately, the delimitation process must reflect India's commitment to justice, equity, and inclusivity. A well-balanced approach will not only ensure equitable representation but also foster national integration and cohesion. As India evolves, its delimitation process must remain adaptive, accommodating demographic shifts and regional aspirations to uphold the ideals of democracy and federalism in a united and diverse nation.

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Exploring the Intersectionality of Gender and Disability: A Study on Women's Rights within India's Legal Framework

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Abstract

The enactment of the Rights of Persons with Disabilities Act, 2016 marked a significant advancement in India's legal framework for protecting the rights of persons with disabilities. Importantly, the Act recognizes the intersection of gender and disability, addressing the distinct challenges faced by women with disabilities. It seeks to ensure their access to healthcare, education, employment, and social protection, while promoting independence, dignity, and full participation in society. The law further emphasizes accessibility, reasonable accommodation, and the elimination of discrimination. Despite these progressive provisions, challenges remain in terms of effective implementation, awareness, and institutional sensitization. Structural barriers—such as inadequate accessible infrastructure, limited educational opportunities, and restricted employment avenues—continue to hinder the realization of these rights. Therefore, sustained efforts toward inclusivity, gender sensitivity, and accessibility are essential for meaningful change.

These discussions will illuminate the difficulties, goals, and real-world perspectives of women with impairments, as well as the viewpoints of those involved in developing disability rights policies[1]. The goal of this research is to critically assess the effectiveness of existing legislation, policies, and institutional mechanisms in addressing the specific needs and vulnerabilities of women with disabilities. It focuses on key legislative instruments, such as "the Rights of Persons with Disabilities Act, 2016", relevant provisions in

[1] Deborah Stienstra, *(Th)reading Rights and Justice: Women and Girls with Disabilities,* 37 **Glob. Soc'y** 354 (2022), https://doi.org/10.1080/13600826.2022.2146576.

the Indian Constitution, as well as international conventions[2]. In addition, this research seeks to engage with the lived experiences and views of women with disabilities and relevant stakeholders, such as disability rights advocates, legal professionals, healthcare professionals, policy makers, and civil society organisations. By focusing on women with disabilities' voices and agency, the aim of the study is to highlight their unique issues, resilience, and goals, thus providing a more nuanced view of their experiences and priorities[3].

Keywords: Women with Disabilities, Gender, Disability Rights, Legal Framework, Intersectionality, India, Laws and Policies, Access to Justice.

1. Introduction

Those individuals who are disabled are among the most disadvantaged groups in society, facing significant barriers in accessing education, employment, and other essential services. Compared to the general population, they often have fewer opportunities and are more likely to be part of the most disadvantaged groups. Women with disabilities, regardless of their disability's severity, face additional challenges[4]. They are often denied equal access to their human rights due to historically lower social status and both overt and subtle forms of discrimination.

Human rights preservation and social justice are pillars of the Indian Constitution. The State must guarantee everyone's equality and fairness to citizens in all areas of life. India has implemented four specific laws designed to protect, promote, and support the interests of individuals with disabilities. However, these laws do not adequately address the specific issues of discrimination and violence that women with disabilities experience, which are distinct from those faced by men with disabilities[5].

The past few years have seen growing recognition from the unique challenges faced by people with disabilities, particularly women, who often experience compounded discrimination due to both their gender and disability[6]. In September 2007, India approved the "United Nations Convention on the Rights of Persons with Disabilities (UNCRPD), 2006", that highlights the multiple forms of discrimination

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[2] A. M. Jogdand & H. J. Narke, *Inclusion of Women with Disability in India*. International Journal of Indian Psychology, *10*(1), 1071(2022), https://doi.org/10.25215/1001.107.

[3] Annie Wilde., & Rosemary Wish, *Gender, feminism and the project of critical disability studies (CDS).* Disability & Society, 1 (2024), https://doi.org/10.1080/09687599.2023.2298774

[4] Bahman Karyani Matin et al., *Barriers in access to healthcare for women with disabilities: a systematic review in qualitative studies. 21* ***BMC Women's Health*** *44 (2021), , https://doi.org/10.1186/s12905-021-01189-5*.

[5] Supra note 4

[6] Ibid.

that women with disabilities face. Following Consequently, the Indian Parliament approved the "Rights of Persons with Disabilities Act, 2016", to incorporate key provisions of the UNCRPD into national law. This Act is a significant legislative achievement, providing a comprehensive framework for protecting and advancing the rights of individuals with disabilities in alignment with international standards, particularly the UNCRPD.

This Act acknowledges the complex and intersecting identities of people with disabilities, recognizing that disabled women must deal with distinct challenges in contrast to men with impairments as well as non-disabled women[7]. This understanding emphasizes the need for a nuanced approach in policy-making and implementation to meet the particular requirements and vulnerabilities of disabled females. This Act's provisions aim to eliminate discrimination, promote equal opportunities, and ensure full participation within the community.

The "Rights of Persons with Disabilities Act, 2016", replaced the earlier "Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995", expanding its scope and definition of disability. It now recognizes 21 disabilities, including various mental illnesses, offering a more inclusive and comprehensive framework for the sake of rights and entitlements of individuals with impairments. Key aspect of this particular Act includes the right to equal treatment and non-discrimination, protection against exploitation as well as neglect, access too justice, and the right to live with dignity. The Act also requires the government to ensure accessibility in public buildings, transport systems, and other facilities, promoting a barrier-free environment[8].

A critical element of the Act is its emphasis on reasonable accommodation and the provision of special measures for persons with disabilities. This includes providing assistive devices, support services, and facilities to make possible persons with impairments in exercising their legal rights equally with others. The enactment also imposes penalties for offenses against persons with disabilities, such as denial of rights, abuse, and exploitation, thereby serving as a legal deterrent against discrimination and mistreatment[9].

Understanding the intersectionality of gender and disability is crucial for addressing the particular difficulties that women with impairments encounter. The term "intersectionality" describes how social categories like race, class, gender, and disability are interrelated and result in overlapping, mutually reinforcing systems of adversity or prejudice. For women with disabilities, this means facing discrimination due to both their disability and gender.

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[7] Supra note 4
[8] Supra note 5
[9] Supra note 6

In India, traditional gender norms and stereotypes often worsen the marginalization of women with disabilities. They may face restricted access to education, healthcare, employment, and social services, compounded by societal attitudes that view them as dependent and incapable. This intersectional discrimination can also result in higher rates of violence, abuse, and neglect. Therefore, any legal or policy framework **intended to uphold the rights of people who are disabled** must consider these intersecting identities to provide comprehensive and effective protection and support[10].

2. Purpose of the Research and Research Question

This study's primary goal is to assess critically how well the "Rights of Persons with Disabilities Act, 2016", discourses the unique demands as well as difficulties experienced by Indian women with disabilities. The study is to investigate how these women's lives are shaped by the intersection of gender and disability and evaluate the extent to which their rights and participation are supported by India's current legal and policy framework. This study's chief research query is: What would be the implications for women with infirmities' inclusion besides rights when laws and policies in India interact with their lived experiences?

This inquiry seeks to uncover gaps and shortcomings in the current legal framework and offer recommendations to improve the protection and empowerment of women with disabilities. This research is crucial as it centres on a particularly vulnerable and often overlooked group: Women with impairments. While the "Rights of Persons with Disabilities Act, 2016", incorporates revolutionary elements, a large gap persists among the legislation and its implementation, most notably in tackling the intersectional prejudice that women with disabilities face encounter. The present investigation aims to close this disparity by thoroughly analyzing the Act's impact on women with disabilities and identifying areas that require further attention and action[11].

Empowering women with disabilities is essential for achieving broader societal goals of equality and social justice. Empowerment involves ensuring access to education, healthcare, and employment and enabling women with impairments to fully participate and equally in every sphere of life. This also includes promoting their leadership and involvement in decision-making processes at both the community and policy levels. Moreover, empowerment involves challenging societal attitudes and stereotypes that limit the potential of women with disabilities and advocating for a more inclusive and respectful society.

3. Legal Framework and Policy Context

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[10] Supra note 3

[11] Naomi Daruwalla et al., *Violence Against Women With Disability in Mumbai, India: A Qualitative Study,* 3 **Sage Open** (2013), https://doi.org/10.1177/2158244013499144.

a) **Status of Women with Disabilities**

Women of every generation with any form of disabilities belong to the most disadvantaged and marginalised populations in society. Considering these large numbers, they frequently remain invisible and voiceless, leading to the neglect of their issues and the denial of their rights. Women who have impairments experiences numerous layers of prejudice because of their condition, gender and poverty, carrying the burden of societal biases. They are frequently stereotyped as being ill, vulnerable, immature, dependent, incompetent, and lacking sexual desire, which significantly limits their opportunities and choices[12]. These women endure various forms of abuse including physical capabilities mental disorders sexual, and pecuniary violence, as well as abuse or neglect, social estrangement, trafficking, institutionalisation, deterioration, incarceration, deprivation of medical services, forcible sterilisation, and involuntary psychiatric therapy.

Due to societal prejudices that dehumanize them, disabled people are at significant gender-specific and various kinds of brutality, both inside their home and in the outside world. Females and girls who have impairements suffer a range of violence that arises from the complex and intersecting discrimination linked to their gender and disability[13].

Forced sterilization is a prevalent practice imposed on young girls and women with disabilities worldwide for reasons such as population control, menstrual management, and pregnancy prevention. This practice is often debated and justified by various professionals and family members, yet it frequently disregards the rights of these individuals. Social factors, including the desire to minimize inconvenience for caregivers, lack of protections against sexual abuse and exploitation, and insufficient support services for women with disabilities who wish to become parents, contribute to the pervasive violation of their rights to investigate their sexuality, form relationships, and form families[14].

In education, Women and girls with impairments frequently endure dual prejudice based on gender. They encounter disparities in academics and employment, including unequal access to training, credit, and resources. Occupational segregation is common, and they

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[12] Ronald J. Burke, *Disability and Women's Work Experiences: An Exploratory Study,* 19 **Int'l J. Soc. & Soc. Pol'y** 21 (1999), https://doi.org/10.1108/01443339910788613

[13] Valerie Novack, Timothy Cornelius & Sophie Poost, *Disabled Women in the Working World: Bias and Barriers that Hinder Workplace Advancement: A Report by Disability EmpowHer Network in Partnership with P3 Technology* (Mar. 8, 2023), available at https://ssrn.com/abstract=4436861.

[14] H. Lalrinhlui, *Challenges Faced By Women With Disabilities in India,* 11 Int'l J. Creative Res. Thoughts (IJCRT) (July 2023), available at: https://ijcrt.org/papers/IJCRT2307633.pdf

are less likely to utilize social services due to social, cultural, and religious barriers. These challenges are exacerbated in rural areas, where a lack of information, awareness, education, income, and social connections leads to severe isolation and invisibility[15].

(b) International Conventions and Agreements

- **Human Rights Instruments and Treaties**

Prior to the formation of the Disabilities Conventions, there was a considerable void in international treaties that addressed the human rights challenges faced by people with disabilities. The equality provisions of the three primary United Nations human rights documents—"the United Nations Declaration of Human Rights (1948), the International Covenant on Civil and Political Rights (1966), and the International Covenant on Economic, Social, and Cultural Rights (1966)"—do rather than explicitly mention disability as a protected category.

When disability is referenced in these agreements, it is usually in reference to welfare and preventive health initiatives. Aside from those global treaties, the United Nations General Assembly has established four substantial legal treaties that protect individuals based on particular distinguishing features; nonetheless, these do not address disability. These treaties include the "International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)", "the Convention on the Elimination of All Forms of Discrimination Against Women" (CEDAW)", "the Convention on the Rights of the Child (CRC)", and the "International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICPMW)". Among them, just the "the Convention on the Rights of the Child (CRC)" contains a specific article addressing disability, which demands state parties to recognise the human rights that children with impairments to lead "packed with and decent" lives and participate effectively in their communities[16].

- **United Nations Convention on the Rights of Persons with Disabilities (UNCRPD)**

United Nations has adopted the "Convention on the Rights of Persons with Disabilities", in December, 2006 establishing a comprehensive framework that outlines the rights of individuals with disabilities and provides guidelines for implementation. This adoption signifies a major transitioning from a charity-based approach to a rights-based approach. Rather than viewing those with disabilities merely as recipients of charity, medical care, and protection, they are now recognized as active participants with the ability to assert their rights.

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[15] Michelle Fine & Adrienne Asch, eds., *Women with Disabilities: Essays in Psychology, Culture, and Politics* (Temple Univ. Press 1988).

[16] Convention on the Rights of the Child art. 23, Nov. 20, 1989, 1577 U.N.T.S. 3.

One of the key advantages of this new approach is that it acknowledges disability as a mainstream issue[17]. Consequently, the status of persons with disabilities will be factored into national evaluations of development and poverty reduction strategies, as well as in relevant international frameworks.

"Article 1 of the UN Convention on the Rights of Persons with Disabilities (UNCRPD)" Individuals with disabilities are defined as those who have long-term mental, physical, cognitive, or sensory disorders that, together with other impediments, may prevent them from fully and effectively participating in society on an equal footing with others[18]. The basic goal of the convention is to promote, defend, and ensure that people with disabilities have full and equal access to all human rights, while taking into consideration their individual requirements and circumstances. It covers significant concerns like availability, individual mobility, rehabilitation efforts, and engagement with politics, aiming to create an inclusive society where individuals with disabilities can fully exercise their rights and contribute actively to their communities.

(c) Legal Framework for the Protection of Rights of Women with Disabilities in India

Constitutional Provisions

Fundamental Rights, the Preamble, and Directive Principles of State Policy, contained in the Indian Constitution demonstrate the State's commitment to its citizens. However, Entry 9 in List II of Schedule VII enshrined in the Constitution assigns the responsibility for providing "Relief to the disabled and unemployable" to State Governments, although Central Government also plays a significant role in this area. Notably, while "Articles 14, 15, and 16 of the Constitution protect equality, they do not explicitly mention disability as a protected category against discrimination. Article 14 ensures equality before the law and equal protection of the laws within India. Article 15 prohibits discrimination based on sex, with provisions allowing for measures that benefit women. Article 16 guarantees non-discrimination in employment opportunities based on sex"[19]. Although these fundamental rights do not specifically reference physical or disabled individuals, they are applicable to socially, economically, and educationally disadvantaged groups, emphasizing the State's responsibility to ensure equal opportunities for everyone, even those with disabilities[20].

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[17] Convention on the Rights of Persons with Disabilities, Dec. 13, 2006, 2515 U.N.T.S. 3.
[18] *Ibid.*
[19] Constitution of India
[20] National Legal Services Authority v. Union of India, (2014) 5 SCC 438

The Constitution primarily addresses the protection of individuals facing disability and illness within the Directive Principles of State Policy in Chapter IV. Article 39A obliges the State to provide equal justice and free legal aid to prevent any citizen from being deprived of justice due to economic or other disadvantages. Article 39 requires the State to enhance the status of women by ensuring equal treatment of men and women in its policies. Article 41 directs the State to take appropriate measures, within its economic capacity and development, to secure the rights to work, education, and public assistance in cases of unemployment, old age, sickness, and disability. Article 46 mandates the State to promote the educational and economic interests of weaker sections of the population, particularly the Scheduled Castes and Scheduled Tribes, and to protect them from social injustice and exploitation[21].

The Constitution of India includes provisions which underscore the government's duty too uplift disadvantaged groups. While Fundamental Rights are enforceable in courts and apply to all citizens, the Directive Principles of State Policy are not legally binding but serve as guiding principles for the State in governance and legislation. and the Scheduled Tribes, and safeguard them from societal injustice and exploitation. It includes provisions highlighting the State's duty to uplift disadvantaged groups.

Specific Legislations

(i) The Rights of People with Disability Act, 2016

The "RPWD Act of 2016" is a significant law designed to protect and promote the rights of persons having physical disabilities diverse facets of life, including education, social welfare, constitutional protection, financial opportunities, cultural activities, and participation in politics. Enacted in 2016 and implemented in 2017, the Act aims to align with the "United Nations Convention on the Rights of Persons with Disabilities". It requires relevant governments to take steps to guarantee that individuals with disabilities (PWDs) have the same opportunities. The concept of disability under the Act is defined in a dynamic and evolving way[22].

People with baseline impairments, and those who have substantial support requirements are eligible for additional benefits. The Act expands the definition of disability from 7 to 21 categories, beyond the previous limitations of mental illness, autism, and spectrum disorders. It now includes conditions such as autism spectrum disorder, severe muscular dystrophy, chronic neurological illnesses, speech and language impairments, thalassemia, hemophilia, and sickle cell disease. It also recognizes numerous disabilities, such

[21] Supra note 21

[22] "*The Rights of Persons with Disabilities Act*, No. 49 of 2016, INDIA CODE (2016)"

as hearing-blindness victims of acid assaults, and Parkinson's disorder or disease. The Government has the authority to notify additional categories of specified disabilities[23].

The Act raises the reservation rate for people who have disabilities from three to four percent in positions in government and from three percent to five percent in higher education facilities. Children with developmental disabilities from 6 to 18 are eligible to a free education, with Government-funded and recognised educational institutions must provide inclusive education.

There is a strong focus on ensuring that public buildings become accessible within a set timeframe, in accordance with the Access India program. The Chief Director for Persons with Disabilities, alongside the state commissioners, will function as regulatory and grievance redressal agencies to oversee the law's implementation. A dedicated national and state fund will be established to give financial help to individuals with impairments. Furthermore, specific measures will be introduced to guarantee equal rights for women and children, and the government is responsible for protecting people with disabilities from cruelty, inhumane and degrading treatment, as well as all forms of violence, abuse, and exploitation.[24].

(ii) The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995

The "Persons with Disabilities (Equal Opportunities, Protection of Rights, and Full Participation) Act", 1995, commonly referred to as the PWD Act, is Primary and comprehensive law in India that addresses issues related to individuals with disabilities. The Act consists of fourteen chapters that cover a range of topics. Under Section 2(t) of the PWD Act, a 'person with disability' is defined as someone who has at least forty percent of a disability, as certified by a medical authority. Section 2(i) further elaborates on what constitutes a disability, including conditions such as Blindness, reduced eyesight, leprosy treatment, hearing loss, locomotor impairment, cognitive impairment, and mental disorders. The Act also addresses disability prevention (Section 25), treatment (Section 56), and social security benefits (Section 66).

The Act outlines the responsibilities of both the Central and State Governments in providing services for individuals with disabilities. Education-related provisions are found in Chapter V, including Section 30, which specifies measures such as removing architectural barriers in schools and designing curricula tailored for

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[23] *Ibid.*

[24] "*The Rights of Persons with Disabilities Act"*, No. 49 of 2016, INDIA CODE (2016), available at https://indianexpress.com/article/explained/explained-law/india-disability-law-accessible-government-buildings-pwd-9195391/

children with disabilities. Chapter VI requires the Government to identify and reserve jobs for persons with disabilities, establish special employment exchanges, and ensure that employers maintain records, with provisions for carrying forward unfilled vacancies.

Section 38(b) allows for the relaxation of age limits in government employment for individuals with impairments. Section 33 gives disabled individuals a particular right in government positions, reserving 3% of vacancies, evenly split between those with impairment or low vision, hearing impairment, motor impairment, or cerebral palsy. For employees who acquire a disability while in service, Section 47 protects them from being dismissed or demoted and also ensures that promotions are not denied solely based on disability. Chapter VIII (Sections 44-47) emphasizes the establishment of an environment without barriers and the removal of discrimination against persons with disabilities, enabling them to access the same developmental benefits as the general population[25].

The PWD Act is notable as it was the first Indian law to address the social and economic rights of individuals with disabilities. However, it does not comprehensively address all issues related to the rights of people with impairments, particularly in the prevention of abuse and assault against disabled women. In September 2006, India adopted the "UN Convention on the Rights of Persons with Disabilities" (UNCRPD), and the government was obligated to align its laws with the provisions of the convention[26].

(iii) The Rehabilitation Council of India Act 1992

The "Rehabilitation Council of India" (RCI) was established through this Act as a governmental body tasked with overseeing and regulating training programs and courses designed for individuals with disabilities, those who are disadvantaged, and those with special educational needs. It is the sole legislative council in India that administers the National Rehabilitation Register, which contains information about all competent professionals engaging in training and educational programs for these people[27].

In 2000, the Government of India introduced and notified the "Rehabilitation Council of India (Amendment) Act 2000", which expanded the definitions and provisions of the original "Rehabilitation Council of India Act, 1992", under the broader framework of the "People's With Disabilities Act, 1995"[28].

(iv) The National Trust for Welfare of Persons with

[25] Supra note 26
[26] Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, No. 1, Acts of Parliament, 1996 (India).
[27] Rehabilitation Council of India Act, 1992, No. 34, Acts of Parliament, 1992 (India).
[28] Rehabilitation Council of India (Amendment) Act, 2000, No. 38, Acts of Parliament, 2000 (India).

Autism, Cerebral Palsy Mental Retardation, and Multiple Disabilities Act 1999

The "National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation, and Multiple Disabilities Act of 1999" was established to protect and support particularly vulnerable groups within the disabled population. This legislation was created to ensure the safety, well-being, and protection of these individuals and their property. The Act is designed to assist families in arranging secure, long-term care for their severely disabled members. Its specific objectives include empowering persons with disabilities to live as independently and fully as possible within their communities, promoting caregiving initiatives, and providing protection in cases where a parent or guardian has passed away[29]. Additionally, the Act supports registered organizations in delivering essential services during family crises. The "National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation, and Multiple Disabilities Act of 1999" is a crucial piece of legislation in India, aimed at safeguarding and enhancing the lives of some of the most vulnerable groups within the disabled population. The Act was established with several key objectives:

1. Protection and Well-being: The Act ensures the safety and well-being of individuals with severe disabilities, providing a framework to protect their rights and interests, particularly in circumstances where they might be unable to advocate for themselves.

2. Long-term Care Arrangements: One of the significant concerns for families of individuals with severe disabilities is the provision of long-term care. The Act provides mechanisms to assist families in arranging secure, long-term care plans for their severely disabled members, ensuring that these individuals continue to receive the necessary care even after the passing of their primary caregivers.

3. Independent Living: The Act promotes the empowerment of persons with disabilities, aiming to enable them to live as independently and fully as possible within their communities. This is in line with broader goals of inclusion and self-reliance, ensuring that individuals with disabilities are not marginalized.

4. Caregiving Support: Recognizing the critical role of caregivers, the Act promotes initiatives that support and enhance caregiving. This includes providing resources and assistance to those who care for individuals with disabilities, acknowledging the challenges they face and the essential services they provide.

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[29] National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation, and Multiple Disabilities Act, 1999, No. 44, Acts of Parliament, 1999 (India).

5. Crisis Intervention: In situations where families are in crisis—such as the loss of a parent or guardian—the Act provides a safety net by supporting registered organizations that deliver essential services to the affected individuals. This ensures continuity of care and protection, preventing these vulnerable individuals from falling through the cracks during times of upheaval.

The Act represents a comprehensive approach to addressing the needs of persons with severe disabilities, ensuring that they are supported, protected, and empowered to live dignified lives.

(v) The Mental Health Act, 1987

The Mental Health Act was established before the human rights focus of the 1990s and can be considered a civil rights law. Its primary purpose is to regulate the standards of mental health institutions and address matters related to the property and affairs of individuals with mental illness. From a human rights standpoint, the Act is intended to protect mentally ill individuals from experiencing physical or mental cruelty during their treatment.[30]

4. Opportunities for education, employment and health care

In India, ensuring accessibility in educational institutions for students with disabilities continues to be a significant challenge despite existing legislative frameworks and policies. The "Rights of Persons with Disabilities Act, 2016" mandates that both private and government educational institutions must ensure accessibility for students with disabilities. This includes providing physical infrastructure such as ramps, elevators, accessible toilets, and appropriate seating arrangements. Among the fundamental rights recognized for women with disabilities in various national and international legal instruments are the following[31]:

a. Right to Education

In the 21st century, education is considered one of the most essential rights, serving as a powerful tool for economical and social empowerment. However, plenty of children with disabilities globally are denied access to education due to barriers like inaccessible facilities, inadequately trained instructors and a lack of consciousness amongst parents and school personnel. Women and girls with impairments face even greater challenges in accessing education compared to their male counterparts with disabilities or non-disabled females. This dual discrimination based on gender and disability contributes to lower literacy rates among women and girls with disabilities.

[30] Mental Health Act, 1987, No. 14, Acts of Parliament, 1987 (India).
[31] Supra 28

Article 24 of the "United Nations Convention on the Rights of Peoples with Disabilities" (UNCRPD) guarantees the right to education for people with disabilities. Similarly, Article 21A of the Indian Constitution establishes education as a basic right. The right to education for those with disabilities is further reinforced by the Persons with Disabilities (PWD) Act, with Section 26 mandating that authorities ensure a conducive learning environment for children with disabilities until they reach the age of 18. The Act also imposes an obligation on the government to promote inclusive education and establish special schools for children with disabilities.

b. Right to work or employment

Employment is crucial for independent living, yet it remains a significant challenge for persons with disabilities, many of whom are either unemployed or underemployed. Discrimination in hiring is common, with many employers holding misconceptions about the abilities of individuals with disabilities. Even when employed, women with disabilities often lack reasonable accommodations in the workplace, which are necessary for them to perform their job duties effectively. These accommodations may include adjustments to the physical work environment, flexible working hours, assistive technologies, and support services[32]. Generally, people with disabilities struggle to access the open labour market, with men with disabilities are almost twice as likely to be working as women with impairments. Women with impairments seeking employment experience prejudice based on both gender and disability. Employers sometimes regard women with impairments as less productive and incapable of adapting to the workplace. Furthermore, once employed, women with disabilities usually face discriminatory hiring and promotion criteria, restricted training opportunities, unequal remuneration for equal work, occupational segregation, and inadequate participation in economic decision-making[33].

The right to employment for persons with disabilities is recognized under Article 27 of the UNCRPD. The Indian Constitution, under Article 16, guarantees equality of opportunity in employment matters, extending similar opportunities to persons with disabilities. Article 39 of the Constitution mandates that the state direct its policies towards ensuring equal rights to a decent living and equal compensation for equal effort for men and women. Furthermore, Section 33 of the PWD Act gives people with disabilities unique and preferential rights in government jobs, including a 3% reservation of openings[34].

c. Right to a Barrier-Free Environment

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[32] Supra note 26
[33] Ibid
[34] Ibid.

Accessibility involves preventing and removing barriers that hinder in accessibility of products, services, and infrastructures to people with impairments. A barrier-free environment enables individuals with disabilities to move securely and freely, as well as use the facilities in the built environment. Article 9 of the UNCRPD requires State Parties to take appropriate measures to ensure that people with disabilities have equitable access to the physical surroundings, transportation, communications and information technology (including technologies and the internet), and other public services and amenities, both in cities and in rural areas.

While the Indian Constitution does not expressly guarantee an individual right to accessibility, the notion can be deduced from its commitment to promoting equal status and opportunity for all. Without accessibility, the rights provided by the Constitution have no meaning for people with impairments. The focus on non-discriminatory access to public facilities, highways, cultural events, and entertainment places for people with disabilities became more prominent following the passage of the PWD Act. This Act requires government bodies to establish barrier-free settings within their economic capacity. Sections 45–46 of the PWD Act advocate a variety of initiatives to improve accessibility for individuals with impairments[35].

d. Right to Protection against Violence, Abuse, and Exploitation

Violence and abuse are major issues for individuals with impairments, particularly women with disabilities facing an even higher risk than their non-disabled counterparts. These women are especially vulnerable to numerous types of exploitation, including sexual harassment, domestic violence, and workplace exploitation. Those with mental disabilities are especially at risk, making them easier targets for sexual exploitation. Within the family, women with disabilities often face exploitation due to the relative isolation and anonymity in which they live, increasing the potential for both physical and emotional abuse. Their isolation also often leaves them with fewer resources to seek help[36].

The UNCRPD recognises women with disabilities' increased vulnerability to abuse and exploitation, especially addressing the gender dimensions of freedom from exploitation, assault, and abuse in Article 16. India's Protection of Women from Domestic Violence Act of 2005 provides legal protection for women facing domestic violence. However, there is an urgent need for gender-specific safeguards to protect women with disabilities from abuse, assault, and exploitation.

[35] Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, §§ 45–46, No. 1, Acts of Parliament, 1996 (India)
[36] Protection of Women from Domestic Violence Act, 2005, No. 43, Acts of Parliament, 2005

Additionally, revisions to the Domestic Violence Act of 2005 may be required to ensure that the protection it provides is accessible to women with disabilities[37].

e. Right to dignity and legal standing.

Article 17 of the UNCRPD states that every person with a disability has the right to respect for their bodily and mental integrity on an equal footing with others. The right to integrity includes respect for an individual's personhood and the ability to enjoy their fundamental rights. For women with disabilities, self-determination is a crucial issue tied to this right. This right also intersects with various other aspects relevant to women with disabilities, such as health, particularly in matters of choice, consent, autonomy, and protection from abuse. Recognising the right to integrity, particularly for women with disabilities, is critical for protecting these other rights and entitlements[38].

Additionally, Article 12 of the UNCRPD recognises the legal competence of people with disabilities on an equal footing with others. Recognising legal competence is a cornerstone of the disability rights movement and a prerequisite for taking a rights-based strategy. Women with disabilities become more vulnerable when their autonomy and legal capability are not recognised. For example, in circumstances of forced sterilisation, without acknowledging legal competence, women with disabilities' permission and choice would be violated. While Indian law does not have a particular provision safeguarding the legal capacity or right to integrity of people with disabilities, this can be deduced from Article 21 of the Indian Constitution, which ensures the right to life[39].

f. Right to Privacy

Article 22 of the UNCRPD protects the right to privacy, which includes a wide range of safeguards such as privacy in family matters, the home, communication, honour and reputation, and personal, medical, and rehabilitation information. These aspects of privacy are particularly important for women with disabilities, especially regarding bodily and sexual privacy. In India, there is no clear legislation ensuring the right to privacy. However, this right may be inferred by Article 21 of the Indian Constitution, which protects the right to life[40].

g. The Right to Home as well as Family

Society often devalues women with disabilities, viewing them as non-sexual, unfit for marriage, and incapable of motherhood. Due to these misconceptions, they are less likely to marry, and if they do, it is often

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[37] Ibid.
[38] Convention on the Rights of Persons with Disabilities, art. 17, Dec. 13, 2006, 2515 U.N.T.S. 3
[39] Ibid
[40] Id. Art. 22

under compromised circumstances. Additionally, women with disabilities worldwide have been subjected to forced or coerced sterilization by medical professionals, a practice rooted in systemic prejudice. This is a serious breach of their human rights and can be considered acts of torture, as well as cruel, inhumane, and degrading treatment[41]. Such activities result in widespread rejection of their rights to express their sexuality, participate in sexual relationships, and start and maintain families, resulting in extreme social isolation and lifelong sadness. Article 23 of the UNCRPD requires States Parties to take effective and proportionate measures to prevent discrimination against people with disabilities in all aspects of marriage, family life, parenting, and relationships, while ensuring equality with others. Article 21 of the Indian Constitution protects the right to marry, have a family, and retain a home[42].

h. Right to Health

Women with disabilities often have unique healthcare needs that demand specialized attention, such as reproductive health services, mental health support, and rehabilitation services. Unfortunately, these needs are frequently neglected due to a lack of awareness and insufficient training among healthcare providers[43]. For example, women with disabilities may encounter obstacles in accessing gynecological care, whether due to physically inaccessible facilities or discriminatory attitudes from healthcare professionals. Additionally, there is a significant gap in mental health services, which is particularly concerning given the higher rates of psychological distress and mental health conditions reported among women with disabilities. Article 25 of the UNCRPD obliges States Parties to take appropriate measures to ensure that persons with disabilities have access to gender-sensitive health services, including health-related rehabilitation. In India, the right to health, including these provisions, is encompassed under Article 21 of the Constitution[44].

5. Conclusion

Ensuring justice and equality for women with disabilities extends beyond mere legislative duties, embodying a critical ethical and social responsibility. India's legal framework, especially through the Rights of Persons with Disabilities Act (RPD Act) of 2016 and the Mental Healthcare Act (MH Act) of 2017, establishes a robust foundation to address the unique challenges encountered by women with disabilities. These laws explicitly acknowledge the compounded

[41] Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, 1465 U.N.T.S. 85.
[42] Ibid
[43] Convention on the Rights of Persons with Disabilities, art. 25, Dec. 13, 2006, 2515 U.N.T.S. 3; World Health Organization, Disability and Health Fact Sheet (2021), https://www.who.int/news-room/fact-sheets/detail/disability-and-health.
[44] Ibid.

discrimination resulting from both disability and gender biases, highlighting the urgency for creating inclusive and equitable societal environments.

Globally, women with disabilities have historically faced neglect and exclusion from central discussions surrounding gender equality, human rights, and social justice. India, too, has mirrored this neglect, despite ratifying the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD). Before the UNCRPD, international laws largely overlooked the distinctive rights and vulnerabilities of women and girls with disabilities, failing to provide specific protections. India's adoption of this treaty signified a critical shift, reflecting an understanding that disability intersects profoundly with gender and socioeconomic equity.

The passage of the RPD Act and MH Act further demonstrates India's national commitment to translating international standards into effective domestic measures. These legislations directly confront issues like discrimination, access to education, employment opportunities, healthcare, and protection against abuse—fundamental rights necessary for women with disabilities to participate fully in society. For example, specific provisions within the RPD Act aim to address increased risks of abuse and exploitation uniquely experienced by women with disabilities, signifying recognition that achieving true equality demands proactive engagement with existing inequalities.

Additionally, India's National Policy for Persons with Disabilities, supported by various governmental programs, emphasizes empowerment, specifically targeting marginalized groups, including women with disabilities. However, translating these policy initiatives into meaningful change depends heavily on dedicated and effective governmental implementation. Without genuine commitment, adequate resources, and political willpower, progressive legislation risks remaining symbolic rather than transformative.

Bridging the gap between legal frameworks and lived realities requires prioritizing effective enforcement of these legislative provisions. Raising awareness among policymakers and society at large about the rights of women with disabilities is vital. Public education campaigns, community initiatives, and targeted awareness efforts must be pursued actively to challenge and eliminate societal prejudices and ignorance that sustain systemic barriers.

Furthermore, ensuring accessible legal aid for women with disabilities is crucial. Legal frameworks and judicial processes must be disability-inclusive, accounting for varied requirements of women seeking justice for violations of their rights. Specialized training and sensitization programs for law enforcement personnel, judiciary officials, and public servants must be mandated, emphasizing

respectful and informed handling of disability and gender-specific issues, particularly regarding violence and discrimination.

Critically, government actions must include robust monitoring and accountability mechanisms. Regular evaluation, feedback, and ongoing refinement of policies are essential for ensuring their continued effectiveness. Systematic collection and detailed analysis of data on the experiences of women with disabilities are fundamental to this monitoring process. Without accurate and comprehensive data, policymakers cannot adequately understand or address the specific issues faced by this community. Intersectional data—covering variables such as caste, class, geographic location, and socioeconomic status—can further expose underlying structural inequalities, guiding more targeted and effective interventions.

Intersectionality must transition from theoretical discourse into practical application within policymaking. Policies must explicitly recognize how multiple identities compound discrimination, tailoring interventions accordingly. Recognizing that women with disabilities experience varied challenges depending on their backgrounds ensures that solutions are nuanced and impactful.

Ensuring meaningful equality also demands an inclusive, participatory approach. Women with disabilities must have direct involvement in decision-making processes, policy formulation, and implementation efforts that affect their lives. Incorporating their voices, experiences, and insights is essential to fostering genuine inclusion and impactful societal change.

In conclusion, India's legislative framework presents significant potential for improving the lives of women with disabilities. However, the real measure of success lies in tangible outcomes that significantly enhance their everyday experiences. Achieving these demands continuous advocacy, unwavering political commitment, robust enforcement mechanisms, and inclusive dialogues among government bodies, civil society organizations, disability advocates, and most importantly, women with disabilities themselves.

Ultimately, India's pathway toward empowering and protecting women with disabilities is undoubtedly challenging but inherently promising. Through rigorous implementation of existing laws, proactive intersectional policymaking, participatory decision-making processes, and vigilant oversight and accountability, India can fulfil its national and international commitments. Such dedicated efforts would affirm India's dedication to universal human rights, demonstrating a progressive society committed to justice, equality, and human dignity for all.

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Anti-Defection Law: The Call for Reforms

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Abstract

Since the conduct of elections in Karnataka in 2018, constitutional provision of defection contained in the Xth Schedule has been a raging topic of discussion. The elections witnessed high political drama.

The events that transpired and followed in the next few months and the following year are enough to speak about the state of our elections in India. The same scenario was recently seen in Maharashtra.

With the current constitutional provisions with respect to anti-defection or otherwise, similar situations have arisen in many States since then.

The research paper 'Anti-Defection Law: The Call for Reforms' deals with the issue of defection not only from the constitutional perspective but also from a moral angle taking all these aspects into account. The paper has discussed these issues with the Karnataka elections of 2018 as the background.

Keywords: Defection; Speaker; Tenth Schedule; Whip; Democracy; Disqualification; 52nd Amendment

1. Introduction

The political equation in Karnataka after the conduct of elections in 2018 witnessed numerous ups and downs no less exciting than a Bollywood potboiler with high voltage drama, also exposing with the turn of events the volatile nature of Indian politics devoid of any morality and principles coupled with the falling political standards with each passing day.

It all started with the Assembly elections in Karnataka held in 2018. The turn of events that took place post elections have been described in detail below.

Elections for the Legislative Assembly of Karnataka took place in 2018 and the results were declared on May 15, 2018. The BJP emerged as the single largest party getting 104 seats in the 224 members' assembly, but failed to clear the half-way mark of 112. The Congress and the Janta Dal (S) bagged the second and the third spots getting seventy-eight and thirty-eight seats respectively. Both the parties immediately formed a post poll alliance and staked claim before the Governor to form the Government. However, the Governor disregarding the constitutional propriety, invited B.S. Yeddyurappa of the BJP to form the Government and gave him fifteen days to prove his majority on the floor of the house. The incident sparked an immediate protest and the Congress moved the Supreme Court the very same day challenging the malafide action of the Governor.

The Apex Court questioned the rationale behind the Governor's decision to invite the BJP to form the Government when the Congress and JD (S) had majority strength. The Court thus reduced the fifteen-day period given by the Governor and asked the BJP to prove its majority by May 19, 2018 which it failed to do. The Congress and JD (S) coalition thus formed the Government.

Even during this entire episode of Government formation post declaration of the results of the elections, the coalition remained on tenterhooks and had sleepless nights as they had to lock their MLAs at a resort in Karnataka with no access to any person. This, in order to prevent them from switching sides.

The rest of the year since the formation of the Government, the situation had been tumultuous and the turn of events that transpired during the said period were unprecedented and posed a big question on the very purpose of a democratic state, constitutional and democratic values. Whatever events followed, it finally led to the ousting of the incumbent within one year of the formation of the Government, and the single largest party i.e., the BJP was able to form the Government by dethroning the Congress JD (S) coalition. The next couple of years witnessed similar attempts being made in many other states. 2019 and 2020 saw many states replicating the Karnataka model with attempts of ousting the incumbent by engineering defections through various means. In Madhya Pradesh, the strategy was successful with the Congress government being ousted out of power in a similar fashion.

Similar attempt was also made in Rajasthan but was somehow unsuccessful. Rajasthan witnessed a high voltage prolonged political drama which however, could not bring the intended results. In the recent past, the Chief Minister of Rajasthan accused the BJP of making attempt to topple his government.[1] A similar situation equal in

[1]Special Correspondent, Rajasthan Chief Minister Ashok Gehlot accuses BJP of making renewed attempts to topple Government, (Feb 01, 2021, 11:35 AM) www.thehindu.com

magnitude and nature to the state of Karnataka was recently witnessed in Maharashtra where a rebel faction of the Shiv Sena- NCP coalition broke off with legislators of the former party merging with the BJP to oust the incumbent and form the Government. The chain of events was like that of Karnataka with legislators being locked in a state quite far away from Maharashtra. Clause 4 of the Xth Schedule of the Constitution creates a rather perplexing scenario open to wider and subjective interpretations. Under the said clause, a legislator or a group are saved from disqualification if two thirds of the legislators from the original political party merge with another political party and claim to become members of that party or claim formation of a new party. These legislators conveniently interpret merger to take place only when they muster the required the magical figure of two-thirds while even the merger of original political party might not have taken place, which in a practical realm is not possible. Thus, the figure of two thirds and original political party in clause 4 of the Xth Schedule of are being seen as separate aspects which is an erroneous interpretation of the said clause. In all cases of defection, the clause is interpreted in this manner which needs corrective and remedial measures. The case of Maharashtra was no different. Even after the dissidents forming a new Government in a new coalition, the original political party neither ceased to exist nor a new party was formed post-merger. This subjective assessment of an important constitutional provision is more for the conveniences which the defectors get to reap and which far outshines the public welfare or any ideological mooring which they tend to display as mentioned earlier. The role of Governors in each of the following states was also called in question with controversies arising with respect to the way the executive heads had been carrying out their constitutional duties; sometimes overlooking the very well laid out and settled constitutional principles and procedures.

Besides the big question of changes to the anti-defection law as described in schedule X of the Constitution, it raises for debate and discussion some important and ancillary issues viz. the purpose of elections, the importance of voting, the element of moral compunction in general, in the world of politics and politicians specifically and the erosion of faith by acts of political parties and politicians before shifting to the main discussion of anti-defection, its purpose and changes required in the law.

2. Conduct of elections in democracy and the purpose of voting

People in public service who are also mostly public figures have, besides the onerous duty of serving their constituents also have the obligation to conduct themselves with the right rectitude, carry the responsibilities and work of their office within the bounds of the law and the constitution and uphold the dignity of their office without

losing their moral compunction or becoming susceptible to lure or temptations.

The constituents or citizens carry an image and repute of their representatives in their mind, and besides the expectations of the work which they have to do for them and for which they have been elected, the value of the image holds considerable weightage for determining the future prospects of the representatives.

Unlike public figures from other walks of life like media, sports or movies, the public image of a public representative stands on a little different footing from all others. While the element of public following is a common element in both the cases, the difference lies in the direct contact between the public representatives and the citizens which distinguishes it from the former.

People generally are not in touch with personalities from movies, sports or television and are only aware of it through their screen or social media appearances. They generally do not have the opportunity to take a glimpse into their personal lives. They form an opinion about the person based on their screen image. Any negative aspect of the image of person brought forward before the citizens through unlawful acts of the person and by real life events does not in any way affect them directly and at the most bound to attract expressions of shock and awe.

For example, if any movie actor has formed an image in the minds of the people through positive roles and being a crusader against all the ills plaguing the society, is bound to shock people if he is prosecuted for running a drug racket in real life. This however is in no way going to affect them directly.

This contrasts with the image of a public representative where his unlawful and unethical acts are bound to affect them directly.

Any shifting of allegiance from the party and its ideology therefore will have a deep bearing on the people and will shape and impact their opinion. With the kind of atmosphere prevailing today where legislators and lawmakers switch sides at the blink of an eye, the perception of people's representatives keeping their self-interests above public welfare has started gaining ground and more so among educated urban youth, who despite massive awareness campaigns for voting, refrain from exercising their franchise.

The methodology and procedure used for this shifting of allegiance becomes immaterial and therefore switching sides within the ambit of law or even taking the law for a ride to avoid disqualification therefore holds no value.

The issue of law relating to defection under the Xth Schedule of the Constitution therefore traverses beyond the technicalities of

procedure and the constitutional principles and becomes an issue involving moral compunction and ethics as well.

Any discussion on the anti-defection law will thus have to be looked at from a holistic perspective and changes with respect to the law to rectify the lacuna will have to be analysed from other angles as well. Before dealing with all these issues, a detailing of the anti-defection law, its historical background and the controversies involved are necessary.

3. Anti-Defection law: The historical background

The law relating to defection is contained in the Xth Schedule of the Constitution of India. It was inserted vide the 52nd Amendment Act, 1985 w.e.f. 01-03-1985. Under the said law, a Member of Parliament or of a State Legislative Assembly shall render himself for disqualification if he voluntarily gives up the membership of the political party or votes or abstains from voting in the house contrary to any direction given by the political party without the prior permission of such political party.

The disqualification however, according to clause 4 of the Schedule shall not apply in case of a merger i.e., where two-thirds of the members of a political party agree to merge with any other party.

The final decision with respect to the disqualification of a member rests with the speaker. The turn of political events in Karnataka recently has created a piquant situation where the legislators, in order to avoid disqualification have tendered their resignation.

Since the decision maker in case of voluntariness of resignation of a lawmaker is also the speaker under clause (3) of Article 190 of the Constitution, the speaker, exercising his discretion disqualified the MLA's citing involuntariness as the reason for disqualifying them.

It needs to be clarified that a disqualified legislator needs to win a re-election in order to retain his seat for the Parliament or the State legislative assembly while tendering a resignation makes such a need redundant and the lawmaker is free to join any other party in an alternative cabinet without seeking a re-election.

The difference between resignation and disqualification lies in the procedural aspect of the nature of proceedings. Whereas resignation is a simple function of being satisfied of its voluntariness which is tested at the discretion of the speaker, and should be exercised with the circumspection and sound principles of objectivity, disqualification is more elaborate and technical in nature and the decision with respect to the same is arrived at after due investigation and enquiry.

There are a host of other issues involved while dealing with a complex constitutional issue like this. Besides testing the irregularities on the touchstone and parameters of law, there is a larger issue of democratic principle and values enshrined in the Constitution and as a part and parcel of our governance system, it also involves the call for conscience where any other narrow, selfish, oblique, or parochial considerations are set aside.

The conduct of legislators as mentioned and discussed earlier has a deep bearing on the electorate who keep a hawk's eye on their post-election conduct. The change of regimes and the principle of anti-incumbency (a major component of politics) upon which electoral outcomes to a large extent are based, are primarily the driving force behind the working of the legislators to whatever extent or howsoever high or low it may be.

The dissatisfaction stemming from a non-functional or malfunctioned government fuels or stokes the passion for a regime change through the instrumentality of elections by means of exercising the franchise. A change of government therefore sparks a new hope and a glimmer of expectations of getting rid of the frustrations which had dawned in the era of the predecessor.

Legislators switching sides therefore is a strong indication to the electorate of the nature of governance they are going to get in the coming years and thus once again a slap on their face. Keeping narrow considerations of retaining power for selfish interests is not a healthy trend for democracy.

Power is a privilege. It gives to the person upon whom it is conferred, certain special commands, through the lawful exercise and use of which he can distribute and give certain benefits to the people who do not wield the same authority as him and which distinguishes him from that other person. Any exercise of that power therefore arbitrarily and which is not in consonance with the above principles is a classic example of power abuse and use thereof for selfish interests.

The entire political scenario in Karnataka and the turn of events that took place are based on this premise. Though the Court's decision was successful in establishing the coalition, the events that followed in the next few months can rightly be termed as abhorrent.

To deal with the question of reforms in the law relating to defection therefore should be seen in the light of the quest for retaining power.

4. The Karnataka episode

The political equation in Karnataka since the conduct of elections turned into a football game where the anti-defection law was being kicked, twisted, and turned to suit one's personal needs and the legislators being turned into a laughing stock.

Since the strength of rebel MLAs was not enough to make themselves immune from disqualification under the anti-defection law as described above, they resorted to resignations in order to avoid disqualification which was solely at the discretion of the Speaker under Article 190 (3) of the Constitution.

Legally speaking, politicians cannot be compelled to remain in a party against their wish but moral principles have certain weightage too and if read in harmony, the former cannot trump the latter.

"The ingenuity of the immoral converted the real malaise of defections into a wholesale malady."[2]

Though the Yeddyurappa Government won the trust vote, the then speaker disqualified 14 rebel MLAs of the Congress JD (S) coalition exercising his discretion under clause (6) of the Xth Schedule.

5. Ant-defection law: The lacuna

Technically speaking, the anti-defection law does not seem to suffer from any infirmities. The very purpose of the law is to stop the democratic system and the constitutional provisions become a tool in the hands of the elected representatives who owe their allegiance to the very constitution under an oath of affirmation and thus make the whole system a mockery.

Clause (6) of the Xth Schedule and clause (3) of Article 190 creates a piquant situation where the conscience of the speaker is put to test and the morality of the law maker must be weighed on a scale with the legal provisions.

Certain constitutional posts and positions are of such a nature that holding of that position puts the person in a position where a very high standard of conduct is expected of him. Persons holding such positions are expected to be non-partisan and are expected to de-link all loyalties, allegiance, and obligations from the post before their appointment/selection/elevation. The position of the speaker of the House enjoys great respect and he is expected to follow the above principles in the conduct of his office.

Discretion is an abstract concept which gives the man exercising such power, the freedom to act and make decision out of his own volition. It is backed by a call for conscience and carries with it a moral element.

The role of the speaker in general and with respect to the present controversy assumes great importance.

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[2] Bhanu Dhamija, Why India needs the Presidential system, 189, Harper Collins (2015).

The office of the speaker is held in high esteem and respect in the Parliamentary traditions. The evolution of the institution of Parliamentary democracy has as its pivot the institution of the speaker. The speaker holds a high, important, and ceremonial office…The speaker is said to be the very embodiment of propriety and impartiality.[3]

The Karnataka controversy created a scenario where proving discretion either at the part of the speaker on disqualification of MLA's or on the part of the legislators with respect to the voluntariness of their resignations by weighing them on scales of evidence and legal principles appeared a very challenging task. The court, in matters like this cannot help much except to leave the ball in the speaker's court. With the current legal position as it stands in the Constitution at present, the observation of the Court which came recently was expected with the Court turning down the present Karnataka speaker's plea through the Solicitor General of framing down the guidelines for the speakers.

The SC opined that the opined that the Court framing guidelines for the Speaker would be an encroachment by the judiciary into the realm of the legislature. The Speaker is the master of the house the SC explained. The Solicitor General had held "It is not defection if you give up membership of a political party for reasons of conscience, then you resign and go back to face the public mandate. This is the recognition of MLA's right to resign."[4]

A man can lie to the whole world but not to his conscience. With little moral element left in the society, it was very unlikely that any changes to the present Karnataka imbroglio with the current law in place would have been possible nor is any new solutions possible if a situation like this arises in future. The best course of action is to change the law to the best extent possible to minimize switching over by legislators except to the extent of their voluntariness.

6. Anti-defection law: The changes required

With legislators finding a way to dodge the anti-defection law, taking the power of discretion to a ride, the first reform needed will be to amend Article 190 of the Constitution of India.

Law makers resigning to the speaker under clause 3 (b) of Article 190 will have to submit an affidavit before the Election Commission (EC) with respect to the voluntariness of their resignation and it not being influenced by any external factor, allurement (financial or otherwise), inducement of any ministerial post or any other pressure which may compel the legislator for resignation.

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[3] Kihoto Hollohan vs Zachilhu, AIR 1993 SC 412.

[4] SC turns down plea to lay down norms for Speakers, The Hindu, 26-09-2019, 8.

The EC, on receipt of the affidavit shall direct the Intelligence Bureau (IB) to conduct a 360-degree review of the legislator concerned including his bank details and other financial assets and if the averments in the affidavit are found to be false, direct the appropriate authorities to prosecute the legislator under relevant provisions of the law. The law maker should in such a case should immediately be barred from contesting elections.

Clause 7 of the Xth Schedule of the Constitution bars the jurisdiction of the Courts with respect to the disqualification of any member of the House. However, since Courts are the final arbiter and interpreter of all laws and the Constitution, it does not prevent it from taking cognizance of the matter even if it has been expressly prohibited by law. The question of actions of those persons including holders of Constitutional posts, which are palpably malafide can always be enquired by the Courts limited only to the extent of deciding the legality of the decision tainted or imputed to be malafide.

If the jurisdiction of the Courts is ousted altogether, even to the question of illegality of any organ of Government or any malafide action on the part of any authority, the system of checks and balances would become nugatory and lose its meaning and would pave the way for anarchy.

The Speakers/Chairmen while exercising powers and discharging functions under the Xth Schedule act as Tribunal adjudicating rights and obligations under the Tenth Schedule and their decisions in that capacity are amenable to judicial review.[5]

Judicial review is not concerned with the merits of the decision but with the decision-making process. This is on the premise that the modern democratic system has chosen that political accountability and the judiciary exercising its judicial review may be refrained to do so when it finds that the controversy is not based on judicially discoverable and manageable standards. However, if a legal question camouflaged by political thicket has arisen, the power and the doors of Constitutional court are not closed, nor can they be prohibited to enter in the political thicket, when the Constitution expressly has the duty to it.[6]

The Speaker being an authority within the House and his tenure being dependent on the will of the majority therein, likelihood of suspicion of bias could not be ruled out. The question as to disqualification of a member has adjudicatory disposition and, therefore, requires the decision to be rendered in consonance with the scheme for adjudication of disputes. In the Tenth Schedule, the Speaker is made not only the sole but the final arbiter of such dispute

[5] Keisham Meghachandra Singh vs The Hon'ble Speaker Manipur Legislative Assembly and Others Civil Appeal No 547 of 2020.
[6] S.R. Bommai vs Union of India AIR 1994 SC 1918.

with no provision for any appeal or revision of the Speaker's decision to any independent outside authority. This departure in the Tenth Schedule is a reverse trend and violates a basic feature of the Constitution since the Speaker cannot be treated as an authority contemplated for being entrusted with this function by the basic postulates of the Constitution, notwithstanding the great dignity attaching to that office with the attribute of impartiality.[7]

Clause 7 of the Xth schedule should be amended as follows: "Where the speaker has disqualified any legislator under this schedule not accepting the resignation by such legislator, and the disqualified legislators challenge the disqualification in the Court, they shall do so on an oath stating that their resignation was voluntarily not fuelled by any promise, threat or any other financial inducement and the speaker in not accepting their resignation has committed an error in law. If the averments in the affidavit are tainted by malice or upon investigation are found to be false, the disqualified legislators shall be barred from contesting elections for ten years".

7. Issuance of whip by the parties: The scope

A whip is a directive from a political party that binds the member of that political party in a House to obey the line of that political party. The chief functions of the whip are:

1. To ensure discipline among party members in the house.
2. To ensure attendance of the party members.
3. To make sure that MP's vote according to party line.
4. To supply list of speakers on Bills and other Business in the House.[8]

Although the ambit and scope of whip is varied and encompasses a wide variety of things on which it can be issued, there is a need to contemplate on the object and subjects on which it can be issued.

Akin to a monitor in the classroom of a school, the purpose of whip in Parliament and State Legislations is to ensure party discipline and to ensure that the elected members of the party remain loyal to it and the ideology. However, issuing a whip for voting in the house chiefly serves two purposes:

1. Voting on a bill introduced in the Parliament for its smooth passage
2. Voting when the party must pass the trust vote

[7]Keisham, *Supra,* note 5, at 28, 29.
[8] https:// www.byjus.com, Whip in India- Whip politics (last visited Feb 01, 2021).

While in the former, there is a sound justification for issuing a whip, the latter does not warrant any such justification.

This is because the politicians cannot be tied to parties against their will. While law does not permit such coercions and the anti-defection law was enacted to pave the way for such a legal quandary, means have always been found to dodge the law to suit one's personal and vested interests. To find ingenious techniques for avoiding disqualification while still having the wider choice of leaving the party further complicates the situation. Since decision on resignations involve more a question of morality and consciousness than of law, the former is more likely to be corrupted by a feeling of loyalty or allegiance towards a person or a group and thus likely to trump the law.

However, there has been a divergence of views and opinion with respect to the scope and ambit of issuance of whip.

While the Law Commission of India in its 170th report opined that whip should be issued solely where the existence of Government was at threat, Manish Tiwari of the Congress mentioned the following instances in which the whips can be issued

1. Motion expressing confidence or want of confidence in the Council of Ministers.
2. Motion for the adjournment for the business of the House.
3. Motion in respect of financial matters as enumerated in Articles 113 to 116 (both inclusive) and articles 203 to 206 (both inclusive)
4. Money Bill[9]

   The best course of action in such a case is to amend the relevant provisions of the Constitution as described above.

8. Democracy, ethics and principles of Governance

Finally, beyond the technicalities of law and questions of specific legal nature, the entire episode of Karnataka in particular poses and leaves for contemplation a larger question of purpose of a good democracy, and principles on which good governance rest?

Democratic principles and good governance complement each other. Governance, the foundations of which have been laid for the benefit of the people can only be said to be good governance. Democracy also has its roots in the same principle.

[9] Kartik Khanna and Dhavani Shah: Anti-Defection Law: A Death Knell for Parliamentary Dissent? NUJS Law Review 5 NUJS L. Rev 103 (2012), 125.

Public representatives, whether selected or elected are the instrumentalities through which such public welfare programs are to be planned, executed and carried out based on the will of the people.

Good policies, and good laws are for the benefit of the people. However, there seems to be emerging a trend where the legislators carry out this work not for the larger goal of public welfare but on the narrow premise of personal benefits. More recently, the elected representatives have started presuming that the policies they frame are for the benefit of the people and try to thrust and impose it on the citizens for whom they are made. Those showing any signs of resistance are dealt with a heavy hand and shown the state prowess.

The crave for power is what drives and regulates the behaviour of the legislator and the manner which drives the conduct of the legislator for voting for or against a bill is driven by the larger goal of his self-interest under the garb of curbing freedom of expression.

Instead of having policies that bring a political party to power, in India the pursuit of power brings a party its policies. Since the primary purpose is to win seats in Parliament, these policies are inherently unfair, they are designed to appeal to a vote bank not to reason.[10]

Even the consideration of vote bank is lost after being elected and the conduct is thereafter is governed only by the quest for power. Thus, the power and value of the very vote that brought about a regime change by ousting the incumbent in the hope of new atmosphere being created, becomes nugatory and lost in the oblivion. The post-election conduct and goal of all legislators become common and the same post elections viz to retain power somehow.

9. Conclusion

The Karnataka episode is only one of the instances where such conduct is displayed brazenly that have occurred many times and in the past and may also recur in future.

Changes in the anti-defection law can curb such brazen conduct only to a limited extent. Ways and means will always be found out meet one's personal interest and need. Law can only contain the external actions of an individual; however, morality of an individual is beyond the reach of law and when the individual morality is nearly absent in the holders of power, they will always give precedence to their cravings over the latter by exercising this power in the most blatant manner.

Future occurrences of events and scenarios like this are unlikely to change unless the public representative see grabbing power as the only goal and motive for conduct of elections.

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[10]Dhamija, *Supra,* note 2, at 303.

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Institutional Support for Patent Navigation: Insights from West Bengal

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Abstract

A patent is an exclusive intellectual property right granted for an invention. Patents incentivise innovation, attract investments, generate revenue and help companies capture the market. Indian Patent Act grants patents for twenty years, and the Controller General of Patents, Designs, and Trademarks is the chief authority on Patent law in India. This research examines the significance of Patents in fostering innovation and entrepreneurship in West Bengal and evaluates the institutional support for Patent navigation in West Bengal. This research explores the common challenges entrepreneurs face in West Bengal and the role of the Patent Information Centre in assisting entrepreneurs. This research also investigates the role of the Technology Development Adaptation Centre and Idea Clinic in promoting innovations and Patents. This research suggests policy recommendations to the Government of West Bengal to bolster the institutional support for patent navigation.

1. Introduction

The term patent was first coined in the Republic of Venice in 1474 and has evolved significantly recently.[1] A patent is an exclusive right granted for an invention. Patents benefit inventors by providing them with legal protection for their inventions. However, patents also benefit society by providing public access to technical information about these inventions and thus accelerating innovation.[2]

[1]Ravi Kiran, Meenakshi Chauhan and Kapil Arya, 'Patent Monetization: A Currency of Knowledge Economy', 2024 6(4) *Indian Journal of Law and Legal Research*
[2] World Intellectual Property Organisation, Patents' (*WIPO*,2025) https://www.wipo.int/en/web/patents/ accessed 10th February 2025

1.1 Salient features of the Patent system

1.1.1 Incentivising innovation: Patent protection reduces the firm's sensitivity to market uncertainty, decreases the value of waiting, and leads to more excellent current R&D investment.[3] According to a study by the U.S. Patent and Trademark Office (USPTO), inventors with patents are likelier to engage in additional research and development activities. A study estimates that in the U.S., companies that hold patents invest three times more in research and development than those without patents.

1.1.2 Attracting investment: A study by the National Bureau of Economic Research found that start-ups with patents are more likely to receive venture capital funding. Patents are valuable assets that can increase the likelihood of attracting investment for start-ups and small businesses.

1.1.3 Monetisation opportunities: Patents have become critical assets in the modern knowledge economy, often regarded as currency in the intellectual property landscape.[4] According to a report by the World Intellectual Property Organization (WIPO), patent licensing has become a significant source of revenue for many companies, with global royalty revenues from patent licenses reaching $180 billion in 2019. Licensing patents allows entrepreneurs to generate revenue without manufacturing or selling products themselves.

1.1.4 Market position and competitive advantage: Patents help differentiate companies' product offerings. By providing unique selling points, patents allow start-ups to stand out from competitors, making it easier to capture market share. This differentiation is vital in crowded industries, where having a patented product can strongly indicate a company's ability to offer innovative solutions. [5]A European Patent Office (EPO) study found that companies with patents are likelier to achieve a strong market position and capture a larger market share. Patents provide entrepreneurs with exclusivity, allowing them to differentiate themselves from competitors and establish a competitive edge.

1.2 Overview of India's patent system

The principal statute in India governing patent law is the Patents Act of 1970, amended in 2005. This is further substantiated by the Patent

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[3]Dirk Czarnitzki and Andrew A. Toole, 'patent protection, market uncertainty, and R&D investment', 2011, 93(1) *The Review of Economics and Statistics* 147

[4] Oguamanam, C., 2008. 'Beyond theories: intellectual property dynamics in the global knowledge economy' 2009(9). *Wake Forest Intellectual. Property Law Journal* 104.

[5] Michael Vingborg Kjelstrup, ' Patents As A Catalyst: How Intellectual Property Drives Startup Success And Investor Confidence (*aera,2* December 2024) https://www.mondaq.com/patent/1568996/patents-as-a-catalyst-how-intellectual-property-drives-startup-success-and-investor-confidence accessed 17th February 2025

Rules, 2003, which provide details on the procedures and practices to be followed about patent applications and their processing.

The Controller General of Patents, Designs, and Trade Marks (CGPDTM) is India's chief authority on patent law. It falls under the Department of Industrial Policy and Promotion (DIPP) in the Ministry of Commerce and Industry. The Indian Patent Office is located in four regions of India: Delhi, Mumbai, Chennai, and Kolkata. Its functions include receipt of patent applications, claims examination, and patent granting.

India also belongs to the Paris Convention for the Protection of Industrial Property and the Patent Cooperation Treaty (PCT). Therefore, Indian patent applicants can file international applications and seek patent protection for their inventions beyond the Indian territory.[6]

1.3 Indian Patent Act and patent rights

Patent rights are granted for a limited period, 20 years from the filing date. They give territorial and exclusive rights, which can be enforced only in the country where they have been granted.

The patent right may enable the patentee to derive material benefit, to which they are entitled, as a reward for their intellectual efforts and compensation/royalty for expenses incurred in research and experimentation relating to their invention.

The patent right protects against infringement, creates the possibility of assigning or licensing the right, and enables the patentee to take legal action against any person exploiting/infringing the patented invention without consent or license from the patentee. A patentee acquires the right, enforceable by law, to decide who shall use and not use his patented invention. The patentee retains this right for the term of the patent, provided the applicant pays the necessary renewal fees.

The grant of patent rights by the government does not mean that the government itself would automatically enforce the patent right. It is up to the patentee/assignee to bring an action, usually under civil law, for any infringement of the patent right.[7]

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[6]Sanjay, ' Indian Patent Search And Patentability Requirements', (*Vakil Search*,31 December 2024) https://vakilsearch.com/blog/indian-patent-search/ accessed 17 February 2025

[7] Office of the Controller General of Patents, Designs and Trade Marks, 'Information Brochure on Intellectual Property Rights(*Intellectual Property India*,2024) https://ipindia.gov.in/writereaddata/Portal/Images/pdf/Information_brochure-IPR__16_.pdf accessed on 17 February 2025

1.4 Criteria of Patentability

An invention is patentable subject matter if it meets the following criteria –

i) It should be novel.

ii) It should have inventive steps.

iii) It should be capable of Industrial application.

iv) It should not attract the provisions of sections 3 and 4 of the Patents Act 1970.[8]

2. Economic and Industrial Landscape of West Bengal

West Bengal is in Eastern India and shares its borders with Jharkhand, Bihar, Odisha, Sikkim, and Assam. The State also has international borders with Bangladesh, Bhutan, and Nepal. The Bay of Bengal is to the south of the State.

West Bengal, India's fourth-largest economy, with a population of 99.7 million, had a gross state domestic product (GSDP) of Rupees 18.8 lakh crore in 2023-24.

There are 21 State-aided Universities, 6 State Specialised Universities, 1 Deemed University, 8 Central Universities and Institutes of Higher Learning, 10 Private Universities, and sizeable research institutes in West Bengal. It hosts top-notch institutes like IIT Kharagpur, IIEST-Shibpur, NIT-Durgapur, Jadavpur University and Calcutta University. Knowledge of English is an advantage for the workforce of West Bengal, especially in Kolkata. (source - official website of Department of Higher Education, Government of West Bengal)[9]

Over 500 Information Technology and Information Technology enabled service companies to operate in the state, employing more than 120,000 professionals. The state government has started work on the 13 proposed IT parks; the IT parks will be located primarily in tier-II cities like Asansol, Kharagpur, Malda, Haldia, Durgapur, Kalyani, Rajarhat, and Siliguri. The work for the IT park at Durgapur is in advanced stages.[10] The state is home to the country's largest leather complex, Hosiery Park, Foundry Park, and largest railway

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[8] Office of the Controller General of Patents, Designs and Trade Marks, Frequently Asked Questions- Patents(*Intellectual Property India*,2024) https://ipindia.gov.in/writereaddata/Portal/Images/pdf/Final_FREQUENTLY_ASKED_QUESTIONS_-PATENT.pdf accessed 17 February 2025

[9] Department of Industry, Commerce and Enterprises, Government of West Bengal, ' Why Invest in West Bengal' (*Government of West Bengal*,2019) https://www.wbindustries.gov.in/Why_Invest_West%20Bengal_2.html accessed 17 February 2025

[10] ibid

manufacturing companies, which produce wagons, metro coaches, and passenger coaches. The state also offers ready-to-invest Industrial Infrastructure with 200 plus Industrial Parks/Estates. It has become a cement hub of the country, with a booming housing and real estate sector. Significant manufacturing of Steel and Steel Products in West Bengal also contributes to exports. The Bengal Silicon Valley Hub has attracted 41 IT & ITES companies on 200 acres of land, including 11 Data Centers. FinTech Hub has attracted all major banks and financial institutions on 69 acres.[11]

West Bengal is one of the top states in India in terms of MSME Development. Bank lending to MSMEs in West Bengal reached a record of Rupees 1.48 lakh crore in 2023-24, partly due to the State's proactive role. Given its geo-strategic location, West Bengal has become India's largest logistics hub.

2.1 Importance of patents for innovation and entrepreneurship in West Bengal.

'*Silpa korun bangla gorun'*(set up industry develop Bengal) has been the State Government's call to the State's younger generation to come forward and set up new enterprises with assured support from the Government. Over the past few years, sustained campaigns and government focus on the growth of entrepreneurship in the state have led to the start-up culture gaining ground. Smooth and time-bound decisions on statutory compliances, seamless access to incentives, a network of support for access to appropriate technology, and a facilitative State apparatus have accelerated the growth of entrepreneurship in the State.[12]

The importance of IP in the case of West Bengal is significant in gaining a competitive advantage and facilitating fetching investment in business. West Bengal is the soil of diversifying demographic and scientific acumen; competition among technology start-ups is vast, and patent is a tool that must be used to improve the start-up business environment. Unique, innovative products protected by patents will provide easy solutions to the market and facilitate the promotion and branding of the product. The valuation of the product vetted by the Patent Office and Patented significantly impacts market development.

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[11] Department of Industry, Commerce and Enterprises, Government of West Bengal, 'Bengal Global Business Summit 2025 Overview (*Government of West Bengal*,2025) https://www.bengalglobalsummit.com/overview-2025/ accessed 17 February 2025

[12] Department of Micro, Small and MEDIUM Enterprises and Textiles, Government of West Bengal, 'Comrehensive Start-Up Guide for Entrepreneurs' (*Startup Bengal*,2025) https://www.startupbengal.in/content/comprehensive_startup accessed 17 February 2025

2.2 Common challenges faced by entrepreneurs in securing patents in West Bengal

2.2.1 Understanding patentability: Determining whether an invention is novel, non-obvious, and commercially viable enough to apply for patent protection is a challenge that the entrepreneurs of West Bengal are finding difficult to overcome.

2.2.2 Awareness: There is a lack of awareness of patenting inventions, and entrepreneurs are losing their monopoly on their businesses. Many universities also lack a proper understanding of patenting.

2.2.3 Cost: Patent fees for registered start-ups have been reduced, but the costs for grassroots innovators or student individuals without registered companies have not been reduced. This discourages them from applying for patents. Many students get inspired for commercialisation or entrepreneurship after getting a patent, but not before.

Technology changes every day. In many cases, entrepreneurs update their technology even after the patent is granted, which requires a patent of addition. Many entrepreneurs don't apply for a patent of addition as it demands additional cost.

2.2.4 Time Delay: In many cases, there is a considerable processing time delay for granting a patent. In these cases, either the inventor loses interest in commercialising the invention or the technology of the invention becomes obsolete.

2.2.5 Technical Expertise of Patent Attorney: In many cases, the attorneys lack sufficient technical expertise in the inventions applied for patent and cannot draft strong claims. In these cases, many good inventions get rejected.

3.0 Institutional support for navigating patents from the government of West Bengal

The Department of Science and Technology and Biotechnology is the nodal department for patent facilitation activity in West Bengal. The Patent Information Centre (PIC) and other department wings have played an active role in patent facilitation, supporting innovators for over 25 years, institutionalising translational research and innovation, and giving stakeholders critical support services under one roof.

The much-needed patent support includes legal and funding support, academia-industry handholding, and exchange. These are key requirements for developing a prototype, promoting incubation, encouraging start-ups, commercialisation, and moving up the value chain.

3.1 Patent process and the role of the PIC of West Bengal

3.1.1 Patentability analysis: Patentability refers to the set of criteria and requirements that an invention must meet to be eligible for patent protection. It is a fundamental concept in the field of intellectual property that determines which inventions can be granted a patent by the relevant authorities.[13] PIC facilitates the processing of patentability analysis and helps budding innovators optimise the cost. When a technology is not patentable, PIC suggests filing a copyright or other protection mechanism. Patentability analysis facilitates systematic filing. Without proper patentability analysis, it may be rejected if anyone proceeds to file a patent. As the patenting system is costly, there is a unique opportunity for start-up entrepreneurs to assess their technology/idea.

The Government of India provides the professional fees of a Patent attorney for filing a Patent for start-ups and SMEs; thus, no cost or minimal cost is required in filing a Patent for start-ups and SME sectors; only official fees are to be borne by the start-ups.

3.1.2 Novelty assessment: First and foremost, patenting concerns assessing the invention's novelty. A proper novelty assessment search must be conducted using different world databases to draw a present scenario of the field of interest. A non-patent literature survey is a key tool researchers adopt to assess novelty. Still, they overlook the substantial global patent documents of which many are unaware.

According to the Indian Patents Act, 1970, Section 2(1)(l), 'new invention' means any invention or technology which has not been anticipated by publication in any document or used in the country or elsewhere in the world before the date of filing of a patent application with complete specification, i.e., the subject matter has not fallen in the public domain or is not part of the state-of-the-art. The invention is considered novel only when it has not been revealed in any prior art, where prior art means everything that has been published, presented, or disclosed publicly before the priority date of the application of the particular invention. Sections 3 and 4 of the Indian Patents Act 1970 also state the conditions when the invention is not patentable.

The in-house Scientific Associates under the Patent Information Centre does the primary novelty search of every invention applied through the portal / direct physical application or any scientific project funded by the DSTBT, WB, before filing a patent. Different paid and non-paid databases, viz., INPASS, WIPO, ESPACENET, USPTO, DERWENT, etc., are followed for the Patent novelty search or prior art search. Several keywords are generated accordingly by the skilled personnel for every individual invention.

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[13] Fiveable, 'Patentability' (*Fiveable*,2025) https://library.fiveable.me/key-terms/intro-intellectual-property/patentability accessed 17 February 2025

After the novelty search is done, a search report is made according to the documents found to be the exact, almost the same, and/or similar to the invention applied. When the search report comprehends more than one prior art collectively reproduces the invention, it reduces the inventive merit. Therefore, a comparative analysis of the invention and the documents searched is recommended in the search report. If the subject is not found in any prior art, both patent and non-patent literature, then only it should proceed to the next step of patenting.

3.1.3 Exploring the Inventive Step:

According to Indian Patent Law, an 'inventive step' is a feature of an invention that involves a technical advance compared to existing knowledge, has economic significance, or both, and that makes the invention not obvious to a person skilled in the art. PIC also facilitates addressing this particular issue with its substantial technical expertise. As per section 2(1)(ja), 'inventive step' means a feature of an invention that involves technical advance compared to the existing knowledge or having economic significance or both, and that makes inventions not obvious to a person skilled in the art.

As per the statutory definition, the invention is patentable only when it comprises one or more inventive steps compared to the prior arts, making the invention non-obvious to a person skilled in the art. The Scientists of PIC assess the Inventive step after submitting the search report. The applicants are requested to consult and disclose their invention in a complete format to the scientists; accordingly, they file the full specification for the invention to the IPO. They also consult whether any modification, addition, or deletion is needed for the invention for filing of the patent with the applicants.

3.1.4 Industrial applicability:

Industrial applicability in the Indian Patent Act means that an invention must be capable of being made or used in any kind of industry, including agriculture, essentially signifying that the invention has practical use beyond a purely theoretical concept and can be produced or utilised in a real-world industrial setting; it is one of the key criteria for an invention to be considered patentable under the Act. To fulfil the requirements of Industrial Applicability under section 2(1) (ac) of The Patents Act 1970, the definition states that an invention must be capable of being made or used in an industry. The scientists of PIC also assess this through their extensive understanding of the Indian patent system and acquaintances with recent developments in modern science.

3.1.5 Cost of Patent filing and prosecution:

Patent filing, prosecution, and maintenance require reasonable costs. The prices vary based on the category of patent files and the services opted for.

There are two parts to filing a Patent: One is the official cost of filing, and the second is for Attorney Fees. Filing Patents costs ₹1,600 for an individual, start-up, or small entity, whereas large entities face a fee of ₹8,000 for up to 30 pages of documents with up to 10 claims. The price is higher for more significant documents (more than 30 pages) for each extra page and claim.

Request for early publication, Request for examination, request for expedited examination, opposition, amendments, and extension of time every action have a fixed payment structure per the Third Schedule of The Patents Act, 1970.

After a patent is granted in India, it must be renewed annually to maintain its validity for up to 20 years from the filing or priority date, whichever comes first. No renewal fees are required during the first two years following the grant of the patent. From the third year onward, the applicant must pay the government a certain amount to maintain the patent.

The renewal fees in India vary based on the applicant type and increase progressively.

The total patent cost in India ranges between ₹45,000 to ₹1,50,000, including professional fees based on Category (means whether the filing is for start-ups or Organisation Corporate) for drafting and other services, depending on the complexity of the application and additional requirements like examination requests and responses to objections. Individual entrepreneurs and start-ups who approach PIC do not need to incur the attorney's costs since PIC provides this service free of cost.

PIC facilitated the filing of more than 300 Patents, and CGPDTM granted more than 120 patents filed through PIC; the rest are in process.

4. Technology Development and Adaptation Centre (TDAC)

In the year 2020, the Department of Science and Technology and Biotechnology(DSTBT), Government of West Bengal, and the Indian Institute of Management led Calcutta Innovation Park(IIMCIP) at Kolkata have mutually agreed to set up a 'Technology Development and Adaptation Centre (TDAC)' through the West Bengal State Council of Science and Technology (WBSCST) with the objective of building and nurturing an ecosystem to support science and technology led entrepreneurship, promoting scientific research and innovation and protecting the innovations of the State.

TDAC provides a comprehensive framework to facilitate innovations in the State, promote the entrepreneurial spirit, provide incentives to innovative work creators, synergise research and

development, including bidirectional knowledge transfer in academia-industry partnerships, and attract investments for industrial growth.

TDAC aims to develop and adapt technologies in a nascent stage in a bottom-up approach to address need-based, location-specific problems with appropriate science and technology intervention for economically viable, ecologically sustainable, and socially acceptable development by mentoring aspiring entrepreneurs, supporting start-up operations through incubators and facilitating commercialisation of research output and coordinating with academic institutions for validation of technology.

4.1 Tecathon

After TDAC was formed, the Department of Science and Technology and Biotechnology organised an orientation programme for the principal investigators and co-investigators of research projects. On 9 February 2021, a Technology Hunt Programme (Tecathon) was held to provide the opportunity to pitch new scientific ideas, inventions, and the successful outcomes of the research and development projects funded by DSTBT and the Government of West Bengal.

After an intensive search and evaluation process by eminent scientists, Nine projects were finally selected based on the novelty of the idea, research, Leadership, Team Capability, Innovation, Market Opportunity, Ease of Implementation, and Social Impact. They were appreciated through financial support and other requirements.

4.2 Idea clinic

In continuation of the TDAC, an idea clinic was initiated in 2021 to mentor and handhold ideas generated by individual inventors and academic researchers of the state. This idea clinic is held on the last Friday of every month. It is a single-window facility to mentor individual innovators, scientists, researchers, and academicians, from initiating an idea to protecting intellectual property, mentoring and guiding them in creating business plans and commercialisation.

Goals of the Idea Clinic.

- Establishing a start-up culture that encourages innovative ideas.
- Transforming novel concepts into practical commercial solutions.
- Supporting start-ups' setup, incorporation, and operations via incubators, enabling them to contribute significantly to the state and the country's economic growth.

- To develop the prototype and create facilities for market-ready product development in a hub and spoke model with Universities and Industries.
- To provide pre-incubation and post-incubation services to incubates apart from handholding, mentoring, and training during incubation.
- To facilitate the commercialisation of research output that has the potential to create large-scale social impact and utility.
- To carry out IPR management for incubates and technology Innovation Entrepreneurs.
- To establish a vibrant interface between the university and academia on the one hand and the farmers, rural artisans, citizens, and MSME sector on the other.

4.3 PG Diploma courses

In collaboration with Maulana Abul Kalam Azad University of Technology, the Patent Information Centre introduced a one-year Postgraduate Diploma Course in Intellectual Property Rights and Technology Business Management to encourage innovative ideas and the Intellectual Protection system and develop professionals.

Number of Students enrolled in IPR and TBM Course

List of Students enrolled in IPR and TBM Course

Year	Certificate Course	Advance Certificate Course	PG Diploma Course
2019-2020	9	7	3
2021-2022	26	15	7
2022-2023	9	8	2
2023-2024	15	8	8
2024-2025	26	15	

5. Success Stories

5.1 Solar Bike

Subhamay Biswas from Nadia district invented a solar bike. It is embedded with a long-life battery, lasting more than 6 years with more than 2000 charging cycles. The bike is also embedded with(i) a Biometric key system,(ii) a Smart GPS with triple safety protection with voice and emergency SOS, (iii) Alcohol detection of the rider, and (iv) a System for wearing a helmet to start the Bike.

The inventor did not have a business plan and was unaware of IPR protection. PIC facilitated the inventor with Patentability analysis, patent filing, training, and mentoring on market analysis and development through IIM

Subhamay Biswas applied for a patent in 2020, and PIC facilitated him for the patent. PIC also supported the inventor in getting a fellowship from IIM Calcutta Innovation Park, where he got a thirty thousand rupees per month scholarship for 3 years. He Participated in different Industrial and educational exhibitions and founded a start-up company named Arati Motors Private LTD. Under this company, he manufactures Electric bikes and scooters

5.2 Leather from Fish skin

Budhhadev Sinha from Kolkata invented a unique process for converting waste fish skin into leather. This process helps transform waste material into highly fashionable leather.

PIC facilitated the initial Patentability analysis and helped with patent filing. Two Patents were applied for the invention. The Calcutta Leather Complex Tanner Association provided the land, which PIC facilitated.

5.3 Smart drinking water container

Dr. Sukanya Ghosh and Amit Neogie invented a Smart Drinking Water Container. This portable bottle or container contains a BPA-free plastic water purifier that kills 99% of bacteria and viruses using UVC technology. It also includes a smart hydration tracker, flashlight, and USB port, which may work as an emergency power bank.

PIC facilitated the inventors' transition from initial Patentability analysis to patent filing. With the help of PIC, the patent was granted, and an Industrial design was also registered.

They had no idea about IPR before coming to PIC and branding their product using IPR; now, they have a contract with a reputed MNC.

5.4 Bio-ethanol from waste-broken rice

Pallavi Luharuka, founder and CEO of Royal Bengal Green Tech Private Limited, invented biofuels and profitable bioethanol technology from waste-broken rice. The inventor was facilitated by PIC's initial Patentability analysis and patent filing, and they are the only Indian start-up to be nominated by the US Department of State for the Tech Summit in Taiwan in 2023. They had no idea about IPR before coming to PIC and branding their product using IPR. The start-up was connected to IIM-Calcutta Innovation Park by PIC.

6. Policy Recommendations

6.1 Infusing multilayered IPR Awareness & Education

The government of West Bengal should tailor, design, and conduct IPR awareness programs specifically for the audience. To augment the State-level IP awareness campaign and enrich the concept of multi-layering IPR awareness and education, the government should use social media, digital media, and print media effectively. The government should also conduct district-level IPR and Innovation Awareness/promotion programs in all twenty-three districts of West Bengal.

The government should introduce courses in schools about innovations and intellectual property rights and augment the P.G. Diploma Course in intellectual property rights and technology business management conducted by the Patent Information Centre.

The government should introduce training courses on intellectual property rights to equip enforcement Agencies like police, customs, excise, taxation, and the judiciary and provide them with the latest information on recent technological advancements involving communication systems, biotechnology, etc., and their implications for intellectual property rights.

Colleges, Institutions of higher learning, universities, and relevant research institutes in the State of West Bengal should be urged to formulate their respective Innovation and IP policies, propagate IPR, offer IP Courses as part of the formal university curricula at the undergraduate and postgraduate levels, and offer credits to students completing notified online courses.

The government should organise an annual Innovation & IP Summit in the State on World Intellectual Property Day.

6.2 Commercialisation

In the Patent Act of 1970, an obvious statement is given that granting a 'monopoly' to an individual or group is not just to facilitate the applicant with exclusive rights to the innovation. Still, he has to ensure that the system recognises the invention and that it must be commercialised to the fullest for the benefit of society at large as required. Section 146 of the Patent Act, 1970 and Rule 131 of the Patents Rules make it mandatory for all patent holders to submit a commercial statement of the patent by furnishing information regarding its working and non-working status.[14]

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[14] Mamta Bhardwaj, Nirmala Chongtham, Rupinder Tewari.Amandeep Sandhu, 'Report on Commercialization of Patents Granted to HEIs and NRLs of India January 2010 – December 2017', (2020).

To enhance the patent commercialisation ecosystem in India, stakeholders need to work in tandem. The academic sector is rich in knowledge but has limited funds. In contrast, the industrial sector doesn't have financial constraints. Still, it lacks knowledge and time for conducting Research and Development. The Govt. plays a crucial role by introducing, implementing, and monitoring the policies to enhance the commercialisation ecosystem. There is a need for synchronisation between these three entities (Govt., industrial sector, academic sector) as they are working in silos. Moreover, the government can incentivise institutions to conduct research in collaboration. A dedicated mediator is also recommended to play a crucial role in bridging the gap between the knowledge creator (academia) and the knowledge exploiter (industry). That mediator should have knowledge, experience, and exposure to work culture, environment, processing of sectors, and research/academic institutions. The second measure that needs to be taken seriously is to consider the reasons mentioned by the patentee. The reasons should be reviewed in detail, and action should be taken to resolve them. The pendency will also affect the licensing process. The task can be assigned to the existing govt. Agencies such as Cell for IPR Promotion and Management (CIPAM), National Research Development Corporation (NRDC), Technology Information, Forecasting and Assessment Council (TIFAC), etc., or a unique body may be established to look after the issues related to Form-27 and resolving for the problems associated to non-working of patents[15].

Researchers' analysis of Form 27 shows that most patentees are not finding potential buyers. The situation in West Bengal is similar to the national scenario; most patents are non-working. The government of West Bengal should collaborate with the Government of India and other stakeholders to solve this problem.

In association with the institutional IP Service Hubs, the government of West Bengal should identify local innovations, assess them for IP Protection, and proceed with their registrations if they have the potential for commercialisation and/or significant socio-economic impact on the local community. The Government should support the efforts of grassroots inventors with knowledge, expertise, and financial resources and promote innovation, technology development, and prototype development in line with the work of the National Innovation Foundation.

The government should facilitate promising science and technology solutions and research in the state to enable sustainable ventures, businesses, and commercialisation of research output. The government should also coordinate with the Ministry of External

[15] ibid

Affairs and Embassies abroad to explore export markets and enforce IPR in foreign countries.

6.3 Equal Opportunities for Knowledge Access

Innovators, creators, and those who support innovation and creativity are at the core of WIPO's mission. For everyone to participate and express their talents and ideas, a supportive environment is needed that makes people - including people with disabilities, in all their diversity - feel welcomed, accepted, and encouraged, both within WIPO and in the broader Intellectual Property (IP) ecosystem.

People living with disabilities enrich the IP system and our workforce, bringing new and additional perspectives and ideas. Diversity, belonging, and inclusion are foundational to an innovative, forward-looking, and creative environment where all contribute to a world where innovation and creativity from anywhere are supported by intellectual property for the good of everyone.'[16] The government of West Bengal should take proactive steps to craft systems to enable people with disabilities to participate in IPRs, and awareness programs should be conducted in collaboration with the Office of the State Commissioner for Persons with Disabilities to ensure proper outreach to the relevant audience.

West Bengal has a 28 percent Muslim population, 23 percent scheduled caste population, and 6 percent scheduled tribe population. The Government of West Bengal should take comprehensive measures to encourage these most backward sections in the field of IPRs.

The government should extend facilities for state women scientists and entrepreneurs and provide incentives for securing IPRs through awareness programs, monetary help, and professional workforce help.

6.4 IPR framework

A high-level government body should be set up to guide and advise the government on IPRs. The chief secretary to the Government of West Bengal should be the Chairperson, and the principal secretary of the Department of Science and Technology and Biotechnology (DSTBT) should serve as vice-chairperson. An executive committee headed by the Principal Secretary of Science and Technology should be framed to manage day-to-day affairs.

A State Coordination Unit should be established under the guidance of the high-level body as a Nodal Agency to assist in implementing State-level activities to meet the policy focus on IPRs. The existing Patent Information Centre operating under the West

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[16] World Intellectual Property Organisation, Disability Inclusion at WIPO (WIPO,2025) https://www.wipo.int/disability-inclusion/en/ accessed 17 February 2025

Bengal State Council of Science and Technology, Department of Science and Technology, and Biotechnology (DSTBT), Government of West Bengal, a category I centre in India, should be upgraded with augmented finance, infrastructure, and human resources. It should be empowered to function as the State Coordination Unit (SCU).

The high-level government body on IPRs should form Working Groups to plan and implement specific activities. The subject matter experts should be included in these Working Groups.

The SCU should provide stakeholders who approach the unit with a search service for IP databases. The search service should include searching for targeted information related to patents. The high-level body should report its findings and recommendations to the State Government quarterly.

6.5 District IPR Authority

The existing district-level committee of the science and technology and biotechnology department, with the District Magistrate as chairperson, should be re-designated as the District IPR authority. The district authority should promote an IPR clinic in coordination with the district specialists/academics/institutes to create awareness about patents and assist innovators.

6.6 Information Dissemination Portal

The Government of West Bengal should develop an Information dissemination portal to provide IP-related information and report on the state's activities. This portal should further serve as a resource repository for IPs in the State.

Other departments working on Patents should upload the status for better convergence and to create an IP and innovation ecosystem. The district-level interface should be used to coordinate easy patentability assessments. An IPR cell should be formed in all government departments and universities to coordinate with SCU, solve IPR-related issues, and update the IPR status to the state portal.

Universities and Research institutes should be directed to upload their patent and other IPR statuses in the portal.

6.7 Interactive platforms

The government should set up and organise interactive platforms for knowledge exchange and transfer, including IP-based knowledge transactions between Industry and academia, to nurture a supportive and competitive climate and stimulate the growth of IPRs and investments in the State.

6.8 Student internships

The government should open options for student internships, short-term sabbaticals for faculty to work in industry, and industry personnel participating in academic institutions as guest faculty to highlight the link between theoretical concepts and their practical applications.

6.9 Collaborative research

The government should investigate fair benefit-sharing arrangements for collaborative research with the private sector. It should also showcase and provide financial assistance through incentivisation/ reward/ recognition mechanisms for collaborative innovation and IP-mediated ventures.

6.10 Role of Academia

IP Cells should be created in Institutions of higher learning and Universities. They should promote the creation and protection of IP in their respective institutions, encourage innovation, and function as IP Service Hubs in their immediate vicinity.

6.11 Utilising MSME Institute in Kolkata

In West Bengal, the Department of Micro, Small & Medium Enterprises &Textiles is responsible for promoting the MSME sector, supporting start-ups/incubators/ accelerators, setting up and nurturing clusters in various parts of the State, and operating the MSME Institute in Kolkata. This MSME Institute is, therefore, the most appropriate institution to integrate IP into its activities and reach out to the MSMEs, start-ups, entrepreneurs, and clusters in various parts of the State of West Bengal.

6.12 Innovation and IP Facilitators in the Field

The government should set up and train personnel in an IP Service Hub in the Department of Micro, Small & Medium Enterprises & Textiles. This hub should organise IP Training Camps for the field-level officers of the MSME and designate them as IP Facilitators in the Field.

6.13 IPR Clinics

The government should conduct IPR Clinics for the stakeholders under the MSME Directorate with active participation of PIC. These clinics should serve as training opportunities for IP Facilitators in the Field and equip them with the required knowledge and working skills, thereby empowering them to facilitate the identification of innovations and ensure their IPR Protection.

The government should encourage and make aware Micro, Small,& Medium Enterprises to protect their Industrial design and trade mark to get facilities in the market from time to time,

The IP Facilitators in the Field should escalate specifically identified cases of innovations to the State IPR Coordination Unit for advice and professional input on the IPR protection of such innovations.

The Department of Micro, Small & Medium Enterprises, and Textiles should synergise their efforts to ensure adequate IP Protection of innovations by MSMEs, start-ups/ incubators/ accelerators, and establish horizontal and vertical connections between communities, other governmental agencies, civil society groups, and industry.

The Department of MSME should showcase success stories from different parts of West Bengal, where entrepreneurs have gained from effectively promoting and managing their innovation, which is linked to IPR.

6.14 Incentivising Innovation and IP

The government should provide financial assistance to grassroots innovators for any form of IPR and facilitate access to funds available in other line Departments, including the Directorate of Micro, Small & Medium Enterprises (MSME).

The IP facilitator should receive financial assistance. The government should formulate incentive schemes for Universities and research organisations and introduce grants, schemes, different technology hunt programs, cash awards, prizes, and recognitions for innovations that have been protected with the appropriate instruments of IPR and facilitate scale, commercialisation, and Technology transfer.

The government should coordinate to converge all incentive schemes existing in other policies. These incentive schemes to celebrate innovation and IP should be open to one and all, including grass-roots innovators, individual innovators, institutional innovators, entrepreneurs, MSMEs, Start-ups, schools, colleges, universities, NGOs, Industries, enforcement agencies, and other government departments for their contributions to the State.

6.15 Funds

Funds associated with the proposed activities related to IPR should be estimated every year. The same should be forwarded to the finance department with a request to make a suitable budget provision. The fund should be used for IP registration, promotion, incentivisation, awards, programs, infrastructure, human resources development, workforce support for the existing head of intellectual property rights, and other activities. The government should arrange for a Special Fund

for IPR Research to fund research and development in educational Institutions to conduct research in specific areas of IP and Competition Law and introduce and augment courses on IPR in their curriculum.

7. Conclusion

Patents promote innovation, attract investments and accelerate the economy. Filing of Patents in India, including West Bengal, has consistently grown. Filing of Patents in 2022-2023 in India exhibited an increase of 24.64 over the previous year. The number of applications filed from West Bengal in 2022-2023 jumped to 808, compared to 449 in 2021-2022. The efforts of the Government of West Bengal and the Government of India through the National Intellectual Property Awareness Mission launched in the year 2021 are yielding results. The Government of West Bengal and its Patent Information Centre are doing a commendable job of helping entrepreneurs navigate patents. The Government of West Bengal should implement policy reforms to strengthen the institutional support for patent navigation and stimulate the growth of patents and investments in the state.

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Arvind Kejriwal Vs. Enforcement Directorate, Supreme Court of India, 2024

Case Name: Arvind Kejriwal v. Enforcement Directorate Citation: 2024 SCC OnLine SC1703

Court: Supreme Court

Judges: Sanjiv Khanna and Dipankar Datta
Decided on: 12 July 2024

Barenya Nayak
Student, KIIT School of Law, Bhubaneswar

Abstract

The case of Arvind Kejriwal v. Directorate of Enforcement (DOE)[1] offers a key legal analysis of how India's constitutional rights and money laundering regulations interact. The case started when Delhi Chief Minister Arvind Kejriwal was accused of money laundering and corruption. Important constitutional issues were brought to light by the court case, such as the necessity for procedural justice, the protection of individual liberty, and the prohibition against self-incrimination. Concerns regarding due process and the possible abuse of strict anti-money laundering regulations were raised when the Directorate of Enforcement started coercive measures, such as arrest and detention interrogation.

The central issue in the case concerned the judiciary's responsibility to strike a balance between the protection of individual rights and the state's justifiable interest in fighting corruption. The Indian Supreme Court underlined how important it is that law enforcement organizations follow impartial protocols, even when dealing with well-known individuals. The decision emphasized that in order to combat financial crimes, procedural protections including a

[1] 2024 SCC OnLine SC1703

presumption of innocence, the right to represent oneself in court, and the prohibition against arbitrary imprisonment cannot be compromised.

The case also demonstrated how carefully the judiciary interprets the expansive provisions of the PMLA in light of fundamental safeguards. The court warned that unfettered powers could undermine civil liberties and warned against a blanket implementation of money laundering regulations. Although the verdict emphasized the value of judicial monitoring in avoiding abuse of power, it did not provide political actors with a shield against corruption enquiries.

In the end, Kejriwal v. DOE underlined that constitutional protections must not be sacrificed in the battle against corruption. As a historic precedent, the case emphasizes the judiciary's vital role in guaranteeing that anti-corruption initiatives are carried out in a way that is fair, lawful, and consistent with the Constitution.

Keywords: Corruption, Money laundering, PML Act, Fundamental rights, Constitution, Politics, PC Act

1. Introduction

The Supreme Court of India rendered a landmark judgment in 2024 in the well-known case of Arvind Kejriwal v. Directorate of Enforcement. The case centered on allegations of money laundering linked to the controversial Delhi Excise Policy Scam. Arvind Kejriwal, the Chief Minister of Delhi and a prominent political leader, was accused of facilitating financial irregularities and laundering illicit proceeds. The case tested the balance between stringent enforcement of anti-money laundering laws and the protection of individual liberties enshrined in the Constitution of India. The judgment, delivered on July 12, 2024, was widely regarded as a defining moment in the ongoing debate over the role of investigative agencies in politically sensitive cases.

2. Facts of the case

On 21st March 2024, The chief minister of New Delhi Arvind Kejriwal was arrested by the Directorate of Enforcement[2] due to the breach of S.19 of the Prevention of Money Laundering Act,2002[3].

On 9th April 2024, the High court of Delhi rejected his plea, upholding the DOE's actions and affirming the procedural compliance of the agency.

The appellant filed a criminal writ petition under A. 226 and A. 227 of the Constitution of India read with S. 482 of Criminal

[2] For short, the "DOE".
[3] For short, the "PMLA".

Procedure Code,1973[4] challenging the validity of arrest under S.19 of PMLA, 2002.

On 17th August 2022, the Central Bureau of Investigation[5] registered for punishable offenses under S. 120B read with Section 477A of Indian Penal Code, 1860[6] and S. 7 of the Prevention of Corruption Act, 1988. The case centered on allegations of money laundering linked to the Delhi Excise Policy Scam. The Enforcement Directorate (DOE) alleged that senior officials and political leaders, including Arvind Kejriwal involved in receiving bribes from liquor contractors in exchange for favorable provisions in the policy. The DOE claimed that the proceeds of this alleged scam were laundered through shell companies and intermediaries.

On 30th October 2023, Under S.50 of the PMLA, Kejriwal received a notice requiring him to appear and record the statement. Eight summonses were then issued until his arrest on March 21, 2024. Since the summons and notices issued under S.50 of the PLMA were unlawful and illegitimate, he did not show up to participate in the investigation.

Following his arrest, Kejriwal was remanded to DOE custody, sparking a legal battle over the validity of his detention and the political motives behind the investigation. He argued that his arrest violated Section 19(1) of the PMLA, which mandates that "reasons to believe" in the necessity of arrest be communicated to the accused.

In *Pankaj Bansal v. Union of India*[7], an interpretation of S.19 of PMLA regarding A. 22(1) of the Constitution of India was done. According to A. 22(1) of the Indian Constitution[8], an arrested person cannot be held in jail without being told. A person detained by S. 19 of the PLMA may request release on bond under S.45 of the PLMA, but only if the court is convinced that the detained individual is innocent of the crime and will not commit any crimes while out on bail. The detained individual must understand the reasons for arrest under PLMA s.19 as well as the "reason to believe" that they are guilty of the offense in order to satisfy the criteria. The communication of the reason for detention as mandated by A.22(1) of the constitution and S.19 of PLMA must be given due importance.

In *Tarsem Lal v. Directorate of Enforcement*[9], S.19(1) of the PMLA permits an arrest to take place before the prosecution's

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[4] For short, the "Code".
[5] For short, the "CBI".
[6] For short, the "IPC".
[7] 2023 SCC OnLine SC 1244.
[8] "22. Protection against arrest and detention in certain cases.—(1) No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice."
[9] 2024 SCC OnLine SC 971

complaint is filed and before the special judge has a chance to consider it. In *V. Senthil Balaji v. State*[10], the arresting officer may only make an arrest after documenting in writing the "reasons to believe" that the subject of the arrest has violated the PMLA in order to maintain justice and accountability.

This case was under s.19 of PMLA and S. 167 of code, within 24 hours, the magistrate must be satisfied with sufficient evidence supporting the arrestee's need for custody. As stated in S. 167 of the code, noncompliance will result in the arrestee's release. In *Pankaj Bansal(supra) v. V. Senthil Balaji(supra),* is to make sure that the arrest is legitimate and legal and that the requirements in S. 19(1) of the PMLA are met. In *Roy V.D. v. State of Kerala*[11], the remand and arrest procedures are vitiated when the right to be informed about the grounds of arrest under A. 22(1) of the Constitution is violated.

The Enforcement Directorate claimed that Arvind Kejriwal as the “Kingpin” of the liquor policy scam which gave preference to some people in return for bribes from liquor merchants. Kejriwal challenged the DOE’s arrest then approached the Supreme Court of India, seeking relief. He argued that his arrest was politically motivated, designed to tarnish his reputation and disrupt his party’s election campaign for the 2024 general elections. The Supreme Court granted him interim bail on May 10, 2024, permitting him to participate in election campaigns for the Aam Admi Party before the Lok Sabha Elections. However, this interim bail expired on June 1, 2024, after which he voluntarily surrendered to the authorities on June 2.

Subsequently, the Central Bureau of Investigation (CBI) arrested him in a related corruption case, adding complexity to the legal battle. On July 12, 2024, the Supreme Court delivered its verdict in the ED case, granting Kejriwal interim bail.

While in judicial custody, Kejriwal faced additional legal troubles when the Central Bureau of Investigation (CBI) arrested him on June 26, 2024, on related corruption charges. This further complicated his legal defense and prolonged his incarceration. Despite these setbacks, Kejriwal’s legal team continued to argue that the DOE’s and CBI’s actions were politically driven and lacked substantive evidence. On September 13, 2024, the Court granted him bail in the CBI case, leading to his release after nearly six months in custody.

[10] (2024)3 SCC 51

[11] (2000) 8 SCC 590

3. Issue:

1. Was the arrest of Arvind Kejriwal compliant with the procedural requirements of Section 19 of the PMLA?
2. Did the DOE effectively communicate the reasons for arrest, as mandated by law?
3. To what extent should allegations of political motivation influence judicial review of investigative actions?
4. How should the judiciary balance the enforcement of anti-corruption laws with constitutional protection of personal liberty?

4. Provisions Involved:

S. 7 of the Prevention of Corruption Act, 1988.

S. 19 of PMLA Act

S.45 of PMLA Act

A. 226 and A. 227 of the Constitution of India

S. 120B Indian Penal Code, 1860

S. 477A of Indian Penal Code, 1860

S. 482 of Criminal Procedure Code,1973

5. Contentions

5.1 Petitioner (Arvind Kejriwal):

Kejriwal argued that his arrest was procedurally flawed and violated Section 19 of the PMLA. His counsel contended that the DOE had not communicated the reasons for his arrest, which amounted to a breach of natural justice and his constitutional rights under Article 21. Furthermore, they alleged that the investigation was politically motivated, designed to malign his reputation and disrupt his party's election campaign. The defense also argued that the ED's evidence lacked direct links between Kejriwal and the alleged laundering activities.

5.2 Respondent (Directorate of Enforcement):

The D0E defended its actions by asserting that it had complied with all procedural requirements under the PMLA. The agency maintained that the reasons for Kejriwal's arrest were recorded internally, and the law did not necessitate immediate verbal communication at the time of detention. The DOE presented financial records and

testimonies purportedly implicating Kejriwal in laundering the proceeds of the excise policy scam. The agency argued that stringent action was essential to ensure accountability and deter corruption, especially when high- ranking officials were involved.

6. Judgment

On July 12, 2024, the Supreme Court delivered its judgment. The Court observed that while the DOE had recorded its reasons for arrest, it had failed to adequately communicate these reasons to Kejriwal at the time of his detention. This procedural lapse, the Court held, violated the principles of natural justice and the safeguards guaranteed under Article 21 of the Constitution.

The Court granted Kejriwal interim bail in the DOE case, noting that procedural deficiencies undermined the legitimacy of his arrest. However, the Court refrained from commenting on the political motivations alleged by Kejriwal, focusing instead on ensuring procedural compliance. The judgment emphasized that while combating money laundering is a legitimate objective, it cannot come at the expense of constitutional protections.

7. Analysis

The Supreme Court's judgment struck a delicate balance between upholding the rule of law and protecting individual liberties. By highlighting the procedural lapses in the DOE's actions, the Court reaffirmed the importance of due process, even in cases involving high-profile individuals and serious allegations. The judgment underscored that procedural safeguards are not mere technicalities but fundamental rights essential to maintaining public trust in the legal system.

However, the Court's decision to avoid addressing allegations of political vendetta left a critical question unanswered. In an era where accusations of misuse of investigative agencies are frequent, a more direct commentary on the limits of executive influence over law enforcement could have set a stronger precedent. The judgment also left the interpretation of Section 19 of the PMLA somewhat ambiguous, particularly regarding the exact manner and timing of communicating arrest reasons.

8. Conclusion

The case of Arvind Kejriwal v. Directorate of Enforcement serves as a milestone in the jurisprudence of money laundering laws and constitutional rights. The Supreme Court's judgment reaffirmed the principle that procedural safeguards must be strictly adhered to, even in politically sensitive cases. While the decision ensured that Kejriwal's constitutional rights were upheld, it also left room for further legal and political debate. This judgment will likely shape

future discourse on the balance between effective law enforcement and the protection of individual liberties in India.

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SEBI's Crackdown on Retail Frenzy- Will it Curb the 'Bull-Run' in F&O Market?

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'The biggest form of gambling in India right now is derivatives. It's India's Las Vegas'

-Siddhartha, Managing Director & CIO, Aequitas Investment Consultancy Pvt Ltd.

Abstract

The Indian derivatives market has witnessed a substantial increase in retail investor participation in recent times. The amalgamation of an inquisitive youth population, increasing financial awareness, popularity of online investing platforms and desperation for financial security via a short-cut approach have influenced derivative trading among retail investors in India. The market's euphoria caused the dynamics to fluctuate, making it a fertile environment for speculative gaming. This phenomenon has become a matter for contemplation for the market regulator, SEBI which has been grappling with the hyperactivity in F&O trading, as it has found out a potential bubble in this bull-run market. This paper analyzes the factors driving the growth of the derivatives market, including the proliferation of weekly options, the role of finfluencers, and the bandwagon effect. This study also comprehensively analyses the potential impact of newly bought SEBI's regulatory changes on market participants, including retail investors, brokerages, and exchanges. While these measures aim to curb speculative trading and promote market integrity, they may also have unintended consequences for retail investors.

This paper argues that a more effective approach would be to focus on investor education and awareness along with certain proposed regulations while critiquing the others. By providing comprehensive training on derivatives trading and risk management,

SEBI can empower retail investors to make informed decisions. Additionally, implementing a phased approach to derivatives trading, with restrictions for new investors, could help prevent impulsive and speculative behaviour. Authors believe that ultimately a balanced regulatory framework will be essential to ensure the growth and sustainability of the Indian derivatives market while safeguarding the interests of investors.

1. Introduction

Financial investment in the secondary market has become a new buzz among the Indian population in the recent past. The Indian derivatives market has garnered substantial influence and has witnessed remarkable expansion, establishing itself as a critical pillar within the nation's financial framework. Since the launch of Index Futures on June 12, 2000 and Index Options on June 4, 2001, the Indian equity derivatives market has experienced tremendous advancement.[1] At the time of introduction, it was believed that this investment tool would offer a strategic mechanism to mitigate substantial financial losses for both individual and institutional investors. This market has undergone a profound transformation, evolving into an indispensable element of India's broader financial ecosystem.

The trading volumes in the derivatives segment have skyrocketed to more than 400x of the cash segment and the notional value of index options traded surged to $907.09 trillion in 2023-24, more than doubling from the previous year.[2] The stability of the market, investor confidence, and household financial well-being are all at risk from an unchecked increase in retail futures and options trading.[3] This recent explosion of F&O trading has caught the eyes of the Market Watchdog, 'Securities and Exchange Board of India' **("SEBI")** due to its potential effects on retail investors and their financial position.

Due to unprecedented volumes of trade and losses to retail individuals, on 1st October, 2024, SEBI had floated a circular (***Circular No. SEBI/HO/MRD/TPD/P/CIR/2024/132***)[4] based on consultation

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[1] Bhagwat, D. S., Omre, R., & Chand, D. (2012). Development of Financial Derivatives Market in India and its Position in Global Financial Crisis. International Journal of Scientific & Engineering Research, ISSN, (2229-5518).

[2] Agarwal , N. (2023) Gamification of market? derivatives to cash volumes ratio highest in India, The Economic Times. Available at: https://economictimes.indiatimes.com/markets/stocks/news/gamification-of-market-derivatives-to-cash-volumes-ratio-highest-in-india/articleshow/104491694.cms?from=mdr (Accessed: 25 January 2025).

[3] Sengar, N.S. (2024) Options trading under SEBI's close watch; report reveals plans to check derivative trading rules, News18. Available at: https://www.news18.com/business/option-trading-sebi-new-rules-derivatives-market-in-india-8937270.html (Accessed: 24 January 2025).

[4] Securities and Exchange Board of India, Circular No. SEBI/HO/MRD/TPD/P/CIR/2024/132, Measures to Strengthen Equity Index Derivatives Framework for Increased Investor Protection and Market Stability (Oct.

paper released earlier to strengthen index derivatives framework for increased investor protection and market stability primarily targeting the reduction of speculative activities by individual traders in futures and options (F&O).[5] In this Circular, SEBI had put forth a set of key adjustments to its derivative trading regulations in an attempt to mitigate the risks associated with the rapid surge in options trading.

The first part of this paper explores the fundamentals of India's Derivative Market, followed with second part which focuses on recent exponential growth of F and O derivative trading and the concerns arising from it. The third part provides a detailed examination of SEBI's recent measures aimed at regulating Futures and Options trading, along with an assessment of the potential impact of these proposed changes. The fourth which is final section offers forward-looking suggestions and recommendations for shaping the future of derivatives trading in India.

A. The Concept of Derivatives and their Types

According to **Section 2 (ac**) of The Securities Contracts (Regulation) Act, 1956, "Derivative includes (A) a security derived from a debt instrument, share, loan, whether secured or unsecured, risk instrument or contract for differences or any other form of security; (B) a contract which derives its value from the prices, or index of prices, of underlying securities."[6] In other words, a derivative is a contractual arrangement between two parties in which one agrees to buy or sell an asset at a specified date and price. Derivative contracts are financial instruments whose value is at least partially contingent upon the price of one or more underlying asset.[7]

Derivatives may be categorized based on various criteria such as the underlying asset, market structure, or product characteristics. Regarding underlying assets, derivatives are classified into Financial Derivatives and Commodity Derivatives. In terms of markets, derivatives are divided into 'Exchange-Traded Derivatives' and 'OTC-Traded Derivatives'.[8] Based on product complexity, they are further classified as Basic Derivatives and Complex Derivatives. Financial derivatives encompass Forwards, Futures, Options, and Swaps.

2024), Available at: https://www.sebi.gov.in/legal/circulars/oct-2024/measures-to-strengthen-equity-index-derivatives-framework-for-increased-investor-protection-and-market-stability_87208.html.

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[6] Securities Contracts (Regulation) Act, 1956 § 2 (India).

[7] Isha Tewari, Derivatives Market in India: Growth, Regulation and Future Outlook, *International Journal of Research in Business Studies ISSN: 2455-2992, Vol. 8(2), December 2023*

[8] Francis, G. (2019). A Study on Emerging Trends in Indian Derivative Market. *International Research Journal of Engineering and Technology*. 6 (4), pp. 1074-1078.

However, while Futures and Options are traded on stock exchanges, Forwards and Swaps are negotiated privately in Over-the-Counter (OTC) markets. This analysis is confined to the basic financial derivative instruments traded on the Nation-wide Stock Exchanges i.e. futures and Options, colloquially known as ***'F&O'.***

1) **Futures-** Futures contracts, also known as 'exchange-traded forwards', is a binding agreement between a buyer and seller to exchange the asset at a predetermined price on a specified future date. These are standardized contracts governed by the rules and regulations of stock exchanges. The terms of the contract, including the quantity, price, and time of the transaction, are determined in advance. Various types of financial futures exist, such as Equity or Stock Futures, Stock Index Futures, Currency Futures, and Interest Rate Futures.

2) **Options**: Options are contracts that grant the right, but not the obligation, to buy or sell a particular underlying asset at a specified price on or before a certain date. The most common underlying assets in options trading are stock options and index options. Options are generally divided into two types—

   - **Call Options** - A Call Option provides the holder with the right to purchase a specified quantity of the underlying asset at a predetermined price by or before a certain date.

   - **Put Options**- A Put Option provides the holder with the right but not an obligation to sell a specified quantity of the underlying asset at a predetermined price by or before a certain date.

The Rapid Development Of F&O (derivative) Trading

Derivative trading is conducted on India's oldest stock exchange, the 'Bombay Stock Exchange' ("BSE") and the National Stock Exchange ("NSE"). However, according to the Futures Industry Association (FIA), the 'National Stock Exchange' ("NSE") has ascended to become the world's largest derivatives exchange by volume of contracts traded.[9] The National Stock Exchange (NSE), which played an instrumental role in pioneering the derivatives market in India, maintained its dominant global position. The Indian derivatives market distinguished itself from the cash market during the fiscal year 2022–2023 by exhibiting strong growth, according indicated SEBI's 2023 Annual Report.[10] Individual investors and proprietary traders were the main forces behind this growth. In addition, the markets for commodities and currency

[9] Acworth, W. (2019) A record year for derivatives, FIA. Available at: https://www.fia.org/fia/articles/record-year-derivatives (Accessed: 24 January 2024).
[10] Sebi (2023) Annual report 2022-23, SEBI. Available at: https://www.sebi.gov.in/reports-and-statistics/publications/aug-2023/annual-report-2022-23_74990.html (Accessed: 24 January 2024).

derivatives both showed noteworthy expansion, with trade volumes increasing by 50% and 60%, respectively, in fiscal year 2022–2023 over the prior year.

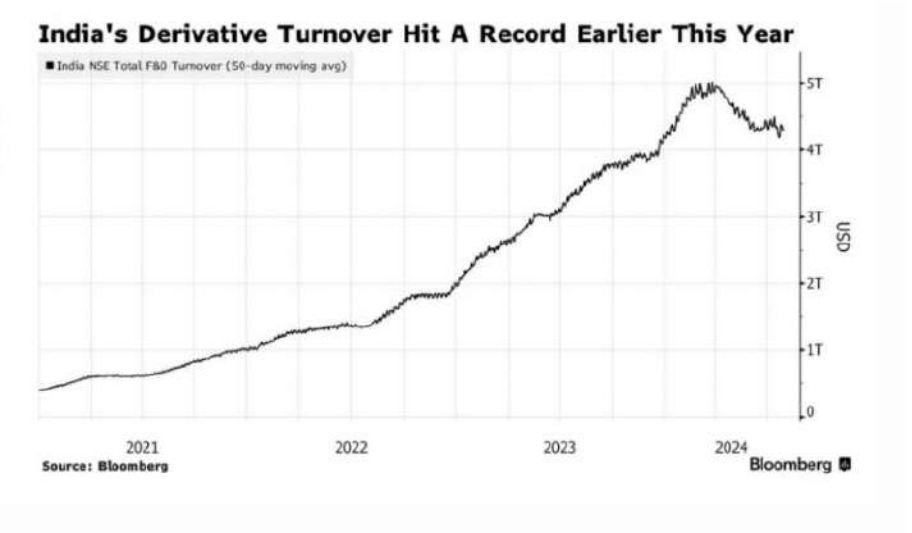
In a recent study, SEBI disclosed that retail traders and proprietorship firms collectively faced trading losses amounting to ₹51,689 crore in FY24.[11] Among these participants, only 1.42 million investors realized a net profit, indicating that roughly 85 out of every 100 traders suffered net losses.[12] SEBI further observed that, beyond these trading losses, those incurring losses also spent an additional 23% of their trading losses on transaction costs, while profitable traders spent an extra 15% of their trading gains on such costs during FY22. When factoring in transaction costs, the financial outcome for FY24 is anticipated to closely mirror the findings from FY22, where nine out of ten investors ended up losing money.[13]

S. No.	Product	Asset Underlying	Date of Introduction
1.	Index Futures	NIFTY	12th June 2000
2.	Index Options	NIFTY	4th June 2001
3.	Individual Securities Options	Individual Securities	2nd July 2001
4.	Individual Securities Futures	Individual Securities	9th November 2001
5.	Interest Rate Futures	Government Bills and Bonds	June 2003
6.	Currency Futures	USD – INR	29th August 2008
7.	Currency Options	USD – INR	29th October 2010
8.	Bank Nifty Futures & Options	BANKNIFTY	13th June 2013
9.	Cross currency Futures & Options	EUR-USD. GBP-USD and USD-JPY	27th February 2018
10.	Bullion Futures	Respective Commodity	12th October 2018
11.	Financial Services Nifty Futures & Options	NIFTY FINANCIAL SERVICES	11th January 2021
12.	Nifty Midcap Futures & Options	NIFTY MIDCAP SELECT	24th January 2022

[11] Sahgal, R. and Joshi, N. (2024) Mint explainer: Impact of SEBI's planned measures for index derivative framework, mint. Available at: https://www.livemint.com/market/mint-explainer-how-sebis-proposed-measures-for-index-derivatives-framework-will-affect-traders-11722397200259.html (Accessed: 24 January 2025).

[12] Id.

[13] Prasad, N. (2024) Sebi cracks down on F&O trading mess, suggests contract size to strike price for retail investors; 7 key measures: Stock market news, mint. Available at: https://www.livemint.com/market/stock-market-news/sebi-cracks-down-on-f-o-trading-mess-suggests-contract-size-to-strike-price-for-retail-investors-7-key-measures-11722344714368.html (Accessed: 24 January 2025).



The Reasons for such a huge spike in the volumes traded are:

1. **'Zero to hero strategy' or Speculative game play**- There has been a pronounced shift in the derivatives market, moving away from traditional hedging strategies towards speculative endeavours. Retail investors are increasingly engaging in a 'zero-to-hero' approach, whereby they acquire positions as close to expiry as possible, aiming to achieve disproportionate gains within a short timeframe. This strategy is typically devoid of research, analytical rigor, or rational decision-making, relying instead on the expectation of extraordinary profits through minimal investment effort.

2. **The introduction of weekly expiry and easy entry-** The introduction of weekly options and derivatives contracts on the benchmark index by the NSE in May 2016 and February 2019 respectively, has led to a noticeable shift in trading preferences, with increased activity directed towards index options contracts. This trend is reflected in the gross turnover of the F&O segment compared to the cash market segment, indicating a considerable change in market behaviour. The BSE reintroduced weekly index futures contracts in May 2023, and since then, exchanges have actively modified their contract expiry date methods. Weekly index derivatives contracts now expire on all five trading days, resulting in a scenario that reflects a thorough dispersion of expiries throughout the whole week. Secondly, trading in F&O segment only requires opening a demat account through a registered broker. There is no minimum capital requirement, especially in case of call option.

3. **The Rise of Finfluencers** - A Financial Influencer, often referred to as a Finfluencer, is an individual or entity that

exerts substantial influence over the investment decisions of their followers by offering financial guidance, advice, or strategic recommendations. The emergence of finfluencers can largely be traced to India's relatively low financial literacy rate of 27%, coupled with the surge of new investors during the Covid-19 pandemic. They have proliferated trading beyond the trading hubs into deeper pockets of the country.[14] While their contribution towards imparting financial literacy cannot be undermined but at the same time there are handful of finfluencers who hoodwink the common masses assuring them guaranteed return on investments and making exaggerated claims. There have been numerous reported cases where naïve and gullible investors have fallen prey to their peddled advice or pump & dump schemes.

4. **The Bandwagon effect or 'FOMO'**- The bandwagon effect within the Indian market epitomizes the psychological inclination of investors to mirror the actions of others, often foregoing their critical analysis in the process. This phenomenon is especially common among retail investors, who, driven by a pervasive fear of missing out (FOMO), impulsively enter into investments based on recommendations from others, including finfluencers or acquaintances. Such Investor behaviour is also sparked by witnessing a singular, anomalous instance of extraordinary profits, fostering the belief that similar success is imminently attainable. The emotional pressure to capitalize on perceived opportunities clouds rational judgment, compelling investors to make hasty, uninformed decisions. This leads to a shift from strategic, research-driven investing to speculative trading, exposing them to heightened risks and potential financial setbacks as market dynamics inevitably fluctuate.

A. Why it is a cause of concern? -the bone of contention

SEBI is worried about an upsurge in options trading, especially by retail investors due to the following changes in Market Dynamics.

- **Retail Investors' Losses** - SEBI's research reveals that a sizable fraction of retail traders in the derivatives market incur financial losses, a scenario particularly perilous for novice investors who may lack a comprehensive understanding of the inherent risks, potentially leading to substantial wealth erosion.[15] SEBI further emphasized that approximately 92 lakh

[14] SEBI (2023) Study - analysis of profit and loss of individual traders dealing in Equity F&O segment, SEBI. Available at: https://www.sebi.gov.in/reports-and-statistics/research/jan-2023/study-analysis-of-profit-and-loss-of-individual-traders-dealing-in-equity-fando-segment_67525.html (Accessed: 24 January 2024).

[15] Biswal, D. (2024) Understanding Sebi's new proposals on derivatives trading, Kuvera. Available at: https://kuvera.in/blog/understanding-sebi-new-proposals-on-

unique individuals and proprietorship firms collectively incurred a staggering loss of ₹51,700 crore in FY24, with only 15 percent of traders (around 14 lakh) recording net profits. Previous studies corroborated these findings, showing that **9 out of 10 individual traders in the equity derivatives market ultimately suffer losses**.[16] Given the intrinsic risks of derivative trading, losses are an inherent part of the market. However, SEBI is majorly concerned about the impact of these losses on retail investors with a low-risk appetite, as it could dissipate their hard-earned savings. The SEBI Chairperson recently said that the rise does not pose any systemic risk because of the robust margining system, but while derivatives trading is often scrutinized for its systemic risks, its severe social repercussions are equally concerning.

- **Hyperactive trading on Expiry Day** – SEBI has statistically shown the hyperactive trading of investors on the expiry day of the contract expiry especially in the last 60 minutes. **Table-1 depicts how during the expiry day in various index options the notional turnover as a percentage of the 5 days before has gone as high as 97% in case of BANKEX.** This is a classic example of gamification of derivative market do earn quick bucks.

Table-1 : Trend in Notional Turnover near contract expiry for a weekly expiry in July 2024

Notional Turnover	SENSEX	BANKEX	NIFTY	BANKNIFTY
Last 30 mins as % of expiry day	27%	20%	16%	13%
Last 60 mins as % of expiry day	40%	36%	28%	26%
Expiry day as % of 5 days before (incl. expiry day)	96%	97%	64%	62%

Source : Exchange data

- **Escalating Trading Volumes in Risky Venture** - The volume of index options traded on the NSE has witnessed a staggering increase, soaring from ₹10.8 trillion in 2019-20 to ₹138 trillion in 2023-24.[17] Over the years, individual investor involvement in index options surged from 2% in FY18 to 41% in FY24.[18]

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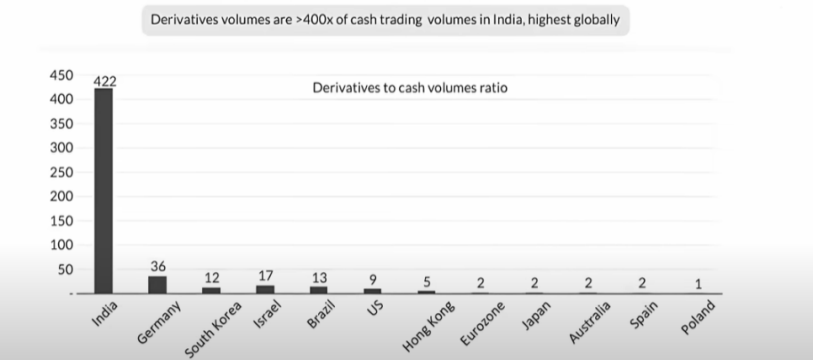
derivatives-trading/#:~:text=Retail%20Investors'%20Losses,equity%20derivatives%20segment%20lost%20money. (Accessed: 24 January 2025).

16 https://www.moneycontrol.com/news/business/markets/9-out-of-10-equity-fo-traders-lose-money-84-of-them-are-men-75-under-40-sebi-study-9937391.html

17

18 Sebi (2024) Consultation Paper on measures to strengthen index derivatives framework for increased investor protection and market stability , SEBI. Available at: https://www.sebi.gov.in/reports-and-statistics/reports/jul-2024/consultation-paper-on-measures-to-strengthen-index-derivatives-framework-for-increased-investor-protection-and-market-stability_85279.html (Accessed: 24 January 2025).

SEBI has voiced concern over the speculative nature of derivatives trading, which poses a potential threat to market stability. The regulator also observed that household savings are increasingly being diverted towards speculative trading rather than long-term investments, undermining capital formation and economic growth. This rapid expansion has raised serious concerns about the resilience and stability of financial markets.



- **Market Manipulation**- The sheer volume of options trading on a particular index could create an opportunity for artificial price movements and volatility, potentially undermining the overall market stability.[19] An example of such Market Manipulation tactic that raised some eyebrows was the Jane Street Scandal. Jane Street is a quantitative trading firm which is also recently suing two former employees and Millennium Management, another hedge fund, alleging they stole a highly profitable options trading strategy used in the Indian market. The undisclosed strategy reportedly generated around $1 billion for Jane Street last year, which are extracted from none other than the retail investors. Therefore, one of plausible underlying causes before proposing these measures could also be Jane Street's $1 billion trade draws from Indian trading market in a single year.

[19] Sengar, N.S. (2024a) Options trading under SEBI's close watch; report reveals plans to check derivative trading rules, News18. Available at: https://www.news18.com/business/option-trading-sebi-new-rules-derivatives-market-in-india-8937270.html (Accessed: 24 January 2025).

SEBI's Crackdown On 'Retail Frenzy'

A. SEBI introduced following Six Point Plan to Protect Retail Investors:-

1. **Minimum Contract Size**- The regulatory body has introduced a set of six new provisions, one of which involves an increase in the baseline contractual amount. Starting November 20, 2024, the minimum value for index-based futures and options contracts will rise from its current range of 5-10 lakh rupees to 15 lakh rupees upon market introduction. This baseline figure had remained unchanged since its last adjustment in 2015.Additionally, the regulatory body stipulates that the lot size should be determined in a way that ensures the derivative contract's value on review day falls between 15 and 20 lakh rupees. The regulator explained that this recalibration, which aligns with market growth, aims to maintain an inherent suitability and appropriateness standard for market participants, particularly given the increased risk and leverage associated with derivative instruments. This adjustment reflects the evolving nature of financial markets and seeks to ensure that participating entities possess the necessary financial capacity to engage in these complex financial products. By raising the entry threshold, the regulatory body aims to promote more stable and responsible trading practices in the derivatives market.

2. **Rationalisation of weekly index products**: This marks a departure from the current setup, where various indices have weekly expirations, resulting in daily contract conclusions throughout the trading week. The proposed adjustment would effectively reduce the frequency of index-based contract expirations from daily occurrences to just twice weekly. Interestingly, this recommendation seems to reverse a previous regulatory decision that initially encouraged more frequent trading through weekly options. This shift aims to address concerns about excessive speculative activity in the market, which some attribute to the daily expiration phenomenon. By rationalizing index derivatives products with weekly expirations, regulators hope to mitigate what they perceive as problematic trading patterns. The proposed implementation date for this change is November 20, 2024. From this point forward, each exchange would be required to select one benchmark index for weekly expiration contracts. This implies that major exchanges will need to carefully consider which of their index derivative products will retain the weekly expiration feature.

3. **Upfront collection of options premium:** In the world of financial derivatives, the cost paid by a buyer to a seller for the

privilege of potentially purchasing or selling a stock is known as the premium. This fee is collected by those offering the options contracts. Regulatory bodies have identified a need to address concerns regarding excessive intraday leverage and the practice of allowing positions that exceed available collateral at the client level. To tackle these issues, a new directive has been issued. This directive mandates that market intermediaries, specifically Trading Members ("TM") and Clearing Members ("CM"), must collect the full premium amount from options buyers upfront. This represents a shift from the current practice where only margins for futures positions and short options positions are collected in advance. The reasoning behind this change stems from the unique characteristics of options pricing. Options prices exhibit non-linear behaviour and inherently carry significant leverage. By requiring upfront premium collection, the regulatory body aims to mitigate potential risks associated with these features. To allow sufficient time for market participants to adapt their systems and processes, this new requirement is set to take effect in the equity derivatives segment starting February 1, 2025. This implementation timeline reflects a balanced approach, allowing for necessary adjustments while addressing perceived market vulnerabilities.

4. **Removal of calendar spread benefit on expiry day:** This change specifically targets positions involving contracts that expire on the same day. Previously, traders could benefit from margin offsets when holding opposing positions across different expiration dates, known as calendar spreads. These spreads typically involve buying and selling options with identical strike prices but different expiration dates. The new directive eliminates this margin benefit for positions that include contracts expiring on the current trading day. This decision stems from observations of substantially higher trading volumes on expiration days compared to other trading sessions. Regulators have noted that this increased activity presents an elevated basis risk. By revoking the calendar spread benefit on the day of expiry for same-day expiring contracts, the regulatory body aims to align this practice with the cross-margin framework applied to correlated indices with varying expiration dates. In that framework, cross-margin benefits are fully withdrawn at the commencement of trading for the first of the expiring correlated indices.

5. **Intraday monitoring of position limits**: This shift moves from an end-of-day evaluation to a more frequent, intraday monitoring approach. The regulatory body has instructed exchanges to implement a system of ongoing surveillance for position limits in equity index derivatives. This decision stems

from concerns about the potential for positions exceeding permissible limits, particularly given the high trading volumes often seen on expiration days. Under the new guidelines, exchanges are required to capture a minimum of four position snapshots throughout the trading day. While this establishes a baseline, individual exchanges have the flexibility to increase the frequency of these snapshots beyond the mandated minimum. This more granular approach to monitoring aims to provide a more accurate and timely picture of market participants' positions. By doing so, it seeks to enhance market integrity and reduce the risk of limit breaches that might otherwise go undetected until the end of the trading session. The implementation of this new monitoring system is scheduled for April 1, 2025. This future date allows market participants and infrastructure providers adequate time to adjust their systems and processes to comply with the new requirements.

6. **Extension of margins for contract expiry:** This update focuses on enhancing the tail risk coverage for short options positions. The regulatory body has decided to implement an additional Extreme Loss Margin (ELM) of 2% for short options contracts. This supplementary margin requirement will apply in two scenarios: 1)All open short options positions at the beginning of the trading day, 2) Short options contracts initiated during the trading day that are set to expire on that same day. To illustrate this concept, consider a hypothetical scenario where weekly index contract expirations fall on the 7th, 14th, 21st, and 28th of a given month. In this case, all options contracts expiring on the 7th would be subject to the additional 2% ELM on that day. This measure aims to create a more robust risk management framework by increasing the financial buffer for potentially volatile short options positions, especially those nearing expiration. The extra margin requirement is designed to mitigate the impact of extreme market movements on traders holding these positions. By implementing this change, regulators seek to encourage more prudent risk-taking and potentially reduce the likelihood of significant losses due to unexpected market swings.

Potential Impact of Proposals on the F & O Market Ecosystem

One of the most essential proposed changes by the Securities and Exchange Board of India (SEBI) is the substantial reduction in weekly option contracts. The current system allows for three weekly contracts to expire per exchange per week, resulting in 18 such contracts per month. SEBI's proposal seeks to streamline this by limiting weekly options to just one benchmark index per exchange, effectively reducing the number of weekly contracts to six per month. Weekly premiums currently constitute approximately 65% of the total premiums in the

derivatives market. According to a report by Jefferies, this proposed reduction could potentially lead to a decrease of around 35% in these premiums.[20] According to latest data, the volume of derivatives trading actually fell 37% month over month in December. Compared to Rs 442 trillion in November, the average daily turnover (ADTV) for the derivatives sector (notional turnover for options segment) is at Rs 280 trillion so far this month, the lowest since June 2023.[21]

Moreover, SEBI's decision to raise lot sizes in the derivatives market is expected to make it more difficult for smaller retail traders, especially those whose monthly premiums are less than 10 lakh. The market's profit pool may be greatly impacted by these traders' reduced activity, even if they may make up a smaller portion of the overall premium volume. Concurrently, the suggested increase in margins close to expiration poses a dilemma. It attempts to limit option sellers' overuse of leverage, which could reduce their profit margins. Due to their greater capacity for leverage, larger institutional players may be able to handle this shift more easily, but HNIs and retail traders with less leverage may find it challenging to meet the higher margin requirements, which could result in decreased trading volumes.

B. Who will be hit hardest?

Equity analysts at Jefferies predict that exchanges and brokerage firms primarily serving retail traders will likely be most impacted by the Securities and Exchange Board of India's (SEBI) proposed amendments to Futures & Options (F&O) trading regulations.[22] Discount brokers, such as Zerodha, Angel One, and Paytm Money, are likely to be significantly impacted by the combined effect of stricter F&O regulations and recent changes to transaction fees. Traditional brokers, including MOFSL, IIFL Securities, and ICICI Securities, will likely face a more severe impact from the F&O market tightening compared to the new transaction charges. However, it's important to consider that a potential shift in trading activity from discontinued products could mitigate the negative effects on earnings per share (EPS). EPS is a crucial metric for determining a company's stock price. In a scenario with a moderate industry-wide impact from SEBI's measures, there's even a possibility of EPS improvements.

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[20] *SEBI-proposed F&O norms to hit exchanges and brokers, say reports*, The Hindu (January. 11, 2025), https://www.thehindu.com/business/markets/sebi-proposed-fo-norms-to-hit-exchanges-and-brokers-say-reports/article68512646.ece.

[21] Business Standard, Derivatives volumes crash 37% in Dec as SEBI tightens trading norms Business Standard (2024), https://www.business-standard.com/markets/news/derivatives-volumes-crash-37-in-dec-as-sebi-tightens-trading-norms-124122600761_1.html (last visited Mar 31, 2025).

[22] Bloomberg (2024) Jefferies warns of new risk tied to commodities: ESG Regulation, mint. Available at: https://www.livemint.com/news/india/jefferies-warns-of-new-risk-tied-to-commodities-esg-regulation-11724362543898.html (Accessed: 24 January 2025).

Exhibit 1 - SEBI measures to have divergent impact on capital market players

Capital market segments	Potential impact from		Key listed & unlisted players
	Recent order on trx charges	Tightening of F&O market	
Discount brokers	Very high	Very high	Zerodha, Angel One, Paytm Money, etc.
Traditional brokers	Low	High	MOFSL, IIFL Securities, ICICI Sec, etc.
Exchanges	None	Very high	BSE, NSE, MCX
Wealth managers	None	None	360 ONE, Nuvama, Prudent Corp., etc.
AMCs	None	None	HDFC AMC, Nippon, UTI, ABSL, etc.
Depositories	None	Low	CDSL, NSDL
RTAs	None	None	KFin Tech, CAMS
Clearing members	None	High	Nuvama, Orbis, etc.

Source: Jefferies estimates

C. Analysis And Recommendation

I. Market sentiments and Speculative/Gambling tendencies

The sentiments of retail investors are captured in the latest Economic Survey 2023–24. The survey notes that youth constitute probably the majority of new retail investors, and they tend to have a higher risk appetite. Their apparent interest in trading derivatives, especially on expiration days, is testimony to this. While derivatives are essentially meant to be used as hedging tools, traders around the world mostly use them as speculative tools which can be because of the daily expiry that derivate market was having. The survey noted that an impressive amount of retail participation in this market can be attributed to derivatives trading, which capitalizes on the human inclination towards gambling and the attraction of income amplification. But it is unlikely that this speculative mindset among younger investors will change considerably, even with more regulation in the derivatives industry. Due to their inclination towards high-risk, high-reward situations, these retail traders are probably going to look for other ways to place these kinds of speculative bets. If regulations tighten up on the derivatives market, many are expected to shift to other speculative platforms like cryptocurrency trading, Forex trading through brokers, or even skill-based gambling like online rummy. Therefore, the general attitude towards taking risks is not likely to change; rather, it will only move to other, possibly less regulated sectors.

II. Demarcating the Lines: Where should a regulator stop?

While SEBI possesses broad regulatory authority over the markets, it is crucial that this power is exercised with restraint, avoiding excessive regulation that could inadvertently damage the very ecosystem it seeks to protect. Markets naturally evolve to manage various risks, and

derivatives have emerged as one of the key instruments for mitigating these risks. The growth of derivatives markets reflects a growing awareness of their risk management capabilities. As highlighted by Sahu,[23] regulation plays a vital role in ensuring the efficient functioning of markets, preventing systemic failures, and fostering competition rather than stifling it. However, it is essential to recognize that regulation should not extend to micromanaging every aspect of market behaviour. The real concern for SEBI and the government is less about risks to the financial system itself and more about safeguarding investors from the pitfalls of irrational exuberance, particularly among retail investors who entered the market post-Covid. Overbearing regulation could stifle innovation, disrupt market dynamics, and lead to unintended consequences that could trigger an irreversible decline in market activity. There needs to be a clear distinction between macro-level issues that pose a genuine threat to market stability and require intervention, and micro-level concerns that are better left to the market participants to navigate. By focusing on macro-level risks, SEBI can protect the broader financial system while still allowing the market to operate with the flexibility and efficiency necessary for its growth. The gamification of F&O trading is identified as a macro-level issue by SEBI requiring reforms. However, these measures should be calibrated to avoid curbing the natural evolution and resilience of the market ecosystem itself.

III. Drawing Parallels from the Dismantled South Korean Market.

The experience of South Korea's derivatives market in the 21st century provides a vital lesson on the perils of an interventionist approach.[24] In late 1990s, in order to stimulate the tepid demand in its derivatives market, South Korea initially simplified market entry by reducing contract sizes and offering capital tax exemptions. These reforms succeeded in driving retail participation. However, as retail investors began to suffer heavy losses, the government responded with a broad and stringent set of regulatory measures. Rather than merely increasing contract sizes, South Korea's regulatory clampdown was far-reaching. Among the more notable interventions was the requirement for a minimum deposit of approximately $13,000 before investors could trade. Additionally, there was a considerable reduction in the powers granted to market makers in the equity-linked warrants (ELW) market. As market structure expert Chris Price noted in The Trade magazine in 2012, these new regulations led to an 80% decline

[23] Kleiman, R. T., Sahu, A. P., Callaghan, J. H.(1997). The Risk-Adjusted Performance of Investment Advisors: Empirical Evidence on Selectivity and Timing Activities. Journal Of Economics And Finance. 20(4), 87-98

[24] Mudgill, A. (2024) F&O Trading: Why Sebi's 7 proposals remind experts of South Korean stock market, Business Today. Available at: https://www.businesstoday.in/markets/stocks/story/fo-trading-why-sebis-7-proposals-remind-experts-of-south-korean-stock-market-439614-2024-07-31 (Accessed: 24 January 2025).

in ELW trading volumes, which, in turn, negatively affected Kospi volumes as firms had been using Kospi futures and options to hedge their ELW positions.[25] By 2012, the average daily turnover in Kospi options had plummeted by 70% from its peak in 2011.[26] Despite introducing mandatory 20-hour training for investors to enhance their understanding of market risks, the heavy-handed regulatory approach drove traders away from the South Korean market. Many of these traders migrated to Japan and China, where regulatory frameworks offered greater flexibility and lower regulatory risks. The South Korean experience serves as a cautionary example of how overregulation, despite being well-intentioned, can stifle market growth, disrupt liquidity, and ultimately drive investors to less restrictive jurisdictions. While ensuring investor protection is crucial, excessive intervention could undermine market dynamics and lead to a similar exodus of investors to foreign markets with more favourable regulatory environments. A balanced regulatory approach, targeting systemic risks while allowing market forces to operate efficiently, will be essential to sustaining the long-term vitality and competitiveness of India's financial markets.

Conclusion And Way-Forward

SEBI's new F&O rules are aimed at creating a more transparent and efficient derivatives market in India. While retail traders may take a while to adapt to any new change that may be implemented, the new F&O rules could foster a healthier market that benefits them holistically in the long run. SEBI has put forth a series of immediate measures designed to limit excessive risk-taking, particularly in index derivatives. These proposals include restricting multiple expirations of options contracts and enlarging the contract sizes of options. The six measures proposed by the regulatory authority are focused on curbing speculative trading, bolstering investor protection, and promoting enhanced market stability. While some of SEBI's proposed measures, such as enhanced monitoring and adjusted contract expiry dates, are commendable steps towards market stability, others, including increased minimum contract size and extended margin requirements, might have unintended consequences. Rather than addressing the root cause of excessive speculation, these drastic regulations could disproportionately impact consistent small-scale traders who may have to bear the brunt of others speculative gameplay. These individuals, often driven by a gambling mentality, may simply shift their activities to other, potentially riskier markets, exacerbating their financial losses. Moreover, experienced traders with limited capital

[25] Id.

[26] Livemint (2024) Kotak cites China, Korea precedent to oppose SEBI's possible F&O Crackdown, https://www.livemint.com. Available at: https://www.livemint.com/videos/kotak-cites-china-korea-precedent-to-oppose-sebis-possible-f-o-crackdown-what-happened-in-china-11721030453043.html (Accessed: 25 January 2025).

may find their trading opportunities curtailed due to higher margin requirements, hindering their ability to participate effectively. Ultimately, these measures may not align with the broader goals of investor protection and market welfare.

It has been observed that an enormous amount of speculation has arisen in the derivatives market, leading to a vicious cycle of losses. This is primarily due to new investors directly entering the derivatives market with the aim of quick gains, often without adequate knowledge. To mitigate this issue, it is proposed that mandatory educational programs on derivatives be introduced for new retail investors. These programs could be conducted by the National Institute of Securities Markets (**NISM**) or other government agencies under SEBI. Given NISM's existing initiatives in field of investor education programs, this would be a logical extension of its role. Moreover, to prevent impulsive decision-making, a phased approach to derivatives trading could be implemented. For instance, new investors could be restricted from trading derivatives for a specific period, such as six months to a year, after entering the stock market. Additionally, gradually increasing capital requirements for derivatives trading could serve as a deterrent to speculative behavior. Rather than imposing blanket restrictions, the government could consider implementing a product suitability framework. This would involve assessing an investor's risk profile and knowledge before allowing them to trade certain derivatives, thereby reducing the likelihood of speculative trading.

Markets inherently face various risks, prompting market participants to seek effective risk management strategies. Derivatives emerged as a valuable tool for mitigating these risks. As awareness of their risk management capabilities grew, so did the derivatives market itself. While the role of government intervention in markets is debated, it's widely acknowledged that regulation is crucial for maintaining market efficiency and preventing systemic failures. The primary goal of regulation should be to enhance competition and efficiency rather than hinder them. By combining investor education, phased market access, and product suitability measures, the regulatory framework can be made more robust, protecting investors and promoting market stability. It is crucial for SEBI to acknowledge the current challenges in the market and implement appropriate measures. However, it is equally important that these steps are introduced gradually to avoid creating irreversible damage, as witnessed in the South Korean market. A phased approach will facilitate careful oversight and allow for necessary adjustments as circumstances evolve.

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AI in Digital Forensics: Tackling Evolving Cyber Threats and Ethical Challenges

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Abstract

As cyber threats become more advanced, digital forensics is increasingly challenged to investigate and counter cybercrimes. Artificial Intelligence (AI) has proved to be an effective weapon in digital forensics, supporting automated data analysis, pattern identification, and threat detection. AI-based solutions increase the speed and accuracy of forensic analysis, facilitating analysts in handling large volumes of digital evidence. Nevertheless, implementing AI also introduces major ethical concerns, such as the fear of bias in forensic algorithms, privacy of data, and misuse of AI-facilitated tools. Moreover, the opaque nature of AI-driven decision-making also raises legal and accountability concerns. This paper analyzes the changing landscape of cyber threats, the position of AI in digital forensics, and the challenges associated with it. It discusses future trends of AI implementation in forensic investigations, stressing the importance of regulatory environments, ethical AI design, and development of explainable AI (XAI) for building trust and reliability. With these challenges resolved, AI can be an effective tool in fighting cybercrime while promoting fairness and transparency in digital forensic activities.

Keywords: Artificial Intelligence, Digital Forensics, Cybersecurity, Ethical Dilemmas, Machine Learning.

1. Introduction

The evolution of cyber threats during the previous four decades can be directly linked to security-enhanced technology development and online network spreading and constant refinement of cybercrime capabilities. The early days of cyber threats contained easy challenges which hackers pursued as an academic interest with bad reputation.

The motivations behind cybercrime have transformed because criminals now seek money and as political purposes and espionage activities and terrorism involvement. Modern-day cyberattacks focus on attacking people and groups along with national governments and crucial national infrastructure which creates dangerous risks against privacy security and as economic safety. Various cyberattacks exist today while their technical progression defeats conventional security measures.

The presence of malware constitutes a primary threat against internet systems. Software malware represents designed malicious code which targets computer systems and extends to viruses and as worms Trojans and spyware. Malware generates three possible risks which include stealing personal information and destroying data while granting unauthorized network access. The dangerous kind of cyber threat today derives from Ransomware because of its insidious malware characteristics. In addition this software functions by encrypting victim files before requiring payment for the decryption key. A global computer lockdown like the WannaCry attack in 2017 successfully paralyzed hundreds of thousands of computers worldwide[1]. Phishing represents a common cyber threat because attackers employ deceptive emails and websites to obtain sensitive information including passwords and financial data from unsuspecting victims. The exploitation of human psychology through phishing attacks makes them the prominent and widespread form of cybercrime[2].

Advanced persistent threats (APTs) develop as a dangerous new category of cyberattacks along with the existing popular threats. APTs carry out sustained targeted network intrusions through complex means enabling persistent unauthorized network access throughout lengthy timespans. State sponsors together with well-organized criminal groups execute these threats against high-value entities which include government agencies and defense contractors and multinational corporations[3]. APT attacks remain hard to identify because their designers work to evade standard security protocols through encryption together with malware concealment and additional deception techniques.

Workspace security faces an increased threat from personnel who possess authorized access to critical resources. Internal threats

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[1] Mamoona Humayun et al., *Internet of Things and Ransomware: Evolution, Mitigation and Prevention*, 22 EGYPTIAN INFORMATICS JOURNAL 105 (2021).

[2] A Survey of Phishing Attack Techniques, https://www.researchgate.net/publication/271156987_A_Survey_of_Phishing_Attack_Techniques (last visited Apr 1, 2025).

[3] Artificial intelligence for cybersecurity: Literature review and future research directions - ScienceDirect, https://www.sciencedirect.com/science/article/pii/S1566253523001136 (last visited Aug 4, 2024).

occur through internal members who fail to protect organizational data by abusing their control over sensitive systems. Intentional data theft and sabotage and unintentional data mishandling and as phishing attacks represent the potential cyber threats. Insider threats prove hard to discover because perpetrators already possess valid system entry which renders perimeter security measures useless[4].

The rise of sophisticated attack vectors in the cybersecurity domain includes fileless malware which functions exclusively from system memory causing minimal hard drive documentation. The new detection and mitigation techniques need to be developed because these attacks avoid normal endpoint security systems[5]. The Internet of Things (IoT) phenomena has made everyday devices such as smart thermostats and industrial control systems suspectable to cybercriminals through their interconnected nature.

Digital threats create an extensive economic and social effect on society. The global economy will incur more than $10 trillion from cybercrime by the year 2025[6]. The expenses stemming from cyberattacks escalate to billions of dollars because they include equipment damages and business revenue disruptions and identity protection fees and cleanup expenses. The attack of systems through digital means produces multiple devastating effects such as public trust breakdown and damage to vital operations and harm to national defense systems. The Not Petya ransomware attack generated $10 billion in damages mainly from business and government interruption throughout Ukraine and worldwide. Governments together with businesses allocated massive funds to cybersecurity after cybercrime grew which established a security sector worth billions of dollars to combat digital threats[7].

1.1. Importance of Digital Forensics

Digital forensics has grown more vital due to advancing cyber threats which present bigger challenges in investigation and criminal prosecution and cybercrime protection. Digital forensics consists of activities to identify evidence followed by legal preservation methods and subsequent analysis and eventually the presentation of digital

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[4] A Review of Insider Threat Detection Approaches With IoT Perspective, RESEARCHGATE, https://www.researchgate.net/publication/340912800_A_Review_of_Insider_Threat_Detection_Approaches_With_IoT_Perspective (last visited Apr 1, 2025).

[5] A Review on Fileless Malware Analysis Techniques, RESEARCHGATE, https://www.researchgate.net/publication/341870307_A_Review_on_Fileless_Malware_Analysis_Techniques (last visited Apr 1, 2025).

[6] Cybercrime Magazine, *Cybercrime To Cost The World $10.5 Trillion Annually By 2025*, CYBERCRIME MAGAZINE (Oct. 26, 2020), https://cybersecurityventures.com/annual-cybercrime-report-2019/ (last visited Apr 1, 2025).

[7] Moatsum Alawida et al., *A Deeper Look into Cybersecurity Issues in the Wake of Covid-19: A Survey*, 34 JOURNAL OF KING SAUD UNIVERSITY - COMPUTER AND INFORMATION SCIENCES 8176 (2022).

evidence as legally acceptable documentation. Law enforcement together with government agencies and organizational institutions depend on digital forensics to understand cyberattacks and track their sources and develop countermeasures. Solving cybercrimes and improving overall cybersecurity require digital forensics to identify vulnerabilities and secure data while tracking privacy regulation compliance.

The scope of digital forensics encompasses a wide range of activities. Digital forensic experts must identify possible evidence sources together with preserving digital evidence intact for later examination. Experts secure various electronic media devices including computers servers mobile devices and storage facilities which hold evidence of cybercrimes. The preservation method functions to defend against tampering or damage of data which maintains its unmodified status for judicial requirements. Law enforcement professionals perform data analysis for deleted file restoration and pattern detection and data discovery purposes. The analysis of file systems alongside networks and computer applications through advanced data carving methods combined with reverse engineering tools helps track the cybercriminal's actions[8]. Digital forensics requires strong attention to presenting digital evidence that stands as a vital component for forensic investigation. The presentation of forensic evidence must be clear and understandable by civil and criminal judicial proceedings when delivered through written reports and expert witness testimonies. Digital evidence needs to abide by court rules of admissibility so experts must have thorough knowledge of technology combined with legal understanding[9]. Digital forensic experts face new challenges when the growing number of organizations shift their operations to cloud environments and as Internet of Things (IoT) networks. Data has shifted from its prior storage within physical devices and on-premises locations because investigators must now establish new methods for accessing evidence that exists across cloud systems and IoT networks[10].

The domain of digital forensics continues to meet multiple obstacles since cyber threats continue to evolve in present times. Digital systems today produce such excessive amounts of data that it creates a major challenge for forensic investigators. Digital forensic investigators struggle to handle enormous data amounts from social

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[8] HANDBOOK OF DIGITAL FORENSICS AND INVESTIGATION, (2009), https://shop.elsevier.com/books/handbook-of-digital-forensics-and-investigation/casey/978-0-12-374267-4 (last visited Apr 1, 2025).

[9] Digital Forensics in Cloud Computing, RESEARCHGATE, https://www.researchgate.net/publication/269978857_Digital_Forensics_in_Cloud_Computing (last visited Apr 1, 2025).

[10] Cloud Computing Forensics; Challenges and Future Perspectives: A Review, RESEARCHGATE, https://www.researchgate.net/publication/371004671_Cloud_Computing_Forensics_Challenges_and_Future_Perspectives_A_Review (last visited Apr 1, 2025).

media platforms along with IoT sensors and cloud platform outputs because they must analyze massive information banks to find crucial evidence. The analysis of modern forensic data requires sophisticated investigative tools supported by AI technologies to accelerate data analysis by filtering out human investigator errors[11].

The escalation of encryption alongside other forms of data concealer creates an environment that hinders investigators from obtaining access to digital evidence. The essential need for data privacy through encryption results in significant hindrance for digital forensics investigation efforts. Edgware University produces encrypted data analysis methods to ensure courtroom integrity during criminal investigations[12]. The ever-evolving nature of cyberattacks renders traditional forensic investigation techniques inadequate. Fileless malware operates from system memory where it leaves few traces on the hard drive thus creating a challenge for investigators to detect and analyze it[13].

The domain of cyber threats keeps advancing so digital forensic experts encounter persisting difficulties in their work. The technical progress of attacks together with advanced persistent threats and rising amounts of data make forensic investigations increasingly complex to carry out. Digital forensics maintains its importance as a crucial domain because cybersecurity development adapts to emerging changes in investigating and prosecuting cybercrimes.

2. Rise of Artificial Intelligence in Cybersecurity

Modern technology depends heavily on artificial intelligence systems which now transform operations throughout healthcare sectors and as finance operations and cybersecurity networks. AI represents the process of human thinking simulation in machines which allows them to execute tasks like task-solving and decision-making and pattern recognition and data learning tasks through automated systems. AI contains two vital subdomains called machine learning (ML) and deep learning (DL) that power cybersecurity innovation. System learning capabilities through machine learning allow computers to extract knowledge from datasets in an unprogrammed manner to boost their operational efficiency over time. The system functions through algorithms which learn from previous data experiences to recognize

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[11] The Use of Artificial Intelligence in Digital Forensics and Incident Response (DFIR) in a Constrained Environment, https://www.researchgate.net/publication/361241108_The_Use_of_Artificial_Intelligence_in_Digital_Forensics_and_Incident_Response_DFIR_in_a_Constrained_Environment (last visited Apr 1, 2025).

[12] HANDBOOK OF DIGITAL FORENSICS AND INVESTIGATION, *supra* note 10.

[13] ML-based Fileless Malware Threats Analysis for the Detection of Cyber security Attack based on Memory Forensics: A Survey, RESEARCHGATE, https://www.researchgate.net/publication/388428126_ML-based_Fileless_Malware_Threats_Analysis_for_the_Detection_of_Cyber_security_Attack_based_on_Memory_Forensics_A_Survey (last visited Apr 1, 2025).

patterns so it can predict upcoming outcomes. Deep learning performs advanced tasks of machine learning by using layered neural networks which analyze large intricate datasets thereby producing improved accuracy rates across image recognition systems and as natural language processing and cybersecurity threat detection operations[14].

The advancement of cybersecurity AI depends on the improvements made in big data analytics, cloud computing and computational power. AI systems achieve real-time data processing that detects threats with superior efficiency in comparison to ordinary security measures. Standard security systems built using rules have become inadequate because the number and complexity of cyber threats continue to increase. Modern cybersecurity solutions built with AI enable ML algorithms to track forthcoming threats during real-time operations which enhances their preventive capabilities and damage reduction possibilities. The processing of cybersecurity tasks becomes automated through AI technology which reduces workload on human analysts enabling them to carry out strategic security tasks. Organizations can improve their response time to threats and enhance risk management capabilities along with threat detection through integration of AI into cybersecurity frameworks. Advanced information security depends on various technical advances that power its development. NLP helps AI systems read and comprehend language texts to find phishing messages and inspect security reports while pinpointing doubtful communication records. The capability of AI systems called Computer vision helps them to find image and video patterns for use in authentication systems that identify people by their faces and systems that recognize malware through digital code scanning. Security protocols gain better protection through AI models using reinforcement learning because the system learns by testing solutions against real threats. AI assists cybersecurity tools by processing network and software functions to find all possible security weaknesses[15].

2.1. AI's Role in Detecting and Responding to Cyber Threats

Cyber defense against threats now receives stronger protection from artificial intelligence systems. The basic design of classic security software relies on known threat detection that needs previous knowledge about dangers. AI security tools analyze human behaviour patterns to spot abnormal and unidentified threats as they happen. AI

[14] Deep learning | Nature, https://www.nature.com/articles/nature14539 (last visited Apr 1, 2025).

[15] Russell and Norvig - 1995 - Artificial intelligence a modern approach.pdf, https://theswissbay.ch/pdf/Gentoomen%20Library/Artificial%20Intelligence/General/Artificial%20Intelligence%20A%20Modern%20Approach%20-%20Stuart%20J.%20Russell%20%2C%20Peter%20Norvig.pdf (last visited Oct 25, 2023).

systems find security breaches when data behaviour strays from established patterns while the problem is still small[16].

AI helps check networks by studying system logs to notice security problems that differ from ordinary behaviour. Artificial intelligence in IDS systems works in misuse and anomaly mode to spot fresh attacks and refine its protection through continuous learning. IPS technology uses artificial intelligence to automatically stop threats which decreases damage prevention time[17].

AI helps the automatic inspection of malware to spot potential threats and stop them before they become dangerous. Instead of traditional scanning tools AI-powered malware systems teach computers to identify previously unknown malware by detecting hiding techniques that malware uses to escape detection. The AI system uses these techniques to examine malware samples during the analysis phase before deep learning networks examine data to detect dangerous files purely based on their pattern behaviour.

AI processes cyber threat intelligence automatically by taking in and handling security data for better protection. Advanced threat intelligence systems scan all dark web networks and cyber communities to find potential dangers and weaknesses developing today. Security analysts use NLP algorithms to study online cybercriminal conversations so they can prevent future attacks by taking appropriate steps ahead of time. Scientists must determine how well AI-based cybersecurity tools remain secure and functional.

3. Role of AI in Digital Forensics

Cyber defense against threats now receives stronger protection from artificial intelligence systems. The basic design of classic security software relies on known threat detection that needs previous knowledge about dangers. AI security tools analyze human behaviour patterns to spot abnormal and unidentified threats as they happen. AI systems find security breaches when data behaviour strays from established patterns while the problem is still small[18]. AI helps check networks by studying system logs to notice security problems that differ from ordinary behaviour. Artificial intelligence in IDS systems works in misuse and anomaly mode to spot fresh attacks and refine its protection through continuous learning. IPS technology uses artificial intelligence to automatically stop threats which decreases damage prevention time. AI helps the automatic inspection of malware to spot potential threats and stop them before they become dangerous.

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[16] Outside the Closed World: On Using Machine Learning for Network Intrusion Detection | IEEE Conference Publication | IEEE Xplore, https://ieeexplore.ieee.org/document/5504793 (last visited Apr 1, 2025).

[17] Wook Hyun Jung, Sangwon Kim & Sangyong Choi, *Poster: Deep Learning for Zero-Day Flash Malware Detection.*

[18] HANDBOOK OF DIGITAL FORENSICS AND INVESTIGATION, *supra* note 10.

Instead of traditional scanning tools AI-powered malware systems teach computers to identify previously unknown malware by detecting hiding techniques that malware uses to escape detection. The AI system uses these techniques to examine malware samples during the analysis phase before deep learning networks examine data to detect dangerous files purely based on their pattern behaviour. AI processes cyber threat intelligence automatically by taking in and handling security data for better protection. Advanced threat intelligence systems scan all dark web networks and cyber communities to find potential dangers and weaknesses developing today. Security analysts use NLP algorithms to study online cybercriminal conversations so they can prevent future attacks by taking appropriate steps ahead of time. Scientists must determine how well AI-based cybersecurity tools remain secure and functional[19].

3.1. Automated Forensics and Case Studies

Automated forensic analysis through AI techniques delivers faster digital evidence processing capabilities to investigators. The automated system enables investigators to dedicate time to strategic analysis because it performs time-consuming and manual tasks. International law enforcement agencies together with global corporate security teams rely on AI-powered forensic platforms to increase their investigation speed and achieve higher conviction rates[20].

Case studies from real-world activities validate the success of AI applications in digital forensics work. AI tools operating from India enabled law enforcement teams to locate financial fraud criminals by analyzing concealed transaction data which led to the breakdown of sophisticated cybercriminal organizations. AI-powered image recognition tools working with different police forces around the world located members from digital child abuse rings through international cooperation[21].

Companies utilize AI-based forensic technologies to stop and identify data security violations throughout their corporate operations. A new AI-powered forensic software system enabled law enforcement to decrypt dark web forum and end-to-end encrypted platform

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[19] A Review on the Internet of Things (IoT) Forensics: Challenges, Techniques, and Evaluation of Digital Forensic Tools | IntechOpen, https://www.intechopen.com/chapters/86010 (last visited Apr 1, 2025).

[20] 2004_USA_paper-the_enhanced_digital_investigation_process_model.pdf, https://dfrws.org/wp-content/uploads/2019/06/2004_USA_paper-the_enhanced_digital_investigation_process_model.pdf (last visited Apr 1, 2025).

[21] AI-Powered financial forensic systems: A conceptual framework for fraud detection and prevention, RESEARCHGATE, https://www.researchgate.net/publication/387285979_AI-Powered_financial_forensic_systems_A_conceptual_framework_for_fraud_detection_and_prevention (last visited Apr 1, 2025).

messages in 2022 which led to breaking up a group behind planned cyber-attacks on essential infrastructure[22].

Furthermore AI-based technology displays two main obstacles alongside ethical difficulties when used. The main problem with adversarial AI pertains to cybercriminals who tamper with data to deceive forensic AI systems. Expert teams create XAI systems as a solution to counteract this growing threat[23]. AI-driven digital forensics generates privacy-related ethical problems during investigations because it entails examining patients' personal data including online activities and communications and biometric information. The struggle to achieve security control while protecting personal rights continues being a critical issue for lawmaking bodies and forensic investigation personnel.

Digital forensics has undergone a change through AI since it allows faster investigation while improving accuracy while also reducing analysis burdens for experts and providing better crime-solving abilities[24]. AI forensic detection tools achieve essential success in identifying cyber fraud attempts and controlling insider threats and as cyberterrorism ventures and protecting users from online abuse.

4. Ethical Dilemmas in AI and Digital Forensics

The implementation of artificial intelligence (AI) technology within digital forensics has triggered numerous ethical issues about personal privacy together with surveillance practices. Advanced artificial intelligence research tools permit investigators to examine extensive personal data which causes privacy issues regarding data gathering and user permission and as extensive surveillance capabilities. AI-powered digital forensics systems increase police capabilities for cybercrime investigation yet pose dangers to personal privacy when their regulation is inadequate.

The main issue arises when agencies must determine how to maintain a proper equilibrium between protecting people and their privacy rights. AI tools typically need access to private information that includes emails along with social media chats and body identification data and tracking records. Unrestricted surveillance practices which include extensive data collection potentially violate basic rights

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[22] Cybersecurity | Penetration Testing in Today's Digital Age and It's Importance, https://www.penntech-it.com/2024/09/23/the-importance-of-penetration-testing-in-todays-digital-age/ (last visited Nov 5, 2024).
[23] What is Explainable AI (XAI)? | IBM, https://www.ibm.com/topics/explainable-ai (last visited Nov 5, 2024).
[24] Sandeep Singh Sengar et al., *Generative Artificial Intelligence: A Systematic Review and Applications*, MULTIMED TOOLS APPL (2024), https://doi.org/10.1007/s11042-024-20016-1 (last visited Feb 14, 2025).

especially the privacy rights outlined in legal systems through the European Union's GDPR and India's Potential PDPB[25].

AI-driven mass surveillance presents a critical ethical problem because it threatens private data protection. Constituent organizations including surveillance units from governments worldwide utilize artificial intelligence-based surveillance tools for monitoring social media platforms in addition to assessing facial recognition data and digital communication tracking. The tools provide chances for abuse through which political activists alongside journalists and minority groups get targeted.

Digital forensic investigations must follow ethical and legal protocols which provide transparency and maintain accountability while preserving proportionality. AI forensic tools need to implement privacy-enhancing technologies (PETs) to protect private information when executing lawful investigations. AI-driven forensic investigations require judicial monitoring and established legal frameworks to protect privacy and prevent improper surveillance.

4.1. Bias in AI Systems

AI bias in digital forensics is a critical concern, as it can lead to unjust or inaccurate investigative results. AI models, trained on past data, can have inherent biases, leading to discriminatory or misleading forensic reports. This can lead to wrongful accusations, unjust convictions, and discriminatory targeting of minority groups. Biased training data, such as facial recognition software, can be a primary source of bias, with higher accuracy for some groups but lower accuracy for women and minorities[26]. This can lead to discriminatory forensic investigations and reinforcement of existing social disparities. Additionally, bias in forensic risk assessment tools can lead to systemic biases in law enforcement data, leading to unwarranted surveillance and more severe legal penalties. To prevent bias, forensic scientists and AI developers need to ensure fairness, transparency, and accountability in algorithm design. This can be done by utilizing diverse datasets, utilizing algorithmic fairness techniques, auditing AI forensic tools regularly, and incorporating human oversight in AI-driven decision-making.

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[25] Tec Empresarial NAVIGATING DIGITAL LEGISLATION: A COMPREHENSIVE ANALYSIS OF INDIA'S IT ACT AND EMERGING CYBER SECURITY CHALLENGES, RESEARCHGATE, https://www.researchgate.net/publication/383211962_Tec_Empresarial_NAVIGATING_DIGITAL_LEGISLATION_A_COMPREHENSIVE_ANALYSIS_OF_INDIA'S_IT_ACT_AND_EMERGING_CYBER_SECURITY_CHALLENGES (last visited Apr 1, 2025).

[26] David Danks & Alex John London, *Algorithmic Bias in Autonomous Systems*, 4691 (2017).

4.2. Accountability and Legal Liability

With more involvement of AI in forensic investigation, the issue of accountability and legal responsibility emerges. AI models make independent decisions based on data analysis, and it is not easy to attribute such decisions with accountability for errors, bias, or incorrect forensic conclusions. AI needs human supervision in forensic decisions, as it lacks contextual reasoning, ethical understanding, and legal acumen. Heavy reliance on AI without human verification may cause false convictions or erroneous evidence[27]. Legal systems nowadays lack adequate guidelines for handling AI accountability in forensic investigations. The courts need to determine whether AI forensic tools should be considered credible expert witnesses or advisory tools to be authenticated by humans. Legal scholars suggest that AI forensic conclusions should be made subject to "explainability requirements" to make AI-generated evidence comprehensible and challengeable to courts. In order to address these concerns, regulatory authorities must make human oversight mandatory in AI forensic investigations, define legal standards for AI forensic evidence, utilize explainable AI techniques, and hold AI developers liable for bias and errors in forensic tools. AI-powered forensic tools must be developed and applied responsibly, so privacy rights are not infringed, biases are reduced, and human oversight remains at the heart of decision-making[28].

5. Challenges in Implementing AI in Digital Forensics

The application of artificial intelligence (AI) in digital forensics has significantly improved the accuracy and efficiency of investigative procedures, allowing forensic investigators to process large amounts of data, detect patterns, and automate repetitive tasks. The application of AI in forensic procedures also poses a range of issues that can impact the reliability and integrity of forensic investigations. Data integrity problems, explainability of AI models, and security vulnerabilities raise significant concerns about the practical application of AI-augmented forensic tools. Validating the authenticity of AI-generated evidence, understanding the decision-making process of AI models, and protecting AI algorithms from cyberattacks are essential steps to guarantee the credibility of AI-assisted forensic investigations.

5.1. Data Integrity and Quality Issues

Data integrity and quality problems are among the most significant problems in the area of AI-based digital forensics. The integrity of the

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[27] Luciano Floridi & Mariarosaria Taddeo, *What Is Data Ethics?*, 374 PHILOSOPHICAL TRANSACTIONS OF THE ROYAL SOCIETY A: MATHEMATICAL, PHYSICAL AND ENGINEERING SCIENCES 20160360 (2016).

[28] Finale Doshi-Velez & Been Kim, *Towards A Rigorous Science of Interpretable Machine Learning*, (2017), http://arxiv.org/abs/1702.08608 (last visited Apr 1, 2025).

evidence is the key to the success of digital forensic investigations, as minor modifications to data can render the forensic results useless. Forensic tools employed in AI-based forensics process large amounts of data from diverse sources, such as log files, electronic mail, social media messages, and encrypted messages. The presence of incomplete, corrupted, or manipulated data in the input of AI systems, however, can yield false forensic conclusions[29]. Cybercriminals can attempt to manipulate forensic data by injecting fabricated information, modifying timestamps, or employing anti-forensic mechanisms to evade detection. It is essential to ensure that AI models process real and unmodified data to avoid misleading forensic conclusions[30].

Another key challenge is collecting and processing unstructured data. Digital forensic analysis is generally susceptible to handling heterogeneous types of data, e.g., videos, images, text, and encrypted files. Structured data sets are necessary for training and implementing AI models and for inference, but forensic data tends to be messy, broken, and spread over diverse devices and cloud infrastructures. AI models based on biased or partial training sets can be incapable of analyzing actual forensic data and, hence, make incomplete or misleading conclusions. In order to exclude these issues, forensic professionals must implement strong data validation approaches so that only accurate, comprehensive, and court-acceptable data will be included in AI models. Blockchain-assisted forensic chains may be applied to maintaining the integrity of digital data so that forensic information will remain unmodified and testifying during investigations. AI-enabled forensic tools must also be designed with the capability to handle unstructured and multi-modal data, by which diverse data sources could be analyzed without endangering the authenticity of digital information[31].

5.2. Complexity and Interpretability of AI Models

Complexity and interpretability of AI models are a major hindrance in AI-based digital forensic practice. Forensic AI tools are mostly based on machine learning and deep learning systems, which are black-box algorithms, whose decision-making processes are not easily understandable. Having such limited transparency poses serious challenges in forensic investigations, where evidence generated through AI needs to be admissible as per law and be made

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[29] digital-evidence-and-computer-crime-third-edition.pdf, https://rishikeshpansare.wordpress.com/wp-content/uploads/2016/02/digital-evidence-and-computer-crime-third-edition.pdf (last visited Apr 1, 2025).

[30] Digital Forensics vs. Anti-Digital Forensics: Techniques, Limitations and Recommendations, RESEARCHGATE, https://www.researchgate.net/publication/350544009_Digital_Forensics_vs_Anti-Digital_Forensics_Techniques_Limitations_and_Recommendations (last visited Apr 1, 2025).

[31] Abiodun A. Solanke & Maria Angela Biasiotti, *Digital Forensics AI: Evaluating, Standardizing and Optimizing Digital Evidence Mining Techniques*, 36 KÜNSTL INTELL 143 (2022).

understandable to forensic experts, judges, and lawyers. But another problem is the variability of AI model performance across different datasets. Forensic software based on AI models developed with Western-centric datasets might not be able to process data correctly from other cultural or linguistic contexts, resulting in biased forensic outputs. The lack of explainability in AI models can also make forensic experts incapable of verifying AI-driven conclusions, thus diminishing confidence in AI-assisted investigations[32].

To address these challenges, forensic AI systems need to include explainable AI (XAI) methods that offer interpretable and transparent forensic analysis. Model-agnostic interpretability techniques, like SHAP and LIME, can assist forensic professionals in knowing which variables affect AI predictions, hence making forensic AI models more accountable and transparent. Forensic AI systems also need to be stringently validated, audited, and regulated to ensure that AI-generated forensic evidence is admissible in court according to legal requirements[33].

5.3. Security Risks and AI Vulnerabilities

AI can transform digital forensics into a more efficient investigative process, automate forensic analysis, and improve crime detection. But it also carries security risks that can be exploited by cybercriminals. Adversarial attacks are about manipulating AI algorithms to generate false forensic findings, e.g., false classification of evidence or tampering with forensic reports. Model poisoning attacks are another serious threat, where attackers provide malicious training data to AI forensic models, which learn spurious patterns. This can taint forensic databases, manipulate AI-based threat intelligence, or build false forensic stories[34].

AI forensic tools should be protected from cyber-attacks, such as data breaches, unauthorized access, and system compromise. Cyber attackers can erase, modify, or create false forensic evidence, compromising the integrity of investigations. The growing use of AI in cloud-based forensic platforms poses data security and jurisdictional conflict concerns.

To counter these attacks, forensic AI systems need to be built with strong adversarial defense mechanisms, including defensive distillation and adversarial detection algorithms. Security audits and zero-trust security architectures can assist in detecting and patching vulnerabilities before they are exploited. In summary, although AI can

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[32] Doshi-Velez and Kim, *supra* note 30.

[33] Interpreting Black-Box Models: A Review on Explainable Artificial Intelligence | Cognitive Computation, https://link.springer.com/article/10.1007/s12559-023-10179-8 (last visited Apr 1, 2025).

[34] Battista Biggio & Fabio Roli, *Wild Patterns: Ten Years after the Rise of Adversarial Machine Learning*, 84 PATTERN RECOGNITION 317 (2018).

transform digital forensics with enhanced investigative effectiveness, automation of data analysis, and crime identification, its deployment is plagued with enormous challenges. Explainable AI algorithms, adversarial security defenses, and privacy-preserving forensic protocols will be crucial in addressing these challenges. A multi-disciplinary cooperation among cybersecurity experts, legal experts, forensic specialists, and AI researchers is required to create trustworthy and ethical AI forensic solutions.

6. Future of Digital Forensics: AI and Beyond

The field of digital forensics is changing rapidly with the emergence of artificial intelligence (AI), machine learning (ML), and other emerging technologies. As cyber-attacks become more advanced, forensic analysts must adopt new approaches to keep pace with cybercriminal methods. The adoption of AI in digital forensics has already expanded the investigator's capabilities, especially in data analysis, anomaly detection, and automation of threat investigations. The future of digital forensics, however, hinges on the capability of AI to react to emerging cyber threats, technological upheavals, and legal challenges.

6.1. Quantum Computing and Cybersecurity Threats

The advent of new technologies such as quantum computing, the Internet of Things (IoT), and fifth-generation (5G) networks presents new challenges to the discipline of cybersecurity. Quantum computing has the potential to transform the discipline of computational power, rendering the decryption of existing encryption methods instantaneous[35]. This is a serious cybersecurity risk, as most of today's encryption technologies, like RSA and ECC (Elliptic Curve Cryptography), can become outdated when quantum computers gain adequate processing power. Cybercriminals can take advantage of the power of quantum computing to decrypt secret communications, break cryptographic keys, and bypass security controls, thus making forensic analysis difficult. To counter this threat, forensic analysts need to move towards quantum-resistant cryptography and develop new post-quantum forensic methods[36].

6.2. Expansion of IoT and Smart Devices

The growth of IoT devices, such as smart home networks, wearable devices, industrial control networks, and self-driving cars, has greatly increased the cyber threat horizon. Forensic analysts need to create advanced forensic methods to retrieve evidence from IoT networks with tamper-evident logging and real-time threat detection. Emerging

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[35] Algorithms for quantum computation: discrete logarithms and factoring, https://ieeexplore.ieee.org/document/365700 (last visited Apr 1, 2025).

[36] Daniel J. Bernstein & Tanja Lange, *Post-Quantum Cryptography*, 549 NATURE 188 (2017).

forensic tools need to employ AI-driven anomaly detection models to detect and react to 5G-based cyber threats in real time.

Advanced AI-based forensic techniques and tools are the call of the hour to fight cyber-attacks in a rapidly changing digital environment. AI-based forensic tools are revolutionizing investigations by providing automated analysis, predictive threat detection, and smart correlation of forensic evidence. AI-based behavioral analytics models can assist forensic investigators in identifying suspicious user behaviour, insider attacks, and unauthorized data access by analyzing behavioral anomalies. AI-based forensic automation will assist investigators in automatically creating cybercrime timelines, creating forensic reports, and revealing hidden relationships between cybercrime groups[37].

6.3. Innovations in AI for Digital Forensics

Early identification of cyber threats and rapid investigative action are essential in managing advanced persistent threats (APTs), which utilize advanced evasion techniques to go unnoticed for a prolonged duration. Artificial intelligence-driven intrusion detection systems (IDS) and endpoint detection and response (EDR) solutions can continuously be aware of system activity, identify anomalies, and initiate real-time forensic investigations. Artificial intelligence-driven automated threat intelligence platforms can process global cybersecurity breaches and identify nascent attack patterns before they amplify into large-scale threats[38].

6.3.1. Integrating AI with Blockchain for Tamper-Proof Evidence

Combining AI with blockchain for unalterable evidence is another significant challenge in digital forensics. Blockchain technology offers a tamper-proof solution for forensic data storage, ensuring that evidence is verifiable, immutable, and admissible as evidence in court. AI and blockchain can combine to enhance forensic evidence management in the following ways:

Blockchain-based forensic chains: Forensic tools based on artificial intelligence can document all forensic processes on a blockchain ledger, thereby creating an open and unalterable chain of custody. Authentication of evidence using smart contracts: Artificial intelligence can automatically authenticate digital evidence using blockchain smart contracts, thereby eliminating the potential for data manipulation. Decentralized storage of forensic data: Blockchain platforms integrated with artificial intelligence can store forensic data in a decentralized and encrypted manner, making it tamper-proof and resistant to unauthorized access. Briefly, the future of digital forensics

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[37] Manos Antonakakis et al., *Understanding the Mirai Botnet*.

[38] Manuel Egele et al., *A Survey on Automated Dynamic Malware-Analysis Techniques and Tools*, 44 ACM COMPUTING SURVEYS (2012).

is interdisciplinarity in the form of collaboration between cybersecurity experts, AI researchers, legal experts, and law enforcement officials in an effort to build a strong and forward-thinking forensic ecosystem[39].

7. Regulatory, Legal, and Policy Framework

Artificial intelligence (AI) is revolutionizing the discipline of digital forensics, but at the same time also raises complex legal challenges, i.e., data privacy, admissibility of evidence, accountability of algorithms, and regulatory compliance. Use of AI in digital forensics is governed through international and as local legislations, e.g., the General Data Protection Regulation (GDPR), the California Consumer Privacy Act (CCPA), the EU AI Act, and India's Information Technology Act. Legal requirements place the process of collection, management, and presentation of digital evidence before a court and as the creation and use of AI models in forensic examination.

7.1. Regulations in Digital Forensics and AI

Legal issues concerning the admissibility of AI-generated evidence before a court are evidentiary admissibility and reliability, bias and non-discrimination of algorithms, chain of custody, and the right to confront AI-generated evidence. Digital evidence has to be authenticated, be of integrity, and be reliable from the perspective of courts, and AI-based systems are not interpretable, therefore challenging to defend their conclusions before a court. AI models applied in forensic examination can acquire bias in training data, and consequently, make discriminatory or false forensic conclusions. Courts have to determine whether AI-based forensic methods are fair and not discriminatory[40].

7.2. Ethical and Legal Governance for AI in Forensics

It is important to develop strong frameworks of AI transparency and accountability to meet legal and ethical issues. Important governance practices are explain and interpretability standards, human review of AI-led investigations, self-auditing of AI forensic systems, and establishing trust in AI-led forensic investigations through legal and regulatory protections. Explainability and interpretability standards: Forensic tools based on AI should be designed with explainability in mind, where forensic experts and lawyers can witness AI-driven conclusions. Legislation should ensure that AI models generate interpretable forensic results. Human oversight of AI-driven investigations: AI should support forensic investigators, not replace them. Regulators' policies should give assurances of human oversight of AI-driven forensic investigations where core forensic conclusions are

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[39] Simson L. Garfinkel, *Digital Forensics Research: The next 10 Years*, 7 DIGITAL INVESTIGATION S64 (2010).

[40] Shubham Handa & Dr Shailja Thakur, *ROLE OF ARTIFICIAL INTELLIGENCE IN ADMISSIBILITY OF ELECTRONIC EVIDENCE* (2024).

reviewed by experts. Auditing AI forensic systems alone: AI-driven forensic tools should be audited periodically to determine if they are biased, accurate, and aligned with legal requirements.

7.3. Building Trust in AI Forensics Through Legal and Regulatory Measures

Establishing trust in AI forensic analysis can be supported through legal and regulatory protections like AI Ethics Committees, explainable AI decision-making, and global cooperation on AI forensic law.

In summary, AI-based digital forensics offers promise and as challenges in legal and regulatory environments. While AI improves forensic efficiency, accuracy, and automation, it also presents questions of evidentiary admissibility, algorithmic bias, and legal accountability. Global and regional regulations like GDPR, CCPA, and the EU AI Act shape the manner in which AI forensic tools are created, deployed, and regulated[41]. Legal issues regarding AI transparency, forensic chain of custody preservation, and due process rights need to be resolved through ethical and legal governance mechanisms[42]. In the near future, the development of explainable AI standards, independent forensic audits, and global regulatory harmonization will be essential in establishing confidence and ensuring fairness in AI-based forensic inquiries[43].

8. Conclusion

The application of Artificial Intelligence (AI) in digital forensics is a paradigm shift in cyber threat discovery, investigation, and prevention. As cybercrime techniques evolve over time, conventional forensic techniques fall short in terms of speed, intelligence, and scale of contemporary cyberattacks. Forensic tools empowered by AI provide data analysis, anomaly detection, and predictive threat intelligence by automation, allowing forensic examiners to detect, monitor, and counter cybercrime more effectively. With these improvements, however, come a number of challenges and concerns of ethics that need to be addressed to make the application of AI in digital forensics responsible and legally valid.

This chapter weaves together key findings from the above discussions, highlighting the situation of AI today in digital forensics,

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[41] Martin Ebers et al., *The European Commission's Proposal for an Artificial Intelligence Act—A Critical Assessment by Members of the Robotics and AI Law Society (RAILS)*, 4 J 589 (2021).

[42] The EU General Data Protection Regulation (GDPR), SPRINGERPROFESSIONAL.DE, https://www.springerprofessional.de/en/the-eu-general-data-protection-regulation-gdpr/13934140 (last visited Apr 1, 2025).

[43] Joy Buolamwini & Timnit Gebru, *Gender Shades: Intersectional Accuracy Disparities in Commercial Gender Classification*, *in* PROCEEDINGS OF THE 1ST CONFERENCE ON FAIRNESS, ACCOUNTABILITY AND TRANSPARENCY 77 (2018), https://proceedings.mlr.press/v81/buolamwini18a.html (last visited Apr 1, 2025).

the issues and ethical concerns, and the future trends that will shape the discipline in the next couple of years.

8.1. Summary of Key Findings

- Emerging New Cyber Threats and the Urgency for AI-Based Forensic Capabilities
- Cyber-attacks have evolved from being simple malware and phishing to sophisticated ransomware, advanced persistent threats (APTs), and artificial intelligence-based cyberattacks.
- Conventional forensic techniques do not typically have the ability to effectively examine big, encrypted, and hidden datasets within a timely manner. Artificial intelligence provides a skilled and rapid response for forensic analysis.

8.2. Role of AI in Cybersecurity and Digital Forensics

- Artificial intelligence improves digital forensics by accelerating and making it more precise for collecting evidence, identifying patterns, and establishing cybercrime.
- Intrusion detection systems (IDS), real-time cyber threat intelligence, and anomaly detection need deep learning and machine learning algorithms and models.
- Artificial Intelligence-based forensic tools facilitate the analysis of mobile forensics, cloud forensics, and network forensics, thereby making it simple to trace cybercrime activity on online platforms.

8.3. Ethical and Legal Issues in AI-Based Digital Forensics

- Privacy and surveillance concerns: National security interests must be balanced by AI-based forensic tools with human rights to privacy.
- Algorithmic fairness and bias: AI systems inadvertently bring about bias, resulting in false accusations or discriminatory targeting of certain groups.
- Legal admissibility of AI-generated evidence: Most legal systems do not have well-defined frameworks for the admissibility of AI-based forensic evidence in court, and this raises due process, transparency, and accountability concerns.

8.4. Regulatory Frameworks and Policy Barriers

- International laws such as GDPR and CCPA have stringent data protection and privacy requirements for digital forensic analysis.

- The European Union Artificial Intelligence Act classifies AI-powered forensic tools as high-risk systems, thus requiring greater oversight and transparency.
- There is an increasing necessity for global cooperation to harmonize forensic artificial intelligence legislation and minimize legal disputes in global cybercrime investigations.

8.5. Future Directions: AI and Beyond in Digital Forensics

As the impact of artificial intelligence on digital forensics expands, emerging technologies and methodologies will shape forensic investigations in the coming years.

1. Next-Generation AI-Driven Forensic Tools
    - Explainable AI (XAI): Forensic AI in the future will be required to be transparent and interpretable so that forensic experts can comprehend and verify AI-based conclusions.
    - Federated Learning for Cybersecurity: AI models will use federated learning more and more, which enables forensic analysts to train AI models over distributed datasets without compromising sensitive data privacy.
2. AI-Based Behaviour Analytics: The latest AI-based algorithms will incorporate behavioral biometrics to identify cybercriminals as they monitor the keystrokes, mouse movements, and digital habits.
    - The Impact of Quantum Computing on Digital Forensics The arrival of quantum computing will make existing cryptographic methods obsolete, and forensic examiners will need to create quantum-resistant forensic methods.
    - Quantum AI algorithms are capable of revolutionizing forensic investigations by drastically accelerating data decryption, pattern identification, and deep forensic examination.
3. Blockchain and AI for Tamper-Proof Evidence
    - The convergence of blockchain technology with artificial intelligence-based forensic techniques will help ensure the integrity and integrity of digital evidence.
    - Smart contracts may be used to automate evidence verification and chain-of-custody documentation to minimize the chances of evidence tampering in forensic investigations.

4. Ethical AI Development and Governance

    - Future policy should place strict ethical requirements on artificial intelligence development to guarantee that AI forensic software is consistent with the ideals of fairness, accountability, and transparency.
    - Regulatory bodies will implement third-party audits and certification of AI-enabled forensic devices on the basis of legal and moral standards.

8.6. Conclusion Remarks

The future of digital forensics is inextricably intertwined with the fast pace of AI and emerging technologies. AI-powered forensic solutions will continue to transform cybercrime investigations, but their use must be guided ethically, governed by law, and constantly improved. Governments, researchers, and forensic professionals must collaborate to develop responsible AI solutions, making digital forensics fair, transparent, and accurate in the battle against cybercrime. As technology evolves, forensic science will be ushered into a new age where automation, intelligence, and security meet to safeguard digital environments. But the success of AI in digital forensics will finally depend on our ability to strike a balance between innovation and ethical principles, legal compliance, and human oversight.

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Custody Disputes in the Contemporary Era: A Comparative Analysis Between Hindus and Muslims

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Abstract

In this essay, the development of law of guardianship and custody in India has been critically analyzed keeping in view the interface between personal laws, constitutional values, and international human rights norms. The analysis traverses the routes through which Hindu and Muslim personal laws have traditionally placed the father as the sole guardian, typically curtailing the mother's role in matters concerning custody. These patriarchal origins have been weakened in time through increasingly more liberal judicial constructions and judicial reform setting forth the child's best interest as the touchstone as it leads the decisions of custody.

It is also examined how the role played by international instruments, and more specifically by the United Nations Convention on the Rights of the Child (UNCRC), to a more child-centered and equitable legal system of India. Joint custody and coparenting reflect a trend by courts towards equality, which has reflected the directions that the rights approach to international development has pointed since its inception as one of the largest actors in delineating shifts in power relations.

Although much has been accomplished, the study proposes further statutory amendments to bring personal laws into sync with constitutional notions of justice and equality. Lastly, it finally proposes a gender-neutral, secular, and child-centric model of guardianship and custody in accordance with modern social values and changing family patterns.

1. Introduction

The idea of guardianship lies at the very center of demarcating the legal rights and obligations of parents and guardians with respect to

children. It protects, nurtures, and effectively safeguards the welfare of children by establishing definitive legal provisions in the form of residential rights. Guardianship in India is predominantly based on religious personal law, and therefore there are gigantic differences in the extent to which various communities acknowledge and implement guardianship and custody rights. Hindu and Muslim law in specific illustrate contrasting tendencies in these kinds of things due to centuries-long theology dogma, customary culture, and socio-legal evolution.

In Hindu law, the major law that presides over guardianship is the Hindu Minority and Guardianship Act, 1956. The father is recognized under this Act as the natural guardian of a child, while the mother becomes so only in exceptional situations, i.e., in the absence of the father. This is consistent with traditional patriarchal society in which paternal ascendancy was ever given priority. But the changing legal culture, sparked by innovative judicial constructions, has increasingly been concerned with placing paramountcy on the best interests of the child in custody cases. Courts have been the prime mover in advancing the welfare principle, and thus curbed strict enforcement of gender-stereotypical guardianship norms.[1]

Contrary to this, Muslim guardianship laws are premised on religious authority in the form of Hadith and Quran. Islamic law differentiates between two concepts, namely guardianship (wilayat) and custody (hizanat). Fathers are usually the natural guardians of the child's financial and legal affairs, while custodial rights are given to mothers, particularly to younger children.[2] This differentiation emanates from religious interpretations that aim to reconcile parental roles in conformity with Islamic doctrines. Indian courts, however, despite respect for religious teachings, have often interfered to advance the child's best interests, particularly where a rigid application of traditional principles might result in undesirable outcomes for the minor.[3]

2. The Changing Dynamics of Marriage and Custody Disputes

In India, traditionally marriage is perceived as a spiritual institution, being culturally and socially sacred, representing a legally as well as morally valid union among individuals. Still, in present-day society, there are plenty of couples suffering from marital issues, resulting in

[1] 'White Black Legal' <https://www.whiteblacklegal.co.in/details/comparative-study-on-guardianship-of-minority-in-hindu-muslim-and-christian-law-by---vignesh-kumar-m> accessed 1 February 2025

[2] chhabra saksham, 'Hindu Law and Muslim Personal Laws - Difference under the Indian Law' (*iPleaders*, 20 June 2018) <https://blog.ipleaders.in/hindu-law/> accessed I February 2025

[3] Srivastava M, 'Comparative Analysis of Guardianship Laws in India' (10 January 2012) <https://papers.ssrn.com/abstract=2149887> accessed 1 February 2025

rising conflicts. Among the most debatable things coming out of such conflicts is child custody.[4]

Children are often considered the foundation of the nation's future. While some children are nurtured with utmost care, receiving all necessities for their development, millions of others face abandonment each year. These deserted children frequently fall victim to sexual abuse, human trafficking, and abduction. It is rare for such vulnerable children to be rescued and placed in the care of NGOs or child welfare homes, where they could receive proper protection and support.[5]

3. Guardianship and Custody from a legal and social point of view

The idea of guardianship is intrinsically tied to custody in children, the best interest of the child always being the most important factor when it comes to legal cases. Guardianship includes the duty to bring up a child, ensure their physical and emotional health, and make choices that will ensure their future safety. The guardianship normally results when a child does not have the capacity to take care of themselves or to manage their assets[6]. A guardian, therefore, is an individual entrusted with making crucial decisions regarding a child's education, health, and welfare. In essence, a guardian is someone who assumes legal responsibility for a minor or a person unable to manage their own affairs.[7]

4. Evolution of Guardianship Under Hindu Law

Ancient Hindu law, as understood from the Dharmashastras, did not discuss at length the institution of guardianship. Its focus was on the protection of a minor's property and not on the welfare of the child. This lack of elaborate legal provisions was partly because of the prevalence of joint families, which provided for the upbringing of children after the death of their natural father. In those instances, the task of raising the child fell to the Karta (the head of the family). When the child was outside of the joint family set-up, the welfare of the child

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[4] 'Historical Evolution | Reforms in Guardianship and Custody Laws in India | Law Commission of India Reports | Law Library | AdvocateKhoj' <https://www.advocatekhoj.com/library/lawreports/reformsinguardianship/2.php?Title=Reforms%20in%20Guardianship%20and%20Custody%20Laws%20in%20India&STitle=Historical%20Evolution> accessed 8 February 2025

[5] Krishnan N, 'Legal Framework Of Child Custody And Guardianship In India' (*Rest The Case*) <https://restthecase.com/knowledge-bank/legal-framework-of-child-custody-and-guardianship-in-india> accessed 8 February 2025

[6] 'Child Custody and Guardianship Laws in India: A Overview' (8 October 2024) <https://ksandk.com/private-clients/child-custody-guardianship-laws-india/> accessed 10 February 2025

[7] IOSR Journals, 'Child Custody Laws in India: A Comparative Analysis of Personal Laws and Judicial Trends' (2015) 20(7) IOSR JHSS 39-58 https://www.iosrjournals.org/iosr-jhss/papers/Vol20-issue7/Version-6/G020763958.pdf accessed 10 February 2025

was monitored by the child's Guru within an ashram. Meanwhile, the king as the custodian in chief took charge of the property of minors.[8]

The contemporary notion of guardianship emerged in the British colonial period, when courts instituted legal provisions that regulated guardianship. It was settled that, according to Hindu law, the father was the natural guardian of a child, and after his death, the mother became the guardian.[9] The Guardians and Wards Act, 1890, vested the power to appoint guardians in district courts, giving a formal touch to the legal process. The Hindu Minority and Guardianship Act, 1956, codified the then prevalent Hindu laws on guardianship and instilled a methodical approach to parental rights and duties.

Guardianship of Minor Children: A journey from Patriarchy to Child Welfare

Historically, guardianship was viewed as an extension of patriarchal power. At present, legal interpretations focus on the role of guardianship as a measure to ensure a child's care and protection. The Hindu Minority and Guardianship Act, 1956 defines a minor as any person under the age of 18 according to Section 4(b). Minors are viewed as being physically and mentally immature and in need of guidance, care, and protection.[10] A guardian, legally, is a person who takes care of the well-being and property of the minor and makes decisions on their education and health.

Since child welfare is of utmost concern, contemporary legislation identifies guardianship mainly as a means of securing the best interests of the child. Guardianship may be classified into various forms:

1. **Natural Guardianship** – The father is the first guardian in the primary guardianship rights, followed by the mother. When the child is illegitimate, the mother enjoys the first guardianship rights with the father being the second guardian.[11]

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[8] 'Reforms in Guardianship and Custody Laws in India | Law Commission of India Reports | Law Library | AdvocateKhoj' <https://www.advocatekhoj.com/library/lawreports/reformsinguardianship/index.php?Title=Reforms%20in%20Guardianship%20and%20Custody%20Laws%20in%20India> accessed 10 February 2025

[9] Ravneet Kaur, 'Legal Aspect of Guardianship under Hindu Jurisprudence: An Analysis' (2021) 20(1) Ilkogretim Online - Elementary Education Online 1953 https://www.bibliomed.org/mnsfulltext/218/218-1617701784.pdf?1741333234 accessed 11 February 2025.

[10] 'Historical Evolution | Reforms in Guardianship and Custody Laws in India | Law Commission of India Reports | Law LibraryAdvocateKhoj'<https://www.advocatekhoj.com/library/lawreports/reformsinguardianship/2.php?Title=Reforms%20in%20Guardianship%20and%20Custody%20Laws%20in%20India&STitle=Historical%20Evolution> accessed 8 February 2025

[11] Rai D, 'Hindu Minority and Guardianship Act, 1956' (*iPleaders*, 27 June 2024) <https://blog.ipleaders.in/overview-of-the-hindu-minority-and-guardianship-act-1956/> accessed 11 February 2025

2. **Testamentary Guardianship –** A father can appoint a guardian in a will, and on his death, the appointed guardian takes over. Traditionally, this provision enabled fathers to override the mother's right of guardianship. Amendments in the law now enable mothers to have equal powers to appoint testamentary guardians.

3. **Court-Appointed Guardianship** – In the event of death or incapacity of the two parents, the district court under the Guardians and Wards Act, 1890, can also appoint a guardian in the best interest of the child. Chartered high courts also possess inherent powers to appoint guardians where required.[12]

These provisions in law reflect the transformation of the guardianship system—away from the patriarchal philosophy of control towards a welfare-oriented, child-friendly approach emphasizing protection.

The institution of guardianship has changed considerably across centuries, influenced by legal tradition, socio-cultural changes, and shifting judicial attitudes. Traditionally, common law held the father to be the sole absolute guardian of his children, bestowing upon him absolute power over their education, religion, property, and upbringing. The mother was subordinated in a similar fashion, as part of the general legal and social structures that refused independent legal personality to women.[13] Throughout the years, legislations and judgments have shaped this patriarchal framework, substituting paternal jurisdiction with the primacy of child interest. This chapter explores the history of the evolution of guardianship legislation, considering the salient legal advancements in England and India, in addition to tracing out international human rights law principles and recent tendencies of joint custody.[14]

5. Traditional Common Law Approach to Guardianship

In the classic common law paradigm, the father was seen as being the only guardian of his offspring, with unfettered power over their person and property. His powers pervaded every domain of the life of the child, from their education to finance and even to moral development. The

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[12] Indulia B, 'Maintenance Under the Guardians & Wards Act, 1890: An Interpretative Analysis' (*SCC Times*, 15 January 2025) <https://www.scconline.com/blog/post/2025/01/15/maintenance-under-the-guardians-wards-act-1890-an-interpretative-analysis/> accessed 10 February 2025

[13] Shalu Nigam, 'Guardianship Law in India: Examining The Principle of the Best Interest of Minors and the Rights of Single Mothers as Sole Guardians' (2023) SSRN Electronic Journalhttps://www.researchgate.net/publication/369106541_Guardianship_Law_in_India_Examining_The_Principle_of_the_Best_Interest_of_Minors_and_the_Rights_of_Single_Mothers_as_Sole_Guardians accessed 10 February 2025

[14] Punj A and Samarnath N, 'Guardianship of Hindu Minor: A Critique of the Law' (2021) 63 Journal of the Indian Law Institute 172 <https://www.jstor.org/stable/27248385> accessed 11 February 2025

courts did not lightly set aside paternal discretion, as also was the case with the overall patriarchal institutional order of society. Mothers were legally dependent upon their husbands, with no distinct rights over children.

This strict paternal guardianship model was firmly rooted in the legal systems of most English common law-influenced nations. It was not until statutory reforms emerged that the legal position of mothers started to shift, though slowly.[15]

6. Early Legislative Reforms in England

The development towards accepting the rights of mothers in guardian cases is traceable to a chain of English legislative developments from the Custody of Infants Act, 1839. The Act gave the courts a discretion to give custody of infant children to mothers for the very first time confronting the absolute discretion of the fathers. But the father's rights were also still predominant, and the mother's rights in custody continued to be drastically curtailed.[16]

Follow-up legislative reforms continued to erode paternal dominance. The Custody of Infants Act, 1873, further protected maternal custody rights by enabling mothers to be awarded custody up to the time when the child reached the age of sixteen. The Guardianship of Infants Act, 1886, came as a major step forward by clearly establishing the equal rights of mothers in matters pertaining to custody and guardianship. It enabled mothers to be made testamentary guardians and entitled them to rights over access and custody of children.[17]

The Guardianship of Infants Act, 1925, furthered the principle of equality by requiring that courts consider the welfare of the child to be the paramount consideration in disputes relating to custody. This principle was further supported by the Guardianship of Minors Act, 1973, which, in effect, put both parents on equal footing and enabled mothers to exercise parental authority independently of fathers.

In India, colonial rule enacted the Guardians and Wards Act, 1890, which expressed largely the usual law principles of paternal dominance. The Act ordained that courts of justice should consider the

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[15] **Law Commission of India,** *Report No. 257: Reforms in Guardianship and Custody Laws in India* (May 2015) https://highcourtchd.gov.in/sub_pages/left_menu/publish/year_books/Report%20No.257%20Custody%20Laws.pdf accessed 12 February 2025.

[16] Grimes L, 'Denied Paternity: Parental Rights and the Guardianship of Infants in Ireland, 1937–1964' (2022) 47 Journal of Family History 193 <https://journals.sagepub.com/doi/10.1177/03631990211020347> accessed 20 February 2025

[17] thelegalquorum, 'The Issue of Child Guardianship in India: Reference to Personal Laws' (*The Legal Quorum*, 5 September 2024) <https://thelegalquorum.com/the-issue-of-child-guardianship-in-india-reference-to-personal-laws/> accessed 13 February 2025

welfare of the minor but also reinforced domination of the rights of the father in guardianship and custody matters[18]. Sections 7 and 17 of the Act acknowledged the significance of child welfare, but this was in effect overruled by Sections 19 and 25, which ensured the paramountcy of the father in matters of guardianship.

With the independence of India, there were legal reforms that brought the focus from paternal rights to child welfare. The most important reform in this context was the passage of the Hindu Minority and Guardianship Act, 1956. The said law clearly gave the provision that the welfare of the minor should be the overriding consideration of protection disputes, thereby nullifying the father's authority.[19]

7. Best Interest of the Child in International Human Rights Law

The doctrine of child welfare has also received firm endorsement in global human rights law. The United Nations Convention on the Rights of the Child (CRC) which was adopted in 1989 states that "in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, legislative bodies, administrative authorities, the best interests of the child shall be a primary consideration."[20]

The CRC also emphasizes the shared responsibility of parents to raise a child. Article 18 of the Convention obliges State Parties to ensure both parents have shared responsibilities in raising and growing the child. In addition, Article 9 of the Convention obliges a child not to be separated from his/her parents unless it is in the child's best interests, e.g., due to neglect or abuse.

The Committee on the Rights of the Child, in General Comment No. 14, has defined the best interest principle, citing many factors for determining a child's best interests. These are the child's views, identity (gender, cultural background, personal beliefs), family environment, safety, and education and access to health care. The best interest principle is meant to be flexible and versatile in order for courts to make rulings based on the unique facts of each case.

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[18] Child Custody and Guardianship Laws in India: A Overview' (8 October 2024) <https://ksandk.com/private-clients/child-custody-guardianship-laws-india/> accessed 13 February2025

[19] 'Evolution of Family Law in India: Key Developments, Challenges, and the Path Toward Gender Justice and Equality | Legal Service India - Law Articles - Legal Resources' <http://www.legalserviceindia.com/legal/article-18916-evolution-of-family-law-in-india-key-developments-challenges-and-the-path-toward-gender-justice-and-equality.html> accessed 13 February 2025

[20] **National Human Rights Commission, India**, *United Nations Convention on the Rights of the Child (UNCRC) 2020* (NHRC, 2020) https://nhrc.nic.in/sites/default/files/UNCRC_2020.pdf accessed 13 February 2025

Criticism of the Best Interest Standard

While universally embraced, the best interest of the child standard has been criticized on two important grounds. It is inherently ambiguous, and it is difficult for involved parents who are fighting custody battles to predict court decisions. That ambiguity can lead to prolonged legal battles and uncertainty for both parents and children. A few law scholars have argued that more rules and clear specification of elements to be taken into account in determining child custody might provide greater certainty and consistency.[21]

Second, the best interest criterion has been faulted for concentrating solely on the child's best interests and not parents' rights and interests. Parents' well-being has been described as being also paramount to give the child a stable and nourishing environment. Parents' interests have been attempted to be incorporated into custody determination by some courts, but the issue remains unresolved.

8. Joint Custody: The New Trend

In the last few decades, there has been an increasing movement towards endorsing joint custody as the default preference in most courts, and this is only increasing with the years. Research has found that children perform better when the two parents are still a live part of their lives even after divorce. Many Western nations, such as the United States of America, Canada, and Australia, have also adopted legislative presumptions of joint custody.[22]

Yet joint custody arrangements are not without controversy. In domestic violence cases, for example, a presumption of joint custody can put the victimized parent—usually the mother—in danger of further abuse. Joint custody, many legal professionals say, should not be ordered in cases of domestic violence.

In India, the LCI released a Consultation Paper in 2014 on Adopting a Shared Parenting System. The paper considered shared parenting regimes in other nations and investigated whether joint custody laws could be introduced in India. Upon wide-ranging consultations with legal professionals, scholars, and child care agencies, the Commission suggested that India ought to shift towards a more equitable system of custody such that both parents are substantially involved in the life of the child.[23]

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[21] 'CHILD CUSTODY: BEST INTEREST VS. PARENTAL RIGHTS » Lawful Legal' (26 December 2024) <https://lawfullegal.in/child-custody-best-interest-vs-parental-rights/> accessed 13 February 2025

[22] '3 Modern Trends in Child Custody Agreements - Lawyer Monthly' (*https://www.lawyer-monthly.com/*) <https://www.lawyer-monthly.com/2024/03/3-modern-trends-in-child-custody-agreements/> accessed 13 February 2025

[23] Mandhani A, 'Law Commission of India Invites Comments on Adopting "Shared Parenting" in India' (13 November 2014) <https://www.livelaw.in/law-commission-india-invites-comments-adopting-shared-parenting-india/> accessed 13 February 2025

The evolution of guardianship laws reflects broader shifts in legal and social norms, from a patriarchal model of paternal supremacy to a child-centric approach emphasizing welfare and best interests. In England and India, legislative reforms have gradually dismantled the absolute authority of fathers, recognizing the equal rights of mothers and prioritizing child welfare. International human rights law particularly the CRC has reinforced these principles, advocating for a balanced and flexible approach to custody determinations.[24] The increasing trend towards joint custody emphasizes the importance of legal regulations that meet the evolving family structure while protecting the best interests of the child. Yet, the controversy surrounding custody laws is dynamic with discussions persisting on the best legal standards for promoting the welfare of children and the rights of parents.

9. Legal Framework regulating custody and guardianship

The words guardianship and custody, though used interchangeably in most cases, have different legal implications. While guardianship relates to the law governing a child's person and property until he or she comes of age, custody means the child's physical custody and welfare, looking after his or her overall upbringing.[25]

Guardianship is typically until the minor attains majority, but custody is a pressing matter as far as personal care and emotional support are concerned. A guardian possesses the authority to manage the minor's property, unlike a custodian, who lacks the same powers. Such legal powers are accompanied by attendant responsibilities. In cases where both parents are available, guardianship and custody disputes are hardly ever encountered. But when parents divorce, the law must step in to determine guardianship and custody rights. This raises fundamental legal questions: who is a guardian, who should have custody, and what are the legal rights of women on guardianship and custody[26]

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[24] Shalu Nigam, 'Guardianship Law in India: Examining the Principle of "Best Interests" of Minors and the Rights of Single Mothers as Sole Guardians' (2024) 31(3) Indian Journal of Gender Studies 308 https://www.researchgate.net/publication/382829765_Guardianship_Law_in_India_Examining_the_Principle_of_'Best_Interests'_of_Minors_and_the_Rights_of_Single_Mothers_as_Sole_Guardians accessed 13 February 2025.

[25] Krishnan N, 'Legal Framework Of Child Custody And Guardianship In India' (*Rest The Case*) <https://restthecase.com/knowledge-bank/legal-framework-of-child-custody-and-guardianship-in-india> accessed 13 February 2025

[26] Child Custody and Guardianship Laws in India: A Overview' (8 October 2024) <https://ksandk.com/private-clients/child-custody-guardianship-laws-india/> accessed 13 February 2025

10. Women's Rights to Custody and Guardianship under Muslim Law

The mother, in accordance with Muslim law, has custody of a child in the majority of circumstances, while guardianship, especially of a legitimate child, is generally given to the father. The custodial mother is called a Hazina. Her right of custody over a daughter comes to an end under Hanafi law when the daughter reaches age at puberty. In the event of a male child, custody would be transferred to the mother until the boy reaches the age of seven years, and then the custody would be transferred to the father as his own right.[27] But Shia law differs on this aspect under which the mother has custody of a girl up to the age of seven and a boy up to two years of age, after which the custody reverts to the father. Where the mother has passed away or is legally incapacitated, Hanafi law prescribes that the custody right passes over to the maternal grandmother or maternal great-grandmother, then the paternal grandmother or great-grandmother, then to the sister of the sister or daughter of the sister, and finally to the maternal and paternal aunts. In Shia law, by contrast, custody falls to the father, and on his default, to the paternal grandfather.

With regard to guardianship, **Muslim law** recognizes three distinct types:

1. **Guardian of the person (Walayat-e-Nafs)**
2. **Guardian of property (Walayat-e-Mal)**
3. **Guardian of marriage (Walayat-e-Nikah)[28]**

The mother is usually not entitled to be a guardian in any of these roles. Rather, the father, then his male relatives, take guardianship roles. This difference in the rights of fathers and mothers points to an important gender difference in Muslim law of guardianship. However, the father, as the legal guardian of property, may in his discretion name the mother as a testamentary guardian by a will. In such situations, she can take charge of the property of the minor.

Apart from these conventional legal provisions, the courts have often appointed or ordained the mother as a guardian of her child's property under the Guardians and Wards Act, 1890 (GWA), whenever

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[27] Aishwarya Agrawal, 'Guardianship under Muslim Law' (2024) https://lawbhoomi.com/guardianship-under-muslim-law/ accessed 20 February 2025

[28] Author Unknown, *Women's Right to Guardianship and Custody* (e-PG Pathshala, INFLIBNET) https://epgp.inflibnet.ac.in/epgpdata/uploads/epgp_content/women_studies/gender_studies/07._women_and_law/18._womens_right_to_guardianship_and_custody/et/8052_et_et_18.pdf 15 February 2025.

the welfare of the child required it. In such cases, minority continues till the age of 21 for the child.

11. Conclusion

The Indian law of guardianship and custody continues to be in controversy at the crossroads, replete with a pervasive movement away from traditional legal models towards child-centered and less-discriminatory designs. A critical examination of Hindu and Muslim personal laws reveals that both codes, while articulated within different theological and cultural contexts, have been predominantly patriarchal in orientation for decades. Guardianship has, in most instances, been assigned to the father and left the mother in the role of a natural custodian in exceptional or temporary cases. This model has had extensive implications for women's legal status, potentially making them powerless in decisions made concerning their own children.

Contemporary legal development and judicial construction are, however, progressively undermining this stereotype. Indian courts, particularly in its milestone judgements, have begun prioritizing the child's interest above provisions of personal law. The courts have been finding it more favorable to grant mother custody, to sanction joint custody, and to even question continuing working personal legislations where these are against the constitutional guarantee of equality and justice. Statutory enactments like the Guardians and Wards Act, 1890 and Hindu Minority and Guardianship Act, 1956, while still having patriarchal undertones, have themselves been interpreted and clarified in light of evolving social realities and the touchstone of best interest of the child.

Human rights covenants at an international level, particularly the United Nations Convention on the Rights of the Child (UNCRC), have also played a significant role in reorienting the normative sphere. India's accession to these treaties reflects its formal commitment to safeguard the rights of the child, among which are their right to be heard in judicial proceedings concerning their custody, to grow up in a healthy and secure environment, and to maintain personal relations with both parents. While enforcement and consistency of practice remain issues to be resolved, these guidelines constitute a beacon of progressive reform.

Additionally, the increasing judicial endorsement of joint custody and shared parenting is a fresh deviation from the past sole-custody model. The new trend, so far not yet codified fully in Indian law, is an articulation of mature understanding of the modern familial forms and the child's psychological needs. It is supportive not merely of the child's psychological health, but also acknowledges the evolving role of each parent beyond the patriarchal models of breadwinner and caretaker.

Overall, while the path to a more equally just regime of custody and guardianship in India remains to be achieved, the trend is positive. Legislative reform, judicial activism, and enhanced public awareness are all moving in the direction of a constitutional, principles-based, best-practice-and-international best-practice-guided, and practice-guided regime of law that is increasingly being put into conformity with constitutional norms, international norms, and family realities. The last objective, nonetheless, will necessarily be to bring Indian custody and guardianship legislation truly child-oriented, gender-neutral, and capable of capturing the diversities and dynamics of Indian society. This will perhaps not merely be an exercise of legislative revision but a shift in broad cultural attitude toward parenting as an collective, group, cooperative, and dynamic endeavour.

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Cult And Crime: The Dark Intersection

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Abstract

Cult, where spirituality intersects with sinister activities. The blurred lines between faith and manipulation leads to heinous and unimaginable crime. India, a land of spirituality had seen the rise in godmen, messenger of God. Who knew, the people we worship as godmen would have a very dark and scary side to their beliefs and faiths. It is very tough for people to trust their religious beliefs because people like them. Knowing how wrong the whole concept of a cult is, people still easily get manipulated and become a part of them. The power control that these godmen derive from their followers is used for the worst of cases but goes unnoticed, merely because of the blind faith and fear instilled in their followers. Through this paper we put light on how godmen use tactics of fear and manipulation to control their members and how fear, manipulation and authority can compel followers to commit crimes in blind obedience.

Key words: Cult, Victimology, Manipulation, Mental control

1. Introduction

Religion is a safe place for a lot of members of society. Faith is the water to the seed of spirituality, but what happens when the wrong people sow this seed? What if this safe space is where outrageous crimes take place? A country that is a cradle of ancient philosophy and wisdom alongside its rich cultural heritage carries the paradox of unwavering belief and blind faith, often a reflection of the deep-seated spiritual society. Religion, 'the opium of the masses', an ideology established by Karl Marx[1], can not be denied in India's case. India harbors communities of different backgrounds and is a web of cultures. It is a spiritual land, the birthplace of four of the world's widely followed religions. India has maintained itself to be a secular

[1] Esther Oluffa Pedersen, *RELIGION IS THE OPIUM OF THE PEOPLE: AN INVESTIGATION INTO THE INTELLECTUAL CONTEXT OF MARX'S CRITIQUE OF RELIGION*, 36, HISTORY OF POLITICAL THOUGHT, 354-387 (2015)

nation since its independence. The continued evolution of the ideology of secularism as a backdrop of stupendous diversity acts as a golden chapter that displays triumph over the tension of the past. SR Bommai v. UOI[2] demonstrates secularism in the facets of the legal framework. This acted as a catalyst for the admissibility of the 42nd Amendment. Cults are not concentrated on affecting people of a particular background, but religious manipulation happens across religions and geographical boundaries. Cult is a matter of interest to several scholars since it is a cumulation of psych- socio- political issues.

Not all who preach purity practice it. The blind faith towards godman, the uncanny aspiration of spiritual enlightenment and nothing less than fear. They feed on fear. Fear of going against the god or the men sent by God. A godman is often advertised as to be a man sent as a messenger of God or a special aid of God, with mystical powers and charisma. They work on thin lines between divine and mortals, doubts and relevance. This faith and enchantment date back to ancient origins. The Guru Shishya Parampara is rooted back to 5000 years of ancient Indian history. This embodies the relationship between a guru and shishya or the modern-day teacher – student, which often is sacred and that filled with respect and gratitude. The general trend noticed is the recent increase of conman disguised as spiritual leaders.

2. Understanding Cult

2.1 What Is Cult?

The texts of all religions states that miraculous people sent by God as his men. A man having mystical powers. These people make their way through herds of helpless populace in search a safeguard mechanism. "Religion becomes an addiction when it is used to control and manipulate other people and/or at the expense of inappropriate behavior, such as taking care of oneself and one's responsibilities both emotionally and financially (Singer, 1995, p26)[3]". Cult is a charismatic group that established divergent views against commonly followed practices. Since past few years cults have resurfaced as a common problem. The leader utilizes guilt enabled within its subjects. The core element of cults includes firstly an unquestioning dedication towards the leader, and his idea. Secondly, this commitment is achieved through manipulation with establishment of fear through various forms of punishment or harm. Cults can be known as a system where rituals are honed by crimes.

The religious perspective of cult is that it goes against the dogmatic principles or the ritualistic process of several religions. Cults are often purely based on manipulation, of people who feel dejected by

[2] S.R. Bommai V. UOI, AIR 1994 SC 1918

[3] Singer, Margaret Thaler, CULT IN MIDST: THE HIDDEN MENACE IN OUR EVERYDAY LIVES, 26-28 (1995)

the mainstream religions. The political perspective establishes that the members of the charismatic group or in short, the cult, denies the standard political ideas. Sociological perspective is amongst the most highlighted and discuss of all perspectives. Several scholars argued that cult is such a group whose foundation is based on the manipulation of its followers to do and go against the rules of society and encourage them to abandon the conventional or mainstream beliefs and values

The prominent feature of cult is that it is well organized structure. Cults have a clear purpose, clear idea to get maximum efficiency alongside lure people into that cult. Cults are centered around a strong leader who through coaxing their members make them useful for their end purpose. The strict hierarchy and rules help efficient functional divisions. Strong vertical management caters to serving personal purpose of leaders. Concealment is a foundational activity conducted by a cult. They conceal their heinous crimes in the shadow of religion. The organized structure often used hidden language to communicate in order to conceal information from the victims. Violence and punishment are used to intimidate its members from reporting the injustice.

2.2 Mental And Psychological Aspects of Cult Influence

Scholars and authors around the globe widely discuss whether cult and the beliefs they establish should be included within the ambit of delusional disorders. Often cult members are said to possess some kind of psychotic and cognitive disorder. According to [4]William J Newman, cult can act as a catalyst or a backdrop for the development of psychological disorders. These matters are important to discuss and regulate while evaluating a sentence in case of possible cult intervention and when they plea of not guilty by reason of insanity.

Control over the mental capacity of subjects in cult is the first step. Subjects who give up their psychic control are weak. Weak enough to not understand morals and rules. A renowned sociologist and psychologist, [5]Steven Hassan analyzed psychological control as a backdrop of cult. He introduced the theory of 'BITE' where 'B' stands of behaviors control that talks about the cult's hold over behavior of its subjects. Through the rigorous use of reward and punishment, this control is intensified. The behavior aligned with the cult's purpose is rewarded, while behavior opposing it is punished. 'I' stands for information control. External information of any kind is prevented by setting barriers that are vital to control as to not disturb mental

[4] William J Newman, *Folie a deux and the courts,* J AM ACAD PSYCHIATRY LAW, 369–375, (2010)

[5] Steven Hassan, *THE BITE MODEL OF AUTHORITARIAN CONTROL: UNDUE INFLUENCE, THOUGHT REFORM, BRAINWASHING, MIND CONTROL, TRAFFICKING AND THE LAW A dissertation submitted*, (2021)

control. 'T' denotes thinking control. Cults not only control the body but more so the mind. Cults will continuously try to inculcate new and twisted reasoning, morals and values into the mindset of members. The use of hypothesis also comes under this amidst. 'E' denotes emotional control with mental control inherently comes the control over emotions. Emotions like fear, guilt and sense of inferiority. This all in all is known as mental abduction. With the continuous and long use of 'BITE' theory, ordinary people are converted into cult members who can be said not to be in their own senses, that is, control over mental capacity, behavior, thought, emotions an information that one consumes.

The other possible way of mental control is the Bandwagon effect[6]. To understand this effect imagine you are at a food court, where you notice one particular stall has a huge line of people waiting to order while other stalls are comparatively empty. You assume that the food must be amazing since there are so many people waiting and hence you decide to join without an idea of whether it is good or bad. In short bandwagon effect is following the herd or hopping on trends assuming the crowd must be right. Cult members present their obedience to authority by the use of pressure and force created by the conformity groups.

Narcissism and psychopathy are just few dark traits of the leader. Many scholars present that most cult leaders often possess anti-social personality. [7]The criminal behavior alongside lack of remorse and absence of empathy exhibits anti-social behavior. Serious events or childhood trauma plants the seed of antisocial behavior in most of the cult leaders. The extremist thoughts lack education and cultural quality, this seed of anti-social personality grows into a plant.

Cult members show high levels of neurotic tendency that denotes less control over your emotions and highly triggered by external stimulus.[8] They often have low consciences which results in very little self-control, poor will power and impulsive behavior which makes it easier for the cult leaders to instigate them to do crime. The belief in supernatural ideas is symbolic of the twisted value orientations that makes them aligned more with the idea of idealism.[9] They prefer to attribute all the reasoning as a result of act of God or external existence. Irrational belief and defective cognitive ability make

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[6] Sharon K. Farber, *Cults and the Mind-Body Connection*, PSYCHOLOGY TODAY (Jan. 17, 2025 8:42 PM) https://www.psychologytoday.com/intl/blog/the-mind-body-connection/201407/cults-and-the-mind-body-connection

[7] Ruihan Chen, A*nalysis on the Features of Cult Crimes and Its Governance,* ATLANTIS PRESS (Jan. 20, 2025, 11:34 PM), https://doi.org/10.2991/978-2-494069-31-2_172

[8] A Kiev , JL Francis, *Subud and mental illness: psychiatric illness in a religious sect*, 18, AMERICAN JOURNAL OF PSYCHOTHERAPY, 66-78 (1964)

[9] I.E. Farber, Harry F. Harlaw, Louis Jolyon West, *Brainwashing, Conditioning, and DDD (Debility, Dependency, and Dread),* 20, AMERICAN SOCIOLOGICAL ASSOCIATION, 271-285 (1957)

them an easy target for manipulation and brainwash. According to statistics 70% of cult members are women.[10] Who exhibit traits as mentioned above. Several reports also mention the members of cult are highly susceptible to external influence and hence most cult members come from rural backgrounds, where education or literacy levels and financial support is low.

2.3 How Does Cult Influence Behaviour

Godmen are the maven in mentalism. They play with the mental aspect of their members. The prime practice is of fearmongering, an approach that uses fear as a way to sway people. It causes people to take drastic decisions in situations of distress or terror, instead of a rational judgement, that results to an imbalance in outcome. Godman takes advantage of people by making false promises to provide solutions to their issues. [11]An evident practice of Dera, an organization, prominent in area of Punjab and Haryana, is where a guru gives his subjects lessons or advice. The importance of deras is now questioned. Several lower caste Hindus were linked with Sikhs to seek refugee from the discrimination they faced in Hindu community. Dera promoted equality and the gave a sense of equal standing to Dalit Sikhs. A prominent dera run by Ram Rahim known as 'Dera Sacha Sauda', raised questions on the validity of deras. [12]Author Vineetha Nangia elaborated on the power of baba. "They are great orators and good at the art of conning. They show concern, try and help their weak followers".

With heightening issues and burden on people, individual seek solace by talking to godmen or gurus. As Manohar Bhatia quoted "Today a godman is not just the miracle maker; he is also the distress reliver – a psychologist, the family consultant and the spiritual guide."[13]

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[10] Jemima Thackray, *Why are women more likely to join religious cults?,* THE TELEGRAPH UK (Jan. 24, 2025, 2:18 PM), https://www.telegraph.co.uk/women/womens-life/10560334/Why-are-women-more-likely-to-join-religious-cults.html#:~:text=It's%20a%20picture%20that%20provides,cent%20of%20global%20cult%20members.

[11] Geetanjali Atri, *Decoding Dera: A Perspctive on its Historicity and Guru Phenomena,* MAINSTREAM WEEKLY (Jan. 23, 2025, 4:56 PM), https://www.mainstreamweekly.net/article7572.html

[12] Vinita Dawra Nangia, *Why do people follow Godmen?,* THE TIMES OF INDIA (Dec. 24, 2024, 5:49 AM), Why do people follow Godmen?

[13] Manohar Bhatia, *The weird world of 'babas',* READERS' BLOG (Dec 12, 2024, 4:28 PM), THE WEIRD WORLD OF 'BABAS'

3. Cult And Crime Through the Ages.

3.1 Thuggee Cult

In the 19th century, a wash of criminal activities infested with theft, murder and many more. Thuggee, a term portrayed a group who performed ritualistic violence. [14] In the backdrop of British Administration, William H took a leap in trying to combat thuggee by implementation of framework. They in depth documented and understood the modus operands, operating on the name of God Kali, and Bhawani, supervisors of the thuggee cult. Thuggee, an act described the crimes of thugs. [15]In 1830 the campaign was released to suppress thuggee and menace created by them. The thugs or popularly called as Phansigars were known for this lethal precision and tactic of killing with handkerchief.

The secret cult prominent from 13th-19th century often disguised the crimes of murder and robbery to be an act in the name of religion or religious rituals. It was believed that thuggees worship goddess Kaali, Hindu God of destruction. These acts of murder were established to be devotion of maa kali. Several texts and paintings of ancient times provided the information of rituals performed pre and post killing. This was done to please rather goddess and victims were seen as some form of sacrifice.

They were stringent regarding traditions and rituals. As per Hindu texts blood shed will initiate a cycle of karma hence, they avoided blood shed during their act of murder. They committed the murder by the use of a scarf and often known as rumaal and bandana. They had a strong belief in destiny, “story of men is written by the god”. They justified their crime by stating that goddess kaali selects her sacrifices. It is the destiny of their victims to die, and they were mere instruments and acted under the guidance of lord and divinity.

An in-depth analysis of thugees established that it is essential to note that the members of thugees didn’t only belong to Hindus. Although most were but not all. Some were Muslims who were also a part of this group. This proved that cult was more about shared rituals, practices and shared ideas or objectives rather than a common religious identity.

In contemporary era, this phase was viewed as a dark chapter in Indian history. Thugees and their heinous tales regarding the

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[14] Roshan Abbas, *Thuggee and the complex history of a mysterious criminal underworld*, FRONTLINE MAGAZINE (Jan. 2, 2025, 3:36 PM) https://frontline.thehindu.com/the-nation/thuggee-and-the-complex-history-of-a-mysterious-criminal-underworld-during-british-rule/article67334128.ece

[15] *The Thuggee and Dacoity Suppression Acts*, AZADI KA AMRIT MAHOTSAV (Jan. 4, 2025, 1:52 PM) https://cmsadmin.amritmahotsav.nic.in/district-reopsitory-detail.htm?25157

misuse of religion and religious practices for destructive purposes created a major gap in the Indian history of religious matters.

3.2 Modern-Day Cult Leader

3.2.1 Gurmeet Ram Rahim Singh

Dera Sacha Sauda[16], an organization established in 1948, founded by Mastana Baluchistan Singh. This was set as a center for religious teachings. Post several successors came the infamous leader Gurmeet Ram Rahim Singh, with the following of more than 16 million people. What made him infamous was his conviction for rape of saadhvis and murder of his devotee, Ranjit in 2002 alongside, murder of journalist Ram Chandra Chhatrapati. He is further accused for forcing male devotees to sterilize. He was considered a messenger of God but he had strong control over his devotees and hence devotees covered up his crime and also abetted.

3.2.2 Rajneeshpuram

Rajneeshpuram,[17] was a creative religious community, followed by millions, led by guru Shree Rajneesh. The headquarters was set in Pune. Celibacy to connect to God contradicted with his beliefs. He promoted living fully without getting attached to any worldly things. Upon having problems with Indian government, he shifted his empire to Oregon. 1985 marked the downfall of this empire. His personal secretary revealed conspiracies of murdering officials and rigging elections. Feminist movement gives support to the rise of this organisation. According to records 54% of his devotees were women.

3.2.3 Nityananda

Nityananda,[18] a godman, who even posts controversies is still adorned with gold throne situated in his own kingdom. 2010, broadcast channels were flooded with news of this godman in an intimate relationship with a Tamil actress. Later on, a tape was also broadcasted and as a result the woman filed a rape case against him. Ashrams were attacked and wide protests broke down. He was arrested in 2010 but due to his followers he made a big comeback, by portraying

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[16] Shiv Inder Singh, *The Ram Rahim verdict is a win for unsung activist on the ground in Haryana,* THE CARAVAN MAGAZINE (Jan. 12, 2025, 7:37 AM) https://caravanmagazine.in/religion/dera-sacha-sauda-ram-rahim-justice-ground-activists-haryana

[17] Hugh Urban, *Rajneeshpuram Was More than a Utopia in the Desert. It Was a mirror of the Time.,* NATIONAL ENDOWMENT FOR THE HUMANITIES (Dec. 28, 2024, 8:19 PM) https://www.neh.gov/humanities/2018/spring/feature/rajneeshpuram-was-more-utopia-desert-it-was-mirror

[18] Theja Ram, *From impotency to having 'consensual sex': Nithyananda changes tune in rape case,* THE NEWS MINUTE, (Dec. 30, 2024, 12:39 PM) https://www.thenewsminute.com/karnataka/impotency-having-consensual-sex-nithyananda-changes-tune-rape-case-78116

himself as a victim of religious prosecution. This case was delayed by several tactics. 2015, several controversies resurfaced with the death of a devotee and a man trying to commit suicide. His power comes from foreign funding and large donations. He in order to flee from Indian controversies created his own island called as Kailasa.

3.2.4 Asaram Bapu and Narayani Sai

Asaram Bapu and his son Narayan Sai are set to possess god like powers and people who get direct guidance by divine. According to the reports and news they were convicted for rape on a minor girl. Several women devotees were said to be sexually assaulted between 1997-2006.

3.2.5 Sant Swami Bhimananda Ji

A self-styled godman in 2010 was arrested for a massive sex racket involving female devotees.

4. Cult Influence In Specific Criminal Cases

4.1 Andhra Double Murder Case

Purushottam Naidu and Padmaja, a well-educated couple who murdered their own children with Damru and Trishul. [19]They stated this to be an activity of sacrifice and Lord Shiva will bring them back to life. This case highlighted the deep-rooted issues of superstitious beliefs in the region. It was said that the elder daughter was under influence of cult practice. She forced her parents to kill her and also made them believe, this will cause good to all. Alekhya, elder daughter, believed in the theory of salvation as she also influenced her family into these absurd delusions. According to reports and police information Alekhya was influenced by baba Rajneesh also known as Osho's philosophy. Lockdown acted as a catalyst in deepening this influence.

4.2 Burari Case

All eleven members of the family were found dead in area Burari. Although any connection of this case to cult practices is not confirmed till date. [20]The cult conspiracy theories begin post the finding of evidence of a notebook that wrote "end life in order to attain moksha (salvation)". Lalit, the younger member of the family, was said to believe that he was guided by his late father's spirit. Lalit had also maintained

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[19] Uma Sudhir, *"Covid Came From Me, Not China": Andhra Woman Who Killed 2 Daughters,* NDTV, (Dec. 27, 2024, 6:49 AM) https://www.ndtv.com/andhra-pradesh-news/im-shiva-covid-came-from-me-andhra-pradesh-woman-who-killed-2-daughters-2358872

[20] *Burari deaths: Here's a look back at four cult-based mass suicides,* INDIAN EXPRESS (Jan. 5, 2025, 3:46 PM) https://indianexpress.com/article/research/burari-deaths-delhi-cult-based-mass-suicides-5243910/

handwritten notes regarding detailed instructions of rituals. Case appeared to be a mass suicide, but later investigations pointed towards elements of cult like behaviour and shared delusions.

4.3 Khurja Murder

Sumitra Bhushan, [21] a lady whose life was not perfect she consulted a holy man. He provided absurd solutions like offering chicken blood to goddess Kali. With the increase in the intensity of problems the solutions grew more absurd. Later on, this holy man provided a solution "you must sacrifice another, a boy from a village". They abducted a three-year-old child and cut his ears, hands and nose in front of goddess Kali's image. The reports and statistics also state that almost 28 human sacrifices cases have been reported in UP within the span of four months in the year 2006.

4.4 Kerala Human Sacrifice Case

This[22] case is a prime example of how cult like beliefs, superstitions can lead to heinous crimes. Shafi, a mastermind behind the murder of two women in the Elanthur village, committed this heinous crime in order to improve the fortune of his two disciples. Shafi, acted as a godman to Bhagaval Singh, traditional medicine practitioner and his wife Laila.

5. Legal Perspective on Cult and Crime

5.1 Legal Interpretation of Cults

Cult is not explicitly mentioned in the Indian statute. However, with a rise in cult activities, scholars analyze cults under the ambit of statutory legal framework. Article 25 of Indian constitution guarantees freedom of religion. This fundamental right entitles everyone equally freedom of conscience and freely promote practice and propagate. However, it is subject to public morality and health etc. Cults often involve practices that violate public order, health and morality. Article 26 of Indian constitution allows religious denominations to manage their own affairs but is subject to public welfare and individual rights. The distinction between cult and religion is often blurred. Religion is generally an establishment or a system of faith with long standing social acceptance, and traditions. Whereas cults are viewed as an unauthorized system which may engage in harmful practices. Cult practices are not accorded with the same legal protection as religious rituals. Religion includes voluntary participation and rarely relies on

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[21] *Indian cult kills children for goddess,* THE GUARDIAN, (Jan. 8, 2025, 2:54 PM) https://www.theguardian.com/world/2006/mar/05/india.theobserver

[22] U. Hiran, M.P. Praveen, K S Sudhi, *Kerala human sacrifice | The macabre murders in Elanthoor village,* THE HINDU (Jan. 10, 2025, 10:39 AM) https://www.thehindu.com/news/national/kerala/kerala-human-sacrifice-the-macabre-murders-in-elanthoor-village/article66010041.ece

coercion. Whereas cult is characterized by isolation and psychological manipulation.

5.2 Legislation Addressing Cult Related Crime

Even at this time, all the heinous crimes that comes under the ambit of cult practices are still governed by the Indian penal code that is there is an absence of separate statute for the same. Godman typically commits offences under cheating and fraud.[23] Under IPC, cheating is given under section 415 and 416. Further, its punishment is described under section 417, 418, 419 and 420. Godman with dishonest means obtain control over the other individual and benefit out of this control. Godman deliberately deceives such that one is placed in an unjust position.

Section 295(A) of Indian Penal Code punishes deliberate acts intended to outrage religious feeling similarly. Section 298 penalizes words and displays actions wounding religious sentiments. Cults often involve manipulation practices for activities that may lead to self-harm and hence section 306 deals with abetment to suicide. [24]As discussed in detail, several godmen involve themselves in sexual exploitation, i.e. penalized under section 354(A) and 375. In case of sexual abuse of a minor, is to be dealt with under POCSO act 2012. Cults are often involved in human trafficking and can be prosecuted under Immoral Traffic (Prevention) Act, 1956.

5.3 Challenges In Prosecution

Prosecuting crimes that are committed under cult influence have several legal hurdles. Firstly, due to the difficulty to prove psychological control and secondary, it is a burdensome task to distinguish cult practices from legitimate religious beliefs. In case of crimes committed under undue influence or coercion, it is an onerous to prove in court. There is often a lack of direct evidence. Psychological manipulation leaves no evidence to prove coercion or undue influence.

Defendants may take the defense of voluntary participation or *volenti non fit injuria* from the member's side. Manipulation and fear are two vital aspects that when utilized makes the members deter from giving evidence, testimonies or even call out on their leader. Mental control is so strong that several fail to believe they did anything wrong. Their beliefs are rigid to go against it.

Courts are still skeptical of psychological theories revolving around cult. Judicial system prioritises direct evidence which is objective and verifiable. This steer clear of subjective claims of mental

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[23] Keerthi V Gouda, Adithi Shenoy, *CRIMINAL LIABILITY OF RELIGIOUS CONMEN AND CULT LEADERS UNDER THE INDIAN CRIMINAL LAWS,* 9 JOURNAL OF LEGAL STUDIES AND RESEARCH, 207-217 (2023)

[24] *ibid*

control and manipulation. There is a lack of universal definition or standard of mental control. Psychological coercion and undue influence has a difficulty in establishing a cause-effect relationship.

Indian judicial system views mental control or manipulation theories to be speculative. India being a secular nation provides strong protection to religious freedom. This makes it difficult to differentiate between cult and religion. The lack of a legal definition of cult, makes prosecution under cult specific crimes nearly impossible. In court ties like India and United States that denotes freedom of religion as fundamental rights it makes it strenuous to regulate cult unless the engaged in clear criminal activities.

6. Conclusion

Religion, an embodiment of faith, sometimes takes a wrong tangent. Godmen according to historical texts, is a messenger of God with noble intentions. However, power can corrupt the thoughts of people. Malicious individuals with power control exploit people in distress. Indian history portrays gurus to be adorned with divinity. However, in today's world divinity is questioned.

States like Karnataka, Maharashtra, Jharkhand and Bihar have introduced anti superstition law and yet there is an absence of uniform central legal framework.

Not all godmen are bad, but few are. Caution is to be taken, and irrational beliefs must do away with. Rise in fictitious conmen disguised as godmen or divided individuals must stop, as it is better to prevent a problem than deal with its consequences. The government must ensure transparency of the activities of godmen or gurus to make sure power control does not exploit people and they do not believe to have the authority to control anyone, physically, mentally or emotionally. Awareness and education of people about dangers of cults is of paramount importance. Social media can act as a safe space to initiate open discussion.

Government[25] must strengthen legal framework at union or central level that must be inclusive of all sorts of cult related criminal activities like wrongful confinement, abuse, fraud or cheating. Government agencies must keep checking of activities of cult and must intervene if necessary. Suspicious cult activities or mental control or manipulation must be reported, and prompt actions must be taken. Help must be provided to individuals to disengage from cult influence through rehabilitation and counselling. In case of Andhra double murder, the mother of the victims or the perpetrator denied believing that she committed a crime and claimed that her children will

[25] Yang Wenyi, *Research on the Governance of Cult According to the Law*, 16, LEGAL SYSTEM AND SOCIETY, 111–112 (2020)

reincarnate. Hence it has become important to detach the influence of cults.

Community support and inclusivity can prevent individuals seeking cult to get the feeling of belongingness. [26]With emergence of technology, online platforms are used to spread their propaganda and misleading content. Such sites must be checked and flagged to provide a disclaimer or warning.

The intersection of cult and crime displays the blind faith, unchecked power control, mental control, can lead to serious societal harm. While cult at the inception is a spiritual movement it converts into an exploitive organization where leaders use the fear to take leverage from their followers for personal gains.

History has evidence that religious leader when they attain supreme power, they are consumed by it, leading to criminal activities. Absolute authority in addition to blind faith creates a dangerous dynamic. Followers obey without any questions. Sometimes they commit crimes without realizing their wrongdoing. India, land where dharma and deception coexist. India has witnessed all, from the rise in spiritual leaders to downfall of sinners, from wisdom of sages to absurd misguided practices. Yet through every upcoming case, we learn, evolve and carry the weight of past, to make the future promising.

[26] Wang Xiaoli, *Challenges and Strategies of Anti-Cult under the Background of "Internet Plus"*, 2, LEGAL SYSTEM AND SOCIETY, 128–129 (2021)

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Patent Linkages and its Impact on Bolar Exemption: An Analysis of US and Indian Approaches

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Abstract

The *Bolar* Exemption is an important TRIPS flexibility employed by the developing nations to balance patents right with the public health. The *Bolar* exemption allows a generic drug manufacturer to conduct tests and obtain regulatory approval before expiry of the patent, enabling immediate market entry upon patent expiration. However, there is constant pressure on countries to either weaken or remove *Bolar* exemption from their national laws, primarily due to pharmaceutical industry lobbying. Patent Linkage is one such threat to the *Bolar* exemption worldwide. The present article examines the evolution of *Bolar* exemption and its utility in generic medicine based pharmaceutical industry and its inconsistency with patent linkage under the TRIPS flexibilities. It further critically analyses the US and Indian approaches on patent linkage and its possible impact on *Bolar* exemption. The case study method has been used to understand the approach of courts in US and India.

Keywords: *Bolar* Exception, TRIPS Flexibilities, Patent Linkage, Generic Medicines, Access to Medicines, and Public Health.

1. Introduction:

The patent grant is described as "an institutionalized bargain between state and inventors."[1] In this bargain the inventor discloses the details of invention in lieu of an opportunity to derive profit from his invention

[1] CHRISTOPHER MAY & SUSAN K. SELL, INTELLECTUAL PROPERTY RIGHTS: A CRITICAL HISTORY 8 (Lynne Riener Publishers, London, 2006).

with statutory protection for the limited period. The details of invention submitted shall be available in public domain on expiry of the period of protection. At International level, patents, and various other forms of Intellectual Properties (IPs) are governed by the World Trade Organization's (WTO) Agreement on Trade Related Aspects on Intellectual Property Rights, 1995 (the TRIPS Agreement).[2] The Agreement sets the minimum standard of protection of intellectual properties to be provided by the WTO member states. However, it also gives the member states the flexibility to incentivize innovation and potential short-term cost of restricting access to such innovation.

The leeway available to the member states while incorporating the standards of the TRIPS Agreement provisions in their domestic laws is termed as 'TRIPS Flexibilities'. These 'flexibilities' provide the member states opportunity to draft their legislations keeping in mind their status, needs, and public policies. The term 'flexibility' appears twice in the TRIPS Agreement, but it does not define the term 'flexibilities' or 'flexibility'. However, a close reading of sixth paragraph of the Preamble of the TRIPS Agreement gives an idea of what does the flexibility means for the member states. It is "recognizing also the special needs of the least-developed country members in respect of maximum flexibility in the domestic implementation of laws and regulations in order to enable them to create a sound and viable technological base;"[3] The term 'flexibility' is also used in fourth paragraph of Declaration on the TRIPS Agreement and Public Health, 2001 (Doha Declaration).[4] The Declaration stated in unequivocal terms that the TRIPS Agreement neither proscribe nor attempts to proscribe members from taking steps to protect public health. The rationale behind providing these flexibilities is to enable least-developed countries to have access to intellectual properties and at the same time empower them to develop their technological abilities. These flexibilities also ensure that public health is not jeopardized in striving to protect intellectual property rights.

There are certain flexibilities in the TRIPS Agreement which are related to public health. The Agreement gives flexibility to member states to determine patentability criteria and define terms like "new", "inventive step" and "capable of industrial application" according to their requirements.[5] It also gives them discretion to exclude any invention from patentability on grounds of protecting public order or morality, or "to protect human, animal or plant life or health or to avoid

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[2] The TRIPS Agreement was signed on April 15, 1994 and came into force on January 1st,1995.

[3] The TRIPS Agreement, 1995, Preamble.

[4] We agree that the TRIPS Agreement does not and should not prevent members from taking measures to protect public health. Accordingly, while reiterating our commitment to the TRIPS Agreement, we affirm that the Agreement can and should be interpreted and implemented in a manner supportive of WTO members' right to protect public health and, in particular, to promote access to medicines for all.

[5] The TRIPS Agreement, 1995, Article 27.

serious prejudice to the environment…".[6] Similarly Compulsory Licensing[7], Government Use Authorization, Provisions for Parallel Import, Pre-grant and Post-grant Patent Opposition by third party and Experimental Use (*Bolar* Exemption) are a few other flexibilities under the TRIPS Agreement often employed by the member states. The *Bolar* exemption has been incorporated into the municipal laws of various countries with little variations. This flexibility has potential to ensure access to affordable healthcare by expediting the entry of generic medicines after the expiry of patent protection. The following part of the paper focuses on experimental use (*Bolar* Exemption) and examines its utility from the public health perspective.

2. Conceptualizing Bolar Exemption:

The fundamental tenet of the patent law is invention which is given statutory protection for a limited period after which it enters public domain. This permits dissemination and diffusion of such inventions, as the monopoly enjoyed by the patentee comes to the end and the competitors enter the market. Particularly in the field of pharmaceuticals entry of competitors in the generic medicines[8] lowers the price of expensive medicines. But in case of medicines, the products cannot be marketed without prior approval from the regulatory authority. This in turn hinders the access to medicines. "Experimental Use" which is popularly called as *"Bolar* Exemption" authorizes the rival manufacturers to use patented inventions for developing and seeking approval of regulatory authority. Such exemption facilitates usage of patented drugs for developing generic medicines without the liability of infringement. However, use must be for seeking regulatory approval. It enables the early entry of generic medicines in the market post-patent expiry and further Research and Development (R&D).

2.1 Evolution of Bolar Exception Over the Time

Patent laws around the world provide patentee the right to exclude others from using or exploiting the invention. Further it also provides for penalties and other actions against people who violate these rights of patent holders. Article 28 of the TRIPS Agreement, expressly mentions exclusive rights conferred upon the owner of patent. In case of product patent, the owner has right "to prevent third parties not having the owner's consent from the acts of making, using, offering for sale, selling, or importing for these purposes that product."[9] Also for

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[6] *Id.,* Article 27.2.
[7] *Id.,* Article 31.
[8] "A generic drug is a medication created to be the same as an already marketed brand-name drug in dosage form, safety, strength, route of administration, quality, performance characteristics, and intended use." (Feb. 12, 2025, 10:25 AM), *https://www.fda.gov/drugs/frequently-asked-questions-popular-topics/generic-drugs-questions-answers#q1*
[9] The TRIPS Agreement, 1995, Article 28(1)(a).

process patent, the owner has right to exclude third parties from using the process without the consent and products obtained directly from that process.[10] Other than these, patent owners are also authorized to assign their patent rights, or transfer the rights by succession.[11]

The rights conferred by the TRIPS Agreement are not absolute. Even before the TRIPS Agreement, patent rights had an exception. Experimental use exemption evolved in 1813 in the case of *Whittemore* v. *Cutter* in the United States.[12] It was the only instance where patent infringer had a legal protection subject to few conditions. Justice Story while evolving the exception observed that "…it could never have been the intention of the legislature to punish a man, who constructed such a machine merely for philosophical experiments, or for the purpose of ascertaining the sufficiency of the machine to produce its described effects."[13] Thus, if the infringement was done with the intention of ascertaining the veracity of the specification; it is a "philosophical experiment"; and done with no intent to gain profit, it will be covered under the experimental use exemption.

After around one hundred and seventy years, the US Court of Appeals for the Federal Circuit in *Roche Product Inc.* v. *Bolar Pharmaceutical Co.*[14], once again narrowly interpreted the experimental use exemption.[15] Roche Product held patent for *Flurazepam Hydrochloride,* active pharmaceutical ingredient[16] in the sleeping pill marketed as *Dalmane*. The patent was granted to Roche Product on 17 January, 1967 and was valid up to 17 January, 1984. Bolar Pharmaceutical eyeing an opportunity to introduce a generic version of the same medicine on patent expiry, acquired around five kilograms of *Flurazepam Hydrochloride* from a foreign manufacturer. Bolar Pharmaceutical argued that this was done to get early regulatory approval which would facilitate entry of the generic medicines at earliest. The Court refused to widen the scope of experimental use exemption reiterating, "if the products of experiment are sold, used for experimenter's convenience or the experiment is conducted with a view to adaptation of invention". Bolar Pharmaceutical also drew attention of the Court towards the fact that, prohibiting experimenter from using the drugs for further Research & Development until the expiry of patent will delay the approval of Federal Drug Authority (FDA). This delay will be an unnecessary extension to statutory protection of patent. Bolar Pharmaceutical also argued that it was a public policy

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[10] *Id.,* Article 28(1)(b).
[11] *Id.,* Article 28(2).
[12] *Whittemore* v. *Cutter* 29 Fed. Cas. 1120, No. 17,600 (C.C.D. Mass. 1813).
[13] 29 Fed. Cas. at 1121.
[14] 21 Fed. Cas. at 555.
[15] Ronald D. Hantman, "Experimental Use as an Exception to Patent Infringement", 67 J.PAT. & TRADEMARK OFF.SOC'Y., 617-644 (1985).
[16] All Drugs have two core components: (i) API- it is the active, central ingredient of any drug and (ii) Formulation/Excipient- The chemically inactive component of the drug, often used as preservatives, giving shape, stabilizing the drug *etc.*

issue, but the Court declined to resolve this conflict, citing fear of judicial overreach.

The consistent restrictive application of 'Experimental Use Exemption' by the Courts led to a watershed moment in history of this flexibility worldwide. The Unites States Congress brought into force the Drug Price Competition and Patent Term Restoration Act, 1984.[17] The Act is instrumental in streamlining the process for generic medicines approvals and incentivising innovation for generic medicines. The Act is accredited for increasing generic versions of approved pharmaceuticals in the US market up to 128% and also led to entry of generic medicines immediately after patent expiry, with some medicines capturing the market share of 90% within three months of entry into market.[18]

2.2 Statutory Recognition to Bolar Exception in US and its Extension

It is widely considered that the *Roche Product Inc.* v. *Bolar Pharmaceutical Co.* ruling served as a catalyst for the US Congress proactively carving out an exemption through the Hatch-Waxman Act, 1984.[19] It mandates that "it shall not be an infringement to make, use, offer to sell, or sell within the United States a patented invention … solely for uses reasonably related to the development and submission of information under a federal law which regulates the manufacture, use or sale of drugs or veterinary biological products."[20] This provision had effect of overturning the above judgment and widen the scope of the exemption evolved in 1813.[21] In the US, the *Bolar* exemption is available only for drugs and veterinary products. Also, the act will not amount to infringement only if it is done for "development and submission of information" under a federal law. Although the applicability of § 271(e)(1) of the above Act is indisputable, its extent has been difficult for commentators to define.[22] Judiciary while interpreting the provisions overcame its pre-enactment stance and widely expanded the types of activities that could be protected under it.[23] In 1990, the US Supreme Court included medical devices within

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[17] Pub. L. No. 98-417 Codified at 15 U.S.C. §§ 68b-68c, 70b (1994); 21 U.S.C. §§ 301 note, 355, 360cc (1994); 28 U.S.C. § 2201 Popularly known as the Hatch-Waxman Act, 1984.

[18] https://cdn.aglty.io/phrma/global/blog/import/pdfs/Fact-Sheet_What-is-Hatch-Waxman_June-2018.pdf (last visited Mar. 22, 2025).

[19] Shasank Updahye, "There's a Hole in My Bucket Dear Liza, Dear Liza: The 30-Year Anniversary of the Hatch Waxman Act: Resolved and Unresolved Gaps and Court-Driven Policy Gap Filing", 40 WM. MITCHELL L. Rev. 1307 (2014).

[20] 35 U.S.C. §271(e)(1)(2003).

[21] Kate Y. Jung, Hatch-Waxman's Safe-Harbor Provision for Pharmaceutical Development: A Free Ride for Patent Infringers? 13, J. MARSHALL. REV. INTELL. PROP. L. 445 (2014).

[22] George Fox, "*Integra* v. *Merck*: Limiting the Scope of the § 271(e)(1) Exception to Patent Infringement", 19 BERKELEY TECH. L.J. 200, 202(2004).

[23] *Id.* at 202.

the ambit of drugs.[24] Later, "protection of any pre-clinical testing of patented compounds"[25] if it required information to be submitted for regulatory approval.[26] The Federal Circuit further widened the scope of the exemption in *Momenta Pharm.* v. *Amphastar Pharm.*[27] The Court interpreted "submission of information" to include "routine, post-approval recordkeeping".

3. Bolar Exemption under TRIPS Agreement:

In 1995, the TRIPS Agreement came into enforced with the aim to harmonize the laws relating to intellectual property among the member states.[28] Article 27 mandates granting patents to both product and process in all the disciplines of technology.[29] Countries other than the developed ones, were apprehensive about the impact of such provision in their laws, particularly on public health. To assuage the apprehensions of members, it was ensured that patent rights granted to inventors are not absolute. Even prior to the TRIPS Agreement there were numerous exceptions to patent rights in national laws. They included "use of invention for teaching and research"[30], in Europe the act of experimenting on the inventions to examine or improving it was not infringement[31], preparing medicines under individual prescription.[32] By now the experimental use had been developed as *Bolar* exemption in US. The Paris Convention for Protection of Industrial Property, 1883 (The Paris Convention) did not provide any exception, but the Berne Convention for Protection of Literary and Artistic Works, 1886 (The Berne Convention) had equivalent provisions, upon which negotiating members relied.[33]

The exemptions in the TRIPS Agreement are incorporated in Article 30 as: "Members may provide limited exceptions to the exclusive rights conferred by a patent, provided that such exceptions do not unreasonably conflict with a normal exploitation of the patent and do not unreasonably prejudice the legitimate interests of the patent owner, taking account of the legitimate interests of third

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[24] *Eli Lilly and Co.* v. *Medtronic*, 496 US 661 (1990).
[25] Anthony Tridico & Jeffrey Jacobstein, *Facilitating Generic Drug Manufacturing: Bolar Exemptions Worldwide,* WIPO MAGAZINE (Feb.19,2025, 12:35 AM) Available at: *https://www.wipo.int/wipo_magazine/en/2014/03/article_0004.htm*
[26] Merck KgaA v. Integra Lifesciences I, Ltd 545 U.S. 193 (2005).
[27] 686 F.3d 1348 (2012).
[28] The TRIPS Agreement, 1995, Preamble.
[29] *Id.,* Article 27.
[30] UNCTAD-ICTSD, RESOURCE BOOK ON TRIPS AND DEVELOPMENT 430 (Cambridge University Press, 2005).
[31] *See*, W. Cornish, Experimental Use of Patented Inventions in European Community States, 29 INT'L. REV. OF IND'L. PROP. AND COPYRIGHT L.736, 1998.
[32] *Supra* note 30.
[33] The Berne Convention, 1883, Article 9(2) reads as: "It shall be a matter for legislation in the countries of the Union to permit the reproduction of such works in certain special cases, provided that such reproduction does not conflict with a normal exploitation of the work and does not unreasonably prejudice the legitimate interests of the author."

parties."[34] Since Article 30 does not provide particular act which could be exempted, the nature and scope of valid exceptions depend upon cumulative satisfaction of three conditions present in Article 30.[35] The three conditions identified by the dispute settlement panel are:

(i) Exception must be "limited": The panel interpreted 'limited' in Article 30 in a restrictive manner. It observed that the word 'exception' in itself implies a limited derogation, and use of the word 'exception' is qualified by the term 'limited'. Hence, "limited exception" must therefore be read to connote a narrow exception, which makes only a small diminution of the rights in question."[36]

(ii) Exception should not "unreasonably conflict with normal exploitation of the patent": Any conflict which defeats the objective of the patent laws like restricting the patent owners from taking effective advantage of their rights would be unreasonable.[37]

(iii) Exception must consider "legitimate interests of third parties": It is last but the most important condition in this trilogy. It seeks that only legitimate interests of third parties are considered for exception.

Thus, if all three conditions are met cumulatively, then only a particular exception to the rights granted to patent owner is considered consistent with the TRIPS Agreement. Domestic exception if found to be not satisfying these three conditions, can be challenged under the Dispute Settlement Understanding (DSU) of the WTO.

4. Bolar Exemption and Judicial Trends in India:

Prior to the Patents Act, 1970, India did not have any express provision for experimental use of a patented invention. Justice Ayyangar in the *Report on Patent Law Revision, 1959* recognized the need for such use in following words: "I consider it desirable that the law should specifically exempt use of the patented articles or processes or the use of articles or products made by the use of the patented process or patented machine or apparatus for experimental purposes from being actionable as an infringement."[38] In 1970, when the Patents Act was enforced, which was predominantly based on recommendations of Justice Ayyangar, had a provision protecting experimental use of patented inventions. It read as: "The grant of a patent under this Act

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[34] The TRIPS Agreement, 1995, Article 30.
[35] Observed by Dispute Settlement Panel examined the regulatory review provisions of Canada's Patent Act in Canada–Patent Protection of Pharmaceutical Products WT/DS114/R, 17 March 2000.
[36] *Id.*, para 7.30.
[37] *Id.*, para 7.55.
[38] Available at: *https://www.ipindia.gov.in/writereaddata/Portal/Images/pdf/1959-_Justice_N_R_Ayyangar_committee_report.pdf* (last visited Mar. 22, 2025).

shall be subject to the condition that any machine, apparatus or other article in respect of which the patent is granted or any article made by the use of the process in respect of which the patent is granted, may be made or used, and any process in respect of which the patent is granted may be used, by any person, for the purpose merely of experiment or research including the imparting of instructions to pupils…"[39]

This exemption was applicable on use of both product and process patents and protected the act only if the purpose was experiment, research, or instruction to the students. The provisions expressing conditions to which grant of patents is subject, is preceding the section in which rights of patentees are declared in the Act. This establishes the fact that the intention of legislature was to ensure that patentee's rights are not absolute. The first attempt to incorporate an exact 'Bolar Exemption' like provision was made in the Patents (Second Amendment) Bill, 1999.[40] However it was only through the Patents (Amendment) Act, 2002, a provision was inserted declaring certain acts not to be considered as infringement of patent.[41] India's role as a leading market player in the field of generic medicines and bio-similars, made it imperative that a robust *Bolar* exemption provision is in force.[42] Over the time the exemption evolved in the same spirit in India.

The Patents Act, 1970 now reads as: "any act of making, constructing, using, selling or importing a patented invention solely for uses reasonably related to the development and submission of information required under any law for the time being in force, in India, or in a country other than India, that regulates the manufacture, construction, use, sale or import of any product shall not be considered as an infringement of patent rights."[43] The above provision envisages a broad *Bolar* exemption in India.[44] In India, this exemption is applicable to all the sectors where market authorization is required prior to introduction of the product or is regulated in any other manner.[45] In this sense the bolar exemption in India is wider that the US law.

The Division Bench of Delhi High Court, in the case *Bayers Intellectual Property Gmbh* v. *Alembic Pharmaceuticals Ltd.*[46] further widened the scope of the above provision. The question before the

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[39] The Patents Act, 1970, §47(3).
[40] Bayer Corporation v. Union of India & Ors. on 22 April, 2019 AIRONLINE 2019 DEL 1712.
[41] The provision was inserted by Act 38 of 2002, §. 44 (w.e.f. 20-05-2003).
[42] VIVIANA MUNOZ TELLEZ, Bolar Exception, in Carlos M. Correa & Reto M. Hilty (eds.), ACCESS TO MEDICINES AND VACCINES: IMPLEMENTING FLEXIBILITIES UNDER INTELLECTUAL PROPERTY LAW 135, 138-149 (Springer, 2022).
[43] The Patents Act, 1970, Section 107-A.
[44] *Ibid.*
[45] *Ibid.*
[46] *Bayer Intellectual Property Gmbh & Anr* v. *Alembic Pharmaceuticals Ltd* decided on 8 March, 2017.

Court was, "whether the language of section 107-A permits export from India of a patented invention?"[47] The *Natco* Pharmaceutical was granted a compulsory license on a patented drug *Sorafenib* held by the *Bayer* Corporation in 2012.[48] One of the conditions for the grant of this compulsory license was the requirement that it should be worked only in territory of India. *Natco* Pharmaceutical was also permitted to export the drug "as and when it obtained permission from the Drug Controlling Authority for clinical purposes" and later, *Natco* Pharmaceutical was granted a drug license and with the consent of *Bayer* Corporation's counsel was allowed to export any amount not exceeding 15 grams of the drug '*Sorafenib Tosylate'*.[49] *Natco* Pharmaceutical again sought permission to export a kilogram of '*Sorafenib Tosylate'* to China for conducting clinical studies and trials. *Bayer* Corporation argued that the word 'selling' in section 107-A implies selling in India only and does not include export. Further they also argued that, only information generated from the trial conducted by using the patented invention can be shared with a country other than India. *Bayer* Corporation also claimed that any rights conferred upon *Natco* Pharmaceutical by virtue of section 107-A of the Patents Act, extinguished the moment, compulsory license was granted to them.

The Court dissected section 107-A clause (a) forming a triad of conditions as "any act of making, constructing, using, selling or importing a patented invention; solely for uses reasonably related to development and submission of information required under any law for the time being in force, in India, or in a country other than India, that regulates the manufacture, construction, use, sale or import of any product; shall not be considered as infringement of patent rights."[50] Thus, it is clear that 'selling' permitted by section 107-A is of a patented product and not information as contended by *Bayer* Corporation. The Court also held that 'selling' is permitted both 'in India' and 'outside India'. Justice Rajiv Sahai delving deeper into the interpretation of 'selling' observed, that, "section 107-A which is merely an exception for experimental use has the word 'selling' incorporated in it because of the practices of pharmaceutical industry". He drew attention to the fact that, a medicine comprised of active pharmaceutical ingredients (API) and excipient or formulations. The API is often produced by other entities known as Fine Chemical Producers (FCP). The general practice in pharmaceutical industry is that these FCP either seek approval themselves and sell it to

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[47] *Ibid.*
[48] *Bayer Corporation* v. *Natco Pharma Ltd.,* Order No. 45/2013 (Intellectual Property Appellate Board, Chennai), available at: *http://www.ipab.tn.nic.in/045-2013.htm* (last visited on Mar. 12, 2025).
[49] *Supra* note 46.
[50] *Id.,* at para 29.

manufacturer or sell it to manufacturer only who in turn seeks approval.[51]

The Court held that "*Natco* Pharmaceutical's status as compulsory licensee did not place it under any additional statutory bar from exporting the product, as long as the underlying condition in section 107-A was satisfied."[52] The Court did not find any ground to restrict the meaning of 'selling' in section 107-A to not include exporting in the definition of selling.[53] Thus, the did not allow patent linkage and thus further extended the scope of *Bolar* exemption in India.

5. Patent Linkage and Its Impact on Bolar Exemption:

Around the world, manufacturers of generic medicines have successfully utilized the *Bolar* exemption to ensure access to affordable medicines. However, the advantages made by *Bolar* exemption is threatened by the introduction of "Patent Linkage" provisions. Patent linkage is a "system or process by which a country links drug-marketing approval to the status of the patents corresponding to the originator's patented product."[54] In most of the countries, patent grant and regulatory approval for pharmaceuticals are mutually exclusive process. The accessibility and affordability of generic medicines shall be seriously affected by linking the regulatory approval to the patent status of originator.[55] Patent linkage potentially leads to refusal to the market approval of drugs until the patent protection term expires.[56] To ensure that the *Bolar* exemption envisaged in the national legislation is effective, it is crucial that practices like patent linkage are prohibited.[57] Among the WTO members only fifteen countries have implemented patent linkage expressly till now.[58] Since patent linkages is a "TRIPS-plus" obligation, it is not mandatory for nations to incorporate it. However, the developing nations are coerced to

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[51] *Id.,* at Para 28.
[52] *Id.,* at Para 94.
[53] *Ibid.*
[54] K.D. RAJU, Patent Linkages and Its Impact on Access to Medicines: Challenges, Opportunities for Developing Countries, in Carlos M. Correa & Reto M. Hilty (eds.), ACCESS TO MEDICINES AND VACCINES: IMPLEMENTING FLEXIBILITIES UNDER INTELLECTUAL PROPERTY LAW 329-369 (Springer, 2022).
[55] *Ibid.*
[56] Mirandah A, Patent linkage in Asian Countries Compared to the US, 4(4) ASIA IP MAGAZINE, 2021(Apr. 04, 2025, 10:35 PM), https://www.lexology.com/library/detail.aspx?g¼73ee9ee5-1873-457e-b24f-8af6e96721ff.
[57] *See*, "Why Clarification & Harmonisation of the Bolar Exemption and an Explicit Prohibition of Patent Linkage Is Needed in the European Union", (last visited Apr. 05,2025, 12:45 AM) Available at:
https://www.medicinesforeurope.com/wp-content/uploads/2023/10/Updated-Medicines-for-Europe-Bolar-Patent-Linkage-Paper-20-Oct-2023-1.pdf
[58] The countries are: US, Canada, Japan, Australia, South Korea, China, Taiwan, Russia, Ukraine, Philippines, Singapore, Jordan, Mexico, UAE and Peru.

incorporate it to garb of 'Free Trade Agreements'.[59] Thus, the number of countries providing patent linkage is set to increase in the future.

5.1 Patent Linkage in US:

In the US, patent linkage provisions appeared for the first time in the Hatch-Waxman Act, 1984. Ironically, the patent linkage was described as a "grand bargain" to provide impetus to innovation particularly in pharmaceutical industry and simultaneously facilitate entry of generic medicines into market at earliest.[60] However, the pharmaceutical companies are abusing the loopholes in the well-intentioned legislation to extend the patent term.[61] The Hatch-Waxman Act, 1984 "links" marketing approval of a drug (related to food, drug, and cosmetic) with the patent status.[62] The patent linkage process requires a generic manufacturer to submit an Abbreviated New Drug Application (ANDA) to the FDA along with a patent certification.[63]

It requires the applicant to certify that the generic drug:

i. has not been patented;

ii. is off-patent or the patent has expired;

iii. will not enter the market/compete with the originators drug until the patent expires; or

iv. has not infringed on the patent or the patent is invalid.[64]

For the last certification (known as Paragraph IV certification), the process is complex. The ANDA applicant has to mandatorily notify the originator company about its filing with the reasons explaining why the patent is invalid or unenforceable, or why it won't be an infringement. Now the originator's right to file a lawsuit for patent infringement within forty-five days of receipt of notice. The originator, merely initiating a proceeding against the generic manufacturer results in stay on FDA approval for next thirty months. Mostly, these litigations take more time than thirty months to resolve, thus, further delaying entry of generic competitor in market. Research findings conclusively suggest that often generic drug approval is delayed by more than 30 months, primarily due to patent linkage in US.[65]

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[59] The US-Peru Free Trade Agreement enforced in 2009 has patent linkage provisions. Similar provisions were present in Korea-US FTA enforced from March, 2012.
[60] BRYAN MERCURIO, DRUGS, PATENTS AND POLICY: A CONTEXTUAL STUDY OF HONG KONG, 185 (Cambridge University Press, 2018).
[61] *Supra* note 54 at 333.
[62] 35 USC1–376(2006); Federal Food, Drug, and Cosmetic Act, 21 USC 301–97 (2006).
[63] 21 U.S.C. § 355(j)(2)(A)(vii).
[64] *Supra* n. 61 at 186.
[65] Ashley M. Winkler; M. David Weingarten *et. al.*, Requirements, Benefits, and Possible Consequences of Listing Patents in FDA's Orange Book, *BNA's Pharmaceutical Law & Industry Report* (2018).

Patent linkage also has severe financial implications. In Germany, *Pirfenidone*, a patented drug used to treat *idiopathic pulmonary fibrosis*, was set to get off patent on February 27, 2021. Due to patent linkage, the generic version of *pirfenidone* could be launched only after November 15, 2022. This delay of 626 days, resulted in significant financial impact, with an estimated loss in savings amounting to 32.1 million euros.[66]

5.2 Patent Linkage in India:

For now, India does not have any patent linkage provision in its patent law. However, the Delhi High Court while granting an *ex-parte* injunction in *Bristol- Myers Squibb* v. *Dr. BPS Reddy & Ors.* [67], hinted of possible patent linkage provision in India.[68] In this case, the plaintiff sought restraining order against defendant from "manufacturing, selling, or offering to sell it's patented drug *Dasatinib.* Justice Endlaw, while granting injunction also attempted enforcing patent through the Drug Controller General of India (DGCI). The order "… expected that the DGCI while performing statutory functions will not allow any party to infringe any laws and if the drug for which approval has been sought by the defendants is in breach of the patent of the plaintiffs, the approval ought not to be granted to the defendants."[69] It is argued that this part of the order was 'unnecessary' and was an attempt to limit the scope of *Bolar* exemption in India.[70]

Later, in *Bayer* v. *Cipla, Union of India and Others* the single bench of the Delhi High Court held that merely submitting the clinical data by the generic manufacturer for marketing approval does not constitute infringement of patentee's rights.[71] This judgment was further upheld by the Hon'ble Supreme Court while dismissing a Special Leave Petition filed by the *Bayer*.[72] The Court held that "patent linkage does not exist under Indian law." *Bayer's* argument that joint reading of section 2 of the Drugs and Cosmetics Act, 1940 and section 48 of the Patents Act, 1970 infers patent linkage was rejected by the Court. Also, the requirement in Form- 44 of the Drugs and Cosmetic Rules, 1945 about mentioning "Patent Status" should not be construed as patent linkage to marketing approval. The Court also observed that

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[66] Available at: *https://www.medicinesforeurope.com/wp-content/uploads/2023/10/Updated-Medicines-for-Europe-Bolar-Patent-Linkage-Paper-20-Oct-2023-1.pdf*

[67] Bristol-Myers Squibb v. Hetero Drugs Ltd, Delhi High Court *Ex Parte* Order on 19 December 2008.

[68] Ravikant Bhardwaj, K.D Raju, *et. al.*, The Impact of Patent Linkage on Marketing of Generic Drugs, 18 J INTELL PROP. RTS., 316-322 (July, 2013).

[69] Available at: *https://www.gnaipr.com/CaseLaws/Bristol%20-Myers%20Squibb%20Company%20&%20Ors%20Vs.%20Dr.%20BPS%20Reddy%20&%20Ors%20(Hetero%20Drugs).pdf*

[70] Available at: *https://spicyip.com/2009/01/breaking-news-court-orders-indian-drug.html*

[71] WP(C) No. 7833/2008.

[72] Special Leave to Appeal (CIVIL) No. 6540/2010.

patent linkage will undermine the "*Bolar* exemption" in India.[73] A clear exclusion of patent linkage in India by the Apex Court is welcome step to enforce the *Bolar* exemption in its intended spirit.

6. Conclusion:

The experimental use exception has been part of patent system notably since 1813. Till the introduction of *Bolar* exemption provision in the Hatch-Waxman Act, 1984, the experimental use exception was interpreted narrowly by the courts.[74] After introduction of section 271 (e)(1) in the Hatch-Waxman Act, 1984, the exception is widened by the congressional intervention. The TRIPS Agreement too by providing exception to rights conferred by patent grant in Article 30 attempted to strike a balance between patents and public health and member states have incorporated the *Bolar* exemption provision maneuvered according to their public policy needs. India, a prominent stakeholder in global market of generic medicines and holds about 20% share by volume in international market, which is set to increase further with development in production of bio-similars.[75] The *Bolar* exemption provision in the Patents Act, 1970 is particularly beneficial to the generic medicine based pharmaceutical industry. It facilitates the 'Day 1' entry of generics by enabling generic manufacturer to use patented products for development and submission of information for market regulation. Delay in entry of generics, delays the competition in market which in turn causes a delay in availability of bio-similars and generics.[76] In absence of section 107-A, the process of marketing approval would be delayed. Since the provision categorically states what acts would not constitute infringement, it also controls unnecessary litigation between originator of the drug and generic manufacturers. Patent linkage seems to be a threat to the *Bolar* exemption worldwide. *Bolar* exemption, *inter alia,* is a vital provision to cater the public health needs of the society. However, due to change in pace of R&D, nations will have to revisit their exception provisions and determination to ensure that the soul of *Bolar* exemption is not lost by introducing patent linkage provisions. A clear exclusion of patent linkage in India by the Apex Court is welcome step to enforce the *Bolar* exemption in its true spirit in India.

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[73] *Supra* note. 54.
[74] Jordan P Krapp, Experimental Use as Patent Infringement: The Impropriety of a Broad Exception, 2170 YALE L. J. (1991).
[75] Available at: *https://www.investindia.gov.in/sector/pharmaceuticals.*
[76] Medicines for Europe, "The Anti-Competitive Effects of Patent Linkage" (May 2019). Available at: *https://www.medicinesforeurope.com/wp-content/uploads/2021/03/Medicines%20for%20Europe%20Position%20Paper%20On%20Patent%20Linkage%20-%20May%202019.pdf.*

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Role of Media Representation in Perpetuating Stereotypes of Suppressed Classes: A Socio-Legal analysis

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Abstract

India is quickly becoming a nation where mobile phones, television, and the internet are commonplace in the twenty-first century. In India, they have spread across the countryside and small towns, leaving just a few isolated areas unaffected. Over the last several decades, the media has grown to be a significant socializing tool. Stereotypes are one way that the media shapes our worldview by promoting and maintaining them. The people we encounter in media, including television, are sometimes quite simple and clichéd. Simple character depictions facilitate the producers' ability to tell their tales visually and the viewers' ability to comprehend them. However, these portrayals uphold and reinforce preconceptions and stereotypes. A stereotype is an oversimplified, generic portrayal of a social group that disregards variety. It often contains both good and bad characteristics about the group members particularly suppressed classes and gives rise to preconceived notions about them. It is possible for these preconceptions to evolve over time in the event that contradicting data becomes available. The preconceived notion of the stereotype are much more easily accessible which results in making an adverse opinion for suppressed classes. This might lead to bias and prejudice, which would show up as unfavorable sentiments toward suppressed classes, such sympathy or disdain. International human rights agreements place a strong emphasis on equitable representation, but their practical application usually falls short. Finding a balance between the right to free expression and the necessity to protect suppressed groups from harmful and misleading representations is challenging. Therefore, we will discuss media stereotypes in this article, as well as

the consequences of stereotype portrayal in the media and the legal developments for the same.

Keywords*:* Stereotypes, Media, Suppressed classes, Preconceptions, Portrayals, Social Group, Prejudice.

1. Introduction:

Public views and societal narratives are greatly influenced by the media in all of its manifestations. In addition to affecting how people and groups are viewed, it is a potent weapon for reflecting cultural norms, values, and challenges. This impact isn't necessarily neutral or constructive, though. Stereotypes have historically been reinforced by media depiction, especially when it comes to excluded and oppressed classes. The media frequently presents particular groups in ways that either support societal prejudices or further marginalize them, whether through news reporting, television programs, movies, or social media platforms. The role that media portrayals have in sustaining preconceptions of marginalized groups is examined in this socio-legal analysis, together with the legal frameworks that aim to counteract such deception.

The media may either strengthen or weaken preconceptions; it is a two-edged sword. Suppressed classes, such as women, ethnic minorities, and economically disadvantaged groups, are frequently underrepresented in ways that uphold the social structures that now exist. For instance, news outlets have long faced criticism for perpetuating unfavourable stereotypes by disproportionately linking minority groups to criminal conduct.[1] Similarly, women are often portrayed in entertainment media in ways that prioritize their physical attributes above their professional accomplishments and intelligence.[2] These representations have an impact on the living reality of these groups by influencing public opinion and policy choices.

Society's perception of suppressed classes is influenced by how they are depicted in the media. Stereotypes ingrained in media narratives have the potential to cause widespread exclusion, discrimination, and social stigmatization. For example, media representations of particular ethnic groupings as intrinsically criminal tend to worsen racial profiling in law enforcement.[3] Similarly, long-standing media portrayals of women and ethnic minorities as less capable or worthy of leadership positions can be linked to workplace discrimination against these groups. Real-world repercussions of these

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[1] Entman & Rojecki, The Black Image in the White Mind: Media and Race in America (University of Chicago Press, 2000).
[2] R. Gill, Gender and the Media (Polity pb, 2007).
[3] Dixon & Linz, Overrepresentation and underrepresentation of African Americans and Latinos as lawbreakers on television news (Journal of Communication, 50(2), 131-154, 2000).

media-driven prejudices include differences in employment procedures, educational chances, and encounters with police enforcement.

Laws have been put in place to combat the negative consequences of media distortion. The goal of laws like the Equal Employment Opportunity standards is to lessen workplace discrimination brought on by inaccurate media representations. Furthermore, a number of anti-discrimination legislation aim to shield people from damaging stereotypes in advertising and the media.[4] Regulating media coverage is a difficult task, though, because it must strike a balance between the need to stop prejudice and the right to free speech. For instance, the United States' First Amendment guarantees free expression, which makes it challenging to restrict media material, especially when it reinforces negative stereotypes. Other jurisdictions have comparable difficulties, since media control frequently clashes with democratic principles of press freedom and free expression.

Social media has become both a challenger and a reinforcer of prejudices in the digital era. Social media platforms have made it possible for more varied narratives to emerge, whereas conventional media sources used to be the main gatekeepers of representation. But this has also resulted in the quick dissemination of false information and damaging preconceptions, especially through algorithm-driven echo chambers and viral content. However, social media gives underrepresented groups a forum to dispel myths, tell their own stories, and demand that traditional media stop its biased representations.

A number of case studies demonstrate how the marginalization of oppressed classes is facilitated by media portrayal. The way African Americans are portrayed in American media is one example; traditionally, news reports have associated Black neighbourhoods with social dysfunction, welfare reliance, and criminality. This has strengthened unfavourable preconceptions that shape public policy, including biased enforcement tactics and stricter sentencing guidelines. In a similar vein, the way women are portrayed in advertisements frequently highlights conventional gender roles, which perpetuates cultural norms that restrict women's access to political and professional possibilities.[5] Beyond only perception, these preconceptions have an influence on actual outcomes including pay gaps and underrepresentation in leadership positions.

A diversified strategy that incorporates social campaigning and legislative reforms is needed to combat media-driven stereotypes.

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[4] C. A. MacKinnon, Sexual Harassment of Working Women: A Case of Sex Discrimination (Yale University Press, 2017).

[5] Kilbourne, Can't Buy My Love: How Advertising Changes the Way We Think and Feel, (Simon & Schuster, 1999).

Programs for media literacy can assist viewers in challenging stereotypes and critically analysing skewed representations. More diverse media ownership and content production, meanwhile, can offer more impartial portrayals of marginalized groups. Incentives for varied media coverage and stronger laws against discriminatory advertising are two examples of legal tools that may be extremely effective in reducing negative stereotypes. Initiatives for corporate social responsibility can also persuade media firms to embrace moral representation.

One urgent socio-legal issue with broad ramifications is the media's role in sustaining stereotypes of marginalized groups. The media frequently perpetuates negative preconceptions that fuel discrimination and inequality, despite its capacity to dispel prejudices and promote social inclusion. Legal frameworks provide some solutions to these problems, but striking a balance between freedom of expression and control is still difficult. In order to guarantee fair, truthful, and inclusive media portrayal going ahead, a mix of legal, social, and educational tactics will be required. Society may advance toward a more fair and reasonable depiction of all of its people by encouraging varied narratives and holding media organizations responsible.

2. Historical Interpretation of Media Representation:

The media has always been crucial in influencing public opinion and upholding or undermining established hierarchies of power. The dominant ideologies of the day have always had a significant impact on how oppressed classes whether identified by race, gender, class, or other indicators of marginalization are portrayed. As social movements, economic shifts, and political objectives have evolved, so too have depictions of the oppressed, from the early days of print media to the emergence of digital platforms.[6]

During the height of European empire and the industrial revolution in the 18th and 19th centuries, media portrayals of oppressed classes frequently functioned to justify exploitative regimes. Dehumanizing stereotypes that supported their oppression were commonly used to portray indigenous peoples, enslaved Africans, and the urban poor. Colonized peoples were shown in newspapers, literature, and pictures as "savages" in need of civilization, while the working class was either represented as violent gangs or as pathetic individuals worthy of charity rather than rights. These representations served to uphold social hierarchies and deflect criticism of systemic injustices.

[6] Edward Said, Orientalism 2–5 (Vintage Books 1978).

The development of radio and movies in the early 20th century made them effective instruments of resistance and tyranny. For instance, stereotyped portrayals of women, immigrants, and Black Americans in Hollywood fueled societal prejudices. Jim Crow-era ideals were reinforced by movies such as The Birth of a Nation (1915), which demonized Black males and extolled white supremacy.[7] Concurrently, labor and socialist groups started utilizing the media to draw attention to class conflicts and oppose capitalist exploitation.[8] In stark contrast to capitalist media, which frequently disregarded or distorted labor concerns, the Soviet Union, for example, created films that portrayed workers as heroes of development.

A watershed was reached in the middle of the 20th century with the Civil Rights movement, feminist movements, and postcolonial battles. To get their views heard and change public perceptions, activists have been using the media more and more. Counter-representations were offered by publications such as feminist journals and The Black Panther newspaper, which revealed injustice and celebrated identities that had been hidden.[9] The mainstream media gradually started to react, albeit frequently by diluting or sanitizing radical themes. Although representation increased, it frequently did so in ways that tokenized or commodified minority identities rather than providing true empowerment.

The 21st century's introduction of social media and the internet gave marginalized groups previously unheard-of access to forums for self-representation. Digital media has been used by movements like #BlackLivesMatter, #MeToo, and indigenous resistance initiatives to get past established gatekeepers and demand recognition.[10] Media power is still up for debate, as seen by the new kinds of monitoring, censorship, and digital exclusion that have been revealed by this democratization, even as it has challenged prevailing narratives.[11]

Overt dehumanization of oppressed groups has given way to more intricate processes of visibility, resistance, and co-optation in media portrayal. According to historical analysis, the media is never neutral; while it presents chances for opposition, it also reflects and upholds power dynamics. Being aware of these changes enables us to critique the media of today and promote more fair and genuine portrayals.

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[7] Thomas Cripps, Slow Fade to Black: The Negro in American Film, 1900–1942 49–53 (Oxford Univ. Press 1977).
[8] Elizabeth Fones-Wolf, Selling Free Enterprise: The Business Assault on Labor and Liberalism, 1945–60 70–85 (Univ. of Illinois Press 1994).
[9] David Hilliard, The Black Panther Intercommunal News Service, 1969–1980 (Black Classic Press 2007).
[10] Sarah J. Jackson, Moya Bailey & Brooke Foucault Welles, #HashtagActivism: Networks of Race and Gender Justice 14–33 (MIT Press 2020).
[11] Safiya Umoja Noble, Algorithms of Oppression: How Search Engines Reinforce Racism 1–19 (NYU Press 2018).

3. Mechanisms of the Persistence of Stereotypes:

3.1 Particularized Representation: Selective portrayal in the media is a major means by which stereotypes are maintained. The restricted duties that are often assigned to oppressed groups serve to perpetuate limiting and prejudiced perspectives. Lower Caste people, for example, are often shown in the context of crime, either as perpetrators or victims. Even the prejudice of African Americans are also associated with crime is reinforced by this selective presentation, which downplays the variety of African American experiences and contributions.

Women are frequently depicted in the media in a way that minimizes their intelligence and professional achievements, instead emphasizing their sensuality and physical appearance. The assumption that a woman's worth is largely derived from her looks rather than her intelligence or talents is perpetuated by this selective depiction.

3.2 Negative Framing: Negative Bad framing is another technique wherein the media more usually than not portrays oppressed groups in a bad light. For example, negative features of minority populations are often highlighted in news coverage, while their accomplishments and contributions are generally underreported.[12] Due to this biased framing, these groups are portrayed as troublesome or inferior, which skews public view of them.

The way immigrants and refugees are portrayed is one area where negative framing is very noticeable. The media often highlights problems related to immigration, including crime or the financial strain it causes, while downplaying the beneficial effects immigrants have on society. By promoting fear and animosity among immigrant populations, this biased representation feeds into xenophobic prejudices.

3.3 Reinforcement of Stereotypes via Repetition: In media, repetition is an effective technique. Certain preconceptions embed themselves in the public awareness when they are perpetuated in different media outlets. For instance, a damaging stereotype linking the Middle East and its inhabitants to terrorism has been solidified by the frequent depictions of Middle Easterners as terrorists in motion pictures and television programs.[13] In addition to distorting reality, this constant negative imagery also affects public opinion and policy.

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[12] "Many Say Coverage of the Poor and Minorities Is Too Negative" by (Pew Research Center 2010).

[13] "Evolution of Islamic Terrorism" Available on https://www.pbs.org/wgbh/pages/frontline/shows/target/etc./modern.html

3.4 Insufficient Diversity in Media Production: Stereotypes are also maintained in part by the absence of diversity in the backrooms of media creation. The viewpoints and prejudices of the creators, producers, and decision-makers are likely to be reflected in the material they generate when they are mostly members of that population.[14] Due to the uniformity of media output, suppressed classes are only partially represented, which often serves to reinforce rather than challenge preexisting preconceptions.

4. Consequences of Media Stereotype Representations:

4.1 Social Views and Discrimination: Stereotypical media portrayals have a big impact on attitudes and social views. Persistently portraying certain groups in a bad light encourages bias and discrimination. The media's persistent association of marginalized groups with criminal behavior has contributed to the widespread issues of racial profiling and systemic racism in the criminal justice system. Gender stereotypes that impede women's advancement in professional domains have also been perpetuated by the predominant representation of women in domestic responsibilities.[15] These views, which are shaped by the media, have the power to discriminate against people in a variety of contexts, such as the workplace, the classroom, and interpersonal relationships.

4.2 Stereotype Internalization: The internalization of these preconceptions by the oppressed classes themselves is another significant effect of stereotypical media depiction. People may start to absorb unfavorable stereotypes about their group and start to believe them to be true if they are exposed to them on a regular basis. Members of oppressed classes may have poor self-esteem, depressed ambitions, and pessimism as a result of this internalization.[16]

Young girls, for instance, may absorb the notion that their potential is restricted to positions akin to those of inferior women if they see women portrayed in such roles on a regular basis. In a similar vein, young people of color who see their neighborhoods being negatively characterized all the time may internalize a feeling of inferiority and lower aspirations for their future.

4.3 Impacts on Policy and Institutions: Decisions made by institutions and policies are also influenced by media coverage. The way the public is portrayed in the media has the power to influence lawmakers to pass laws and regulations that support these prejudiced viewpoints. For example, the idea that certain minority groups are

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[14] https://www.sciencedirect.com/topic/psychology/social-identity-theory

[15] Naznin Tabassum and Bhabani Shankar Nayak, Gender Stereotypes and Their Impact on Women's Career Progressions from a Managerial Perspective (Sage Journals, 2021).

[16] Bahador, Kemp G & McMillan, Media, and politics, Politics and the media in: Rudd C (eds.). (Auckland: Pearson, pp. 257–271, 2017)

more likely to commit crimes has shaped laws against crime and tactics used by the police that disproportionately target these populations.[17]

Furthermore, preconceptions propagated by the media may affect how funds and support are distributed for different initiatives. For instance, the public may approve welfare program cutbacks if the media consistently presents beneficiaries as unworthy or lazy, which would negatively impact the many people who really need help.

5. Potential Legal Angles:

Addressing the spread of stereotypes through legal remedies requires a multifaceted approach, given the complex interplay between anti-discrimination laws, media regulation, and freedom of expression. The following frameworks and legal remedies can be used to counteract the maintenance of stereotypes:

5.1 Civil rights legislation that prohibits discrimination: Equal protection laws forbid discrimination on the basis of race, gender, religion, and other protected characteristics. One example of such a legislation is the Civil Rights Act in India.[18] Under these rules, victims of stereotyped depictions that result in discrimination in housing, work, or other sectors can seek recourse.[19]

5.2 Hate Crime and Hate Speech Laws: Laws that forbid hate speech and hate crimes exist in many nations. When media portrayals encourage hatred or violence against marginalized groups, these laws may be used. For instance, it is forbidden to broadcast anything that incites racial hatred in certain nations.

5.3 Standards and Regulations for Broadcasting: Broadcast content standards are established by regulatory organizations like the Ministry of Information and Broadcasting Media outlets that propagate harmful stereotypes in violation of these guidelines may face sanctions or fines from these agencies.

5.4 Press Councils and Ombudsmen for the Media: The media sector is regulated by press councils or ombudsmen in several nations. They have the authority to look into complaints regarding stereotyped content and order an apology or correction. These organizations frequently prioritize fair portrayal and moral journalism.[20]

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[17] Alex R. Piquero & Robert W. Brame, Assessing the Race Crime and Ethnicity Crime Relationship in a Sample of Serious Adolescent Delinquents (National Library of Medicine, PubMed Central Publications 2009).
[18] Article 14 (Right to Equality) of the Constitution of India, 1950
[19] Protection of Human Rights Act, 1993
[20] Grievance Redressal Mechanism Press Council of India (PCI).

5.5 Laws pertaining to libel and defamation: People who suffer harm from stereotyped media representations may file libel or defamation lawsuits to get compensation. Although the main goal of these laws is to protect people, not groups, they can serve as a deterrent against egregiously false or harmful claims.[21]

5.6 Laws Protecting Consumers: These rules forbid deceptive or misleading advertising, and they can be used to contest stereotypical depictions in advertisements. Regulators have the authority to take action against ads that reinforce negative stereotypes.[22]

5.7 Workplace Anti-Discrimination Policies: Laws like Equal Employment Opportunity regulations help combat stereotypes that affect hiring, promotions, and the overall work environment. If prejudices are maintained and lead to discriminatory acts or a hostile work environment, employers may be held accountable.

5.8 Campaigns for Awareness and Education: Mandatory Training and Education Programs: To address unconscious prejudice and stereotype propagation among staff members, several jurisdictions mandate that media businesses develop diversity training and education programs.

5.9 Human Rights Treaties and the United Nations: Signatory nations are required to fight racial prejudice and advance equality under agreements like the International Convention on the Elimination of All Forms of Racial prejudice (ICERD). It is possible to exert pressure on states to enact anti-stereotyping laws by using these international platforms.[23]

6. Theoretical considerations about the effects of stereotypical media presentations:

Stereotypes are detrimental because they frequently downplay each person's individuality and diversity. Some of the preconceptions about particular groups that we encounter in the media are the only ones we are aware of. certain unfavorable preconceptions may explain our anxiety, our restricted social contacts, and even the injustice that society has inflicted upon certain groups. It could also cause us to re-evaluate how we view other people and ourselves. Three well-known theories that look at how exposure to stereotyped media material affects viewers' attitudes and behaviors are cultivation, media priming, and social cognitive theory.

[21] Section 499 of IPC and Defamation under Law of Torts.
[22] Consumer Protection Act, 2019.
[23] CEDAW (Convention on elimination of all forms of discrimination against women, 1979) and UDHR (Universal declaration of Human Rights, 1948).

According to the **cultivation hypothesis,**[24] prolonged media exposure alters viewers' worldviews. The cultivation hypothesis states that people are more inclined to create reality in a fashion that resembles media representations the more television they watch. This notion is supported, at least in part, by studies that demonstrates that heavy watchers frequently have more stereotyped views about women, people of color, the elderly, Lower caste people and those suffering from mental diseases.

The **Media Priming hypothesis**[25] is an additional method for comprehending the effects of media stereotyping. "Priming" describes how an initial stimulus subconsciously affects the perception of a later one. Media communications can prim audiences, shaping how they interpret subsequent messages. Research on media priming has frequently been done in relation to how African-Americans are depicted in the media as violent, menacing, or criminals. According to one experiment, criminal suspects who are African-American (suppressed classes in India) had greater dispositional ratings on aggressiveness than criminal suspects who are White, but not vice versa, after reading a newspaper article on a violent occurrence. The study was able to demonstrate that viewers' preconceived notions about the "violent black male" stereotype have an impact on their assessments of violent crimes.

The **Social Cognitive Hypothesis,**[26]states that under specific circumstances, viewers would mimic the behaviors they witness in the media, leading to a greater frequency of modeling of some pictures than of others. Adolescent females, for instance, can focus more intently on slender models who are frequently featured in the media. These models are portrayed as being extremely attractive and receiving all of the attention from men. Adolescent girls who view these kinds of pictures could start to feel self-conscious about their physique and desire to lose weight. They could acquire eating problems in the process of trying to get skinny. Reading magazines was shown to be significantly correlated with eating disorder symptoms in college-aged females.[27] This might not always be the case, though, since individuals frequently get the chance to see parents, friends, professors, and other people who might encourage healthy lifestyles. Therefore, while pictures in the media may have an impact on people, other socialization variables also have an impact.

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[24] George Gerbner & Larry Gross, Living with Television: The Violence Profile (26 J. Commc'n 172, 175–77 1976).
[25] Shanto Iyengar & Donald R. Kinder, News That Matters: Television and American Opinion (Univ. of Chicago Press 63–68, 1987).
[26] Albert Bandura, Social Foundations of Thought and Action: A Social Cognitive Theory 22–35 (Prentice-Hall 1986).
[27] Kristen Harrison & Joanne Cantor, The Relationship Between Media Consumption and Eating Disorders, 31 J. Commc'n 173, 178–80 (1997).

7. Clark's stages of minority groups' media representation:

The conversation so far has demonstrated that a variety of stereotypes are present in how various groups are portrayed in the media. These media portrayals are dynamic and adapt to the shifting circumstances. According to Clark,[28] there are four phases that minority representations in the media, particularly on television, go through.

The minority is essentially invisible and not acknowledged by the mainstream media during the ***first stage,*** known as "non-recognition." The group is presented on TV, but negative, stereotyped media images are utilized to represent them, leading to the ***second stage*** of "ridicule." They are shown in these pictures as being sluggish, foolish, wicked, or foolish. Boosting the self-esteem of the dominant group is the main goal of these representations. We proceed to the ***third stage,*** or "regulation," when the minority group is represented in constrained, socially acceptable roles like police officers, teachers, soldiers, etc., in response to objections against these representations. When the group is shown in both good and bad ways and is portrayed similarly to the dominating groups, it reaches the ***fourth stage,*** which is "respect."

8. Politics in Media Representation:

A danger to press freedom known as "media capture" occurs when the media are covertly manipulated "either directly by governments or by vested interests networked with politics.".[29] Media capture comes in a variety of formats. One method of directly regulating media content is through government or large business ownership of the media. The bulk of India's top media outlets are owned by massive conglomerates that make investments in a variety of sectors. Silvio Berlusconi was an Italian media mogul who launched his political career by using his media assets. He went on to become prime minister of Italy many times. According to Eraslan and Özertürk Politicians can also manage coverage by allowing media access only to certain areas.[30]

Governments and large businesses provide the media with advertising income, which is essential to their existence even in situations when they do not have direct influence over the media. This also holds true for India, where media outlets have tight ties with large enterprises that provide a substantial amount of funding for advertising. In a similar vein, media outlets have tight ties with several public sector businesses that run ads in their publications. Advertisers may threaten to discontinue running ads in their media if the articles

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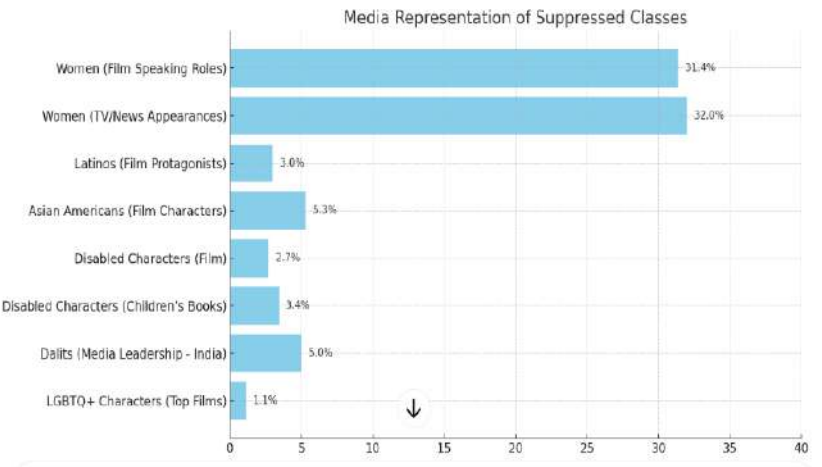
[28] Cedric C. Clark, *The Negro Image in American Television*, 6 *Television Quarterly* 18, 21–22 (1967).
[29] Anya Schiffrin, Media Capture: How Money, Digital Platforms, and Governments Control the News, 62 Journal of Development Studies 849 (2020).
[30] Hülya Eraslan & Selçuk Özertürk, Media Capture through Favor Access: Theory and Evidence, 14 American Economic Journal: Microeconomics 1 (2022),

in the media present a bad image of them or if they disagree with the editorial policies of the media.[31]

Even seemingly free social media platforms like Google, Facebook, and Twitter are really selling advertising our browser history and associated data. In addition, a number of social media platforms have been charged of bias in their reporting, disseminating false information, encouraging violence, and influencing voter behavior. In response, several governments globally have enforced more stringent regulations on social media platforms. In response, however, the social media have also taken a number of actions, including defending themselves at times, developing guidelines to lessen media entrapment, highlighting the value of digital literacy, attempting to be open and honest in their reporting, and demonstrating a commitment to holding candid public discussions about these matters.

9. Contemporary Statistical Figures:



9.1 The Media's Representation of Women: Just 31.4% of speaking characters in 900 popular films from 2007 to 2016 were female, with women of color being disproportionately underrepresented, according to research.[32] Only 32% of nighttime programs included women on camera, while 37% of print news articles were written by women.[33]

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[31] Centre for Media Studies (CMS), Government Advertising and Accountability: Media Visibility and Public Perception (2017).

[32] Women's Media Ctr., The Status of Women in the U.S. Media 2019 (2019), https://tools.womensmediacenter.com/page/-/WMCStatusofWomeninUSMedia2019.pdf.

[33] Stacy L. Smith et al., Inequality in 900 Popular Films: Examining Portrayals of Gender, Race, & LGBT Status from 2007–2016, USC Annenberg Inclusion Initiative (2017), https://annenberg.usc.edu/sites/default/files/DrStacyLSmithInequalityIn900PopularFilms.pdf.

9.2 Racial and Ethnic Representation: In 1,200 popular films from 2007 to 2018, Latinos made up just 3% of protagonists and 4.5% of all speaking or named characters, although making up 18% of the U.S. population and 23% of movie ticket consumers.[34] Despite making up 5.6% of the US population, Asian Americans only made up 5.3% of movie roles. Interestingly, television series with primarily Asian-American casts were separated by 20 years.

9.3 Disability Inclusion: Just 2.7% of characters in the highest-grossing movies from 2007 to 2016 have impairments, despite the fact that 15% of people worldwide have a handicap. According to a 2019 survey, handicapped main characters appeared in just 3.4% of children's novels.[35]

9.4 Indian Media's Representation of Caste: According to research by Oxfam India, 106 of the 121 leadership positions in newsrooms were held by members of higher castes, with Dalits and other underprivileged groups having little representation. Less than 5% of media decision-making positions were held by Dalits, who make up almost 16.6% of India's population. As a result, caste-based issues were underreported.[36]

9.5 Representation of LGBTQ+: Lesbian, homosexual, and bisexual characters made up just 1.1% of the 100 most watched movies in 2016, and there were no transgender characters.[37]

Conclusion

A crucial socio-legal issue with significant ramifications for social justice, equality, and human rights is the media's role in sustaining stereotypes of marginalized groups. As a potent tool of influence, the media Molds society norms, public opinion, and attitudes. Although it has the capacity to dispel ingrained prejudices and advance inclusion, its constant propagation of stereotypes frequently leads to the exclusion of already marginalized groups. A complex interaction between media restrictions, anti-discrimination legislation, and freedom of expression is shown by the socio-legal examination of this phenomena, underscoring the potential constraint of legal frameworks in addressing stereotyped portrayal.

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[34] Martha M. Lauzen, Latinos in Film: Erasure on Screen & Behind the Camera Across 1,200 Popular Films (USC Annenberg Inclusion Initiative 2019), https://assets.uscannenberg.org/docs/aii-study-latinos-in-film-2019.pdf.

[35] Stacy L. Smith et al., Inequality in 900 Popular Films: Examining Portrayals of Gender, Race, & LGBT Status from 2007–2016, USC Annenberg Inclusion Initiative (2017), https://annenberg.usc.edu/sites/default/files/DrStacyLSmithInequalityIn900PopularFilms.pdf.

[36] Oxfam India & Newslaundry, Who Tells Our Stories Matters: Representation of Marginalised Caste Groups in Indian Newsrooms (2019), https://www.oxfamindia.org/knowledgehub/workingpaper/whotellsourstories.

[37] GLAAD, Where We Are on TV: 2016–2017, https://www.glaad.org/files/WWAT/WWAT_GLAAD_2016-2017.pdf.

According to sociology, societal narratives are significantly shaped by media depictions. Stereotypical representations of suppressed groups, whether due to socioeconomic position, gender, caste, ethnicity, or disability, feed into preexisting biases and perpetuate a discriminatory cycle. By creating skewed public perceptions, limiting access to social and economic mobility, and upholding societal hierarchies, these portrayals restrict prospects for underrepresented populations. Some groups are systematically excluded from mainstream society as a result of the persistent portrayal of them as criminal, inferior, or undeserving. Suppressed classes find it challenging to claim their identities and rights as a result of this type of symbolic violence, which also maintains power disparities.

Legally, some governments have used constitutional clauses and regulatory frameworks to try to stop racist media coverage. The goal of hate speech legislation, content restrictions, and anti-defamation laws is to stop damaging stereotypes from being spread. But because of enforcement flaws, issues with free speech, and opposition from influential media corporations, the efficacy of these laws is still in doubt. Even though equitable representation is emphasized in international human rights accords, actual implementation frequently falls short. The difficulty is striking a balance between the need to shield vulnerable populations from damaging and deceptive representations and the right to free expression.

The landscape of media representation has become even more complex with the emergence of digital and social media. Social media platforms offer an uncensored environment where stereotypes may be both contested and reinforced, even as conventional media organizations are held to some degree of accountability. Suppressed classes may now express their opinions and challenge popular narratives thanks to the democratization of content creation. However, the lack of strict regulatory control enables hate speech, false information, and biased representations to proliferate unchecked, frequently escalating social divides and discrimination.

A multifaceted strategy that incorporates social awareness, media responsibility, and legal change is needed to address the problem of stereotypes that are reinforced by the media. To reduce bias, it is crucial to strengthen legislation against discriminatory material, encourage ethical journalism, and guarantee varied representation in media creation. Programs for media literacy can enable viewers to interact critically with material and dispel long-held preconceptions. Furthermore, encouraging inclusive narratives that accurately depict suppressed groups might aid in dispelling ingrained biases and advancing societal cohesiveness.

In summary, the media undoubtedly shapes society narratives, but it also has an obligation to promote justice and fairness. In order to ensure that suppressed groups are accurately and respectfully depicted in the media, legal frameworks must adapt to the shifting dynamics of media representation. Ultimately, to destroy damaging stereotypes and promote a more equitable and inclusive society, legislators, media professionals, civil society, and the general public must work together.

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Manual Scavenging in India: An Analysis of Legislative and Judicial Perspective

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Abstract

This study examines the persistence of manual scavenging in India through a critical analysis of legislative and judicial responses. Despite statutory prohibitions under the Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993 and the Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013, the practice continues due to entrenched caste hierarchies, socio-economic marginalization, and inadequate implementation. The research highlights how manual scavenging violates fundamental rights, particularly the right to equality, dignity, and life under the Constitution of India. Judicial interventions, especially by the Supreme Court and High Courts, have played a significant role in recognizing the inhuman nature of the practice and mandating compensation and rehabilitation measures. However, gaps in enforcement, lack of technological advancement, and persistent social stigma hinder meaningful progress. The study argues for a comprehensive approach involving strict implementation of laws, technological innovation, and societal transformation to eradicate manual scavenging and ensure dignity and justice for affected communities.

Keywords - Manual Scavenging; Human Dignity; Caste Discrimination; Rehabilitation; Constitutional Rights; Judicial Activism; Social Justice; Sanitation Workers; Equality; Legislative Framework

1. Introduction

"For ours is a battle not for wealth or for power. It is a battle for freedom. It is the battle of reclamation of human personality."

- Dr. B. R. Ambedkar

Manual Scavenging is the practice of cleaning, moving, discarding, or handling human waste from drains, dry toilets, and other sanitation systems by hand. This long-standing, stigmatized practice, which is restricted to India's Dalits, is a grave human rights violation that compromises the involved individuals' wellbeing, health, and dignity. In comparison to their male counterparts, the vast majority of girls and women who engage in manual scavenging clean dry latrines, making them especially vulnerable. Manual scavenging is a dangerous and dehumanizing practice that violates human rights and the Indian constitution's guarantee of a dignified life. Participating members of the so-called "lower caste" are suppressed and forced to lead degrading lives. Because those in the "lowest of the lowest" classes are responsible for cleaning up human waste, the practice is a real-life illustration of the strict caste system. In addition to experiencing the psychological effects of social exclusion and stigmatization, these people face discrimination in all areas of daily life, including healthcare, education, and access to basic amenities. This social attitude has shown the value placed on these people's lives in addition to reflecting the value placed on their dignity.

Manual scavenging has a deeply entrenched history in India, existing at the crossroads of caste-based discrimination and economic deprivation. Individuals, known as manual scavengers, undertake the cleaning of waste using rudimentary tools such as brooms, buckets, or baskets, usually without access to the necessary protective gear. Their work may involve descending into dark and hazardous environments, and the absence of modern equipment and protective clothing makes them highly vulnerable to health risks, including exposure to toxic gases and pathogens. The nature of manual scavenging reinforces deep-seated social hierarchies in India. The practice perpetuates a cycle of discrimination, as manual scavengers face not only physical hazards, but also experience social stigmatisation and exclusion from mainstream society. Caste-based occupational groups like manual scavengers are economically, psychologically, and politically marginalised in society.

The emergence of a manual scavenging class has been shaped by a number of socio-economic practices and perceptions and has been normalised through the idea of a ‘duty’, sanctioned by religion-based caste oppression, economic imperatives, a lack of infrastructure, and legal indifference. Many manual scavengers are women, also making it a question of gender discrimination.[1]

Despite manual scavenging having been banned, the practice continues in pockets of the country under different names. Efforts have been made by the Indian government and various organisations to eradicate manual scavenging and provide alternative livelihoods for

[1] Deepika Tandon and Moushumi Basu, “Manual Scavenging Must End”, 51(17) *Economic and Political Weekly*, 4-5 (APRIL 23, 2016).

those involved. However, despite legislative measures and awareness campaigns, the practice persists, underscoring the complex challenges of dismantling a deeply ingrained social and economic system. The fight against manual scavenging is a critical aspect of India's struggle for social justice and equality. In light of this background, this paper will attempt to examine India's legislative and judicial perspectives on manual scavenging.

2. Meaning and Extent of Problem

Manual scavenging is the process of manually cleaning, handling, and getting rid of human waste and other waste products from open drains, sewers, and dry latrines. Scavenging by hand is extremely dangerous to one's health. Every five days, a worker passes away from breathing in harmful gases and fumes while cleaning septic tanks, and innumerable others experience serious health issues.[2] The issue at hand poses challenges not only to the right to health and the right to life, but it also undermines human dignity and prompts concerns regarding discrimination and caste distinctions.[3] The Supreme Court has also described it as a practice which is 'squarely rooted in the concept of the caste system and untouchability'.[4]

In India, manual scavenging has been a persistent problem, even though it has been legally prohibited since 1993. The most recent survey conducted by the National Safai Karmachari's Finance and Development Commission (NSKFDC) in 2018 across 14 states in India revealed that 87,913 individuals were involved in the removal of human excrement.[5] As per the United Nations, "the practice of manual scavenging is linked to India's caste system where so-called lower castes were expected to perform this job. Manual scavengers are amongst the poorest and most disadvantaged communities in India."[6] In December 2021, the Ministry of Social Justice had released the caste-related data of 43,797 scavengers identified and stated that 42,594 of them are from scheduled caste and 421 are from scheduled tribes and 431 from other backward classes.[7] A staggering 98 percent of individuals engaged in manual scavenging come from lower castes

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[2] See, "One Manual Scavenging Death Every Five Days: Official Data" available at: https://indianexpress.com/article/india/official-data-shows-one-manual-scavenging-death-every-five-days-5361531/ (last visited on Jan. 22, 2025).

[3] Mustafa Chitalwala, "Manual Scavenging — An Injustice Towards Caste and Gender", available at: https://lawlex.org/lex-pedia/manual-scavenging-an-injustice-towards-caste-and-gender/23120?noamp=mobile (last visited on Jan. 22, 2025).

[4] *Safai Karamchari Andolan* v. *Union of India*, (2014) 11 SCC 224.

[5] Varsha Gowda, "Shaackles of Manual Scavenging Still Weigh Heavy in Free India" available at: https://www.deccanherald.com/india/shackles-of-manual-scavenging-still-weigh-heavy-in-free-india-1135877.html (last visited on Jan. 28, 2025).

[6] Hanan Zaffar, "Manual Scavengers Continue To Die While Cleaning Sewers In India" available at: https://www.fairplanet.org/editors-pick/manual-scavengers-continue-to-die-while-cleaning-sewers-in-india/

[7] Press Information Bureau, available at: https://pib.gov.in/PressReleasePage.aspx?PRID=1776847 (last visited on Feb. 15, 2025).

or are women.[8] According to government statistics from India, the total number of manual scavengers is around 58,098; however, activists and experts believe this figure is significantly underestimated.[9]

It has been found through surveys that "49 per cent of sewer cleaners suffered from breathing problems, cough and pain in the chest and 11 per cent suffered from dermatitis, eczema and other skin infections. Thirty-two per cent complained that constant and prolonged contact with sewer water causes ear infections, burning of eyes and bad eyesight. Lack of appetite is also a common problem among such workers."[10] As per the Safai Karmachari Andolan, which is a national initiative aimed at eliminating manual scavenging, "there were 472 fatalities linked to this practice from 2016 to 2020."[11] As per the union Ministry of Social Justice and Empowerment, "between 2018 and 2023, 339 people lost lives while cleaning sewers and septic tanks in India; nine such deaths were recorded in 2023, 66 in 2022, 58 in 2021, 22 in 2020, 117 in 2019, and 67 deaths in 2018."[12]

In a documentary[13] focused on manual scavenging, the workers share their experiences of being stigmatized, discriminated against, and living an undignified existence. Additionally, the film highlights the vulnerability of manual scavengers, who lack safety gear while cleaning dangerous septic tanks. These workers expressed their frustration with the indifference of both the government and society towards their situation. However, the social stigma and degradation of dignity extend beyond the individuals working as scavengers; it is also passed down and suffered by their families.

India has signed the 2030 Sustainable Development Agenda. However, the achievement of the Sustainable Development Goals (SDGs)[14] such as "clean water and sanitation"[15], "decent work and economic growth"[16], "reduced inequalities",[17] and "peace, justice and strong institutions"[18] is hindered by the widespread practice of manual scavenging in the nation. According to the Danish Institute for Human

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[8] *Supra* note 6.
[9] *Ibid.*
[10] Harish V. Nair, "Apex Court Says Pay Rs 10 Lakh to Dead Sewer Workers' Families" available at: https://www.indiatoday.in/india/story/supreme-court-compensation-dead-sewer-workers-manual-scavenging-186787-2014-03-29 (last visited on Jan. 8, 2025).
[11] *Supra* note 6.
[12] See, "339 Lives Lost to Manual Scavenging in the Last Five Years, Govt. Data Reveals" available at: https://thewire.in/rights/339-lives-lost-to-manual-scavenging-in-the-last-five-years-govt-data-reveals (last visited on Jan. 8, 2025).
[13] ScoopWhoop "The Manual Scavengers of Mumbai", Available at: https://www.youtube.com/watch?v=5gRwdDfxVL8 (last visited on Jan 16, 2025).
[14] United Nations, The 17 Goals, available at: https://sdgs.un.org/goals (last visited on Jan. 19, 2025).
[15] *Id.,* Goal 6.
[16] *Id.,* Goal 8.
[17] *Id.,* Goal 10.
[18] *Id.,* Goal 16.

Rights, "156 out of the 169 targets defined under the SDGs are linked to human rights and labour standards, underscoring the importance of measuring progress of excluded communities and rights-holders such as those engaged in manual scavenging and sanitation work."[19]

3. International Covenants, Protocols and Instruments

The prohibition of manual scavenging is clearly spelt out in international instruments. In recent past, the problems and worries of manual scavengers have been discussed and highlighted at international forums, especially the United Nations. India was one of the first countries to ratify the International Labour Organisation (ILO) "Convention Concerning Discrimination in Respect of Employment and Occupation, 1958" which aims to promote equality in employment and occupations by eliminating discrimination based on a variety of factors, such as social origin. The ILO adopted the 1930 Convention on Forced Labour to abolish all forms of forced or compulsory labour. Moreover, India having ratified the Convention is under an obligation to eliminate all forms of forced or compulsory labour. The ILO classifies manual scavenging into three forms - "removal of human excremental from public streets and dry latrines"; "cleaning septic tanks"; and "cleaning gutters and sewer."

Occupational Health Services Convention, 1985, provides the protection to any worker against injury, disease or other infirmity caused during the course of employment and services. This convention indirectly indicates that manual scavengers must be given better health facility and technological support in order to prevent the performance of such inhumane activity manually.[20]

India is also a signatory to the other international treaties and conventions that impose duties to prohibit manual scavenging, such as the Convention on the Rights of Child (CRC), the International Covenant on Economic, Social, and Cultural Rights (ICESCR), and the International Covenant on Civil and Political Rights (ICCPR). India has been urged to prohibit manual scavenging by the Committee on Economic, Social, and Cultural Rights (ESCR Committee), the Committee on the Rights of the Child (CRC Committee), and the Committee on the Elimination of Racial Discrimination (CERD Committee). The practice of manual scavenging has been denounced by numerous worldwide organizations, which have also called for its cessation.

In addition to the constitutional provisions the inhuman practice of manual scavenging is banned by a number of international

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[19] WaterAid, "Status of Manual Scavengers in India" available at: https://www.wateraid.org/in/sites/g/files/jkxoof336/files/status-of-manual-scavengers-in-india-sustainable-development-goals-perspective.pdf (last visited on Feb.18, 2025).

[20] Occupational Health Services Convention, 1985, preamble.

treaties and accords to which India is a member such as the Convention on the Elimination of Racial Discrimination (CERD), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), and the Universal Declaration of Human Rights are a few of these instruments (UDHR).

4. Constitutional Safeguards for Manual Scavengers

Recognised as a grave violation of human rights, manual scavenging infringes upon several fundamental rights guaranteed under the Constitution of India. It represents an unacceptable sanitation practice that poses severe risks to public health and the environment. Since manual scavengers belong to the backward section of society, they are entitled to some special rights apart from rights under the Indian Constitution. These are enshrined in constitutional provisions such as: article 14- "right to equality"; article 16(2)- "equality of opportunity in matters of public employment"; article 17- "abolition of untouchability"; article 19(1)(g)- "right to practice any profession or to carry on any occupation, trade or business"; article 21- "protection of life and personal liberty"; article 23- "prohibition of traffic in human beings and forced labour etc."; article 41- "right to work, to education and public assistance in certain circumstances"; article 42- "just and human conditions of work"; article 46- "promotion of educational and economic interest of schedule caste, schedule tribe and other weaker sections"; article 47- "duty of the state to raise the level of nutrition and the standard of living and to improve public health"; article 338- "constitution of a national commission for scheduled caste."

In case of *Indira Gandhi* v. *Raj Narayan*,[21] the Supreme Court held that "right to equality is the basic feature of Indian Constitution and it cannot be destroyed or derogated by any customary or social evils." Further Constitution provides for the specific application of equality and prohibits the state as well as private individuals from discriminating citizens on the "grounds of religion, race, caste, sex, place of birth or any of them"[22] and also enables the state to "make special provision for protection of interest of socially, educationally and economically backward classes of citizens or for the scheduled class and scheduled tribes."[23] Even Constitution provides the equal opportunity in the matter of employment[24] and reservation policy[25] for the upliftment of weaker section of the society.

In case of *People's Union for Democratic Rights* v. *Union of India*,[26] the Supreme Court held that "right under article 17 is also

[21] (1976) 2 SCR 347.
[22] The Constitution of India, art. 15, cl. 1 and cl. 2.
[23] *Id.* art. 15, cl. 4, 5 & 6.
[24] *Supra* note 22, art.16 cl. 1, "There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State".
[25] *Id.* art.16 cl. 4.
[26] (1982) 3 SCC 235.

available against private individuals." Article 19 of Constitution enumerates different forms of freedoms and one of them is "right to practice any profession, or to carry on any occupation, trade or business"[27] which express that no one can be compelled to choose or perform any inhumane and menial job or occupation because of belonging to a particular section of society.

Moreover, article 21 of Constitution embodies the provision of protection of life and personal liberty[28] which has been interpreted widely by Indian judiciary with the passage of time and plethora of rights have been included in it which can be claimed by any section of society including manual scavengers. In *Francis Coralie* v. *Union Territory of Delhi*,[29] Supreme Court held that "right to live is not limited to mere animal existence. It is something more than just physical survival. It includes the right to live with human dignity along with bare necessities of life."

5. Legislative Perspective on Manual Scavenging

In the light of the nature of this occupation, and the historical context of caste, poverty and coercion, there has been a progression of social and legal responses, ultimately leading to the comprehensive legal prohibition of manual scavenging in all its forms. The practice of manual scavenging has been outlawed by the Government through two legislation, the Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993 and Prohibition of Employment as Manual Scavengers and Their Rehabilitation Act, 2013. The Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993 (hereinafter the EMSCDL Act), provided for the "prohibition of employment of manual scavengers as well as construction or continuance of dry latrines and for the regulation of construction and maintenance of water sealed latrines and matters connected therewith." This 1993 Act outlawed manual scavenging and made this a punishable offence. An overdue reform process was initiated in Indian society. Despite its numerous shortcomings, it served for twenty years as a key tool in freeing marginalized individuals who were forced to live a life of indignity by the ideology of caste and descent-based labor.

While the 1993 Act focused on requirements for sanitation, it paid little or no attention to the deep rooted social problem of the depletion of human dignity and was therefore unable to take effective long term steps to eliminate the phenomenon. The 1993 Act made it illegal to employ scavengers or to build dry (non-flush) latrines, with a penalty of up to one year in prison and a 2000 rupee fine. The fate of

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[27] *Supra* note 22, art. 19 cl. (1)(g).
[28] Id., art. 21, "No person shall be deprived of his life or personal liberty except according to a procedure established by law".
[29] (1981) 1 SCC 608.

this law, even in its diluted state, was akin to that of many other measures enacted by the Indian legislature that support or defend the poorest and most marginalized members of society. These regulations are seldom recognized, much less implemented. This can be stated on the basis of fact that the 1993 Act came into force only on January 26, 1997,[30] in six states and the Union Territories.[31] It took another 13-15 years to be adopted in all states after the Apex Court's warning of initiating contempt proceedings in 2012.[32] It is a *prima facie* proof of lack of political will and administrative apathy in the proper planning and implementation of the 1993 Act. The 1993 legislation could not yield any substantial results due to a lack of holistic implementation and apathy engendered due to deeply entrenched caste hierarchies prevalent in India.[33] According to the 2001 Census, nearly 787000 manual scavengers were identified. The 2011 Census recorded 182505 manual scavengers and 2606278 dry latrines. These figures suggest that the 1993 Act failed to achieve its objective.

Indian parliament passed a new and stronger law in its monsoon season in 2013 aiming to prohibit and punish manual scavenging, which remains the country's most degrading form of untouchability and cast discrimination. Minister Selja, introducing the bill in Parliament, described the practice as "dehumanizing and inconsistent with the right to live with dignity and a stigma and blot on society" and admitted that the persistence of this social evil was in denial mode for all state governments. The law was passed by Parliament on 7th September 2013 after much debate and consideration, to address the problems left untouched by the erstwhile legislation and to correct some of the previous law's weaknesses. It came into force immediately, unlike the 1993 Act[34] and the rules were also notified.[35]

The 1993 Act was thus replaced by the enactment of the Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013 (hereafter PEMSR Act) which mandates the identification of persons engaged in manual scavenging for their

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[30] See, Jan. 26, 1997, vide notification No. S.O. 58(E), dated Jan. 24, 1997, see Gazette of India, Extraordinary, Part II, sec. 3(ii) and also see the Employment of Manual Scavengers and Construction of Dry Latrine (Prohibition) Act, 1993, available at: https://legislative.gov.in/sites/default/files/A1993-46_0. pdf (last visited on March 5, 2025).

[31] As per the Act notified in the gazette, it came into force only in Andhra Pradesh, Goa, Karnataka, Maharashtra, Tripura and West Bengal and in all Union Territories.

[32] *Safai Karamchari Andolan* v. *Union of India*, (2011) 15 SCC 611.

[33] Sujith Koonan, "Background Note on Prohibition of Manual Scavenging and Protection of the Rights of Sanitation Workers in India" International Environmental Law Research Centre (2013), available at: http://www.ielrc.org/content/f1305.pdf (last visited on March 13, 2025).

[34] It came into force on Sep. 18, 2013.

[35] The rules were notified on Dec. 12, 2013 available at: http://socialjustice.nic.in/pdf/manualsca-rules2013.pdf (last visited on March 13, 2025).

liberation and rehabilitation. This Act does not explicitly ban dry latrines and manual scavenging. It operates after the issuance of a notification by the State Governments setting a date for the implementation of the provisions prohibiting the use of manual scavengers and dry latrines in the state.

The PEMSR Act defines 'manual scavenging' in an inclusive way as "Manual scavenger means a person engaged or employed by an individual or a local authority or an agency or a contractor, for manually cleaning, carrying, disposing of, or otherwise handling in any manner, human excreta in an insanitary latrine or in an open drain or pit into which the human excreta from the insanitary latrines is disposed of, or on railway track or in such other space or premises, as the Central Government or a State Government may notify, before the excreta fully decomposes in such a manner as may be prescribed, and the expression 'manual scavenging' shall be construed accordingly."[36] The explanation attached to this definition states that "for the purpose of this clause (a) 'engaged or employed' means being engaged or employed on a regular or contract basis; (b) a person engaged or employed to clean excreta with the help of such devices and using such protective gear, as the Central Government may notify in this behalf, shall not be deemed to be a 'manual scavenger'."[37]

Unlike the 1993 Act, the strength of the new law is that it is a central law which is binding on all states and does not require state legislatures to endorse it. It acknowledges the historical injustice and indignity caused by individuals forced to perform this degrading work for generations, and imposes strict penalties for its further continuation and a rehabilitation package. This law is more comprehensive than the previous one and for the first time bring both railways and sewers into the scope of its definition and prohibitions. The previous law did not apply to the cleaning of excreta from railway tracks, nor to dangerous and degrading practices in which sanitary workers were forced to enter and wade into human excreta.

There are technical solutions available today that eliminate the need for humans to handle excreta manually. However, the new legislation does well to bring them under the law but railways and municipalities have not made sufficient investment to protect the sanitary workers' human dignity. The new legislation does include a number of escape clauses that permit governments to continue these outdated methods as long as they implement 'protective gear'. Both railways and local government must modernize their technology to guarantee that no one is ever obliged to handle human waste while carrying out their responsibilities. There should be no compromise on this.

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[36] The Prohibition of Employment as Manual Scavengers and Their Rehabilitation Act, 2013, S. 2(g).
[37] *Ibid.*

The 2013 Act requires a survey of insanitary latrines and manual scavengers within its jurisdiction to be carried out by every local authority. The experience with the 1993 law, however, was that the prevalence of manual scavenging has been greatly under reported by the state governments and mostly continues to be in denial.

Finally, in describing the state's responsibility to rehabilitate employees with jobs, housing incentives, soft loans, and vocational training, the statute is clear. If the transformation of manual scavengers and their children to a life of social inclusion and integrity is to be completed, these rights should be meticulously set out in depth in the laws.

Liberation will arrive for sewage workers with the implementation of technological improvements that make the profession civilized, dignified and clean as well as insuring that human beings do not have to have any close contact with the dirt that retains their health. Technology are globally available that could be invested in by both Indian railways and municipalities as mentioned which would remove the need for human beings to manually treat excreta.

The reality is that these public investments are not made by central, state or local governments because people can be hired inexpensively to do them, driven by their birth in the least advantaged castes and their lack of other means of subsistence. Their lives, unfortunately, are viewed as inexpensive, and they are frequently cut short early by asphyxiation in sewers, respiratory or skin disorders, and other occupational health dangers. These workers are not medically insured and are frequently denied adequate treatment unless they receive support from their employers.

The 2013 Act reinforces the prohibition on manual scavenging. The main features of this Act which distinguishes it from the earlier 1993 Act are that it covers not only dry latrines but also other sanitary latrines, including rehabilitation provisions, and so on, with a broader definition of manual scavengers. The 2013 Act outlaws the practices such as "the hiring of manual scavengers", "the manual cleaning of sewers and septic tanks without the use of protective gear and cleaning tools", and "the building of insanitary toilets."[38] It is worth noting that the offences under this Act also attract higher penalties. Talking of the authorities, the Act states that the sub-division, district, state and central government will have a vigilance/ monitoring committee.

In addition, the National Safai Karmcharis Commission (NCSK) has been set up to track the enforcement of the Act, as well as to investigate allegations of abuse under the Act. Since manual scavenging exists primarily because of the shortage of water borne

[38] "Insanitary latrine" means "a latrine which requires human excreta to be cleaned or otherwise handled manually, either in situ, or in an open drain or pit into which the excreta is discharged or flushed out, before the excreta fully decomposes."

latrines, the Act also provides for a sufficient number of sanitary community latrines to be constructed in urban areas to eliminate the practice of open defecation.

The 2013 Act does not designate an authority to oversee the rehabilitation process, leading to a failure in rehabilitating manual scavengers, a problem which is exacerbated by the absence of alternative employment and the social stigma attached to the practice. The lack of appropriate training and skill development programs further hinders these workers from transitioning to other forms of employment, leaving them trapped in the cycle of manual scavenging. The Act also aims to "prohibit employers from engaging manual scavengers" unless they provide 'protective gear', but does not offer a precise definition of 'protective gear'. Further, the effectiveness of the Act is compromised by the absence of technological investments in appropriate infrastructure.

Manual scavenging persists in India despite these regulations and laws because of three significant gaps in the Act. First and foremost, there has been a complete failure to rehabilitate workers, primarily because the Act does not designate an authority to supervise this. According to the rules, many families of workers who lost away while manual scavenging are not compensated either.[39] The issue is exacerbated by ongoing social stigma and a scarcity of follow-up job prospects. These employees are trapped in the vicious cycle of manual scavenging because they do not receive the proper training or skill development to switch to other jobs.

Secondly, the law seeks to forbid employers from hiring manual scavengers, but only if they do not provide protective equipment to their workers. However, the law does not define "protective gear," and employers exploit this gap to avoid responsibility, even if they are only supplying workers with gloves. Finally, a lack of technology and investment in suitable infrastructure makes the Act practically insignificant.

6. Judicial Perspective on Manual Scavenging

Judiciary has always played an active role in promoting the cause of social economic welfare by transforming certain ideals of the guidelines into enforceable rights to uplift the disadvantaged and weaker sections of society. A liberal interpretation of article 21 of the constitution produced several freedoms and gave a new dimension to the

[39] Out of 376 deaths, families of only 200 sanitation workers who died between 2015 and 2019 were paid full compensation, 75 received partial amount and 101 have not received any compensation at all. See, "Manual Scavenging: 376 Die In 5 Years, Only Half Of The Families Given Compensation, Minister Informs Lok Sabha", available at: https://swachhindia.ndtv.com/manual-scavenging-376-die-in-5-years-only-half-of-the-families-given-compensation-minister-to-lok-sabha-41680/ (last visited on March 28, 2025).

jurisprudence on social welfare in India. As far as the legal response to the manual scavengers is concerned, the courts have recently adopted a strict stance towards manual scavenging and pulled up the State authorities for failing to eliminate manual scavenging.

In *Delhi Jal Board* v. *National Campaign for Dignity and Rights of Sewerage and Allied Workers*,[40] in a historic ruling, the Supreme Court recognized and emphasized the indifference shown to and suffering experienced by the marginalized segments of society, especially scavengers and sewage workers. These individuals, who have been denied basic rights to life, liberty, and equality for more than sixty years, put their lives at risk by entering the drainage system without any protective gear or security. The Court referred to a report by Centre for Education and Communication,[41] and stated that "The workers are suffering from high mortality and morbidity due to exposure at workplace. 33 workers had died in last 2 years due to accidents while working on the blocked sewer lines...59% of the workers enter underground sewer manholes more than 10 times a month and half of them have to work more than 8 hours a day... 41workers have reported syncope, and other 24 reported temporary loss of consciousness. A little over 1/3 of the workers had been immunized against tetanus while none of them had been vaccinated against hepatitis B. Approximately 46 % of workers across all age group were found to be underweight according to Body Mass Index (BMI) calculation....All daily wagers were getting a wage of approximately 2950 rupees per months without any other benefit irrespective of service period."

In response to the contention raised by the Delhi Jal Board regarding judicial activism and overreach the Court observed that "Whenever one of the three constituents of the State i.e., judiciary, has issued directions for ensuring that the right to equality, life and liberty no longer remains illusory for those who suffer from the handicaps of poverty, illiteracy and ignorance and directions are given for implementation of the laws enacted by the legislature for the benefit of the have-nots, a theoretical debate is started by raising the bogey of judicial activism or judicial overreach and the orders issued for benefit of the weaker sections of the society are invariably subjected to challenge in the higher courts. In large number of cases, the sole object of this litigative exercise is to tire out those who genuinely espouse the cause of the weak and poor." The Supreme Court also condemned the government and state institutions for being insensitive to the safety and well-being of those who, due to extreme poverty, are forced to work in extremely hazardous conditions and are constantly at risk of losing their lives. The Supreme Court also rejected the affluent class's elitist

[40] (2011) 8 SCC 568.

[41] Centre for Education and Communication in collaboration with Occupational Health & Safety Management Consultancy Services on "Health & Safety Status of Sewage Workers in Delhi".

attitude toward pro bono litigation and public interest litigation.[42] In addition to ordering the families of the deceased to receive higher compensation, the Supreme Court also instructed the civic authorities to promptly carry out the Delhi High Court's directives and rulings aimed at protecting and safeguarding the sewage workers.

In *Safai Karmchari Aandolan* v. *Union of India*,[43] a writ petition was filed by the petitioners as a PIL so that a writ of mandamus be issued directing the Union of India, Union Territories, and State Governments to strictly enforce and implement the EMSCDL Act. The petitioner further urged the court to rule that manual scavenging violates the rights to equality and life, as well as to consider it a form of untouchability and forced labor, both of which the Constitution has prohibited. For eleven years, the petitioner persuaded the Supreme Court to hear the matter as a "continuing mandamus," allowing the court to hold state authorities accountable for ignoring the law.

The Supreme Court acknowledged the menace of manual scavenging in India as an inhuman, degrading and indignified profession. The Supreme Court observed that "PEMSR Act, 2013 and the EMSCDL Act, 1993 neither dilutes constitutional mandate of article 17 of the constitution nor does it condone inaction on the part of Union and State governments under EMSCDL Act, 1993. The Supreme Court held that the PEMSR Act, 2013 expressly acknowledges article 17 and 21 of the constitution as the rights of persons engaged in sewage cleaning and cleaning tanks as well as persons cleaning human excretion on railway tracks." P. Sathasivam CJ. said that "the official statistics of the Ministry of Social Justice and Empowerment for the year 2002-03 put the figure of identified manual scavengers at 6, 76,009. Of these, over 95 percent are dalits, compelled to undertake this denigrating task." The Supreme Court also cited numerous international agreements and instruments[44] to which India is a signatory that aim to ensure a dignified human life in relation to his profession and other aspects of life and laid down following propositions with regards to rehabilitation of manual scavengers: "If the practice of manual scavenging has to be brought to a close and

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[42] Supreme Court emphasized the importance of the petitions filed pro bono publico for protection of the rights of less fortunate and vulnerable sections of the society, and observed: "There is a misconception in the minds of some lawyers, journalists and men in public life that public interest litigation is unnecessarily cluttering up the files of the court and adding to the already staggering arrears of cases which are pending for long years and it should not therefore be encouraged by the court. This is, to our mind, a totally perverse view smacking of elitist and status quoist approach. Those who are decrying public interest litigation do not seem to realise that courts are not meant only for the rich and the well-to-do, for the landlord and the gentry, for the business magnate and the industrial tycoon, but they exist also for the poor and the down-trodden, the have-nots and the handicapped and the half-hungry millions of our countrymen."

[43] 2014 (4) SCALE 165.

[44] Universal Declaration of Human Rights (UDHR), Convention on the Elimination of Racial Discrimination (CERD), and Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).

also to prevent future generations from the inhuman practice of manual scavenging, rehabilitation of manual scavengers will need to include: (a) Sewer deaths – entering sewer lines without safety gears should be made a crime even in emergency situations. For each such death, compensation of Rs. 10 lakhs should be given to the family of the deceased. (b) Railways – should take time bound strategy to end manual scavenging on the tracks. (c) Persons released from manual scavenging should not have to cross hurdles to receive what is their legitimate due under the law. (d) Provide support for dignified livelihood to *safai karamchari* women in accordance with their choice of livelihood schemes. (i) Identify the families of all persons who have died in sewerage work (manholes, septic tanks) since 1993 and award compensation of Rs.10 lakhs for each such death to the family members depending on them. (ii) Rehabilitation must be based on the principles of justice and transformation." The Supreme Court stressed on the "rehabilitation of manual scavengers in accordance with part IV of the PEMSR Act, 2013" and directed the "state governments and union territories to fully implement various provisions of PEMSR Act, 2013 and take appropriate action for non-implementation as well as violation of provisions contained in PEMSR Act, 2013."

In this landmark case,[45] the Supreme Court observed that "the practice of manually removing night soil, which involves removal of human excrement from dry toilets with bare hands, brooms or metal scrappers, and carrying excrement in baskets to dumping sites is a practice which is still prevalent in many parts of the country and has to be stopped forthwith. About 7.5 lakh families still work as manual scavengers, according to the 2011 census, and most live in Uttar Pradesh, Rajasthan, Bihar, Madhya Pradesh, Gujarat and Jammu and Kashmir." The Court passed an order giving it a retrospective effect which made it mandatory for the government of States and Union Territories to identify all those who died in sewage work since 1993 and provide Rs. 10 lakh each as compensation to their families. The Supreme Court established clear guidelines for the rehabilitation of manual scavengers and compensation for the families of deceased workers. It also issued directions for education, employment and rehabilitation of the affected people.

The Apex Court stated that "states should advise civic agencies to use modern technology for cleaning sewers" and asked "the Centre to publish within three weeks model rules to guide state governments." The Court pointed out that "the safety gadgets made mandatory for such workers are instruments to check poisonous gases, blowers to push out polluted air, torches and gloves." The Apex Court, taking serious note of the blatant disregard for safety regulations by civic agencies, stated that the municipal employee who hired a sewer worker could be charged with "causing death due to negligence" and

[45] *Safai Karmchari Aandolan* v. *Union of India*, (2014) 11 SCC 224.

sentenced to two years in prison if next time a sewer worker dies as a result of lack of safety equipment.

In *Chinnamma* v. *State of Karnataka*,[46] The High Court of Karnataka ruled in favor of the family of Chenchaiah, who died of asphyxia after drowning while cleaning a drain. The victim's family sought the right to rehabilitation despite receiving Rs 2 lakhs in compensation. Justice Ashok B. Hinchigeri, considering the precedents laid down in *Delhi Jal Board* and *Safai Karamchari Andolan cases*,[47] observed that "manual scavengers risk their lives for the comfort of the others… the court has a duty and constitutional obligation to acquaint itself with the issues concerning the plight of the people who subject themselves to such a hazardous and dangerous life… when courts can spend days/month to hear the elitist class and their advocates, listening about the cases of tax evasion, heinous crimes like murder, rape, kidnapping, etc or people who come forward with their grievances saying that their fundamental rights have been violated then the court can certainly take some time out to hear the grievances of the vast majority of silent sufferers."

In *Secretary to the Government of Tamil Nadu, Municipal Administration and Water Supply Department* v. *Valaiyakka*,[48] High Court of Madras directed the authorities to comply with the orders and directions of the court and provide compensation to the respondents as merely because the death occurred at premises of private owners would not absolve the state government from making payment. Similarly, in *Change India, represented by its Director, A. Narayanan* v. *Government of Tamil Nadu, represented by Chief Secretary, Chennai*,[49] in which the High Court of Madras highlighted the delay in payment of compensation to the dependants of persons who died and were manual scavengers and has directed to pay the compensation along with interest for the identified heirs of manual scavengers who had lost their lives during manual scavenging. This case has pointed to the fact that it is not just the duty of the State to compensate but also that the private entities that employ manual scavenging are also bound to pay compensation to the dependants.

After taking *suo motu* cognisanze of the media report on sewer deaths,[50] High Court of Punjab and Haryana banned the manual cleaning of sewers, septic tanks and manholes in the States of Punjab, Haryana and U.T. Chandigarh and held that the same should be cleaned mechanically by employing the latest technological appliances. Further, the court directed financial assistance incentives for the use

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[46] W.P. No. 16365 of 2014 [GM-RES], Decided On, 11 /1/2016.
[47] *Safai Karamchari Andolan* v**.** *Union of India*, (2014) 11 SCC 224; *Delhi Jal Board* v. *National Campaign for Dignity and Rights of Sewerage and Allied Workers,* (2011) 8 SCC 568.
[48] WA (MD) No. 550 of 2016, order dated 7-4-2016 (Mad).
[49] W.P. No. 25726 (2017), High Court of Madras.
[50] *Court on its Own Motion* v. *Union of India*, 2019 Indlaw PNH 2138.

of modern technology for cleaning sewers, septic tanks and other spaces. Further, taking note of the existence of insanitary latrines in the States of Punjab, Haryana and U.T. Chandigarh, the court directed to demolish them immediately. It is worth noting that it was directed that contravention of the provisions of the 2013 Act should be dealt with strictly, and the criminal proceedings should be initiated in all such grave violations.

In *Union of India* v. *State of Maharashtra*,[51] the case involving review of *Dr. Subhash Kashinath Mahajan* v. *State of Maharashtra*,[52] which diluted the scope of SC/ST Atrocities Act, the Supreme Court of India expressed serious concern over deaths of manual scavengers. A bench headed by Justice Arun Mishra questioned Attorney General K. K. Venugopal, appearing for the Centre: "Why are you not providing them masks and oxygen cylinders? In no country in the world, people are sent to gas chambers to die. Four to five people are dying due to this every month. It is the most uncivilized and inhuman situation where the people are losing their lives in gas chambers without any masks or oxygen cylinders. This is the most inhuman way to treat a human being. All the human beings are equal and when they are equal you should provide them equal opportunities as mandated under the Constitution. You are not even providing them an equal chance and they are not been given the basic facilities to even clean themselves. Despite the Constitution abolishing untouchability in the country, I am asking all of you, will any of you shake hands with them? The answer is no. That is the way we are going on. The condition must improve. We have moved 70 years since Independence but these things are still happening."

Thus, the Court acknowledged the rampant prevalence of untouchability despite the formal prohibition of untouchability under Article 17 of the Constitution. The bench further observed that "The plight of untouchables is that they are still denied various civil rights; the condition is worse in the villages, remote areas where fruits of development have not percolated down. Dalits cannot enjoy equal civil rights. So far, we have not been able to provide the modern methods of scavenging to Harijans due to lack of resources and proper planning and apathy… The answer can only be found by soul searching."[53]

While addressing the core issue of caste discrimination, the Court sparked a discussion on the relevance of legal protection in banning deeply ingrained social customs that are supported by discriminatory attitudes, prejudices, and powerful socio-religious and cultural sanctions. However, by allowing the practice to continue by default, the 2013 Act has permitted discrimination against manual

[51] (2020) 4 SCC 761.
[52] (2018) 6 SCC 454.
[53] (2020) 4 SCC 761.

scavengers to be perpetuated, and the Court did not address the gap of "conditional prohibition" of manual scavenging.

In *Death of Sanitation Workers* v. *State of Odisha*,[54] a Division Bench of the Orissa High Court, comprising of Chief Justice S. Muralidhar and Justice B. P. Routray, declared itself horrified by the disgraceful practice of forcing the poor and needy to perform dangerous manual cleaning of sewers and septic tanks despite the PEMSR Act being in force. The Court stated, "It shocks the judicial conscience, as it should the society's collective conscience," and registered a *suo motu* PIL titled "Deaths of Sanitation Workers" in relation to the two recent tragic fatalities in Cuttack city and Bhubaneswar. The Court made significant comments about the deplorable condition of manual scavengers and ordered that 10 lakh in compensation be given to the bereaved families.

In *Vimla Govind Chorotiya* v. *State of Maharashtra*,[55] the Bombay High Court opined that "the Maharashtra government has the responsibility and liability to ensure that the shameful practice of manual scavenging is not carried out anywhere in the state." A division bench of Justices Ujjal Bhuyan and Madhav Jamdar asked the state administration about whether it had conducted a survey to identify manual scavengers across the state after the PEMSR Act, 2013 was passed, and what measures had been taken to rehabilitate them. The court also asked the state government how many manual scavengers had perished while working since 1993 and whether their families had received compensation. The court was considering a petition submitted by three women whose husbands, who worked as manual scavengers, died in December 2019 while cleaning a septic tank at a private society in suburban Govandi. The court ordered the Mumbai suburban collector to compensate each of the petitioners Rs. 10 lakh.

In *Manav Garima* v. *State of Gujarat,*[56] a petition was submitted to the High Court urging the PEMSR Act be implemented properly. The case aimed to secure appropriate compensation for the families of workers who had died while performing manual scavenging. The High Court held that "the Head of the Civic Body concerned will be liable (e.g. a municipal commissioner, municipality chief officer, or gram panchayat sarpanch) if any individual is found engaged in manual scavenging, a necessary measure to compel appropriate attention from authorities."

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[54] 2021 SCC OnLine Ori 383.
[55] 2021 SCC OnLine Bom 3002.
[56] *Manav Garima* v. *State of Gujarat*, [R/WRIT PETITION (PIL) NO. 225 of 2016] Order dated May 1, 2023. available at: https://images.assettype.com/barandbench-hindi/2023-05/80ab2225-065d-4caa-b708-d65a6d4d1fd6/Manav_Garima_vs_State_of_Gujarat.pdf (last visited on April 10, 2025).

In *Dr. Balram Singh* v. *Union of India*,[57] the Supreme Court instructed the Union and State Governments to diligently enforce the PEMSR Act, 2013, while hearing PIL on the total ban of manual scavenging in India. The goal of this legislation is to eliminate manual sewer cleaning entirely and guarantee that no one ever has to enter a sewer by hand. The Court observed that "Manual scavenging – or the practice of removing human excreta by hand from sewer lines or septic tanks – is banned under the Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013. But, the practice remains prevalent in several parts of the country." The Apex Court observed that "the government must ensure that right to equality is implemented and untouchability as well as child labour are abolished. Union and States are duty-bound to ensure that the practice of manual scavenging is completely eradicated. Each of us owes to this large segment of the population who have remained unseen, unheard, and muted, in bondage systematically trapped in inhuman conditions. The conferment of entitlements and placement of obligations upon the Union and States through the express prohibitions in the constitution and provisions of the 2013 Act means that they are obliged to implement the provisions in the letter and spirit." The Court also observed that "It is not without reason that our constitution has placed great emphasis on the value of dignity and fraternity. But for these two, all other liberties are a chimera. All of us today who proudly bask in the achievements of our republic have to awake and arise so that the darkness which has been the fate of generations of our people is dispelled and they enjoy these freedoms and justice- social, economic, and political – that we take for granted."

7. Conclusion

The problem of manual scavenger rehabilitation in India is a complex and deeply entrenched issue that requires urgent attention and concerted efforts from all stakeholders. Despite India's efforts to abolish this practice through legislation, surveys, and rehabilitation programs, very little has been done on the ground. In addition to banning the practice, the EMSCDL Act and the PEMSR Act impose penalties on anyone who hire others to clean up human waste. A year later in 2014, post enactment of the PEMSR Act, the Supreme Court also ruled that manual scavenging violates international human rights commitments. The judiciary in India has played significant role in the implementation of the legislative provisions and has often raised its concern on the existing ill practice of manual scavenging. However, despite judicial directives, various legislative measures and government initiatives to eradicate this dehumanising practice, significant challenges remain. It requires a shift in societal attitudes towards the dignity and rights of manual scavengers, along with the

[57] [2023] 14 S.C.R. 1083.

commitment to provide alternative livelihoods and opportunities for those trapped in this exploitative occupation.

Manual scavenging remains a serious concern regarding human rights issues. While legislation, extensive budget allocation and economic assistance programs have been put in place for the scavenging communities, but the most important need is the strict implementation and oversight mechanisms required to ensure fair enforcement of laws and efficient use of budget allocation. Ultimately, public awareness of prohibiting degrading profession such as manual scavenging is unavoidable. Manual scavenging is an inhuman and degrading practice which has continued to plague various parts of the nation even in the 21st century.

To overcome the problem of manual scavenging some drastic measures need to be worked upon such as exploration of technology driven solutions, promotion of entrepreneurship and skill development, sanitation infrastructure development etc. There is a need to embrace technology to develop innovative tools and machinery that can replace manual scavenging tasks. For instance, robotic systems for automated sewage cleaning can be used to clean septic tanks and sewer lines, lowering the demand for human involvement in dangerous situations. Additionally, it's critical to promote affected people's skills and training, enabling them to seek other sources of income. To assist former manual scavengers in moving to safer and more respectful occupations, government and non-governmental organizations can offer vocational training in fields like plumbing, electrical work, computer literacy, and entrepreneurship. Additionally, it is utterly necessary to invest in the creation and enhancement of sanitation infrastructure, such as effective waste management systems, sewage treatment plants, and modern toilets. These improvements will offer safer options for garbage disposal and decrease the need for manual scavenging.

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One Nation One Election: A Necessity of Indian Electoral System?

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Abstract

In India, the elections are conducted when the term of the government ends or when the government fails due to no confidence motion the legislative assemblies or Parliament as the case may be. This leads to conduction of elections multiple times in the country. In every, one or two year elections have to be conducted in any of the state. to prevent this multiplicity of elections, the government has brought a bill which says for conducting of Lok Sabha and State Legislative Assemblies elections simultaneously. The bill provides some major changes in the election system provided under the Constitution. This bill provides that the new provision will decrease the election expenses. But everything has two sides. The bill is under the consideration of JPC, which will test the feasibility. At present, there has been a nationwide debate is going on it. The bill has also been called as against the federal structure of the Constitution. On the other side, many are supporting this bill and call it as a good solution to avoid the various obstructions and complications dealt by the Election Commission of India and Election Commission of States in conducting elections at different time intervals. As the multiple elections, brings many complex things such as expenses on Electronic Voting Machines (EVMs), involvement of government employees for constituting election teams, security arrangements, etc. The elections also gives space for many wrongful activities such as booth capturing, hate speeches, illegal gratification is given by candidates or political parties to voters in order to gain their votes, etc. So, the elections have become a reason of corruption in the country because it involves illegal smuggling of money. Many countries like Phillipines, Indonesia, South Africa, etc. have been conducting elections simultaneously in their countries. But only incorporation of the provision is not enough until the political parties and their members don't understand the responsibility given to them by the Constitution as well as the voters also have to understand the same.

Keywords – elections, democracy, electoral process, fairness of elections, voters, candidates, federalism.

"Winning or losing elections is less important than strengthening the country."

--Indira Gandhi[1]

1. Introduction

Elections are the most dynamic power of the citizens of a country. It gives them an authority to change the future of their country and can expect the changes necessary to shape the social, cultural as well as economic growth of the country. In a democratic country, right to vote is the biggest priviledge of the citizens, as it ensures the difference between a democratic country and colonial rule which many countries have suffered including India. However, even there are many democratic countries where people are unable to exercise this right as freely as people exercise this right in India. The constitutional structure of the country is quasi-federal in nature. This calls for several election cycles. One are the elections of Lok Sabha and the other are the elections of State Legislative Assemblies. In both the elections the citizens of the country cast their votes to constitute a new government for the next 5 years. The cycle of these elections are different because in many states the cycle of the period of 5 years is not the same which leads to the conduction of elections in the country at different intervals. Recently, the 'One nation, one election' bill has been introduced in Lok Sabha, which provides the procedure for conduction of one election in place of this multiple elections system. In this paper we will study about the elections and the new changes which the ONOE Bill propose to introduce in India.

2. Research Methodology

This research is based on doctrinal method. The secondary data has been collected with the help of websites. For this research, primary data has been taken from several laws, rules, reports published by government and private agencies have also been studied. All these data have been studied and has been qualitatively analyzed.

3. Election cycles in India

In India, the election of Lok Sabha and State Legislative Assemblies took simultaneously in the years 1951-52, 1957, 1962 and 1967. After this, this cycle of 5 years got disturbed due to early dissolutions of State Legislative Assemblies in 1968 and 1969. And 4th, 5th, 6th, 7th, 9th, 11th, 12th, 13th failed to complete their 5 years term as 5th Lok Sabha was extended to 1977, due to proclamation of emergency under Article 352 and rest of the Lok Sabha terms were dissolved

[1]Election quotes, Brainy Quotes, https://www.brainyquote.com/topics/election-quotes

early. Only 1st, 2nd, 3rd, 8th, 10th, 14th, 15th, 16th have completed their terms of five years.

Similarly, state assemblies have also been dissolved early which resulted in cycle in disturbances in cycle which resulted in changes in the election cycles as incomplete terms of government resulted in mid-term elections.

So due to this, early dissolutions and other political reasons the simultaneous system was disrupted and it caused conduction of separate election of Lok Sabha and State Legislative Assemblies. It not only caused issues to elections cycles but also affected various functions and decisions of the government.

This disturbance in election cycle creates various challenges in conducting elections. As elections are the most important part of any democracy but when these elections have to be conducted with an interval of few months and year, it causes problems. Following are the challenges which come cross while conducting different elections at different time periods:-

3.1 Financial Loss: - As in conducting elections again and again at different time periods, causes high economic burden on the country's expenses. As per the report of a private news agency, in 2019 Lok Sabha elections around 55,000 Crore rupees were expended on conducting elections in India.[2] This amount increased to 1.35 Lakh Crore in the Lok Sabha elections of 2024.[3] This shows that the elections expenses leads to the increase in expenses of the country. And so when multiple elections are conducted these expenses also increase as in India elections have to be conducted in the States whenever the terms ends or by-election takes place.

3.2 Polling Booths: - For conducting systematic elections, it is required to constitute polling booths. So, for Lok Sabha as well as State Assemblies also polling booths have to be established every time when the elections are to be conducted. This makes the function of the election commission to calculate the population, divide them into several booths according to the population.

3.3 Team of Election Commissions: - With the increasing population, increasing number of candidates in election, increasing number of voters several functions of the election commission has

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[2] Nandini Singh, Lok Sabha election 2024: How much does it cost to hold elections in India?,Business Standard, Apr 19 2024 | 11:44 AM IST, https://www.business-standard.com/elections/lok-sabha-election/lok-sabha-election-2024-how-much-does-it-cost-to-hold-elections-in-india-124041900352_1.html

[3]Aishwarya Paliwal, Most expensive polls ever? Nearly Rs 1.35 lakh crore spent in 2024 election, India Today, May 31, 2024 23:43 IST https://www.indiatoday.in/elections/lok-sabha/story/lok-sabha-election-2024-expenditure-election-commission-2546455-2024-05-31

increased and so the commission need more number of people/members in its team so that the multiple functions such as registration of new voters.

3.4 Voter's Backouts: - When elections are conducted many times, the voters gets disinterested in casting their votes. Many are not interested in going to polling stations at distant areas. Many voters many times unable to find their polling booths. For 2024, elections, only 40% of the eligible citizens have registered as voters.[4] This shows that the young India is not very much interested in casting their votes in the elections. Another reason of the voters are not casting their votes is the shifting of their jobs. As many people are shifting from one city to another, this makes them a non-voter at the new place. It makes them as a person who does not caste the vote but actually it's the situation which is making them a non-voter.

3.5 Constituency Changes: - As for elections, many times it happens that constituency has to be altered in elections depending upon the population which varies with time.

3.6 Number of Candidates: - The number of candidates varies with each elections. With every election of Lok Sabha and State Legislative Assemblies variation in number of candidates is very obvious thing. So, if the number of candidates changes the election commission also has to make several changes and arrangements for conducting peaceful, systematic, proper and fair elections.

3.7 EVMs and VVPATs: - In India, the polls are casted on Electronic Voting Machines which was introduced in India in 1982 and as a proof of vote VVPAT machines have also been used since 2017 in elections. So arrangement of so many EVMs and VVPAT machines is very difficult as well as costly. As both these machines are manufactured in India. India has taken these techniques from other countries which increase manufacturing and several other expenses as several machines has to be supplied at every corner of India.

3.8 Security Arrangements: - For conduction of peaceful elections, it is highly required to keep strict security at polling stations, as booth capturing is a very issue in India. Sometimes, people capture polling stations to lodge false votes to win the elections or in order to re conduction of elections.

3.9 Political Games: - In order to win the elections, the political parties use wrong tactics to lure citizens and gain their votes. It

[4]Polls about future, but young not interested?, Times of India, Apr 5, 2024, 06:35 IST https://timesofindia.indiatimes.com/india/polls-about-future-but-young-not-interested/articleshow/109049324.cms

includes false promises, hate speeches, instigating hatred among people, etc. which also disturbs peaceful co-existence of people.

3.10 Illegal Corruptions: - No one can separate politics and corruption. When it comes to elections, many activities like hawala and several other ways of gaining money for election expenses comes into existence. Government is trying to control all these things but it is very difficult nowadays to completely put an end on these activities which is also affecting the economy of the country.

3.11 Hate Speech: - In India, the politics revolves around the caste, culture, religion, etc. and many times the politicians use these things to manipulate the voters. It has been a punishable under various laws. It includes advocate, incite, promote or justify hatred, violence and discrimination against a person or group of persons for a variety of reasons.[5] It spreads hatred among people from different caste and communities and many times it gets converted into violence and riots. Such speeches are the violation of Article 19 of the Indian Constitution which states that the freedom of speech and expression cannot be used in such a manner which will affect the integrity and security of India.[6]

The Supreme Court through a case[7] issued strict guidelines for the government for controlling hate speech in the country and directed to take suo-moto actions against the speaker.

Similarly, the Supreme Court in a case[8], gave the power to the police to arrest any person for giving hate speech and also gave the power to register suo moto FIRs without waiting for the formal complaints. So in India, where people from different cultures live, politics is based on the caste and community rather than the quality of work of the government. Once Dr. B. R. Ambedkar had also said that 'the social structure of India is incompatible with the democratic structure of the Constitution because here people vote on the basis of the election symbol not on the name of the candidate.'[9] He pointed out he illiteracy and diversities of the Indian society.

4. Election Laws in India: -

The constitution of India specifies about the composition of organs of the Indian democracy. In this, it has provided the structure of the government including about the composition of the houses of the Parliament and State Legislatures their composition, qualification of members, etc. The constitution is the basis of election laws which

[5] https://vajiramandravi.com/upsc-daily-current-affairs/mains-articles/hate-speech-in-india/
[6] Article 19, Constitution of India
[7] *Shaheen Abdullah Vs Union of India* , Writ Petition (Civil) No. 940 of 2022.
[8] *Ashwini Kumar Upadhyay v. Union of India* , WP (Civil) No. 43 0f 2022
[9] Bhimrao's rare TV Appearance: 'The social structure must change', BBC News India https://www.youtube.com/watch?v=WS7P9TKDZ2k

more clearly provides the procedure that would be adopted in the implementation of the provisions of the Constitution. The Parliament has framed the laws for the governance and conduction of elections. The laws includes:-

4.1 The Representation of People Act, 1950:- This was the first law which has been enacted by Parliament related to elections.

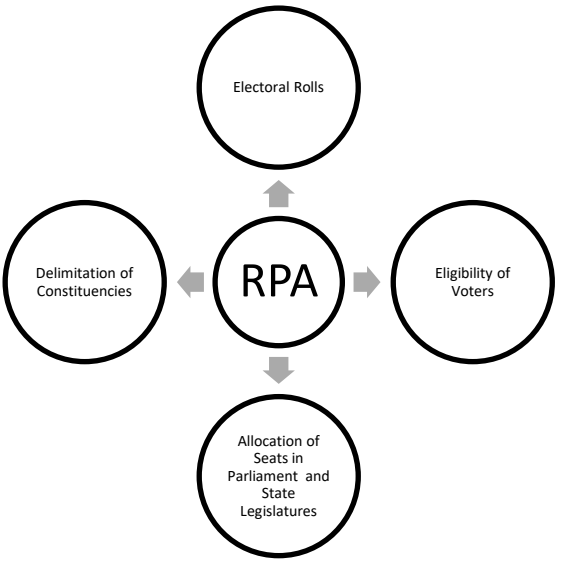

Chart 1

It provides provisions for preparation of electoral rolls[10] as adult suffrage is the system in India so any person who attains 18 years of age his or her name is to be added in the voter list. It also provides special provisions for the voters who are in the service of armed forces or in the services of the central government outside India.[11] The delimitation of the constituencies is the major function of the act because it has to be done as per the census data which changes with passage of time[12]. Allocation of seats in the houses is done as per the census which has to be regulated properly. It further provides about the election officers such as Chief Electoral Officers in State/UTs, Electoral Registration Officers for preparation of electoral rolls in each constituency, Returning Officers, etc. which are appointed for conducting free and fair elections as well as supervisions of them at each state and polling booths.[13] This law

[10] The Representation of The People Act, 1950, Sec.15-25A,
[11]The Representation of The People Act, 1950, Sec. 20A
[12] The Representation of The People Act, 1950, Sec. 13
[13] The Representation of The People Act, 1950 Sec. 13-13CC

specifies the rules and manner in which the above given things will be decided for conducting elections.

4.2 The Representation of People Act, 1951:- This act is a further step of the RPA, 1950. It complements the previously enforced. It was enacted before the First General Elections by Dr. B.R. Ambedkar.

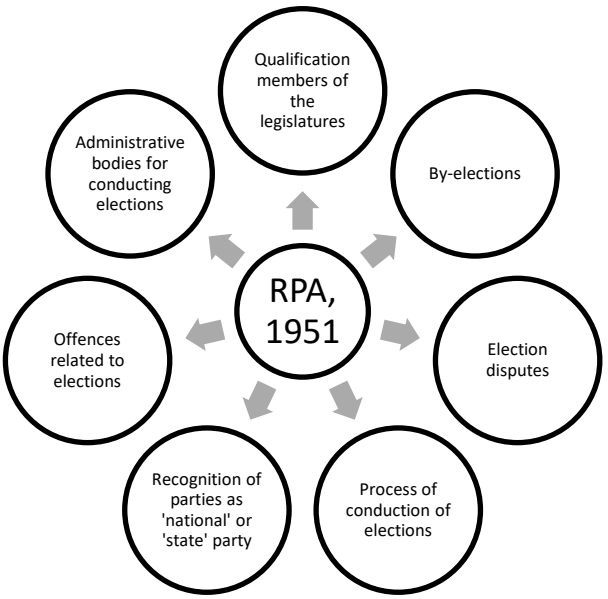

Chart 2

This law work together with the 1950 Act, as it deals with those areas which are related to the subjects which come into picture when the preparation for conducting elections arose. On the basis of the constitution, it also provides for the qualification of member of Parliaments and set the qualification of being voter in any of the constituencies.[14] In addition to the grounds of disqualifications provided under the Constitution, it further provides that if a person has been convicted and has been imprisoned for an offence for 2 years or fails to submit accounts of election expenses or if he had been in government services but dismissed on the grounds of corruption, etc.[15] So it supports the Constitutional provisions to maintain and protect the democratic set up of the government.

Along with it, the law specifies the offences related to elections, which may be committed by the candidates of the elections like giving gratification to voters for votes, booth capturing[16], influencing voters,

[14]The Representation of The People Act, 1951, Sec. 3-5
[15] Id
[16]The Representation of The People Act, 1951, Sec. 135A

taking illegal assistance of government officer for luring votes[17], etc. It further prohibits the election campaigning and any other kind of publicity by political parties or candidates during 48 hours before the completion of the polling.[18] Such campaigning and publicity is banned on any kind of electronic media i.e. television, satellite channels, etc. [19]

This Act also gives a responsibility to the candidates to declare their criminal records and property details to the Election Commission[20].

All these provisions specify various strict provisions to bring such members of legislative bodies which are of ability to handle the responsibilities provided under the constitution.

4.3 The Conduct of Election Rules, 1961:- This law is the regulating law for actual conducting elections. It governs the from polling to counting of votes,[21] appointment of polling agents,[22] provisions related to proxy voting, special provisions for women electors,[23] old aged electors[24], identification of electors[25], etc.

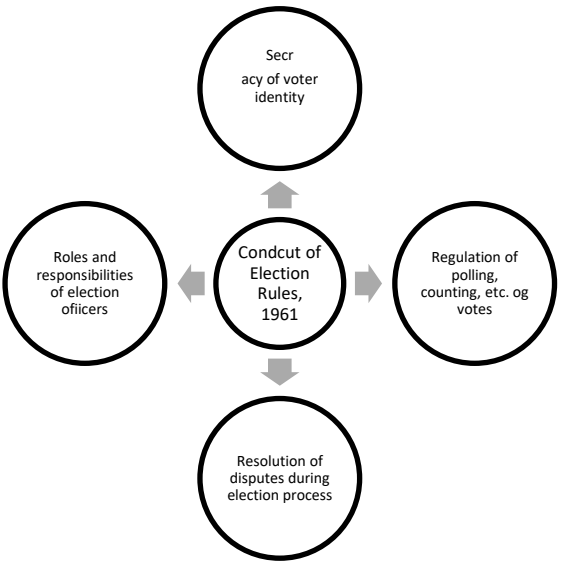

Chart 3

[17] The Representation of The People Act, 1951, Sec.134A
[18] The Representation of The People Act, 1951, Sec. 126
[19] The Representation of The People Act, 1951, Sec. 126A
[20]The Representation of The People Act, 1951, Sec. 75A
[21] The Conduct of Election Rules, 1961, Part III B
[22] The Conduct of Election Rules, 1961 Rule. 13
[23] Id, Rule 34
[24] Id, Rule 27
[25] Id, Rule 35

4.4 Model Code of Conduct, 2019:- The Election Commission of India has issues guidelines for the political parties and candidates for the elections which are also known as Model Code of Conduct Guidelines, 2019 (MCC). Its foremost objective is to ensure fair and peaceful elections. It provides some guiding principles for so that the candidates for the election keep their behavior and actions balanced and controlled which are necessary for a country like India where the citizens belong to different culture and religious beliefs, which makes it very easy to disturb the peaceful existence of people during time period of elections. This code of conduct prohibits the candidates and political parties from giving hate speeches[26], distribution of cash and kind to affect the voters,[27] misuse of religious and other beliefs of the people,[28] etc. Overall it governs the :-

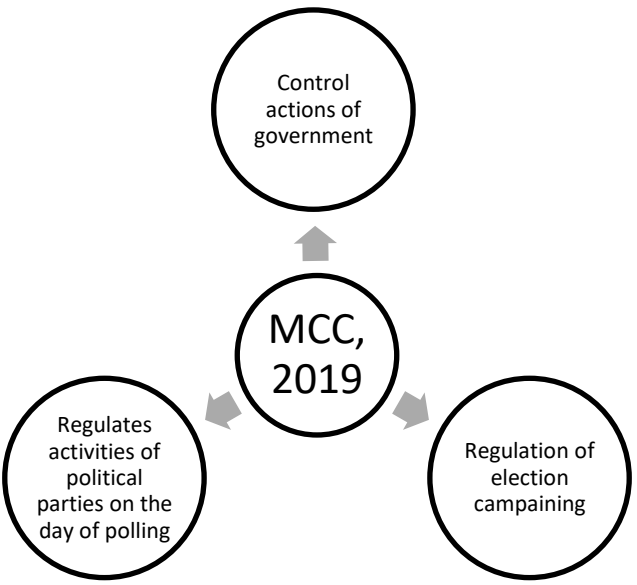

Chart 4

In this way, at present along with the constitutional provisions there are four other laws/rules which are actively working and controlling the elections in the country. In India, elections have to be conducted at various time periods in various states and so these all laws remains active time to time. The problem associated with it is the conduction of elections bring all these laws into force multiple times and their compliance at each election has to be done, otherwise it will put a question on the validity of the elections conducted which may

[26] Election Commission of India, MCC Guidlelines, 2019, Clause 3
[27] Id, Clause 7
[28] Id, Clause 3

lead to re-conduction of elections too and so it may also increase the responsibilities of the Election Commissions.

Along with it, the Indian Judicial courts have also many times expressed its opinion on the election system in India. In a case the Punjab and Haryana High Court had stated and directed the election officer of Faridabad for disclosure of CCTV footage related to the conduction of legislative elections to the general public as it has to be disclosed to the public under the document related to elections under Rule 93 of the Conduct of Election Rules, 1961[29]. It was a dynamic decision of the court on transparency and conduction of fair elections. But the Central Government in order to loosen the effect of this direction of the court, amended the rules and kept the CCTV footages out of the purview of the of the term election documents, making the directions of the court as nullity.

In this way, the political parties always try to find ways so that the manipulation can be done in the elections and affect the fairness of elections. Again, the transparency related to elections came into light in a case, in which the disclosure of electoral bonds was directed by the Hon'ble Supreme Court[30]. In this again the question of free and fair elections was involved. The issue was related to the donation to political parties for election expenses. This bond is like an anonymous note which does n't mention the name of the company or person donating the money to the political party. This led to some amendments were also done in the Finance Act, 2016, which opened the way for the foreign companies for providing donations to political parties and further provided priviledge to political parties from disclosure of such donations . It was contended that it is an obstruction to transparency of elections and will raise the corruption as the general public i.e. voters are not allowed to know the sources of the political parties. On this, point the Hon'ble Supreme gave a judgment in support of fair elections and held the Electoral Bond Scheme as unconstitutional as it is violation of the right to information of the voters.

The above given cases gives a picture that the government is trying to interfere and finding ways to curtail the transparency of the elections and if we are following the concept of multiple elections, it means that the citizens or voters are being cheated by politicians whenever the elections are being conducted.

5. Bill on One Nation One Election: -

The Parliament of India has recently introduced a bill which is Constitution (129th Amendment) Bill, 2024, which proposes for the simultaneous conducting of elections in Lok Sabha and State

[29] Mehmood Pracha vs Election Commission Of India And Others, CWP-33005-2024
[30] Association for Democratic Reforms and Another v. Union of India and Others (Writ Petition (C) No. 880 of 2017)

Legislative Assemblies. It does not say for simultaneous election of local bodies i.e. panchayats and municipalities. This bill provides from inclusion of some provisions under the existing Articles of the Constitution and also introducing news Articles to it. The main features of the bill are:-

5.1 It states that on the composition of new Lok Sabha with the general election, the president will make a declaration that the existing state assemblies will also dissolve with the completion of the term of Lok Sabha.

5.2 It states that if the dissolution of Lok Sabha takes place before the term of five years, mid-term elections shall be conducted which will continue for the remaining time of the previous Lok Sabha.

These provisions shall also be followed for the remaining terms of the State Legislative Assemblies.

5.3 It further provides that the legislative assemblies may be continued and their elections can be conducted later if the Election Commission makes recommendation in this regard and the President makes a declaration for conducting their election later.

These new changes have been opposed by the various political parties because it is taking powers out of their hands. It is changing the complete political scenario with each election. It is also reducing the term of many existing State Legislative Assemblies. On this issue, the people are divided into three section i.e. one are opposing it, second are supporting it and third are those people who are unable to understand this thing. As it is difficult for the common man to understand the cycles of election that will be conducted if the bill is passed.

On this concept of elections, many opinions have come out. Some people have stated that it will affect the federal structure of the Constitution, as the bill provides for the dissolution of State Assemblies before the completion of their actual term of 5Years.

The other thing is that it provides power to President for dissolution of State Assemblies by declaring a date of dissolution. So here, the dissolution is not happening due to failure of law and order, for which Article 356, gives power to President. Here, under the ONOE bill, a legally constituted assembly will be dissolved without any serious cause. It will disturb the democratic process and will lead to conducting elections with break of few time periods. It means for initial years it will definitely lead to the disturbance of democratic and federal order of the Constitution.

On this, Dr. Abhishek Manu Singhvi, Advocate Supreme Court of India, has stated that the bill has given a “reset button” to Indian

democracy.[31] It means that if 'the government falls in 4 years, then new government will be formed only for 1 year'[32] which says no logic as it is making a joke of the Indian Constitution.

On this Senior Advocate Harish Salve has stated that 'the elections are not a thing which is limited to the politicians but every citizen is the stakeholder of it.'[33] He stated that the concept is not against the federal structure as the state assemblies will be constituted by the direct election by the people but the government has to be dissolved if the properly elected government fails to complete the term as overlapping of powers is the feature of federal system of government. He further says that this scheme of election will help in reducing the frequency of conducting elections and will also reduce the cost of elections which is a major burden on Indian economy.[34]

So if we take the opinions of the experts, we can say that the law has both positive and negative sides. It is a good step but it has to be reconsidered and planned before proper execution.

6. One Nation One Election a Comparative Aspect of India And Other Nations:-

In India, we are moving to adapt it, as the bill has been sent to Joint Parliamentary Committee to determine the feasibility of the bill. However, this concept has been in practice in many countries of the world. Some have adapted it completely buy most of the countries have adapted it partially. To understand it we will take a look at the system of simultaneous elections of some countries: -

6.1 Sweden: - In Sweden the Legislative elections of the Riksdag i.e. Swedish Parliament, County Councils (Regional Level) and Municipal Assemblies are conducted simultaneously in four years. In this country, generally dissolution of the assembly doesn't happens and the elected government continues until it has the confidence of the assembly.[35] And if the dissolution takes place, the Prime Minister may either resign or request the Speaker to help form a new government. And if no government is formed then the fresh elections will take place.[36] In this way, the Swedish Constitution provides the procedure in which conduction of elections can be avoided and so the elections can be conducted simultaneously and dissolutions are avoided to maintain the dignity of the Constitution.

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[31] Anuja Jha, Democracy at risk or step forward? Top lawyers weigh in on One Nation One Poll, India Today, Dec 17, 2024 20:36 P.M., https://www.indiatoday.in/india/story/one-nation-one-election-harish-salve-abhishek-manu-singhvi-insight-parliament-debate-2651201-2024-12-17

[32] Id

[33] Id

[34] Id

[35] Wikipedia, 3 April 2025, at 15:03 (UTC). https://en.wikipedia.org/wiki/Elections_in_Sweden

[36] Id

6.2 South Africa: - The case of this country is different from Sweden. Here the elections of National Assembly (Parliament) and Provincial Assembles are conducted simultaneously in every 5 years. And the elections of the local bodies are conducted generally after 2 years of the general elections when three years have passed since its last election, The Assembly passes a resolution to dissolve itself with a majority vote (more than 50%).[37] In this case, early general elections i.e. national as well as provincial, must be held within 90 days.[38] But in general practice the system works for the successful completion of the term by the government and so dissolution of the government is a rare thing.

Along with it, there are countries like Indonesia also which has been conducting elections simultaneously from 2019 and is further trying to make this system more proper and successful. Similarly, there is Philippines, where local and national elections are conducted simultaneously, in every 6 years excluding the Barangay elections (smallest administrative unit of the Philippines). [39]

7. Conclusions and Suggestions: -

When India became independent, the majority voters of India were not literate and were uneducated. At that a system was framed which can be understood by the common man. At that time, India had great leaders like Dr. Bhimrao Ambedkar, Pt. Jawaharlal Nehru, Dr. Rajendra Prasad, Pt. Lal Bahadur Shastri, Sardar Vallabhbhai Patel, etc. who understood the Indian politics and democracy, and worked with their whole heart and mind for the welfare of the country and its citizens which had gained independence at the cost of sacrifice of several innocent lives. The leaders of that time were loyal to the Constitution and towards Indian democratic principles.

But with the passage of time, the nature of Indian politics got massive changes and now the welfare and development of the people has becomes the secondary function for the politicians and ministers. It is at the time of election only, when the politicians, ministers and higher authorities think about the citizens just to lure them for gaining votes. They adopt illegal methods and give illegal gratification to voters to receive votes of the voters. The bill on ONOE is a very complex thing for the Constitution of the country. This bill wants to bring major changes in the system of elections framed by the great leaders, who had formed this pattern of elections to maintain the nature of the democracy, separation of powers, checks and balances as well as the federal structure of the country. The new bill is changing the entire system of elections. It is a good system but it is

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[37] Wikipedia, 8 April 2025, at 13:14 (UTC), .https://en.wikipedia.org/wiki/Elections_in_South_Africa

[38] Id

[39]Wikipedia, 30 March 2025, at 06:03 (UTC)., https://en.wikipedia.org/wiki/Elections_in_the_Philippines

not easy to implement it. But the bill suffers from several problems such as:-

7.1 It provides for dissolution of existing Lok Sabha.

7.2 It provides for reelection of Lok Sabha for the remaining time period.

7.3 It provides for the dissolution of state assemblies if the Lok Sabha gets dissolved before the term of 5 years.

7.4 It further states that the Election Commission can recommend for the continuation of assembly if it thinks elections cannot be conducted.

By studying the above points, we found that the bill is providing provision for dissolution of assemblies before the term of 5 years even if there is no question of law and order or failure of government, which doesn't seems correct and admissible. Secondly, it is providing authority to the President to declare date of dissolution assemblies, which indirectly giving way for governmental interference in the elections matters. In the his speech on Article 324, of the Indian Constitution, Dr. B.R. Ambedkar had said that "If the object of this House (Constituent Assembly) is that all matters relating to elections should be outside the control of the Executive Government of the day, it is absolutely necessary that the new machinery which we are setting up, namely the Election Commission, should be irremovable by the Executive, by a mere fiat."[40] Here he has clarified that the elections must be kept far from the interference of the executive but the bill is giving for such interference. The main objective of this law is to change the system of conduction of multiplicity of elections but the system proposed in the bill is again saying for conduction elections again and again only to bring the assemblies to rum together in their term.

The Bill provides that if a party which has formed its government lawfully by gaining the confidence of the voters will not be able to continue in the assemblies just because the government in majority in the Parliament has failed to maintain the majority. This system will be a major setback to the Indian democratic system and a failure to value the votes of the voters.

The politicians will adopt this method to bring the government of states as well as union to come to an end which is more dangerous for the existence of the Indian democratic system. The Bill is saying that it will decrease the problem of multiplicity of elections but in reality it is opening the doors for new problem of failure of

[40] Dr. H V Hande, How Ambedkar's Vision Ensured the Independence of Election Commission, Nov 17, 2020, 12:09 PM, https://swarajyamag.com/ideas/how-ambedkars-vision-ensured-the-independence-of-the-election-commission

government, interfering with the lawfully constituted state assemblies and so affecting the federal system of the government and so affecting the basic structure of the Indian Constitution. But just bringing such amendments is not the main solution to the problem of elections. The people of India including Member of Parliament, Member of Legislative Assemblies, Members of Political Parties and voters of India has to understand their understand their responsibility towards the Constitution as well as towards the country.

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AI in Uniform: Reforming Law Enforcement and Combating Custodial Violence

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Abstract

Artificial intelligence (AI) has emerged as a dynamic tool, necessitating its existence in varied arenas across professions and academics. The technological advancement and growing digital reliance have led to global emergence of AI into a crucial source of data collection and analysis. The introduction of AI bought mixed speculations on its accuracy, role, and character. It was called unethical tool that creates biases in approach depending upon its operator. This paper analyses the role AI could play to aid policing and law enforcement in India. Custodial violence can be termed as most gruesome form of human rights violation. When police officers become aggressors, trust between the police and the public erodes, creating a barrier to effective crime prevention. AI can play a pivotal role in closing this gap, offering advanced policing techniques and forensic tools that strengthen oversight and accountability. AI can play a colossal role to identify gaps and strengthen law enforcement oversight through advanced policing techniques and forensic investigation. The paper highlights various aspects that could be explored to combat police torture and custodial violence. These aspects include AI risk profiling, robotic law enforcement assistants, and AI powered de-escalation tools among others. The paper also suggests crucial role of AI in improving transparency and increasing accountability in preventing police misconduct and promoting human rights. The empirical analysis explores the legal and ethical application of AI in transforming policing structure in India to create healthy police-public relationship. Lastly, paper proposes legislation for inculcating AI in policing structure of India.

Keywords: Accountability, Artificial Intelligence, Criminal Justice System, Custodial Torture, Ethical application, Human Rights, Policing, Transparency.

1. Introduction

Artificial Intelligence (AI) is a field of science or set of technologies to perform advanced functions. The term AI was coined by Stanford professor ***John McCarthy*** in 1955.[1] AI applications are broad and vivid with capacity to sense, comprehend and act as per human capabilities. It is termed as "constellation of technologies" by NITI Aayog.[2]

1.1 AI in Predictive Policing and Surveillance

Predictive policing represents a groundbreaking use of artificial intelligence in law enforcement. By analysing historical crime data, AI algorithms can forecast criminal activities, enabling police to allocate resources efficiently. The Nagpur Police's SIMBA (System Integrated for Monitoring and Big-Data Analysis) is a prime example of this application. This system uses Crime GPT, an advanced feature integrated with facial recognition, audio analysis, and natural language processing, to analyses CCTV footage, historical records, and audio data. It allows real-time identification of crime hotspots and assists in predicting the likelihood of specific criminal activities.

However, predictive policing is not without its controversies. Critics point out that reliance on historical data can perpetuate existing biases. If a community has been historically over-policed, it is more likely to appear as a "high-risk" area in AI-generated predictions. This feedback loop, known as "tech-washing," reinforces discrimination under the guise of objectivity. Furthermore, the opacity of certain predictive models raises questions about accountability, as decisions based on AI predictions can be challenging to explain or justify.

AI-driven surveillance technologies, including facial recognition and speaker identification, further enhance the capability of law enforcement to monitor activities in real time. Such tools are crucial for identifying suspects and monitoring public spaces. However, their widespread deployment poses significant concerns about privacy and the potential for misuse. For example, facial recognition systems have faced criticism for misidentifying individuals, leading to wrongful detentions. Additionally, these

[1] The History of Artificial Intelligence, University of Washington (Dec. 2006), https://courses.cs.washington.edu/courses/csep590/06au/projects/history-ai.pdf.
[2] NITI Aayog, National Strategy for Artificial Intelligence (June 2018), https://www.niti.gov.in/sites/default/files/2023-03/National-Strategy-for-Artificial-Intelligence.pdf.

technologies could be used to suppress dissent or unfairly target vulnerable communities.

1.2 Benefits of AI in Policing

AI integration in policing has introduced several transformative benefits:

1.2.1 **Enhanced Resource Allocation**: AI systems like SIMBA (System Integrated for Monitoring and Big data analysis) enable police departments to identify high-risk zones and allocate resources more strategically, improving response times and preventing crimes before they occur. [3] SIMBA is developed for Maharashtra police (Nagpur) which acts as swift information source integrated into a digitized database of over 1.5 lakhs criminals. Crime GPT is one of the features of SIMBA which provides data from video, document, and data. Therefore, such platforms can help in prompt action by authorities.

1.2.2 **Efficiency in Investigations**: AI accelerates the processing of large volumes of data, such as analysing forensic evidence, identifying patterns in crime statistics, and correlating seemingly unrelated incidents. This improves both the speed and accuracy of criminal investigations. New criminal laws in India also aim towards efficiency in investigation procedures, Bhartiya Nagrik Suraksha Sanhita, 2023 thereby introduced timelines. AI tools can therefore paly a colossal role towards efficiency and adhering to these set time frames.

1.2.3 **Improved Decision-Making**: AI provides data-driven insights that support police officers and investigators in making informed decisions. For instance, crime pattern recognition can highlight trends that would otherwise go unnoticed.[4] In order to evaluate crime pattern recognition, AI can help to identify crime trends and hotspots that would have been missed due to employing traditional methods. Natural Language Processing (NLP) to analyse social media, emails, and call records, with lawful authorization can aid to detect organized crime activities.

1.2.4 **Automation of Routine Tasks**: AI technologies streamline administrative processes such as documentation, scheduling, and case management, allowing officers to focus on critical tasks requiring human judgment. Usage of AI in these kinds of activities can ensure that material errors are reduced to minimum. When done by humans, error rate is naturally high which can further lead to

[3] Anjali Raja, Fighting crime with AI powered SIMBA, IndiAI, (July, 2024) https://indiaai.gov.in/case-study/fighting-crime-with-ai-powered-simba

[4] Rapporteur, Council of Europe, Committee on Legal Affairs and Human Rights, Justice by algorithm (September, 2020)

extended deadlines, non-compliance of tasks or any other delinquency.

1.2.5 **Public Safety Enhancement**: One of the most AI-powered systems like facial recognition and real-time video analytic can aid in improving surveillance accuracy, which can further help to create safer public places. Also, predictive policing, through analysing historical crime data will help police authorities to take steadfast actions towards proactive policing and preventive measures and resource allocation.

1.3 Challenges of AI Integration in Policing

1.3.1 **Bias and Fairness in AI Models**: Bias gives rise to distrust amongst public. When concerning technology, caution holds utmost importance. AI systems reflect the data for which they are trained. If the training datasets are biased, the resulting models will also exhibit bias, disproportionately targeting specific communities. For example, if a neighbourhood has historically been over-policed, the AI may continue to flag it as high-risk, perpetuating systemic inequalities.

1.3.2 Transparency and Accountability: Many AI systems function as "black boxes," making it difficult for users and regulators to understand how decisions are made. Black box is impenetrable artificial intelligence system whose operations are not visible. In simpler terms, there is no transparency in its conclusions or decisions or the basis on which they have been achieved. [5] This opacity undermines trust in AI and complicates efforts to hold law enforcement accountable for decisions influenced by AI recommendations.[6]

1.3.3 Privacy Concerns: It is a laid down fact that the opinion of public is subordinate to their safety, but at times it results in apprehensions that requires paramount attention. AI-powered surveillance tools often operate without explicit consent from the public, raising concerns about mass surveillance and the potential misuse of personal data. These technologies must comply with data protection laws to prevent abuse. The rights outlined by Supreme court in KS Puttaswamy (Retd.) v. Union of India are violated using data which is opaque. [7]

The prolonged debate on “security v liberty” has found new comfort with introduction of AI. This is a persistent issue across the countries. In UK, Lord Sumption opined in his bestseller book about atrocities of pandemic and the way government-imposed restrictions widened the gap between public and state. He highlighted the importance of

[5] Jane Irene Kelly, What is Black Box AI? (Feb. 3, 2025), https://www.invoca.com/blog/what-is-black-box-ai.
[6] Id
[7] K.S. Puttaswamy (Retd.) v. Union of India, (2017) 10 S.C.C. 1 (India).

balancing individual rights and state-impowered policies keeping in mind their delicate dependence. [8] Privacy, therefore is a most concerning aspect in terms of artificial intelligence, given its range and prominence.

1.3.4 Dependence on Technology: The conditions like "Nomophobia" is becoming more common these days. Nomophobia is the fear of being without mobile. According the report by J Flowers Health Institute, technological dependence has become more relevant and prevalent with new innovations.[9] If addicted, technology can not only impact one's physical health but also mental and emotional well-being. According to the study conducted by Universiti Kuala Lumpur, categorizing effects could be seen on social interactions and overall conduct of an individual when technology overpowers him in every shape and form. [10] Over-reliance on AI tools could lead to reduced critical thinking and decision-making skills among officers. This "judgmental atrophy" could undermine the effectiveness of human oversight in complex situations.

1.3.5 Ethical Concerns: Data mining based on spurious correlations mostly results in unjustified actions of AI. Further, the opacity is questionable as algorithms may be poorly interpreted with minimum to no transparency, which is panacea in terms of technological ethics. The bias and discrimination is unsustainable technological constrain and functionally often creates void. The deployment of AI in policing raises broader ethical questions about balancing public safety with civil liberties. Policymakers must ensure that AI applications do not infringe on fundamental rights. There is a need for operationalized standards. These norms could be established through empirical studies and ethnographic analysis. Ethics must be preserved at all grounds to sustain AI in policing structures as in custodial constraints things might get overwhelmed leading to gross violations.

2. AI in Monitoring Police Behaviour and Addressing Police Brutality

AI technologies offer powerful tools for promoting accountability and curbing police misconduct.

Body-Worn Cameras (BWC) are gaining significance with technologies such as "Truleo" in the USA which records every second of police behaviours. [11] These cameras integrated with AI can automatically analyse footage to detect instances of excessive force or

[8] Jonathan Sumption, *The Challenges of Democracy: And the Rule of Law* (2024).
[9] J. Flowers Health Institute, Technology Dependency in Children, https://jflowershealth.com/technology-dependency-in-children/.
[10] Azah Anir Norman et al., Technology Dependency and Impact During COVID-19: A Systematic Literature Review and Open Challenges, 11 IEEE Access 40741 (2023), https://doi.org/10.1109/ACCESS.2023.3250770.
[11] Truleo, Home, https://truleo.co/ (last visited Feb. 11, 2025)

procedural violations. These tools can flag problematic behaviours in real-time, providing evidence for investigations into police brutality.[12] Unfortunately, according research 95% of these footages are never accessed or reviewed by agencies which undermines its overall benefits and purpose.[13] However, AI can help resolve these issues. Usually, the reason for not revisiting this footage is that they are in petabytes and such humongous volumes cannot be viewed by a human being, AI can thus, not only review these BWCs but also identify officers' behaviour while making an arrest, conducting a search, or marking surveillance.

Systems like SIMBA enable authorities to monitor police interactions with the public, reducing the likelihood of misconduct. This real-time surveillance can play a colossal role towards public safety. AI-powered alerts can notify supervisors when force thresholds are exceeded.[14]

Also with *Predictive Policing Analytics*, AI can identify patterns of misconduct by analyzing complaints, disciplinary records, and operational data. This helps police departments intervene early by providing additional training or counselling to officers at risk of engaging in brutality.[15] AI tools can help in auditing use-of-force incidents by evaluating whether incidents of force comply with departmental policies and ethical standards. By providing an unbiased analysis, AI ensures that misconduct is addressed fairly and consistently.

There is not an iota of doubt that AI has the potential to improve accountability, however it also depends on the implementation of robust oversight mechanisms to prevent misuse or selective enforcement. The issue of biasness or non-transparency create procedural inaccuracies which is needed to be tackled at the earliest.

2.1 Accountability and Transparency Mechanisms

Addressing police brutality requires transparency and accountability at every step. There is a need for multiple level channels to check and balance the tool. AI can be a treat as well as act as bait which may drive towards unethical or illegal mechanisms. Therefore, there is a need for:

[12] U.S. Dep't of Justice, Research on Body-Worn Cameras and Law Enforcement, Nat'l Inst. of Justice (Nov. 22, 2021), https://nij.ojp.gov/topics/articles/research-body-worn-cameras-and-law-enforcement.
[13] Seth Wats et al., Automating Body-Worn Camera Footage Review through AI: Preliminary Findings from a Multi-Site Randomized Control Trial, ARIZ. ST. UNIV. & CAL. ST. UNIV., LONG BEACH (Aug. 14, 2024), https://doi.org/10.21428/cb6ab371.dd9645dd.
[14] Id
[15] Muskan Shokeen & Vinit Sharma, Artificial Intelligence and Criminal Justice System in India: A Critical Study, 5 Int'l J.L. Pol'y & Soc. Rev. 156 (2023).

2.1.1 Independent Oversight Bodies: Establishing independent commissions to investigate complaints and review AI-powered policing systems is essential. These bodies must have the authority to audit AI algorithms, evaluate their fairness, and recommend policy changes. Annexure 1 in this paper suggest the establishment of similar kind of statutory body that can overlook the functions of AI in policing set-up.

2.1.2 Public Access to Data: Police departments should provide transparent access to data on use-of-force incidents, AI-generated insights, and surveillance practices. This fosters public trust and enables independent evaluations of policing strategies. Data concerning public safety, or national security falls as an exception.

2.1.3 Judicial Review: Courts play a critical role in scrutinizing police actions influenced by AI. Ensuring that AI-driven decisions adhere to legal and ethical standards is vital for upholding justice.

2.1.4 Regular Audits and Evaluations: Police departments must conduct periodic audits of AI systems to identify potential biases, errors, or unintended consequences. Such evaluations should involve independent experts and community representatives.

2.2 Community-Centred Policing and Trust-Building

Rebuilding public trust in law enforcement is crucial for addressing police brutality. Encouraging dialogue between police and communities helps address grievances and align policing strategies with local needs. Community policing models promote collaboration and mutual understanding. It also helps in bridging the long existing gaps between public and police. The immediate reaction of a person when police is around is either being petrified or reluctance, even when innocent. Police needs to organize initiative to have cordial relationship with the public. Community policing will play a critical role in establishing common grounds across political lines and build trust through transparency.

Also, *Cultural Competency Trainings* can also play a colossal role. In policing, it can be designed to aid enforcement agencies to interact and help diversified communities. Radical transformations can be seen among countries that have employed such training in their investigative structures, Royal Canadian Mounted Police (RCMP) is one such example where the focus lies on marginalized communities.[16] Also, the initiative by United Kingdom police towards protection of rights of people belonging to LGBTQ community is commendable. Through these networks they aim to establish regional and local police networks that work towards inclusion and rightful

[16] Homepage, Royal Canadian Mounted Police https://www.rcmp-grc.gc.ca/

representation of LGBTQ community.[17] Such training programs throw emphasis on cultural awareness and sensitivity can reduce implicit biases among officers, leading to fairer interactions with diverse communities.

There can be the introduction of anonymous reporting mechanisms where various platforms can allow citizens to report misconduct anonymously. This will empower communities to hold police accountable without fear of retaliation. Such systems can not only will help in reporting unethical behaviour of authorities but will also create a system that is necessary in terms of whistle blower protection, crime reporting, enforcement of human rights and ethics in place of work.

Transparency in AI use is another critical factor that can be employed for community favoured policing to build trust. Technology is changing constantly in its skin and nature; therefore, it is important to have a strong and reliable software that could ensure unbiased and transparent operations. Providing communities with information about how AI systems are used in policing fosters trust and allows for informed discussions about their benefits and risks.

2.3 Policy and Legal Reforms

2.3.1 Revising Use-of-Force Policies: Updating governmental and political policies to align with international human rights standards can ensure that officers understand the limits of acceptable force. Police at times go beyond the set guidelines to draw confessions from the accused. AI can assist in monitoring compliance with these guidelines. AI software can process the recording from body-cam and interrogations to mark cases of undue intimidation or pressure. This will further help in identifying misconduct through predictive policing.

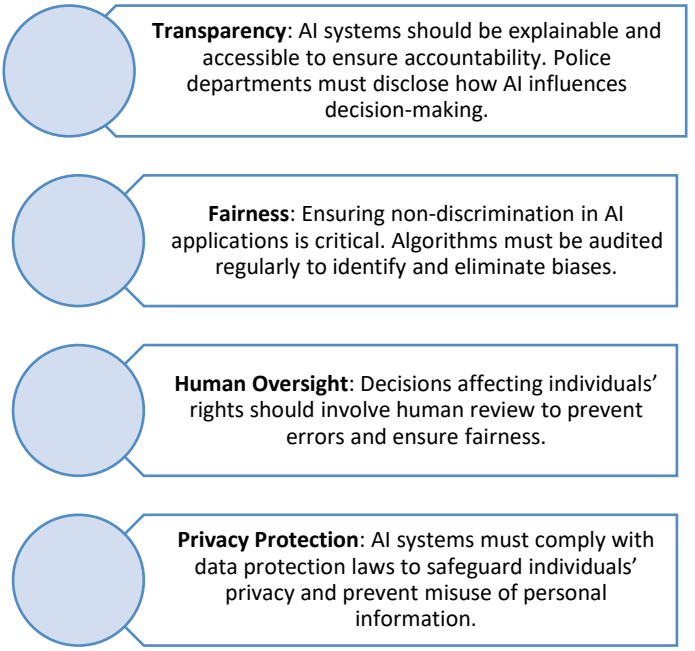
2.3.2 Enhanced Training Programs: Regular training on de-escalation techniques, ethics, and the limitations of AI systems equips officers to handle complex situations responsibly. For same, virtual training stimulations can be set-up that will help police officials to understand and interact such de-escalation techniques.

2.3.3 Regulating AI Deployment: Policymakers must establish clear legal frameworks governing the use of AI in policing. The biggest setback for AI today is lack of trust. The complicated approach and functioning of AI software further creates distrust. Technology and digitalization cannot be understood by everyone, therefore there is a need for legislations that can strengthen unbiased and non-opaque mechanisms. These regulations should prioritize transparency, accountability, and the protection of civil liberties.

[17] National LGBT+ Police Network, *Joining the Police*, https://www.joiningthepolice.co.uk/supporting-diversity/support-organisations/national-lgbt-police-network

2.4 Ethical Principles for AI in Policing

The integration of AI in law enforcement must adhere to universally accepted ethical principles:



2.5 Summarization: Technological Innovations for Police Reform

Based on the arguments above, AI and other advanced technologies can offer innovative solutions for improving law enforcement, such as:

2.5.1 Automated Case Management: AI streamlines administrative processes, enabling faster resolution of cases and reducing backlogs. By eliminating human interference, the element of bias and clerical errors could be minimized.

2.5.2 Crime Pattern Analysis: Tools like SIMBA use advanced analytics to detect trends and predict future crimes, enhancing resource allocation. Such innovative tools can reduce the chances of unlawful arrests. By analysing the crime patterns and identifying criminal hotspots much resources could be saved and therefore channelized towards holistic development.

2.5.3 AI-Driven Legal Assistance: Virtual assistants can provide officers with quick access to legal information, ensuring compliance with procedural guidelines. There is no doubt in the fact that AI, if applied ethically and with due diligence could lead creditable results.

2.5.4 Real-Time Interventions: AI-powered monitoring systems can alert supervisors to potential misconduct or procedural violations, enabling timely corrective actions.

By implementing these innovations within a robust ethical and legal framework, law enforcement agencies can enhance accountability, efficiency, and public trust.

3. Expert Perspectives on Integrating AI into Policing: An Empirical Study

3.1 Survey Analysis

A brief study was conducted across academicians, advocates, legal researchers, software engineers, and police official on how AI could be integrated into policing and what challenges it will pose or solutions it will cater?

38 people across 6 states (Chhattisgarh, Madhya Pradesh, Karnataka, Uttar Pradesh, Odisha, Haryana) were interviewed. 78.9% agreed that they have heard about police brutality in their respective state.

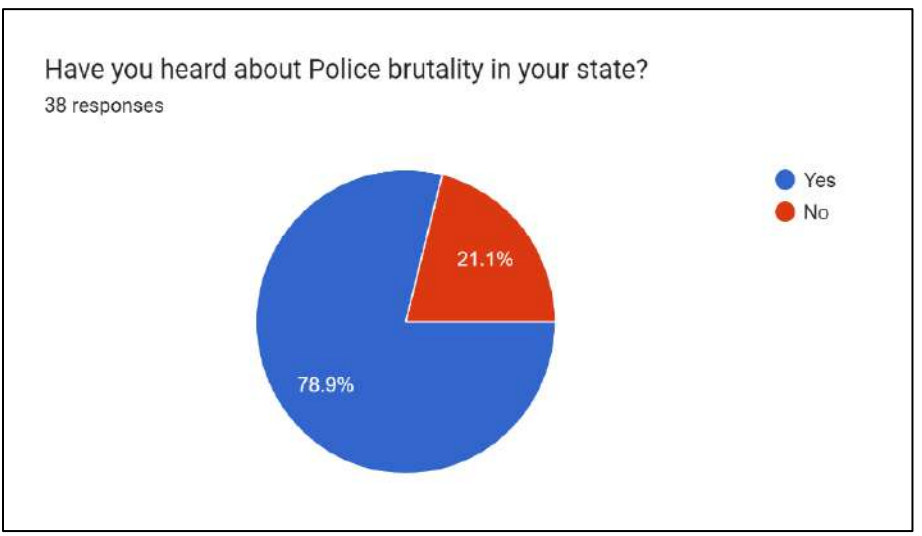


Figure 1

However, in terms of Artificial intelligence, results were sceptical. The use of AI in law enforcement or policing is an emerging concept and will take time to get into legal framework. Therefore, on being asked about usage of AI in law, 34.2% respondents agreed that they are aware of the same.

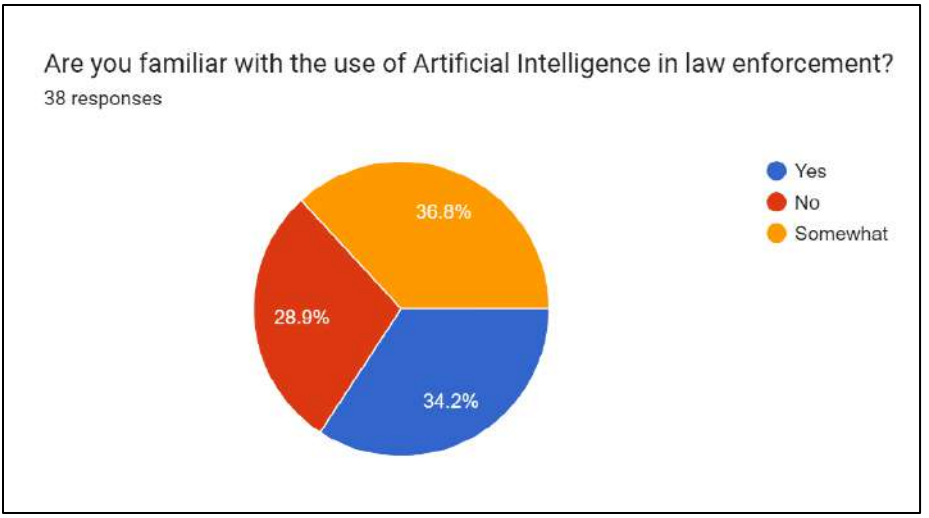


Figure 2

Facial recognition is amongst the top technique, respondents are aware regarding use of AI. Body cameras and related techniques have gained popularity since many international cases such as George Floyd (Black Lives Matter) came into light.

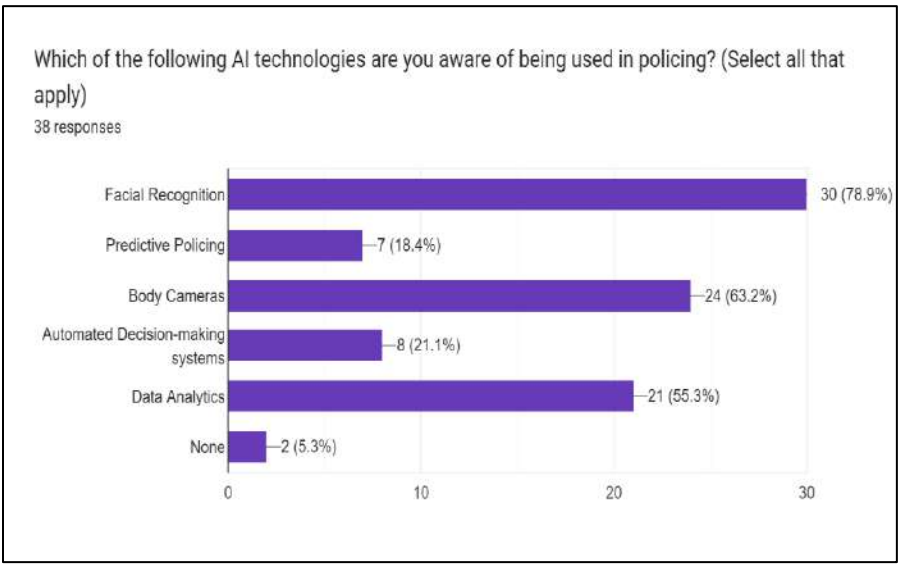


Figure 3

Considering the growing popularity of AI, when asked about what role it can play towards policing and law enforcement agencies, 76.3% respondents agreed that it will help in analyzing works of police

department and assign accountability, along with monitoring police-public interactions through body-cameras.

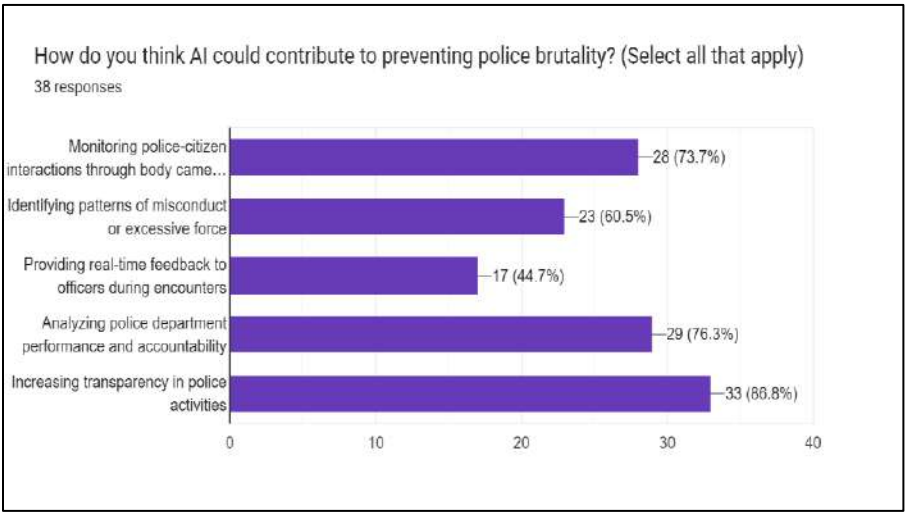


Figure 4

The responses raises age-old question regarding police accountability. Actions by executives and law authorities must also be within the circumscribed limits of procedure established by law. This legal sanction acts as a critical sphere to differentiate necessary legal action against arbitrary interference. Police officials are bestowed with intricate responsibility to act as guardian of public policies and human rights. However, when protectors become aggressors, police accountability comes into picture to protect rescinding image of policing. Police accountability can be defined as mechanisms or process where law enforcement and/or their personnel can be held liable for their actions. This comprises as a centre to ensure smooth police-public relationship and rule of law. In recent times, it has been observed that police department has indulged in indefensible behaviour. There is no denying in the fact that large scale illegalities do take place by police department. Human rights violations while performing daily actions is something which is in crux here. The question to be answered here is the scale of these violations. Such actions undermine human dignity and brutalizes policing system.

The Bharatiya Sakshya Adhiniyam, 2023 includes provisions that recognize video and digital evidence, such as body camera footage, as admissible in courts. This provision could prove revolutionary in investigating encounters, as real-time evidence of police actions can clarify the circumstances surrounding these cases and reinforce accountability. Therefore, when asked about detection of inappropriate use of force by police and role of body-cam photos, 52.6% agreed that latter will aid in combating use of force.

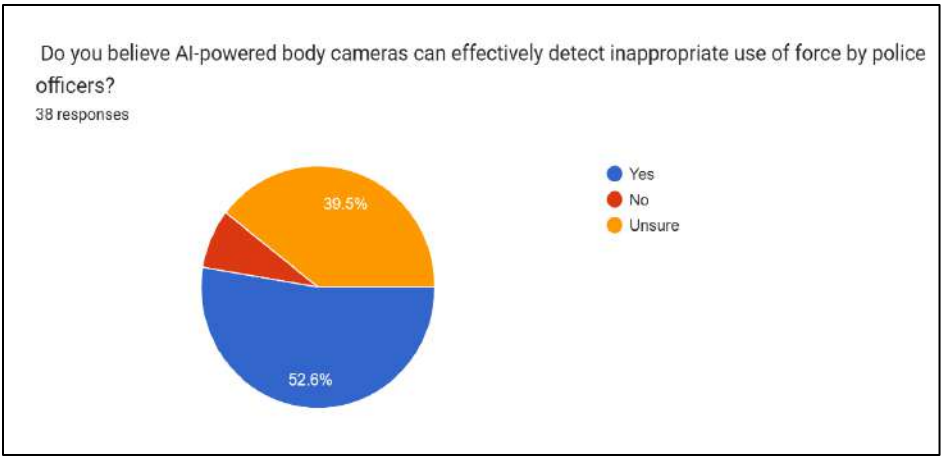


Figure 5

There is no denying in the fact that AI technology has proved to be crucial to identify criminal activity, detect fraud, and other financial as well as cybercrimes with high degree of accuracy. Inculcating AI into police work will foster greater and more impactful results.

However, this integration could raise ethical concerns over its biased approach, privacy invasion among others. The issue of data protection in cases of international or cross-border investigations is also a huge challenge. This is also identified by 71.1% of respondents in the research.

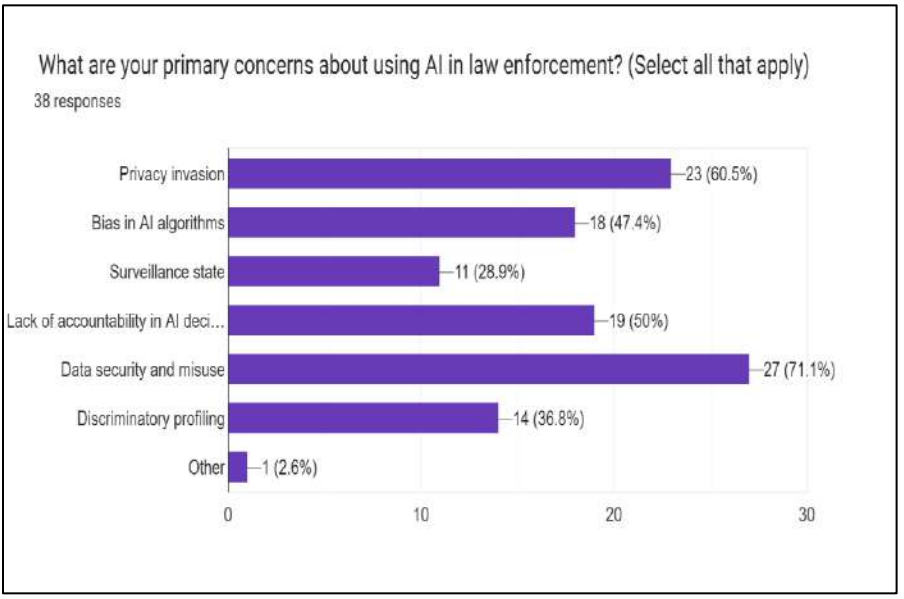


Figure 6

3.2 Personal Interactions and Interviews

India's current AI usage in legal framework is at the nascent stage. This budding platform needs to become more comprehensive and colossal to be at par with international regime.

1. During a personal interview, Dr. Shivli Shrivastava, Assistant Professor, Kalinga University, Naya Raipur said that, "The law deals with human behaviour which can be unpredictable and so AI based evaluation of evidence must not be relied completely. As there are many evidences which can be easily falsely created which may lead to failure of justice too." She pointed out that in today's world the modus operandi in committing crime is changing, therefore to cater the need of the hour, technology needs enhancement. AI can therefore, play a massive role here to identify offence and offenders.

2. In discussion with Mr. Shivanshu Bais, Assistant District Public Prosecution Officer, Chhattisgarh, he pointed out that to accept AI as reliable evidence it should be tested based on its dependability. The mechanism must be transparent and accessible, because its conclusions are clear to advocates and judges. Any type of inconsistency could overall question its integrity. He suggested that to uphold transparency and protect civil liberties, periodic independent audits and checks should be conducted. Such audits at regular intervals can help in keeping the technology fair and prevent discriminatory practices.

3. Mr. Sanjay Sharma, Deputy Commissioner of Police, Dewas, Madhya Pradesh noted that in AI is multifaceted and digital divide in India makes it further complex. He noted that police stations and officers are either technologically challenged or ill-equipped as far as advanced systems are concerned. Insufficient infrastructure is biggest hurdle faced by police across rural regions. Moreover, the fragmented legal framework where laws related to AI is missing makes it difficult to adapt it in daily workings.

4. When asked about developing an AI software which can help police, Mr. Saurav Kumar, Software Engineer 2, Flipkart, Bengaluru, said that developing such software is not only possible but is already in practice by many advanced countries like USA, UK, and China. PredPol app in USA is a prime example of one such application where predictive policing is done. AI has proven to be a powerful tool for policing in terms of data analysis, facial recognition among others.

5. According to Mr. Anilabh Guhey, Associate Attorney, PWC, Gurgaon, India can integrate Israel policies in terms of cybersecurity laws taking inspiration from "Protection of Privacy Law (1981)" to provide framework for artificial intelligence. We can also work towards setting stringent standards in social networking seeking stimulation as per German laws.

6. Mr. Vijay Kumar Jain, International agency read news (electronic media) head, Balod said that AI is the most revolutionized form of technology, a human can lie but AI will not, it is made by man but will function as an earnest entity when sought and understood properly. The crucial element here is that it should be used in its true sense, there should be no manipulation.

4. Recommendations and Suggestions

The status of India in terms of employing AI is backward considering lack of technological awareness and urban-rural divide. Still many core areas are unaware about internet and digitalization.

Amongst this challenge, however, many states have tried to integrate AI into their policing techniques. Delhi, Hyderabad, and Mumbai have employed tools under the name of "*Crime and Criminal Tracking Network and Systems (CCTNS)*" for crime mapping. Facial recognition systems (FRSs) installed at airports and public areas is another key example to develop enhanced criminal identification system. AI tool for traffic management known as "*Red Light Violation Detection System*" and auto *challan* generation system are prime example that India has deployed using AI.

Following table analyses the AI monitoring arrangements of various countries which India can adapt for strengthening its legal system

Countries	AI System
1. Singapore	Safe City Program for real time surveillance and crime detection
2. United Kingdom	Live Facial Recognition (LFR) used by police to identify suspects.
3. United States of America	Tools like COMPAS (more refined version can be adopted) to monitor frequent offenders for taking bail/parole decision.
4. Canada	Laws like "Directive on Automated decision making, 2019" to ensure algorithmic transparency.

5. Australia	Legal frameworks like "Surveillance Devices Act, 2004" to regulate and ensure AI is at par with ethical standards
6. New Zealand	"Algorithm charter for Aotearoa New Zealand," this legal framework ensures accountability of government with respect to usage of AI in terms of personal data.
7. China	"Cybersecurity Law of the People's Republic of China, 2017", a legal guideline towards data collection and usage.
8. South Korea	"*Personal Information Protection Act*" that focuses on data protection and "*National AI Strategy,*" which deals with accountability.
9. Sweden	"*Police data act, 2018*" for governing law enforcements using AI.
10. Brazil	"*AI Ethics Guidelines*" to ensure privacy protection and guide deployment of AI in law enforcement. It helped Brazilian police to identify 900 wanted individuals in 2019.

It can be concluded from above table that primary tangent that majority of countries focused on was indeed privacy concerns and data protection. Other countries such as United Arab Emirates, Norway, Estonia among other have also framed AI-driven regimes to ensure accountability and transparency. Netherlands has framed algorithms for public reporting, that can bridge police-public gaps. With the help of laws and guidelines, India can also establish a comprehensive legal framework that can aid police to establish more determined and reliable policing structure.

In conclusion, India needs law for merging artificial intelligence, police and criminal justice system which could be inspired by various legal frameworks around the globe and existing legal, social resources of the country.

(Proposed act- Annexure 1)

Annexure 1

"Artificial Intelligence in Policing and Criminal Justice Act, 2024"

Preamble

An act to regulate, guide and promote the usage of artificial intelligence in India's policing structure and judicial framework to enhance transparency, increase accountability and assign responsibility particularly by police. The act aims to prevent custodial torture in particular and police brutality in general through technological intervention while upholding the principle of justice as enshrined in *Bhartiya Nagarik Suraksha Sanhita, 2023.*

Section 1: Short title, Extent, and Commencement

a. This act may be called as "Artificial Intelligence in Policing and Criminal Justice Act, 2024"

b. It extends to whole of India.

c. It shall come into force on such date as central government may notify.

Section 2: Definitions

a. Artificial Intelligence: Technology capable to perform task on human prompt and have ability to learn, reason, and solve problems.

b. Policing: organized actions by police in a particular territory to maintain law and order.

c. Forensic AI System: includes crime scene investigation, among others at conscience with Bhartiya Nagarik Suraksha Sanhita, 2023.

d. Body cameras: devices worn by police officials to record interactions during investigation, interrogation, search, and seizure.

e. Human Rights: includes rights of dignity, individuality, integrity, and virtue.

f. Commission: AI-*Nyaykaran* Commission as established by central government.

Section 3: Objectives

a. To provide India with comprehensive legislation for integration of Artificial Intelligence and Policing.

b. To combat police brutality and torture using AI mechanisms.

c. To include acceptable international legal regimes into Indian framework.

d. To adopt tools for dynamic forensic investigation at par with Bhartiya Nagarik Suraksha Sanhita, 2023.

e. To establish unbiased and transparent system into India's criminal justice system

Section 4: Establishing AI-Nyaykaran Commission

a. Central government to establish an AI-*Nyaykaran* Commission i.e. AI- Based Justice Administration Council for Criminal Justice System, to audit, monitor, review, and address AI systems under Ministry of Law and Justice.

b. Commission including national and international experts to implement best practices circling AI into our criminal justice system.

Section 5: Composition of Commission

a. Chairperson: Retired Chief Justice of High Court or Judge of Supreme Court

b. Technical expert: 2 AI experts with experience of not less than 7 years in relevant field.

c. Human Rights Manager: Expert in human rights and related areas for not less than 7 years.

d. Law Enforcement Member: Officer from CBI, ED, etc or police official not below the rank of Deputy Commissioner of Police from state concerned.

Section 6: Functions of Commission

a. To look into body camera photos and videos to identify uncalled force, unlawful detentions.

b. To analyse patterns and behaviours of criminals and aid courts to provide bail or parole.

c. To study historical data generated by AI and categorise potential crime hotspots to employ police force accordingly.

d. To ensure privacy of individuals is not compromised in name of law and order.

e. To evaluate and certify AI tools for legal compliance.

f. To train officials regarding AI mechanism through workshops, seminars, and conferences.

g. To publish six-monthly reports in collaboration with police from different states to understand awareness and reach.

h. To collaborate with other international agencies working in AI tools.

i. To aid towards expediate evidence processing and authentication in accordance with Bhariya Sakshya Adhiniyam, 2023.

j. To refer and check forensic reports for judicial proceedings.

Section 7: Power to intrude privacy

a. To intrude with privacy of individuals only under judicial order in case of public safety and national security.

b. The intrusion must be rational, proportional, and reasonable as per decision of court concerned.

Section 8: Penalties

Commission has power to award penalty on the grounds of

a. Unauthorized use of AI as per commission: Not less than Rs. 5000, which may go upto Rs. 25000.

b. Invasion of privacy without reasonable cause to be punished as per Digital Personal Data Protection Act, 2023.

c. Any police officer misusing AI to face disciplinary action under Police Forces (Restriction of Rights) Act, 1966.

Section 9: Retention of Records

The commission to preserve records and reports of preceding five years.

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Notions of Justice by Dr. B.R Ambedkar

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Abstract

The Notions of Justice have always been interpreted differently by various jurists, Philosophers, and Scholars. It is one of the terms used by society in day-to-day activities to judge and distinguish between what is just and unjust. The paper studies the concept of justice through the lens of Dr. B.R Ambedkar, the distinguished personality who has chaired the drafting committee of the supreme law of the land. Dr. Ambedkar's perspective for justice was social justice, a classless society where everybody lives equally. The paper lays its focus on the sayings of different philosophers who had the perspectives that there are four main values of a culture that is fortitude, courage, wisdom and fairness and by using the term fairness, they meant Justice. The paper tries to study the notions of justice by different philosophers and jurists to understand the evolution of the term justice and its different interpretations, which will assist in understanding the concept through the lens of Dr. Ambedkar. The paper also discusses the life of Dr Bhimrao Ramjirao Ambedkar to understand the circumstances which led to lay the concept of social justice, how he worked to improve the conditions of the untouchable in the society, etc. The primary purpose of the paper is to study pillars of Justice by understanding Equality, Liberty and Fraternity.

Keywords: *Social Justice, Classless Society, Culture, Equality, Liberty, Fraternity.*

Introduction

The term 'Justice' is used often in our day-to-day life by judging the actions, decisions, attitudes, behavior, personalities, etc of others. Justice in simple words, means the judgment of right and wrong or just and unjust. The term tests the quality of actions on the test scale of right and wrong or just and unjust and further tests if it is unjust

what kind of sanctions does that unjust behavior demand, all of this depends on the term 'justice'.

The word 'Justice' has its origin from the Latin word 'jus' which means law. This is also connected to jussum, which is a Latin phrase meaning "what is ordered."[1] The notion of justice is not geographically constrained. Its meaning is broad and varied and shifts depending on the context. Justice is a fluid idea. Thinkers, academics, and philosophers have been interpreting the idea since the sixth century on the foundation of their deliberate thinking, beliefs, and observations. Some philosophers' ideas are more liberal, while others are more socialist or belong to a different philosophical school altogether. The models and techniques that have been discovered thus far each have their own "insightful foundation of judgement" that they use to make decisions regarding the acceptability and fairness of various social circumstances[2].

Since the perception of what is fair and unfair varies from region to region, group to group, and finally from person to person, existing civilizations are naturally rarely well-ordered. What is unfair in India doesn't have to be unfair in the United States. Finding consensus on a specific issue to establish a just order is exceedingly challenging. The definitions of justice offered by various thinkers are examined here.

As is well known, Greece is where political philosophy first emerged. The four main values of a society, according to Greek philosophy, are fortitude, courage, wisdom, and fairness. Numerous intellectuals and philosophers gave the word justice varied interpretations. Justice, according to the Greek philosopher Polemarchus, is defined as "paying each man his due" or "what was fitting." Justice was supposed to be "doing the right thing," which is "doing good to friends and harm to adversaries." The Greek ethic that Solon expressed in his prayer—"may I be pleasant to my friends and hateful to my enemies"—was reiterated by Polemarchus.

A Sophist named Thrasymachus understood justice or truth as serving the interests of the party, or the monarch. He claims that "mostly every kind of administration upholds regulations that serve its own best interest; a constitutional democracy enacts progressive legislation, a totalitarian state enacts totalitarian legislation, and so forth. And by doing so, they end up making it quite clear that whatever is "appropriate" about their own disciplines is that to serve the engagement of one's own self - concept, the leaders, and when someone detracts from that, he will be reprimanded as a guilty party and offender.

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[1] Evaluation of Legal Aid and Legal Liberty – Tools of Social Justice (Jan 23, 2025, 09:00 AM) http://shodhganga.inflibnet.ac.in/bitstream/10603/7785/10/10_chapter%203.pdf

[2] www.idll.uct.ac.za/usr/idll/resources/student/smtaherzadeh_2012.pdf

The great philosopher Socrates, who believed that wisdom and knowledge were the first virtues, placed a strong emphasis on reasoned conduct. In addition, Socrates refuted the Thracymachian theory, arguing that the job of the ruler is to advance the interests of the people, not the interests of the powerful, and that fairness is not a benefit of the powerful.

According to Plato, justice meant that each person should be given a place in society based on their innate abilities and skills. According to others, Plato's justice refers to "departmental perfection." Every human soul, according to Plato, possesses the three attributes of reason, passion, and appetite. As per Plato, a few of these traits predominate in each soul. Individuals with a strong sense of reason make up the upper classes and acquire the wisdom of intellect. Individuals who have a strong sense of spirit make up the warrior class and possess the wisdom of boldness. Individuals with a strong sense of appetite make up the skilled craftsmen and constructive class and possess the wisdom of prudence. "One class, one task; one man, one work" is how justice is defined.

The father of political science and a visionary with a wide range of knowledge, Aristotle, has offered opinions "on justice." Although not an absolute virtue, justice was seen by Aristotle as a full virtue. The two categories of justice according to Aristotle.

1. Notion of justice as a whole: The notion of fairness is the legitimate, which does not imply adhering to the rules of any one state.

2. A certain understanding of justice: This understanding focuses on fairness and equality. He categorizes a certain idea into distributive and reificatory, remedial, or corrective justice. Whatever people demand and have a right to get, such as positions of wealth and power, rewards and obligations based on contributions made on merit, are the topics of distributive justice. Justice of transactions, both voluntary (buying, selling, or financing) and involuntary ones, is referred to as remedial justice (being a victim).

The crucial point was that each person would be treated fairly and according to their merits. Aristotle referred to this as Absolute Justice. Justice according to Aristotle is founded on the notion that "everyone should have his own," but justice according to Plato is based on the idea that "everyone should do his own."

John Rawls, an American philosopher, finally unveiled his "Theory of Justice" around 1971 after just a protracted period of development. According to Rawls, a civilised society exhibits a variety of virtues, with justice ranking first among them. According to Rawls, his concept is one of pure procedural justice.

Justice, in Rawls' view, is just what free and fair people would accept as the fundamental prerequisites of social interaction under

just circumstances. Based on this, he proposed the notion "justice as fairness," from which Rawls deduced the liberty principle and the difference principle, two well-known concepts of justice.

In India, Dr. B. R. Ambedkar is regarded as the leader in social justice. The entirety of these concepts is skillfully and elegantly conveyed in Dr. Ambedkar's publications, addresses, and, most importantly, the Indian Constitution. His theories give rise to a picture of the welfare state that emphasizes the importance of institutions. However, Dr. Ambedkar also discussed putting restrictions on them in order to prevent them from acting indiscriminately. Further, Dr. B.R Ambedkar's concept of social justice will be studied in detail.

Life of Mr. B.R. Ambedkar

Some people are thought to be conceived great, while others become great by their virtuous achievements. Both proverbs apply to Dr. Bhimrao Ramjirao Ambedkar, an Indian Dalit activist, state constitution maker, democratic nation builder, and "World Legend" who championed human dignity and social justice. The circumstances surrounding a person's upbringing, their household, community, and their actions as a youngster all have an impact on how they behave. It's indeed crucial to research these circumstances, perspectives, financial impacts, and political factors. The material circumstances of life have a significant influence on a person; they truly shape who that person ultimately becomes. So, while we begin discussing Dr. Ambedkar's social justice, let's take a look at his biography.

On April 14, 1891, in Mhow, India, Dr. Bhim Rao Ambedkar was born into a prosperous family. His mother was Bhima Bai, and his father was Ramji Sakpal. The grandfather of Ambedkar was Maloji Sakpal. The Ambedkar family was from Ambavada, a village near in the Maharashtrian area of Ratnagiri's Kheda Taluka. Ambedkar originally used the name of his birthplace, "Ambavadekar," but one of his devoted teachers subsequently changed it to "Ambedkar.[3]" Ambedkar's father was a "vasandar mahar," receiving eight annas as "vatan" compensation each quarter. His family placed a high value on armed forces, placing "vatan" service in a distant second. Ambedkar's ancestor served in the armed forces of the Maratha Empire, the Peshwas, and the former Mughal Empire. They were brave soldiers.

Ambedkar was their 14th son overall. He jocularly referred to himself in his later years as "chaudave ratna," which is Hindi for "the fourteenth pearl of his parents." After leaving the service, Ambedkar's father retired and made his home in the Maharashtra village of Dapoli in the Konkan region. Ambedkar enrolled in schools in Dapoli along with his older brother. He was just six when his mother passed away.

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[3] Bharill, Chandra, Social and Political Ideas of B. R. Ambedkar. Aalekh Publisher; 1977. P-1. (April 3, 2025, 10:00 AM http://www.new1.dli.ernet.in/ambedkar/

He first became aware of the sin of untouchability at this very basic level. Even though some teachers supported him and treated him gently, others' segregationist and inhumane treatment of him devastated him.

In order to find work and provide for his children's education, Ambedkar's father moved to Bombay after losing his job in Dapoli. There, he was not hired. The family's primary source of income was the pension from the previous job. Anand Rao and Bhim Rao were accepted by Ramji Sakpal into Bombay's Elphinstone High School. However, Anand Rao discontinued his studies because of the poor economy and started helping to support his family. Only Bhim Rao was given the chance to finish his studies, and he attempted to make the greatest of it.

The untouchability orthodoxy, however, nonetheless pervaded the academy. Due to his status as an inferior, Ambedkar wanted to learn Sanskrit but was prohibited from doing so. His decision to go with Persian was coerced.In the year 1907, he graduated. An unbeatable back then had accomplished something remarkable. A meeting is arranged between him and the Maharaja of Baroda by his instructor and admirers, who later arranges for him to get a grant for further education. Ambedkar joined the Baroda Government force like a lieutenant commander after receiving his degree from Bombay's Elphinstone College in 1912. When Ramabai was just 9 years old, Ambedkar married her at the age of 14. His dad passed away on February 2nd, 1913[4]. For Bombay, Ambedkar departed. Following that, He had planned to continue his education and hadn't reverted back to Baroda.

Due to his untouchable caste, Ambedkar was unable to locate a place to dwell. Ambedkar began concealing his caste while residing at a Parsee Inn. However, this was not allowed to go unobserved for long, and one morning Ambedkar discovered a group of Parsees threatening to beat him with sticks unless he departed at the inn gate. Following the disgusting events in Baroda, he departed for Bombay. He started looking for a job in Bombay, but it took him a year to locate one. Then, using his scholarly interests, Ambedkar had his papers on "Caste in India" and "Small Holdings in India and its Remedies" released.

He was appointed as a political economy professor at Sydenham College in Bombay in 1918. Being an easygoing educator, he gained popularity among the pupils. He was criticised by some Gujrati professors in this location as well for consuming water from a

[4] Rajasekhariah, A. M., B. R. Ambedkar : The Politics of Emancipation. Sindhu publication;1971, p.9.(Nov 22 ,2022 11:30 AM) http://www.new1.dli.ernet.in/ambedkar/

pot meant for experts. Such intellectual attitudes, in Ambedkar's opinion, are exceedingly unsatisfactory[5].

[6]Ambedkar had already begun to set aside some of his earnings. He sought assistance from his friend, the Maharaja of Kolhapur, and enrolled in the London School of Economics and Political Science for graduate study. In June 1921, he received a Master of Science degree for his thesis, "Provincial decentralization of Imperial Finance under British Rule." In the London School of Economics and Political Science, he submitted a second thesis on "the Problem of Rupee."

He worked to elevate the untouchables so that they may receive an education when he was working as a lawyer in the High Court of Bombay. His first concerted effort to do so was the "Bahishkrit Hitakarini Sabha," which aimed to advance socioeconomic development, education, and the welfare of "outcastes," or what were then referred to as the depressed classes. He founded a number of magazines, including Mook Nayak, Bahishkrit Bharat, and Equality Janta, to advance Dalit rights. In 1925, he was chosen to serve on the Bombay Presidency Committee alongside the all-European Simon Commission. While the majority of Indians ignored the report of this committee, which had triggered widespread protests across the country, Ambedkar himself produced a second set of suggestions for the country's future constitution.

Ambedkar made the decision to start aggressive anti-untouchability efforts in 1927. He started with public demonstrations and marches to share and expand access to public water supplies, and he also started a fight for the freedom to visit Hindu shrines. To struggle for the untouchable community's right to access the town's primary water tank, he led a satyagraha at Mahad. Ambedkar started the movement for the Kalaram Temple in 1930. He spent three months preparing for this non-violent movement. One of Nashik's largest processions was made up of around 15000 volunteers at the Kalaram Temple Satygraha. The military band led the parade while a group of scouts, women, and men walked with order, discipline, and desire to view the deity for the first time.

Further, some of the most famous and enduring philosophies had an impact on Dr. Ambedkar. His thought was greatly impacted by the teachings of John Dewey, Buddha, Saint Kabir, Jyotba Phule, and others. "My societal philosophy may be considered to be embedded in 3 categories: freedom, equality, and fraternity," he claims. Instead of political science, religion is the foundation of my philosophy. I got them

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[5] Mishra, Dharmendra Kumar and Mishra, Anshu, The Protean Face Of Justice (From Plato to Amartya Sen). (Nov 24, 2022 12:30 PM) http://essayforth.com/read-file/the-protean-face-of-justice-from-plato-to-bhu-pdf-2267030/

[6] Ambedkar, B. R., Annihilation of Caste, 1936.(Feb 13, 2025 1:30 PM: http://drambedkarwas.files.wordpress.com/2010/10/who-were-the-shudras.pdf

from my master, the Buddha, who taught them to me. Ambedkar's worldview was centred on Buddha's realism interpretation of reality. Saint Kabir's idea of "Begumapura," which translates as "a city of no sorrow," also had an impact on Ambedkar's way of thinking because it emphasised human dignity and brotherhood while criticising the caste system.

In addition to Saint Kabir, Ambedkar regarded Jyotiba Phule as his "Guru" due to Mahatma Phule's dedication to the learning of the underprivileged. John Dewey, a lecturer at Columbia University, was another person who influenced Ambedkar's ideas, particularly his views on politics. In his essays on democracy and societal freedom, he frequently quotes Dewey. He noted in his book Annihilation of Caste, "Prof. John Dewey, who was my instructor and to whom I respect so much, believes that each and every society gets burdened with what is inconsequential, with dead wood from the past, downright bizarre. As society develops, it is its responsibility to preserve and transmit not all of its current accomplishments, but just those that will contribute to a better society in the future.

Concept of Social Justice by Dr. B.R Ambedkar

Due to his stigmatized status, Dr. B.R. Ambedkar was indeed a child of an unfair social structure. He severely chastised the societal activists of his period for giving the caste and untouchability issues little more than lip regard. If we examine Dr. Ambedkar's works and writings, we will discover that everything he did was put out concepts for the construction of "social justice" or for the improvement of the human community, regardless of whether it consisted of men or women, high caste or lower caste, affluent or poor. In his mind, each drop of the ocean is significant enough to contribute to the creation of a society where justice is practiced.

The concept of social justice advanced by Ambedkar is the one that is most current today. [7]According to R. C. Guha, B. R. Ambedkar is the sole nationalist, or at the very least pan-Indian, figure that exists today. Bose is rarely remembered outside of Bengal, where he was born, while Patel is revered exclusively in his native Gujarat. While both Muslims and non-Muslims forget about Azad, both the left and the right denigrate Nehru. Gandhi still has some admirers among courageous social activists, but he no longer has much influence on the general public.

Ambedkar described Indian villages as being devoid of equality, liberty, and fraternity, and thus of democracy, in order to provide the true picture of Indian communities to the Constituent Assembly.

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[7] Guha, Ramchandra, THE DARLING OF THE DISPOSSESSED. The Hindu(Dec, 08, 2002): http://ramachandraguha.in/archives/ambedkar-the-hindu.html

[8]Dr. Ambedkar promoted democracy as being necessary for social justice. Democracy, in his opinion, is a type of social structure rather than a system of administration. The foundation of Ambedkar's idea of social justice is "social democracy." One form of democracy that is connected to equality is social democracy. Tocqueville, a philosopher from the United States, supported the idea of social democracy. He was captivated by the American democracy's social precepts of equality, of position, etiquette, and customs. He viewed democracy as a social state as opposed to a political form.

A social democracy, according to Bryce, is a society where everyone is expected to view themselves as socially equal. In the Constituent Assembly, Ambedkar said, "We must not be satisfied with purely political democracy. We need to discern political democracy. We also need to create a social democracy. Without social democracy at its core, democratic politics cannot endure. What exactly does social democracy entail? It refers to a manner of living that values liberty, equality, and fraternity as guiding ideals.

[9]He made the following recommendations to the Constituent Assembly in his speech: His constitutional techniques; (ii) to not lay freedoms at the foot of a remarkable man; and (iii) establish a political democratic a social democracy."

Dr. Ambedkar vehemently criticised the socialists in India who were imitating their European counterparts and applying to India the economic interpretation of history, which holds a certain property is the only source of power, that man is an economic creature, and that his actions and aspirations are constrained by economic facts. Therefore, "Indian socialists, per the Dr. Ambedkar, preach that economic reform via property equalisation should have priority over every other kind of change and also that both political and social reforms are but enormous illusions." In India, social standing also functions as a source of power and authority, proving that economic motivation is not the main driver of human behaviour.

[10]According to Dr. Ambedkar, "He did not understand how a Socialist A Indian state can exist for a little period of time without having to deal with the issues brought on by the prejudices that force Indians to distinguish between elevated / low, clean and dirty.

Ambedkar is primarily focused on adopting strategies that are better suited to the society in question. The only way for India to attain

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[8] Chand, Shyam, Dr. Ambedkar on Democracy. Mainstream, Vol XLV, No 51. (Feb 10, 2025 5:00 PM): http://www.mainstreamweekly.net/article467.html

[9] *Supra*

[10] Ambedkar, B. R., Annihilation of Caste.(March, 20, 2025 10:30 AM: http://drambedkarbooks.wordpress.com/dr-b-r-ambedkar-books/

justice and equality is through the development of social democracy. [11]Theorists like Montesquieu and Hobbes held the opinion that not all types of government are appropriate for all nations.

The essential principle of "representative government, by the people, and for the people" served as the foundation for Dr. Ambedkar's vision of democratic administration. But for him, "democracy" meant far more than just democratic rule. According to him, democracy is more than just a system of administration. It is basically a way of living in community and communicating together. It is primarily reverence and respect for one's fellow human beings.

Ambedkar aimed to bring about significant changes in the way that people lived their social and economic lives, and he wanted them to be accepted by them without the need of conflict or violence. He is using constitutional means to enact these changes.

He cited John Stuart Mill in his final address to the Drafting Committee when he urged Indians not to "throw their rights at the feet of even a brilliant man or to entrust him with abilities which enable him to destroy their institutions." Ambedkar argued that there was nothing wrong with being We are grateful to exceptional men who have given the nation their lives' work. But being appreciative has its limits. He was concerned that India's politics would be significantly impacted by bhakti, often known as the road of dedication or hero-worship, to a greater extent than any other nation in the world. In terms of religion, bhakti might lead to salvation for the soul. However, *bhakti*, or hero worship, is a guaranteed path to degradation and eventually authoritarianism in politics. Ambedkar was quite critical of how the major political parties themselves conducted themselves. He favoured total lower caste mobilisation.

It was asserted that Brahimins predominated in the government apparatus following independence in politics as well. [12]Non-Brahimin movements had been started in several regions of India, mainly Tamil Nadu and Maharashtra, to oust the dominant Brahimin castes from those states from their disproportionate influence over positions in the government services and other privileges in society. Men from the upper castes of Hinduism, particularly Brahimins in most regions, Kayasthas in North India, Banias in many regions, and various regional high caste groups in other parts of the country, dominated the leadership of the nationalist movement and of the Indian National Congress in almost the entire subcontinent. However, as a result of adult voting rights, castes themselves became more active and emerging leaders from previously

[11] Mukherjee, Subrata & Ramaswamy, Sushila, A History of Political Thought: Plato to Marx. PHI Learning Private Limited; 2012, p-251.

[12] Brass, Paul R., The Politics of India since Independence. Cambridge University Press, 2008, p-6.

underrepresented classes and castes started to emerge. Ambedkar claimed that self-representation was essential however, as a result of adult voting rights, castes themselves became more active and emerging leaders from previously underrepresented classes and castes started to emerge. Ambedkar asserted that the Dalits and Hindu castes have different goals, beliefs, aspirations, and knowledge, necessitating the need for self-representation. Between two Hindus, he asserted, "caste-like mindedness is more potent than the like-mindedness due to their both being Hindus." He underlined that as Hindus and Dalits would have competing interests, class Hindus could never adequately represent the interests and viewpoints of Dalits in the absence of self-representation. Ambedkar desired Dalit self-representation because he believed that only Dalits could speak for their concerns. According to him, "-as it is clear that they will be represented alone by the Untouchables. The extremely contentious point that divided Gandhi and Ambedkar was this. Dr. Ambedkar complained that no Indian was worried about caste eradication despite his desire to do so. Some claim that M. K. Gandhi shared this desire for the caste system to be abolished. There is a disagreement involving Gandhi and Ambedkar on this specific issue. The two Indians are incredibly significant because they each sought to create a good society in their own unique ways. The former was born into the Vaishya caste, whereas the latter was raised in the Untouchable caste. Gandhi, a devout Hindu, believed that Untouchability needs to be eliminated from Hinduism. On the other hand, Ambedkar was certain that The issue was a component of Hindu and was written about in its holy texts.

Dr. Ambedkar created a bill to protect the rights of Hindu women in addition to providing privileges for the Lower castes and other underprivileged castes. With a number of sections, the bill was designed to guarantee Hindu women an honorable and equal standing. There are laws that forbid dowries. The legalization of monogamy replaced polygamy. Instead of being a ritual, Hindu marriage was reduced to a contract. If an adoption occurred, the wife's approval had to be required. Ambedkar had envisioned a strong country and just society by granting Hindu women all of these rights.

According to Dr. Ambedkar, "my ideal society would be one built on Liberty and Equality likewise Fraternity. These exact points outline how Dr. Ambedkar's concept of social justice should be explained. During the French Revolution, the phrase "Liberty, Equality, and Fraternity" first appeared. These three terms "enshrine" his thinking as well. [13]As stated by Dr. Ambedkar "However, let no one claim that I am using the French Revolution's idea as my own. I didn't. He derived them from his master, the Buddha, who taught me them. His instruction seemed wholly democratic to me ".

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[13] Wijesiri, Lionel, BUDDHA DHAMMA: Liberty, equality, fraternity and Buddhism. (Jan 26, 2025 2:30 PM): http://www.lakehouse.lk/mihintalava/buddhism04.htm

Liberty

A essential aspect of human life is liberty. It is stated that to give up one's freedom is to give up being a man. However, Kancha persuasively argues that when it was granted to them, Indians saw liberty as a scourge rather than a blessing the eminent Indian scholar. India had a very orthodox and traditional culture, and concepts like liberty and equality were viewed as disrespectful to the established order. According to Dr. Ambedkar, liberty is a necessary component of life. He wished to put an end to conventional beliefs. He desired the freedom to at least choose one's own course of action, which Indians did not have because of the caste system. He compared the caste system in India to slavery, which is a social condition in which certain men are coerced into engaging in undesirable behaviour but does not entail that slavery is a legitimate form of subordination. According to Ambedkar, those who support caste and would favour freedom in the meaning of freedom of life, limb, and property, would not readily acquiesce to freedom in this sense because it entails the freedom to select one's vocation. However, he claimed that to object to this sort of liberty is to continue slavery. Within caste system, some people are forced to follow certain mandated callings against their will simply because of their caste.

Rama killed Shambuka willfully and without justification, and perhaps some people have seemed to hold him responsible. Ram Raj was an imitation of Chaturvarnya's Raj. Rama was required to uphold Chaturvarnya as a monarch. Therefore, it was his responsibility to execute Shambuka, a Shudra who had defied his status and aspired to become a Brahmin. Shambuka was murdered by Rama for this reason. Which is Why does Manu-Smriti recommend such severe punishments as tongue chopping off or pouring molten lead into the Shudra's ears if they hear or recite the Veda? There is a difference between merely existing and existing deservingly for just a person in addition to for a society. Another strategy for surviving is to make a retreat, submit, and live as a captive. According to Dr. Ambedkar, this highly depressing scenario of a community without liberty cannot result in the formation of social justice.

Equality

Because human equality and the rights of men were firmly established in political thinking, equality functions as one of the fundamental concepts of justice. [14]We understand that the hierarchical Indian culture once viewed equality as the disrespect for orthodox beliefs and "Dharmashastras." There was no concept like equality in Indian society. "Equality may be a fantasy, but one must embrace it as a

[14] Ilaiah, Kancha, God as Political Philosopher: Buddha's Challenge to Brahminism. Samaya publication; 2004, p-101.

governing principle," says Dr. Ambedkar. The development of social justice is centered on equal treatment. Both procedural and substantive justice are topics of discussion in thought. Two ways in which equality contributes to a fundamental theory of justice are as follows: (1) by assuring an equitable distribution of goods; and (2) by serving as a more basic ordering principle as part of due process, which mandates that equal instances be treated equally. Additionally, operational conceptions have a weak notion of fairness that suggests everyone has a right to be treated in accordance with societal norms.

According to Dr. Ambedkar, some of the objections against equality may be valid and it may be necessary to acknowledge that not all men are created equal. But how about that? Further, Dr. Ambedkar claimed and questioned that "a man's power is reliant on (1) physiological heredity, (2) social heritage or bequest in the form of parental support, schooling, collection of scientific understanding, anything which allows him to possess more effective than the savage, and lastly, (3) by his own efforts. Men are unquestionably unequal in all three of these areas. But should we treat them unequally simply since they are unequal? From the individualist's perspective, it might be justified to treat males differently insofar where their activities are unjust.

Even though the idea of equality is obviously false, it is ultimately the one and only way a politician can conduct themselves in politics, which is a very practical endeavor and necessitates a very practical test.

He quotes, "Caste is the demon that stands in your way; without slaying this monster, neither political nor economic transformation is possible."

Fraternity

A stable society should be dynamic and full of ways to communicate changes happening in one area to other areas. Many hobbies should be openly expressed and shared in a perfect society. The sites of contact with different types of association should be numerous and unrestricted. The term fraternity here simply refers to democracy. Politics is not just a style of government It is basically a way of living in community and communicating together. In essence, it is a reverence and respect for one's fellow human beings.

Ambedkar had unwavering trust in democracy, according to a detailed analysis of his conception of democracy. He described democracy's extraordinary role as "one person, one vote" and "one vote, one value" in his vision of an exploitation-free society. Democracy is liberty, equality, and fraternity; it means giving any person the power to become a part of making decisions that affect her or him. Ambedkar believed that because religion served as the foundation upon which

Hindu society was created, it was regrettable that it failed to be cohesive.

Ambedkar not just to establish a brilliant theory of social justice on the side of the state, but he also showed how to really achieve "justice" for the average person. The gold mine of his ideas has produced some crucial sologan for the exploited class. He performed the solo for "Educate, Agitate, Achieve." He stressed the value of education in escaping all hardships. Dr. Ambedkar permits peaceful protests as long as they follow legal procedures. Finally, he insisted on the accomplishment of predetermined objectives.

Hence, even though Ambedkar's life was difficult, he persevered with utmost tenacity. He was committed to solving the human dilemma via arduous labour and perseverance. He was the leading proponent of human rights. India has ever. He is actually the most respected deity in the Dalit diaspora. He is not well known for his thoughts on women's empowerment, but he was the one who pushed for the equality of men and women's standing. The social justice theories of John Rawls and Plato are compared to those of Dr. Ambedkar. He contends that the social justice concept establishes the framework for a society founded on liberty, equality, and fraternity. These principles were incorporated by Ambedkar into the Indian Constitution. The Indian Constitution's preamble includes the concept of equality, which is more than just a catchphrase. Instead, it has been supported by Article 16's equality of opportunity clause and Article 17's equality of treatment clause This is reservation, at least prior to John Rawls, whose justice theory is regarded as the pinnacle of the 20th century (Articles 330, 332, and 335).

Conclusion

As per R. C. Guha, Dr. Ambedkar's conception of social and economic justice is the one that is most applicable in the modern period. In particular in the Indian context, his doctrine of liberty, equality, and fraternity is crucial for the construction of social justice. He believed in taking action even though he provided a great suggestion. According to him, any type of government is useless if its constituents are either not working or functioning indifferently. The finest illustration of this is the current political climate in India. Great plans exist, but they are either not carried out or are done so inefficiently. We might use the SC, ST, and OBC reservation policies as an example. The fact that more than six months passed after the initial despite our decades of independence, there has been no notable change.

India definitely needs "escape velocity"—but not to get away from the issue; rather, it needs it to modify the traditional way that its citizens view caste and to change and advance the particular class that is currently marginalised within society. The government should examine how its policies are being implemented. They need to be aware

of the reasons behind their development programmes' failures. But things are better than they've ever been.

Based on statistics from the 2001 and 2011 Censuses, households belonging to scheduled castes and scheduled tribes have seen changes in their financial and living conditions over the recent period of increased economic growth. Significant improvements have been made in the state of wellbeing of STs and SCs throughout the past ten years. There's a chance. The only reason for our unhappiness is that we aren't where we ought to or could be.

Because of corruption and the government's inefficient plans and programs, we are behind. At the same time, we have legal means to combat it and upright people who can speak out against the issue itself. By elaborating on Equality, liberty, fraternity Dr B.R Ambedkar tried to explain that his intention of justice did not only focus the Dalits but it stressed on all to individuals in the society who are treated unequally.

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Blockchain for a Sustainable Future: Potential for Climate Accountability and Exploration of Legal Challenges

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Abstract

Blockchain technology has garnered significant attention for its potential to revolutionise accountability mechanisms in various sectors, including climate action. In an era where technological advancements permeate every sector, the climate sector remains predominantly analogue, relying on outdated data. Blockchain technology, with its decentralized, transparent, and immutable characteristics, emerges as a transformative solution for enhancing climate accountability. This paper will explore the intersection of blockchain technology and climate accountability, probing its implications, challenges, and opportunities within the legal landscape.

The paper's background section provides an overview of the challenges posed by climate change and the imperative for enhanced accountability measures to address its impacts. It also introduces blockchain technology, highlighting its decentralised nature and immutable ledger system, which promises to transform how climate-related data is managed and verified. The paper shall use descriptive and analytical methodology to relate both fields.

The paper comprises of two parts:

- The Promise of Blockchain for Climate Accountability: This part will examine the potential applications of blockchain technology in fostering transparency, trust, and accountability within climate initiatives and its possible role in attaining the Sustainable Development Goals (SDGs). It will illustrate how blockchain can enable real-time tracking of carbon emissions,

facilitate carbon offset trading, and throw light on other potential use case scenarios.

- Legal and Other Challenges: Delving into the legal landscape, this part will identify and analyse the legal and regulatory challenges of integrating blockchain technology into climate accountability frameworks. Topics of discussion will include data privacy concerns, jurisdictional issues, smart contract enforceability, and the need for standardised protocols, along with ethical considerations.

Through an examination of these issues, this paper aims to provide insights and recommendations for stakeholders seeking to harness the transformative potential of blockchain technology in advancing climate accountability efforts.

Keywords: Blockchain, Climate Change, Climate accountability, Environment, SDGs, Carbon Emissions, Sustainability, Immutability, Transparency.

1. Introduction

Over the past three decades, calls for action against challenges posed by Climate Change have intensified across the globe. The calls and initiatives have been for greater accountability of human activities contributing towards the planet's detriment. There has been an increased imperative for more robust accountability measures. The Intergovernmental Panel on Climate Change (IPCC) has emphasised the pressing need for well-directed action.[1] However, at a time when rapid advancements in technology have revolutionised every sector of life, the climate sector remains mostly analogue and reliant on outdated data.[2] To remedy this, the search for innovative solutions has led to a shift of focus on Blockchain technology (BCT).

Blockchain is an emerging technology popularised in the last decade by blockchain-propelled Cryptocurrencies such as Bitcoin and Ethereum. Due to its decentralised, open, and global nature, it has also been looked at with promise regarding its usage for addressing critical environmental issues. Unlike traditional centralised databases, blockchain operates on a distributed network of computers. In such a network, the transactions are recorded in blocks, where they are linked cryptographically, making it immutable. This design feature ensures that the database is transparent. It also ensures it is secure and

[1]IPCC, Urgent climate action can secure a liveable future for all, IPCC (Mar. 20, 2023), https://www.ipcc.ch/2023/03/20/press-release-ar6-synthesis-report/.
[2]Anuj Agrawal, Risky Reliance: The Peril of Disparate Weather Data Sources in an Age of Advanced Technology and Climate Change, DISASTER RECOVERY JOURNAL (Apr. 24, 2024), https://drj.com/journal_main/risky-reliance-the-peril-of-disparate-weather-data-sources-in-an-age-of-advanced-technology-and-climate-change/.

resistant to tampering, making blockchain an attractive proposition for applications beyond finance.

Investigating the potential applications of blockchain technology can yield beneficial results, particularly in accounting data about the fulfilment of objectives outlined in various international agreements concerning climate change mitigation. With this approach, this paper aims to explore the interface of blockchain technology and climate accountability. In section two, the paper first provides a glimpse into the gravity of climate change and the disastrous outcome that may entail if not seriously heeded. It also gives an overview of Blockchain technology and its features while not going into the computational technicalities of the technology. It focuses on its central features and how they can enhance transparency and accountability in climate-related efforts. In the third section, the paper then discusses use-case scenarios where blockchain can or is already used to ensure sustainable development practices. In the fourth section, the paper delves into the possible legal, technical and ethical challenges that may arise in adopting blockchain to ensure climate accountability. This paper aims to shed light on the future of using blockchain technology to tackle the pressing issues of climate change by looking at its possible uses, addressing legal and regulatory matters, and discussing ways to regulate the challenging aspects.

2. Background

2.1 The Urgency of Climate Change

Climate change has stood up as one of today's most daunting challenges. Although not distinctly discernible to an average human in their day-to-day lives, it has threatened the well-being of humans and entire ecosystems and economies. The evidence is clear that decades of anthropogenic activities, such as the increasing consumption of fossil fuels and the rapid rates of deforestation, have driven unprecedented increases in emissions of greenhouse gases, resulting in rise of global temperatures. As per the Intergovernmental Panel on Climate Change (IPCC), there has been a rise in temperatures globally by approximately 1.1 degrees Celsius above the pre-industrial levels, which has had profound consequences for ecosystems and human societies worldwide.[3]

Numerous concerning statistics highlight the critical need to address climate change. Extreme weather occurrences like heat waves, droughts, wildfires and floods are leading to damages of billions of

[3] IPCC, Climate Change 2021: The Physical Science Basis, IPCC (2021), https://www.ipcc.ch/report/ar6/wg1/.

dollars.[4] It has been verified that July 2021 was the hottest month,[5] and 2010-19 was the hottest decade in recorded history.[6] Highly vulnerable regions which are home to more than 3 billion people witnessed mortality rates higher than 15 times than those regions that have less vulnerability to extreme climatic events such as floods and wildfires.[7] Along with this, there is a constant sword dangling over in the form of the rise of sea levels, which will lead to the displacement of a massive chunk of the human population and the destruction of coastal infrastructure.[8]

The climate challenges transcend borders and cultures. These realities call for urgent action, and any further delay will lead to further irreversibility of the damages done. Conventional methods alone cannot address this threat that humanity is facing. Hence, finding options and adopting emergent technologies such as blockchain has become necessary.

2.2 UN's Sustainable Development Goals (SDGs) and Climate Change

In this backdrop of urgency, the Sustainable Development Goals (SDGs) of the United Nations (UN) give a detailed framework for tackling climate change by addressing the interrelated problems of poverty, inequality, and environmental degradation. The 17 SDGs are a set of interconnected goals that are constituent of the 2030 Agenda for Sustainable Development.[9] These goals range from promoting gender equality and access to clean energy. SDG 13 explicitly addresses climate change by asking for action to mitigate this phenomenon and its impacts. All SDGs are also intrinsically linked to this end.

They offer a roadmap for mitigation, adaptation, and resilience-building efforts. SDG 7, for example, demands for an universal availability to "affordable, reliable, sustainable and modern energy"[10] It thus emphasises the critical role renewable energy assumes in lowering emissions of greenhouse gas and slowing climate change.

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[4] *Id.*

[5] NOAA, It's official: July 2021 was Earth's hottest month on record, NOAA (Aug. 13, 2021), https://www.noaa.gov/news/its-official-july-2021-was-earths-hottest-month-on-record#:~:text=July%202021%20has%20earned%20the,D.

[6] UNRIC, 2010-2019 confirmed as warmest decade in history, UNRIC (Mar. 10, 2020), https://unric.org/en/2010-2019-confirmed-as-warmest-decade-in-history/.

[7] UNSD, Goal 13: Climate Action, UNSD (2023), https://unstats.un.org/sdgs/report/2023/Goal-13/.

[8] UN, Climate Change-induced Sea-Level Rise Direct Threat to Millions around World, Secretary-General Tells Security Council, UN (Feb. 14, 2023), https://press.un.org/en/2023/sc15199.doc.htm.

[9] UN, Transforming our world: the 2030 Agenda for Sustainable Development, UN (2015), https://sdgs.un.org/2030agenda.

[10] *Id.*

In the further sections, the paper discusses in detail how blockchain can aid in implementing these goals. It can offer innovative solutions for transparency, accountability, and decentralised governance. Using distributed ledger technology in blockchain, stakeholders can improve data integrity, expedite transactions, and promote cooperation among different sectors. Blockchain-based platforms, for example, can make it easier to track and verify renewable energy sources, giving consumers the power to make informed decisions and encouraging investments in clean energy infrastructure.[11]

Although blockchain has enormous potential for addressing climate change, its practical application necessitates careful assessment of its drawbacks and limitations. In the coming sections, the article discuss the need for a refined approach that considers scalability issues, ethical concerns, and regulatory uncertainties necessary to incorporate blockchain technology into the intricate framework of the SDGs.

2.3 Fundamentals Of Blockchain

Blockchain is a recent advancement, first introduced in 2009 by a pseudonymous person/ group in its application-based form of Bitcoin.[12] Later, by 2014, the application of Blockchain evolved from Bitcoin to other fields whereby it was termed Blockchain 2.0,[13] And experts started exploring its potential in environmental and sustainable development fields. A tamper-proof activity record is created in a blockchain by grouping transactions into blocks, cryptographically connecting them, and adding them one after the other.[14]

The primary technology behind Blockchain is the *Distributed Ledger system.*[15] A ledger is copied on every node (host computer), serving as an information collector. When information related to a transaction is entered into the ledger, it becomes *immutable* because it can no longer be deleted or altered in any manner.[16] The ledgers are distributed across various nodes that are part of that particular blockchain network, and any transaction done is processed to be recorded across those nodes. When all the nodes accept that

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[11] J. Smith et al., The impact of climate change on global food security, SCIENCE DIRECT (2023), https://www.sciencedirect.com/science/article/pii/S2211467X23001578.
[12] Staff, What is 'Block chain', ECONOMIC TIMES (2024), https://economictimes.indiatimes.com/definition/block-chain.
[13] Staff, History of blockchain, ICAEW (2023), https://www.icaew.com/technical/technology/blockchain-and-cryptoassets/blockchain-articles/what-is-blockchain/history.
[14] Staff, Security Aspects of Blockchain, TEC (2023), https://www.tec.gov.in/pdf/Studypaper/Security%20aspects%20of%20blockchain.pdf .
[15] Mary Lacity, *Crypto and Blockchain Fundamentals*, 73 ARK. L. REV. 363, 370 (2020).
[16] *Id.*

information, the network reaches a *consensus*, which means all the nodes have the exact string of recorded data, and they all conclusively consent to the current state of that network.[17] This component makes the system both transparent and tamper-proof. There is no single authority that updates the database. Instead, every participant with access can provide input to the database, making the system decentralised and less prone to data manipulation or fraud. Also, all participants can access and verify transactions, fostering *accountability.*

A blockchain uses a combination of a mechanism of a public key and private key to operate.[18] A public key can be like an email address listed in a public directory (blockchain), and the private key is the password through which that email can be accessed. As soon as the password holder makes any changes to or via the email account, that particular action shall be updated across all public directories. This function allows credibility to be established in the system as it ensures that the input has been made only by authorised access. It enables traceability; hence, the original inputter of the data string can be tracked, enabling efficient and secure transfer of that data string. Additionally, every input can be tracked in real-time across the ledgers, making this technology increasingly instrumental in accountability measures of climate change.

Blockchain 2.0 opened the gates for another exciting use case scenario in the form of *Smart Contracts*, which are especially relevant to climate change. The ability of blockchain's smart contract functionality to automate climate-related transactions streamlines procedures like trading carbon offsets, issuing renewable energy certificates, and disbursing climate finance.[19] Coded on the blockchain, smart contracts are self-executing contracts that allow parties to automatically carry out the terms of the agreement when specified circumstances arise or the preconceived conditions are met.[20] The execution is automated, and the contract will be enforced as soon as the relevant information is updated in the blockchain. This automation lowers transaction costs, eliminates the need for intermediaries, and improves the effectiveness of climate finance mechanisms.

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[17] Staff, Consensus Mechanisms Explained, CRYPTO.COM (May 13, 2022), https://crypto.com/university/consensus-mechanisms-explained.

[18]Ledger, What are Public Keys and Private Keys, LEDGER (Feb. 1, 2024), https://www.ledger.com/academy/blockchain/what-are-public-keys-and-private-keys.

[19] Marco Schletz et al., Blockchain Application for the Paris Agreement Carbon Market Mechanism—A Decision Framework and Architecture, RESEARCHGATE (Jun. 22, 2020), https://www.researchgate.net/publication/342404785_Blockchain_Application_for_the_Paris_Agreement_Carbon_Market_Mechanism-A_Decision_Framework_and_Architecture.

[20] Reggie O'Shields, *Smart Contracts: Legal Agreements for the Blockchain*, 21 N.C. BANKING INST. 177, 179 (2017).

In the following sections, the paper delves deeper into the promise of blockchain for climate accountability, exploring its possible applications.

3. The Promise of Blockchain for Climate Accountability

As discussed, the blockchain technology offers efficiency, trust, and transparency in managing environmental data and transactions, holding significant promise for revolutionising efforts towards climate accountability and the fulfilment of SDGs. This section explores some potential uses of Blockchain in spearheading efforts for sustainability and mitigation.

3.1 Real-time Tracking of Carbon Emissions

One of the main application of blockchain technology in climate accountability is the tracking and verification of carbon emissions. Concerning the efficacy of voluntary carbon markets, the global carbon market has been dealing with serious credibility issues.[21] Ensuring due diligence has become necessary as the manual reporting procedures and centralised databases used in traditional methods of tracking greenhouse gas emissions are prone to inconsistencies and data manipulation. On the other hand, Blockchain provides a transparent and safe platform for logging and confirming emissions data, guaranteeing its accuracy and dependability as it can be assessed and verified by stakeholders in real time.

World Economic Forum has highlighted the need for interoperable global data infrastructure and recommended including blockchain technologies in such initiatives.[22] It has appreciated the efforts of Blockchain companies such as Filecoin, One shot and Hyphen.[23] Industrial heavyweights such as in the Steel industry are deliberating on the usage of blockchain by forming the "Mining and Metals Blockchain Initiative", where 7 global steel companies, including India's Tata Steel, have come together to develop blockchain-based solutions for transparent emissions tracking.[24]

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[21] Staff, How blockchain technology addresses the double counting of carbon emissions, CLIMATE ACTION DATA TRUST (Nov. 29, 2023), https://climateactiondata.org/how-blockchain-technology-addresses-the-double-counting-of-carbon-emissions/.

[22] World Economic Forum, Blockchain for Scaling Climate Action, WORLD ECONOMIC FORUM (Apr. 25, 2023), https://www.weforum.org/publications/blockchain-for-scaling-climate-action/.

[23] *Id* at pg 15

[24] Yoana Cholteeva, Tracing mining's carbon emissions with blockchain, MINING TECHNOLOGY (Mar. 30, 2021), https://www.mining-technology.com/features/tracing-minings-carbon-emissions-with-blockchain/.

3.2 Carbon Offset Trading

Carbon offsetting means efforts for the mitigation of climate change and preservation of environmental equilibrium by compensating for carbon dioxide emissions from one source through funding programs such as afforestation that reduce or eliminate an equivalent amount of greenhouse gases from the atmosphere.[25] Its trading involves the exchange of credits among institutions representing the reduction of carbon dioxide emissions.

Blockchain technology can facilitate carbon offset trading. Blockchain-based platforms enable the safe tokenisation and transparent, decentralised exchange of carbon credits, thereby reducing transaction costs and increasing market efficiency. Organisations have started to experiment with the utility of blockchain in Offsetting. Verra, a well-known organisation that establishes standards for carbon offsets, is looking into integrating blockchain technology in order to boost the legitimacy and efficacy of the offset market and support SDG 13's goal of mobilising climate finance.[26] Companies have also shown interest; Examples include Ecosphere+, a blockchain-based carbon credit platform supported by Athelia Climate Fund and Poseidon, a Singapore-based company.[27] Other companies, such as the Spain-based Climatetrade, have also developed initiatives on blockchain platforms for offsetting carbon.[28] Blockchain can streamline carbon offset transactions, making them more accessible and transparent to stakeholders.

3.3 Enhancing Climate Data Reporting

The accuracy and availability of climate data is crucial for informing effective policy and action. As discussed in the earlier section of the paper, peer-to-peer transactions on the blockchain are possible without the need for intermediaries, which lessens dependency on centralised authorities and lowers transaction costs. This decentralised strategy democratises access to climate-related data and transactions by enabling individuals and organisations to engage in climate accountability initiatives actively. By promoting inclusivity and decentralisation, blockchain also aligns with the principles of S.D.G. 16, which calls for inclusive and accountable institutions at all levels. For instance, the "Climate TRACE" initiative, a collaboration between

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[25] Noelle Eckley Selin, Carbon offset, BRITANNICA (Jul. 31, 2024), https://www.britannica.com/technology/carbon-offset.

[26] Staff, Verra Concludes Consultation on Third-Party Crypto Instruments and Tokens, VERRA (Jan. 17, 2023), https://verra.org/verra-concludes-consultation-on-third-party-crypto-instruments-and-tokens/.

[27]Climate Action, Poseidon brings value to nature through carbon blockchain technology, CLIMATE ACTION (Sep. 19, 2017), https://www.climateaction.org/press-releases/poseidon-brings-value-to-nature-through-carbon-blockchain-technology.

[28]Karolina Kondrak, Blockchain and Carbon Credits: How Can They Help Combat Climate Change?, ICEO (Mar. 22, 2023), https://iceo.co/blog/blockchain-and-carbon-credits-how-can-they-help-combat-climate-change.

scientists and Institutions such as Hypervine, uses blockchain to record greenhouse gas emissions, aligning with SDG 13's call for improved climate data collection and management.[29]

3.4 Promoting Sustainable Supply Chains

Blockchain can give customers the transparency they need to make educated decisions by revealing the environmental policies of businesses all the way up the supply chain. Through platforms enabled by blockchain technology, consumers can obtain comprehensive details regarding the origins, manufacturing procedures, and modes of transportation of products. Therefore, customers can select products with smaller environmental footprints by tracking the sourcing and production of materials, encouraging companies to implement more sustainable practices.

Some examples of such initiatives are the "Provenance" platform, which uses blockchain to track the origin and journey of seafood, promoting sustainable fishing;[30] And blockchain-enabled "IBM Food Trust" helps reduce food wastage and supports better handling of perishable food items.[31] This inclusion of blockchain can help ensure sustainable and green practices in wastage-heavy industries such as Fashion and Food processing. This also further aligns the uses of blockchain with SDG 12's goal of encouraging sustainable production and consumption patterns.

3.5 Better Financing Solutions for Climate Projects

Blockchain technology can facilitate peer-to-peer financing of climate projects directly and securely, enabling individuals and organisations to invest in projects such as reforestation or renewable energy directly. Through the transparency and accountability these platforms offer in project funding, funds are directed effectively and efficiently toward actions taken to lessen the impact of climate change. Initiatives for sustainable agriculture, afforestation, and renewable energy installations are examples of climate projects that investors can support. In developing nations, this can significantly democratise access to climate finance and swift transition to a low-carbon economy.

For instance, the "SunExchange" platform uses blockchain technology to enable people to invest in solar power projects in developing nations, which aligns with SDG 13's objective of mobilising climate finance from all sources.[32]

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[29] Climate TRACE, Team + Partners, CLIMATE TRACE (2024), https://climatetrace.org/team.

[30] Faisal Chaudhuri, Tracking Tuna from Catch to Customer, PROVENANCE (Sep. 16, 2016), https://www.provenance.org/news-insights/tracking-tuna-catch-customer.

[31] Staff, Food logistics on blockchain, IBM (2023), https://www.ibm.com/blockchain/resources/food-trust/food-logistics/.

[32] Staff, Sun Exchange, SUN EXCHANGE (2024), https://sunexchange.com/.

3.6 In Humanitarian Aid Efforts

WHO predicts that between the decades of 2030-50, 250000 additional deaths per year can happen due to adverse possibilities cascaded by climate change. [33] In such a scenario, blockchain technology has the potential to expedite humanitarian relief efforts by improving the accountability and effectiveness of assisting those in need. Blockchain can also be used to help communities impacted by natural disasters caused by factors due to climate change. Aid organisations can use blockchain to create secure and immutable transaction records, ensuring donations go directly to the intended recipients without the need for intermediaries or corruption. Smart contracts can be of much use, making it possible for money to be distributed automatically and transparently, lowering administrative expenses. There are many ways in which blockchain could be useful in such efforts, and some initiatives have started to materialise. For instance, Blockchain is being used by 'World Food Programme's' *Building Blocks* to provide financial aid to refugees, increasing the effectiveness and transparency of the distribution of humanitarian assistance in Bangladesh and Jordan. [34] The "Red Cross" is also proactively investigating blockchain technology to increase the effectiveness and transparency of providing humanitarian aid.[35] Similarly, UNICEF and other organisations use blockchain to monitor vaccine distribution and guarantee medical supplies legitimacy.[36]

These are just a few examples of how blockchain technology could be utilised to promote climate accountability and help achieve different sustainable development goals. It is necessary to recognise that blockchain technology is still developing and that there are obstacles to its use in climate action, some of which will be discussed in the next sections. However, the potential advantages of increased efficiency, trust, and transparency can make it a significant tool in the battle against climate change, and thus, its applications and possibilities must be continuously explored.

4. Navigating Legal and Other Challenges

To ensure the responsible and equitable implementation of blockchain-enabled solutions, it is crucial to navigate the complex landscape of legal and ethical considerations as the relationship between blockchain technology and climate accountability evolves. These challenges arise from the inherent characteristics of blockchain

[33]Staff, Climate change and health, WHO (Oct. 12, 2023), https://www.who.int/news-room/fact-sheets/detail/climate-change-and-health.
[34]WFP, Building Blocks, WFP (2024), https://www.wfp.org/building-blocks.
[35] Staff, The Next Generation Humanitarian Distributed Platform, DANISH RED CROSS (2020), https://www.rodekors.dk/next-generation.
[36]Cecilia Chapiro and Mehran Hydary, UNICEF Innovation Fund: Blockchain Portfolio, UNICEF OFFICE OF INNOVATION (Aug. 5, 2019), https://www.unicef.org/innovation/stories/Fundblockchain6months.

technology and its creative application in the field of climate change. This section discusses some of these challenges and recommends some possible suggestions for a legally, ethically and environmentally sound implementation of Blockchain Technology.

4.1 Jurisdictional Issues in Blockchain for Climate Action

Since blockchain operates across national borders and legal jurisdictions, it can be challenging to ascertain which laws and regulations apply to climate change transactions and smart contracts. The enforcement and resolution of disputes resulting from blockchain-enabled transactions are made further difficult by the distinct legal interpretations and regulatory frameworks of different Jurisdictions. For instance, states may have different laws of contracts for a single remedy; what in France would be remedied by Promissory estoppel may be dealt with by the doctrine of third-party beneficiary in the United Kingdom.

The distinctive features of blockchain technology may not be sufficiently addressed or even recognised by legal frameworks in some states, hence creating regulatory gaps and inconsistent laws between jurisdictions. Enforcement challenges are also present as a state can not enforce its laws on another in cases of cross-border carbon offset trading or in other similar situations.

Therefore, it's critical to encourage cooperation between governments, international organisations, and stakeholders to develop unified legal frameworks and enforcement mechanisms for blockchain-based climate initiatives in order to ensure that blockchain technology can function successfully for climate use case scenarios. The UN has called for initiatives to increase cooperation among the relevant stakeholders. [37] Steps can be taken to bolster already-existing Mutual Legal Assistance Treaties (MLATs) and work on fresh approaches concerning the acceptability of blockchain technology as the basis for action by enforcement agencies and collaboration between them in order to expedite investigations and uphold rulings pertaining to environmental crimes. States have already started acting on this front in the financial sectors related to Crypto and Blockchain, and this approach can be extended to the environmental realm also.[38] States can also experiment with forming Regulatory Sandboxes (system set up by regulators that enables businesses and innovators to trial new products, services, or business models in a controlled setting with

[37] Massamba Thioye, UN Supports Blockchain Technology for Climate Action, UNFCCC (Jan. 22, 2018), https://unfccc.int/news/un-supports-blockchain-technology-for-climate-action.

[38] David Zaslowsky, U.S. Seizes $24 Million in Virtual Currency Under MLAT Request From Brazil, BAKER MCKENZIE (Nov. 10, 2020), https://blockchain.bakermckenzie.com/2020/11/10/u-s-seizes-24-million-in-virtual-currency-under-mlat-request-from-brazil/.

fewer regulatory constraints)[39] where flexibility is allowed in law enforcement on a specific issue for some time so as to see what fares out and what legal arrangement would be best for dealing with that specific issue. EU has already taken the initiative as an experiment to establish the best possible pan-European legal framework for regulating blockchain technologies.[40] In order to resolve jurisdictional ambiguities and advance legal certainty in blockchain-enabled climate initiatives, harmonising international standards and establishing precise jurisdictional guidelines are crucial first steps.

4.2 Smart Contract Enforcement

Smart contracts are self-executing blockchain agreements, and a brief discussion on their relevance has been done in the background section. Climate-related transactions, like trading carbon offsets and purchasing renewable energy, could be automated and streamlined with the help of these contracts. Nevertheless, there is still discussion and ambiguity surrounding the enforceability of smart contracts in law.

Smart contracts are a type of self-executing programs that run on predefined code; however, unexpected events or ambiguities in the code may result in unexpected consequences, including legal disputes.[41] There is a contention about whether they can really be referred to as contracts because there is a universal need for some conditions to be met as prescribed by the statutory framework of that relevant state, such as that of capacity and consideration, among others. It is difficult for traditional legal frameworks to handle disputes resulting from the execution of smart contracts due to a deficiency of technical expertise; therefore, new procedures and personnel for just and efficient dispute resolution would be required. The question of fixing liability would also be complex, especially where smart contracts have cross-border origins and implications.

There is a requirement for clear standards and best practices for making and entering into smart contracts. Companies such as Fujitsu and others have come together to design recommendations around smart contracts both on technicality and legality.[42]

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[39] Kalyan Parbat, ET Explainer: What's a regulatory sandbox? How it spurs innovation, THE ECONOMIC TIMES (Dec. 26, 2023, 11:44 PM), https://economictimes.indiatimes.com/news/et-explains/et-explainer-whats-a-regulatory-sandbox-how-it-spurs-innovation/articleshow/106301427.cms..

[40] Georgios Chatzitheodoridis and Antonios Kamzelas, Sandbox Project, EUROPEAN COMMISSION (Feb. 8, 2024), https://ec.europa.eu/digital-building-blocks/sites/display/EBSI/Sandbox+Project.

[41] Report: Guidelines for Improving Blockchain's Environmental, Social and Economic Impact, WORLD ECONOMIC FORUM, pg 14 (April, 2023) https://www.weforum.org/publications/guidelines-for-improving-blockchain-s-environmental-social-and-economic-impact/

[42]Staff, Standards for Smart Contract Security Audits, SMART CONTRACT SECURITY ALLIANCE (n.d.), https://www.smartcontractsecurityalliance.com/.

Experimentation in regulatory sandboxes can further aid in developing best practices around smart contracts in environmental matters. Some best practices, such as clear risk allocation in the circumstance of a coding error and also a hybrid approach, have been recommended where a written contract supports a code contract and only the terms of the written contract should be enforceable until the jurisprudence around code contracts is satisfactorily evolved.[43] Fostering trust and confidence in smart contract transactions would require defining frameworks for dispute resolution and providing clarity on the legal status of smart contracts at the state level.

4.3 Data Privacy

The fundamental defining feature of blockchain technology, transparency, raises the possibility of a conflict with laws governing data privacy. Concerns concerning data security and unauthorised access arise when public or authorised ledgers containing sensitive environmental data such as individual energy usage or carbon footprint are kept open access. For example, there has been a recent controversy where the carbon footprint due to private jet use of celebrated individuals like Elon Musk and Taylor Swift was continuously tracked by a Twitter user by utilising open access sources.[44] The celebrities argued this was a severe breach of their privacy. A blockchain would operate in a similar fashion.

There is also a lack of individual control over data because as soon as it is entered into a blockchain, it is rendered immutable. As a consequence, if a user wishes to remove data due to a valid purpose, it cannot be done.

To minimise privacy concerns, what can be done is only the necessary information should be gathered and retained, and whenever possible, reliable technical methods should be used to make it anonymous.[45] There should also be explicit consent procedures for the gathering and storing of data.[46] Furthermore, compliance with data protection laws of the relevant state will also ensure the blockchain is within the ambit of statutory guidelines enabling protection of

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[43]Stuart D. Levi and Alex B. Lipton, An Introduction to Smart Contracts and Their Potential and Inherent Limitations, HARVARD LAW SCHOOL FORUM ON CORPORATE GOVERNANCE (May 26, 2018), https://corpgov.law.harvard.edu/2018/05/26/an-introduction-to-smart-contracts-and-their-potential-and-inherent-limitations/.

[44] Drew Harwell, Taylor Swift Threatens Legal Action Against Student Who Tracks Her Jet, THE WASHINGTON POST (Feb. 6, 2024, 8:00 AM), https://www.washingtonpost.com/technology/2024/02/06/taylor-swift-jet-tracking-legal-threat/.

[45] S. K. Gupta et al., Blockchain Technology for Sustainable Supply Chain Management: A Systematic Literature Review and a Framework for Future Research, JOURNAL OF CLEANER PRODUCTION (Dec. 20, 2020), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7765152/.

[46]Mongetro Goint, Cyrille Bertelle, and Claude Duvallet, Secure Access Control to Data in Off-Chain Storage in Blockchain-Based Consent Systems, MATHEMATICS (Mar. 25, 2023), https://www.mdpi.com/2227-7390/11/7/1592.

individual privacy. A careful consideration of data anonymisation techniques, access control mechanisms, and adherence to current data privacy regulations are necessary to balance transparency and accountability with individual privacy rights.

4.4 Standardization and Interoperability

Interoperability and standardisation are essential requirements. The smooth exchange of climate data and interoperability across various blockchain networks and platforms are impeded by the lack of standardised protocols and data formats, hereby also limiting the scalability of the operations.[47] Interoperability also restricts broader adoption by adding questions about platform legitimacy and data integrity.[48]

The key to storing and exchanging environmental data across many platforms is standardisation, as well as the establishment of agreed-upon data formats and protocols. To develop and adopt common frameworks for data integration and exchange, stakeholders including government agencies, industry and standard's bodies must work together. There has been a visible movement in that direction, where bridge systems are being developed to ensure interoperability across platforms.[49] Further open-source platforms tools and platforms should be encouraged.[50] Collaboration and standardisation are key to building an ecosystem that is interoperable, allowing blockchain platforms to work together seamlessly, realising the full potential of data-driven climate action, and hastening the transition to a sustainable future.

4.5 Ethical Considerations Around Blockchain

Apart from data privacy and social impact, Blockchain also has some other ethical standpoints which should be focused on. The most prominent is the adverse environmental impact of the technology around blockchain itself. The UN states that if a state's energy consumption was assumed for blockchain-related activities, then that state would rank 27th, which is comparable to the consumption of a

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[47]Carlo R.W. De Meijer, Blockchain Interoperability Solutions and Challenges: Where Are We Now?, FINEXTRA (Oct. 30, 2023), https://www.finextra.com/blogposting/25112/blockchain-interoperability-solutions-and-challenges-where-are-we-now.

[48] S. K. Gupta et al., Blockchain Technology for Sustainable Supply Chain Management: A Systematic Literature Review and a Framework for Future Research, JOURNAL OF CLEANER PRODUCTION (Dec. 20, 2020), https://www.sciencedirect.com/science/article/abs/pii/S2452414X22000759.

[49] Carlo R.W. De Meijer, Blockchain Interoperability: The Tab Switching of Web 3.0, FORBES (Aug. 15, 2023), https://www.forbes.com/sites/digital-assets/article/blockchain-interoperability-the-tab-switching-of-web-30/?sh=2c8406266cf1.

[50] *Id.*

large state like Pakistan.[51] Opponents contend that the goal of climate action is contradicted by the computational power needed for proof-of-work (PoW) mining, which increases greenhouse gas emissions.[52] It can also increase the gap between affluent and marginalised communities that do not have access to or cannot sustain the use of such sophisticated technologies.[53] Furthermore, there is a possibility of misuse of blockchain technologies in fraudulent activities such as greenwashing and manipulation of carbon markets by feeding manufactured data and lack of verification. Stakeholders must evaluate the possible hazards and unforeseen repercussions of implementing blockchain technology, such as the aggravation of current disparities.

To reduce environmental impact, it is necessary to look into and implement energy-efficient blockchain protocols and consensus mechanisms. It can be ensured through the usage of blockchain technology only that the energy used to mine blockchains is from renewable sources.[54] Furthermore, instead of energy-intensive PoW mining, Proof of Stake(PoS) or even better Proof of Authority (PoA) verification techniques should be only used for climate accountability purposes.[55] To save blockchain initiatives from fraudulent acts, blockchain-based climate projects should have transparent reporting, strict oversight, and clear ethical guidelines. The technology should be inclusive, and affluent states must extend their hand towards larger adaptation of blockchain technology by providing required aid and technical support to the poorer communities because climate change is an inevitable issue that may not affect everyone equally, but will surely affect everyone in some adverse way if not heeded to in time.

5. Conclusion

Incorporating blockchain technology into climate accountability initiatives is crucial in tackling the complex issues associated with climate change. Blockchain's decentralised ledger system and immutable record-keeping capabilities provide innovative solutions that improve climate-related processes efficiency, trust, and transparency. By enabling real-time tracking of carbon emissions,

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[51] Kaveh Madani et al, UN Study Reveals the Hidden Environmental Impacts of Bitcoin: Carbon is Not the Only Harmful By-product, UNITED NATIONS UNIVERSITY (Oct. 24, 2023), https://unu.edu/press-release/un-study-reveals-hidden-environmental-impacts-bitcoin-carbon-not-only-harmful-product.

[52] Nishant Sapra, Imlak Shaikh, and Ashutosh Dash, Impact of Proof of Work (PoW)-Based Blockchain Applications on the Environment: A Systematic Review and Research Agenda, JOURNAL OF RISK AND FINANCIAL MANAGEMENT (Mar. 31, 2023), https://www.mdpi.com/1911-8074/16/4/218.

[53] Sam Greene, Can Blockchain Unblock Climate Finance?, INTERNATIONAL INSTITUTE FOR ENVIRONMENT AND DEVELOPMENT (May 21, 2018), https://www.iied.org/can-blockchain-unblock-climate-finance.

[54] Grace Bogart, *Using Blockchain to Address the IPCC's Climate Change Mitigation Strategies*, 51 ENVTL. L. REP. 10296, 10301 (2021).

[55] Id. at 10300.

facilitating carbon offset trading, and promoting the integrity of climate data reporting, blockchain empowers stakeholders to take proactive measures in combating climate change.

Moreover, blockchain aligns with the principles of the UN SDGs, offering a pathway towards sustainable and inclusive development. Its decentralised nature fosters peer-to-peer transactions, democratising access to climate-related data and financing mechanisms. Through innovative applications and partnerships, blockchain has the potential to catalyse collective action and accelerate progress towards achieving global climate targets.

However, realising the full potential of blockchain in climate accountability calls for coordinated action from lawmakers, corporations, and civil society actors. Addressing regulatory challenges, ensuring data privacy, and promoting inclusivity are essential steps in harnessing blockchain technology for the greater good. By fostering collaboration and embracing innovation, the transformative power of blockchain can be harnessed to build a more resilient, equitable, and sustainable future for generations to come. Now that a climate catastrophe is imminent, it is critical that we take advantage of blockchain technology's potential to steer the world toward sustainability.

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Administration of Justice in Ancient India with Special Emphasis on Women

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Abstract

In ancient India, the administration of justice was a multifaceted system deeply rooted in the socio-political fabric of the time. This research paper explores the intricacies of the ancient Indian judicial system, shedding light on its structures, processes, and underlying philosophies.

At the heart of ancient Indian justice administration was the concept of dharma, or righteous conduct, which governed both individual behavior and societal norms. Dharma formed the basis of law and justice, emphasizing moral principles and ethical values in resolving disputes and maintaining social harmony.

The ancient Indian judicial system was decentralized, with different regions and communities often having their distinct systems of justice. Local councils, known as sabhas and samitis, played a significant role in adjudicating disputes and dispensing justice at the grassroots level. These councils were comprised of respected elders and community leaders who applied customary laws and traditions to resolve conflicts.

In addition to local councils, ancient India also saw the emergence of royal courts, where kings and rulers administered justice on a broader scale. The king, or raja, was considered the ultimate arbiter of justice and was responsible for upholding dharma and ensuring the welfare of his subjects. Royal courts employed a hierarchy of officials, including judges, magistrates, and courtiers, who assisted the king in dispensing justice and maintaining order in the kingdom.

The legal system in ancient India encompassed a wide range of laws and regulations covering civil, criminal, and administrative matters. Legal texts such as the Manusmriti, Arthashastra, and Dharmashastra provided guidelines for governance, justice

administration, and social conduct. These texts codified laws, established procedures for trials and punishments, and outlined the rights and duties of individuals within society.

Furthermore, ancient Indian justice administration was characterized by its emphasis on mediation, arbitration, and reconciliation as methods of dispute resolution. Courts encouraged parties to resolve their conflicts amicably through negotiation and compromise, with judges serving as mediators to facilitate settlements.

The administration of justice in ancient India was a complex and nuanced system deeply influenced by cultural, religious, and philosophical beliefs. By exploring the structures, processes, and values inherent in ancient Indian justice administration, this research paper seeks to provide insight into the rich legal heritage of the region and its enduring impact on modern concepts of justice and governance.

Key words:- History, Dharma, Dharmashastra, Justice, Caste, Rural Administration, Punishment

Introduction

In ancient India, the administration of justice was a fundamental aspect of society, deeply rooted in the principles of dharma (righteousness), fairness, and equity. Dating back to several millennia, the system of justice in ancient India evolved, influenced by various socio-cultural, religious, and philosophical factors. This essay will explore the administration of justice in ancient India, highlighting key institutions, legal principles, and practices that characterized the judicial system of the time.[1]

At the heart of the administration of justice in ancient India was the concept of dharma, which encompassed moral, ethical, and legal principles governing individual conduct and societal order. Dharma formed the basis of the legal system and was upheld by rulers, judges, and legal scholars alike. The ancient Indian legal tradition was deeply ingrained in the Dharmashastra texts, including Manusmriti, Arthashastra, and Yajnavalkya Smriti, which codified laws, norms, and procedures for resolving disputes and administering justice.[2]

One of the central institutions of justice in ancient India was the king's court or royal assembly (sabha), where disputes were adjudicated and judgments were delivered by the king or his appointed judges. The king was considered the upholder of dharma and the ultimate authority in dispensing justice. The royal court was often

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[1] Sharma, A. (2004). POLICE IN ANCIENT INDIA. *The Indian Journal of Political Science*, *65*(1), 101–110. http://www.jstor.org/stable/41855800

[2] Gupta, R. K. (2004). LAW & ORDER ADMINISTRATION IN ANCIENT INDIA. *The Indian Journal of Political Science*, *65*(1), 111–122. http://www.jstor.org/stable/41855801

assisted by learned Brahmin jurists and advisors who interpreted legal texts and provided counsel on matters of law and governance.

In addition to the royal court, local assemblies (sabhās) and village councils (panchayats) played a vital role in the administration of justice at the grassroots level. These decentralized bodies resolved disputes and maintained order within their respective communities, guided by customary laws, local traditions, and the principles of dharma. Village elders, respected community leaders, and elected representatives formed the core of these assemblies, ensuring the participation of the community in the dispensation of justice.[3]

The legal system in ancient India was characterized by its flexibility and adaptability to diverse social contexts and changing circumstances. While the Dharmashastra texts provided overarching principles of justice, they also allowed for discretion and interpretation based on the specific needs and conditions of different regions and communities. This decentralized and pluralistic approach to justice ensured that the legal system remained accessible and responsive to the needs of the people.

Furthermore, the administration of justice in ancient India emphasized reconciliation, mediation, and arbitration as preferred methods for resolving disputes. Litigation was seen as a last resort, with efforts made to encourage amicable settlements and consensus-building among parties. Mediators (panch) played a crucial role in facilitating negotiations and reaching mutually acceptable solutions, guided by principles of fairness, equity, and compromise.

In conclusion, the administration of justice in ancient India was a multifaceted system guided by principles of dharma, fairness, and community participation. From the royal courts of kings to the grassroots assemblies of villages, the legal system was characterized by its inclusivity, flexibility, and emphasis on reconciliation. While the specifics of legal procedures and institutions may have varied across regions and periods, the overarching ethos of justice as a cornerstone of societal order remained constant throughout ancient Indian history.[4]

Objective Of Study

The objective of this research paper on the administration of justice in ancient India is to explore and analyze the key principles, institutions, and practices that governed the legal system of the time. By examining ancient texts, historical records, and scholarly interpretations, the study aims to uncover the underlying concepts of justice, the role of

[3] Sharma, A. (2004). POLICE IN ANCIENT INDIA. *The Indian Journal of Political Science*, *65*(1), 101–110. http://www.jstor.org/stable/41855800

[4] Narayan, J. (2005). CORRUPTION IN ADMINISTRATION IN ANCIENT INDIA. *The Indian Journal of Political Science*, *66*(3), 559–574. http://www.jstor.org/stable/41856149

rulers and legal authorities, and the methods used for resolving disputes. Through a comprehensive investigation of ancient Indian jurisprudence, the paper seeks to contribute to a deeper understanding of the evolution and significance of legal traditions in shaping societal norms and governance structures.

Research Methodology

The research methodology for a paper on the administration of justice in ancient India involves a multidisciplinary approach. Primary sources such as Dharmashastra texts, historical records, and inscriptions provide foundational knowledge. Secondary sources including scholarly articles, books, and archaeological findings offer context and analysis. Comparative studies with other ancient legal systems aid in understanding unique features. Methodological frameworks encompass textual analysis, historical interpretation, and comparative analysis. A critical examination of primary and secondary sources, coupled with interdisciplinary perspectives, ensures a comprehensive understanding of the administration of justice in ancient India.

Literature Review

In exploring the administration of justice in ancient India, scholars have drawn upon a rich array of sources spanning religious texts, legal treatises, historical accounts, and archaeological findings. One seminal work in this field is "The Arthashastra" attributed to Chanakya (Kautilya), which provides detailed insights into governance, law, and justice during the Mauryan period. Chanakya's treatise offers a comprehensive overview of administrative practices, including the establishment of courts, appointment of judges, and procedures for adjudicating disputes.

Another foundational text is the "Manusmriti" (Laws of Manu), an ancient legal code that delineates the principles of dharma and lays down rules governing social conduct, morality, and justice. Scholars have examined the Manusmriti to understand its influence on legal thought and practice in ancient India, particularly regarding issues of caste, gender, and property rights.[5]

In addition to classical Sanskrit texts, historians have turned to archaeological evidence and inscriptions to reconstruct the legal systems of ancient India. The discovery of inscriptions on pillars, coins, and cave walls has provided valuable insights into the administration of justice, including the role of local assemblies (sabhās) and village

[5] Narayan, J. (2005). CORRUPTION IN ADMINISTRATION IN ANCIENT INDIA. *The Indian Journal of Political Science*, *66*(3), 559–574. http://www.jstor.org/stable/41856149

councils (panchayats) in resolving disputes and maintaining order at the grassroots level.[6]

Recent scholarly research has also explored the intersection of law and religion in ancient India, examining how religious beliefs and rituals influenced legal practices and the dispensation of justice. Studies have highlighted the role of Brahminical texts and rituals in legitimizing royal authority and shaping legal norms, as well as the emergence of alternative legal traditions such as Buddhist and Jain jurisprudence.

Furthermore, interdisciplinary approaches incorporating anthropological, sociological, and comparative perspectives have enriched our understanding of justice in ancient India. Comparative studies with other ancient civilizations, such as Mesopotamia, Egypt, and Greece, have shed light on commonalities and differences in legal systems, judicial procedures, and conceptions of justice.[7]

The literature on the administration of justice in ancient India is multifaceted and interdisciplinary, drawing upon a wide range of sources and methodologies. Through a careful analysis of religious texts, legal treatises, archaeological findings, and comparative studies, scholars continue to deepen our understanding of the complexities and nuances of justice in ancient Indian society.

Legal Frameworks

In ancient India, the legal framework governing justice was deeply rooted in the concept of dharma, a complex and multifaceted term encompassing righteousness, moral duty, and cosmic order. Dharma formed the basis of societal norms and ethical principles, guiding individuals and communities in their conduct and interactions. Central to the concept of dharma was the idea of upholding justice and ensuring the well-being of all members of society. Dharma was not merely a set of rules or laws but a guiding philosophy that permeated every aspect of life, including the administration of justice.

The Manusmriti, also known as the Laws of Manu, stands as one of the most influential legal texts in ancient India, providing a comprehensive code of conduct and legal principles. Composed around the 2nd century BCE to the 2nd century CE, the Manusmriti delineates various aspects of dharma, including social, familial, and legal duties. It lays down rules governing personal conduct, social hierarchy, and the administration of justice. The Manusmriti prescribes specific punishments for different offenses, ranging from fines and exile to

[6] Barthwal, C. P. (2014). NATURE OF DISTRICT ADMINISTRATIONIN IN ANCIENT AND MODERN INDIA: A COMPARATIVE ANALYSIS. *The Indian Journal of Political Science*, *75*(2), 221–236. http://www.jstor.org/stable/24701131

[7] Lakshminath, A. (2006). CRIMINAL JUSTICE IN INDIA: PRIMITIVISM TO POST-MODERNISM. *Journal of the Indian Law Institute*, *48*(1), 26–56. http://www.jstor.org/stable/43952016

more severe penalties such as mutilation and death, reflecting the prevailing moral and ethical values of the time.

Apart from the Manusmriti, other Dharmashastra texts, such as the Arthashastra attributed to Chanakya (Kautilya), provided additional insights into legal principles and governance in ancient India. The Arthashastra, composed around the 4th century BCE, offers a pragmatic and systematic approach to statecraft, including the establishment of courts, appointment of judges, and procedures for adjudicating disputes. It emphasizes the importance of maintaining law and order for the stability and prosperity of the kingdom, highlighting the role of the king as the ultimate authority in dispensing justice.[8]

In addition to the Dharmashastra texts, ancient Indian legal principles were also influenced by religious and philosophical traditions, including Hinduism, Buddhism, and Jainism. These traditions contributed to the development of alternative legal systems and ethical frameworks, shaping diverse approaches to justice and morality. For example, Buddhist and Jain legal texts emphasized compassion, non-violence, and the principle of ahimsa (non-harm) in resolving disputes and promoting social harmony.

Overall, the legal framework governing justice in ancient India was characterized by a complex interplay of religious, ethical, and philosophical principles. Dharma served as the guiding force behind the administration of justice, with legal texts such as the Manusmriti providing detailed guidelines and rules for maintaining order and resolving disputes. While the legal system was rooted in tradition and upheld by royal authority, it also exhibited flexibility and adaptability to accommodate diverse social contexts and changing circumstances, reflecting the dynamic nature of ancient Indian society.[9]

Judicial Institutions

In ancient India, the administration of justice was facilitated through a network of judicial institutions that operated at various levels of governance, from the royal courts of kings to the grassroots assemblies of villages. These institutions played a crucial role in adjudicating disputes, upholding the rule of law, and maintaining social order. Examining the structure and functions of these judicial institutions provides valuable insights into the legal system and its operation in ancient Indian society.[10]

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[8] Lakshminath, A. (2006). CRIMINAL JUSTICE IN INDIA: PRIMITIVISM TO POST-MODERNISM. *Journal of the Indian Law Institute*, *48*(1), 26–56. http://www.jstor.org/stable/43952016

[9] Rao, A. V. R. (1952). ADMINISTRATION OF JUSTICE BY VILLAGE PANCHAYATS IN INDIA. *The Indian Journal of Political Science*, *13*(3/4), xvii–xviii. http://www.jstor.org/stable/42743423

[10] Cohn, B. S. (1989). Law and the Colonial State in India. In J. Starr & J. F. Collier (Eds.), *History and Power in the Study of Law: New Directions in Legal Anthropology* (pp.

At the apex of the judicial hierarchy were the royal courts, which served as the highest authority in the administration of justice. These courts were presided over by the king or monarch, who was considered the ultimate arbiter of legal disputes and the upholder of dharma (righteousness). The king was assisted by a council of ministers, advisors, and learned Brahmin jurists who provided counsel on matters of law and governance. The royal courts had jurisdiction over a wide range of cases, including civil disputes, criminal offenses, and matters of state.

In addition to the royal courts, local assemblies known as sabhās played a vital role in the administration of justice at the regional and municipal levels. Sabhās were deliberative bodies composed of representatives from various segments of society, including nobles, merchants, artisans, and Brahmins. These assemblies convened regularly to discuss issues of public concern, enact laws, and adjudicate disputes within their respective jurisdictions. Sabhās operated on the principles of consensus-building and participatory decision-making, reflecting the democratic ethos of ancient Indian society.

At the grassroots level, village councils known as panchayats served as the primary forums for resolving disputes and maintaining order within rural communities. Panchayats were composed of respected elders, community leaders, and elected representatives who volunteered their services to the community. These councils operated on the principles of customary law, local traditions, and the principles of dharma. Panchayats played a crucial role in mediating disputes, settling grievances, and promoting social cohesion within villages.

The structure and functions of judicial institutions in ancient India were guided by principles of equity, fairness, and accessibility. Unlike modern legal systems characterized by formalistic procedures and professional judges, ancient Indian courts emphasized informal and participatory methods of dispute resolution. Litigation was seen as a last resort, with efforts made to encourage amicable settlements and reconciliation between parties. Mediation and arbitration were preferred methods for resolving conflicts, with mediators (panch) playing a crucial role in facilitating negotiations and reaching mutually acceptable solutions.[11]

Furthermore, judicial institutions in ancient India were characterized by their adaptability and responsiveness to local customs and traditions. While the overarching principles of dharma

131–152). Cornell University Press. http://www.jstor.org/stable/10.7591/j.ctt207g6xn.10

[11] Cohn, B. S. (1989). Law and the Colonial State in India. In J. Starr & J. F. Collier (Eds.), *History and Power in the Study of Law: New Directions in Legal Anthropology* (pp. 131–152). Cornell University Press. http://www.jstor.org/stable/10.7591/j.ctt207g6xn.10

provided a moral and ethical framework for justice, the application of law varied according to regional differences and cultural practices. Local assemblies and village councils operated autonomously, allowing communities to govern themselves according to their norms and values.

The structure and functions of judicial institutions in ancient India reflected the diverse and decentralized nature of the legal system. From the royal courts of kings to the grassroots assemblies of villages, these institutions played a vital role in administering justice, resolving disputes, and upholding the rule of law. Through their inclusive and participatory approach to dispute resolution, ancient Indian judicial institutions promoted social harmony, community cohesion, and the ideals of dharma.

Role Of The Kings

The role of the king, or ruler, in administering justice in ancient India was pivotal, as the king was not only the political leader but also the ultimate authority in upholding the rule of law and maintaining social order. As a sovereign monarch, the king wielded extensive powers and held a sacred duty to ensure the well-being and welfare of his subjects. One of the primary responsibilities of the king was to administer justice impartially and fairly, thereby upholding the principles of dharma (righteousness) and ensuring the stability of the kingdom.[12]

The king's authority in administering justice was derived from his status as a dharmic ruler, bound by ethical and moral principles that governed his conduct and decision-making. The Manusmriti, an ancient legal text, emphasizes the king's duty to uphold dharma and dispense justice without bias or favoritism. The king was expected to rule with wisdom, compassion, and integrity, embodying the ideals of a righteous ruler.[13]

The king's powers in administering justice were extensive and encompassed various aspects of governance, including legislation, adjudication, and enforcement. The king had the authority to enact laws, promulgate decrees, and establish courts to ensure the orderly conduct of society. He appointed judges, magistrates, and other officials to administer justice on his behalf, delegating authority to dispense judgments and enforce the law.

In addition to his legislative and executive powers, the king played a central role in adjudicating disputes and resolving conflicts within his kingdom. The royal court served as the highest judicial authority, where the king presided over cases and delivered judgments

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[12] Henderson, C. R. (1913). Control of Crime in India. *Journal of the American Institute of Criminal Law and Criminology*, *4*(3), 378–401. https://doi.org/10.2307/1133355

[13] Havell, E. B. (1910). ART ADMINISTRATION IN INDIA. *Journal of the Royal Society of Arts*, *58*(2985), 274–298. http://www.jstor.org/stable/41339009

based on the principles of dharma and equity. The king's decisions were final and binding, with no avenue for appeal or recourse against his rulings.

The relationship between the king and the legal system was characterized by mutual dependence and collaboration. While the king held ultimate authority in matters of justice, he relied on a network of advisors, ministers, and legal scholars to assist him in interpreting the law and administering justice effectively. Brahmin jurists, in particular, played a crucial role in providing legal counsel and guidance to the king, drawing upon the principles of dharma and legal texts such as the Manusmriti to inform their decisions.[14]

Furthermore, the king's relationship with the legal system was influenced by broader political, social, and religious considerations. As the protector of dharma and the custodian of societal order, the king was expected to promote justice, righteousness, and the welfare of his subjects. The king's adherence to dharma was believed to ensure the prosperity and well-being of the kingdom, while any deviation from dharma could lead to chaos, unrest, and divine retribution.

The role of the king in administering justice in ancient India was characterized by his powers, responsibilities, and relationship with the legal system. As the embodiment of dharma and the ultimate authority in the kingdom, the king wielded extensive powers to ensure the equitable and fair dispensation of justice. Through his legislative, executive, and judicial functions, the king played a crucial role in upholding the rule of law, maintaining social order, and promoting the ideals of righteousness and justice in ancient Indian society.

Legal Procedures

Legal procedures in ancient India were guided by a combination of textual prescriptions, customary practices, and principles of dharma (righteousness) that governed the resolution of disputes and the administration of justice. The methods of dispute resolution in ancient India were diverse and inclusive, reflecting the pluralistic nature of Indian society and the flexible approach to resolving conflicts. One of the primary methods of dispute resolution was mediation, where neutral third parties known as panchas (arbitrators) facilitated negotiations between disputing parties and sought to reach a mutually acceptable resolution. Mediation was preferred over litigation and was based on principles of compromise, conciliation, and consensus-building.[15]

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[14] Henderson, C. R. (1913). Control of Crime in India. *Journal of the American Institute of Criminal Law and Criminology*, *4*(3), 378–401. https://doi.org/10.2307/1133355

[15] PACHAURI, S. K. (1994). HISTORY OF PRISON ADMINISTRATION IN INDIA IN 19TH CENTURY : HUMAN RIGHTS IN RETROSPECT. *Proceedings of the Indian History Congress*, *55*, 492–498. http://www.jstor.org/stable/44143401

In cases where mediation failed or disputes could not be resolved informally, parties had the option of seeking adjudication through formal legal channels. The royal courts presided over by the king or his appointed judges served as the primary forums for adjudicating disputes and delivering judgments. Trial procedures in ancient India were relatively informal compared to modern legal systems, with an emphasis on oral arguments, witness testimony, and the presentation of evidence. Litigants were expected to present their cases orally before the court, supported by witnesses and documentary evidence to substantiate their claims.

Rules of evidence in ancient India were based on the principles of credibility, reliability, and relevance. Witness testimony played a crucial role in establishing facts and determining the outcome of legal proceedings. Witnesses were required to swear oaths or make solemn declarations to speak the truth, and their credibility was assessed based on factors such as integrity, character, and impartiality. Documentary evidence, including written contracts, deeds, and other records, was also considered admissible in court and could be used to support or refute claims made by parties.

Moreover, the principles of dharma and equity guided the application of legal procedures in ancient India, ensuring fairness and impartiality in the administration of justice. Judges were expected to uphold the principles of dharma and apply the law in a just and equitable manner, without bias or prejudice. Legal proceedings were conducted to achieve justice and reconciliation between parties, rather than simply determining guilt or innocence. Judges had the discretion to consider mitigating factors, extenuating circumstances, and the broader interests of society in delivering judgments.[16]

In addition to formal legal procedures, alternative methods of dispute resolution such as arbitration, conciliation, and negotiation were also prevalent in ancient India. These methods allowed parties to resolve conflicts outside the courtroom and avoid the adversarial nature of litigation. Village councils (panchayats) and local assemblies (sabhās) played a significant role in facilitating alternative dispute resolution mechanisms and promoting community-based solutions to conflicts.

Legal procedures in ancient India were characterized by a combination of formal and informal methods of dispute resolution, guided by principles of dharma, equity, and inclusivity. While royal courts served as the primary forums for adjudicating disputes, alternative methods such as mediation, arbitration, and conciliation were also widely practiced. Rules of evidence and trial procedures were

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[16] PACHAURI, S. K. (1994). HISTORY OF PRISON ADMINISTRATION IN INDIA IN 19TH CENTURY : HUMAN RIGHTS IN RETROSPECT. *Proceedings of the Indian History Congress*, *55*, 492–498. http://www.jstor.org/stable/44143401

based on principles of credibility, reliability, and relevance, with an emphasis on oral arguments, witness testimony, and documentary evidence. Overall, the legal procedures in ancient India reflected a holistic and flexible approach to justice that sought to achieve fairness, equity, and reconciliation among parties.

Legal Personnel

In ancient India, legal professionals played a crucial role in the administration of justice, ensuring the fair and equitable resolution of disputes and upholding the principles of dharma (righteousness) and equity. These legal professionals encompassed a diverse range of individuals, including judges, jurists, mediators, and legal advisors, each with specific roles and responsibilities within the legal system. Judges, as the primary adjudicators of disputes, were responsible for presiding over court proceedings, evaluating evidence, and delivering judgments based on the principles of dharma and equity. They were typically appointed by the king or ruler and were expected to possess a deep understanding of legal principles, customs, and precedents. Judges were tasked with ensuring that legal proceedings were conducted fairly and impartially and that justice was served according to the law.[17]

Jurists, or legal scholars, played a vital role in interpreting and codifying the laws of ancient India. These learned Brahmins were well-versed in the Dharmashastra texts, including the Manusmriti, Arthashastra, and Yajnavalkya Smriti, which provided the legal framework for ancient Indian society. Jurists provided legal counsel to the king, advised judges on matters of law, and helped resolve complex legal disputes. They also played a significant role in the development and evolution of legal principles, contributing to the refinement and codification of legal norms and procedures.

Mediators, known as panchas, served as neutral third parties tasked with facilitating negotiations and resolving disputes through mediation and conciliation. Panchas were typically drawn from the community and were respected for their impartiality, integrity, and wisdom. They played a crucial role in promoting reconciliation between parties and avoiding protracted litigation. Panchas helped parties reach mutually acceptable agreements based on principles of fairness, equity, and compromise, thereby fostering social harmony and cohesion within communities.

Legal advisors provided counsel and guidance to rulers, officials, and litigants on matters of law, governance, and administration. These advisors were typically Brahmin scholars well-versed in legal texts and traditions, and they played a key role in

[17] Sarkar, B. K. (1921). Public Finance in Ancient India. *The Annals of the American Academy of Political and Social Science*, *97*, 151–169. http://www.jstor.org/stable/1015334

shaping legal policy and decision-making. Legal advisors assisted rulers in drafting laws, interpreting legal texts, and resolving legal disputes, thereby contributing to the effective functioning of the legal system. They also provided legal education and training to aspiring judges, jurists, and administrators, ensuring the continued development and refinement of legal knowledge and expertise.

The roles and responsibilities of legal professionals in ancient India were shaped by the broader socio-cultural, religious, and political context of the time. Legal professionals were expected to adhere to high ethical standards, uphold the principles of dharma, and serve the interests of justice and equity. Their expertise and guidance were instrumental in ensuring the fair and impartial administration of justice, promoting social harmony, and upholding the rule of law. Through their knowledge, wisdom, and dedication to justice, legal professionals played a vital role in maintaining the stability and prosperity of ancient Indian society.[18]

Social Justice

In ancient India, issues of social justice, equality, and fairness were addressed through a complex interplay of legal, social, and religious norms that shaped the fabric of society. The ancient Indian legal systems, rooted in the principles of dharma (righteousness) and equity, sought to uphold the rights and dignity of all individuals, irrespective of caste, gender, or class. However, the practical application of these principles varied across different periods and regions, reflecting the diverse socio-cultural landscape of ancient India.

Caste, as a fundamental social institution in ancient India, played a significant role in shaping legal and social hierarchies. The Manusmriti, a prominent legal text, delineated the duties and obligations of individuals based on their caste (varna) and social status. While the caste system was deeply ingrained in ancient Indian society, the legal system sought to mitigate its inequalities through principles of social responsibility and mutual respect. For example, the Manusmriti prescribed different rights and duties for individuals belonging to different castes, but it also emphasized the importance of treating all members of society with dignity and respect, regardless of their caste.[19]

Gender was another important dimension of social justice in ancient India, with women often occupying subordinate roles in society. The Manusmriti and other legal texts contained specific regulations governing the conduct and rights of women, reflecting

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[18] Choudhary, R. K., & Chowdhary, R. K. (1947). JUDICIAL IMPORTANCE OF THE REPRESENTATIVE INSTITUTIONS IN ANCIENT INDIA. *Proceedings of the Indian History Congress*, *10*, 163–166. http://www.jstor.org/stable/4413712

[19] Minattur, J. (1978). ADMINISTRATION OF JUSTICE IN PONDICHERRY. *Journal of the Indian Law Institute*, *20*(2), 145–185. http://www.jstor.org/stable/43950525

patriarchal attitudes prevalent at the time. However, despite these restrictions, women in ancient India had certain legal protections and rights, particularly in matters of property ownership, inheritance, and marriage. For example, the Stridharma (duties of women) outlined in the Manusmriti provided women with legal safeguards and entitlements, albeit within the confines of traditional gender roles.

Class distinctions also played a significant role in ancient Indian society, with socioeconomic status often determining one's access to resources, opportunities, and justice. While the legal system sought to uphold the rights of all individuals, regardless of class, disparities in wealth and privilege could impact the administration of justice. Wealthy and powerful individuals often enjoyed greater access to legal recourse and influence over judicial proceedings, while marginalized groups faced barriers to justice and systemic discrimination. However, the principles of dharma and equity espoused in ancient Indian legal texts served as a moral compass for addressing issues of social injustice and promoting greater equality and fairness.[20]

Despite these challenges, ancient Indian legal systems also contained mechanisms for promoting social justice and addressing inequalities. Village councils (panchayats) and local assemblies (sabhās) played a vital role in mediating disputes, resolving grievances, and promoting social cohesion within communities. These grassroots institutions operated on principles of consensus-building, participatory decision-making, and community solidarity, thereby empowering marginalized groups and ensuring their voices were heard in the legal process.

Furthermore, the concept of dharma served as a guiding principle for promoting social justice and equality in ancient India. Dharma emphasizes the moral and ethical duties of individuals towards society, encouraging compassion, empathy, and social responsibility. The ideals of dharma were reflected in the legal system through principles of fairness, equity, and impartiality, ensuring that justice was administered with compassion and integrity.

Issues of social justice, equality, and fairness were central concerns in ancient Indian legal systems, as reflected in the principles of dharma and equity that guided legal norms and practices. While the caste, gender, and class hierarchies inherent in ancient Indian society posed significant challenges to achieving social justice, the legal system contained mechanisms for mitigating inequalities and promoting greater fairness and equality. Through grassroots institutions, moral principles, and legal safeguards, ancient Indian

[20] Choudhary, R. K., & Chowdhary, R. K. (1947). THEORY OF PUNISHMENT IN ANCIENT INDIA. *Proceedings of the Indian History Congress*, *10*, 166–171. http://www.jstor.org/stable/44137122

society sought to uphold the rights and dignity of all individuals, laying the groundwork for a more just and equitable society.[21]

Legal Pluralism

The ancient Indian legal landscape was characterized by a remarkable degree of legal pluralism, with the coexistence of multiple legal traditions and systems that reflected the diverse religious, cultural, and social fabric of the subcontinent. Brahminical law, rooted in Hindu religious texts and traditions, formed the dominant legal tradition in ancient India. The Manusmriti and other Dharmashastra texts provided the foundational principles of Brahminical law, governing various aspects of social, familial, and legal life. Brahminical law emphasized concepts of dharma (righteousness), karma (action), and varna (caste), prescribing rules and regulations for individuals based on their caste, gender, and social status.

Alongside Brahminical law, alternative legal traditions emerged within the Indian subcontinent, reflecting the diverse religious and philosophical landscape of ancient India. Buddhist legal traditions, influenced by the teachings of the Buddha, emphasized principles of compassion, non-violence, and ethical conduct. Buddhist legal texts such as the Vinaya Pitaka provided guidelines for monastic discipline and community governance, while secular legal treatises such as the Dhammasattha addressed matters of civil law and administration.[22]

Similarly, Jain legal traditions developed within the Jain religious community, drawing upon the ethical and philosophical teachings of Mahavira, the founder of Jainism. Jain legal texts such as the Ratnakaranda śrāvakācāra and the Nandi-sūtra provided guidelines for ethical conduct, social responsibility, and dispute resolution within the Jain community. Jain legal principles emphasized concepts of ahimsa (non-violence), aparigraha (non-possession), and anekāntavāda (multiplicity of viewpoints), shaping the ethical framework of Jain law.

Tribal communities in ancient India also maintained distinct legal traditions and customary practices that governed social relations, resource allocation, and dispute resolution within tribal societies. Tribal laws were often based on oral traditions, customary norms, and communal consensus, reflecting the unique cultural and environmental contexts of different tribal groups. Tribal legal systems emphasize principles of collective responsibility, reciprocity, and

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[21] Choudhary, R. K., & Chowdhary, R. K. (1947). THEORY OF PUNISHMENT IN ANCIENT INDIA. *Proceedings of the Indian History Congress*, *10*, 166–171. http://www.jstor.org/stable/44137122

[22] Arora, U. P. (2002). Sectional President's Address: "ANCIENT INDIA AND THE GREEKS." *Proceedings of the Indian History Congress*, *63*, 29–85. http://www.jstor.org/stable/44158076

community solidarity, fostering social cohesion and resilience within tribal communities.

The coexistence of multiple legal traditions and systems in ancient India facilitated a dynamic exchange of ideas, practices, and norms that enriched the legal landscape of the subcontinent. While Brahminical law remained dominant in mainstream society, alternative legal traditions such as Buddhist, Jain, and tribal laws provided marginalized communities with distinct avenues for legal recourse and social governance. Moreover, interactions between different legal traditions gave rise to syncretic forms of jurisprudence that incorporated elements from multiple religious and cultural traditions, reflecting the cosmopolitan nature of ancient Indian society.[23]

Despite the plurality of legal traditions, certain commonalities and shared principles existed across different legal systems in ancient India. Concepts such as dharma (righteousness), karma (action), and ahimsa (non-violence) were integral to both Brahminical and non-Brahminical legal traditions, reflecting universal ethical values that transcended religious and cultural boundaries. Additionally, the principles of equity, fairness, and impartiality were upheld in varying degrees across different legal systems, underscoring the shared commitment to justice and the rule of law in ancient Indian society.[24]

The coexistence of multiple legal traditions and systems in ancient India reflected the rich diversity of religious, cultural, and social life within the subcontinent. Brahminical, Buddhist, Jain and tribal laws each contributed to the legal landscape of ancient India, offering distinct perspectives on ethics, governance, and justice. While Brahminical law remained dominant, alternative legal traditions provided marginalized communities with avenues for legal recourse and social governance, enriching the legal pluralism of ancient Indian society. Through interactions between different legal systems, ancient India witnessed a dynamic exchange of ideas and practices that shaped the evolving contours of its legal landscape.

Legal Philosophy And Ethics

The philosophical and ethical foundations of ancient Indian legal thought were deeply rooted in the religious and philosophical traditions of the subcontinent, shaping the conceptual framework of justice, morality, and the nature of law. At the heart of ancient Indian legal philosophy was the concept of dharma, a multifaceted term that

[23] Gopal, L. (1961). Ownership of Agricultural Land in Ancient India. *Journal of the Economic and Social History of the Orient*, *4*(3), 240–263. https://doi.org/10.2307/3596288

[24] Gopal, L. (1961). Ownership of Agricultural Land in Ancient India. *Journal of the Economic and Social History of the Orient*, *4*(3), 240–263. https://doi.org/10.2307/3596288

encompassed righteousness, duty, and cosmic order. Dharma served as the guiding principle for individual conduct and societal governance, providing the moral and ethical foundation for the administration of justice. According to ancient Indian thought, dharma was inherent in the cosmic order of the universe and manifested in the actions of individuals, who were duty-bound to uphold righteousness in their thoughts, words, and deeds.

Justice, in the context of ancient Indian legal philosophy, was understood as the embodiment of dharma, ensuring the equitable distribution of rights, responsibilities, and consequences within society. The Manusmriti, a prominent legal text, delineated the principles of justice and fairness based on the concept of dharma, prescribing rules and regulations for individuals, communities, and rulers. Justice, according to ancient Indian thought, required impartiality, equity, and adherence to the principles of righteousness, ensuring that the rights and interests of all members of society were protected and upheld.

Morality was another central tenet of ancient Indian legal philosophy, emphasizing the ethical dimensions of human conduct and the pursuit of virtuous living. Moral values such as compassion, honesty, and non-violence were considered essential virtues that guided individual behavior and informed legal norms and practices. The concept of karma, the law of cause and effect, underscored the moral accountability of individuals for their actions and their consequences, shaping notions of responsibility, accountability, and ethical conduct within society.

The nature of law in ancient India was characterized by its close association with dharma and its role in upholding the principles of righteousness and social order. Law, according to ancient Indian thought, was not merely a set of rules or regulations imposed by authority but a manifestation of the eternal principles of dharma that governed the universe. Legal norms and practices were rooted in religious texts, philosophical treatises, and customary practices that reflected the moral and ethical values of society. The Manusmriti and other Dharmashastra texts provided the foundational principles of ancient Indian law, prescribing rules, and regulations for various aspects of social, familial, and legal life.[25]

Moreover, ancient Indian legal philosophy emphasized the importance of flexibility, adaptability, and pragmatism in the administration of justice. While the principles of dharma provided a moral and ethical framework for legal norms and practices, they also allowed for discretion and interpretation based on the specific needs

[25] Gopal, L. (1961). Ownership of Agricultural Land in Ancient India. *Journal of the Economic and Social History of the Orient*, *4*(3), 240–263. https://doi.org/10.2307/3596288

and circumstances of different individuals, communities, and contexts. Legal procedures and institutions were designed to accommodate diverse social realities and ensure that justice was administered with fairness, equity, and compassion.

Additionally, ancient Indian legal philosophy emphasized the interconnectedness of individuals, communities, and the natural world, highlighting the importance of harmonious coexistence and mutual respect within society. The principles of ahimsa (non-violence), aparigraha (non-possession), and anekantavada (multiplicity of viewpoints) underscored the ethical imperative of compassion, tolerance, and understanding in human relations, shaping legal norms and practices that promoted social harmony and cohesion.

The philosophical and ethical foundations of ancient Indian legal thought were characterized by their deep-rootedness in religious and philosophical traditions, emphasizing the principles of dharma, justice, morality, and the nature of law. Dharma served as the guiding principle for individual conduct and societal governance, ensuring the equitable distribution of rights and responsibilities within society. Justice was understood as the embodiment of dharma, ensuring that legal norms and practices were guided by principles of fairness, equity, and righteousness. Morality played a central role in shaping ethical conduct and virtuous living, emphasizing the importance of compassion, honesty, and non-violence in human relations. The nature of law, rooted in the eternal principles of dharma, reflected the moral and ethical values of society and sought to uphold the principles of righteousness and social order. Through its emphasis on flexibility, adaptability, and pragmatism, ancient Indian legal philosophy promoted justice, morality, and social harmony within society, laying the foundation for a just and ethical legal system.[26]

Legal Education And Scholarship

In ancient India, the transmission of legal knowledge and the role of education and scholarship played a crucial role in shaping legal practices and institutions. Legal education was deeply intertwined with the broader educational system of ancient India, which was characterized by a strong emphasis on oral tradition, teacher-student relationships, and the study of sacred texts. The transmission of legal knowledge occurred primarily through the guru-shishya parampara, or the teacher-student lineage, wherein knowledge was passed down from teacher to student through direct instruction, discussion, and debate.

Brahminical tradition played a central role in the transmission of legal knowledge in ancient India. Brahmin scholars, who were

[26] Singh, U. K. (2003). CRIME IN ANCIENT INDIA (EARLY TIMES TO 647 A.D.). *Proceedings of the Indian History Congress*, *64*, 1417–1417. http://www.jstor.org/stable/44145576

considered the custodians of sacred knowledge and religious traditions, played a pivotal role in teaching and disseminating legal texts such as the Manusmriti, Arthashastra, and other Dharmashastra treatises. These texts formed the core curriculum of Brahminical education, providing the foundational principles of law, ethics, and governance.[27]

The education of young Brahmins typically began at an early age, with students learning Sanskrit grammar, literature, and religious texts under the guidance of a guru (teacher) in a gurukula (residential school). As students progressed in their studies, they were introduced to advanced subjects such as logic, philosophy, and law, with a particular emphasis on the study of legal texts and jurisprudence. Legal education was rigorous and demanding, requiring students to memorize, analyze, and interpret complex legal doctrines and principles.

The role of education and scholarship extended beyond the formal classroom setting to include discussions and debates in public forums such as sabhas (assemblies) and religious gatherings. Brahmin scholars would engage in intellectual exchanges, philosophical debates, and legal discourses, where they would expound upon legal principles, interpret legal texts, and offer insights into matters of governance and administration. These public discourses served as a forum for the exchange of ideas, the refinement of legal knowledge, and the dissemination of legal principles to a wider audience.

Legal scholarship flourished in ancient India, with scholars producing commentaries, treatises, and compendiums on various aspects of law, ethics, and governance. Brahmin jurists such as Manu, Yajnavalkya, and Narada composed authoritative legal texts that codified legal principles, prescribed rules and regulations, and guided on matters of social, familial, and legal life. These legal texts served as the cornerstone of legal education and scholarship, shaping legal practices and institutions for centuries to come.

In addition to Brahminical legal scholarship, alternative legal traditions such as Buddhist and Jain jurisprudence also emerged within ancient Indian society. Buddhist monastic universities, such as Nalanda and Vikramashila, were centers of learning and scholarship where monks and scholars studied Buddhist scriptures, philosophy, and jurisprudence. Buddhist legal texts such as the Vinaya Pitaka and Dhammasattha provided guidelines for monastic discipline, community governance, and secular law, shaping legal practices within Buddhist societies.[28]

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[27] India. (1962). *The Journal of Asian Studies*, *21*(5), 735–783. http://www.jstor.org/stable/2942912

[28] Singh, U. K. (2003). CRIME IN ANCIENT INDIA (EARLY TIMES TO 647 A.D.). *Proceedings of the Indian History Congress*, *64*, 1417–1417. http://www.jstor.org/stable/44145576

Similarly, Jain scholars produced legal treatises such as the Ratnakaranda śrāvakācāra and the Nandi-sūtra, which guided ethical conduct, social responsibility, and dispute resolution within the Jain community. Jain legal principles emphasized concepts of ahimsa (non-violence), aparigraha (non-possession), and anekāntavāda (multiplicity of viewpoints), shaping the ethical framework of Jain law and governance.

The transmission of legal knowledge and the role of education and scholarship in ancient India were not limited to religious institutions or elite Brahminical circles but extended to broader segments of society. Village councils (panchayats) and local assemblies (sabhās) served as forums for informal education and legal discourse, where community elders, leaders, and ordinary citizens would gather to discuss legal matters, resolve disputes, and uphold the principles of justice and fairness. These grassroots institutions played a crucial role in promoting legal awareness, community participation, and social cohesion within rural communities.

The transmission of legal knowledge and the role of education and scholarship were integral components of ancient Indian society, shaping legal practices and institutions and promoting the principles of justice, morality, and governance. Through formal education in gurukulas, public discourses in sabhas, and scholarly endeavors in monastic universities, ancient Indian scholars and jurists produced a rich corpus of legal texts, commentaries, and treatises that laid the foundation for legal education and scholarship in subsequent centuries. The legacy of ancient Indian legal education and scholarship continues to resonate in modern legal systems, reflecting the enduring influence of ancient Indian legal thought on the pursuit of justice and the rule of law.[29]

Punishment And Rehabilitation

In ancient India, the administration of justice encompassed a range of punishments and penalties prescribed for various offenses, reflecting the principles of deterrence, retribution, and social order. Punishments were categorized into two main types: physical and pecuniary. Physical punishments included corporal chastisement, mutilation, and capital punishment, while pecuniary punishments involved fines, restitution, and confiscation of property. The severity of the punishment often varied depending on the nature and gravity of the offense, as well as the social status and caste of the offender.[30]

[29] Singh, U. K. (2003). CRIME IN ANCIENT INDIA (EARLY TIMES TO 647 A.D.). *Proceedings of the Indian History Congress*, *64*, 1417–1417. http://www.jstor.org/stable/44145576

[30] Mishra, K. K. (2004). THE STUDY OF ANCIENT INDIAN POLITICAL TRADITIONS. *The Indian Journal of Political Science*, *65*(1), 9–20. http://www.jstor.org/stable/41855793

One of the most severe forms of punishment in ancient India was capital punishment, which was reserved for the most serious offenses such as murder, treason, and high treason. The Manusmriti, a prominent legal text, prescribes death as the punishment for crimes such as murder, adultery, theft, and treason, reflecting the harsh penalties imposed for offenses against the individual, the community, or the state. Capital punishment was often carried out through methods such as hanging, beheading, or burning at the stake, and offenders were sometimes subjected to public executions as a deterrent to others.[31]

Corporal punishment was another common form of punishment in ancient India, involving physical harm or bodily injury inflicted upon the offender as a means of punishment or retribution. The Manusmriti prescribes various forms of corporal punishment for offenses such as theft, adultery, and defamation, including whipping, branding, and amputation of limbs. Corporal punishment was often administered publicly and served as a means of deterrence, humiliation, and social control within society.[32]

Mutilation was also used as a form of punishment in ancient India, particularly for offenses such as theft, robbery, and treason. Offenders convicted of theft or robbery could be subjected to mutilation of limbs, such as the amputation of hands or feet, as a punishment for their crimes. Mutilation served as a visible and permanent reminder of the consequences of criminal behavior and was intended to deter others from engaging in similar offenses.

In addition to physical punishments, pecuniary penalties such as fines, restitution, and confiscation of property were also common forms of punishment in ancient India. Fines were imposed as a means of compensating victims, punishing offenders, and generating revenue for the state. Offenders convicted of crimes such as theft, fraud, or breach of contract could be required to pay fines or make restitution to their victims as a form of compensation for their losses. Confiscation of property was another form of pecuniary punishment used in ancient India, where offenders convicted of serious offenses could have their property confiscated by the state as a penalty for their crimes.

Efforts towards rehabilitation and reintegration of offenders were also evident in ancient Indian society, reflecting a recognition of the potential for redemption and reform. Alternative forms of punishment such as exile, banishment, or community service were sometimes used as alternatives to incarceration or physical punishment, allowing offenders the opportunity to atone for their

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[31] Smith, R. M. (1958). POWER IN ANCIENT INDIA: 2 KINGSHIP & AUTHORITY. *Annals of the Bhandarkar Oriental Research Institute*, *39*(1/2), 1–33. http://www.jstor.org/stable/44082843

[32] Mishra, K. K. (2004). THE STUDY OF ANCIENT INDIAN POLITICAL TRADITIONS. *The Indian Journal of Political Science*, *65*(1), 9–20. http://www.jstor.org/stable/41855793

crimes and reintegrate into society. Exile or banishment was often imposed for offenses such as treason, sedition, or social misconduct, where offenders were expelled from their communities and forced to live in remote areas or distant lands as a form of punishment and social ostracism.

Community-based forms of rehabilitation and reintegration were also prevalent in ancient India, with village councils (panchayats) and local assemblies (sabhās) playing a central role in resolving disputes, promoting reconciliation, and restoring social harmony within communities. Offenders convicted of minor offenses could be subjected to community service or restitution, where they were required to perform labor or provide services to the community as a means of making amends for their actions. Through these community-based interventions, offenders were allowed to redeem themselves, seek forgiveness, and reintegrate into society.[33]

Moreover, religious and philosophical traditions in ancient India emphasized the importance of forgiveness, compassion, and moral transformation as essential components of rehabilitation and reintegration. The concept of karma, the law of cause and effect, underscored the potential for individuals to atone for their actions, seek redemption, and achieve spiritual liberation through virtuous living and ethical conduct. Religious teachings and moral precepts guided ethical behavior, personal responsibility, and the pursuit of righteousness, encouraging offenders to reflect on their actions, seek forgiveness, and strive for moral and spiritual growth.[34]

Punishment and rehabilitation in ancient India were characterized by a range of penalties and interventions designed to deter crime, maintain social order, and promote the rehabilitation and reintegration of offenders. Physical punishments such as capital punishment, corporal chastisement, and mutilation were used to punish serious offenses and deter others from engaging in criminal behavior. Pecuniary penalties such as fines, restitution, and confiscation of property served as means of compensating victims, punishing offenders, and generating revenue for the state. Efforts towards rehabilitation and reintegration included alternative forms of punishment such as exile, banishment, or community service, as well as community-based interventions aimed at promoting reconciliation and restoring social harmony within communities. Through these punitive and rehabilitative measures, ancient Indian society sought to uphold the principles of justice, morality, and social order, while also recognizing the potential for redemption and reform among offenders.

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[33] Mishra, K. K. (2004). THE STUDY OF ANCIENT INDIAN POLITICAL TRADITIONS. *The Indian Journal of Political Science*, *65*(1), 9–20. http://www.jstor.org/stable/41855793

[34] Smith, R. M. (1958). POWER IN ANCIENT INDIA: 2 KINGSHIP & AUTHORITY. *Annals of the Bhandarkar Oriental Research Institute*, *39*(1/2), 1–33. http://www.jstor.org/stable/44082843

Conclusion

The administration of justice in ancient India was a multifaceted and complex system that encompassed a rich tapestry of legal principles, institutions, and practices. Rooted in the principles of dharma (righteousness), equity, and social order, ancient Indian legal systems sought to uphold the rule of law, ensure the welfare of society, and promote the ideals of justice and morality. Through a combination of legal texts, judicial institutions, and community-based mechanisms, ancient Indian society developed a sophisticated framework for resolving disputes, adjudicating conflicts, and maintaining social harmony.

One of the defining features of the administration of justice in ancient India was its pluralistic nature, characterized by the coexistence of multiple legal traditions and systems. Brahminical, Buddhist, Jain and tribal laws each contributed to the legal landscape of ancient India, offering distinct perspectives on ethics, governance, and justice. While Brahminical law remained dominant, alternative legal traditions provided marginalized communities with avenues for legal recourse and social governance, enriching the legal pluralism of ancient Indian society.

The role of the king, or ruler, was central to the administration of justice in ancient India, as the ultimate authority responsible for upholding the rule of law and maintaining social order. The king's powers encompassed legislative, executive, and judicial functions, and he was expected to rule with wisdom, compassion, and integrity, embodying the ideals of a righteous ruler. Judicial institutions such as royal courts, local assemblies (sabhās), and village councils (panchayats) served as forums for adjudicating disputes, resolving conflicts, and dispensing justice according to the principles of dharma and equity.

Legal procedures in ancient India were guided by principles of fairness, equity, and impartiality, with an emphasis on oral arguments, witness testimony, and the presentation of evidence. Rules of evidence and trial procedures were based on principles of credibility, reliability, and relevance, ensuring that justice was administered with integrity and transparency. Alternative methods of dispute resolution such as mediation, arbitration, and conciliation were also prevalent, allowing parties to resolve conflicts outside the courtroom and avoid the adversarial nature of litigation.

Moreover, the administration of justice in ancient India was characterized by efforts towards social justice, equality, and fairness, particularly about caste, gender, and class. While the caste system was deeply ingrained in ancient Indian society, legal systems sought to mitigate its inequalities through principles of social responsibility and mutual respect. Legal principles such as ahimsa (non-violence),

aparigraha (non-possession), and anekāntavāda (multiplicity of viewpoints) emphasized the ethical imperative of compassion, tolerance, and understanding in human relations, shaping legal norms and practices that promoted social harmony and cohesion within society.

In summary, the administration of justice in ancient India was a dynamic and evolving system that reflected the cultural, religious, and social complexities of the time. Rooted in the principles of dharma, equity, and social order, ancient Indian legal systems provided a framework for resolving disputes, upholding the rule of law, and promoting the ideals of justice and morality. Through its pluralistic legal traditions, institutional structures, and ethical principles, ancient Indian society laid the groundwork for the development of legal systems that continue to influence and shape the pursuit of justice in the modern world.

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From Tradition to Transformation: A Human Rights Approach for Combating Marital Rape in India

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Abstract

Marriage is a legal union where two individuals share emotional, rational, and sexual aspects of life, built on love and honesty. However, Indian society's patriarchal roots often reduce marriages to master-servant relationships, where a wife's consent and autonomy are disregarded. Despite decades of independence and discussions on equality, these ideals remain largely unfulfilled. One stark example is marital rape, where a wife is coerced into sexual acts against her will. Unlike rape outside marriage, this crime often goes unnoticed, as the perpetrator is the husband, not an outsider. Patriarchal norms dismiss the importance of consent, which is why marital rape remains legal in India. This oversight contradicts efforts to uphold equality, fairness, and constitutional rights. The state's duty is to ensure citizens' safety and security, including within marriage. Addressing marital rape demands a comprehensive approach involving legislative reform, social change, and women's rights protection. It is imperative to uphold principles enshrined in the Constitution and international treaties such as CEDAW, ICCPR, and UDHR. By fostering respect for consent and equality, society can move towards justice and dignity for all individuals in marriage. Notwithstanding the decisions of the subordinate Courts that "sexual intercourse or act by husband with legally wedded wife is not rape even if it was by force or against wife's will," the Honourable Supreme Court of India attempted to restore the equity of preventing a pregnancy through marital rape in RIT Foundation v. Union of India (2023). Indian law must be changed to conform to both international and constitutional human rights norms in order to safeguard women's dignity and gender equality. The present study emphasizes on how patriarchal societal and cultural views that have promoted marital rape have impeded women's intrinsic right to

human dignity inside marriage. Additionally, it talks about how making marital rape a crime can help married women regain their dignity in their union.

Keywords: Marriage, Rape, Consent, Autonomy, CEDAW

1. Introduction

Marriage is regarded as one of those institutions that is founded on love rather than blood. Marriage's establishment is essential to the sanctity and advancement of society. It is an inseparable bond in which husband and wife have obligations to each other: obligations to love, respect, gratitude, adjustment, freedom, and compromise. But what happens when ego, individuality, anger, and superiority take precedence in a marriage and compromise the love and respect? A fractured family and marital disarray are the answers to this inquiry. Couples may reach a point where they see marriage and compromise as equal notions due to a variety of causes, but the question still stands: Does the other gender feel pressured to make sacrifices in life, or does the husband and wife also make compromises?

Historically, marriage has been interpreted as the legal right to have sex. One of our hidden society's most obscure concepts is sex. Our society casually overlooks the significance of consent when discussing marriage, claiming it is a right to engage in lawful sex. This kind of sexual activity, which happens when a woman is coerced into having sex against her will, is called marital rape. The issue of marital rape is prevalent in Indian society since husbands are not held responsible. Domestic violence also includes marital rape, a form of sexual assault. A lot of women who are sexually abused by their intimate husbands do not report it because of the misconception held by some women. It's common knowledge that this is one of the myths surrounding sexual assault of women. Lack of permission—which need not involve physical assault—is the most crucial component. Currently, marital rape is not prohibited by Indian law. In contrast to other nations where lawmakers have either outlawed marital rape or actively worked to recognize it as such, the Indian judiciary appears to be in conflict with the law.

The marital rape exclusions do not shield married women from violent offenses based only on their marital status and gender. Any legislation pertaining to marital rape should have the primary goal of strengthening the criminal justice system. The implication is that rape that takes place in married homes needs to be acknowledged. The goals of this study are to look into sexual assault against married women, assess if marital rape under section 375 of the IPC is constitutional, and closely examine the recently enacted Bhartiya Nyaya Sanhita, 2023. In addition to explaining why marital rape ought to be made a crime, this paper attempts to define the term in its proper context. The most heinous of crimes against women is rape. Even when the sufferer

is alive, she dies a thousand times. Even if the rape wasn't her fault, the violated woman is frequently treated harshly and made to feel as though she committed the crime. Nonetheless, society is more forgiving and tolerant of criminals. Talk about marital rape is still uncommon and taboo. Everyone is vulnerable to marital rape, regardless of age, social status, educational attainment, race, or ethnicity.

About 30 years ago, the Indian Supreme Court declared that a woman's right to privacy could not be infringed upon, even if she was a woman of easy virtue. The Supreme Court later ruled that safeguarding one's privacy is essential to leading a peaceful and honourable life. However, we still can't establish a fair society where transgender people, women, and men all have the right to this type of privacy, even with these advancements. When In a sensible, emotional, sexual, and logical sense, marriage is a system in which two people share every part of their lives. However, our Indian society operates under the tenets of patriarchy and compromise, which runs directly counter to the idea of equality through equity in a marriage. It's illegal to forcefully establish a sexual relationship with an unidentified minor or adult woman, but it's acceptable when a wife is older than eighteen. Patriarchy makes this worse by promoting the notion that the husband is the head of the household and has control over the wife and the entire marital residence. The wife's consent is totally irrelevant, which makes it inevitable that she will live with her husband's coerced financial, emotional, and sexual relationships. Despite 74 years of independence, we continue to discuss equality without any real-world implementation. The utter disrespect for a woman's free and informed permission in a marriage is one of the main things that encourages marital rape. While it is seen as a violation of human rights, criminalizing marital rape remains a significant issue. Marital rape is defined as any sexual activity that is forced upon an individual against their will by their husband or intimate partner. Since India is a party to conventions like the UDHR, CEDAW, and ICCPR, it is the Sovereign Authority's duty to enforce the principles and regulations of these agreements, which protect human dignity regardless of a person's physical characteristics, religion, or geographic origin. A number of causes, including social stigma, fear of retaliation, ignorance of legal rights, and cultural traditions that support gender inequity, are preventing this country's lawmakers from making marital rape a crime. Sociocultural factors that influence the acceptance of marital rape as a crime within a marriage include perspectives on gender and sexuality, power relations in partnerships, and gender conventions.

The earlier penal laws and the recent Bharatiya Nyaya Sanhita, 2023 still didn’t recognized Marital Rape as an offence and the same can be deciphered from *Dilip Pandey & Ors.* v. *State of Chhattisgarh* (2021), where it was established that “sexual intercourse or act by husband with legally wedded wife is not rape even if it was by force or against wife’s wish”, Court here relied on Exception II of Section 375

of the Indian Penal Code, 1860, where forceful sexual act with wife not below the age of 18 years is no rape, the same was established in *Nimeshbhai Bharatbhai Desai* v. *State of Gujarat* (2018), but in 2022 the Supreme Court of India tried achieving the idea of equality of terminating pregnancy through Marital rape. The Supreme Court of India in RIT Foundation v. Union of India (2022) in a way tried to mark a step towards recognizing Marital Rape in India.

The challenges and barriers that legal systems face when trying to prosecute cases of marital rape are part of this study. This study aims to investigate and challenge these factors in order to understand their effects on the prevalence of marital rape and the attitudes that normalize or encourage it. It might also mean investigating cultural norms and attitudes that encourage marital rape and hinder efforts to effectively address the issue. The current study focuses on how to criminalize marital rape, which currently degrades women's status in marriages, by applying human rights provisions. It also examines the challenges faced by Indian lawmakers and the judiciary in their attempts to criminalize marital rape in the country.

2. Marital Rape: Definitions, Types, Theories and Effects

"Against her will" or "without her free consent" refers to a husband having sexual relations with his wife. This is known as marital rape. Put another way, it refers to a woman being raped by her spouse. The seriousness of marital rape must be taken into account because the victim's spouse continues to pose a threat to her. Given that her spouse has the potential to rape her every day, this threat is more serious. Who will shield women from such sexually deviant males, after all, if not the law?

Generally speaking, there are two types of marital rape:

A. **Non-physical methods of forcing a sexual relationship:** Reminding the wife of her responsibilities as a wife is a societal kind of compulsion that forces her to engage in sexual activity. To have sex with a non-consenting female, one may turn to non-physical methods and strategies such verbal coercion, making false promises, threatening to dissolve the marriage, etc. These kinds of non-physically coercive sexual activities are common and a threat to women's rights in society, even though they are thought to be less serious than physically coercive sexual acts.

B. **Forced Sex:** In order to engage in sexual activity with a lady who is unwilling, physical force must be used. These four categories are further classifications for it:

i. **Battering Rape:** Rape that is considered battering occurs when a husband uses violence and aggressiveness to coerce his wife into having sex or even after. He might occasionally resort to physical force to force her to engage in sexual activity.

ii. **Force Only Rape:** This kind of rape does not involve physical violence; instead, the husband coerces the victim into performing a sexual act against her will, even while she rebuffs him with all of his strength.

iii. **Obsessive Rape:** In order to satisfy his sadistic desire for sex, the spouse in this case engages in many perverted behaviors in addition to using force and violence during the marriage.

iv. **Sadistic Rape:** In order to satisfy his sadistic desire for sex, the spouse in this case engages in many perverted behaviors in addition to using force and violence during the marriage.

Many scholars have developed a variety of views over time on the reasons why marital rape occurs in society. The theories defining the occurrence of Marital Rape are:

i. **The Feminist Theory:** This argument contends that patriarchal societies use married rape as a means of strengthening their hold over women. They argue that the provision for marital rape cases is a legacy of earlier laws that viewed women as the property of their husbands. Feminists believe that marital rape only occurs when the male partner abuses his power in the marriage. Furthermore, because heterosexual relationships are driven primarily by male needs, radical feminists argue that they are another way that men subjugate women.

ii. **The Social Construction-ism Theory:** Proponents of the social constructionist thesis maintain that men have always held political and legislative power in society. Thus, laws emerged as a mirror of human interests. Because of these laws' subjugation of women and belief that women are their husbands' property after marriage, marital rape was viewed as a less serious crime than rape. In certain jurisdictions, rape that occurs within a marriage is deemed to be non-violent rape. According to the social constructionists, males attempt to impose control over their wives through marital rape in an effort to hold onto the things they have worked so hard to acquire.

iii. **The Sex – Role Socialization Theory:** These ideas claim that the gender roles that each spouse possesses determine the sexual encounters that occur between them in a marriage. In a marriage, men are expected to be assertive and dominant, while women are always expected to be calm, cooperative, and subservient. Women are perceived as loving and caring. But guys are the ones who produce most of the violently themed sexual entertainment. Role socialists contend that marital rape is merely a manifestation of the dominant culture surrounding sexual roles.

Marital rape can leave a woman with psychological scars and long-term impacts on her emotional, mental, and physical health. This section is divided into various topics that address the psychological and physical problems that a woman may have during or after a rape.

i. **Physical effects:** Marital rape can result in physical harm to one's intimate organs, bruises, torn muscles, lacerations, weariness, and fractures. Wounds from any kind of weapon, blacked eyes, broken bones, and other physical violence-related problems are common among women who suffer sexual abuse, in addition to the usual psychological effects. There is a higher chance of infections, infertility, miscarriages, and HIV infection in women who have been raped in marriage.

ii. **Psychological Effects:** According to reports from women who have been raped in marriage, these symptoms can include fear, anxiety, depression, rape trauma syndrome, low self-esteem, and dysfunctional, unstable, or unavailable sexual behaviour. It is required of a woman to satiate her husband's sexual cravings after marriage. Any female who encountered this for the first time would have been surprised that anything like this could be asked without her consent. She may have found any further incidents horrifying but numb, but she is aware that resisting or disobeying her lover would be futile. The woman worries that there could be damage to her family's reputation. She is driven to protect her family's name as a result.

3. Development of Marital Rape

In Family Law (2014), Jonathan Herring claims that rape used to be considered a felony or a robbery of a father's or spouse's property. It's possible that the victim's father or husband was the intended victim, as evidenced by the property damage. Therefore, by default, a male was not allowed to rape a woman because she was his property. Furthermore, until the 20th century, coverture—the idea that a woman's constitutional rights were transferred to her husband at marriage—was the legal principle that governed English and American law. Professor of law Jennifer Koshan of Calgary University makes the case in an article that men have historically been exempt from prosecution for marital rape for a number of reasons. The second argument, which claims that a woman is her husband's property, as evidenced earlier, contradicts marital rape. Koshan said that other arguments included the difficulty of attempting to establish non-consensual sexual relations within a marriage, the importance of maintaining the dignity of matrimony, the claim that marital rape is not as serious as other types of rape and that victims have other options besides being criminalized, and women's alleged propensity to fabricate allegations of sexual assault in order to gain an advantage in the divorce process. The aforementioned points of view began to rapidly change with the advent of feminism and related ideologies in the 19th

century. Lucy Stone was the first to speak out on women's rights and sexual autonomy. By the 1960s, marital rape was either illegal in many western nations or the legal loophole that allowed the perpetrators to continue their crimes had been closed. The United States and the United Kingdom were among the last established democracies to ban marital rape, after the Soviet Union did so in 1922. By treating women as nothing more than objects for sex, rape, whether it takes place inside or outside the married home, deprives them of their intrinsic dignity. In the mid-seventh century, the top justice of England was found to be arguing in favour of such spouses, claiming that forced sexual relations between a lawful husband and his wife does not amount to marital rape because the wife has surrendered herself to the husband through marriage. Lord Hale's theory gained popularity after his comment, leading to the concept of marital rape exemption.

4. International Conventions on Human Rights: Recognizing Rights of Married Women

At the beginning UDHR was one of the registered documents in the late 1940s that spoke about Human Rights. In 1948, UDHR established itself as one of the *Magna Carta* for promoting basic rights that are required by a human for one's survival, the Preamble underlines the idea of dignity, equality and inalienable rights to human family to promote social progress which also exceeds better standards of life[1]. Discrimination on the basis of religion, nationality, language, sex, colour, race, opinion or status is prohibited[2] barring cruel, torturous and treatment[3], where every individual has the right to be recognized[4] and be treated as an equal[5], where everyone will have a right to express one's thought, opinion and expression[6] or religion freely[7] followed by the right to move freely and establish residence within or outside the borders of a State[8] or seek effective remedy by competent authority granted by the Constitution or by the Law[9]. One of the most important aspects of accessing basic Human Rights is Right to Life and Personal Liberty[10] which includes right to marry with full and free consent of the intending spouses[11] or to associate oneself or form or be a part of a peaceful assembly[12] or access to social, economic or cultural security for one's personality development[13] where one has right to choose

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[1] Article 1 UDHR, 1948 All human beings ..... spirit of brotherhood.
[2] Article 2 UDHR, 1948 Everyone is entitled to.....or other status.
[3] Article 5 UDHR, 1948 No one shall.....treatment or punishment.
[4] Article 6 UDHR, 1948 Everyone has the.....before the law.
[5] Article 7 UDHR, 1948 All are equal.....to such discrimination.
[6] Article 19 UDHR, 1948 Everyone has the.....regardless of frontiers.
[7] Article 18 UDHR, 1948 Everyone has the.....worship and observance.
[8] Article 13 UDHR, 1948 Everyone has the.....of each State.
[9] Article 8 UDHR, 1948 Everyone has the.....or by law.
[10] Article 3 UDHR, 1948 Everyone has the right to life, liberty and the security of person.
[11] Article 16 UDHR, 1948 Men and women.....the intending spouses.
[12] Article 20 UDHR, 1948 Everyone has the.....to an association.
[13] Article 22 UDHR, 1948 Everyone, as a member of society, has the right to social security.....of his personality.

employment and work in just and favourable conditions including equal remuneration[14] followed by choosing to relax or rest or access to adequate healthy and basic standards of living for mothers and children[15] for everyone irrespective of their religion, race, caste, sex, nationality subject to certain reasonable restrictions or limitations.

Convention of ICCPR is one of the outcome of UDHR for recognition of rights like Right to Equality[16], Right to Life and liberty[17], Right against Inhuman treatment[18], Freedom of movement and establishing one's own residence[19], right to be recognized as person before law[20] and attainment of privacy[21], freedom to express and be opinionated[22], Right to form an association[23] and marry with full and free consent[24].

Convention of ICESCR is one of the rules that has established in consonance with UDHR recognizing the rights of Self Determination[25], rights envisaged will be applicable to everyone irrespective of religion, race, caste, sex [equal right to men and women[26]], language, political, opinion, nationality or birth[27] subject to certain reasonable restrictions or limitations[28], also the current convention aims in providing interpretation not disrupting rights of

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Article 29 UDHR, 1948 Everyone has duties to the community in which alone the free and full development of his personality is possible……in a democratic society.

[14] Article 23 UDHR, 1948 Everyone has the……protection of his interests.

[15] Article 25 UDHR, 1948 Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family……the same social protection.

[16] Article 3 ICCPR, 1966 The States Parties to the present Covenant……in the present Covenant.

Article 26 ICCPR, 1966 All persons are equal before the law……birth or other status.

[17] Article 6 ICCPR, 1966 Every human being has……deprived of his life.

Article 9 ICCPR, 1966 Everyone has the right to liberty and security of person……are established by law.

[18] Article 7 ICCPR, 1966 No one shall be subjected to torture……medical or scientific experimentation.

[19] Article 12 ICCPR, 1966 Everyone lawfully within the territory……freedom to choose his residence.

[20] Article 16 ICCPR, 1966 Everyone shall have the right to recognition……before the law.

[21] Article 17 ICCPR, 1966 No one shall be subjected to arbitrary or unlawful interference with his privacy……his honour and reputation.

[22] Article 19 ICCPR, 1966 Everyone shall have the right to hold opinions without interference……media of his choice.

[23] Article 22 ICCPR, 1966 Everyone shall have the right to freedom of association……protection of his interests.

[24] Article 23 ICCPR, 1966 The right of men and women of marriageable age to marry and to found a family……free and full consent of the intending spouses.

[25] Article 1 ICESCR, 1976 All peoples have the right of self-determination……social and cultural development.

[26] Article 3 ICESCR, 1976 The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant.

[27] Article 2 ICESCR, 1976 The States Parties……property, birth or other status.

[28] Article 4 ICESCR, 1976 The States Parties to the……in a democratic society.

any individual[29] like Right to Work and Opportunity[30], Right to Social Security[31], Marital and Family Rights with special protection to mothers before and after childbirth with adequate standards of living including both physical and mental progress of an individual[32].

Conventions like ICCPR and ICESCR aims to attain equality through general notion where everybody should be treated equal obviously keeping in mind one's circumstances but CEDAW is one of those set International Standards which aids in achieving the goals of UDHR. CEDAW aims to remove orthodox cultural and societal theories existing in the society that directly or indirectly violates the dignity of a Women. CEDAW enlists the objective of discarding discrimination of any form[33], undertake and adopt legislations prohibiting discrimination and promoting equality[34], idea of full personality development and advancement[35] of women both physically and mentally[36], freedom to move or settle anywhere in the State[37], or choose life partner and family of one's own[38] and these for women of every age, area (urban or rural[39]).

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[29] Article 5 ICESCR, 1976 Nothing in the present Covenant……them to a lesser extent.
[30] Article 6 ICESCR, 1976 The States Parties to the present Covenant……to safeguard this right.
[31] Article 9 ICESCR, 1976 The States Parties to the present Covenant recognize the right of everyone to social security, including social insurance.
[32] Article 10 ICESCR, 1976 The widest possible protection and assistance should be accorded to the family……which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and education of dependent children. Marriage must be entered into with the free consent of the intending spouses.
Article 11 ICESCR, 1976 The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family……international cooperation based on free consent.
Article 12 ICESCR, 1976 The States Parties to the present……physical and mental health.
[33] Article 1 CEDAW, 1979 For the purposes of the present Convention, the term "discrimination against women"……or any other field.
[34] Article 2 CEDAW, 1979 States Parties condemn discrimination against women……to repeal all national penal provisions which constitute discrimination against women.
[35] Article 3 CEDAW, 1979 States Parties shall take in all fields, in particular in the political, social, economic and cultural……basis of equality with men.
[36] Article 4 CEDAW, 1979 Adoption by States Parties of temporary special measures……opportunity and treatment have been achieved……not be considered discriminatory.
Article 12 CEDAW, 1979 States Parties shall take all appropriate measures to eliminate discrimination against women in the field of health care……related to family planning.
[37] Article 15 CEDAW, 1979 States Parties shall accord to women equality with men before the law.
[38] Article 16 CEDAW, 1979 States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women.
[39] Article 14 CEDAW, 1979 States Parties shall take into account the……to women in rural areas.

5. Locus Standi of Marital Rape in India

The Indian legislation pertaining to this matter has some gaps. The Indian Penal Code's Section 375 states that a husband's rape of a wife who is older than fifteen is not regarded as rape. These statutes demonstrate how a girl who hasn't yet reached the age of 18 is assumed to have granted her husband all of her rights without her consent, which is blatantly patriarchal and backwards thinking. In the case of Independent Thought v. Union of India[40], the Supreme Court held that the POSCO Act is a unique law designed to protect married female children of 15 to 18 years old from the adulterous sexual relations of their spouses.[41] On the other hand, the court in this instance blew the opportunity to offer guidance to married women above the age of eighteen who are helpless to put an end to this forced activity. Nonetheless, some laws provide that any sexual interaction with a couple whose marriage has been declared unlawful by a court of law—for example, if the husband is already married—will be considered rape.[42]

Numerous laws in our Indian legal system work to protect women's rights. One such law, the Domestic Violence Act of 2005[43], attempts to lessen the trauma that women experience on a daily basis by offering victims practical solutions. However, the sections that could regulate the topic of marital rape were overlooked by the act's writers. The act has disregarded the fundamental rights of numerous women who consistently fight for their safety and access to their bodies. The Supreme Court of India ruled in Sakshi v. Union of India[44] that previous legislation in the Indian legal system need to be revised to address flaws brought about by impending challenges. It also provided recommendations to the legislature on how to address these issues and work towards finding solutions. In certain instances, the legislature has amended a statute; one such instance is the criminal law reform bill that parliament passed in 2013 and expanded the definition of rape.[45]

Marital Rape an Idea against Article 14 of the Constitution of India

The Exception, which classifies women into two groups according to their marital status, forbids men from committing crimes against their

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[40] (2017) 10 SCC 800.
[41] Dr. Bhavish Gupta and Dr. Meenu Gupta, *Marital Rape: Current Legal Framework in India and the Need for Change,* 1 GALGOTIAS JOURNAL OF LEGAL STUDIES 1, 19 (2013).
[42] G.V. Akshaya & M. Kannappan, *A Study on Marital Rape in the Indian Legal Scenario,* 119 INTERNATIONAL JOURNAL OF PURE AND APPLIED MATHEMATICS 1089, 1095 (2018), http://www.acadpubl.eu/hub/Special Issue.
[43] Domestic Violence Act, 2005, No.43.
[44] Sakshi v. Union of India, (1999) 8 SCC 591.
[45] G.V. Akshaya & M. Kannappan, *A Study on Marital Rape in the Indian Legal Scenario,* 119 INTERNATIONAL JOURNAL OF PURE AND APPLIED MATHEMATICS 1089, 1095 (2018), http://www.acadpubl.eu/hub/Special Issue.

husbands. Married women may only be harmed by the Exception since single women are protected from the same offenses. The High Court of Karnataka, in the case of Hrishikesh Sahoo v the State of Karnataka[46], recently ruled on March 23, 2022, highlighting gender equality and holding that the Constitution's guarantee of equality for men and women cannot be undermined by the IPC's Exception-2 to Section 375. The question of whether there are any such legal disparities belongs to legislators. For centuries, a man clothed in a husband's clothes has treated his wife like property, his impolite actions unaccountable of the fact that he exists at all. Rape is the only acceptable term for the violent act of sexual assault on a wife, even if the husband is the one who does it. In the case of Rafiq v State of Uttar Pradesh[47], Justice Krishna Iyer made the following statement: "A murderer kills the body, but rapists kill the soul." The Constitution forbids the use of Exception-2 to Section 375 of the Indian Penal Code to create a gender gap. Legislators are responsible for taking these kinds of disparities into account when crafting legislation. For centuries, a man dressed in a husband's robes has treated his wife like property; his impolite actions are in spite of the fact that he exists at all because of a woman. The Supreme Court decided in the Arnesh Kumar v. State of Bihar[48] case that criminalizing marital rape would lead to the "collapse of the social and family system." These cases so suggest that the strict and punishing attitude used by the legal system to these matters needs to be changed. This is due to the fact that a great deal of women are enduring physical and psychological abuse as a result of these disputes and remarks; in certain situations, these women are even harming themselves. These women need justice, which can only be attained by suitable legislation, hence changes to the current legal system are required in order to make these kinds of activities punishable.

Marital Rape an Idea against Article 21 of the Constitution of India

In India, marital rape occurs de facto rather than de jure. The Indian judiciary is approaching this specific issue from two different angles. First, the Supreme Court ruled in the Bodhisattwa Gautam v. Subhra Chakraborty[49] case that rape is an offence that infringes upon "basic humanitarian rights" and that one of the fundamental rights guaranteed by Article 21 of the Indian Constitution—namely, the right to life—is being violated. Nevertheless, Indian law does not recognise marital rape. The law as it stands now has progressed, but it only covers "physical abuse"—not "sexual abuse." Accordingly, since marital rape is specifically acknowledged by Section 375 of the Indian Penal Code as not being an offence, women are denied protection by the state. The Indian judiciary has greatly contributed to the protection of women's rights in society, including the right to own property and

[46] MANU/KA/1175/2022.
[47] 2011 (8) SCC 300.
[48] (2014) 8 SCC 273.
[49] (1996) 1 SCC 490.

the ability to report sexual harassment at work. However, it has frequently shown caution when it comes to a woman's rights within the home, particularly in marriage. Throughout the years, the Indian judiciary has even regressed when it comes to the problem of marital rape.

The Indian Constitution's Article 21 guarantees everyone's right to life and personal freedom. Despite its negative repetition, Article 21 guarantees everyone the essential rights to life and personal freedom. Following the Maneka Gandhi v. Union of India[50] case, Article 21 has come to be seen as the foundation for all rights intended to safeguard human life and liberty. Thus, life's definition has gradually broadened. Field J. stated in the famous Munn v. Illinois decision that life is "something more than mere animal existence," and the Supreme Court of India further affirmed this view in the well-known Bandhua Mukti Morcha v. Union of India[51] case. In the well-known decision of Francis Corallie Muin v. Union Territory of Delhi[52], the Supreme Court ruled that the right to human dignity and all that accompanies it, namely the basic needs of life, including enough food, clothing, and shelter over one's head, as well as the ability to read, write, and express oneself in a variety of ways, move freely, and interact with other people, are all included in the concept of the right to life under Article 21 of the Constitution. The recognition of an individual's autonomy is a fundamental and innate aspect of the right to life, which includes the right to live with human dignity. In a number of judgments, notably the seminal ruling in The Chairman, Railway Board v. Chandrima Das[53], the Supreme Court has concluded that rape is a crime that infringes on the victim's right to life and right to live in human dignity. In Bodhisattwa Gautam v. Subhra Chakraborty[54], the Supreme Court held that rape is a crime against society as a whole, not just an offence under the Indian Penal Code. The court also discussed the necessity of establishing guidelines for victims of sexual assault and the establishment of a Criminal Injuries Compensation Board. According to this ruling, rape is not so much a sexual violation as it is an aggressive conduct intended to degrade and humiliate the victim. Thus, a woman's right to exist in human dignity is similarly violated by the marital exemption theory of rape. Any law that gives a husband the authority to force a wife to have sex against her will and without her agreement violates Article 21's guarantee of the right to life and should be ruled illegal. The Indian Constitution does not specifically address the right to privacy. Article 21 of the Constitution guarantees the right to privacy, as recognized by the Supreme Court in a number

[50] AIR 1978 SC 597.
[51] (1997) 10 SCC 549.
[52] AIR 1981 SC 802.

[53] (2002) 2 SCC 465.
[54] (1996) 1 SCC 490.

of instances, including State of U.P. v. Kharak Singh[55], State of Madhya Pradesh v. Govind[56], and Neera Mathur v. LIC[57]. As per the ruling in Justice K.S. Puttuswamy v. Union of India[58], the Supreme Court of India made clear that every individual has the natural right to privacy just by virtue of their humanity, and the Constitution exclusively recognizes this right for humans. According to Article 21, the right to privacy also includes the right to be left alone. The right to privacy is violated by any type of coercive sexual activity, including by a spouse. It is well known that forcing a married woman to have a sexual connection against her will in order to circumvent the marital rape exemption violates her right to privacy. In the historic case of State of Maharashtra v. Madhkar Narayan[59], the Supreme Court ruled that every woman had a right to sexual privacy and that no one could infringe on that right at any time. The Supreme Court expanded this right to privacy to include workplaces in the Vishakha v. State of Rajasthan[60] decision. Because Section 375 of the Indian Penal Code does not criminalize rape committed within a marriage, it is illegal to violate a married woman's right to privacy.

It is obvious that laws that deny people the ability to express and revoke their consent—a kind of self-expression and self-determination—violate their fundamental right to bodily self-determination. Because it essentially denies a married woman her bodily autonomy over one of her most intimate and personal decisions—accepting sexual contact—the exception from marital rape granted by Section 375 of the Indian Penal Code is said to be unconstitutional. Given that Section 375 of the IPC prohibits marital rape, this exemption is controversial because it infringes on the victim's right to good health. The legal literature has recognized the right to good health as an integral component of the right to life under Article 21 in numerous cases, including CESC Ltd. v. Subhash Chandra[61]; Regional Director, ESI Corpn. v. Francis de Costa[62]," etc. This kind of right is essential to an individual's ongoing spiritual and intellectual well-being. The victim's right to good health is violated when marital rape is excluded from protection against health harm because it almost always leads to substantial psychological harm, such as depression and PTSD, among other psychological problems, as well as physical harm ranging from minor to severe injuries, some of which may be fatal. An extreme emotional and psychological crisis destroys a woman's mental equilibrium. There is more evidence to support the claim if the victim of the rape crime is informed of an STD

[55] 1964 SCR (1) 332.
[56] AIR 1975 SC 1378.
[57] AIR 1992 SC 392.
[58] AIR 2017 SC 4161.
[59] AIR 1991 SC 207.
[60] (1997) 6 SCC 241.
[61] (1992) 1 SCC 441.
[62] 1992 SCR (3) 23.

as a result of forceful marital rape. The Indian Penal Code's Section 375 effectively denies married women their right to good health, making it illegal. Additionally, there are other circumstances in which marital rape is an exempt.

Despite the judiciary in India's lack of intention to make marital rape a crime, the court has raised problems related to or involving marital rape. The courts have adopted varying positions in these situations; some of them may even be seen as the initial move towards making marital rape a crime. Though they might not have the same legal force as regular judgments, judges' dissenting opinions and the ratio decidendi in overruled judgments can and should be seen as alternative viewpoints and the right course of action if they serve to uphold the Constitution and fundamental human rights.

The doctrine of characterization holds that a husband and wife are regarded as a single individual for legal purposes, and as such, no action may be taken against one for an offence committed by the other. This says it plainly: A spouse cannot lie to or harm another person. The main justification for the decriminalization of marital rape is this philosophy. However, throughout time, a number of court rulings, shifts in jurisprudence, and shifts in public opinion have all worked to undermine this theory. Even if they have faded, remnants of this mind-set can still be seen in some laws, such as Section 375 of the Indian Penal Code, which exempts marital rape.

After reviewing the court's rulings on the subject of serious injury caused by a husband to a wife, the court in Queen Empress v. Haree Mythee[63], noted that, for married women, the law prohibiting rape does not apply to relationships between husband and wife after the age of fifteen. This means that, even if a wife is over fifteen, her husband cannot disregard her physical safety, for example, if there are circumstances that make it likely that she will die during a sexual encounter, laws such as Section 375 of the Indian Penal Code, which exempts marital rape. Under Section 338 of the Indian Penal Code, the husband in this instance was found guilty of rupturing his wife's vagina, producing haemorrhage that ultimately resulted in her death. The accused husband was found guilty only under S. 338 of the Indian Penal Code, which is the crime of causing grievous hurt by endangering the life or personal safety of others by rash and negligent act, even though it is evident that the husband committed rape in this case and it does not fall under the exception. Nonetheless, given that it is the 19th century, the husband's belief is admirable and might be seen as the first move against the notion of coverture. Under Section 304A of the Indian Penal Code, the husband in the case of Emperor v. Shahu Mehrab[64] was found guilty of causing his child-wife's death by careless or rash sexual relations. The verdict in this case can be

[63] (1891) ILR 18 Cal. 49.
[64] AIR 1917 Sind 42.

considered a step up from the last one since the husband was found guilty of a more serious charge under Section 304A of the Indian Penal Code, which addresses Causing Death by Negligence, rather than the lesser charge under Section 338 of the Indian Penal Code.

There is no question that an order of restitution of conjugal rights, when it is enforced, violates the inviolability of the person whose body and mind it is imposed upon, as well as their integrity, and it infringes upon their right to privacy in marriage and domestic relationships. This ruling was made in the now-overruled landmark case of Saretha v. T. Venkata Subbaih[65]. In case a woman's right to privacy is violated by non-consensual sexual relations with her husband, it is undoubtedly also violated by state-enforced sexual relations between a husband and wife. As opposed to being the conditions of a private agreement between two people, rights and obligations in a marriage are not established by contract. Marital affiliation does not revoke one's right to privacy. The right to privacy over one's body was mentioned by the Supreme Court in the case of State of Maharashtra v. Madhukar Narayan Mandikar[66]. In this instance, it was determined that a prostitute possesses the entitlement to decline sexual relations. Regretfully, the criminalization of stranger rapes and the grant of the right to privacy over one's body to all women, excluding spouses, mean that women now have the ability to decline sexual relations and withhold consent. The lack of rights afforded to married women, which even prostitutes enjoy, demonstrates how little society values and respects married women.

In Sree Kumar v. Pearly Karun[67], the Kerala High Court noted that even if the wife is subject to her husband having sex with her against her will and without her consent, there will not be an offence under Section 376A, Indian Penal Code, because she was not living apart from him under a decree of separation or under any custom or usage. The parties in the current instance were engaged in a divorce battle. Following that, the parties decided to stay together after reaching a settlement between them. During her two days at her husband's house, the wife claimed that she was forced into having sex with him against her will and permission. Even though the husband was defecating on his wife, he was found not guilty of raping her. The assumption that rape within a marriage cannot occur or that a woman's stigma from a rape may be removed by marrying the perpetrator appears to have been entirely relegated to the judiciary's convenience. The issue arises from the widespread belief that marriage is virtually inviolable. Mutual respect and trust are expected to flourish instead of the wife being forced to submit to her husband's every desire, particularly sexual ones.

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[65] AIR 1983 AP 356.
[66] AIR 1991 SC 207.
[67] 1999 (2) ALT Cri 77.

Being raped by a familiar person, a family member, and even worse, having to live with him, is far more painful.[68] The Apex Court invalidated Section 375's Exception 2, which is now defined as "Sexual intercourse by a man with his wife, the wife not being 18 years old," in the historic decision of Independent Thought v. Union of India[69]. The age was fifteen years old before the 2018 amendment, which raised it to eighteen years old. According to the Supreme Court, early marriage and sexual activity are harmful to a girl's health, and the practice should be stopped right away for the sake of young girls and society at large. According to the Apex Court, Article 21 guarantees a girl child the right to a life of dignity. A girl child's self-esteem is damaged when she experiences sexual assault. Her early marriage and regular sexual activity make her susceptible to pregnancy even though her body isn't ready for parenting. Malnutrition is more likely to affect children born to young couples. The POCSO Act forbids sexual actions by anybody under the age of eighteen, and the Court determined that limiting the marital exception to married women under sixteen is a clear breach of this law. Because the POSCO Act was a special Act and would have precedence over other laws, the Court created a harmonious interpretation of it and the Indian Penal Code. As a result, the Supreme Court reduced the scope of Section 375's Exception 2 by altering the limitation of age to 18 years. It should be highlighted that, even in this instance, the married woman's consent has been completely disregarded. The modification was only enacted because early sexual activity and early pregnancy were endangering the wife's physical health. Nonetheless, the court has overlooked the harm that a married woman experiences directly from being raped in her marriage to her physical, psychological, and emotional well-being. The age at which a married woman's consent is assumed to be given is eighteen years old, which is a highly ironic statement to make.

In the RTI Foundation v. Union of India[70] case, the Government argued before the Delhi High Court that: If every sexual act with a person's wife turns into marital rape, it will be extremely impossible to show and rely upon any evidence because there will be no lasting proof of rape between a man and his own wife. The Indian Penal Code's Section 498A, which deals with cruelty perpetrated by a spouse or his family members, is frequently misused, which is why. Marital rape should not be made a crime, according to the 172nd Law Commission Report and the 16th Parliamentary Standing Committee on Home Affairs' comprehensive investigation of the issue. In addition, there needs to be social and moral awareness in order to stop the Act, which criminalizes marital rape. The way that society views things needs to

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[68] Ms. Bhavya choudhary & Mr. Nitish chandra, Wake up before it's too late: Marital rape and Criminal law,
Law Audience Journal Volume 1 Issue 4 June 2019 ISSN (o): 2581-6705 at https:l1ww Iawaudien ce. cornwake-up-before-itoo&atemaital-rape-and-crimina 1-aw/'.

[69] (2017) 10 SCC 800.

[70] (2022) SCC Online Del 1404.

shift. Marriage rape should not be made illegal in India just because it is illegal in a number of other countries. There are differences between countries in terms of population, health, literacy rate, poverty, and social thinking.

A man wearing a husband's robes has been treating his wife like property for ages; his rude behaviour is the result of the fact that a woman is the reason he even lives. A man in a husband's robe has been treating his wife like property for ages; his rude behaviour is despite the fact that a woman is the reason he is even here. The Supreme Court decided in the Arnesh Kumar v. State of Bihar[71] case that criminalizing marital rape would lead to the "collapse of the social and family system." These incidents strongly imply that the legal system's harsh and punitive approach to these issues has to be modified. This is because these arguments and comments are causing many women to suffer from physical and psychological abuse; in some cases, these women are even hurting themselves. Changes to the current legal system are necessary to make these kinds of actions punishable because these women need justice, which can only be achieved by appropriate laws. In India, marital rape occurs de facto rather than de jure. The Indian judiciary is approaching this specific issue from two different angles. First, the Supreme Court ruled in the Bodhisattwa Gautam v. Subhra Chakraborty[72] case that rape is an offence that infringes upon "basic humanitarian rights" and that one of the fundamental rights guaranteed by Article 21 of the Indian Constitution—namely, the right to life—is being violated. Nevertheless, Indian law does not recognise marital rape. The law as it stands now has progressed, but it only covers "physical abuse"—not "sexual abuse." Despite the judiciary in India's lack of intention to make marital rape a crime, the court has raised problems related to or involving marital rape. The courts have adopted varying positions in these situations; some of them may even be seen as the initial move towards making marital rape a crime. Though they might not have the same legal force as regular judgments, judges' dissenting opinions and the ratio decidendi in overruled judgments can and should be seen as alternative viewpoints and the right course of action if they serve to uphold the Constitution and fundamental human rights. There is no question that an order of restitution of conjugal rights, when it is enforced, violates the inviolability of the person whose body and mind it is imposed upon, as well as their integrity, and it infringes upon their right to privacy in marriage and domestic relationships.

6. Conclusion

The key to advancing gender-based equality is to alter people's perspectives and ways of thinking. This can be done by putting policies in place to support women's economic independence by enhancing

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[71] *Supra* note 12
[72] (1996) 1 SCC 490

their access to employment and financial services, strengthening systems in place to prevent gender-based violence and enforcing strict penalties against those who commit it, raising awareness of sexual rights and sex education among vulnerable groups in society, and helping low-income women improve their life skills so they can better manage their lives. Equality is now a fundamental right guaranteed to all Indian citizens by the Constitution. Although society and beliefs have changed since the Constitution was enacted, several problems still exist. A girl kid is still viewed by some as a burden for the family. The government, the Supreme Court, and other authorities have repeatedly put in place different procedures to stop discrimination, but this hasn't changed the narrow-mindedness of those who would even consider engaging in female foeticide. All of this makes achieving complete gender equality in a nation like India extremely difficult. Consequently, it can be concluded that gender equality in India will only be achieved if customs such as female infanticide, dowry murders, khap panchayat honour killings, domestic violence, and sexual assault are discontinued. At that point, women's empowerment and gender equality will actually be possible.

It remains depressing to learn about the state of women in our society in such a rapidly expanding era. India is still mired in antiquated ideologies and labour practices despite being a developing country and changing rapidly. Women belong to a stratum that is vulnerable to violent acts from the minute they are conceived, thus we should appreciate gender equality and everything it stands for. Government must understand the fundamental distinction between a private marital affair and an infringement on an individual's rights. Conscientiousness is consent, whether or not one is married, hence the value of marriage alone cannot be justified by this fact. It is no use for the fundamental rights that each and every person has been granted to defend themselves if the government is unable to put them into practice. It is absolutely necessary to alter both our system and society's mind-set.

In the matter of marital rape, the Indian judiciary is regressing, asserting that the Indian parliament has the authority to enact laws. The parliament has previously looked into the matter and made it clear that marital rape is not a crime in India. On the other hand, the government feels that making marital rape a crime will damage the institution of marriage. The government and the courts are not prepared to criminalize marital rape. The judges and lawmakers are effectively supporting the offenders and legitimatizing their acts under the guise of protecting the marriage. But there were situations where judiciary has time and again uplifted the dignity and autonomy of individuals in the society and within the private sphere. In 2017, the Hon'ble Supreme Court of India in the landmark judgement of Justice

K.S. Puttaswamy (Retd.) Anr. v. Union of India & Ors.[73] Where right to privacy was an inherent fundamental right where the significance of agency and choice of private spheres and the same was taken into consideration in the case of Joseph Shine v. Union of India[74] where it was stated that, "The exercise of personal autonomy and agency is essential to the right to privacy. Courts must intervene to guarantee that dignity is fully fulfilled in cases where citizens are unable to exercise these fundamental qualities. Structures inside families cannot be considered private areas where constitutional rights are infringed."

Laws based on gendered preconceptions are forbidden by the anti-stereotyping principle, as emphasised in Anuj Garg & Ors. v. Hostel Association of India & Ors.[75] and Navtej Singh Johar v. Union of India[76]." Based on the antiquated idea that women instinctively consent to having sex with their husbands in bed after marriage, the Marital Rape Exception was created. The stereotype of women as obedient sexual partners constrained by marital conventions is thus maintained. By forcing women to give up even their most basic rights in the interest of maintaining peace, it perpetuates the harmful perception that marriage robs them of their individuality. Marital Rape effectively reduces the married woman's sexual autonomy to that of her husband's property by permitting husbands to act on these stereotypes with impunity, which is against Article 15's anti-stereotyping principle. In today's egalitarian and autonomous constitutional framework, the idea that marital consent is unchangeable and automatic is out of place. Beyond Articles 14 and 15, Marital Rape Exemption violates other parts of the constitution. Sexual autonomy is protected by Article 19(1) (a), which also protects personal speech. When married women are legally denied the ability to say "no," Marital Rape Exemption stifles a vital component of individuality. Furthermore, dignity and bodily integrity have been generously interpreted to be part of Article 21's[77] guarantee of life and personal liberty (Maneka Gandhi v. Union of India [78] , Justice K.S.Puttaswamy (Retd.) & Anr. v. Union of India & Ors.[79], etc.). This fundamental right to a dignified existence is violated by Marital Rape Exemption, which denies married women control over their bodies. Furthermore, the ban on forced work in Article 23 is jurisprudentially applicable in cases when compulsion is social, economic, or lawful. The constitutional safeguards against slavery are undermined when women are legally forced to participate in non-consensual sexual

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[73] *Supra* note 61.
[74] AIR 2018 SC 4321.
[75] AIR 2008 SC 663.
[76] *Supra* note 77.
[77] Article 21, The Constitution of India, 1950 Protection of Life and Liberty, No person shall be deprived of his life or personal liberty except according to procedure established by law.
[78] *Supra* note 53.
[79] *Supra* note 76.

actions, thereby allowing a type of domestic forced labour. The proportionality test is widely used by India's legal system to evaluate limitations on fundamental rights, which stipulate that such measures must have a justifiable purpose and be both necessary and reasonable to accomplishing that purpose. The alleged goal of Marital Rape Exemption, which is to protect the sanctity of marriage, cannot be supported by this argument. Shayara Bano v. Union of India [80] demonstrates that upholding patriarchal standards cannot supersede the fundamental rights to autonomy and equality. Furthermore, the same goals could be attained using less restrictive tactics that respect a woman's individuality, including encouraging mutual respect within a marriage.

In Indian law, Marital Rape Exemption is the height of normative failure and constitutional abdication. In addition to violating fundamental rights, it also legitimises gender inequity and abuse in one of the most private areas of human existence by maintaining patriarchal control within marriage in an unconstitutional and cruel manner. In public and legal discourse, married women who are otherwise restricted to their homes must be given equal voice and consideration. This is where the debate over marital rape comes in. Acknowledging the existence of a substantial legal loophole that threatens the constitutional safeguards affording women equality and self-governance is imperative. The victimization of women by men and society has occurred and continues to occur. Marrying someone has become a legal permit to have reluctant sex, according to patriarchal power structures. Giving her the respect and dignity she deserves is imperative, as it is widely acknowledged that empowering women is the fastest path to changing society. Let's move past the antiquated idea of her as nothing more than property and treat her as a human being. Society will flourish in tandem with the emancipation of women.

[80] AIR 2017 SC 4609.

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Who Owns the Global South's Data?: Data Colonialism, Economic Independence, & Global Trade

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Abstract

As data becomes the lifeblood of the global digital economy, questions of ownership, control, and value are increasingly framed in post-colonial terms. In much of the Global South, a growing literature on data colonialism argues that dominant technology firms and foreign powers extract value from citizens' data much as colonial empires once did from raw materials.[1] At the same time, rising nationalism and "digital sovereignty" discourse push developing states to assert control over their digital infrastructures and data flows. This paper examines these tensions, focusing on India as a leading Global South case study. We review India's ambitious **Digital Public Infrastructure** (India Stack) – including Aadhaar (biometric ID), UPI (payments), and ONDC (open e-commerce) – which aims to harness data for national development.[2] We also trace India's move to restrict certain cross-border data flows, require data localization in sensitive sectors (later eased), and reform competition law to curb platform dominance .[3]

[1] Mihir Kaulgud, India's Approach to Data Decolonization: Moving Away from the "Data as Resource" Metaphor, Social and Political Research Foundation (2022).
[2] Pallavi Arora & Jyotsna Manohar, *India as a Post-Colonial Digital Developmental State: A Critical Analysis – NUJS Law Review*, 18 NUJS LAW REVIEW (2025), https://nujslawreview.org/2025/03/25/india-as-a-post-colonial-digital-developmental-state-a-critical-analysis/ (last visited May 4, 2025).
[3] Anirudh Burman, *Understanding India's New Data Protection Law*, CARNEGIE ENDOWMENT FOR INTERNATIONAL PEACE (2023), https://carnegieendowment.org/research/2023/10/understanding-indias-new-data-protection-law?Lang=en (last visited May 4, 2025).; Sonam Mathur, Dhruv Dikshit & Rishabh Joshi, *India: Navigating Digital Markets through the Proposed Ex-Ante Framework*, 4 GLOBAL COMPETETION REVIEW (2024), https://globalcompetitionreview.com/guide/digital-markets-guide/fourth-

These policies reflect an attempt to reclaim economic value from data and prevent foreign tech "monopolies," but they raise concerns about surveillance, privacy, and trade frictions.[4] In the broader Global South context, most developing nations face similar dilemmas: Big Tech (mostly US and Chinese) dominate digital markets and capture the lion's share of data-driven value,[5] while multilateral trade rules remain inadequate to protect digital sovereignty. This paper critically examines current international frameworks (WTO e-commerce rules, digital trade agreements) and finds them skewed toward unfettered data flows that benefit already-rich economies.[6] Finally, we propose policy strategies for India and other Global South states: building open digital public goods and skills, negotiating collective standards for privacy and data governance, and selectively engaging in trade to protect nascent digital industries – aiming to strengthen digital sovereignty without forfeiting global market access.

1. Introduction

In the era of **big data** and artificial intelligence, data is often hailed as the "new oil." Yet its ownership and value are contested. The Global South – home to the majority of humanity – is rapidly digitizing, generating unprecedented quantities of personal, social, and economic data. However, much of this data's **value** is captured outside the region. Scholars have coined the term **data colonialism** to describe how powerful companies and states appropriate information from developing countries, replicating historical patterns of resource extraction and inequality.[7] At the same time, many developing-state governments are pushing back with a discourse of **digital sovereignty**, asserting that they must control data flows and digital infrastructure to ensure national security and development. In practical terms, this has meant a surge in data localization laws, efforts to promote local tech industries, and new regulations on global platforms.

This paper asks: *Who owns the Global South's Data* and how can developing countries convert digitalization into equitable growth rather than new dependency? We focus on India as a leading case

edition/article/india-navigating-digital-markets-through-the-proposed-ex-ante-framework (last visited May 4, 2025)..

[4]Vrinda Pareek, *Why De-Localizing Data Helps: India's Position*, WWW.IAPP.ORG (2024), https://iapp.org/news/a/why-de-localizing-data-helps-india-s-position (last visited May 4, 2025).

[5] Kristina Irion, Margot Kaminski & Svetlana Yakovleva, *Privacy Peg, Trade Hole: Why We (Still) Shouldn't Put Data Privacy in Trade Law*, GLOBAL POLICY, https://lawreview.uchicago.edu/online-archive/privacy-peg-trade-hole-why-we-still-shouldnt-put-data-privacy-trade-law#heading-1 (last visited May 4, 2025).

[6] Munsif Vengattil, India's stance on data transfers at WTO spooks chip giants, Reuters, https://www.reuters.com/world/india/indias-stance-data-transfers-wto-spooks-chip-giants-2024-02-23/#:~:text=Sign%20up%20here; ibid.Kristina Irion

[7] Kushang Mishra, Data as a national asset What does seeing data in terms of an asset reveal about the postcolonial state in India?, Technology and Regulation (2024).

study, since it is (a) one of the largest and fastest-growing digital economies and (b) explicitly frames its strategy in post-colonial terms. India has built an unprecedented suite of digital public goods (India Stack) to onboard 1.4 billion people into the digital economy.[8] It has also pursued aggressive data governance and competition reforms to curb foreign tech dominance.[9] We analyze India's experience and position it in the wider Global South context. Our questions include: How do notions of **data as national asset** and sovereignty clash or align with free trade? What are the limitations of current WTO and regional trade rules in addressing digital colonialism? How might Global South countries collectively advance an economic-independent path in the digital age?

The paper proceeds as follows. Section 2 reviews relevant literature on **data colonialism**, digital sovereignty, and data governance. Section 3 examines India's strategy – the architecture of India Stack (Aadhaar, UPI, ONDC, etc.), data localization and protection laws, and competition reforms for digital markets – analyzing how these address data control and market power. Section 4 broadens the lens to the Global South: it surveys Big Tech's dominance of the global data economy, discusses tensions between open digital trade and protectionism, and critiques existing international frameworks (WTO, G20, etc.). Section 5 offers policy recommendations for India and its peers: ways to build domestic capacity and cooperative institutions for digital sovereignty while remaining integrated in global markets. Section 6 concludes by highlighting the key lessons and remaining challenges for equitable data governance in the Global South.

Table 1: Major Digital Trade Agreements and Their Stance on Data Flow

Agreement	Cross-Border Data Flow Provisions	Data Localization Restrictions	Impact on Sovereignty
CPTPP (Comprehensive and Progressive Agreement for Trans-Pacific Partnership)	Requires parties to allow cross-border data transfers for business purposes, with exceptions for "legitimate public policy objectives"	Prohibits data localization requirements but allows exceptions for legitimate public policy objectives.	Balances trade facilitation with regulatory autonomy; however, the necessity test may

[8] Supra Note 2.
[9] Supra Note 3.

	that are not arbitrary or discriminatory.		limit domestic policy space.
USMCA (United States–Mexico–Canada Agreement)	Prohibits restrictions on cross-border data transfers, including personal information, for business purposes, with limited exceptions that must meet strict necessity and proportionality tests.	Prohibits data localization requirements, with no general exception for public policy objectives, except for specific cases like financial services.	Strongly favors free data flows, potentially constraining domestic data protection and privacy regulations.
DEPA (Digital Economy Partnership Agreement)	Encourages cross-border data flows and cooperation on digital trade, with commitments to uphold data protection standards; allows for exceptions to achieve legitimate public policy objectives.	Discourages data localization, promoting interoperability and mutual recognition of data protection frameworks.	Aims to balance digital trade facilitation with respect for national regulatory measures, offering more flexibility than USMCA.

RCEP (Regional Comprehensive Economic Partnership)	Encourages cross-border data flows but includes broad exceptions for "essential security interests," allowing member states to restrict data flows without challenge.	Prohibits data localization requirements but permits exceptions for legitimate public policy objectives, including essential security interests.	Provides significant leeway for national regulations, potentially at the expense of uniform digital trade standards.
US-Japan Digital Trade Agreement	Prohibits restrictions on cross-border data transfers for business purposes, with exceptions similar to those in USMCA, requiring measures to be necessary and proportionate.	Prohibits data localization requirements, with limited exceptions, aligning closely with USMCA provisions.	Strongly supports free data flows, potentially limiting domestic regulatory flexibility.

2. Literature Review

The rapid rise of data-driven technologies has generated a rich, interdisciplinary literature on **data governance** and digital political economy. A recurring theme is that personal and collective data have become commodities, raising questions of control, value, and rights. Early critical accounts by Zuboff on "surveillance capitalism" emphasized how firms like Google and Facebook monetize user data.[10] More recently, theorists such as Couldry and Mejias have framed this process as **"data colonialism,"** arguing that it extends colonial forms of extraction into the digital realm.[11] In this view, the tech industry's capture of data from previously marginalized populations parallels the annexation of land and resources under historical colonialism. Datafication transforms social life into a stream of extractable bits,

[10] Supra Note 7.

[11] NICK COULDRY & ULISES MEJIAS, THE COSTS OF CONNECTION | STANFORD UNIVERSITY PRESS (2019), https://www.sup.org/books/sociology/costs-connection (last visited May 4, 2025).

which global platforms process and profit from, often without equitable return to the data producers.[12]

Other scholars have extended this analysis to geopolitical scales. As Parvez and others note, the **New Global Colonialism** involves digital infrastructure: global tech giants and Western governments can shape the development paths of poorer countries by controlling their digital lifelines (cloud services, apps, social media).[13] This can reproduce dependencies, as developing countries become "providers of raw data" while their citizens pay to use foreign-owned services.[14] UNESCO and UNCTAD have documented that while data flows have grown exponentially, the value chain is highly concentrated: Western and Chinese firms hold most of the patents, platforms, and AI capabilities, leaving many countries on the periphery of the digital economy.[15]

In response, the concept of **data sovereignty** has gained traction. This term is used by many states (from the EU to India to Brazil) to assert jurisdiction over data and tech in the name of national interest. Theoretically, digital sovereignty debates center on whether data should be treated as a purely economic resource or as tied to individual and collective rights. Some researchers criticize the notion of "data as resource," arguing (e.g. India's approach) that it just reinforces the same extractive paradigm.[16] They call for a *rights-based* approach: not only should states have sovereignty, but individuals and communities should have sovereignty over the data they generate. This literature draws on the "indigenous data sovereignty" movement and the broader decolonial turn, advocating community consent, data co-ownership, and public data trusts. For example, Kaulgud (SPRF) argues that India's policies so far still frame data in extractives terms and urges a shift to people-centric governance.[17]

On governance, scholars differentiate *models* around the world. The EU model emphasizes privacy as a human right (GDPR) and tight control over data flows.[18] The US model prioritizes trade and innovation, generally opposing data localization and favoring free cross-border flows.[19] China promotes state-centric digital infrastructure for security and control. Many Global South countries

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[12] Ibid

[13] Bitange Ndemo, *Addressing Digital Colonialism: A Path to Equitable Data Governance | UNESCO Inclusive Policy Lab*, UNESCO INCLUSIVE POLICY LAB (2024), https://en.unesco.org/inclusivepolicylab/analytics/addressing-digital-colonialism-path-equitable-data-governance#:~:text=The%20rapid%20proliferation%20of%20digitalisation,sided%20dynamics%20of%20data%20exploitation (last visited May 4, 2025).

[14] Supra Note 5

[15] Irion, Ibid.

[16] Supra note 7

[17] Supra Note 1

[18] Supra Note 5

[19] Ibid

(India, Brazil, South Africa, etc.) have watched these debates and adopted hybrid or distinct paths. For instance, Brazil's 2020 data law is inspired by GDPR but includes strict data rights; South Africa's PDPB is still pending. India has proposed data localization in the past and frames its approach in developmentalist terms.[20]

Finally, the literature on **international law and trade** highlights a gap. Traditional trade law (WTO, GATS) largely predates digital data issues. The so-called "privacy bracket" in GATS Article XIV(c)(ii) acknowledges data privacy but does not harmonize rules.[21] Recent plurilateral talks on e-commerce (e.g. WTO Joint Statement Initiative) have touched on data flows, but many developing countries (India, South Africa) have abstained, worried that binding free-flow provisions would disadvantage them.[22] Critics argue that treating data purely as a tradeable commodity ignores social and security dimensions[23]. As Chander and Schwartz note, imposing a one-size regime risks exacerbating the digital divide.[24] In sum, the scholarship is converging on the idea that current global rules are insufficient: they tend to favor the Global North's vision of open markets, while many developing countries seek greater regulatory autonomy. This literature informs our analysis of how India and the Global South navigate the politics of data.

3. India's Digital Strategy and Data Governance

India's approach to data and digital markets provides a compelling case study of the tensions above. On one hand, India has embraced a **digital developmental state** model: it has deployed massive public infrastructures and regulations to expand digital access and use, with the goal of economic inclusion and autonomy.[25] On the other hand, it has also tightened control over data and platforms in the name of national interest, raising concerns about surveillance and protectionism. We analyze these aspects in turn.

3.1 India Stack: Digital Public Infrastructure

Since the 2010s, India has built a suite of **digital public infrastructure** (DPI) often called *India Stack*. This open, layered architecture is aimed at providing scalable digital services to all citizens. The foundation is **Aadhaar**, a unique biometric ID for each resident. As of 2024, over **1.38 billion Indians (97% of the population)** have Aadhaar numbers.[26] Aadhaar's digital identity system allows residents to authenticate themselves for government

[20] Supra Note 1
[21] Supra Note 5
[22] Ibid; Supra Note 6.
[23] Supra Note 5.
[24] Ibid.
[25] Supra Note 2.
[26] Ibid.

welfare, banking, telecom and more. According to a Nasscom report, Aadhaar contributed an estimated **$15.1 billion to India's GDP in 2022**[27] by reducing leakages and transaction costs in welfare programs. It has dramatically lowered costs of onboarding unbanked citizens: for example, the percentage of Indians with bank accounts under the Jan Dhan Yojana scheme rose from 40% in 2014 to 77% in 2023, thanks in part to Aadhaar-based KYC processes.

On top of Aadhaar sits **UPI (Unified Payments Interface)**, India's real-time digital payment system. UPI is an open-source, interoperable interface that allows any bank or fintech app to send and receive payments instantly. It has been wildly successful: in June 2024 alone, India processed **1,388 crore (13.88 billion) UPI transactions** p.[28] In 2023, UPI's total transaction volume reached over 118 billion, dwarfing the throughput of legacy card networks.[29] UPI is now also being rolled out internationally; for example, France became the first EU country to adopt UPI for payments by tourists.[30] The government stresses UPI's contribution to financial inclusion and digitization: as a PIB press release notes, UPI "has contributed to financial inclusion up to the grass root level".[31]

The third layer is **ONDC (Open Network for Digital Commerce)**. Launched in 2022, ONDC is an open e-commerce protocol (not an app) designed to unbundle online retail. Similar in spirit to UPI, ONDC's goal is to let buyers and sellers transact across different applications without being locked into a single platform. By enforcing interoperability among apps, ONDC aims to dilute the dominance of giant marketplaces like Amazon and Flipkart.[32] In theory, a merchant can list products on multiple apps via ONDC, and customers can order from any app of their choice, with the underlying network routing orders. In practice, ONDC is still nascent, but several large Indian startups have joined as participants.[33] The government actively promotes ONDC – for example, by onboarding small sellers

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[27] Ibid.
[28] PIB Delhi, *Government of India Taking Measures to Enhance the Reach of Indian Digital Public Infrastructure*, PRESS INFORMATION BUREAU, Jul. 26, 2024, https://pib.gov.in/pib.gov.in/Pressreleaseshare.aspx?PRID=2037598 (last visited May 4, 2025).
[29] Ritesh Jain, *The Rise of UPI: A New Global Leader in Payments by 2025: By Ritesh Jain*, FINEXTRA RESEARCH (Jun. 6, 2024), https://www.finextra.com/blogposting/26282/the-rise-of-upi-a-new-global-leader-in-payments-by-2025 (last visited May 4, 2025).
[30] DW Team, *France Becomes First EU Country to Launch India's UPI Payment System | Digital Watch Observatory*, DIGWATCH (Feb. 5, 2024), https://dig.watch/updates/france-becomes-first-eu-country-to-launch-indias-upi-payment-system (last visited May 4, 2025).
[31] Supra Note 28.
[32] Supra Note 2.
[33] Ibid.

through workshops – in an effort to create a decentralized digital commerce ecosystem.[34]

Together, these components exemplify India's **open-standards** approach: unlike a privately-owned platform, these DPIs are built on government-laid protocols and are intended to be public goods. The World Bank and G20 have highlighted India's DPI model as innovative for inclusive growth. As one analysis notes: *"At the foundation of India Stack lies…Aadhaar, the world's largest biometric national identification system…built on top of Aadhaar are standards for digital payments, consented data sharing, and unbundled commerce"*.[35] By design, these systems generate massive data (on identity, transactions, location, etc.) that flow through public APIs. The government often points out that such data infrastructure can be leveraged for national development. For instance, a **NASSCOM** report calls India Stack a "Digital Public Infrastructure [that] is accelerating India's digital inclusion".[36] In parliament, officials have similarly stressed that "Digital Public Infrastructures have been developed across various domains, aimed at enhancing accessibility, efficiency, and inclusivity" .[37]

The **economic rationale** is that by pooling data and building public standards, India can reduce dependence on foreign tech and keep more value domestically. The idea is that when Indian fintech and e-commerce firms use UPI and ONDC, they accumulate transaction data that can be monetized in India's economy, rather than flowing out to global giants. India's digital identity and payment systems have indeed spurred domestic innovations: countless payment apps and fintech startups have emerged. Moreover, India has begun **exporting** these models: the PIB press release notes that "India Stack Global" has been rolled out to share Indian DPIs with friendly countries,[38] and that MoUs were signed with over ten countries to replicate India's digital solutions. In short, India Stack is a centerpiece of India's bid to turn digital infrastructure into a national asset.

3.2 Data Localization and Privacy Laws

India's data sovereignty debate has centered on *where* data is stored and who can use it. In the 2010s, the government pursued a strong data-localization stance. The 2019 draft **Personal Data Protection Bill** (based on the Srikrishna Committee Report) introduced strict localization requirements: "sensitive personal data" (health, finance, etc.) had to be stored and processed only in India, and "critical personal data" could not even be transferred abroad.[39] The bill also

[34] Ibid.
[35] Supra Note 2.
[36] Ibid.
[37] Supra Note 28.
[38] Ibid.
[39] Burman, Supra Note 3.

created the concept of "non-personal government data," which the state could requisition from private companies, and gave the government broad exemptions for law enforcement. In other words, India was asserting sovereign control over both personal and non-personal data.

However, legislative delays and industry pushbacks led to a diluted outcome. The **Digital Personal Data Protection Act 2023**, passed in August 2023, *dropped mandatory localization* in its basic text. Instead, it empowers the government to **restrict data flows** by blacklisting (or whitelisting) certain countries.[40] In practice, this means only specific national security or critical data flows might be barred. The Act also contains broad exemptions for "state instrumentalities," effectively allowing the government to tap into data in the name of security or welfare. As IAPP analyst Pareek observes, the new law "soften[ed] data localization provisions" and shifted the focus from a strict rights-based privacy framework toward balancing privacy, innovation, and state interests.[41]

Thus, India's current posture is a calibrated one: there is **no across-the-board firewall** for data, but sector regulators like the Reserve Bank of India (RBI) continue to impose localization for payments data, health data, etc. The RBI's existing rule (mandating, for example, that payment company data reside on Indian servers) was explicitly preserved by the law.[42] Telecom and media regulators similarly retain powers to insist on local storage. The government has signaled, however, that it won't pursue the blanket approach originally mooted. The Carnegie Endowment notes that the 2023 law "reverses course" on localization.[43] In essence, India has chosen a middle path: it projects the rhetoric of data sovereignty (sometimes quoting anti-colonial metaphors)[44] but so far has limited concrete restrictions mostly to strategic domains.

This ambiguity reflects broader tensions. On one hand, data localization is seen by some Indian policymakers as critical for economic security – preventing foreign companies from mining Indian data for their gain.[45] On the other hand, critics warn that forced localization would raise costs for businesses and deter international services. The final legislation, by letting local industries use public infrastructure (India Stack) while retaining targeted privacy protections, tries to balance these concerns.[46] India thus remains at the forefront of the global debate: neither fully open (à la US), nor fully

[40] Ibid.
[41] Supra Note 4.
[42] Burman, Supra Note 3.
[43] Burman, Supra Note 3.
[44] Supra Note 1.
[45] Supra Note 7.
[46] Burman, Supra Note 3; Supra Note 4.

closed (like China), but aiming for a "third way" that protects national interests without severing itself from global technology ecosystems.

3.3 Competition Law and Platforms

Another prong of India's strategy has been to regulate powerful digital platforms under competition law. Historically, the **Competition Commission of India (CCI)** had limited interventions in tech, but in recent years it has taken on major cases. Notable actions include the fines against Google for abusing its Android dominance[47] and against online travel portals (MakeMyTrip, GoIbibo) for anti-competitive parity clauses.[48] The CCI has signaled that it views data control as integral to market power. For example, in a case against WhatsApp's high business fees, the CCI recognized that in a "data-driven economy," data access can be a non-price competition parameter.[49] In February 2024, a high-profile committee (headed by economist Ashok Chawla) recommended that India enact a **new Digital Competition Act (DCA)** with ex-ante rules for large tech firms.[50] This draft bill has since been passed by Parliament (as the Digital Markets, Competition and Consumers Act 2024).

Under the DCA/DMCC, firms designated as "Systemically Significant Digital Enterprises" (SSDEs) – based on thresholds of market share, user-base, or qualitative criteria – would face proscriptions similar to Europe's Digital Markets Act. These include bans on self-preferencing, mandatory data portability, unbundling of apps, and prohibitions on restrictive contracts.[51] Crucially, the draft law would bar platforms from using non-public data gathered from one service to compete against business users on another. (For example, a shopping platform could not use a small retailer's sales data to launch a rival product.) The idea is to prevent data hoarding and anti-competitive leveraging of user data. Such provisions directly confront the tech giants' traditional playbook. The proposed law also contemplates heavy penalties and even structural separations if obligations are violated.

These competition reforms aim to **reclaim control over digital infrastructure** in much the same way that the DPI policy sought infrastructural sovereignty. The CCI itself has advocated an ex-ante regime precisely because "post-facto" antitrust enforcement is slow and reactive. As one analysis notes, India's Digital Markets bill would require designated platforms to deal "fairly, non-discriminatorily and transparently" with other businesses[52] and forbid practices like forced bundling of services. This is a sharp departure from India's earlier

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[47] Sonam Mathur et al., Supra Note 3
[48] Ibid.
[49] Supra Note 2.
[50] Ibid; Sonam Mathur et al., Supra Note 3.
[51] Sonam Mathur et al., Supra Note 3.
[52] Ibid.

hands-off approach and reflects the view that unchecked platforms constitute a form of digital colonialism.

At the same time, this regulatory push has to be balanced against broader market goals. Some critics worry that aggressive rules could stifle innovation or be used opportunistically. India is thus also experimenting with new market structures like open networks (ONDC) to introduce competition from the bottom up. Overall, the trend is clear: Indian competition authorities now see Big Tech's dominance – in data, platforms, and standards – as a national economic issue, not just a matter of consumer prices. The emerging DMCC Act, if implemented vigorously, represents a bold attempt to assert digital economic sovereignty through law.

3.4 Data Sovereignty and Surveillance Concerns

It is important to note that India's data regime is driven not just by economics but also by security and governance considerations. Official discourse often invokes concerns about foreign surveillance and cyber-security. For example, India has banned hundreds of Chinese apps from 2020 onward, citing data leakage risks. The Ministry of Electronics and IT has warned that storing Indian citizens' data abroad could pose national security vulnerabilities. These themes resonate with a populist narrative of techno-nationalism.

However, analysts caution that "digital sovereignty" rhetoric can also legitimize expanded state powers. Rina Chandran's Reuters report (Feb 2024) quotes a digital rights advocate: "Digital sovereignty has roots in the intent to control, and is tied to nationalism… data is valuable".[53] Local platforms and data are easier for the government to regulate and surveil. Privacy activists worry that government-backed DPI systems like Aadhaar could become tools of monitoring if used beyond welfare (for instance, in policing or mass surveillance). Some of these debates have legal overtones: the Supreme Court of India famously upheld Aadhaar while also limiting its use by private entities,[54] reflecting concern about privacy. Yet the newly enacted data protection act has broad exceptions for state use, suggesting that India's model will prioritize national security and welfare programs over individual data rights.

In sum, India's approach is paradoxical: it uses a post-colonial discourse to motivate data sovereignty, yet it simultaneously builds state-controlled infrastructures that could reproduce centralized control (what one law review calls "state-driven digital colonialism").[55] These tensions – sovereignty vs surveillance, market access vs security – characterize the broader Global South challenge. India's case shows how developing countries might attempt a middle path: using digital

[53] Supra Note 6.
[54] Supra Note 2.
[55] Ibid.

tools to empower citizens (inclusion, innovation) while also tightening state oversight of data. Whether the result will be an egalitarian, rights-respecting regime or a new digital authoritarianism remains contested. This complexity underscores why policy recommendations must consider both freedom and development objectives.

4. The Global South Context: Data, Trade, and Power

India's experience is emblematic of wider Global South issues. Across Africa, Asia, and Latin America, similar dynamics play out: enthusiasm for digital growth coexists with anxiety about dependency on foreign tech. Here we analyze the broader patterns.

4.1 Big Tech Dominance and Data Value

Today's largest technology firms are overwhelmingly based in a few Global North countries (especially the US and China). According to UNCTAD (2021), U.S. and Chinese companies account for about **90% of the market capitalization** of the world's top digital platforms.[56] These "big digital" players (Alphabet, Amazon, Meta, Tencent, etc.) control not just consumer apps but entire data networks. They invest heavily in infrastructure (data centers, submarine cables, cloud services) and AI research, securing further leads in the value chain.[57]

This concentration has real economic consequences for developing countries. Studies show that data flows are largely **South-to-North**: data from users in India, Nigeria, Brazil, etc., is collected by Big Tech and then processed in Western or Chinese servers. Only a small fraction of that data's value is captured locally.[58] UNCTAD warns that without intervention, many countries will remain "mere providers of raw data to global digital platforms, while having to pay for the digital intelligence obtained from their data".[59] In other words, developing nations generate data but lack the AI talent, computing infrastructure, and proprietary algorithms to monetize it. This dynamic extends classical trade inequality into the digital realm.

Moreover, data as an **economic asset** is unique: it is non-rivalrous (can be reused countless times) and grows in value when combined with other data. The highest-valued firms today are those that aggregate massive user datasets to fuel targeted advertising, e-commerce, or AI services. For example, advertising revenue in developing markets often goes entirely to Google/Facebook, rather than local media. Digital platforms also use their data advantage to lock in users and sellers, creating network effects that shut out competition. In sum, data is not just another export commodity; it is a

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[56] UN Secretary General, Digital Economy Report 2021,UNCTAD/DER/2021 (29 Sept. 2021)
[57] Ibid.
[58] Supra Note 5.
[59] Ibid

foundational input for future industries (AI, IoT, etc.). This recognition has underpinned many governments' calls to treat data as a **national asset**. In India, for instance, policymakers explicitly framed data as something that Indians generate collectively and that should benefit the Indian economy, not just Silicon Valley.[60]

Yet, as critical scholars point out, calling data a national asset is a double-edged sword.[61] It acknowledges its immense value, but also risks reinforcing a mindset of extraction. True sovereignty over data, they argue, should involve empowering individuals and communities, not only the state. This debate – data as *sovereign resource* vs data as *citizen right* – is playing out in many global forums.

4.2 Digital Protectionism vs Global Integration

Developing countries find themselves in a dilemma. On one side, unrestricted cross-border data flows and open digital trade can enable cheaper services and international market access. On the other side, such openness often favors incumbents in the North and offers little guarantee of fairness to Southern producers. The **tension between digital protectionism and integration** is intense.

India and several peers have been cautious about signing up to trade rules that lock in free data flows. For example, India opted out of the Regional Comprehensive Economic Partnership (RCEP) partly due to concerns that its commitments on data transfers would undermine domestic policy space. Similarly, in WTO negotiations, India and South Africa have resisted extending the 1998 moratorium on customs duties on electronic transmissions unless there are safeguards. In February 2024, Reuters reported that semiconductor industry groups urged India to abandon its plan to impose digital tariffs, warning it would harm India's own chip sector.[62] The industry letter argued that charging duties on e-commerce and data would impede technology transfer and investment. India defended its stance by arguing that, in practice, physical goods (books, movies) are being imported digitally and escaping duties – a loss of revenue for developing economies.[63]

UNCTAD has documented these divisions: while some GS governments push for data flow liberalization, many civil society and smaller-country voices warn that free flow benefits rich countries more. In its 2021 *Digital Economy Report*, UNCTAD warned that the raw data provided by developing countries must be transformed into data intelligence to confer real value.[64] Without accompanying skills, infrastructure and capital, simply exporting data will lock the South into an inferior position. The Report emphasizes that digital divides –

[60] Supra Note 7.
[61] Ibid.
[62] Supra Note 6.
[63] Ibid.
[64] Supra Note 5.

in infrastructure, skills, and regulatory power – make the "assumption about the benevolent effects of cross-border data flows" questionable .[65] In trade terms, it suggests that multilateral commitments to unfettered data flow could widen the Global North–South gap by "channeling multidimensional issues into a silo" of trade law.[66]

On the supply side, the Global South's limited bargaining power means traditional international bodies have struggled to address digital inequality. The WTO has no digital trade chapter yet, and its only "privacy" provision (the GATS Article XIV exemption) is toothless. Plurilateral alliances like the Digital Economy Partnership Agreement (DEPA) include some data provisions, but participation by Southern economies is minimal. In the absence of strong rules, countries have resorted to unilateral measures: China's Great Firewall and data laws, the EU's strict data protection rules (which can act as de facto barriers for non-adequate countries), and India's nascent localization. These actions are often labeled "digital protectionism" in the Western press .[67] In Asia alone, digital protectionism is "on the rise," with countries prioritizing national champions and cybersecurity over cross-border trade.[68]

The risk, analysts warn, is a fragmented Internet: one in which data governance is determined by national interests. Some see analogies to colonial empires negotiating spheres of influence. The EU, for instance, strives for "digital sovereignty" to protect European data and industries, even as it encourages exports of its standards. China likewise builds parallel infrastructure (like its own GPS and social platforms) for autonomy. Developing countries find themselves caught between these tech blocs. On one hand, they resent Western/Chinese dominance; on the other, they also need foreign capital, technology and market access. There are no easy solutions: complete isolation would forgo the benefits of scale and innovation, but blind liberalization may enshrine inequality.

4.3 International Legal Frameworks and Limitations

Given this complexity, what do existing international rules offer? The short answer is: very limited recourse. The WTO's current framework was crafted before data became central. Its General Agreement on Trade in Services (GATS) has a broad "privacy exception" (Article XIV(c)(ii)) but no detailed provisions on data flows. No member has ever been challenged at the WTO over data protection laws. Similarly, the WTO's e-commerce moratorium on digital duties is a one-sided benefit that development critics say costs revenue.[69] Efforts to create a binding digital trade agreement have largely stalled.

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[65] Ibid
[66] Ibid.
[67] Supra Note 6.
[68] *Greenberg Center for Geoeconomic Studies,* ***The Rise of Digital Protectionism (2017).***
[69] Supra Note 6.

In recent years, some multilateral efforts have emerged. The G20 and OECD have launched principles for data governance that emphasize openness *and* trust. For example, the 2023 G20 Leaders' Declaration (New Delhi) explicitly endorsed open, interoperable DPIs.[70] Global forums on AI ethics and digital taxation also touch on data. Yet these are soft norms. The fragmentation of approaches (EU vs US vs China) means no single global standard: data remains largely "up for grabs"[71] unless a country enforces its own laws.

Regional agreements are more concrete but also conflicting. The US-led bloc (through FTAs like USMCA) generally prohibits data localization and cross-border flow restrictions. The EU pushes data adequacy mechanisms and digital taxation. China's digital Silk Road promotes its technology in the Global South. Smaller countries must pick and choose. For instance, many Latin American countries have GDPR-like laws, yet still negotiate trade deals with data clauses favoring US interests. India has become a voice in forums like the WTO's Joint Statement Initiative (JSI) on e-commerce, often aligning with South Africa and others to preserve policy space. For example, India abstained from JSI in 2020 and flagged that free data flow rules could be "trade barriers" if not carefully defined.

In sum, international law currently treats data as both resource and risk, with no clear resolution. Critics argue that placing data governance in trade law could neglect privacy, security and industrial policy concerns.[72] As one Chicago Law Review analysis concludes, treating cross-border data flows as a matter of trade could "broaden the digital divide" rather than ameliorate it. In practice, trade rules remain tentative: India's recent stance (supported by semiconductors firms) to tax digital transmissions shows how countries still rely on old tariff tools. Overall, the legal regime is still evolving, and Global South countries like India are actively shaping it by their negotiating positions, digital infrastructure diplomacy (e.g. G20 DPI forums), and coalition-building (like digital BRICS or partnership with ASEAN on cybersecurity).

5. Data as an Economic Asset and the Politics of Value

The discussions above point to a deeper question: how should developing countries conceptualize **data as an economic asset**? If we follow the data-as-resource metaphor, Indian policymakers are correct to want a share of the value: as the TechReg scholar notes, the Indian state sees data "as a national asset that needs to be protected against the data colonialism of Western Big Tech".[73] This view treats data akin to minerals: if you generate it (within India's borders), its raw form

[70] Supra Note 2.
[71] Supra Note 1.
[72] Supra Note 5.
[73] Supra Note 7.

should at least partly belong to India or Indian firms. By that logic, India's DPI is a way to "nationalize" key parts of the data value chain, forcing foreign firms to interact with Indian standards and regulators.

On the other hand, critics argue that data is not property in the traditional sense. It is non-rivalrous, ephemeral, and bound up with privacy. As the SPRF brief puts it, continuing to use the "data as resource" lens risks perpetuating the same colonial logic: data is "out there" to be mined, but real empowerment comes from shifting to a people-centric approach.[74] Some scholars liken claims of "data sovereignty" to 19th-century *terra nullius*: just because data were un-owned doesn't mean any actor can claim them by fiat.[75]

Nevertheless, in the short term, many governments are pragmatically treating data as a national asset for development. India's Aadhaar database has enabled targeted subsidy transfers that save money; its medical data rules (pending) envisage sharing anonymized patient records to spur research.[76] The government views such collective pools as public goods. This can be economically justified: if foreign companies have first-mover advantage (as one policy document complained),[77] then leaving data flows entirely free would indeed risk sending monetary gains abroad. Recent studies estimate that digital platforms transferred billions out of emerging markets last decade through advertising revenues and patent royalties. In response, India has already imposed digital service taxes on foreign tech (since 2016) and is eyeing digital trade remedies. These measures reflect the belief that data-driven profits should contribute to the domestic economy.

However, the long-run truth is uncertain. Data's value often emerges in complex ways. A developing country might be a big data generator today, but only a fraction translates into domestic jobs or knowledge. Much value creation – the algorithms, models and marketing – still resides with the platforms. Moreover, data requires complementary assets: analytics expertise, cloud computing, high-speed networks. Realizing economic independence thus demands capacity-building, not just retention. India's success in mobile apps and fintech shows promise, but it still heavily relies on imported semiconductors, foreign cloud providers, and global IP.

In international law terms, these issues fall under fuzzy categories. "Intellectual property" regimes partly cover data-derived knowledge (e.g. patents), but not raw personal data. General trade rules focus on goods and services (e.g. telecom service providers), not on data per se. This legal gap leaves countries to juggle unilateral measures (like localization) and ad hoc deals (like data adequacy or tax

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[74] Supra Note 1.
[75] Supra Note 11.
[76] Supra Note 1.
[77] Supra Note 7.

accords). The emerging norm may be that developing countries demand "data remuneration" or technical assistance in exchange for market access – a kind of data-for-development compact yet to be fully articulated. The key point is that data is increasingly seen as central to national wealth and security, and thus to sovereignty issues. Who can rightly "own" or govern it remains a contested question.

6. Policy Recommendations

Drawing on the above analysis, we suggest several policy pathways for India and other Global South nations. They aim to enhance digital sovereignty and value capture **while** avoiding unnecessary isolation.

- **Build and share digital public infrastructure.** Continue investing in open standards and public digital goods (identifiers, payments, etc.) that are interoperable and platform-agnostic. For example, expanding India Stack and similar DPI projects (health IDs, educational credentials, carbon registries) can foster local innovation and reduce transaction costs.[78] Crucially, these systems should be interoperable globally, not fenced off. India's initiatives like the Global Digital Public Goods Repository (launched under its G20 presidency) are steps in this direction. Working with other developing countries to adopt common standards (e.g. Asia-Pacific digital ID interoperability) can spread the benefits while also creating a counterweight to proprietary systems.

- **Strengthen data governance with rights and transparency.** Digital sovereignty shouldn't mean unchecked state control. India can refine its legal framework to more clearly protect individuals' privacy and data rights. This might include enacting a robust personal data protection law (with minimal state exemptions) and establishing independent regulators. Transparency regimes (e.g. algorithms audits, mandatory data-sharing impact assessments) can ensure that any data collected by government DPI is used ethically. India's 2023 law took a step back from mandatory localization – continuing in this pragmatic vein, policymakers should seek to meet core national objectives (security, health, inclusion) without broad-brush restrictions that stifle business. In other words, calibrate data policies to actual harm (cyber espionage, abuse) rather than blanket controls. Civil society and academia should be included in drafting these rules to guard against abuse of power .[79]

- **Develop domestic digital capabilities and regional cooperation.** Beyond laws, countries must build *talent and*

[78] Supra Note 2; Supra Note 28.
[79] Supra Note 2.

infrastructure. For instance, India should promote data science and AI education, subsidize cloud infrastructure, and support startups that use local data pools. Public–private partnerships (e.g. funding open-source software, edge-computing in villages) can democratize access to technology. Regionally, South Asian or ASEAN partnerships on digital skills or research could pool resources and avoid duplication. Similarly, countries might negotiate data-sharing pacts with trusted partners – e.g. India could share agricultural data with African nations (and vice versa) under mutual benefit agreements, strengthening ties and capabilities.

- **Engage strategically in global rulemaking.** Developing countries should form coalitions to influence international norms. For example, India and African nations could jointly propose UN guidelines on cross-border data flows that include exceptions for developmental programs and privacy. Participation in forums like the Internet Governance Forum (IGF) or UN Data Forums can amplify Global South perspectives. In trade negotiations, India should continue to insist on carve-outs (as in GATS Article XIV) for legitimate public policy, while seeking balanced commitments. This could mean agreeing to free flow of de-identified data for academic research but allowing restrictions on personal or strategic data. India's recent participation in the CPTPP talks could be used as leverage to shape digital trade terms favorably.

- **Use competition and regulatory tools judiciously.** The new Digital Competition Act (DMCC) provides a framework to curb excessive platform power – but it must be implemented transparently. Regulators should monitor compliance by SSDEs, especially foreign tech firms, and apply remedies (portability, unbundling) consistently. At the same time, enforcement should not discriminate against foreign firms arbitrarily; the rules should be clear enough to also apply to any emerging Indian giants (e.g. Jio Platforms). Sectoral regulators (finance, telecom) should harmonize their policies: for example, ensuring that RBI's data rules complement rather than contradict the national privacy law. In the data economy, consider also introducing data trusts or cooperatives (as some OECD think tanks suggest) to give communities a stake in data governance.

- **Balance protectionism with market openness.** Finally, avoid extremes. India's slowness to liberalize data flows can be a bargaining tool, but overprotection risks leaving the country technologically isolated. For example, imposing tariffs on electronic transmissions (as discussed at WTO) could backfire by increasing costs for Indian tech firms that rely on global

components.[80] Instead, consider "digital safeguarding" measures: short-term duties in crisis (like a sudden flood of cheap spam bypassing customs) coupled with time-bound review. Engage in reciprocal digital market access deals – for instance, Indian tech could gain something in return for allowing certain foreign services, similar to how India negotiates in goods and services trade.

- **Promote equitable data use internationally.** As a long-term goal, support global initiatives for fair data governance. This could include advocating for multilateral mechanisms where data-intensive companies must share algorithmic insights or pay into development funds, akin to digital royalties. Also, work on common standards (with EU, AU, UN) for data portability and interoperability, so that citizens can move their data (like credit scores) between countries seamlessly, reducing lock-in. This helps maintain a global market for Indian services (ease of data flow *out* when it benefits India).

In summary, policy should aim to **maximize local value capture** while **not walling the country off**. This means building up domestic tech ecosystems, ensuring data rights, and cooperating internationally, rather than assuming isolationist policies alone will deliver prosperity. India's early DPI success and regulatory activism show potential paths, but also highlight pitfalls. Lessons from other Global South countries suggest that multilateral engagement (e.g. a "Developing Countries Digital Alliance" in WTO) combined with national capacity-building may be the most sustainable route to digital economic independence.

7. Conclusion

The question "Who owns the Global South's data?" has no simple answer. In practice, data ownership and control are distributed among multiple actors: citizens who generate data, firms that collect and analyze it, and states that legislate its use. Historically marginalized countries have rightly recoiled at the notion that all this new resource should be gobbled up by foreign corporations. Many are thus framing data sovereignty as a sovereign right and taking concrete steps – India's experience being foremost among them – to stake a claim on data-generated value. India has built one of the world's largest digital ecosystems (Aadhaar, UPI, etc.) explicitly to keep data within national development loops. It has also enacted laws and proposed regulations aimed at curbing external domination of its digital markets.

Yet this assertion of control intersects with other values. Data sovereignty initiatives can boost privacy and local innovation, but they can also empower heavy-handed surveillance or digital isolation.

[80] Supra Note 6.

Internationally, the Global South's interests are conflicted: it needs access to global knowledge and capital flows while guarding against unequal data exchange. Current international trade and law regimes do not adequately protect these dual needs. The WTO's stances unilaterally determined trade deals, and tech alliances fall short of reconciling sovereignty with openness.

Our analysis suggests a balanced path forward. Developing countries should continue building open digital infrastructures that serve public goals and strongly defend citizens' data rights. They should negotiate collectively for data governance rules that recognize developmental differences – for example, by allowing limited data localization for nascent sectors, or by investing in shared AI capabilities. Trade agreements can include flexible clauses that respect privacy and cybersecurity exceptions. Simultaneously, integration into the global digital economy must not be forfeited: participating in international standards-setting and tech partnerships (e.g. in AI research, 5G) will help the Global South avoid technological lockout.

Ultimately, "ownership" of data in the Global South may come to mean a shared stewardship: governments, private sector and communities collaborating to ensure data resources fuel inclusive growth. India's experience shows both the promise and complexity of this endeavor. Its model – of digital public infrastructure plus assertive regulation – offers lessons but also cautions. The key is not to mimic old colonial patterns in new guise, but to forge an equitable data order where the Global South has real agency. Achieving that requires innovation not just in technology, but in law, policy, and international cooperation. Only through deep engagement – domestically and globally – can developing countries turn the data deluge into a tide that lifts all, rather than a trickle that sustains a few.

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Assessing the Effectiveness of Cleanliness and Sanitation Initiatives in Dhamtari Block of Chhattisgarh

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Abstract

The research paper explores the effectiveness of cleanliness and sanitation initiatives in the Dhamtari block of Chhattisgarh, India, with a focus on the Swachh Bharat Abhiyan. Cleanliness and sanitation are critical for public health, and overall community well-being. The study evaluates the impact of local sanitation programs by analyzing key indicators such as infrastructure development, community participation, behavioral change, and health outcomes. Through a combination of surveys, interviews, and field observations, the research identifies successes and challenges in the implementation of these initiatives. The findings reveal that while significant progress has been made in the construction of sanitation facilities and raising public awareness, challenges persist, particularly in maintaining these facilities and ensuring long-term behavioral change. The study also highlights the importance of community engagement and local governance in sustaining sanitation practices. Effective leadership, consistent monitoring, and strategic partnerships with local organizations were identified as crucial factors in driving success.

Keywords: Sanitation, Waste Management, Swachh Bharat Abhiyan, Community participation, Rural development.

Introduction

Cleanliness and sanitation are fundamental aspects of public health and community well-being. Effective sanitation practices contribute to the prevention of diseases, improvement of living standards, and

overall development of a region. Recognizing the critical role of hygiene, the Government of India launched various initiatives, including the Swachh Bharat Abhiyan (Clean India Mission), aimed at improving sanitation infrastructure, promoting hygienic practices, and eradicating open defecation across the country. The tradition of open defecation was mostly prevalent in both rural and urban areas of Dhamtari. These programs have been pivotal in mobilizing communities, raising awareness, and driving behavioral change towards better hygiene practices.

Dhamtari is abbreviated from "Dhamm" and "Tarai". Dhamtari is situated in fertile plains of Chhattisgarh region. Dhamtari district is officially formed on 6th July 1998 dividing the Raipur district along with Mahasamund district. The Dhamtari block is one among the four blocks of the Dhamtari district. The Dhamtari block in Chhattisgarh has been an active participant in these national efforts, implementing various cleanliness and sanitation programs at the local level. This study aims to evaluate the performance of cleanliness and sanitation initiatives in Dhamtari, focusing on key indicators such as infrastructure development, community participation, health outcomes, and the sustainability of these programs.

Literature Review

Anjali Malan, Meenakshi Suhag, Pankaj Kumar Gupta, Hardeep Rai Sharma (2023) in their research paper titled 'Water, sanitation, and hygiene practices among rural households and related health impacts: a case study from some North Indian villages' highlighted that rural areas often struggle with maintaining sanitation facilities due to limited financial support and technical expertise. The study pointed out that while toilet construction has been a significant focus, the maintenance of these facilities and the management of waste remain underdeveloped.

Parameswaran Iyer (2019) in his book "Swachh Bharat Revolution" provides an in-depth narrative of the Swachh Bharat Mission (SBM), India's ambitious nationwide campaign launched in 2014 to achieve universal sanitation and eliminate open defecation. The book offers insights from the perspective of policymakers, implementers, and beneficiaries, presenting a comprehensive account of how this social revolution was driven across the diverse and challenging landscape of India.

The Joint Monitoring Programme (JMP) report by WHO and UNICEF (2021) emphasizes the need for integrated approaches combining infrastructure development, community engagement, and policy support to sustain improvements in sanitation. These global insights provide a foundation for evaluating local sanitation efforts,

such as those in Dhamtari, by establishing universal benchmarks for effectiveness.

Objectives

(1) To Evaluate the Sanitation Infrastructure of Dhamtari block of Chhattisgarh.

(2) To Analyze behavioral change by assessing the Swachh Bharat Abhiyan has affected peoples of Dhamtari and their attitudes towards hygiene and sanitation.

(3) To Evaluate the Health Outcomes of the Swachh Bharat Abhiyan's implementation in the Dhamtari area.

Methods

This paper utilizes a mixed-methods approach, combining quantitative data analysis and qualitative insights from field surveys and interviews. Quantitative data includes government reports, surveys, and census data, while qualitative data is derived from interviews with policymakers, Representatives of Panchayats, Government Servants, farmers, laborers, students women and beneficiaries of the Swachh Bharat Abhiyan.

Table:1 Outline for Data Collection:

S. No.	Selected Blocks	Selected villages	Selected Number of Respondents for Interview
1	Dhamtari	Achhota	20
2		Kharenga	20
3		Demar	20
4		Nawagaon	20
5		Sambalpur	20
Total	1	5	100

The data collection for this research is structured around a systematic selection of respondents from five villages within the Dhamtari block: Achhota, Kharenga, Demar, Nawagaon and Sambalpur. To ensure a comprehensive and representative analysis, the study covers 5 villages across the blocks, with equal distribution across the selected areas. In each village, 20 respondents were selected for interviews based on random sampling method to include a mix of households, local leaders, and stakeholders involved in sanitation programs. The study conducted 100 interviews in total, with 20 respondents from each village. This structured methodology provides a robust data set, helping to draw meaningful conclusions about the overall effectiveness of cleanliness and sanitation initiatives in Dhamtari block.

Hypothesis

1. The Swachh Bharat Abhiyan has led to a significant reduction in open defecation in Dhamtari block. There is a positive correlation between the implementation of the Swachh Bharat Abhiyan and improved sanitation facilities in households in Dhamtari block.

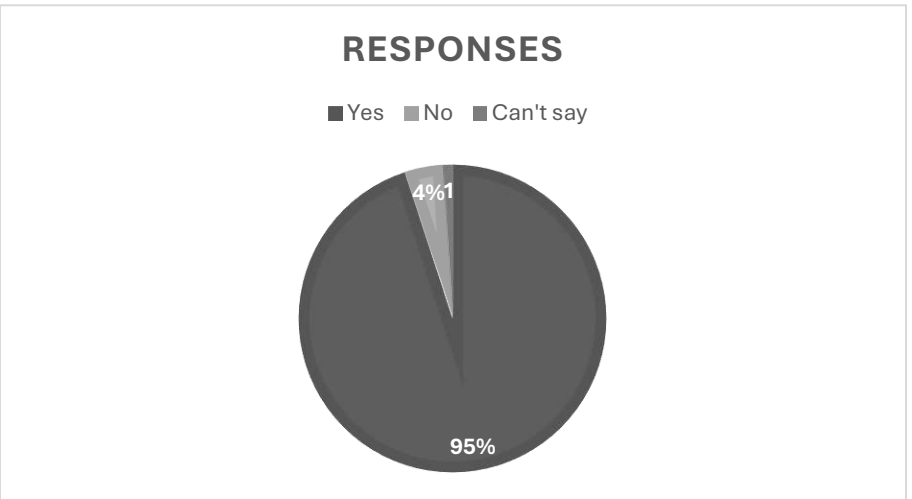
2. Community participation plays a crucial role in the Positive implementation of the Swachh Bharat Abhiyan in Dhamtari block.

3. The Swachh Bharat Abhiyan has improved overall cleanliness and hygiene practices among residents of Dhamtari block.

Research Area: Villages of Dhamtari Block: Evaluation of Effectiveness of Cleanliness and Sanitation Program with special reference to Swachh Bharat Abhiyan.

Question 1. Did you observe any major improvement regarding sanitation in your block because of Swachh Bharat Abhiyan?

S.No.	Responses	Frequency	Percentage
1	Yes	95	95%
2	No	4	4%
3	Can't say	1	1%
4	Total	100	100%



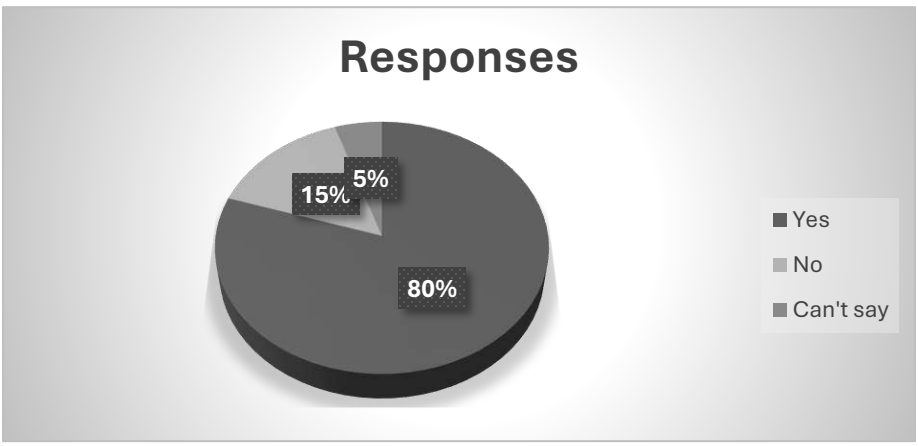
Analysis:

The data shows that the Swachh Bharat Abhiyan was recognizes as successful by most of the population in the block. In response to the question most respondents (95%) noticed an improvement in

sanitization in their area particularly with respect to open defecation, that has been significantly reduced due to the Swachh Bharat Abhiyan. A good and healthy tradition has developed because of this scheme, which is beneficial for all. A small minority (4%) did not observe any improvements. This may be due to the changes not being as visible or impactful to them. Only 1% of respondents were unsure if any improvements were made. This may suggest a lack of awareness or engagement with sanitization improvements.

Question 2. Has the Swachchha Bharat Abhiyan impacted the overall cleanliness and sanitation levels in Dhamtari block?

S.No.	Responses	Frequency	Percentage
1	Yes		80%
2	No		15%
3	Can't say		5%
4	Total		100%



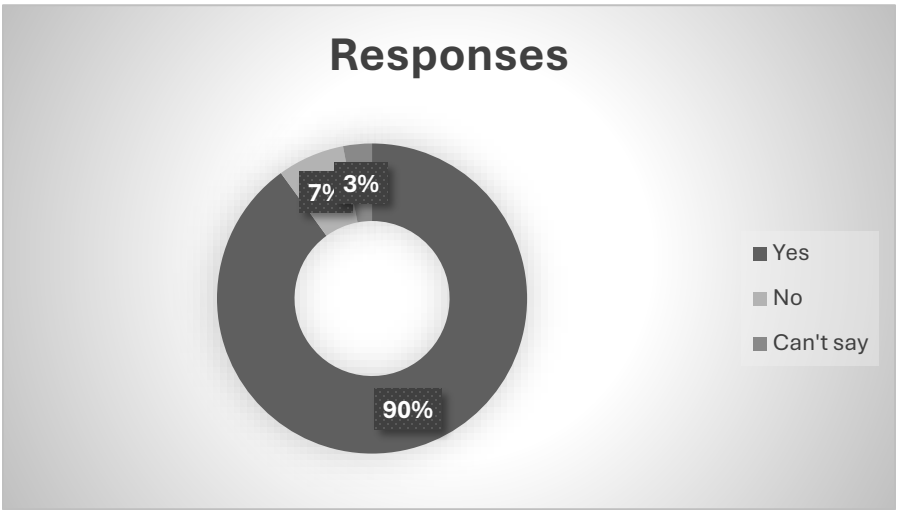
Analysis:

The data for this question reflects public perceptions of the impact of the Swachh Bharat Abhiyan on cleanliness and sanitation levels in the Dhamtari block. Overall cleanliness and sanitation levels increased drastically due the campaigning of this scheme. This thing has been affirmed by 80% of the respondents with reference to the question. The role of Government was very significant, and the use of social media was impressive that improved waste management, sanitation infrastructure, and hygiene practices in the region, resulting in noticeable benefits for most people. 15% of respondents said that campaign has not impacted the cleanliness and sanitation levels possibly due to uneven implementation, local challenges, or inadequate resources in certain parts of the block. They believe that a lot of money was spent and corruption took place in this scheme. A

small amount 5% of respondents did not say anything regarding the answer to this question. This could reflect a lack of awareness or engagement with the sanitation improvements, or that any changes may not have been immediately visible to them.

Question 3. Did the Government implement specific strategies and initiatives under the Swachh Bharat Abhiyan in Dhamtari block? If yes, please explain.

S. No.	Responses	Frequency	Percentage
1	Yes		90%
2	No		7%
3	Can't say		3%
4	Total		100%



Analysis

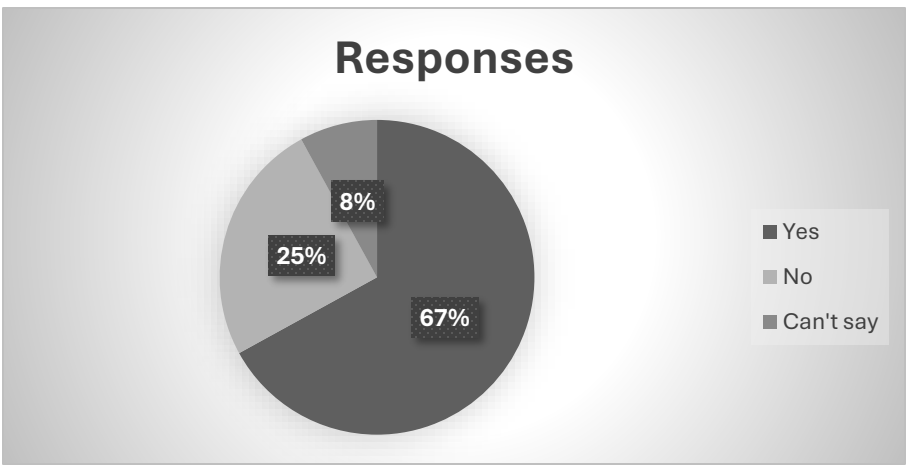
This question assesses the public's awareness of government efforts and specific initiatives implemented under the Swachh Bharat Abhiyan. The Block Administration and local representatives played an important role for monitoring of the program. Committees were organized in panchayat and town levels of Dhamtari for monitoring open defecation and cleanliness program in respective areas. If any person goes against the rules, then committees fine those people. committee members used to take round of inside and outside of villages and towns in the day and night so that no person break the rules. Kotwar used to promulgate (Munaadi) at rural level regarding

the scheme that has significantly impacted villagers' awareness. the scheme was highly supported particularly by women because it boosted the moral and supported the self-respect of them buy prohibiting open defecation which was humiliating for them.

Regarding the question an overwhelming majority (90%) of respondents indicated that the government implemented specific strategies and initiatives like construction of public toilets, door-to-door waste collection, awareness campaigns, or setting up waste segregation systems under the Swachh Bharat Abhiyan in Dhamtari. A small minority (7%) of respondents did not believe that the government implemented specific strategies. A very small percentage (2.5%) were unsure about whether any specific government strategies were implemented.

Question 4. Has the Swachh Bharat Abhiyan influenced the health outcomes of the residents in Dhamtari block?

S.No.	Responses	Frequency	Percentage
1	Yes	67	67%
2	No	25	25%
3	Can't say	8	8%
4	Total	100	100%



Analysis:

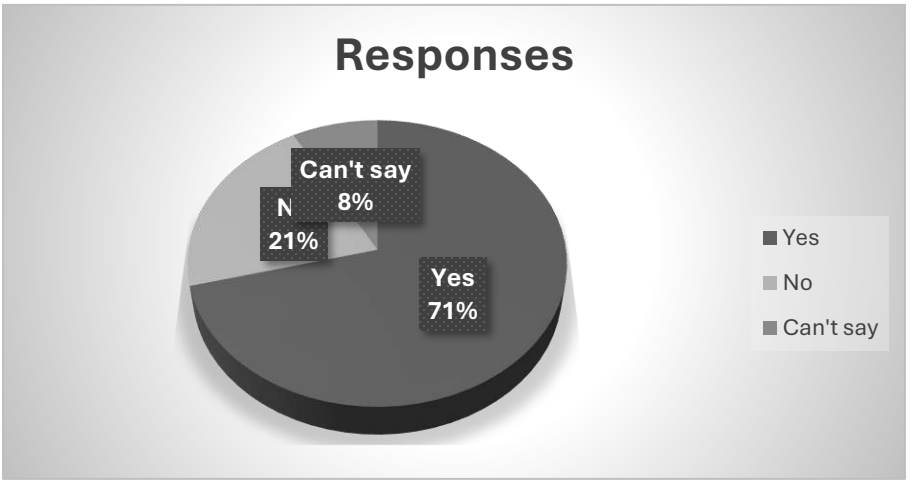
This question evaluates whether the Swachh Bharat Abhiyan has had an impact on the health outcomes of residents in the Dhamtari block. Earlier, there were many patients which were suffering from diarrhea, vomiting, food poisoning piles and fistula but now these years patients of these diseases have been reduced surprisingly. One of the reasons behind the piles and fistula was not timely going to toilet people used to go for open defecation due to lack of access of toilets. This issue has

been significantly reduced after the construction of toilets because of the scheme. Because of the Swachchha Bharat Abhiyan people are using toilets and dumping waste in proper process, so it is positively impacting the Cleanliness and sanitation and that is a result of Swachh Bharat Abhiyan.

These can be corroborated from the response of respondents. Where 67% of respondents believe that the Swachh Bharat Abhiyan has positively influenced the health outcomes of the residents. The scheme contributed to better public health, likely reducing the incidence of diseases linked to poor sanitation, such as diarrhea, cholera, and respiratory infections. A quarter of the respondents 25% did not feel that the campaign had any noticeable impact on health outcomes. This could indicate that while sanitation efforts were made, they may not have been sufficient in all areas. A small portion 8% of respondents were unsure whether the campaign had influenced health outcomes. This may reflect a lack of direct awareness of health-related improvements,

Question 5. Is the funeral process of animals being a stumbling block for the implementing of the sanitation and cleanliness program in Dhamtari block? If yes, please explain.

S.No.	Responses	Frequency	Percentages
1	Yes	71	71
2	No	21	21%
3	Can’t say	8	8
4	Total	100	100%



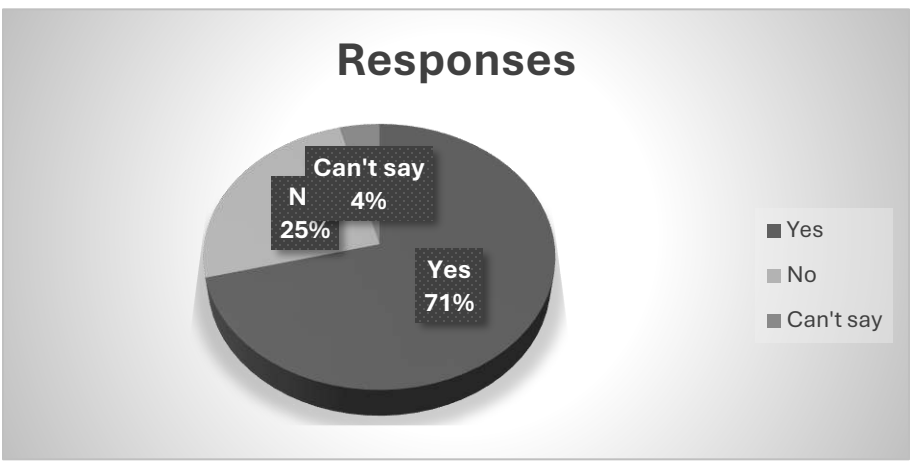
Analysis:

This question investigates whether the disposal of dead animals is hindering the implementation of the sanitation and cleanliness efforts under the Swachh Bharat Abhiyan in Dhamtari block

A significant majority (71%) of respondents indicated that the funeral process of animals is indeed a stumbling block for the sanitation and cleanliness program. This suggests that improper disposal of animal remains or a lack of efficient burial or cremation processes may be undermining the broader goals of Swachh Bharat Abhiyan, possibly leading to health risks, foul odors, and an unsanitary environment. 21 % of respondent are in opinion that funeral process of animals is naturally right and not a significant obstacle. This tradition has been practiced for centuries, and through the process of animal funerals, many other living animals and birds find sustenance. small percentage (8%) of respondents were unsure about whether the funeral process of animals is impacting the sanitation program.

Question 6. Do you agree that the Swachh Bharat Abhiyan contributed to the improvement of waste management practices in Dhamtari block?

S. No.	Responses	Frequency	Percentage
1.	Yes	71	71%
2.	No	25	25%
3.	Can't say	4	4%
4.	Total	100	100



Analysis:

This question evaluates the perception of the Swachh Bharat Abhiyan's role in improving waste management practices in the Dhamtari block.

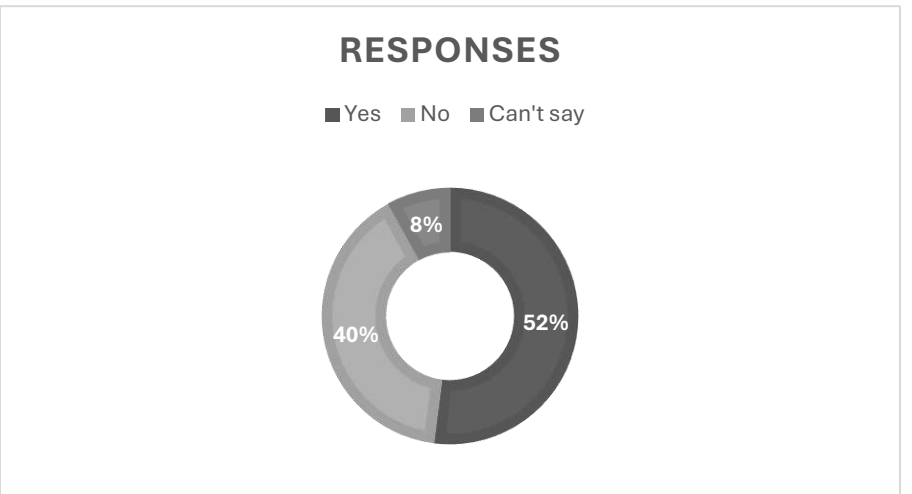
In Dhamtari block the Swachh Bharat Abhiyan has contributed significantly to the improvement of waste management practices and the campaign has focused on creating awareness about the importance of proper waste disposal and segregation. It has also facilitated the establishment of waste collection systems and the focusing the

construction of waste treatment plants. Additionally, the campaign has encouraged the adoption of sustainable practices such as composting and recycling. These efforts have led to a noticeable reduction in open dumping of waste and improved overall waste management practices in Dhamtari block, resulting in a cleaner and healthier environment for its residents.

71% of the respondents believe that the Swachh Bharat Abhiyan has contributed to improving waste management practices in the area. The high percentage reflects a broad recognition that the campaign has led to tangible improvements in public sanitation, such as the introduction of door-to-door waste collection, more efficient waste segregation, and the establishment of disposal facilities. 25 % of respondents said that execution of Swachh Bharat Abhiyan was not satisfactory. These responses point to a need for further action or reinforcement of existing programs to address these gaps. 4% of respondents were uncertain about the impact of the Swachh Bharat Abhiyan on waste management. This group may not have enough information or awareness of waste management practices in their area, or they might not have noticed significant changes.

Question7. Do you believe that there is need of improvement of Ghuruwa System?

S. No.	Responses	Frequency	Percentage
1	Yes	52	52%
2	No	40	40%
3	Can't say	8	8%
4	Total	100	100%



Analysis:

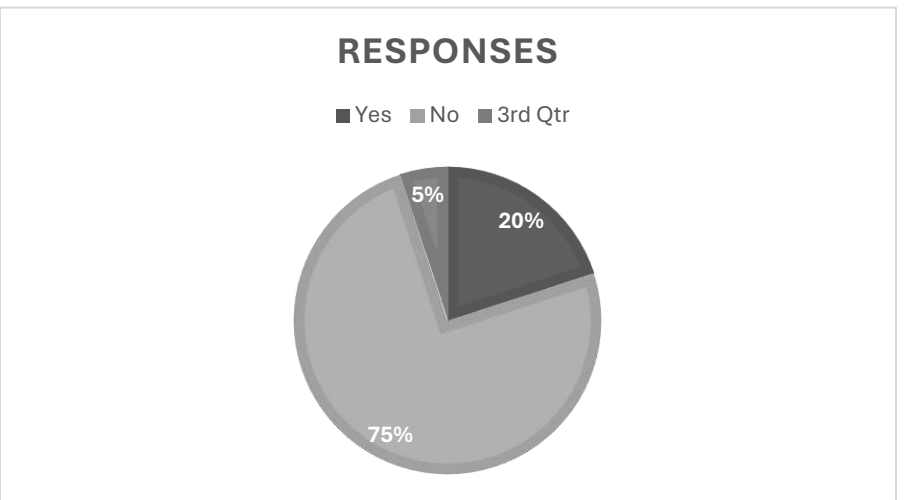
It is important to note that the **Ghuruwa System** is a traditional waste management and composting practice prevalent in the villages of

Chhattisgarh. It focuses on recycling organic waste, such as agricultural residues, kitchen waste, and animal dung, by turning them into compost in nearby area. Ghuruwa system is beneficial for rural areas because it provides a major source of natural fertilizer but main issue with this is its unsystematic dumping of waste and place of disposal. Generally, people use roadsides for Ghuruwa which is unhygienic and unpleasant that creates hurdles for cleanliness.

A slight majority 52% of respondents accepts that the Ghuruwa System needs improvement in response to the question. Improvements could include modernization, better infrastructure, or integration with contemporary waste management practices to make it more efficient. According to 40 % of Respondents there is no need of improvement of Ghuruwa system. In their opinion the traditional system is working well and continues to meet the needs of the community. A small percentage (8%) of respondents were unsure about whether the system needs improvement.

Question 8. Do you have any recommendations for further improving the effectiveness of the Swachh Bharat Abhiyan in Dhamtari block? If Yes give your inputs.

S.No.	Responses	Frequency	Percentage
1	Yes	20	20%
2	No	75	75%
3	Can't say	5	5%
4	Total	100	100%



Analysis:

A minority of respondents (20%) provided recommendations for improving the Swachh Bharat Abhiyan. Because they believe there are

areas that need further attention or reform. This includes suggestions related to better waste management, increased public awareness, more robust enforcement of sanitation laws, and infrastructural improvements.

First, Encouragement and enforcement of the segregation of waste is required at the household and community levels into biodegradable and non-biodegradable categories. Awareness campaigns and penalties for non-compliance can help. Construction of more waste treatment plants and composting units, especially in rural areas is needed.

Second, there is a need to focus on Sustained behavior change through continued awareness campaigns and community engagement activities. This can include the promotion of hygiene practices and the importance of proper waste disposal, door-to-door campaigns, and engaging school children as ambassadors.

Third, there should be a stronger emphasis on monitoring and evaluation to ensure that the objectives of the campaign are being met. This can help in identifying areas that need improvement and in adjusting strategies accordingly.

Fourth, there is a need for better coordination among different stakeholders, including the local government, NGOs, and community leaders, to ensure a more integrated approach to sanitation and waste management.

Finally, there should be efforts to address the infrastructure gaps, such as the construction of more public toilets and the improvement of waste collection and treatment facilities, to ensure that the campaign's goals are achieved in a sustainable manner.

A significant majority (75%) of respondents did not offer any recommendations. This suggests that a large portion of the population is either satisfied with the current implementation of the Swachh Bharat Abhiyan or does not have specific suggestions for improvement. A small percentage (5%) were unsure about whether they had any recommendations.

Findings:

First, there is a need to focus on improvement of Ghuruwa System. Ghuruwa is a major obstacle for cleanliness of roadsides of villages. Villagers generally made Ghuruwa in the Galli Road or main roadside of the villages and because of the Ghuruwa cleanliness and hygeuine of villages impacts. As well as beautification of villages impacts. So we should work on improvement of Ghuruwa system in the villages.

Second, proper carcass process of animals should take place because it is observed by everyone who leave in villages and towns that

whenever animals dead then what happens people dispose dead body of animal at the roadside and consequence of this action is bad smell and unhygienic, unpleasant situation seen by everyone who pass that road. So there is a need to work on it.

Third, Drainage system in villages is poor, many of the villages do not have Drainage system. Because of this unhygienic environment takes place in villages there is requirement of proper Drainage system in villages.

Fourth, there is a need for sanitation of ponds. In the villages people use ponds for bathing themselves and animals. But now these days people are ignoring ponds for bathing because ponds look unhygienic and unpleasant. The water of ponds is polluted and even the color of water looks dark green because of ignoring sanitation of ponds. But there is no other way for poor people who have no other source for bathing, and it is compulsion for them.

Achievements: In Dhamtari block, the result of sanitation programme is seen in more successful way. Before the Swachchha Bharat Abhiyan, people of Dhamtari blocks were not much aware of sanitation methods, many of the people uses open defecation and not dump properly garbage. Swachchha Bharat Abhiyan made people conscious about hygiene and sanitation. This scheme made habit in people to use toilet and because of this scheme people are making new hygienic toilet for us. consciousness of people shows in community in example of demanding implementation of sanitation schemes from government.

Conclusion:

Launched in 2014, the Swachh Bharat Abhiyan sought to rid India of open defecation by the year 2019. Its efficacy in the Dhamtari block is evaluated, and both achievements and difficulties are found.

The increased coverage of toilets is one of the major accomplishments of the Swachh Bharat Abhiyan in the Dhamtari block. Numerous restrooms were built as a result of the effort, greatly lowering the incidence of open defecation. This enhanced health and sanitation while also promoting dignity, especially for women and children. Furthermore, the initiative's awareness initiatives have raised awareness of the value of hygiene and cleanliness in the community.

In addition, the Swachh Bharat Abhiyan has started to modify Dhamtari locals' behaviour. People are increasingly more aware of proper cleaning techniques and waste disposal. People are becoming more involved in the community and taking ownership of keeping their surroundings clean. This mentality change is essential to maintaining the campaign's long-term effects.

Nevertheless, difficulties still exist despite these successes. In Dhamtari block, proper waste management is still a challenge. Even while there is more awareness now, it is still difficult to translate that understanding into regular action, particularly in rural regions. To properly handle this issue, infrastructure development—such as waste treatment facilities and garbage collection systems—needs to be improved even further.

Furthermore, ongoing work and funding are needed to keep the Swachh Bharat Abhiyan moving forward. Mechanisms for monitoring and evaluating progress must be reinforced to guarantee that it is sustained and expanded upon. To further reinforce good habits and handle any new issues, continuous behavioural change communication is required.

In conclusion, the Dhamtari block's sanitation and cleanliness have significantly improved thanks to the Swachh Bharat Abhiyan. The citizens' awareness has grown, their use of the restrooms has expanded, and behavioural changes have begun. Nonetheless, issues like managing garbage and maintaining community involvement still exist. To achieve the full potential of the Swachh Bharat Abhiyan and guarantee a clean and healthy environment for the people of Dhamtari block, sustained dedication, investment, and innovation are needed.

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Democratising Knowledge Access: The Legal and Policy Analysis of One Nation One Subscription

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Abstract

The interplay of copyright law and academic publishing significantly impacts access to scholarly knowledge. While copyright law incentivises creativity and innovation, it often reinforces publisher-centric frameworks, limiting equitable access to research. The Access to Knowledge movement and the open-access paradigm are discussed as responses to these systemic issues, with particular attention to various models of Open-Access, each offering unique challenges and opportunities. India's "One Nation One Subscription" scheme is a recent initiative to democratise access to academic resources. While ONOS promises nationwide access to scholarly materials, it retains the traditional subscription model, raising concerns over its alignment with open-access principles.

This paper examines how the control of content in academic publishing by major players perpetuates knowledge inequality, particularly in the Global South. The paper analyses the concerns of the ONOS scheme over its alignment with open-access principles. This study advocates for a balanced legal framework that supports both publishers' sustainability and unrestricted, public access to research by analysing the limitations of copyright law to offer universal access in a subscription-based model. The findings emphasise the need for transformative policies integrating reforms in copyright licensing policies to foster a globally inclusive knowledge ecosystem.

Keywords: Scientific Knowledge, Information dissemination, Copyright, Scholarly communication, Open-Access, One Nation One Subscription, India

1. Introduction

Research is one of the most prominent factors in the development of not only an individual but also society. It generates the knowledge to enhance existing literature on the subject and creates scope for further study. Researchers around the globe are motivated to disseminate that scientific knowledge to their peers through scientific journals, books, conference papers, and presentations. The critical point here is that most of the means of disseminating knowledge are controlled by a few big publishers.[1] Since the knowledge is held in the hands of few, the inaccessibility of scientific knowledge is a persistent global issue that disproportionately affects researchers, educators, and students, particularly in the Global South. While scientific publishing aims to disseminate research, the current system often prioritises profit over accessibility. Most high-impact academic journals operate on a subscription-based model, with exorbitant costs making access a privilege of affluent institutions. This creates a systemic divide in the global research ecosystem, as many scholars from developing nations cannot afford to access critical resources, further perpetuating knowledge inequality.[2]

Multiple different disruptions characterise the academic publishing market.[3] Researchers frequently submit their work to journals for free as they do not seek any monetary gain for their work. Instead, they are more interested in advancing the dissemination of their work through high-impact journals to add reputation to their credit. Under traditional publishing contracts, authors commonly transfer exclusive copyright to publishers, handing them the sole right to distribute and monetise the knowledge.[4] This model positions publishers as gatekeepers of knowledge, allowing them to impose high subscription fees and enforce restrictive access policies. For instance, global publishing giants control vast portions of scholarly literature, leveraging their oligopoly to dictate terms.[5] The consequences of this model extend beyond financial barriers, as it not only hinders the primary motivation of the researchers to disseminate scientific knowledge to the world but also restricts the acquisition of the same by the public. Even publicly funded research, paid by taxpayer money,

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[1] J.M. Owen, *The New Dissemination of Knowledge: Digital Libraries and Institutional Roles in Scholarly Publishing*, 9 J. Econ. Methodol. 275, https://doi.org/10.1080/1350178022000015113 (2002).

[2] D. Vervoort, X. Ma & H. Bookholane, *Equitable Open Access Publishing: Changing the Financial Power Dynamics in Academia*, 9 Glob. Health Sci. & Prac. 733 https://doi.org/10.9745/ghsp-d-21-00145 (2021) .

[3] A. Esteve, *Copyright and Open Access to Scientific Publishing*, in IIC 55, 901, 901–26 (2024), https://doi.org/10.1007/s40319-024-01479-z.

[4] M.P.R. Mohan & A. Gupta, *Right to Research and Copyright Law: From Photocopying to Shadow Libraries*, SSRN Elec. J., https://doi.org/10.2139/ssrn.3930041 (2021).

[5] An, Y., Williams, M. & Xiao, M., *The Cost of Knowledge: Academic Journal Pricing and Research Dissemination*, SSRN Elec. J., https://doi.org/10.2139/ssrn.4691124 (2024)

frequently ends up behind paywalls, limiting its societal impact.[6] In addition to the dysfunctional academic publishing market, copyright law reinforces the publisher-centric framework by granting publishers long-term control over using and reusing scientific knowledge. Researchers seeking to share or adapt their own work often face legal hurdles, stifling innovation.

At the heart of this issue is copyright law, having a vital role in the academic publishing market.[7] Copyright serves as a foundation of scholarly publishing, influencing how scientific research is disseminated, shared and protected.[8] It is thus imperative to under the implications of conditions for the transfer of copyright so authors can better navigate the intricacies of scholarly communication.[9] Copyright grants exclusive rights to creators and owners of the work to control the use, distribution, and reproduction of their works. While this incentivises creativity and innovation, it also costs society by keeping the knowledge behind paywalls or licensing restrictions, especially in the case of educational and scientific knowledge.[10] A primarily ignored "serial crisis" currently haunting researchers all around the globe can be addressed through the understanding of the social dimension of copyright law and framing of socially viable policy copyright.[11]

It is accepted view that the fundamental function of copyright law is to provide access not as an exception but as a right of the user. It is not only utilitarian in purpose by incentivising the creation of works of artistic and scientific nature, but it is also utilitarian in the sense that these productions should be used to create further and produce works that serve the advancement of knowledge in society.[12] However, in the industrialised and globalised world, to limit the

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[6] Tennant, J.P., Waldner, F., Jacques, D.C., Masuzzo, P., Collister, L.B. & Hartgerink, C.H.J., *The academic, economic and societal impacts of Open Access: an evidence-based review*, 5 F1000Res. 632, https://doi.org/10.12688/f1000research.8460.3 (2016).

[7] Esteve, *supra* note 3.

[8] K. Bowrey, T. Cochrane, M. Hadley, J. McKeough, K. Pappalardo & K. Weatherall, *Managing Ownership of Copyright in Research Publications to Increase the Public Benefits from Research*, 52 Fed. L. Rev. 3, https://doi.org/10.1177/0067205X231213676 (2024).

[9] S. Puehringer, J. Rath & T. Griesebner, *The Political Economy of Academic Publishing: On the Commodification of a Public Good*, 16 PLoS ONE e0253226, https://doi.org/10.1371/journal.pone.0253226 (2021).

[10] F. O. Majekolagbe, *Public Domain and Access to Knowledge*, 31 J. Intell. Prop. L. (n.d.), https://digitalcommons.law.uga.edu/jipl/vol31/iss1/2.

[11] Christophe Geiger, *Copyright as an Access Right, Securing Cultural Participation Through the Protection of Creators' Interests, in What if We Could Reimagine Copyright*? 73, 73–109 (R. Giblin & K. Weatherall eds., ANU Press 2017), Max Planck Inst. for Innovation & Competition Research Paper No. 15-07 (2015).

[12] C. Geiger, The Social Function of Intellectual Property Rights, or How Ethics Can Influence the Shape and Use of IP Law, in Edward Elgar Publ'g eBooks, https://doi.org/10.4337/9781783470532.00013 (2013).

dissemination of information, copyright law has been used by giants in the industries as a means to restrict knowledge.[13]

Moreover, it is the (mis)conception that the expansion of the internet and the digital era have revolutionised the landscape of information production, dissemination, and knowledge acquisition.[14] The shift from analogue to digital publications has increased the perception that copyright protection of scientific works impedes access to knowledge that should be free.[15] The proliferation of online platforms and digital resources has drastically reduced the cost of access to information on an unprecedented scale, one now can have the ability to access a vast repository of knowledge with just a few clicks, transcending geographical and temporal barriers. This transformation would have empowered researchers of all backgrounds to engage with diverse perspectives and scientific research. However, exploiting the copyright law to commodify knowledge has hindered the process altogether.[16]

The paper is structured into four interconnected parts, each addressing critical aspects of scientific knowledge, accessibility of scientific knowledge, and copyright law. The first part lays the foundation of the intrinsic nature of knowledge as a public good, emphasising its role in driving societal progress and innovation. It further examines how academic publishing operates as a channel for disseminating such knowledge while simultaneously being intertwined with copyright law. This section interrogates the inherent tensions within this dynamic, questioning how copyright frameworks affect the free flow of information. The second part shifts focus to the transformative potential of Access to Knowledge (hereinafter referred to as the A2K movement), advocating for its evolution into an open-access framework by analysing the principles and successes of A2K. This section delves into strategies for dismantling the systemic inequities in access to scientific literature, particularly in resource-constrained settings. The third part provides an in-depth analysis of the One Nation One Subscription (hereinafter referred to as the ONOS scheme), contextualising it within the broader legal and policy debates surrounding copyright law. This section unloads the intricacies of the scheme, including its implementation challenges, potential to lower institutional costs, and implications for copyright owners, publishers, and researchers. It critically evaluates whether ONOS can serve as a

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[13] L. Guibault, Open Content Licensing: *From Theory to Practice – An Introduction, in Open Content Licensing: From Theory to Practice* 7, 7–20 (Amsterdam Univ. Press eBooks 2011),

[14] D. Tewksbury & J. Rittenberg, *Information Democratization, in News on the Internet: Information and Citizenship in the 21st Century* (Oxford Studies in Digital Politics) (2012; online ed., Oxford Academic, Jan. 19, 2015), https://doi.org/10.1093/acprof:osobl/9780195391961.003.0008.

[15] Majekolagbe, *supra* note 10.

[16] C. May, *Commodifying the "Information Age": Intellectual Property Rights, the State and the Internet*, 1 SCRIPTed 408, https://doi.org/10.2966/scrip.010304.408 (2004).

viable model for reconciling the conflicting interests of accessibility and revenue generation within the academic publishing ecosystem. Finally, the fourth part synthesises insights from the preceding sections, offering actionable recommendations to address the barriers identified. It emphasizes the need for a balanced approach that harmonizes the goals of copyright law with the imperatives of Open-Access, ultimately aiming to create a sustainable, inclusive model for knowledge dissemination.

1.1 Scope of the study

This paper provides a comprehensive, multidimensional perspective comparing multiple systems from an access view. It ventures into the intricacies of the traditional subscription model and open-access model to analyse their interplay with copyright law. This study also critically evaluates the ONOS scheme as a policy framework for democratising access to academic resources, alongside its interaction with copyright laws. This study focuses on the Indian milieu, particularly how ONOS can address the issue of accessibility of scientific knowledge to researchers and libraries. It also attempts to evaluate the probable impact of the One Nation One Subscription scheme on the publishing game and the prevailing "publish or perish" environment in Indian academia from the lens of copyright law.

1.2 Methodological Approach

This study adopts a qualitative, doctrinal methodology to explore the intersections between academic publishing, open-access models, copyright law, and its overall development. The research predominantly relies on secondary sources, including academic literature, legal texts, government reports, and case studies. The first phase of the research attempts to understand the traditional publishing models and anomalies therein. It then delves into a comparative analysis of open-access models, particularly green, gold, and bronze open-access. The study critically assesses the impact of these models on accessibility and equity. Next, the research applies policy analysis to assess the potential of the ONOS as a tool for equitable access to academic resources in India. This involves examining proposed government policies and institutional practices to identify opportunities and challenges in implementing ONOS. Through this methodological approach, the study aims to provide actionable insights and recommendations for policymakers to navigate copyright in the academic publishing landscape.

2. A2K and Open-Access Movement

The spirit of the A2K movement can be understood from the letter to Isaac McPherson by Thomas Jefferson, in which he described beautifully how ideas need to be free and knowledge should be accessible, in words:

> *"If nature has made any one thing less susceptible than all others of exclusive property, it is the action of the thinking power called an idea its particular character Isa that no one possesses the less because every other possesses the whole. He who receives an idea from me receives institution himself without lessening mine; as he who lights his taper at mine, receives light without darkening mine."*[17]

A fundamental principle of the Access to Knowledge movement is that access to intangibles, primarily educational and cultural works, should be open to everyone.[18] Much of the debate on equitable public access to copyrighted work is seen from the perspective of Access to Knowledge.

The steadily rising prices of scholarly journals, combined with the persistent stagnation or decrease in library budgets, force academic libraries to make difficult choices regarding journal subscriptions.[19] As a result, libraries are compelled to reduce the number of subscriptions they maintain, which significantly hampers the progress of the A2K movement. This dynamic not only restricts access to essential academic resources but also worsens the barriers to equitable knowledge sharing and participation in scholarly communication. In 2018, a study conducted by Duke University found that "Scholarly publications are not typically free to access, and subscription costs for certain resources are exorbitant. Journals in certain disciplines, especially engineering, business, & medicine, have higher price tags than others."[20]

2.2 Open-Access for equitable access

The open-access movement is a response to the restriction on disseminating scientific knowledge by academic journals. It aims to provide free, unrestricted and immediate access to scholarly journals, books, and other material on the Internet.[21] The open-access movement surged forward with the emergence of the Internet during the early 1990s, coinciding with a growing interest among researchers, librarians, and other stakeholders in reducing publication expenses and enhancing accessibility to scholarly works. In 1991, physicist Paul

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[17] University of Virginia Press, *Founders Online: Thomas Jefferson to Isaac McPherson* (Aug. 13, 1813), https://founders.archives.gov/documents/Jefferson/03-06-02-0322.

[18] Sibongile Ngwenya, *Access to knowledge vs the demands of copyright. ResearchGate.* https://doi.org/10.13140/RG.2.1.3862.5760 (2015).

[19] R. Anderson, The Forbidden Forecast: Thinking About Open Access and Library Subscriptions, The Scholarly Kitchen (Jan. 15, 2025, 1:00PM), https://scholarlykitchen.sspnet.org/2017/02/21/forbidden-forecast-thinking-open-access-library-subscriptions/.

[20] S. Chakraborty et al., *Suggestions for a National Framework for Publication of and Access to Literature in Science and Technology in India*, 118 Current Sci. 1026, https://doi.org/10.18520/cs/v118/i7/1026-1034 (2020).

[21] *What is Open Access?, Openaccess.nl,*(Jan. 15, 2025 1:00 PM). *https://www.openaccess.nl/en/what-is-open-access*.

Ginsparg established "arXiv.org," a repository for preprints, which are manuscript drafts prior to formal journal submission.[22] While preprint papers do not undergo traditional peer review, alternative methods such as post-publication peer review have been developed to address this limitation. This innovative approach has contributed to advancing scholarly communication and facilitated broader dissemination of research findings. Its advocates sought to make research freely accessible online, aiming to democratise knowledge dissemination. Pioneered by initiatives like the Budapest Open-access Initiative, which noted, "An old tradition and a new technology have converged to make possible an unprecedented public good. The old tradition is the willingness of scientists and scholars to publish the fruits of their research in scholarly journals without payment…..the new technology is the Internet."[23] The movement gained momentum with the development of open-access repositories and journals. Institutions, funders, and researchers increasingly embraced open-access principles, recognising their potential to accelerate scientific progress and foster innovation. Despite challenges, the movement continues to evolve, shaping the scholarly communication landscape and promoting global access to information.

Open-access journals and repositories operate under alternative licensing frameworks, such as Creative Commons, allowing free access and broad reuse of scholarly content. Despite its promise, Open-access is not without challenges. Many Open-access journals charge Article Processing Charges (APCs) to authors, shifting the financial burden without resolving the underlying inequalities. Critics argue that this model excludes researchers from low-income backgrounds who cannot afford APCs. It cannot straightforwardly be said that the open-access movement completely solves the problem of academic literature accessibility, although it was a significant step towards democratising scientific knowledge.

There are multiple accepted types of open-access Viz., Gold open-access, Green open-access, Hybrid open-access, Diamond open-access and black open-access.

2.1.1 Gold open-access

In this publication model, the manuscript is made openly available by the publisher, which means one can access the article from the original place of publication.[24] The gold open-access model provides a peer review of the manuscript, similar to the closed-access publication. It is opposite to the existing "reader-pay" model; thus, it is pertinent for publishers to generate revenue through alternate sources; publishers

[22] Tennant et al., *supra* note 6.
[23] P. Suber, OPEN ACCESS 19 (MIT Press eBooks, 2012).
[24] M. a. G. Van Der Heyden & T. a. B. Van Veen, *Gold Open Access: The Best of Both Worlds*, 26 Neth. Heart J. 3, https://doi.org/10.1007/s12471-017-1064-2 (2017).

charge article processing charges (APC) from authors rather than readers through subscription. Therefore, before advocating open-access from oligopolistic academic publishers, we must remember that their profits are still intact, and although readers are relieved from the subscription charges, authors or their funding agency have to pay the publishers, for example. Springer, the pioneer of open-access with its "Springer Open Choice platform," charges $3000 per article.[25] It is irrelevant that the inception of the open-access movement was started to fight exorbitant pricing for access to knowledge. Still, the open-access publications themselves have become an obstacle to publication for researchers as they lack the excessive article processing charges of the journals. The model could potentially contribute to elitism. It may disadvantage early-career researchers and individuals affiliated with smaller academic institutions who may struggle to afford high APCs. This financial barrier could limit their ability to publish their work in open-access journals, thereby perpetuating disparities in scholarly dissemination and hindering equitable access to knowledge.

2.1.2 Green Open-Access

Green open-access is frequently equated with self-archiving. However, in this study, Green open-access encompasses all freely accessible versions of articles available on platforms other than the publisher's official website. This includes copies deposited by authors through self-archiving, versions uploaded to institutional repositories by librarians, and copies hosted in subject-specific repositories maintained by publishers.[26] It places significance on the article as a fundamental unit. The green open-access provides an option for the author to post some version of the work on the internet to access freely, both pre-print version and post-print version. Green open-access publications can be found on the internet, like repositories of institutes, departmental websites, or even on the author's website. Articles can also be submitted to academic networks such as Academia.org or Social Science Research Network (SSRN). Looking at the multifaceted advantages of green open-access publication, it has become an integral part of the more extensive open-access movement.[27] Many researchers might upload or archive pre-print versions of their research work, but since the work has not been peer-reviewed, the findings of the study may not be verified. Using DOIs and author identifiers (e.g., ORCID) to ensure that green open-access works are correctly attributed and integrated into the scholarly system can make green open-access a more reliable and sustainable route.

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[25] S. Jurchen, *Open Access and the Serials Crisis: The Role of Academic Libraries*, 37 Technical Servs. Q. 160, https://doi.org/10.1080/07317131.2020.1728136 (2020).
[26] M. Laakso, *Green Open Access Policies of Scholarly Journal Publishers: A Study of What, When, and Where Self-Archiving Is Allowed*, 99 Scientometrics 475, https://doi.org/10.1007/s11192-013-1205-3 (2013).
[27] N. Chakravorty, C.S. Sharma, et al., *Open Science: Challenges, Possible Solutions and the Way Forward*, 88 Proc. Indian Nat'l Sci. Acad. 456, https://doi.org/10.1007/s43538-022-00104-2 (2022).

2.1.3 Hybrid Open-Access

In the hybrid open-access model, Hybrid open-access (HOA) represents a publishing model that attempts to combine traditional subscription-based access with open-access features.[28] Under this model, authors can choose to pay article processing charges (APCs) to make their articles freely available to the public. At the same time, the rest of the journal's content remains behind paywalls. This approach offers an intermediary solution between the fully open-access and traditional publishing systems, aiming to address the increasing demand for open-access without dismantling the existing publishing infrastructure. However, the hybrid model faces significant challenges, particularly in its interplay with copyright law. From a legal perspective, the hybrid open-access model complicates the distribution and usage of scientific works. Copyright law generally grants exclusive rights to authors and publishers over the reproduction, distribution, and public performance of their works. In the hybrid open-access model, the author often retains copyright but grants the publisher a license for certain rights, such as the right to distribute the article through the journal's platform. However, even if the work is made open-access via payment of APCs, the publisher may still retain certain restrictive rights that impact the dissemination and reuse of the article. For example, restrictive licensing terms—such as non-commercial clauses or prohibitions on redistribution—can limit how freely others can share or reuse the research. Legal scholars argue that the hybrid open-access model while fostering access to knowledge, can lead to potential conflicts between copyright holders and users. The inconsistency between open-access and the retention of traditional copyright structures can limit the ability of institutions or individuals to use and share the content freely. Furthermore, the practice of charging APCs in hybrid models, which is often seen as a "double dip," raises concerns over the commercialisation of academic research and its impact on equitable access.[29]

2.1.4 Diamond Open-Access

Diamond open-access is also called Platinum open-access. It is an emerging model in the open-access route where researchers publish their work in a journal or any other platform without payment; the diamond route also charges nothing from the readers. Instead, costs of publishing are paid by the publisher, academic institution or other funding agencies. Diamond open-access can help address inequality issues and increase access to knowledge by making research freely accessible. This model facilitates unrestricted access and thus

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[28] B. Björk, *Growth of Hybrid Open Access*, 2009–2016, 5 PeerJ e3878, https://doi.org/10.7717/peerj.3878 (2017).

[29] B. Mittermaier, *Double Dipping in Hybrid Open Access – Chimera or Reality?*, 0 ScienceOpen Res. 0, https://doi.org/10.14293/s2199-1006.1.sor-socsci.aowntu.v1 (2015).

contributes significantly to the advancement of innovation and development.[30] Since the funding for Diamond open-access doesn't come from active players in the industry, there's no conflict of interest between publishers and authors. This can help to ensure the integrity of the peer review and publication process.[31] This distinguishes it from other open-access routes.

While diamond open-access journals provide multiple benefits compared to other alternatives to traditional publishing models, the model is riddled with factors crucial for a researcher before publishing his work in a journal. Most diamond open-access journals are newer and less established and driven by small-scale scholarly communities than traditional subscription-based or Gold Open-access journals, which may limit the prestige and impact of research published in Diamond Open-access venues. The diamond open-access model faces criticism for being more like a trend than a permanent alternative to the subscription model.[32]

2.1.5 Bronze Open-Access

Bronze open-access refers to journals which publish scientific articles without charging APCs, where neither the author nor the reader pays any charges to the publisher for publication and access. Since it does not follow the open-access license route[33] (Creative Commons license) and publishers own the copyright, it can take the article down without notice. Publishers can also restrict various options which are allowed under open-access licensing, such as redistribution, modification, and reuse of the article. Because of the lack of open-access license, restrictions on the use and adaptation of scientific knowledge and the publisher's right to revoke the accessibility of the article, the bronze route is often under criticism from open-access advocates.

2.1.6 Black Open-Access

Black open-access runs through multiple websites, which provides unfettered access to academic publications by illegally downloading research articles, books and other scholarly works without the consent of either authors or publishers.[34] The operation of black open-access websites is beyond the scope of the legal framework of copyright law and often contravenes the intellectual property rights of the copyright

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[30] Q. Dufour, D. Pontille et al., *Supporting Diamond Open Access Journals*, 4 Nordic J. Libr. & Info. Stud. 35, https://doi.org/10.7146/njlis.v4i2.140344 (2023).
[31] *Id.*
[32] R. Harington, Diamond Open Access, Societies and Mission, The Scholarly Kitchen (Jan. 25, 2025, 5:30 PM), https://scholarlykitchen.sspnet.org/2017/06/01/diamond-open-access-societies-mission/.
[33] *'Bronze' Open Access Supersedes Green and Gold, Nature Index (Mar. 12, 2018), https://www.nature.com/nature-index/news/bronze-open-access-supersedes-green-and-gold.*
[34] B.-C. Björk, Gold, Green, and Black Open Access, 30 Learned Publ'g 173, https://doi.org/10.1002/leap.1096 (2017).

owners. Despite purporting to promote open access to knowledge, these websites do not compensate the creators of the works or provide appropriate attribution. Sci-Hub is a notable example of black open access.

3. Is One Nation One Subscription (ONOS) a Solution?

The Union Cabinet of India has recently approved the ONOS scheme for a three-year term, aiming to provide nationwide access to scholarly research articles and journals.[35] This initiative will be coordinated by the Information and Library Network (INFLIBNET), an autonomous inter-university centre under the aegis of the University Grants Commission (UGC). The ONOS scheme addresses the limitations of the traditional "pay-to-read" academic publishing model, where institutions and libraries must pay significant subscription fees to access research publications. By transitioning to a unified national subscription model, ONOS aims to democratise access to high-quality academic resources, particularly benefiting students and researchers who have historically faced financial and logistical barriers to accessing high-impact academic journals. The program promises to grant access to over 13,000 high-impact journals from 30 leading international publishers. This initiative is set to encompass more than 6,300 educational institutions, potentially benefiting students, faculty members, and researchers. By significantly enhancing access to global academic resources, ONOS is poised to strengthen India's research capabilities and increase its visibility within international academic communities. ONOS reflects a progressive approach to fostering equitable access to knowledge, positioning India as a leader in open-access and scholarly resource democratisation while aligning with global trends advocating for open science and inclusive research ecosystems.

The One Nation One Subscription model seeks to enhance the efficiency of the current fragmented subscription systems by consolidating them under a single, unified framework. This initiative is designed to facilitate broader access to scholarly knowledge, ensuring it reaches a more diverse segment of society, particularly those in under-resourced regions. The ONOS model is grounded in the principle of equitable access to information, which is essential for promoting educational and research advancement across the country. Still, the scheme is facing criticism from experts and advocates of the A2K movement. Since the scheme was formulated after India had rejected the adoption of Plan S or any similar model to promote open-access publications, it instead chose to stick to the traditional subscription model with only modification of unified payment to publishers from the Central Government.

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[35] Ministry of Education, Cabinet Approves One Nation One Subscription (ONOS), Press Information Bureau (Nov. 25, 2024), https://www.education.gov.in/sites/upload_files/mhrd/files/PIB2077098.pdf.

From the copyright law perspective, the scheme fails to promise the authors and readers fundamentally. The subscription model brings numerous questions as well. It gives publishers the power to do what they want with the papers submitted to them by authors. Also, it does not provide much scope for researchers to retain their copyright in the work. Thus, the autonomy of authors is still circumscribed by publishers. Also, the oligopolistic nature and high share of the publishers in the concentrated market grant them great negotiation power in dealing even with the government; we had a similar experience in 2020 when MIT University cancelled the subscription of Elsevier journals due to their restrictive terms under the subscription contract.[36] While the ONOS scheme ensures subscription-based access, it doesn't necessarily promote open-access publishing, which the government intends to ensure barrier-free access. In the open-access model, authors retain their copyright in their work, creating space for readers to use for educational and research purposes.

In recent times, many big publishers contracted with tech giants to provide them with a significant chunk of their depository to train the AI module.[37] Publishers who entered into contracts with AI companies need not ask for permission from the authors of the papers who had put all the effort into doing research to formulate ideas and write a paper for publication since many publishing contracts include clauses that mandate authors to transfer broad rights or sometimes full copyright to publishers. for example,

> *"The Author at this moment grants to the Publisher the perpetual, sole and exclusive, worldwide, transferable, sub-licensable and unlimited right to publish, produce, copy, distribute, communicate, display publicly, sell, rent and/or otherwise make available the Contribution in any language, in any versions or editions in any and all forms and/or media of expression (including without limitation in connection with any and all end-user devices), whether now known or developed in the future, in each case with the right to grant further time-limited or permanent rights. The above rights are granted in relation to the Contribution as a whole or any part and with or in relation to any other works. Without limitation, the above grant includes:*
>
> *a) the right to edit, alter, adapt, adjust and prepare derivative works;*
>
> *b) all advertising and marketing rights, including without limitation in relation to social media;*

[36] MIT, *Guided by Open Access Principles, Ends Elsevier Negotiations*, MIT News June 11, 2020, https://news.mit.edu/2020/guided-by-open-access-principles-mit-ends-elsevier-negotiations-0611.

[37] D. Kwon, *Publishers Are Selling Papers to Train AIs — and Making Millions of Dollars*, Nature, Dec. 9, 2024, https://doi.org/10.1038/d41586-024-04018-5.

c) rights for any training, educational and/or instructional purposes; and

d) the right to add and/or remove links or combinations with other media/works. The Author hereby grants to the Publisher the right to create, use and/or license and/or sub-license content data or metadata of any kind in relation to the Contribution or parts thereof (including abstracts and summaries) without restriction".

When a publisher has become the de-facto copyright owner of the scholarly works, authors are left with no option for renegotiation and to get any remuneration for their intellectual efforts and work.

More concern about the subscription-based model is since publishers have absolute control over the content, they can assert unwanted and overboard restrictions on how to access the content on their website. After the digital revolution, technological protection measures (TPMs) or Digital Rights Management were enacted to prevent online content piracy. Still, big publishers can use TPMs to restrict access to scientific knowledge to researchers. There are two types of TPMs, Viz. Access control measures and Copy control measures, respectively. While the former monitors and restricts access to the content by requiring authentication, encryption keys, or passwords. They protect digital content from unauthorised access, reproduction, and distribution, ensuring copyright compliance. Although controlling access might reduce interference in the legitimate use of copyrighted work, it can wield publishers to restrict legitimate simultaneous use of the content by constraining the number of accesses to an article. Later measures monitor and restrict the use of the content. Copy control mechanisms are often embedded in digital content and physical media, utilising encryption, watermarking, and DRM systems.[38] For example, a DRM-enabled e-book may prevent users from copying text, printing pages, or sharing files with others.

One of the issues left unanswered under the ONOS is the problem of "big deal".[39] In the subscription model of academic publishing, bundling of academic journals generally refers to big deals. The comprehensive product is then sold in the all-or-nothing deal; whilst it showcased the larger number of articles as a benefit, the reality is many of them are very rarely used by researchers. Larger serial collections mostly lead to larger expenditures for libraries on few publishers and bigger profits for them. Big deal poses a great barrier for libraries, and it would eventually impact the ONOS also.

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[38]D Kown, *supra* note 37.

[39] Science Europe, CHALLENGING THE CURRENT BUSINESS MODELS IN ACADEMIC PUBLISHING: ACCELERATORS AND OBSTACLES TO THE OPEN ACCESS TRANSITION, Workshop Report, https://scienceeurope.org/media/faan2fu3/se_ws_report_oa_big_deals.pdf (2018).

4. Conclusion

Copyright law is pivotal in shaping access to scholarly works, although its role in academic publishing is often limited but not insignificant. Copyright law grants publishers the authority to assert ownership over published research, enabling them to impose high access fees. This control can hinder the dissemination of scientific knowledge, highlighting the need for a legal framework that balances the rights of publishers and users. Such a framework should empower publishers to sustain their operations while ensuring users, including researchers and the public, have unrestricted access to knowledge. While readers may access academic work for personal use, activities such as translating, text mining, or adapting content for new technologies typically require permission from the copyright holder. This practice underscores the significance of copyright in controlling how works are shared and repurposed. Despite the broad accessibility of digital content, copyright law continues to impose strict limitations on the use and transformation of works, particularly in academic and research settings. Authors and researchers, therefore, often find themselves constrained by copyright agreements, which may restrict the dissemination and reuse of their work without explicit permission from publishers or other rights holders. This situation highlights the tension between the growing demand for Open-Access and the entrenched copyright practices prioritising publisher control. As a result, the flow of knowledge and innovation may be stifled, especially in the case of research data and scholarly articles, which often hold great potential for reuse across various fields.

As the One Nation One Subscription (ONOS) scheme presents a golden opportunity for the Indian government to ensure equal and fair access to academic journals, it has the potential to bridge the gap for Indian researchers who often face financial constraints in accessing the latest research. Indian institutions and libraries would undoubtedly thrive in such an environment, fostering greater academic growth and collaboration. However, the government mustn't let this opportunity slip away. In drafting the legal and economic policies surrounding ONOS, the government must be careful not to create an environment where researchers are forced to revert to illegal platforms, such as Sci-Hub and Libgen, to access essential academic resources. While providing free access, these platforms infringe upon the intellectual property rights of authors and publishers. It is imperative that ONOS is structured in a way that prevents such consequences, ensuring that equitable access to research is achieved without undermining the rights of authors and publishers. The future of academic publishing and access depends on the collaborative efforts of authors, publishers, and the government, enabling equitable dissemination and access to scientific knowledge.

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Artificial Intelligence (AI), Legislative Intent and Judicial Discretion: Reconciling the Future of Statutory Interpretation in the Digital Age

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Abstract:

"AI Should Serve as An Assistive Mechanism Rather Than a Substitute for Human Judicial Discretion".[1]

Artificial Intelligence (hereinafter AI) has influenced almost all fields of human life. Human life has multiple dimensions, ranging from birth to education, from health to legal regulations. The legal and constitutional validity of the induction of AI in decision-making poses a lot of opportunities and challenges to implement AI as an effective tool for decision-making. The million-dollar question among all is what AI is and how it works. As far as decision-making across the globe is concerned, it is managed by highly sensitive but equally qualified human agencies called Judges. However, there are a few countries, such as China and the European Union, where AI is heavily relied upon by the courts, mainly as a decision-making tool. There has been a constant demand to address algorithmic bias and to increase transparency and clarity in decision-making processes. India is a democratic country with powers divided into three major branches: the legislature, the executive, and the judiciary. No doubt, investigation agencies nowadays use various AI tools for crime detection and monitoring criminals and patterns, but in terms of AI as a decision-

[1] PTI, The Economic Times, "AI can assist but cannot replace human judgmentRead more at: https://economictimes.indiatimes.com/news/india/ai-can-assist-but-cannot-replace-human-judgment-says-former-cji_chandrachud/articleshow/_118607172._cms?_utm_source=_contentofinterest &utm_medium =text&utm_campaign=cppst".

making partner, it cannot be equated unless tested, proven, and validated by Government agencies. The number of pending cases in the court undermines the idea of justice, as it creates the hope that someone will save the judiciary and judicial system from AI interpretation of statutes. In this paper, the researchers propose using AI to unravel legislative intent through judicial interpretation. The present paper adheres to the balanced approach of using AI with caution and care, without affecting emotional, social, psychological, and ethical considerations.

Keywords: Artificial Intelligence, Statutory Interpretation, Judicial Discretion, Legislative Intent, Evidentiary Standards, Global Perspective.

1. Introduction: The Judicial AI Renaissance:

The judiciary in India is currently on the cusp of a technology-driven transformation driven by artificial intelligence (AI) applications, likely to revolutionise statutory interpretation practices, at a time when courts are facing a significant caseload and a backlog that already exceeds 50 million pending cases. This phase may be described as a judicial AI renaissance, a shift towards more human-friendly hybrid systems that simultaneously challenge the very concept of legislative intent and judicial discretion.

India's judiciary is undergoing a profound transformation through Artificial Intelligence in statutory interpretation, redefining how judges interpret statutes. As e-courts Phase III (2023-2027) is pumping in about 7,210 crores,[2] as well as a range of tools such as SUPACE[3] (the digital hub of the Supreme Court) and AI Saransh,[4] all geared toward turbocharging case analysis, precedent search, and access to justice in multiple languages with speed and efficiency.

AI's real challenge in judging laws is the frustrating hallucination of inventing non-existent case citations that sound real but aren't, as pointed out in the Andhra Pradesh High Court decision in Gummadi Usha Rani v. Sure Mallikarjuna Rao.[5] Those mistakes did not cancel orders, yet they made us check all references proposed by AI. There is also the risk of algorithmic bias, which could skew results, undermine doctrines such as the mischief rule, and jeopardise judicial independence. Therefore, the human-in-the-loop principle remains critical, particularly given the backlog of about 50 million cases. Additionally, the 2023 reforms, Bharatiya Nyaya Sanhita, Bharatiya

[2] Press Information Bureau, Government of India, 'Cabinet approves Phase III of eCourts Project with an outlay of ₹7,210 crore' (13 September 2023).
[3] Supreme Court of India, e-Committee, 'SUPACE: Supreme Court Portal for Assistance in Court Efficiency'.
[4] National Informatics Centre, 'AI Saransh' presented at the International Bar Association Conference, Mexico City (2024).
[5] Gummadi Usha Rani v Sure Mallikarjuna Rao, 2023 SCC OnLine AP 1530.

Nagarik Suraksha Sanhita, and Bharatiya Sakshya Adhiniyam,[6] revise the evidentiary standards for digital evidence, advocating for the admissibility and reliability of such evidence in criminal proceedings, including the proceedings under cyber law. The move towards manually discovering legislative intent to an algorithmically constructed meaning implies that one must compare the global pilots (USA/UK) to safeguard the values of the Constitutions.

An AI system is fundamentally different from human actions in several ways. Perhaps, AI could not be counted on the equation of human actions and inactions. However, machines are essentially the by-product of human creativity. Currently, AI operates more as a metaphor for intelligence, reflecting similarities in rational processes between humans and machines rather than possessing genuine, autonomous decision-making capabilities.[7] The projection and induction of AI across sectors depict the future of transformation in health care, finance, education, and law. It is worth noting that early AI systems, such as the logic theorist and the general problem solver, demonstrated the ability of machines to solve mathematical and logical problems. However, advances in AI were hampered by the time's limited computing power and the difficulties of encoding comprehensive human knowledge.[8]

The incorporation of AI into justice administration addresses immediate crises in an overworked system where the time required in the process erodes citizens' confidence, while predictive analytics and natural language processing now automate case screening and precedent alignment. By 2026, phase III of the e-Courts is expected to initiate the digitisation of legacy records across the country, and AI is expected to reduce case pendency in matters involving complex statutory interpretation, particularly in light of the criminal law changes that have occurred after 2023. This applicability is also encouraged by international AI-assisted judicial pilots, making India a major technologically oriented judicial system. Phase III, which has been approved with a funding of ₹7210 crore,[9] provides common digital solutions, paperless courts, video conferencing (more than 3.38 crore virtual meetings so far), and e-Sewa Kendras in complexes. The innovations include 99.5% wide-area network connectivity at 10-100 Mbps, built-in AI to support multilingual decision-making, and robotic processes. The plan aims to achieve complete e-filing by 2027, thereby transforming access to justice amid increased litigation. However,

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[6] Bharatiya Nyaya Sanhita 2023; Bharatiya Nagarik Suraksha Sanhita 2023; Bharatiya Sakshya Adhiniyam 2023.

[7] Sujeet Kunar and Tauseef Alam, 'AI on Trial', Oakbridge Publishing Pvt. Ltd. Ed.1st, p. 2

[8] Rawas, S. AI: the future of humanity. *Discov Artif Intell* **4**, 25 (2024). https://doi.org/10.1007/s44163-024-00118-3

[9] Press Information Bureau, supra note 2.

technological expansion must operate within constitutional safeguards.[10]

One of the essential principles, "human-in-the-loop," protects judicial independence[11] by placing AI into a supportive role rather than as a decision-maker, with human operators screening AI outputs to exclude errors. Explainability and periodic audits are ensured through ethical frameworks that address biases in India's heterogeneous linguistic environment. Therefore, AI does not undermine constitutional independence; rather, it augments judicial discretion. The main problems include AI-generated hallucinations that create fabricated citations (e.g., the Gummadi Usha Rani case) and biases that distort the discovery of legislative intent and are therefore inconsistent with mischief rule traditions. Evidentiary issues arising from the new criminal statutes also increase the threat of algorithmic discrimination. Without effective protection, AI will jeopardise equity in statutory construction.

Conventionally, judges determine the intention behind legislation through purposive interpretation; AI may recommend a construction methodology based on evidence-based trends, offering predictive modelling capabilities. This transformation risks increasing subjectivity but provides greater clarity in uncertain situations, thereby necessitating a hybrid interpretation canon. In the context of India, there should be a delicate balance maintained between innovation and adherence to democratic law-making.

2. Defining Artificial Intelligence :

Artificial intelligence is a branch of computer science that aims to create a machine capable of intelligent behaviour. In many ways, it is claimed that the AI system is integrated seamlessly into our daily lives and work. In the present era, there would hardly be any field that would not have been impacted by AI. A decision-making problem-solving in a legal sphere could not be an exception to this. AI enables machines to learn from experience, adapt to new inputs, and execute tasks resembling human capabilities.[12]

The primary issue to be addressed at this stage is the need for a precise definition of AI. Currently, there are no universally accepted definitions that hinder the development of the legislation required to combat this activity. The refinement of the concept involves paving the

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[10] Press Information Bureau, Government of India, 'More than 3 crore virtual hearings conducted under e-Courts Project'.

[11] UNESCO, Recommendation on the Ethics of Artificial Intelligence (2021) available at Recommendation on the Ethics of Artificial Intelligence | UNESCO

[12] UIC, what is artificial intelligence? Uncover the potential of AI, learn the definition of AI, how it works and educational carrier opportunities, University of Illinois Chicago, for more detail visit What is (AI) Artificial Intelligence? | Online Master of Engineering | University of Illinois Chicago

way for the correct formulation of law that properly addresses the appropriate set of technologies within the definition and ambit of AI.

NITI Aayog and the Indian Government think tank, in its "National Strategy for Artificial Intelligence, attempted to define AI as: "AI is a constellation of technologies that enable machines to act with higher levels of intelligence and emulate the human capabilities of sense, comprehend and act.[13] However, it is worth noting that the major issue with this definition is the lack of a clear distinction between AI as a hardware tool and as a software tool. Neither did it specify whether it's too strong to believe or too weak to disbelieve. Hence, there is a need to highlight the other significant definitions of AI.

Another significant definition is given by Safe and Secure Innovation for Frontier Artificial Intelligence Models Regulation of California under section 3 (b) of the Bill, 2025, (SB 1047) as: "Engineered or machine-based system that varies in its level of autonomy and that can, for explicit or implicit objectives, infer from the input it receives how to generate outputs that can influence physical or virtual environments."[14] However, this definition is subject to the mandates of a comprehensive inventory of high-risk automated decision systems used by state agencies requiring annual reports through 2028 and deepfake impact assessments.

Considering the above definitions, one can define Artificial Intelligence as "A system or interrelated technology based on an algorithm or computer programme integrated with a hardware component built to perform tasks requiring human-like intelligence to make decisions or generate outputs without explicit human guidance."[15] Moreover, the guest of argument is not just to know the nature or shape of AI, but also the source of AI technologies. In a number of ways, it has been claimed and proved that the data fed into the system operates without human intervention. In that way, the major strength of the AI is the data, which is imperative to build and train artificial intelligence systems. The quality and quantity of data strongly influence the AI's learning capabilities and performance. It is pertinent to mention that, in the absence of data, the AI system will not be able to make informed decisions.

In such a scenario, if one proposes that AI replace judicial officers and assume complete control over decision-making, it would

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[13] NITI Aayog India, National Strategy for Artificial Intelligence (2018) P. 12, available on https://www.niti.gov.in/sites/default/files/2023-03/National-Strategy-for-Artificial-Intelligence.pdf

[14] United States - California - AI Definition, available at California AB 2885 — Artificial Intelligence: Unified Definition and State Agency Inventory - United States | Regulations.AI - The Site on AI Laws and Regulations | Regulations.ai

[15] Supra 8,Sujeet Kunar and Tauseef Alam, 'AI on Trial', Oakbridge Publishing Pvt. Ltd. Ed.1st 2025, P.8.

pose a serious threat to the future of the justice system. But similarly, it is worth noting that if the data is correct and unbiased, and fed into the system without algorithmic bias, the foreseen danger can be avoided. However, when one considers the legal standpoint of the inculcation of AI mechanisms in judicial decision-making, one must not forget that judicial decision-making involves philosophical, social, psychological, physical, conscious, and subconscious elements to address the motives and the previous and subsequent conduct of the parties after the incident. It involves certain considerations and presumptions on which the law is based. These factors serve as a backbone for decision-making and justice administration. It is equally true that the law always provides a mechanism to correct errors made by judges. Indeed, the systems have injected review, reference, revision, and restoration. If AI is used in a decision-making process, similar corrective measures may be taken, keeping in mind that the decision proposed or promulgated by the AI tool is subject to human scrutiny without affecting the algorithmic value.

3. Theoretical Framework: Legislative Intent and Judicial Discretion:

The practice of statutory interpretation in India is essentially a wavering middle ground between what the legislators intended and desired (that is, the intention of a law), in other words, the meaning of a law, and judicial discretion, which allows judges to make minor alterations to the text of the law as society evolves. The corporate feel, which has always been a fully human discussion, is receiving an enormous remodelling now that AI is entering the courtrooms. The law may be obscure and inconsistent; hence, it requires us to read purposefully to remember democratic objectives, and we must exercise discretion to render justice, not merely through straight-up literalism. As AI tools have become a regular feature of the e-Courts Phase III, the mechanistic logic of AI is challenging the balance, and scholars are debating whether algorithms can mediate human law. Modern jurisprudence is stuck on the opaque face of old-school interpretation, stuck on the text and on fair treatment of situations. The latter arrangement has been hacked and elevated by AI, in which machine learning models leak out what other case books articulate, which may be helpful, yet normalises our interpretation. The theoretical dilemma arises: "Is it possible to retain the fine-tuned legislative purpose without undermining judicial autonomy in case we introduce the help of algorithms?"

The Mischief Rule vs. Algorithmic Logic- The mischief rule remains a foundational pillar of purposive interpretation, tracing its roots to the Case of Heydon (1584),[16] which instructs courts to identify the mischief or defect that a statute was intended to remedy and to interpret the law in a manner that suppresses that defect while

[16] Heydon's Case (1584) 76 ER 637

advancing the intended remedy. It was taken up by India, particularly in Smith v. Hughes (1960) and Pyare Lal v. Ram Chandra (1973), in which the Supreme Court placed greater emphasis on what the lawmakers intended rather than on mere wordy arguments, such as solicitation laws or tenant protection. It is all about the active judicial inquiry, which probes beyond the text to include how the law has been, parliamentary debate, and social evils that have lobbied and compelled the law, enabling the courts to view the entire legislative picture.

Alternatively, algorithmic logic is based on statistical patterns. Machine learning and neural nets are trained using hundreds of judgments to identify trends and produce likely readings. Tools such as SUPACE rely on latent semantic analysis to cluster cases, providing a clean comparison. Nevertheless, unlike the mischief rule, which is based on pure empathy and history, algorithms are more concerned with quantifiable indicators, which could marginalise cultural subtleties. Artificial intelligence may prioritise brute force over situational, purposive irony. On top of that, opponents who discover algorithmic hallucinations, artificial logic, and programmed bias due to ill data, which does not gel with the anthropocentric atmosphere of the mischief rule.

4. Judicial Discretion as Constitutional Independence:

The Constitution provides the Supreme Court with the authority to dispense justice, even when statutes have been interpreted literally, as in Union Carbide Corp. v. Union of India (1991)[17] and Sahara India Real Estate Corp. Ltd. v. SEBI (2012).[18] Also, Article 136 provides courts with supervisory power,[19] underscoring the idea that judicial authority is not merely mechanical but is supported by the Constitution. Maintaining interpretative discretion is not merely an academic issue; it's a cornerstone of the judiciary's protection within the constitutional framework.

That constitutional stronghold is now under significant fire because of the introduction of AI. Although algorithmic recommendations may be effective, they tend to lead to the loss of actual discretion. It is like the mended arguments of automated decision-making in the field of administrative law: the increased application of AI may substitute attentive human decisions with filter-tuned yet impersonal outputs. It is inevitable that, in such a heterogeneous society with caste relations, a federal knot, and inequality, the homogeneity of AI can trigger biases. The human-in-the-loop concept partially addresses this concern by requiring regulatory authorities to maintain a reasonable level of oversight of AI, as proposed in new models such as LegRAA.

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[17] Union Carbide Corporation v Union of India (1991) 4 SCC 584

[18] Sahara India Real Estate Corporation Ltd v Securities and Exchange Board of India (2012) 10 SCC 603

[19] Constitution of India, art 136

Nevertheless, judicial discretion is not entirely free and ought to be logical, as judges stated in Ranjit Thakur v. Union of India (1987).[20] AI may balance bias checks and explainable models, thereby increasing accountability. Theoretically, hybrid systems that combine algorithmic pitch suggestions with the judge's decision are more powerful in terms of independence, which aligns better with a constitutional mood in this digital era. The assumption behind that setup is that discretion is not only a bureaucratic illusion but a good defence of techno-determinism.

In general, this conceptual map underlines what AI can introduce and what might be dangerous. AI may assist in detecting intent in legislation and accelerate the courts' work, but it also drives the courts to remain alert to ensure that interpretation does not lose relevance. The combination of the purposive tone of the mischief rule and the data-driven motivation of AI signals a new form of constitutionalism in which the core values can change without dehumanising human agency.

5. Modern tools for Statutory Interpretation:

India has been at the forefront in the digitisation of its legal institutions, such as courts and tribunals. The High Courts and the Supreme Court of India are currently fully adopting digital infrastructure across numerous spheres, including hybrid hearings, e-filing, viewing case status, maintaining court records digitally, and collecting court fees via a special webpage. The development of SUVAS and SUPACE is a part of the e-government project.[21] which includes the e-courts objective. The key task of the e-committee of the Supreme Court in coming up with these tools is to attain four main tasks

- To increase access to justice,
- To enhance judicial productivity, transparency, and process,
- To fully digitise Indian courts, and
- To support advocates by simplifying court operations.

6. Supreme Court Legal Translation Software (SUVAS):

SUVAS is an artificial intelligence machine-assisted translation system that aims to incorporate regional languages in the legal process. In 2023, the Supreme Court initiated the translation of past decisions, orders, and other documents into regional languages, such as Hindi, Punjabi, Gujarati, and Telugu. SUVAS has already translated over 22,000 of its decisions into Hindi, over 3,500 into Punjabi, over 1,000 into Gujarati, and over 1,800 into Kannada. As of 2023, SUVAS had

[20] Ranjit Thakur v Union of India (1987) 4 SCC 611

[21] Supreme Court of India, e-Committee, 'Judiciary and Information Communication Technology (ICT) Enablement'

been translated into 31,000 regional languages, and the opening disclaimer relieved the Supreme Court of any errors.[22]

During the development of the SUVAS program, SC faced an issue because there was no standardised lexicon of legal terms in regional languages, leading to numerous translation errors. The Bar Council of India has begun developing a legal language to be implemented in all courts in India, to be translated into the different regional languages.

7. Supreme Court Portal to Enhance Court Efficiency (SUPACE):

The Supreme Court e-committee invented SUPACE, an AI assistant intended to increase the efficiency of Indian courts through artificial intelligence. It is designed to assist judges and researchers in working on cases by retrieving relevant information, locating judgments, searching case files, and drafting court documents. The program becomes smarter as it analyses with every suggestion or action it performs.

SUPACE allows judges and scholars to convert text files to PDF format, and then they can ask the chatbot about specific texts, such as locating paragraphs discussing the law. The fact extraction system focuses on prominent facts, quoted rulings, and presented arguments. This is supported by an integrated word processor for taking notes and preparing legal documents, and a dashboard that displays the number of cases served and those yet to be completed by a team or individual.[23]

It is, in fact, the Supreme Court of India that is doing this, having introduced AI Saransh into its legal processes via an application of the same name. The National Informatics Centre (NIC) introduced AI Saransh[24] and announced it at the IBA International Conference 2024 in Mexico City. It was initiated by the acting Chief Justice of the Delhi High Court, Manmohan. The point here is to transform the way legal papers are analysed and condensed in Indian courts. This A.I. application provides the judiciary with a significant efficiency boost by generating summaries of legal submissions, reducing the time judges and lawyers spend identifying the key aspects of complex cases. AI Saransh is a state-of-the-art document summarisation system that converts massive legal documents into concise, understandable summaries. It applies two summarisation techniques:

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[22] Supreme Court of India, SUVAS (Supreme Court Vidhik Anuvaad Software), https://main.sci.gov.in.

[23] Supreme Court of India, SUPACE: Supreme Court Portal for Assistance in Court Efficiency, https://main.sci.gov.in

[24] National Informatics Centre, 'AI Saransh' presented at the International Bar Association Conference, Mexico City (2024).

Extractive Summarisation presupposes the direct extraction of critical passages in the original text without any distortion. Abstractive Summarisation produces new sentences and phrases to convey the main information. It has the same effect as a human does. This strategy would avoid the rigid structure of extractive methods.

This technology is required for legal professionals who work with large stacks of paper. The AI, Saransh, will allow users to filter through that information much more quickly, saving time and money. With enormous volumes of documents to review, AI Saransh has the potential to accelerate most court procedures in a short period of time. For example, when dealing with large or constitutionally significant cases, it may take many thousands of pages to summarise. AI Saransh provides some crucial information, allowing lawyers to address the most burning controversies. The tool may be beneficial in arbitration because both parties can reach an agreement quickly, identify conflicts or areas requiring resolution, thereby enhancing the efficiency of the entire process.[25]

(a) The Ayodhya Ruling Case Study:

AI Saransh was used in the Ayodhya judgment, as the court needed to review thousands of pages of evidence and arguments. The AI provided brief summaries that highlighted key areas of dispute and referenced case law, so the judges could reach the main issues without wasting time on irrelevant information. The tool was also put to the test in the Assam NRC appeals of 2023, when it was used to handle the large number of petitions submitted by individuals contesting their citizenship. These petitions were organised and summarised by AI Saransh, making the work of law officials and judges easier.[26]

(b) Legal Research Analysis Assistant (LegRAA):

When we talk about "Judicial Interpretation in the Age of AI," we're really asking one big question: Is the judge still the one making the decision, or is the software? In the past, a judge faced with ambiguity in a law would examine legislative intent, in other words, attempt to know what the legislature meant when it wrote the words. This demanded a human element, some common sense and the knowledge of social justice.

In the modern courtroom, the emergence of AI-based research assistants is fundamentally altering our interpretation of the spirit of the law. Historically, it was a very human process of interpreting a statute. A judge would appeal to his own discretion to examine beyond the face of a page to determine the real intent behind the legislation based upon historical background and moral wisdom to arrive at a fair

[25] National Informatics Centre, Ministry of Electronics & IT, Gov't of India, AI Saransh: AI-Based Legal Summarisation Tool (2024), https://www.nic.in.
[26] M. Siddiq (D) Thr. Lrs. V. Mahant Suresh Das, (2019) 18 SCC 1 (India).

decision. Nevertheless, with AI tools taking over the roles of the main assistants in legal research, they introduce a new, data-driven rationale to the bench. These algorithms are designed to identify trends and forecast outcomes based on millions of previous documents, but they lack the human capacity to comprehend why a law was enacted and how society has evolved since its enactment. This poses a significant conflict: when a judge starts using an AI to interpret a law, he or she risks losing the ability to be flexible and just. We are heading down a path where predictive justice could replace reasoned judgment. To safeguard the integrity of our legal framework, we should ensure that AI is used as an aid in the search for information, not as a substitute for the judge's exclusive capacity to infuse human values into written text. Once a judge begins to trust an AI to the extent that it tells him a statute is likely to mean a certain way, we risk losing the human aspect of justice.[27]

8. Re-Examining Legislative Intent: The Hallucination & Bias Crisis Case citation Hallucinations:

Artificial Intelligence is slowly becoming part of everyday legal practices. Many use AI tools to draft, research and summaries etc. It saves time and feels efficient. Nevertheless, recent examples demonstrate that the overuse of AI can cause serious problems.

Andhra Pradesh Hon'ble High Court in Gummodi Usha Rani vs. Sure Mallikarjuna Rao [Civil Revision Petition No. 2487 of 2025] was a case in which a trial court order was based on judicial citations that were not even genuine. These authorities were eventually discovered to have been created by an AI tool. The High Court was required to investigate the legality of such a reliance upon non-existent case law to render the order unsustainable in law. It was not a matter of technology. It focused on the basics of judicial reasoning. The reasoning that is constructed based on a fictitious precedent cannot be maintained.

Similarly, the Bombay High Court in Heart and Soul Entertainment Ltd. vs. Deepak S/O Shiv Kumar,[28] in an action related to Writ Petition No. 8390 of 2009, severely condemned the submission of untested AI-generated submissions. The Court noted that AI tools can create case law and distort legal frameworks. It cautioned that careless submission of such materials will waste judicial time and may entail costs. It was an easy message to understand; convenience was no substitute for verification. In Jeetmal Choraria vs. Union of India,

[27] Law Minister Meghwal on AI in Judiciary and No Formal Policy, NewKerala.com (Dec. 5, 2025) (reporting that AI tools like a Legal Research Analysis Assistant (LegRAA) are used to aid judges in legal research and analysis), https://www.newkerala.com/news/o/no-formal-policy-adopting-ai-tools-judicial-processes-law-521.

[28] Heart and Soul Entertainment Ltd v Deepak S/o Shiv Kumar, Bombay High Court (2026).

the Court observed inconsistencies in the cited judgements and noted that Government Departments should exercise the highest level of caution when relying on precedents created by Artificial Intelligence software. This finding indicates a developing judicial consciousness that AI hallucination is not a potential danger. It is being carried out in actual courtrooms.

AI hallucination law is not a technical process malfunction. It may misguide the courts, infringe on litigants' rights, and tarnish professional reputations. It is not the responsibility of lawyers and professionals to pass the burden onto a software tool. We can use technology, though it is our responsibility to ensure verification. AI is a powerful assistant. It is not an advocate. It is still up to the human who signs the pleading.

9. Algorithmic Discrimination:

Statutory interpretation that involves algorithmic discrimination occurs when AI systems, upon which we interpret statutes, generate inequitable or discriminatory results depending on the information and design with which they are created. Already, with courts and legal professionals becoming accustomed to AI as a support for legal research, predictive analytics, and legal interpretation, there are real questions about whether these systems remain neutral as they continue to process statutes.

Classical instruments such as the literal rule, golden rule, mischief rule and purposive approach have always been used in statutory interpretation. It is meant to be rich in contextual knowledge, to interpret the purpose of legislation, and to stay within constitutional constraints. However, the point is that AI systems are trained on vast collections of past verdicts. When such judgments are biased by history, such as systematic disadvantage towards marginalised people, then the algorithm will only recreate those patterns of interpretation.

Using a labour statute, as one example, when earlier judicial interpretations of the law had all been employer-friendly, an AI model trained on such decisions could predict or suggest similar employer-friendly interpretations. We obtain a structural bias when the statute as such is neutral and well-constructed. In this regard, the algorithm does not analyse the purpose of the legislation on its own; it merely reflects tendencies already evident in the case law.

Complex machine learning models are another major concern due to their incomprehensibility. When an AI tool directs to a specific statutory meaning without explaining how it was placed there, it certainly violates the principle of reasoned adjudication, of which we all should be so proud. The litigants and others objecting to the system will find it difficult to oppose an interpretation provided by a black-box system that does not give us insight into how it arrived at its decision.

In addition, statutory interpretation relies on value and constitutional balancing, whereas algorithms lack the moral understanding and discernment needed to perceive changing social conditions. A dependency that is not duly vetted can undermine judicial independence and the principle of equality before the law. To prevent algorithmic discrimination, ensuring that the courts implement transparency, human-in-the-middle, conduct vigorous testing for bias, and remain closely connected to the concept of constitutionality is the way to go. Artificial intelligence ought to serve as an assistive technology rather than an aid to human interpretative judgment.

10. Evidentiary Standards: In three New Criminal Laws:

AI-enabled systems are rapidly transforming the large-scale criminal justice system, not only in how investigations are conducted and evidence is processed, but also in how prosecutions and courts operate. Police, forensic laboratories, prosecution, prisons, and courts are becoming more interoperable, and AI is finally closing that centuries-old interoperability gap that had previously confined data to silos and snarled the whole system.

It has been observed that the process in which AI-enabled tools are overlaid onto the Integrated Criminal Justice System (ICJS). Essentially, the ICJS provides digital connections between the police, courts, prisons, forensic systems and prosecution databases under the rule of one data, one entry. The AI performs the laborious tasks of managing large volumes of case information, monitoring process milestones, and improving the reliability of interagency information flow.

AI systems that record and preserve court proceedings are also being bumped up by AI-enabled systems. Hearing sessions are now recorded electronically in the Court Information System (CIS) daily, and some courts are also live-streamed, providing some transparency. Applications such as Navya Shruti, released within the ICJS framework, allow individuals to attend trials via secure video calls. The AI voice processing makes audio sound clear, continuous, and recorded correctly, particularly in situations where multiple parties are spread across different locations. Additionally, the use of digital evidence recorded on websites such as e-Sakshya reduces concerns about record integrity. So, it can be said that the use of AI extends beyond Statutory Interpretation to many purposes, such as the electronic recording of evidence, conducting criminal proceedings via audio-visual means, and more.

Courts in many Jurisdictions do not prohibit the production of digital evidence to establish or negate liability. They are indeed treated with respect and recognition, and this digital evidence seems to serve as a guiding light for decision-making, but in very few cases does it

force judges to reach a specific conclusion or form a particular opinion. However, one must distinguish AI from digital evidence. Indian Courts have already set a caution in the case of State (N.C.T. of Delhi) v. Navjot Sandhu, Afsan Guru [29] and Anvar P V v. P.K. Basheer[30] where the court mandated the compliance of section 65 B of the Indian Evidence Act, 1872, which is now replaced with section 63(4)(c) of Bharatiya Sakshya Adhiniyam (BSA) 2023[31] for proving electronic records in court, including CCTV footage, mobile recordings, WhatsApp chats, and computer documents. In that sense, all AI involves digital evidence, but not all digital evidence necessarily involves AI.

11. A Global Perspective: Comparative Analysis of AI in Legal Systems:

AI Saransh is not the only interesting AI tool in the legal field. In the US, lawyers use ROSS Intelligence to filter legal information, whereas in the UK, AI technologies are used to process case management and verdicts. The key distinction of AI Saransh is that it is designed on the basis of Indian legal practices, unlike those in the US or the UK. It addresses multilingual transcription and translation through applications such as SUVAS, ensuring that legal documents in local languages are not lost. The tool will help us negotiate across the various Indian languages more effectively.

Comparatively, the United States has a robust textualist and originalist tradition, in which Justice Antonin Scalia has argued that the meaning of statutes should be determined by their text rather than their history.[32] This text-based approach is supplemented by AI-based analytics and algorithms that improve the analysis of precedent and predictive stability. However, sentencing with the use of algorithmic systems has brought about due-process concerns, think Wisconsin v. Loomis,[33] in which transparency and bias were the burning issues. The AI's soft power may indirectly limit judges' flexibility to make case-by-case decisions.

The United Kingdom is a mix of literal and purposive interpretation, with an emphasis on the contextual meaning of statutes. Continued digital transformation in HMCTS is using AI as a tool for efficiency and procedural change, but not substantive

[29] AIR 2005 SC 3820
[30] AIR 2015 SC 180
[31] Section 63(4) (c) of BSA, 2023, requires that, dealing with any of the matters to which the conditions mentioned in sub-section (2) relate, 30 and purporting to be signed by a person in charge of the computer or communication device or the management of the relevant activities (whichever is appropriate) and an expert shall be evidence of any matter stated in the certificate; and for the purposes of this sub-section it shall be sufficient for a matter to be stated to the best of the knowledge and belief of the person stating it in the certificate specified in the Schedule.
[32] Antonin Scalia, A Matter of Interpretation: Federal Courts and the Law 23–25 (Princeton Univ. Press 1997).
[33] State v. Loomis, 881 N.W.2d 749 (Wis. 2016).

interpretative change. It is a nice way to accomplish more without altering the entire process of reading the law. The Court of Justice of the European Union adopts a teleological approach at the supranational level, meaning that it interprets legislation in light of integration and fundamental rights.

The EU Artificial Intelligence Act also requires human supervision of high-risk AI systems but leaves judicial discretion intact.[34] The People's Republic of China (PRC) began construction of smart courts in 2015. Since then, AI and other digital technologies have been applied to various stages of litigation from case filing to case management hearings. Even the Chinese system went ahead with the recommendation of custodial sentences. This scenario will indeed impose a challenge on the independence of the judiciary and the separation of powers. The delegation of decision-making authority to AI is another potential challenge for the system. The application of AI in the civil domain may be justified to some extent; however, the role of AI, even though considered recommendatory, seems deadly and unwelcome in criminal law. Another challenge the system may face is when algorithmic biases are hidden or poorly understood. It may blur the responsibility and primary obligation of judges to deliver what one call it as a justice. It will place the situation, claiming that robot judges are taking the bench to decide the matter.

Compared with a country like India, where numerous factors influence judicial processes, including social and economic conditions, historical factors, and the circumstances surrounding the legislation, judicial scrutiny is more significant than AI's influence or impact. Rather if one adopts a very balanced approach, the AI technology can certainly be use in other non-judicious functions of the courts such as correcting the grammatical or arithmetical mistakes in decision, finding the more relevant decision on the facts in issues, listing of cases, allotment of the dates to the parties, allotment of number to the cases for registration, allotment of the matters and record keeping of the cases.

12. Conclusion:

The AI in judicial interpretation will certainly lower the burden on the judiciary. It will certainly advance the remedies, at least for the judges, lawyers, and indeed the parties to the case. The economic, emotional, and ethical dimensions of AI will always be under human scrutiny. The quest for invisible challenges will always put AI at a higher risk in decision-making processes. But similarly, it can enhance the likelihood of achieving a more transparent system, preserving public trust, and avoiding bias if carefully designed. It is clear that there is a

[34] Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024 Laying Down Harmonised Rules on Artificial Intelligence (Artificial Intelligence Act), 2024 O.J. (L).

need to maximise the use of AI, not by replacing human agencies, but by integrating AI as an assistant tool to enhance justice delivery systems. Perhaps there are three-pronged approaches to develop to maximise AI utilisation for the maximum number of people. One among all is data privacy. Fortunately, countries like India have the Personal Data Protection Act 2023. The second approach focuses on cybersecurity. This is needed to prevent hacking, tampering with the information, and misuse of technology by strangers. And the third is about avoiding algorithmic biases, which can be addressed by how information is fed into the algorithm. There is a need to build a pool of holistic, interdisciplinary collaboration among policymakers, technologists, and ethicists by managing the space between legislative intent and judicial discretion. As Hon'ble J. D.Y Chandrachud emphasises, "AI should serve as an assistive mechanism rather than a substitute for human judicial discretion".[35]

Thus, the adoption of Artificial Intelligence (AI) in judicial processes has led to a review of the legislative intent and judicial discretion in different jurisdictions. Traditionally, the Supreme Court in India has followed a purposive constitutional approach to statutory interpretation, in which the legislature's intention is found within the context of constitutional supremacy and the basic structure doctrine. AI-based tools developed in the e-Courts Project and SUPACE initiative primarily support research and case management rather than replace judicial thinking. Then, it is not the crunching of numbers or memorising facts; discretion is still constitutionally rooted. New technological developments in AI are indeed part of an assisted tool for interpretation, but not as a sole decision-making factor unless tested, verified, and proven to be sound for such a purpose.

[35] PTI, The Economic Times, "AI can assist but cannot replace human judgment", read more at https://economictimes.indiatimes.com/news/india/ai-can-assist-but-cannot-replace-human-judgment-says-former-cji_chandrachud/articleshow/_118607172._cms?_utm_source= contentofinterest &utm_medium =text&utm_campaign=cppst

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