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PREFACE

Lex Mente - Volume 1 represents the beginning of an initiative aimed at encouraging meaningful, accessible, and student-driven legal research. This inaugural edition brings together a collection of articles written by young scholars who have explored contemporary legal issues with sincerity, analytical depth, and originality.

The idea behind *Lex Mente* is simple yet essential: to provide a platform where students can express their perspectives without academic barriers, develop research skills, and engage with the evolving nature of law. Through this volume, we hope to motivate readers to think critically, question established interpretations, and contribute to legal discourse with confidence.

Each paper included in this edition has been reviewed to maintain academic quality and ensure that it reflects the purpose of this publication. We are grateful to our contributors, mentors, and the editorial team whose dedication made this volume possible.

As we present this first edition, we remain committed to nurturing a space that supports legal scholarship and encourages more students to participate in future publications. We hope this volume serves as an inspiration and a stepping stone for many more academic contributions ahead

MESSAGE FROM ADVISORY BOARD

"The Lex Mente initiative represents an exemplary advancement in student-led legal research and academic publishing within the contemporary legal domain. By providing a scholarly platform for emerging researchers and students, Lex Mente strengthens the cultivation of critical inquiry and substantive legal writing, thereby enriching the academic discourse and promoting intellectual rigor within the legal community.

It is imperative for students and early-career scholars to engage thoroughly in research, academic writing, and analytical debate, as these endeavors are fundamental to their development as competent legal professionals. Lex Mente's mission to foster a robust research culture aligns with the evolving needs of legal academia and professional practice.

The journal's steadfast commitment to academic integrity and the production of original, well-reasoned scholarship underlines the importance of competence, ethical standards, and responsibility in legal research.

I extend my best wishes for the successful publication of Volume 1 and express optimism for Lex Mente's future as a leading forum for quality legal scholarship.

- Adv. Pushpila Bisht

Senior Counsel with the Union of India

MESSAGE FROM EDITOR-IN-CHIEF

The Lex Mente Journal continues its commitment to engaging deeply with contemporary legal issues and the dynamic relationship between law, policy, and society. This volume reflects our belief that meaningful scholarship emerges from critical examination, informed analysis, and a willingness to engage with the complexities of the Indian legal landscape.

As an academic platform, we seek to encourage research that is rigorous, original, and impactful—work that not only expands legal understanding but also contributes to the evolving discourse on justice, rights, and governance. Every contribution to this volume embodies the intellectual curiosity and analytical depth that we aim to nurture within the legal community.

We remain dedicated to supporting scholars, practitioners, and students who engage thoughtfully with legal developments and offer nuanced perspectives on pressing issues. It is our hope that this edition furthers the journal's objective of enriching legal scholarship and fostering meaningful academic engagement."

- Dr. Purnima Bhardwaj
Assistant Professor
Shri Ramswaroop Memorial University,
Lucknow.

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ORGAN TRANSPLANTATION EXAMINED THROUGH FOUNDATIONAL HUMAN RIGHTS CONCEPTS

***Vibhuti Shrivastava*[1] *and Prof. Dr. Sanjay Kumar Yadav*[2]**

ABSTRACT

Organ transplantation stands at the intersection of medicine, ethics, and law, raising complex questions concerning autonomy, dignity, equality, and state accountability. This article re-examines the transplantation framework through core human rights concepts by engaging with principles such as the right to life, bodily integrity, informed consent, privacy, and non-discrimination. Through a critical assessment of the transplantation continuum—including organ retrieval practices, allocation protocols, consent structures, regulatory mechanisms, and the treatment of vulnerable populations—the study identifies persistent tensions between clinical objectives and the imperative to uphold individual rights. The analysis contends that despite the life-saving potential of transplantation systems, existing legal and policy arrangements may inadvertently disadvantage marginalized groups, weaken voluntariness, or allow insufficient transparency in decision-making. Employing a human rights lens provides a structured method for assessing how regulatory regimes can balance public health goals with essential rights-based protections. It further highlights contemporary challenges related to commercialization pressures, transnational organ trafficking, technological developments such as algorithmic matching and digital donor registries, and the crucial need for accountability and openness in governance. The article ultimately argues that integrating foundational human rights standards into national transplant laws is vital for safeguarding donors and recipients alike, while reinforcing ethical credibility and societal trust. A rights-centred paradigm thus offers a strong normative foundation for developing transplant policies that are equitable, transparent, and ethically sustainable.

Keywords: Organ transplantation, human rights, informed consent, bodily integrity, non-discrimination

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INTRODUCTION

Organ transplantation has become a defining advancement in modern healthcare, enabling life-saving and life-enhancing interventions for individuals with irreversible organ failure. The evolution of transplantation—from early surgical attempts to highly sophisticated contemporary procedures—has paralleled the development of ethical norms and legal frameworks governing the human body. These advancements have pushed national and international authorities to establish rules ensuring safety, fairness, and respect for individual rights. The World Health Organization underscores that transplantation systems must operate with strict respect for dignity, voluntary participation, and a categorical rejection of organ commodification.[3] This positioning highlights that transplantation is not solely a medical or technical matter but one deeply embedded in broader human rights considerations.

Background and Significance of Organ Transplantation

Organ transplantation holds essential significance as it offers a critical therapeutic option for patients with terminal organ dysfunction, often serving as their only means of survival. Yet, the scarcity of transplantable organs and the heightened vulnerability of donors reveal an intricate set of ethical, legal, and social issues. Cases of organ trafficking and exploitative procurement practices, recognized as violations under the U.N. Trafficking Protocol, demonstrate the human rights risks inherent in insufficiently regulated systems.[4] As a result, transplantation must be understood as a domain requiring not only medical oversight but also structured legal and rights-based safeguards to protect individuals throughout the process.

Rationale for A Human Rights–Based Analysis

Adopting a human rights framework is essential because transplantation touches core rights such as bodily autonomy, dignity, self-determination, equality, and the right to life, all affirmed in foundational instruments like the Universal Declaration of Human Rights[5] and the International Covenant on Civil and Political Rights.[6] Donation systems—whether opt-in, opt-out, or otherwise—raise crucial questions about voluntariness, coercion, privacy, and state duties to ensure equitable organ allocation. A rights-based evaluation thus offers a structured analytical approach to determining whether transplantation governance protects individuals from abuse, discrimination, and opacity in decision-making.

[3] World Health Org. [WHO], *Guiding Principles on Human Cell, Tissue and Organ Transplantation* (2010).
[4] Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children art. 3(a), Nov. 15, 2000, 2237 U.N.T.S. 319.
[5] Universal Declaration of Human Rights [UDHR] art. 3, G.A. Res. 217A (III), U.N. Doc. A/810 (Dec. 10, 1948).
[6] International Covenant on Civil and Political Rights [ICCPR] art. 6, Dec. 16, 1966, 999 U.N.T.S. 171.

Objectives, Scope, and Methodology

This paper seeks to analyse organ transplantation through central human rights doctrines, with a focus on autonomy, bodily integrity, privacy, dignity, and non-discrimination. The research aims to: (1) explore how these principles arise across the procurement, allocation, and post-transplant stages; (2) assess whether national and global regulatory models adequately reflect rights-protective standards; and (3) identify deficiencies and recommend reforms to strengthen protections for donors and recipients. The study encompasses international treaties, comparative national legislation, ethical guidelines, jurisprudence, and scholarly work. Using doctrinal, comparative, and normative methodologies, it critically evaluates the alignment between transplantation practices and human rights requirements, offering insights for policy and governance reforms.

FOUNDATIONAL HUMAN RIGHTS CONCEPTS RELEVANT TO ORGAN TRANSPLANTATION

Organ transplantation operates within a normative landscape shaped by core human rights doctrines safeguarding dignity, bodily autonomy, equality, privacy, and life. These principles define both the limits and obligations of states and medical institutions engaged in transplantation activities. International human rights law imposes dual responsibilities: to refrain from violating protected rights and to proactively create conditions that ensure safe, ethical, and equitable transplantation practices. Thus, foundational human rights norms serve as essential interpretive tools for assessing the legitimacy of organ procurement, allocation, and post-transplant interventions.

Right to Life and the Duty to Protect

The right to life—enshrined in Article 6 of the International Covenant on Civil and Political Rights (ICCPR)—forms the fundamental legal basis for understanding the importance and regulation of organ transplantation.[7]Transplantation directly promotes this right by offering critical treatment options for patients facing fatal organ failure. Yet, the same right imposes strict obligations on states to ensure donor safety and prevent practices that endanger life, such as coercive or unsafe organ removal. The World Health Organization (WHO) emphasizes that living donation must not expose individuals to excessive physical or psychosocial harm.[8]

Additionally, states must act to curb practices like organ trafficking, coercive procurement, and black-market transactions, all of which threaten both the right to life and human dignity. The

[7] *Id.*
[8] WHO, *Guiding Principles*, supra note 3, at 3.

U.N. Trafficking Protocol explicitly identifies organ removal through exploitation or deception as a serious human rights violation.[9] Consequently, the right to life requires a regulatory structure that simultaneously protects potential donors and guarantees life-preserving opportunities for recipients.

Bodily Integrity and the Ethics of Donation

Bodily integrity—central to the protection of human dignity—prohibits unwarranted interference with the human body and is reflected in international human rights norms prohibiting degrading or involuntary treatment.[10] In transplantation, this principle governs the permissibility of removing organs from living or deceased individuals. For living donors, bodily integrity mandates that organ retrieval occur only when the individual fully understands the risks and freely consents. For deceased donors, it requires that post-mortem procedures respect cultural, ethical, and legal standards.

Ethical donation further depends on transparency, voluntariness, and the absence of financial or social pressure. The WHO Guiding Principles assert that organ removal requires valid consent and reject any practices that compromise the physical integrity of individuals for profit.[11] Bodily integrity therefore provides a foundational ethical and legal benchmark for determining acceptable transplantation practices.

Autonomy, Consent, and Voluntariness

Autonomy—grounded in the principles of self-governance and informed decision-making—is a critical human rights value that governs both living and deceased organ donation. The Universal Declaration on Bioethics and Human Rights affirms the centrality of autonomy and informed consent to medical decision-making.[12] Consent systems across jurisdictions—whether based on explicit consent, presumed consent, or mandated choice—must ensure that individuals retain meaningful control over decisions about their bodies.

Living donation requires particularly high standards of voluntariness, as donors face substantial physical and long-term health implications. Courts in various jurisdictions have reinforced this notion; for instance, Canterbury v. Spence held that informed consent requires disclosure of all significant risks to enable autonomous decision-making.[13] This reasoning is directly applicable to transplantation, where the ethical and medical stakes are considerable. Ensuring

[9] Protocol to Prevent Trafficking, supra note 4
[10] UDHR art. 5, supra note 5.
[11] WHO, *Guiding Principles*, supra note 3, at 2–4.
[12] UNESCO, *Universal Declaration on Bioethics and Human Rights* art. 5 (2005).
[13] *Canterbury v. Spence*, 464 F.2d 772, 780 (D.C. Cir. 1972).

voluntariness protects individuals—especially those facing economic or social pressure—from being compelled into organ donation.

Privacy, Confidentiality, and Data Protection

Transplantation systems rely heavily on the collection, storage, and dissemination of sensitive medical information, requiring strict adherence to the right to privacy under Article 17 of the ICCPR.[14] Medical confidentiality, a core dimension of this right, demands that donor and recipient information be kept secure and disclosed only under lawful and ethical conditions.

International frameworks such as the Council of Europe's Convention on Human Rights and Biomedicine impose clear obligations to ensure that biomedical data are processed only with consent and under stringent safeguards.[15] With the increasing use of digital health databases, genetic profiling, and algorithmic organ-matching systems, the risks of data misuse, discrimination, and unauthorized disclosure are amplified. Thus, robust privacy and data protection norms are essential for upholding trust and ethical integrity in transplantation.

Equality, Non-Discrimination, and Vulnerable Populations

Equality and non-discrimination—affirmed in Article 2 of the UDHR and Article 26 of the ICCPR—require that organ transplantation systems guarantee fair and impartial access to organs and transplant services.[16] Structural disparities in access often reflect broader socioeconomic inequalities, disproportionately affecting marginalized populations, including low-income individuals, women, minorities, and migrants.

Human rights protections impose heightened responsibilities on states to prevent exploitation of vulnerable groups, especially in contexts where poverty or social disadvantage may lead individuals to engage in dangerous or coerced organ selling. The WHO has explicitly warned that economic vulnerability heightens the risk of exploitation in transplantation contexts.[17] Equitable allocation systems must therefore be based on transparent clinical criteria rather than wealth, social status, or political influence. Equality principles mandate that organ distribution be fair, need-based, and free of discriminatory bias.

LEGAL AND ETHICAL FRAMEWORKS GOVERNING ORGAN TRANSPLANTATION

The governance of organ transplantation is shaped by an integrated body of international human rights norms, domestic legislation, and ethical rules designed to protect donors and

[14] ICCPR art. 17, supra note 6.
[15] Convention on Human Rights and Biomedicine art. 10, Apr. 4, 1997, C.E.T.S. No. 164.
[16] ICCPR art. 26; UDHR art. 2.
[17] WHO, *Guiding Principles*, Principle 5 (2010).

recipients while sustaining public confidence in the system. These frameworks outline how organs may be procured, allocated, and used, and they ensure that transplantation is conducted in ways consistent with dignity, autonomy, and fairness. Sound governance requires incorporating human rights standards into national laws, developing coherent policy approaches that curb exploitation, and establishing oversight bodies that enforce transparency and accountability.

International Human Rights Standards

International human rights instruments provide the foundational principles that guide transplantation ethics and regulation. The Universal Declaration of Human Rights (UDHR) establishes the basis for dignity, equality, and bodily integrity—values that shape lawful and ethical organ procurement.[18] The International Covenant on Civil and Political Rights (ICCPR) further articulates the right to life, respect for privacy, and protection against degrading treatment, all of which directly relate to donor autonomy, data protection, and prevention of coercion.[19]

Specialized global guidance also exists. The World Health Organization's (WHO) Guiding Principles set forth core rules such as free and informed consent, the ban on financial gain, equitable organ allocation, and the responsibility of governments to prevent trafficking and illicit procurement.[20] Likewise, the Council of Europe's Convention on Human Rights and Biomedicine mandates strict standards on consent, privacy, and the prohibition of commercial use of body parts.[21]

Together, these documents form a rights-oriented framework that informs national legislation and ensures that transplantation processes uphold ethical and legal standards globally.

National Transplant Legislation and Policy Models

National legal systems translate international norms into enforceable regulations governing organ donation and transplantation. Countries apply different consent frameworks—opt-in, presumed consent, or mandated choice—each with implications for autonomy and societal trust. Spain and Belgium, for example, have adopted opt-out models supported by strong institutional capacity and public confidence, contributing to high donation rates.[22] India, by contrast, implements an explicit consent system under the Transplantation of Human Organs

[18] UDHR arts. 1–5, supra note 5.
[19] ICCPR arts. 6, 7, 17, supra note 6.
[20] WHO, *Guiding Principles*, supra note 3, at 1–5.
[21] Convention on Human Rights and Biomedicine arts. 5–21, supra note 15.
[22] Rafael Matesanz, Organ Donation, Transplantation and the Spanish Model, 1 *Transplantation* 1–5 (2003).

and Tissues Act, which prohibits commercial organ dealings, regulates brain-death determinations, and establishes authorization committees to prevent coercive practices.[23]

Domestic legislation typically contains provisions governing living donation, including stringent risk assessments, psychological evaluation, and consent verification. Many states criminalize organ brokering, trafficking, and unlicensed transplantation, thereby fulfilling obligations under the U.N. Trafficking Protocol.[24]

These national models reflect local ethical considerations and health system capacities while aiming to prevent exploitation and ensure equitable access to transplantation services.

Regulatory Oversight, Transparency, and Accountability

Effective transplantation systems depend on strong regulatory institutions that supervise all phases of organ procurement, allocation, and transplantation. Oversight bodies are responsible for accrediting transplant centres, monitoring organ procurement organizations, maintaining registries, and auditing allocation decisions to safeguard against corruption and preferential access. Transparent organ allocation procedures—grounded in clinical need and fairness—help mitigate discrimination and enhance public trust.

Transparency is a recurrent theme in international guidance. The WHO's Guiding Principles require that organ allocation systems be traceable, subject to documentation, and governed by procedures that allow verification and review.[25] Accountability mechanisms include statutory reporting duties, independent appeals processes, and judicial review to address violations of donor or recipient rights. Courts, through case law, often play a key role in interpreting consent standards, addressing unethical practices, and reinforcing medical responsibilities.

Together, oversight, transparency, and accountability create a regulatory environment that supports ethical transplantation, protects individuals from abuse, and ensures alignment with human rights obligations.

HUMAN RIGHTS CONCERNS ACROSS THE TRANSPLANTATION PROCESS

Human rights considerations shape every phase of the organ transplantation pathway, from the initial procurement of organs to allocation, protection against commercialization, and long-term care of recipients. Because transplantation involves profound interventions on the human body and engages vulnerable individuals, each stage requires rigorous evaluation under principles of autonomy, dignity, equality, and the right to health. A rights-sensitive analysis

[23] *Transplantation of Human Organs and Tissues Act* [THOTA], No. 42 of 1994, India Code.
[24] Protocol to Prevent Trafficking, supra note 4.
[25] WHO, *Guiding Principles*, Principle 10 (2010).

helps identify structural challenges, prevents rights violations, and ensures that transplantation practices align with ethical and legal obligations.

Organ Procurement and Consent Regimes (Opt-In, Opt-Out, Mandated Choice)

Organ procurement relies on legally valid and ethically sound consent, reflecting a core requirement of autonomy and respect for bodily integrity.[26] Jurisdictions adopt different systems for obtaining consent: opt-in, presumed consent (opt-out), and mandated choice. Opt-in models, such as those in India or the United States, depend on explicit authorization from donors or families; critics note that these systems often face low consent rates due to limited public engagement or procedural burdens.[27]

Opt-out systems, widely used in countries like Spain and Belgium, presume consent unless individuals explicitly refuse.[28] These regimes typically increase organ supply but also raise questions about whether the presumption of consent satisfies norms of informed decision-making. International guidance—including the WHO Guiding Principles—maintains that genuine consent, whether expressed or presumed, must reflect adequate knowledge and voluntariness.[29]

Mandated-choice models, which require individuals to state their preference formally, aim to reinforce autonomy but demand substantial administrative infrastructure. Across all systems, legitimacy depends on ensuring that individuals are informed, able to express their wishes, and protected from coercion, consistent with the dignity-based protections in the UDHR.[30]

Allocation Criteria and Equity in Access

The distribution of organs must conform to human rights principles of equality and non-discrimination. Article 26 of the ICCPR obligates governments to ensure equal legal protection without bias or unjustified distinctions.[31]Allocation frameworks typically use medical indicators—urgency, compatibility, waiting time—to prioritize recipients. Yet, systemic inequalities such as disparities in healthcare access, socioeconomic disadvantage, and geographic location can hinder fair participation in transplant waiting lists.

The WHO Guiding Principles require that allocation be "equitable, transparent, and based on clinical criteria."[32] Lack of transparency can lead to preferential treatment, corruption, or

[26] UNESCO, *Universal Declaration on Bioethics and Human Rights* art. 5 (2005).
[27] THOTA, supra note 23.
[28] Matesanz, supra note 22.
[29] WHO, *Guiding Principles*, Principles 1–3 (2010).
[30] UDHR arts. 1–3, supra note 5.
[31] ICCPR art. 26, supra note 6.
[32] WHO, *Guiding Principles*, Principle 9 (2010).

discriminatory exclusion. Research indicates that marginalized communities often face structural barriers, including delayed referrals and limited access to transplant centres, underscoring the need for targeted reforms.[33]

States therefore have a human rights obligation to ensure that allocation mechanisms do not reinforce or perpetuate inequality, and that all eligible patients have fair access to transplantation services.

Commercialization, Exploitation, and Organ Trafficking

The commercialization of organs poses significant ethical and human rights risks, especially for economically vulnerable populations. Organ markets often exploit individuals facing poverty or coercive circumstances, undermining their autonomy and dignity. The WHO explicitly prohibits financial incentives related to the human body, viewing such practices as incompatible with ethical medical standards.[34]

The U.N. Trafficking Protocol identifies forced or exploitative organ removal as a form of trafficking, reflecting its severity as a human rights abuse.[35] Organ trafficking networks frequently operate across borders, jeopardizing the right to security, bodily integrity, and health. States are required to adopt strong criminal prohibitions, licensing systems, and monitoring mechanisms to combat such exploitation.[36]

Reducing commercialization further requires addressing underlying economic vulnerabilities and ensuring adequate social protections, as trafficking often thrives in contexts where individuals lack viable alternatives.

Post-Transplant Rights and Long-Term Patient Welfare

Post-transplant care is essential for safeguarding the rights and welfare of recipients, yet it remains an under examined area in transplantation governance. Recipients rely on long-term medical supervision, immunosuppression, and psychosocial support to maintain their health. Under Article 12 of the ICESCR, states must guarantee access to necessary healthcare services, including continuity of care after transplantation.[37]

A failure to provide adequate follow-up can jeopardize graft function and violate the recipient's right to life and health. The WHO notes that aftercare is a critical component of ethical

[33] Nancy Scheper-Hughes, The Global Traffic in Human Organs, 41 *Current Anthropology* 191–200 (2000).
[34] WHO, *Guiding Principles*, Principle 5, supra note 17.
[35] Protocol to Prevent Trafficking, supra note 4.
[36] *Id.*
[37] International Covenant on Economic, Social and Cultural Rights [ICESCR] art. 12, Dec. 16, 1966, 993 U.N.T.S. 3.

transplant systems.[38] Privacy rights also play a significant role, particularly with respect to managing sensitive medical and genetic information gathered during transplantation.

Transplant recipients may encounter discrimination in employment, insurance, or social participation. Thus, long-term welfare involves multiple human rights considerations—health, equality, dignity, and privacy—all of which require affirmative protections by the state and healthcare institutions.

REFORMING ORGAN TRANSPLANTATION THROUGH HUMAN RIGHTS PRINCIPLES

Reforming transplantation systems through a human rights lens requires aligning every legal, ethical, and institutional component of the process with principles of autonomy, dignity, equality, and protection from exploitation. A rights-based orientation guides states in constructing frameworks that safeguard vulnerable populations, strengthen ethical governance, and ensure that organ procurement, allocation, and clinical practices uphold internationally recognized human rights standards. Such reforms must draw on human rights doctrines, national regulatory needs, and global best practices to build systems that are fair, transparent, and ethically robust.

Embedding Rights-Based Standards in Law and Policy

Integrating human rights norms into transplantation law demands statutory frameworks that clearly reflect commitments to informed consent, dignity, autonomy, fairness, and the right to health. Foundational instruments such as the Universal Declaration of Human Rights (UDHR) provide essential standards relating to bodily integrity, personal autonomy, and non-discrimination, which form the ethical underpinnings of transplantation governance.[39] Legal reforms must specify consent requirements, ban commercial organ transactions, and establish transparent allocation criteria. The WHO Guiding Principles reinforce these duties by insisting on voluntary donation, prohibition of financial gain, and traceability within transplant systems.[40]

National policies must also correspond with obligations under treaties like the International Covenant on Civil and Political Rights (ICCPR), which safeguards life, privacy, and freedom from coercive practices.[41] Further, states must ensure protections for vulnerable groups and create clear institutional mechanisms for oversight. Embedding human rights within

[38] WHO, *Guiding Principles*, Principle 10, supra note 25.
[39] UDHR arts. 1–3, supra note 5.
[40] WHO, *Guiding Principles*, Principles 1–10, supra note 3.
[41] ICCPR arts. 6, 7, 17, supra note 6.

transplantation law builds coherence, consistency, and public confidence—key elements for effective organ donation systems. Thus, a rights-anchored legislative regime ensures that transplantation practices remain ethically grounded and resistant to exploitation.

Strengthening Safeguards for Donors and Recipients

Effective protection for donors and recipients is essential to mitigate the medical, psychological, and socioeconomic risks inherent in transplantation. Safeguards for living donors must include comprehensive informed consent procedures, independent counselling, medical and psychological evaluations, and assurance that consent is freely given without economic inducement or pressure. The UNESCO Universal Declaration on Bioethics and Human Rights underscores these protections, affirming the primacy of autonomy and informed decision-making.[42]

Donors must receive long-term follow-up care and legal protections against exploitation, particularly for individuals from marginalized or economically vulnerable groups. International law—especially the U.N. Trafficking Protocol—requires states to criminalize organ trafficking and adopt measures to protect individuals from being exploited for their organs.[43]

Recipients require equitable access to transplantation, reliable long-term treatment, and safeguards against discrimination in employment and insurance. Privacy protections concerning medical and genetic information must also be maintained. The ICESCR's right-to-health provisions obligate states to ensure ongoing access to necessary medical services post-transplant.[44] Strengthening safeguards in these areas ensures a transplantation system that respects human dignity and protects both donors and recipients from harm.

Ensuring Transparency, Equity, and Accountability

Transparency, equity, and accountability constitute essential structural principles of a human rights–compliant transplantation system. Transparency in decision-making and organ allocation helps prevent arbitrary practices, corruption, and bias. The WHO Guiding Principles require traceability, documentation, and open, clinically justified allocation processes.[45]

Ensuring equity demands that all persons—irrespective of socioeconomic status, caste, gender, ethnicity, or region—have meaningful access to transplantation. Article 26 of the ICCPR mandates equality before the law, obligating states to eliminate discriminatory barriers within

[42] UNESCO, *Universal Declaration on Bioethics and Human Rights* arts. 5–7 (2005).
[43] Protocol to Prevent Trafficking, supra note 4.
[44] ICESCR art. 12, supra note 37.
[45] WHO, *Guiding Principles*, Principle 9, supra note 32.

healthcare systems.[46] Transparent referral pathways, fair waitlist criteria, and non-discriminatory allocation protocols are critical to fulfilling this duty.

Accountability mechanisms—including independent regulatory agencies, judicial oversight, reporting obligations, and redress systems—ensure that violations are identified and rectified. Courts continue to play a pivotal role in shaping medical consent jurisprudence, enforcing ethical duties, and preventing exploitation. Effective accountability strengthens public confidence and guarantees ethical adherence, making transplantation systems more just, reliable, and aligned with human rights norms.

CONCLUSION

This study demonstrates that organ transplantation operates at the intersection of medical science and human rights, demanding that ethical and legal principles guide every aspect of the process. Transplantation involves interventions on the human body that directly implicate core rights—including life, dignity, autonomy, equality, and privacy—making it essential that governance structures uphold these rights at all stages. When these principles are compromised, transplantation systems become vulnerable to inequitable access, coercive procurement practices, and inadequate oversight, ultimately undermining public confidence and ethical legitimacy.

An evaluation of international norms alongside national regulatory approaches reveals that, although many jurisdictions have established robust transplant laws, significant inconsistencies remain in how rights protections are implemented. Consent frameworks, allocation mechanisms, and monitoring systems often struggle to balance the urgent need for organs with the imperative to safeguard individual freedoms, particularly in contexts marked by socioeconomic inequality. These observations point to a continued need for legal and policy reforms that explicitly integrate human rights obligations into transplant governance.

Protecting the interests of donors and recipients must remain central to any reform agenda. This requires strengthening procedures for informed and voluntary consent, ensuring fair and transparent allocation pathways, combating organ trafficking and commercial exploitation, and guaranteeing comprehensive long-term care for transplant recipients. A rights-oriented model also demands proactive measures to prevent disproportionate burdens on vulnerable populations and to promote equitable access to transplantation services.

Embedding human rights norms into transplantation policy ultimately provides a foundation for ethical resilience, legal consistency, and social trust. By harmonizing medical objectives

[46] ICCPR art. 26, supra note 6.

with respect for human dignity and individual freedoms, States can build transplantation systems that are fair, accountable, and responsive to societal needs. Such a framework not only enhances ethical credibility but also reinforces the broader obligation to protect and value human life within organ transplantation practices.

LEGAL PROTECTION OF CLIMATE-EXPOSED WORKERS IN THE AGE OF EXTREME HEAT: A CRITICAL ANALYSIS OF LABOUR LAW AND CLIMATE JUSTICE IN INDIA

Shifa Parveen[47]

ABSTRACT

Notable changes have been observed due to the changing climate in the workplace. The health, livelihood, and dignity of millions of Indian workers particularly those working in the unorganized and outdoor sectors are at risk due to rising temperatures. India's labour law framework lacks climate resilience, as demonstrated by the record-breaking heatwaves of 2024 and 2025. Current laws that do not address heat stress, hydration, or required rest periods during extreme weather events include the Factories Act of 1948 and the Occupational Safety, Health and Working Conditions Code of 2020.

This article explores the legal void surrounding workers exposed to climate change. It analyses statutory gaps, assesses the promise of humane working conditions under Articles 21 and 42 of the constitution, and compares Indian law to global best practices like the ILO Convention 155 and Qatar's ban on midday work. It makes the case supported by comparative policy and human rights jurisprudence that the current framework ignores workers' urgently needed protections because it views climate hazards as "environmental" rather than "labour" issues. Protecting workers from climate extremes is no longer optional, it is central to ensuring constitutional rights, social justice, and sustainable development in the world's fastest-warming labour market.

Keywords: Climate Change, Labour Law, Heat Stress, Occupational Safety, Unorganized Sector, Constitutional Rights, ILO Convention 155, Sustainable Development

[47] Shifa Parveen, *Babu Banarasi Das University*.

INTRODUCTION

In recent years, climate change has evolved from a distant environmental concern to a serious practical challenge. One of the world's largest labour groups resides in India, and the country's most vulnerable citizens are increasingly suffering from the devastating effects of extreme heat. An increase in heat-related illnesses, lost productivity, and even fatalities has resulted from heatwaves being longer, more frequent, and more intense. In 2022 alone, India lost 191 billion potential labour hours due to heat exposure.[48] By 2025, record-breaking temperatures above 45°C were reported across northern states, forcing temporary shutdowns of construction sites and pushing delivery workers into life-threatening conditions.

The crisis is the most intense for external and informal workers: construction workers, sanitary workers, road sellers, distribution agents for traffic police and gaming economy. For them, heat exposure is not a timely threat, but a daily struggle to survive. Unlike factory workers or salaried personnels, they do not have the legal right to compensation for payment climate holidays, protective equipment, rest or heat -related diseases. Lack of awareness in the legal system is the best way to portray systemic inequalities in India's labour market.

According to this article, an important blind gap in the Indian Labor laws is the lack of clear legal protection for workers encountering climate change. The current paradigm ignores climate -inspired threats because it is machine -centred and factory -focused. Moreover, it violates the constitutional guarantees of equality, reasonable working conditions, and life. India risks maintaining a system where people should decide between maintaining their health and earning life's stay until the working laws are updated to reflect the reality of a warming climate.

CONSTITUTIONAL FOUNDATIONS OF WORKER PROTECTION

The Indian Constitution provides not merely a moral aspiration but a juridical foundation for the protection of workers against climate-induced risks. The constitutional promise of dignity, health, and equality becomes particularly significant when one considers that climate change has transformed extreme heat from a natural inconvenience into a structural workplace hazard.

Article 21 – Right to Life and Health

Article 21[49] has been judicially expanded into a fertile source of socio-economic rights. In *Francis Coralie Mullin v. Union Territory of Delhi,*[50] the Court held that the right to life

[48] Seema Prasad, In India, 191 Billion Potential Labour Hours Were Lost Due to Heat Exposure in 2022: Lancet, *Down to Earth* (Nov. 17, 2023), https://www.downtoearth.org.in/news/climate-change/in-india-191-billion-potential-labour-hours-were-lost-due-to-heat-exposure-in-2022-lancet-92619 (accessed Aug. 8, 2025).

[49] India Const. art. 21 ("No person shall be deprived of his life or personal liberty except according to procedure established by law.").

[50] *Francis Coralie Mullin v. Administrator, Union Territory*, (1981) 2 SCR 516 (India).

"includes the right to live with human dignity and all that goes along with it." This includes the right to health, safe working conditions, and protection from occupational hazards.

In *Bandhua Mukti Morcha v. Union of India*[51], Justice P.N. Bhagwati emphasised that the State carries a positive duty to ensure humane working conditions, remarking:

"The right to live with human dignity derives its life breath from the Directive Principles of State Policy."

Working below a burning temperature of 45–48 ° C without shade, water, or effectively breaks the stripes to this dignity. In 2022, India lost approximately 191 billion potential working hours due to exposure to heat, a number showing the scale that Article 21 rights have been incomplete.

Article 14 – Equality before Law

Not everyone is affected similarly by extreme heat. Unlike office employees and air-conditioned businesses, road sellers, construction workers, sanitary workers and delivery agents for gig economy, there are inconsistent exposures to climate threats. The absence of climate -specific protection is therefore the result of systemic inequality, contrary to the spirit of Article[52].

The Court in *E.P. Royappa v. State of Tamil Nadu*[53], stressed that "equality is a dynamic concept with many aspects and dimensions, and it cannot be cribbed, cabined and confined within traditional limits." The neglect of outdoor workers vis-à-vis their indoor counterparts reflects precisely the kind of inequality Article 14 seeks to redress.

Article 23 – Prohibition of Forced Labour

Article 23[54], while traditionally invoked against bonded labour, also prohibits economic compulsion that drives individuals into inhuman conditions. In *People's Union for Democratic Rights v. Union of India*[55], the Court held that if a person is forced to provide labour due to poverty or lack of alternatives, it falls within the definition of "forced labour."

[51] *Bandhua Mukti Morcha v. Union of India,* AIR 1984 SC 802 (India).
[52] *India Const.* art. 14 ("The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.").
[53] *E.P. Royappa v. State of Tamil Nadu,* AIR 1974 SC 555, 1974 SCR (2) 348 (India).
[54] *India Const.* art. 23 ("Traffic in human beings and begar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law.").
[55] *People's Union for Democratic Rights v. Union of India,* (1982) SC 1473 (India).

When workers are forced to choose between starvation and working through extreme heat, often without even minimum hydration or rest, the condition mirrors forced labour. As one construction worker, Yogendra Tundre, told *Reuters* during the 2022 Delhi heatwave[56]:

"There is too much heat and if we won't work, what will we eat?"

The harsh dilemma that countless casual labourers suffer on a daily basis is revealed by his statements, which go beyond personal suffering. For them, labour is a matter of survival rather than choice because they must constantly choose between surviving the extreme heat and hunger.

This dilemma is centred around Article 23 of the Constitution. The Constitution acknowledged that there are several forms of compulsion when it forbade forced labour. An employee is enslaved no longer just through a grasp's whip or a series of bondage, however additionally with the aid of the unseen force of poverty, which forces them to tolerate working occasions that threaten their very lives. In this way, financial problem may generate as tons coercion as physical pressure.

Extreme heat has been a commonplace workplace threat, which contributes to this inequity. Ignoring the truth that choice vanishes when survival is at danger is equivalent to dismissing such hard work as "voluntary." A labourer receives stuck in a scenario that the Constitution itself aimed to take away while he's compelled to choose between famine and heatstroke.

Article 42 – Directive Principle of Humane Work Conditions

Article 42[57] asks the State to "make provision for securing just and humane conditions of work." True, it is placed among the Directive Principles and is not directly enforceable in court. Yet, our constitutional history shows that these principles are not dead letters; they are living values that shape how Fundamental Rights are read and applied. The Supreme Court itself has often turned to them as guiding lights, ensuring that the Constitution speaks to the real struggles of people.

In *M.C. Mehta v. State of Tamil Nadu*[58], the Court reminded us that humane work conditions must reach the most vulnerable, including children forced into hazardous industries. The principle is simple but profound: dignity at work is not a privilege; it is a minimum that every worker deserves.

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[56] Sunil Kataria, Poor Workers Bear the Brunt of India's Heatwave, *Reuters* (May 16, 2022), https://www.reuters.com/world/india/poor-workers-bear-brunt-indias-heatwave-2022-05-16 (accessed Aug. 9, 2025).

[57] *India Const.* art. 42 ("The State shall make provision for securing just and humane conditions of work and for maternity relief.").

[58] *M.C. Mehta v. State of Tamil Nadu,* (1996) 6 SCC 756 (India).

The meaning of "humane conditions" must expand to meet the challenges of climate change in present time. What does it mean to talk of humane work when construction workers are laying bricks in 45°C heat, or sanitation staff sweep the streets at noon under a blazing sun, without shade, water, or rest? Without climate-sensitive protections, Article 42 risks becoming an empty promise.

Humane work in the 21st century must include rest breaks during heatwaves, shaded cooling shelters, access to drinking water, and even paid leave on days when temperatures reach dangerous extremes. These are not luxuries but basic safeguards for survival.

Article 42 might not create a felony right by itself; however, it contains an ethical and constitutional force. It reminds the State that leaving people to fall apart in the heat isn't just a monetary failure, however a betrayal of constitutional values. If we take Article 42 seriously, then adapting labour law to climate realities is not optional, it is the only way to honor the spirit of justice and dignity embedded in our Constitution.

Each clause is important on its own, but taken as a whole, they form a constitutional requirement that cannot be disregarded. Protecting employees from excessive heat and climate threats is required by the constitution and is neither a question of state generosity nor policy preference. It is a violation of the right to life, an increase of inequality, a tolerance of forced labour, and a rejection of the constitutional ideal of humane labour to leave workers unprotected in the face of rising temperatures.

Thus, the climate issue is also a constitutional crisis. In addition to being a human tragedy, every instance of a construction worker fainting on a blistering job site, a street vendor having to sell the goods in the blazing sun, or a sanitation worker experiencing unbearable heat without any relief is evidence of constitutional neglect. As the Supreme Court observed in *E.P. Royappa case*, equality is a "dynamic concept", and arbitrariness is its antithesis. If the State extends meaningful protections only to those who can afford private insulation while leaving the poor to their fate, such arbitrariness becomes a direct violation of Article 14 and the broader constitutional promise.

The framers never intended the Constitution to be static. Its provisions were deliberately infused with breadth and vision, so that future generations could respond to new forms of injustice. Just as the industrial hazards of the 20th century compelled the creation of workplace protections, the environmental hazards of the 21st must compel the recognition of climate-sensitive labour rights. This is not an expansion beyond the Constitution, but its faithful unfolding in new conditions of life.

Ultimately, a Republic that allows its poorest citizens to bear the costs of a warming planet betrays its own foundations. To protect climate-exposed workers is to honor the Constitution's deepest commitments: to life, dignity, equality, and humane labour. To neglect them is not merely an administrative lapse but a constitutional dereliction. The message is unambiguous: *climate adaptation in labour law is not a question of charity, but of constitutional duty and failing to act is failing the Constitution itself.*

THE CURRENT LABOUR LAW FRAMEWORK: GAPS AND LIMITATIONS

Despite their seeming exhaustiveness, India's labour laws were developed during the industrial era and are not equipped to deal with the risks posed by the contemporary climate. Although they are one of the main causes of illness and mortality between outdoor workers today, excessive heat in the legal community is still unimaginable. However, many countries with similar conditions have begun to change their work rules, highlighting India's deficient response.

Occupational Safety, Health and Working Conditions Code, 2020

The Code[59] consolidates safety laws across industries, covering chemical, mechanical, and biological hazards. But it remains silent on climate risks. Heatwaves are not classified as occupational hazards, leaving millions vulnerable.

The International Labour Organization (ILO) has also explicitly recognized heat stress as one of the most severe climate-related labour risks in its 2019 report *Working on a Warmer Planet*[60], urging member states to integrate climate into occupational safety standards.

India's inaction, therefore, is not a neutral omission, it places the country behind the global consensus. More worryingly, it reflects an outdated imagination of workplace safety that still views hazards as accidents within factories, rather than slow, systemic dangers produced by climate change. If labour law is meant to evolve with the realities of work, then the failure to classify heat as a workplace hazard is not just a legislative gap, but a profound disconnects between law and lived experience.

Factories Act, 1948

The Factories Act[61], was groundbreaking for its era. For example, Section 13 mandates that factories maintain proper temperature control and sufficient ventilation within enclosed

[59] *The Occupational Safety, Health and Working Conditions Code*, No. 37 of 2020, Gazette of India, Extraordinary, Part II, Sec. 1 (Sept. 28, 2020).
[60] Int'l Labour Org., *Working on a Warmer Planet: The Impact of Heat Stress on Labour Productivity and Decent Work* (2019), https://www.ilo.org/global/publications/books/WCMS_711919/lang--en/index.htm (accessed Aug. 10, 2025).
[61] *The Factories Act*, No. 63 of 1948, India Code.

workspaces. This was a progressive clause in 1948 that sought to shield industrial workers from the stifling heat of poorly ventilated workplace areas. Yet, its vision was limited by the context of its time. The law remains entirely inward-looking, designed only for the traditional industrial unit. Outdoor labour, sanitation workers, delivery riders, street vendors, traffic police, and construction workers are arguably those most at risk in today's climate who remain outside its protective umbrella.

This limitation exposes the factory-centric bias of India's labour law framework. At a time when more than 90% of India's workforce is employed in the informal sector, and a growing proportion of employment involves outdoor or gig-based work, the fact that legal protections stop at the factory gate is profoundly exclusionary. The very workers who endure the harshest exposure to heat are the ones rendered invisible by this outdated statute.

Countries that experience similar weather extremes, on the other hand, have already started to modify their laws. Qatar and the United Arab Emirates, both heavily dependent on migrant and outdoor workers, have introduced legally binding *midday work bans*[62]. During the hottest summer months in Qatar, it is illegal to work outside between 10 a.m. and 3:30 p.m.; also, workplaces must have hydration stations, covered rest rooms, and medical supplies on hand. Penalties for employers who violate the law demonstrate that heat protection is a fundamental labour right and not an option. Despite experiencing more severe and prolonged heatwaves in recent years, India lacks a comparable measure. Despite the lived realities of delivery agents pedalling through 45°C afternoons or construction workers toiling outdoors, the law still views workers as factory hands from the middle of the 20th century. The Factories Act's absence of climate-adaptive protections shows a lack of legislation as well as a general reluctance to update labour rules considering current threats.

Building and Other Construction Workers Act, 1996

The Building and Other Construction Workers Act[63], was created to protect one of the most vulnerable groups of workers i.e. construction workers. It set up welfare boards, made registration compulsory, and introduced a cess fund to provide benefits such as housing, maternity aid, accident insurance, and pensions. On paper, it looked like a safety net for workers who build India's cities but rarely share in their growth.

[62] Deeplata Garde, After UAE, Bahrain, Qatar & 2 More GCC Countries Have BANNED Outdoor Work in Summer, *Curly Tales* (June 16, 2025), https://curlytales.com/after-uae-bahrain-qatar-2-more-gcc-countries-have-banned-outdoor-work-in-summer/ (accessed Aug. 17, 2025).

[63] *The Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act*, No. 27 of 1996, India Code.

However, the Act says little about climate-related risks. Construction is almost always outdoor work, where exposure to extreme heat is unavoidable. Yet the law does not require employers to provide shaded shelters, hydration points, rest breaks during heat alerts, or flexible work timings in hot weather. It treats only sudden accidents as dangers, ignoring the slow and daily damage caused by heat stress.

Other countries show that better is possible. Nepal's *Labour Rules, 2018* recognize "hazardous work environments" and put the duty on employers to adapt to them. Qatar goes further by linking construction permits to heat safety by banning outdoor work in the hottest hours and requiring shaded rest spaces and water facilities. By contrast, India's law still views construction safety in narrow terms, focusing on scaffolding or helmets, while leaving climate exposure out of the picture.

This difference is especially concerning because thousands of crores are collected annually through the Acts cess, but a large portion of that money is wasted. Preventive measures such as first-aid kits, cooling shelters, and heat safety awareness receive very little funding. As a result, there is a difference between what the law states and what employees go through. If the Act is not up to date keeping in mind the realities of the climate change, it could become outdated and useless for the individuals it was created to protect.

Unorganized Workers' Social Security Act, 2008 & Code on Social Security, 2020

The unorganized sector, which employs close to 90% of India's workforce, remains the least protected under labour law. The *Act*[64]*, and later the Code on Social Security*[65]*,* were intended to extend welfare benefits to this vast majority. They created schemes for pensions, maternity aid, and insurance, and more recently, platforms such as *E-Shram* to register and identify workers.

Yet these frameworks stop short of addressing climate-related vulnerabilities. Neither statute recognises heatstroke, dehydration, or other heat-induced illnesses as *occupational diseases*. This means that workers who collapse while working in 45°C heat cannot claim medical compensation, wage replacement, or insurance cover even though their illness is clearly linked to working conditions. In practice, the law offers registration and welfare "on paper," but little by way of climate-sensitive protection.

By contrast, legal systems elsewhere are beginning to move forward. The European Union has gradually expanded the definition of "occupational disease" to include not only physical

[64] *The Unorganised Workers' Social Security Act*, No. 33 of 2008, India Code.
[65] *The Code on Social Security*, No. 36 of 2020, Gazette of India, Extraordinary, Part II, Sec. 1 (Sept. 29, 2020).

injuries but also mental health risks like stress and burnout and is now opening discussions on environmental hazards. Even Bangladesh's National Adaptation Plan (2023–2050) identifies heat stress as a serious threat to labour productivity and calls for its integration into social security schemes.

India's approach, therefore, lags both global consensus and regional neighbours. Workers are acknowledged for statistical and welfare purposes, but their greatest vulnerability i.e. exposure to extreme climate is kept legally invisible. Unless occupational health frameworks are updated to recognize heat as a compensable hazard, social security for unorganised workers will remain symbolic rather than substantive.

Minimum Wages Act, 1948

The Act[66] was meant to guarantee wage fairness and prevent exploitation by ensuring that workers receive at least a basic floor of pay. However, it does not account for variations in risk or working conditions. A worker toiling under the scorching sun is legally entitled to the same wage as someone working in a shaded or climate-controlled environment. This silence on hazard pays or climate allowance effectively ignores the added physical and health risks borne by outdoor workers.

On the other hand, several countries have adjusted their wage and labour laws to take climate change into account. In the United Arab Emirates and Qatar, employers are required to either reduce working hours or increase allowances during the hottest summer months; licensing and inspection are tied to the application of these rules. Businesses who fail to provide outdoor workers with shade, water, and rest intervals during heat waves risk fines, according to recommendations set by the Occupational Safety and Health Administration[67] (OSHA) in the United States. These actions demonstrate an understanding that safe working conditions and fair pay are inextricably linked.

India's failure to recognize hazard-linked wages creates a troubling paradox. Employers face no financial incentive to adapt workplaces or reduce risk, while workers are forced to absorb the double burden of poverty and danger. In effect, the law rewards inaction on safety and penalizes only the workers those are least able to bear the cost. Unless wage law evolves to reflect the risks of climate-exposed labour, the principle of "fair wages" will remain incomplete.

[66] *The Minimum Wages Act*, No. 11 of 1948, India Code.

[67] Occupational Safety & Health Admin. (OSHA), U.S. Dep't of Labor, *Heat Illness Prevention Campaign* (2021), https://www.osha.gov/heat (accessed Aug. 19, 2025).

What emerges is clear: India's labour laws are factory-centric, static, and blind to climate realities. They imagine the worker as a factory hand of the 1940s, surrounded by machines, rather than the delivery rider, construction worker, or vendor braving 45°C heat in today's economy. Other nations whether Qatar with its mid-day bans, UAE with its hazard allowances, Bangladesh with climate-adaptation plans, or the ILO with global guidelines are already recognising heat as a workplace hazard. India, however, continues to treat it as "weather" rather than "work."

This is more than a legal oversight. It is a form of structural neglect where millions of climate-exposed workers remain invisible to the law. Their illnesses are not "occupational," their exhaustion is not "compensable," and their deaths are not "avoidable" within the current framework. If India's labour laws are to remain meaningful, they must evolve from being factory-era statutes to climate-era safeguards. Recognition of climate hazards as occupational risks is not only urgent but it is the only way to honour constitutional promises of dignity, equality, and humane work.

CLIMATE JUSTICE AND LABOUR RIGHTS

A fundamental issue of climate justice, the plight of heat-exposed workers is not merely a result of inadequate regulation. Workers are not all equally affected by extreme heat. Those who are already poor, unorganized, and socially marginalized are the ones that suffer the most. A street vendor or construction worker must endure the worst of the rising temperatures, while a salaried office worker in an air-conditioned setting can continue with little disruption.

Even more glaringly unfair is the situation for gig economy workers. The algorithmic management systems that oversee delivery agents working on digital marketplaces punish tardiness and reward speed. This means that during peak summer afternoons, when the risk of heatstroke is highest, they are often under the greatest pressure to keep working without any entitlements to rest, insurance, or protective gear. Similarly, sanitation workers, waste pickers, and traffic police cannot choose when to work; their exposure is part of the very services society depends upon. Yet, they remain almost invisible in India's labour law framework.

This imbalance reflects a deeper environmental injustice. Those who contribute the least to carbon emissions like the poor, the informal, and the powerless are the ones paying the highest price. They suffer most of the climatic burden mostly caused by urbanization, industrialization, and global energy systems from which they receive little benefit. In this sense, labour law reform is not only about protecting health and safety; it is about redistributing climate risks more fairly.

To treat climate-exposed workers with dignity is to recognise that climate justice and labour rights are inseparable. Protecting them is no longer optional welfare, it is a constitutional and moral imperative.

RECOMMENDATIONS FOR REFORM

Moving beyond limited benefits to a system of labour laws that are climate sensitive is necessary to protect workers in India from climate change. The following changes are both necessary and doable:

Recognise Heat as an Occupational Hazard

Dehydration, heat stress, and climate related illness should be expressly mentioned as occupational hazards in the 2020 Occupational Safety, Health, and Working Conditions Code. rather than describing heat as a "natural" or unavoidable situation, this would make the companies legally responsible for prevention and compensation

Mandatory Workplace Heat Action Plans

Every employer in heat-exposed sectors like construction, delivery, sanitation, agriculture must be required to prepare Heat Action Plans. These should include shaded rest shelters, drinking water stations, first-aid units, and compulsory rest breaks during peak hours. Just as fire safety drills became routine after industrial accidents, heat safety must be institutionalized.

Climate Leave

Paid leave should be made available during government-declared red-alert heatwaves. Workers should not be forced into the cruel choice between hunger and heatstroke. Climate leave would act as a humane safeguard, especially for daily-wage and informal workers.

Insurance and Compensation

Heat-related illnesses such as heatstroke, kidney damage, or cardiac stress must be covered under the Employees' State Insurance Act and the Code on Social Security. Families of workers who die due to heat exposure should receive compensation at par with workplace accidents.

Gig Worker Protections

Companies that provide digital platforms are accountable for the climate risks that their delivery agents take. To avoid penalizing employees for slowing down during periods of intense heat, algorithmic targets need to be modified. Every gig agreement should include emergency insurance, required cooling breaks, and heat-safety bonuses.

Adopt International Best Practices

India should learn from global examples. In Qatar and the UAE, outdoor work is banned during the hottest hours of the day, with enforcement linked to permits and penalties. A similar midday

work ban during Indian summers could prevent thousands of heat-related hospitalisations and deaths.

Green Labour Law Framework

Climate change must move from the margins to the centre of labour law. Workplace safety standards can include environmental sustainability through measures like energy-efficient cooling, heat-resistant clothing, urban tree cover near work sites, and company commitments to reduce emissions. Environmental and labour rights may no longer be viewed as distinct domains.

CONCLUSION

India's labour laws were developed for factories and mechanical hazards in the industrial age, but the damage caused by excessive heat in the 21st century is quite severe. Due to climate change, heat has become a deadly threat in the workplace that affects workers outside and exposed to the weather. However, the current legal system failed to seriously provide protection to these workers. Articles 21 and 42 in the Constitution, which guarantee life, health and worthy employment rights, require changed labour law that includes climate flexibility and protect human dignity.

Protecting climate-exposed workers is not merely aspirational; it is a legal, constitutional, and moral imperative. Failure to act perpetuates a silent epidemic of heat-related illness and death among construction labourers, street vendors, agricultural workers, and gig economy participants. Recognizing extreme heat as a formal occupational hazard, mandating structured rest breaks, instituting climate leave, ensuring access to hydration and cooling facilities, and adopting international best practices are urgent steps toward a “green labour law” which is a framework that harmonises social justice, human rights, and climate adaptation. Justice P. N. Bhagwati, in *Bandhua Mukti Morcha*, observed that “the right to live with dignity… cannot be ensured unless workers are protected from exploitation.” In a warming India, failure to shield workers from climate extremes is itself a profound form of exploitation, hidden yet deadly. Legislative and policy action is no longer optional; it is a constitutional obligation. Protecting workers from climate hazards is the measure of our commitment to human dignity, social equity, and ethical governance. The time to act is now before neglect transforms into irreparable loss.

ENHANCING THE EFFECTIVENESS OF THE ARBITRATION AND CONCILIATION ACT, 1996: A CRITICAL ANALYSIS OF ENFORCEMENT MECHANISMS IN INDIA

Himanshu Bhat[68]

ABSTRACT

The Arbitration and Conciliation Act, 1996 serves as the foundation for arbitration in India. However, the effectiveness of its enforcement mechanisms, especially in relation to the public policy exception and judicial review, remains debatable. This paper critically analyses these enforcement challenges, compares India's framework with international standards, and provides recommendations for reforms. It also reviews key Supreme Court judgments that have shaped arbitration law, shedding light on India's evolving stance. The paper concludes by proposing targeted reforms aimed at making India a more arbitration-friendly jurisdiction

Keywords: Arbitration, conciliation, UNCITRAL model, arbitral award.

INTRODUCTION

Arbitration has become an indispensable alternative to traditional court litigation, offering a faster and often less costly means of resolving disputes. The Arbitration and Conciliation Act, 1996 (ACA) was enacted with the aim of consolidating and modernizing India's arbitration laws, drawing inspiration from the UNCITRAL Model Law. Despite its progressive nature, the Act's enforcement mechanisms have faced criticism due to judicial intervention, delays, and broad interpretations of the public policy exception. The New York Convention of 1958, which India has ratified, specifies in Article V(2)(b) that the enforcement of an arbitral award may be refused, among other reasons, if it conflicts with the public policy of the jurisdiction where enforcement is sought. Notably, the term 'public policy' remains undefined in the Convention, meaning its interpretation will depend on each country's standards. Historically, India has faced challenges in aligning its understanding and standards of public policy with those accepted internationally.

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Many countries contend that their definitions of international public policy are more limited than their domestic public policy. As India aims to position itself as a hub for arbitration by ensuring that arbitration awards are final and minimizing judicial interference, there has been a trend towards adopting a more restricted interpretation of public policy in rejecting the enforcement of foreign awards in international commercial arbitration.

OVERVIEW OF THE ARBITRATION AND CONCILIATION ACT, 1996

Historical Context

The legal landscape of arbitration in India predates its independence. Arbitration law evolved through various legislative enactments, notably the Arbitration Act, 1940, which was criticized for inefficiencies and delays in the arbitral process. Recognizing the need for a modern arbitration framework, the Arbitration and Conciliation Act, 1996 was enacted, reflecting the principles of the UNCITRAL Model Law and aligning Indian arbitration law with international standards.

Pre-Independence Era: Arbitration in India initially developed under British colonial rule, with early laws such as the Indian Arbitration Act, 1899 providing limited recognition of arbitral awards.

Post-Independence: The Arbitration Act of 1940 became the primary legislation, though it was widely criticized for allowing excessive court interpretation.

Key Objectives and Principles of the ACA

The ACA rests on several key principles, including party autonomy, minimal judicial interference, and the finality of arbitral awards. These principles are crucial for ensuring the efficiency of arbitration and boosting the confidence of both domestic and international parties in India's arbitration framework.

1. **Increased Popularity of Arbitration**:

   The ACA has significantly contributed to the rise in arbitration as a preferred mode of dispute resolution in India. More parties are opting for arbitration due to its efficiency, flexibility, and reduced costs compared to traditional court litigation.

2. **Party Autonomy**:

   One of the most notable findings is the emphasis on party autonomy. The ACA allows parties the freedom to choose their arbitrators, procedures, and applicable laws, which enhances their control over the arbitration process.

3. **Limited Grounds for Challenge:**

The Act limits the grounds on which an arbitral award can be challenged, promoting the finality of awards. This reduction in grounds for judicial intervention supports the integrity of the arbitration process.

4. **Judicial Support:**

   The Indian judiciary has generally adopted a pro-arbitration stance, which has been instrumental in reinforcing the effectiveness of the ACA. Courts have been supportive in upholding arbitration agreements and awards, thereby fostering a favourable environment for arbitration.

5. **International Alignment**:

   The ACA is aligned with international arbitration standards, including the UNCITRAL Model Law. This alignment enhances India's appeal as a destination for international arbitration and reflects a commitment to global best practices.

6. **Recognition of Arbitral Institutions**:

   The ACA encourages the establishment and recognition of arbitral institutions, which can provide administrative support and enhance the credibility of the arbitration process. Institutions like the Delhi International Arbitration Centre (DIAC) have emerged as key players**.**

7. **Emphasis on Confidentiality**:

   The Act supports the confidentiality of arbitration proceedings, which is a critical aspect for parties, especially in commercial disputes. This confidentiality fosters trust and encourages parties to disclose sensitive information during arbitration.

8. **Interim Measures**:

   The ACA allows for the granting of interim measures by arbitral tribunals, providing essential relief and preserving the status quo during the arbitration process. This provision is crucial for protecting parties' rights before the final award.

9. **Time-Bound Proceedings:**

   The ACA emphasizes the need for timely resolution of disputes, with provisions aimed at expediting arbitration proceedings. The introduction of time limits for the completion of arbitration has been a significant improvement.

10. **Judicial Intervention:**

    While the ACA aims for minimal judicial interference, the courts have sometimes intervened in arbitration matters. Notable Supreme Court judgments have clarified the scope of judicial

review and enforcement of arbitration awards, balancing party autonomy with judicial oversight.

11. **Evolving Interpretation:**

The interpretation of key provisions of the ACA has evolved over time, particularly in the context of public policy and the enforcement of foreign arbitral awards. The judiciary's role in shaping these interpretations is crucial for the ACA's application.

12. **Awareness and Education**:

There is a growing awareness and education regarding arbitration among legal practitioners, businesses, and academics, which is essential for the successful implementation of the ACA. Increased training and resources are being made available to foster a deeper understanding of arbitration practices.

ANALYSIS OF ENFORCEMENT MECHANISMS

Public Policy Exception

One of the most contentious aspects of arbitration law in India is the public policy exception, particularly under Section 48 of the ACA, which allows courts to refuse the enforcement of foreign arbitral awards if they violate India's public policy. The interpretation of "public policy" has evolved over the years, often leading to unpredictable enforcement outcomes.

1. Definition and Scope:

The public policy exception under Section 48(2)(b) permits the refusal of an arbitral award if it is contrary to the "fundamental policy of Indian law," the "interests of India," or "justice or morality." These broad terms have resulted in varied judicial interpretations.

2. Impact on Enforcement:

The unpredictable application of public policy, as seen in ONGC Ltd. v. Saw Pipes Ltd., has undermined the certainty of arbitral awards. In this case, the Supreme Court expanded the scope of public policy to include errors of law, allowing the setting aside of an award on the grounds of patent illegality.

Case Law - ONGC Ltd. v. Saw Pipes Ltd. (2003)

Facts: The dispute arose from a contract between ONGC and Saw Pipes regarding the supply of pipes. ONGC challenged the arbitral award, claiming that it violated Indian law.

Issue: Whether an arbitral award could be set aside on grounds of "patent illegality" under the public policy exception.

Observations: The Supreme Court held that an award could be set aside if it was "patently illegal" or violated the fundamental policy of Indian law. This broadened the scope of judicial intervention in arbitration.

Judgment: The court set aside the award, stating that the arbitrator's interpretation of the contract was erroneous and violated public policy. The court observed, "an award that is contrary to the provisions of law or the terms of the contract is liable to be set aside under Section 34.

THE FORMALITIES FOR ENFORCEMENT OF A FOREIGN AWARD

The formalities of enforcement of foreign awards are relatively basic and have been reflected in Article 4 of the New York Convention and Section 7 of the 1996 Act. Here too, there have been certain legal developments. Article 4(1) of the NYC provides that to obtain recognition and enforcement, the party applying for recognition and enforcement shall supply the duly authenticated original award or duly certified copy, as well as the original agreement or a duly certified copy. The language of Article 4(1) and Section 47 suggests that it is mandatory that the requisite documents be filed at the time of application. However, in a recent judgment in PEC Ltd. v. Austbulk Shipping Sdn. Bhd., the Supreme Court gave the provision a liberal interpretation. This case concerned the enforcement of a London Maritime Arbitration Association award. The authenticated copy of the arbitration agreement had not been filed at the time of making the application, but later in the proceedings, the Supreme Court held that the word 'shall' be read down as may[69] Consequently, 'shall' would be read as may, at the initial stage of the application, but not thereafter. The Supreme Court emphasized the pro-enforcement bias of the New York Convention by advancing a pragmatic, flexible, and non-formalistic approach in construing the enforcement applications. It gave a liberal interpretation and held that initial non-filing of the charter party was a curable defect. The award was finally enforced. The pro-enforcement bias of the Supreme Court was also exhibited in Shriram EPC Ltd. v. Rioglass Solar SA, where it upheld the validity of the arbitration agreement despite challenges, reinforcing the need for judicial restraint in interference[70]

Singapore

Singapore has positioned itself as a global arbitration hub by adopting a pro-arbitration stance and streamlining its enforcement procedures. The International Arbitration Act, 1994, which is

[69] *PEC Ltd. v. Austbulk Shipping Sdn. Bhd.*, (2019) 2 SCC 327 (India).
[70] *Shriram EPC Ltd. v. Rioglass Solar SA*, (2018) 15 SCC 224 (India).

based on the UNCITRAL Model Law, offers a narrow interpretation of the public policy exception, which enhances the certainty of enforcement.

- **Public Policy Exception**: The courts in Singapore interpret the public policy exception narrowly, limiting its application to cases where the award violates the fundamental norms of justice and morality. This approach aligns with the pro-enforcement bias inherent in international arbitration.
- **Judicial Review**: Singaporean courts have consistently upheld the principle of minimal judicial interference, confining their review to procedural irregularities rather than engaging in merits review.

Case - AJU v. AJT (2011)

Facts: This case involved a challenge to an arbitral award on the grounds of public policy.

Issue: Whether the award could be set aside for being contrary to public policy.

Observations: The court reaffirmed that the public policy exception must be interpreted narrowly, emphasizing that only awards that offend fundamental principles of justice and morality can be set aside.

Judgment: The court upheld the award, reinforcing Singapore's pro-arbitration stance. The court held, "The public policy exception should be applied sparingly, and only where there is a clear violation of fundamental justice."[71]

Hong Kong

Hong Kong has long been recognized as one of the most arbitration-friendly jurisdictions. The Hong Kong Arbitration Ordinance mirrors the UNCITRAL Model Law and places a strong emphasis on minimizing court intervention.

- **Efficient Enforcement:** The enforcement of arbitral awards in Hong Kong is relatively straightforward, with minimal procedural hurdles. The courts place great weight on party autonomy and the finality of arbitral awards.
- **Minimal Judicial Intervention**: Hong Kong courts adopt a restrictive approach to judicial review, focusing only on procedural fairness and preventing any review on the merits.

Case - Hebei Import & Export Corp v. Polytek Engineering Co. Ltd. (1999):

Facts: The dispute concerned a foreign arbitral award, which was challenged on the grounds of public policy.

Issue: Whether the enforcement of the award was contrary to Hong Kong's public policy.

[71] *AJU v. AJT*, [2011] SGCA 20 (Sing.).

Observations: The court noted that the public policy exception should be applied cautiously, and only in cases where the award would undermine justice and fairness in Hong Kong.

Judgment: The court enforced the award, holding that "public policy is not to be lightly invoked to resist the enforcement of an arbitral award.[72]"

United Kingdom

The United Kingdom, under the Arbitration Act, 1996, is seen as a model jurisdiction for arbitration. The Act incorporates the principles of the UNCITRAL Model Law and adopts a clear and predictable framework for enforcing arbitral awards.

- **Precise Public Policy**: UK courts have consistently applied a narrow interpretation of the public policy exception, limiting its scope to fundamental breaches of justice.
- **Enforcement Framework**: The UK has an efficient enforcement framework, where the courts typically support the arbitral process and avoid interfering with the merits of the dispute.

Case- Dallah Real Estate v. Pakistan (2010):

Facts: The case involved the enforcement of a foreign arbitral award that was challenged by Pakistan on the grounds of public policy.

Issue: Whether the UK courts should refuse enforcement on public policy grounds.

Observations: The court emphasized that public policy should only be invoked in exceptional circumstances and should not be used to challenge the merits of an arbitral award.

Judgment: The court refused to enforce the award, but the decision was based on jurisdictional issues rather than public policy concerns. The court stated, "Public policy in the context of arbitration is confined to matters affecting the most basic notions of morality and justice.[73]"

Switzerland

Switzerland is known for its arbitration-friendly approach and its alignment with international arbitration standards. The Swiss Private International Law Act, 1987 governs arbitration in Switzerland, offering a streamlined and efficient enforcement process.

- **Narrow Public Policy Application**: Swiss courts have consistently applied the public policy exception narrowly, focusing only on cases where the award contravenes Switzerland's most fundamental legal principles.
- **Effective Enforcement**: Switzerland has a highly efficient enforcement framework, with minimal judicial intervention and clear procedural guidelines.

Case - X v. Y (Swiss Federal Tribunal, 2006):

[72] *Hebei Import & Export Corp. v. Polytek Eng'g Co. Ltd.*, [1999] 2 HKCFAR 111 (H.K.).
[73] *Dallah Real Estate & Tourism Holding Co. v. Islamic Republic of Pakistan*, [2010] UKSC 46 (U.K.).

Facts: This case involved a challenge to a domestic arbitral award on the grounds of public policy.

Issue: Whether the award could be set aside for being contrary to public policy.

Observations: The Swiss Federal Tribunal held that public policy must be interpreted restrictively, applying only to awards that violate Switzerland's core legal principles.

Judgment: The court upheld the award, reaffirming Switzerland's pro-arbitration stance. The court observed, "Public policy is an exceptional ground for refusing enforcement and should be interpreted narrowly to respect the finality of arbitral awards.[74]

United States

The United States follows the Federal Arbitration Act, 1925 (FAA), which provides a solid framework for the recognition and enforcement of arbitral awards. The public policy exception is narrowly defined under U.S. law, ensuring that arbitral awards are not easily set aside.

- **Specific Grounds for Public Policy**: U.S. courts apply the public policy exception in limited cases, such as awards obtained through fraud, corruption, or where enforcement would violate fundamental principles of justice.
- **Established Framework**: The FAA provides a well-defined procedure for enforcing arbitral awards, with the courts generally taking a hands-off approach unless procedural irregularities are evident.

Case Reference - Mitsubishi Motors Corp v. Soler Chrysler-Plymouth, Inc. (1985):

Facts: The case involved the enforcement of an arbitral award in an international commercial dispute.

Issue: Whether the enforcement of the award violated U.S. public policy.

Observations: The U.S. The Supreme Court held that arbitral awards should be enforced unless they violate the "most basic notions of morality and justice."

Judgment: The court enforced the award, emphasizing that the public policy exception should be used sparingly. The court observed, "The enforcement of an arbitral award should not be denied on the basis of public policy unless it clearly offends the most fundamental norms of justice.[75]

[74] X v. Y, [2006] 132 I.L.R. 1 (Swiss Fed. Trib.).
[75] *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614 (1985).

LANDMARK CASES IN INDIA

India's arbitration jurisprudence has been shaped by several landmark Supreme Court cases. These cases highlight the evolving nature of arbitration law in India, particularly in relation to the enforcement of arbitral awards and the interpretation of the public policy exception.

Case- ONGC Ltd. v. Saw Pipes Ltd. (2003)

Facts: ONGC and Saw Pipes Ltd. entered into a contract for the supply of goods. A dispute arose, and the matter was referred to arbitration. The arbitrator made an award in favour of Saw Pipes, but ONGC challenged the award on the grounds of public policy.

Issue: Whether the arbitral award could be set aside on the grounds of "patent illegality" under the public policy exception.

Observations: The Supreme Court broadened the scope of public policy by holding that an award could be set aside if it was "patently illegal." The court emphasized that an error of law could be a valid ground for setting aside an award if it violated Indian law.

Judgment: The court set aside the award, stating that the arbitrator's interpretation of the contract was erroneous and violated public policy. The court held, "An award that is contrary to the provisions of law or the terms of the contract is liable to be set aside under Section 34[76].

Case- Renusagar Power Co. Ltd. v. General Electric Co. (1994)

Facts: This case involved the enforcement of a foreign arbitral award in favour of General Electric. Renusagar Power Co. challenged the award on the grounds of public policy, arguing that it violated Indian law.

Issue: Whether the enforcement of the foreign arbitral award could be refused on public policy grounds.

Observations: The Supreme Court adopted a narrower interpretation of public policy, limiting its application to fundamental principles of Indian law, justice, and morality.

Judgment: The court enforced the award, stating that public policy should be narrowly construed in the context of enforcing foreign arbitral awards. The court held, "Enforcement of a foreign award may be refused only if it is contrary to the fundamental policy of Indian law, justice, or morality.[77]

Case- Ssangyong Engineering & Construction Co. Ltd. v. National Highways Authority of India (2019)

[76] *ONGC Ltd. v. Saw Pipes Ltd.*, (2003) 5 SCC 705 (India).
[77] *Renusagar Power Co. Ltd. v. General Electric Co.*, (1994) 2 SCC 644 (India).

Facts: The dispute arose over a construction contract between Ssangyong Engineering and the National Highways Authority of India (NHAI). The arbitral tribunal ruled in favour of Ssangyong, but NHAI challenged the award on the grounds of public policy.

Issue: Whether the arbitral award could be set aside on the grounds of public policy under Section 34 of the ACA.

Observations: The Supreme Court took a more restrictive approach, ruling that the public policy exception must be interpreted narrowly in line with international standards.

Judgment: The court upheld the award, stating that the public policy exception should not be used to re-examine the merits of the case. The court observed, "Public policy must be given a narrow interpretation, and courts should refrain from interfering with arbitral awards unless there is a clear violation of fundamental legal principles."[78]

PUBLIC POLICY AND THE 2015 AND 2021 AMENDMENTS

The 2015 Amendment to the ACA introduced significant changes aimed at reducing delays in arbitration and limiting judicial interference. One of the key amendments was the clarification of the public policy exception, ensuring that it is applied in a narrow and precise manner.

Key Changes Introduced by the 2015 Amendment

- **Public Policy Clarification**: The Amendment restricted the scope of the public policy exception, limiting it to awards that are in conflict with the "fundamental policy of Indian law," "interest of India," or "justice and morality."[79]
- **Expedited Proceedings**: The Amendment introduced timelines for the completion of arbitration proceedings, aimed at expediting the process and reducing delays.[80]
- **Judicial Intervention**: The Amendment reinforced the principle of minimal judicial interference by narrowing the grounds for setting aside awards.

The 2021 Amendment

The 2021 Amendment further streamlined the arbitration process, particularly in relation to the enforcement of arbitral awards.

Unconditional Stay on Awards: One of the key changes introduced by the 2021 Amendment was the provision for an automatic stay on the enforcement of arbitral awards in cases where the underlying arbitration agreement or contract is induced by fraud or corruption.[81]

[78] *Ssangyong Eng'g & Constr. Co. Ltd. v. Nat'l Highways Auth. of India*, (2019) 15 SCC 131 (India).
[79] *Arbitration and Conciliation Act*, No. 26 of 1996, § 34(2)(b)(ii), India Code.
[80] A.K. Mishra, Arbitration in India: A Comparative Analysis of the 2015 Amendment, 3 *Indian J. Arb. L.* 1 (2016).
[81] *Arbitration and Conciliation (Amendment) Act*, No. 3 of 2021, § 36, India Code.

Impact on Public Policy: The 2021 Amendment reinforced the narrow interpretation of public policy, limiting its application to cases where there is a clear violation of Indian legal principles.[82]

CONCLUSION

India's arbitration framework, particularly the Arbitration and Conciliation Act, 1996, has evolved significantly since its enactment. The enforcement of arbitral awards remains a critical issue, with the public policy exception often serving as a ground for judicial intervention. However, recent amendments to the ACA, coupled with landmark judgments from the Supreme Court, have sought to narrow the scope of public policy and reduce delays in the arbitral process[83].

To further enhance the effectiveness of India's arbitration framework, it is crucial to continue promoting a pro-arbitration stance, limiting judicial interference, and streamlining enforcement procedures. By adopting best practices from arbitration-friendly jurisdictions, India can position itself as a global arbitration hub and attract more international commercial disputes.

[82] A. Bhattacharya, Recent Developments in Indian Arbitration Law: A Review of the 2021 Amendment, 10 *Indian Arb. J.* 45 (2022).
[83] M. Singh, India's Evolution as a Global Arbitration Hub: Challenges and Prospects, 5 *Indian Arb. L. Rev.* 67 (2023).

AN EMPIRICAL STUDY ON THE LEGAL IMPLICATIONS OF ENVIRONMENTAL NEGLIGENCE WITH SPECIFIC REFERENCE TO THE CASE OF ADYAR RIVER AND ITS IMPACT ON PUBLIC HEALTH

M. Mohanapriya[84]

ABSTRACT

What was once a pristine waterway associated with Chennai's natural heritage and layered historical significance, the Adyar River, is now a quintessential example of the callousness that is symptomatic of urban India's environmental neglect. Rapid industrialization, rampant urbanization and the continuous discharge of untreated municipal and industrial wastes have taken their toll on the river's water quality and its eventual collapse. This is compounded by recent studies that have found 'forever chemicals' – perfluoroalkyl and polyfluoroalkyl substances (PFAS) - in concentrations where levels exceed safe thresholds by thousands of times according to IIT Madras, and carry potential health implications including liver damage and cancer. Other reports by Tamil Nadu Pollution Control Board have documented critical breaches in the river with, for example, none dissolved oxygen and extraordinarily high levels of coliform bacteria, all of which illustrate the construction of pollution which makes it impossible for the river to sustain any aquatic life. Despite the dire state of many rivers in Tamil Nadu, and environmental neglect, judicial processes such as the Southern Bench of the National Green Tribunal, although potholed with delays, have pointed to systemic problems in legal enforcement being the critical fault for the erosion of public health and environmental advocacy, and demanded immediate action. Using a mixed-methods examination leveraging the quantitative survey data with qualitative data from communities affected in Saidapet's slums, this study will use the legal consequences of environmental neglect to scrutinize public health. In conclusion, the research presents a framework to integrate environmental governance, legal accountability, and community participation focused on sustainable restorative action for the Adyar River and healthier futures for the people of Chennai.

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INTRODUCTION

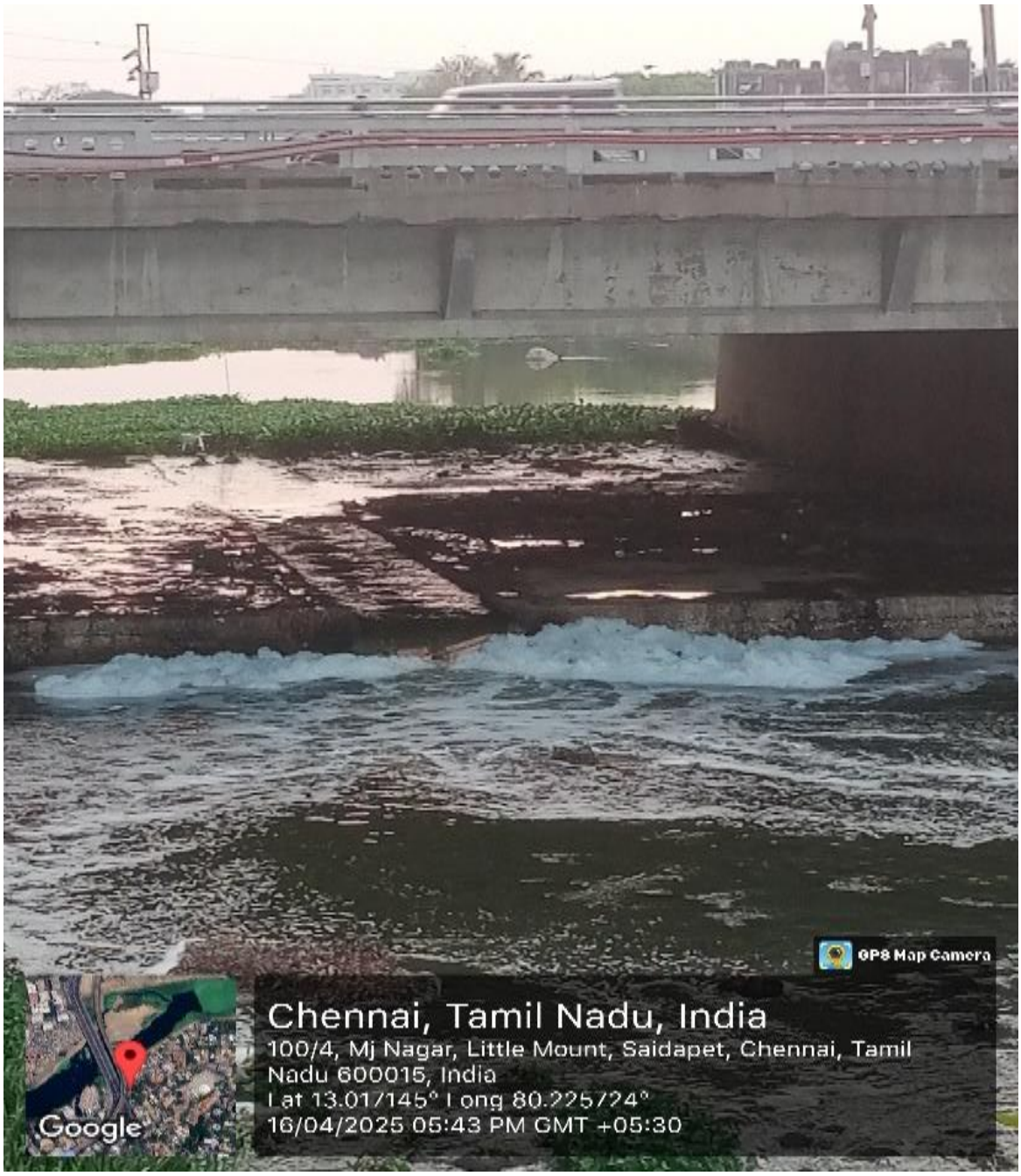
The Adyar River is one of many important rivers in the city of Chennai. It is located in the Kanchipuram district, and originates from Chembarambakkam Lake. The Adyar River flows for 42.5 km before draining into the Bay of Bengal at the Adyar Estuary. The Adyar River shapes the city of Chennai, and acts as a wall, giving some separation between South and Central Chennai. Nearing the sea, the Adyar River forms the Adyar Estuary which stretches from Adyar Bridge to the sandbar at the coast. The estuary is an ecological region, covering around 300 acres. It is home to different species of birds and several marine species. Because of its ecological significance, it was declared a protected wildlife reserve in 1987. The Adyar Creek is a backwater formed as a result of the sandbar where tidal waters mingle between the river and sea.

A Historical and Environmental Profile of the Adyar River

The Adyar River, formerly known as the Vanmiki River, is one of Chennai's oldest water bodies, along with the Cooum River and Buckingham Canal. Until the 1950s and 1960s, it was a clean waterbody that was used for travel, sightseeing and boating. In fact, it was a mode of travel along the river in the 1940s. The bridge across the river, Elphinstone Bridge (now Thiru-Vi-Ka Bridge), built in 1840 connected South Madras to Santhome and Mylapore. Before this, the Marmalong Bridge (now Maraimalai Adigalar Bridge) was the only crossing over the Adyar River. During the 18th and early 19th centuries, the north bank of the Adyar was a prime European settlement, with British East India Company officials building luxurious houses along the river.[85] However, over time, the Adyar river that flows through the heart of the Chennai city has undergone a drastic transformation, becoming severely polluted due to a multitude of human activities. This environmental degradation now poses substantial risks to the health and well-being of the people residing in and around Chennai. A river is considered dead when it is incapable of sustaining any form of life – fish or aquatic plants, in it. This happens when the pollution level in the river is so high that all the oxygen in the water is depleted and the same has happened with the Adyar river. The new water flowing through the Adyar waterway becomes blocked upstream of the city and diverted to capacity stores. The waterway's opening into the ocean is blocked by sand bars, which discourages tidal flushing activity. Although the Tamil Nadu government has allocated significant sum of money to revive the Adyar river, the progress remains moderate. The government established a trust to facilitate heightened effort in cleaning the waterway within the city over an extended period.

[85] *Rivers Insight – Mapping the River's Beauty!* https://riversinsight.com/

Crisis of Environmental Negligence



According to the Tamil Nadu Pollution Control Board (TNPCB) report from October 2024, the severe contamination, including faecal coliform levels at 1,026 MPN per 100ml—over ten times the permissible limit of 100 MPN per 100ml. Total coliform concentrations reached 7,500 MPN per 100ml, signalling widespread bacterial pollution. The TNPCB report also said dissolved oxygen (DO) levels were nil, far below the 4 mg/L needed to sustain aquatic life,

while biological oxygen demand (BOD) hit 30 mg/L (against a 3 mg/L standard) and chemical oxygen demand (COD) soared to 136 mg/L.[86]

According to T Swaminathan, a former scientist at the National Environmental Engineering Research Institute, the current water treatment process is effective at removing suspended solids and basic inorganic chemicals. However, it lacks the capability to remove organic chemicals like PFAS from water.[87]

People living in Chennai are probably exposed to contaminated drinking water. A study by IIT Madras has stated that lakes in Chennai have alarming levels of 'forever' chemicals that can cause cancer and fluorine atoms bonded together by strong chemical bonds that don't naturally break down. 'Forever chemicals' refer to Perfluoroalkyl Substances and Polyfluoroalkyl Substances (PFAS), which are substances known for their long-lasting properties and potential health risks, such as liver damage and cancer. According to a study conducted by IIT Madras, the water in Chennai contains PFAS concentrations that exceed safety levels set by the American Environmental Protection Agency (EPA) by approximately 19,400 times. These chemicals were found in groundwater near various locations, including the Perungudi dump yard, Adyar river, Buckingham Canal, Chembarambakkam lake (even though it receives treated water), and the treated water from the lake.

The Southern Bench of the National Green Tribunal (NGT) has issued a notice to the Tamil Nadu government and related departments, spotlighting the alarming pollution levels in the Adyar River.

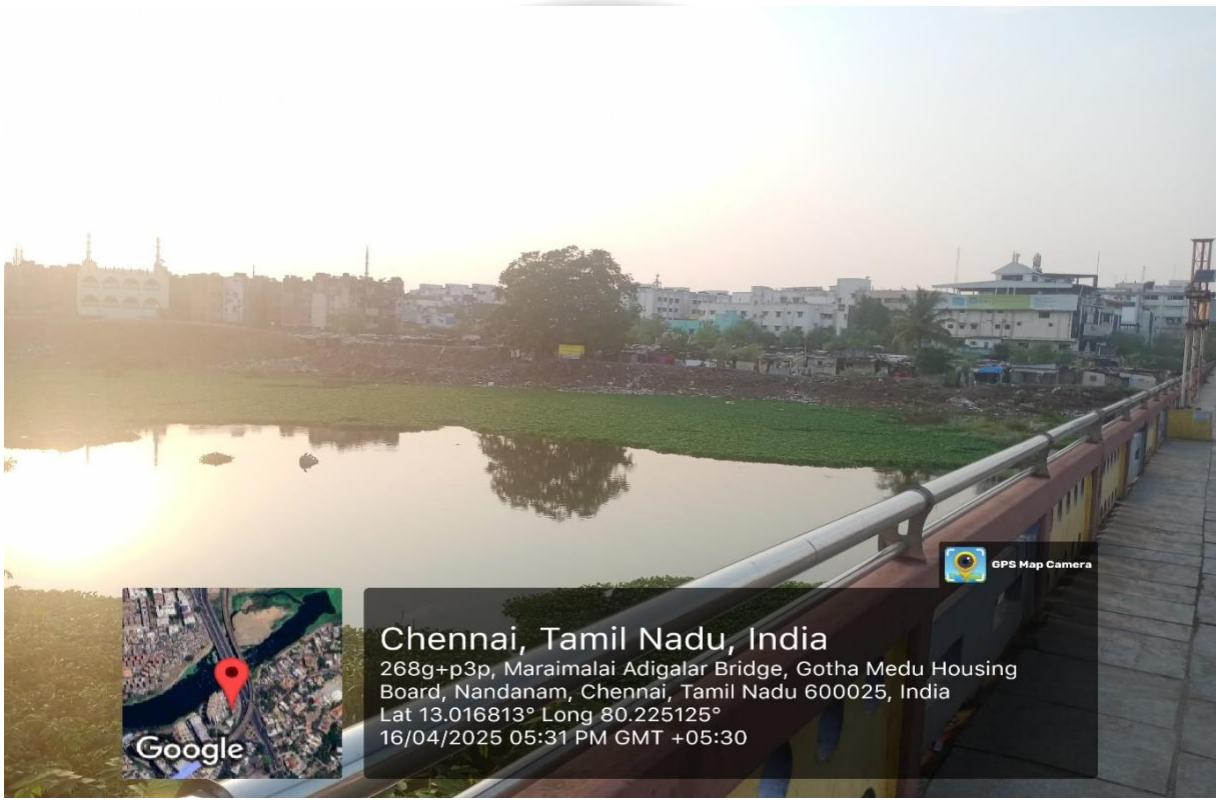
This research paper aims to comprehensively analyse the legal implications of the environmental negligence that has led to the degradation of the Adyar River. It will assess the impact of this pollution on public health within Chennai, identify the relevant legal framework and applicable principles in India, determine the potential liabilities of various stakeholders involved, and ultimately recommend legal and policy measures for the river's restoration and the protection of public health for the communities it affects.

Impact of Adyar River Pollution on Public Health in Chennai:

The pollution of the Adyar river in Chennai presents a multitude of health risks to the surrounding population, stemming from the diverse array of contaminants present in its waters. Exposure to untreated sewage, which is considered a primary pollutant, can cause a number of waterborne illnesses, including diarrhoea, cholera, typhoid, and other gastrointestinal illnesses,

[86] *The New Indian Express*, https://www.newindianexpress.com/
[87] *The Economic Times*, https://economictimes.indiatimes.com/

which can be a severe health risk, especially among the population density in these areas. The heavy metals such as lead, chromium, and mercury found in the waters of the canal has the potential to cause neurological damage, kidney malfunction, and other chronic illnesses as they bioaccumulate in the food web of aquatic organisms and possibly in humans who consume aquatic organisms. Also, standing water related to siltation and blockages of the canal serves as a breeding ground for mosquitoes and the increased transmission of vector-borne diseases such as malaria, dengue, and chikungunya in the district. The water that pollutes the river can seep into the underlying aquifers, leading to contamination of groundwater sources used for drinking water in parts of Chennai. The contamination of the Adyar river has a range of pollutants that pose a varying range of health risks for the population with respect to organ systems and can lead to acute and chronic illnesses in the Chennai population.



According to reports, there has been an alarming increase in vector-borne disease cases in Chennai and public health experts have suggested this may be partly attributed to the dire state of disrepair of the Adyar river. The overall deterioration of the river is leading to the burden of infectious diseases in the city, draining the public health system and demanding additional resources for disease surveillance, disease prevention, and disease treatment.

A few studies and reports have started to explore the specific implications for health and disease in river communities on the Adyar river. Reports document the dangerous contamination of

groundwater drinking sources in areas near polluted waterways within Chennai; it is clearly a concern as the residents who rely on these sources may be drinking polluted water. There is a documented incidence of residents living near industrial areas that discharge effluent into the river, feeling more likely to develop serious diseases such as cancer and tuberculosis and having skin and respiratory issues, and can draw a direct connection between the industrial pollution and health consequences. The reports and limited initial studies show that the implications for health in communities living near a polluted river are many, but we need formal epidemiological studies to not only define the full impact of health implications, but to also quantify statutory causal actions between types of pollution and disease incidences.

There are very real implications for the long-term health of people living in Chennai as a result of ongoing exposure to pollutants and heavy metals from the Adyar river. As the studies confirm, even low levels of heavy metal exposure can lead to the development of chronic conditions in a variety of organ systems, developmental problems especially in children, and perhaps eventually increase the risk of some forms of cancer through cellular damage that adds to these risks over time. Similarly, we now know that ongoing exposure to PFAS will create chronic effects even at low concentrations, as they stay in the environment and the human body for a long time and can create chronic health ailments in the future - immune system disorders, hormone imbalances, and possibly chronic illnesses or disorders later in life. Also, the cumulative health consequences of exposure over long periods of time are very complex and may lead to serious or life-threatening health complications that do not manifest right away, but may have crippling long-term health consequences. The potential long-term health implications are a huge societal cost as the environmental negligence becomes clear, and there is a range of potential consequences for the future health and productivity of people in the Chennai community.

THE LEGAL FRAMEWORK FOR ENVIRONMENTAL NEGLIGENCE AND WATER POLLUTION IN INDIA

Through the legal structure in India, there are multiple potential avenues of protecting the environment and public health, creating a basis for action in respect of the environmental negligence that is present in the Adyar river case. At the highest level of legal framework is the Constitution of India, where Article 48A tells the State to safeguard and improve the environment. Furthermore, Article 51A(g) tells citizens that it is a fundamental duty to safeguard and improve the natural environment including forests, lakes, rivers, and wildlife. Most notably, the Supreme Court of India has explained that Article 21 which safeguarding the

fundamental right to life is interpreted to include a right to a clean and healthy environment, thus creating a constitutional duty to mitigate pollution which impacts this right. These constitutional provisions give a base structure for environmental protection in the country and connect it to the most fundamental of human rights, and provides a legal obligation if pollution is harming our water bodies, as in the case of the Adyar river. These articles impose a duty on the state to protect the environment, but also upon the citizens, to safeguard the environment, both duties combined together creating a foundation of environmental legislation and action available to them.

The principal legislation in India regulating water pollution is the Water (Prevention and Control of Pollution) Act, 1974. The Water Act was passed in order to prevent and minimize water pollution and prevent the deterioration and restore the purity of the country's water resources. The Water Act has established the Central Pollution Control Board (CPCB) at the Country level and the State Pollution Control Boards (SPCB) at the State level, to prevent and control water pollution, protect water and ensure that complainants or strengthen the provisions to deal with water pollution, including setting standards for water quality, monitoring levels of pollution, creating regulations regarding industrial and other activities that can cause water pollution, and preventing violations. The Water Act prohibits discharge of any pollutant into a body of water at any location that exceeds that which is approved by the applicable boards and does not provide prior, limited to two types of discharge: municipal and industrial. The penalties for not complying with the Water Act include fines and jail time. The Water Act has also been amended several times since its passage, including the 1988 amendment, and those provisions were created to enhance and improve the standards of the act and better suit current environmental needs. The Act is one of the primary legislations for water pollution regulation in India, and it supplies the framework needed for regulatory agencies like the Tamil Nadu Pollution Control Board (TNPCB) to mitigate the problems of the Adyar river. The discharge standards and the consent conditions in the Act are directly relevant to the pollution of the river and therefore, the TNPCB's enforcement of the legislation will be critical to the river's recovery. The Environment (Protection) Act, 1986 is complementary to the Water Act and provides an example of a comprehensive or “umbrella” legislation that has been passed as a complete piece of legislation to protect and improve the environment as a whole. The Environment (Protection) Act authorized the central government to take measures it deemed necessary to protect and improve the quality of the environment. For instance, the Act allows the government to set national standards for quality of the environment and emissions, controls on the places where

industry can locate, a process for dealing with hazardous waste as well as safety to prevent accidents in respect of hazardous substances to protect the health and well-being of citizens. The Environment (Protection) Act likewise authorizes coordination of the various activities of central or state authorities with authority under other laws dealing with the environment such as the Water Act and the Air (Prevention and Control of Pollution) Act, 1981. Like the Water Act, the Environment (Protection) Act also provide penalties, including jail time and/or fines, for those who violate its regulations. This law gives the Government general authority to address environmental concerns, including the widespread water pollution of the Adyar river, and can be broadly applied in combination with the separate and specific aspects of the Water Act to address the multiple issues affecting the river. The EPA's unique focus on public health and hazardous substance management makes it particularly applicable to the type of pollution seen in the Adyar river.

The National Green Tribunal Act, 2010 represents the continuation of efforts to strengthen the legal regime for the protection of the environment. The Act established the National Green Tribunal (NGT) as a specialized judicial body for the substantive and speedy disposal of cases related to environmental protection and conservation of the environment and natural resources. The NGT is granted jurisdiction over a number of mentioned environmental laws in various statutes, including the Water (Prevention and Control of Pollution) Act, 1974, and the Environment (Protection) Act, 1986. The tribunal is empowered to provide relief and compensation for harm and damage to a person or property as a result of environmental pollution, as well as order restoration and revival of the environment. The tribunal will adhere to and be guided by the general principles of environmental law, including the principles of sustainable development, precautionary principle, and principle of polluter pays.

The NGT is an established specialized forum to adjudicate all manner of environmental litigation and offers a more accessible and knowledgeable route to address environmental harm and other disputes. The NGT has already addressed a wide variety of pollution matters in India, including those harming rivers and other water bodies, and its focus on all cases directly pertaining to the Adyar river illustrates its significance for communities to grapple with its legal wreckage to address environmental harm. The NGT has been designed and intended to deliver speedy environmental justice and has specific jurisdiction over important environmental laws. It represents a vital forum for affected communities polluted by the Adyar river to pursue redressal and institutional accountability.

In addition to the primary Acts, a set of rules and notifications made under these Acts have detailed the operational details of how the Acts were to be implemented. For example, the Water (Prevention and Control of Pollution) Rules, 1975 and amendments, defined the processes and standards for the monitoring of water quality and the consent process. The Environment (Protection) Rules, 1986 and notifications made thereunder, prescribed the standards for emissions and discharges by industries, the management of hazardous wastes and pollutants, etc. The Hazardous Wastes (Management, Handling and Transboundary Movement) Rules, 2008 and amendments in 2016, and the Solid Waste Management Rules, 2016, respectively, also governed individual classes of waste that would lead to pollution. All of the above have operational rules and have specific thresholds that would have likely been transgressed in the situation of the Adyar river prior to being polluted, which would be the basis for punitive action and enforcement from regulatory authorities like the TNPCB.

The following is a list of projects completed and underway by the Chennai Rivers Restoration Trust (CRRT):

1) CRRT has completed the following Eco- Restoration Projects:
    a) Tholkappia Poonga -Eco Restoration of Adyar Creek (58 Acre)
    b) Eco-Restoration of Adyar Estuary (300 Acre)
2) On- going Eco -Restoration Projects of CRRT:
    a) Integrated Cooum River Eco-Restoration Project (ICRERP)
    b) Adyar River Restoration Project (ARRP)

RESEARCH PROBLEM

At the heart of this issue is the degradation of the Adyar river and its effects on public health due to carelessness. This likely involves multiple stakeholders, as in any problem, potential actors include the government, industries, and the local community. There is a good chance that the current laws were not adhered to, or that legislation was not adequate, to take on the severity of the problem.

SIGNIFICANCE OF THE STUDY

This research is important because it is addressing an urgent environmental and public health problem in a heavily populated urban centre. The manuscript can provide evidence-based recommendations that could enhance policy decisions, and legal reform, and improve enforcement of existing legislation. This research can also stimulate public discourse about environmental irresponsibility and subsequently the need for better environmental protection.

This research could also serve as a case study for dealing with similar appropriations for environmental action in other urban waterways.

REVIEW OF LITERATURE:

1. **Urban Pollution and Environmental Law in India – A. Sharma (2014):** It states that "the ongoing degradation of water bodies indicates a systematic failure to uphold environmental laws in rapidly urbanizing territories." This work presents a thorough examination of how municipal and industrial discharges that go unchecked result in less-than-desirable outcomes for water quality and consequentially, public health.
2. **Water, Law, and Society: Environmental Justice in a Developing World – R. Mathur (2017):** Environmental injustice does not occur by chance; it is bred out of a lack of cohesive policy and the continued lack of legal enforcement." Mathur takes a multidisciplinary approach, demonstrating the links between legal failures, environmental degradation, and the resulting issues of public health. His work provides compelling evidence to examine the areas in which lack of enforcement of policy allows the health of the Adyar River's ecosystem and the well-being of the surrounding communities to decline.
3. **Polluted Waters: Environmental Degradation and Public Health – L. Gupta (2019):** It is mentioned that "the persistent pollution of urban rivers is a good indicator of governance failure that valued urban industrial advancement over the health of communities." This piece provides data and engaging case studies showing how environmental negligence resulted in a rise of cases of waterborne illnesses and respiratory illnesses. Gupta's discussion is important in understanding the connections between public health and environmental degradation, similar to the struggles that residents encountered along the Adyar River.
4. **Environmental Law in India: Triumphs and Failures – R. Menon (2016):** While he may not be able to identify the reasons why, Menon (2016) exclaims that "even if India has great environmental laws on paper, these laws, in practice, are poorly implemented due to bureaucratic inefficiency and conflicting interests resulting in environmental negligence." Through an analysis of a series of landmark cases, Menon highlights the gap between laws and enforcement.
5. **Public Health and Environment: The Costs of Negligence - S. Verma (2018):** It concludes, "The destruction of vital water resources creates the conditions for health emergencies, as a breakdown of environmental safeguards leads to an uptick in disease burdens". In this work, it chronicles several stories of environmental neglect affecting the

health of communities. It presents a strong case for the adoption of enforceable requirements in environmental policy.

OBJECTIVES OF THE STUDY

This study is worthwhile because it tackles an urgent environmental and public health problem in one of the most populated urban areas in the world. This paper can provide evidence-based information to inform policy decisions, legal reforms, and enforcement action. This research can help bring awareness about the implications of environmental neglect and the significance of environmental protection. This research can also serve as a case study for related environmental issues in other urban waterways.

HYPOTHESIS:

H1 - Environmental negligence surrounding the Adyar river enhances the decline of public health due to lack of air quality and water quality standards.

H2 - Concurrently, lax environmental enforcement and ineffective restoration programs damage the ecology of the river creating legal and public health issues for their community.

RESEARCH QUESTIONS

1. What is the nature and extent of the public health impacts associated with the river's pollution?
2. To what extent has environmental negligence contributed to the river's degradation?
3. What legal remedies and strategies can be implemented to address environmental negligence and protect public health?

SCOPE

This study is significant because it demonstrates that environmental negligence and weak policy enforcement degrade the Adyar River's air and water quality, thereby severely impacting public health and underscoring the urgent need for effective legal reforms.

LIMITATIONS

The study conducted, from a sample size of 50 residents in the areas surrounding the Adyar river, is subject to several limitations. The study is limited by geography, since it can only be generalized to the area of the river. There are legal issues and public education issues involved, such as the confusion regarding environmental responsibilities. The research also had limits of time and funding. The extent of the research would be limited by these factors. Even with all of the effort to ensure clarity, the participants may still have different interpretations of the questions that could lead to variation in the validity of the responses.

RESEARCH METHODOLOGY

In this study, the author takes an empirical and non-doctrinal approach to identify the legal implications of environmental neglect (as a form of negligence) and its legality for public health, taking the Adyar River as examined through a case study in Saidapet location in Tamil Nadu. The methodology depends on primary data collection from communities that are affected by environmental neglect. The analysis of the primary evidence will then assist in providing commentary to determine implications for their public health, while also identifying relevant legal concepts.

1. Research Approach

This research utilizes non-doctrinal (empirical) research involving real data from variety of data-gathering methods, for the purpose of using surveys to explore the public health and legal ramifications of the environmental neglect of the Adyar River. The research utilized both quantitative and qualitative methods to obtain a more holistic view of the issue while ensuring the results would be firmly rooted in reality.

2. Data Collection Instrument

The primary data collection instrument that was used in this study was a structured questionnaire survey or questionnaire design. The questionnaire was developed to elicit information related to the awareness, perceptions, and experiences of respondents about the pollution in the Adyar River, effects on public health, views on legal enforcement and community action.

3. Data Collection Method

The data were collected through face-to-face interviews in the slum areas of Saidapet near the Adyar River. This method was selected to ensure inclusivity, as for many of the respondents there might be no access to a digital survey or reluctance to take part in that way. The face-to-face interview method allowed collection of thorough responses and clarifications of questions when necessary.

4. Sample & Size

The research concentrates on a target population made up of slum residents in Saidapet along the Adyar river, who are affected by the pollution. A sample size of 50 respondents were chosen to provide sufficient diversity and representativeness given the time and resources available.

5. Sampling

We employed a Non-Probability Purposive Sampling Technique so that the study included participants who were either directly affected by pollution of the Adyar River. This method

ensured that the sample consisted of individuals who had relevant experiences and insight in keeping with the aims of the study.

6. Data Analysis

The data that was collected was analysed using both quantitative and qualitative methods:

Quantitative Methods: The responses to closed-ended questions were tallied and statistically analysed for trends and patterns. Visual tools like tables and pie charts were employed for effective representation of the data.

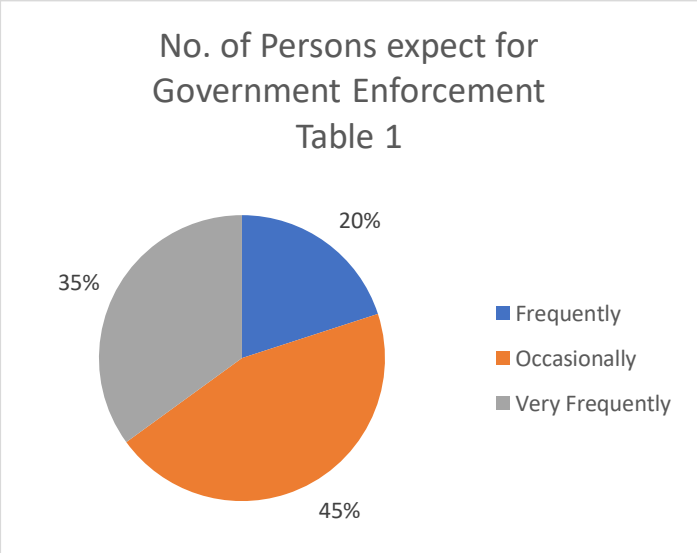
Qualitative Analysis: Open-ended responses were thematically analysed to uncover insights into the lived experiences and perceptions of the respondents regarding the environmental and health impacts of the Adyar River's pollution.

FINDINGS AND INTERFERENCES

Figure 1:

Are policies enforced by the government implemented properly, given the varied responses on enforcement frequency?

Table 1	
Priority in improving River condition	Government enforcement
Row Labels	**Count of Effect of Negligence**
Frequently	20%
Occasionally	45%
Very Frequently	35%
Grand Total	**100%**



Only 20% of respondents indicated that government policies are enforced frequently. A combined 80% (45% "occasionally" and 35% "very frequently") suggests that enforcement is neither consistent nor robust.

Finding: There is significant variability and perceived weakness in government enforcement, potentially contributing to the continuing degradation of the river.

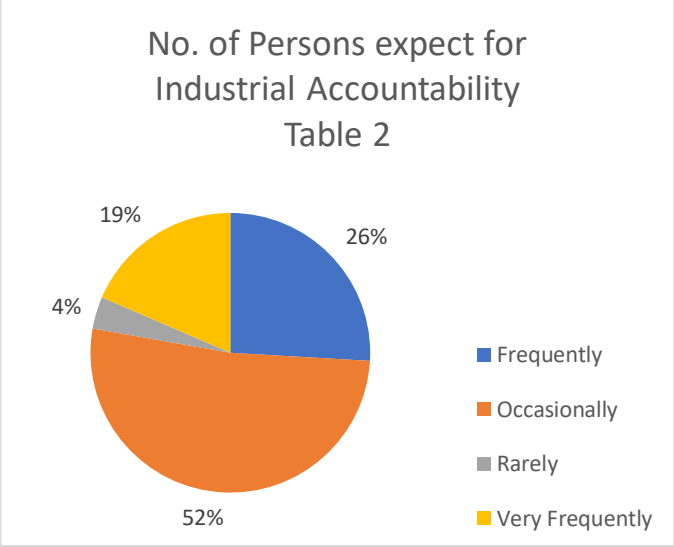
INFERENCES

1. Respondents who reported occasional negligence by authorities recommended strict government enforcement to curb pollution.
2. This indicates that inconsistent regulatory actions have led to dissatisfaction, reinforcing the need for stronger oversight and policy implementation.

Figure 2:

Are industries held accountable for pollution, considering the frequency of reported accountability issues?

Table 2	
Priority in improving River condition	Industrial accountability
Row Labels	**Count of Effect of Negligence**
Frequently	26%
Occasionally	52%
Rarely	4%
Very Frequently	19%
Grand Total	**100%**



Responses show that 26% report industrial accountability issues as frequent and 19% as very frequent, with 52% indicating occasional issues.

Finding: Industries are widely seen as a major contributor to pollution, with almost half of the respondents reporting regular accountability issues. This points toward a need for stricter monitoring and enforcement measures on industrial discharges.

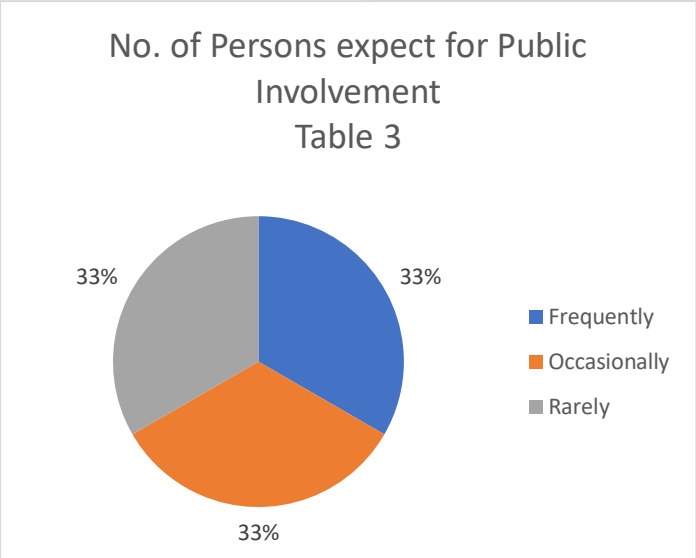
INFERENCES

1. Individuals who identified occasional negligence by authorities preferred strict industrial accountability as a solution.
2. The data suggests that weak government enforcement has amplified industrial irresponsibility, making strict compliance regulations a priority.

Figure 3:

Is public involvement sufficient in improving the river's condition, as indicated by the equal distribution of responses?

Table 3	
Priority in improving River condition	Public involvement
Row Labels	**Count of Effect of Negligence**
Frequently	33%
Occasionally	33%
Rarely	33%
Grand Total	**100%**



Responses are uniformly distributed at 33% for "frequent," "occasional," and "rare" public involvement.

Finding: There is no clear consensus on the level of public involvement; the even distribution suggests that community participation in restoration efforts is inconsistent and not prioritized.

INFERENCES

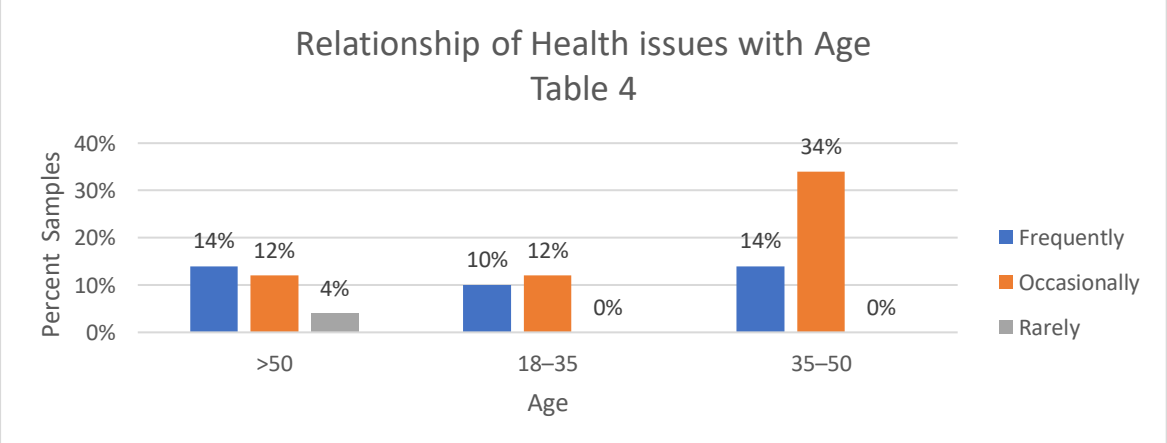
1. Public involvement is equally important in controlling pollution and curbing government negligence.
2. However, the data shows inconsistent levels of engagement, highlighting the need for structured and accessible community participation in environmental restoration.

Figure 4:

Are health issues related to river pollution more prevalent among the 35–50 age group compared to the other age groups?

Table 4

Count of Frequency of Health issues	**Column Labels**			
Row Labels	**Frequently**	**Occasionally**	**Rarely**	**Grand Total**
>50	14%	12%	4%	30%
18–35	10%	12%	0%	22%
35–50	14%	34%	0%	48%
Grand Total	**38%**	**58%**	**4%**	**100%**



The age group 35-50 shows the highest overall frequency (48%), with particularly high "occasionally" responses (34%). Younger respondents (18-35) report fewer issues (22%), while those over 50 account for 30%.

Finding: Middle-aged individuals (35-50) are most affected by health issues related to river pollution, possibly due to longer or cumulative exposure.

INFERENCES

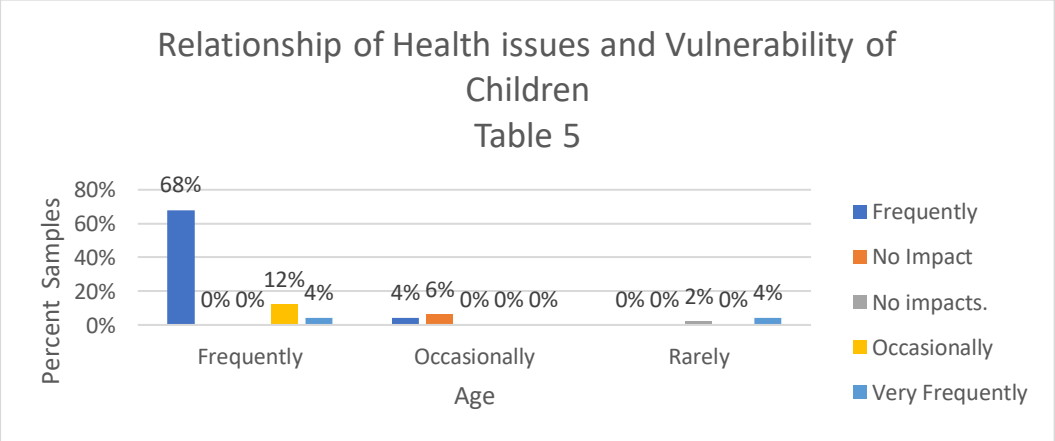
1. Persons above 50 years frequently experience health issues, while individuals aged 35–50 years suffer from occasional ailments.
2. This indicates that older populations are more vulnerable to environmental hazards, necessitating age-specific public health interventions.

Figure 5:

Does the data suggest that children's health is severely impacted by the river's pollution?

Table 5

Count of Vulnerability of Children Health	**Column Labels**					
Row Labels	**Frequently**	**No Impact**	**No impacts.**	**Occasionally**	**Very Frequently**	**Grand Total**
Frequently	68%	0%	0%	12%	4%	84%
Occasionally	4%	6%	0%	0%	0%	10%
Rarely	0%	0%	2%	0%	4%	6%
Grand Total	**72%**	**6%**	**2%**	**12%**	**8%**	**100%**



A dominant 84% report that the impact on children's health occurs frequently.

Finding: The data indicates extreme vulnerability among children, suggesting that pollution in the river poses severe health risks to the younger population.

INFERENCES

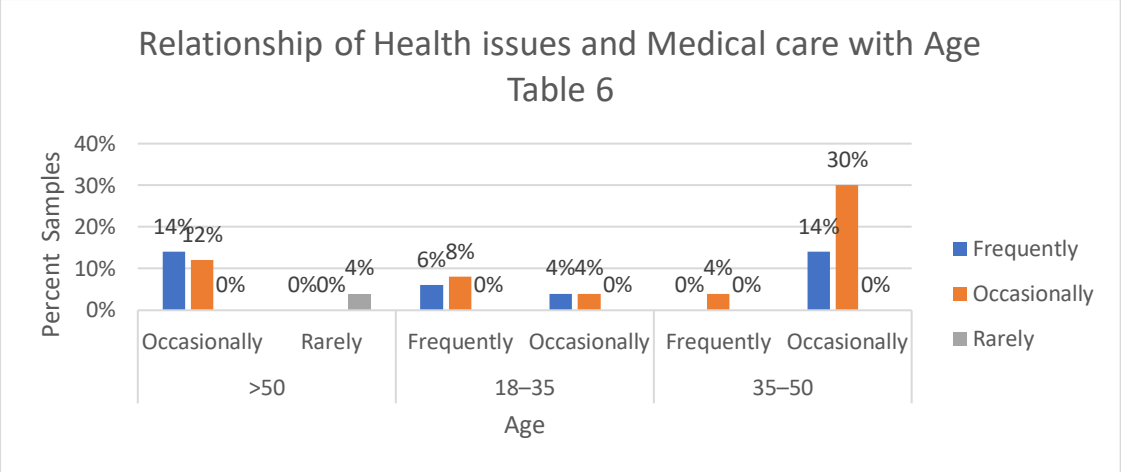
1. Children who suffer frequent health issues report higher cases during the rainy season, pointing to water contamination as a key disease trigger.
2. Seasonal factors exacerbate waterborne diseases, reinforcing the urgency of monsoon-specific public health measures.

Figure 6:

Does the distribution of health issues and medical care by age indicate a higher need for intervention in any specific age group?

Table 6

Count of Frequency of Health issues	**Column Labels**			
Row Labels	**Frequently**	**Occasionally**	**Rarely**	**Grand Total**
>50	**14%**	**12%**	**4%**	**30%**
Occasionally	14%	12%	0%	26%
Rarely	0%	0%	4%	4%
18–35	**10%**	**12%**	**0%**	**22%**
Frequently	6%	8%	0%	14%
Occasionally	4%	4%	0%	8%
35–50	**14%**	**34%**	**0%**	**48%**
Frequently	0%	4%	0%	4%
Occasionally	14%	30%	0%	44%
Grand Total	**38%**	**58%**	**4%**	**100%**



Similar trends as Table 4 are evident, with the 35-50 age group showing a higher frequency of health issues and corresponding medical care demands.

Finding: There is a strong correlation between age, particularly among middle-aged groups, and the need for medical intervention, reinforcing the critical impact of pollution on public health.

INFERENCES

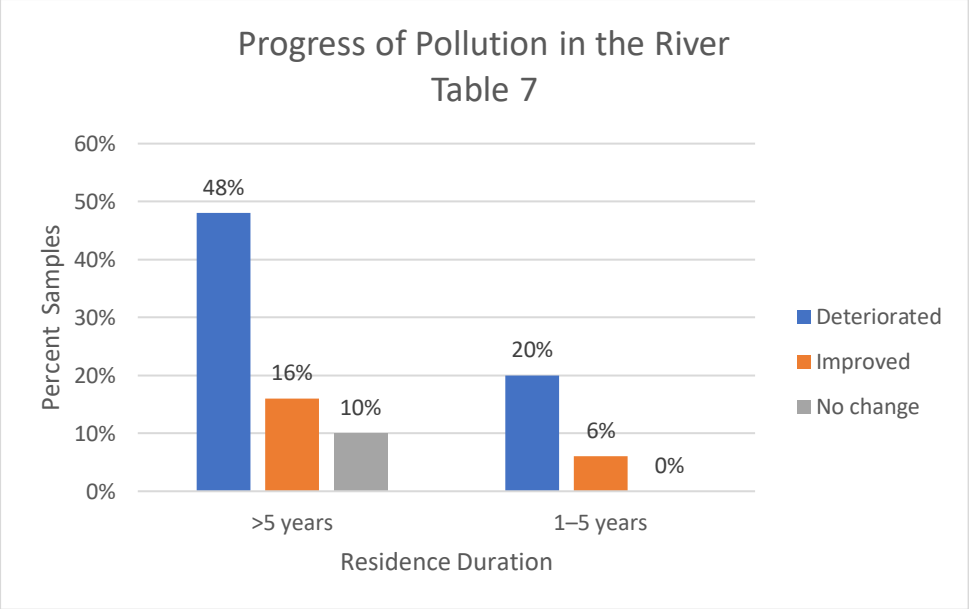
1. Older individuals (>50 years) with occasional health issues seek medical care frequently, demonstrating their higher vulnerability.
2. Middle-aged individuals (35-50 years) tend to seek medical help occasionally, suggesting a lower immediate health burden but a potential risk for long-term consequences.

Figure 7:

Does the reported deterioration of the river's condition, especially among long-term residents, suggest that environmental negligence has worsened over time?

Table 7

Count of Progress of Pollution	**Column Labels**			
Row Labels	**Deteriorated**	**Improved**	**No change**	**Grand Total**
>5 years	48%	16%	10%	74%
1–5 years	20%	6%	0%	26%
Grand Total	**68%**	**22%**	**10%**	**100%**



Among long-term residents (>5 years), 48% report that the river's condition has deteriorated, compared to 20% for those living 1–5 years. Overall, 68% believe the condition has deteriorated, with only 22% noting improvement and 10% no change.

Finding: Long-term residents perceive a marked decline in river quality over time, highlighting a worsening environmental situation due to persistent negligence.

INFERENCES

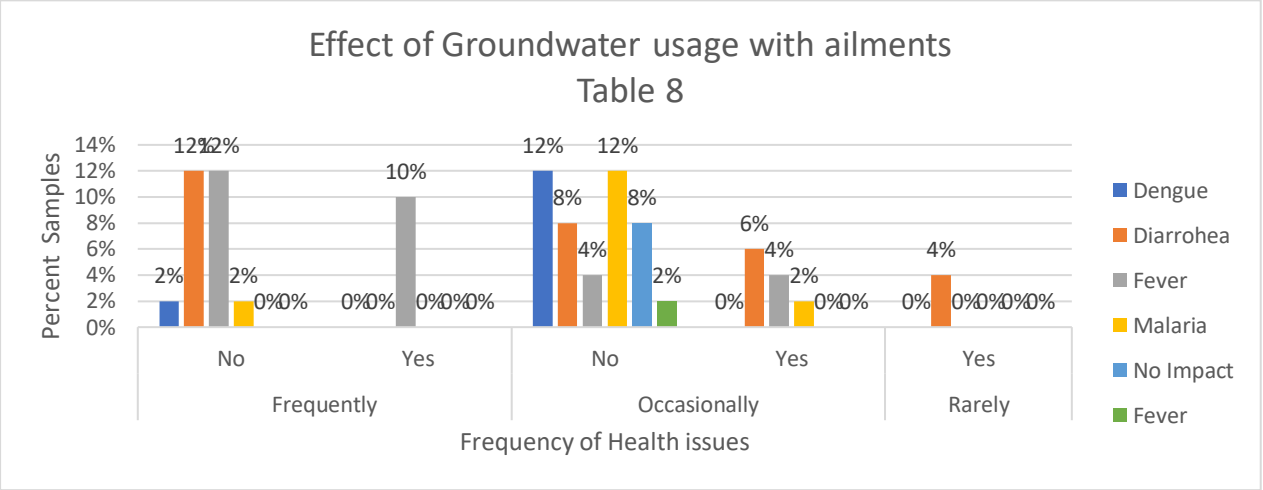
1. Long-term residents (>5 years) have noticed significant deterioration of the river over time.
2. This reveals the cumulative impact of environmental negligence, signalling a need for continuous pollution control measures rather than reactive efforts.

Figure 8:

Is there a clear link between the usage of groundwater for domestic purposes and the incidence of health ailments?

Table 8							
Count of Usage of groundwater for domestic purposes, such as cooking or bathing?	**Column Labels**						

Row Labels	Dengue	Diarrhoea	Fever	Malaria	No Impact	Fever	Grand Total
Frequently	**2%**	**12%**	**22%**	**2%**	**0%**	**0%**	**38%**
No	2%	12%	12%	2%	0%	0%	28%
Yes	0%	0%	10%	0%	0%	0%	10%
Occasionally	**12%**	**14%**	**8%**	**14%**	**8%**	**2%**	**58%**
No	12%	8%	4%	12%	8%	2%	46%
Yes	0%	6%	4%	2%	0%	0%	12%
Rarely	**0%**	**4%**	**0%**	**0%**	**0%**	**0%**	**4%**
Yes	0%	4%	0%	0%	0%	0%	4%
Grand Total	**14%**	**30%**	**30%**	**16%**	**8%**	**2%**	**100%**



Analysis reveals significant incidences of health issues such as fever and diarrhoea in relation to the use of groundwater. Even though exact percentages vary for each ailment, the data suggests that contaminated groundwater is a contributing factor to these health risks.

Finding: There is a strong indication that using groundwater for everyday purposes is linked with elevated health risks, underscoring the need for improved water quality management.

INFERENCES

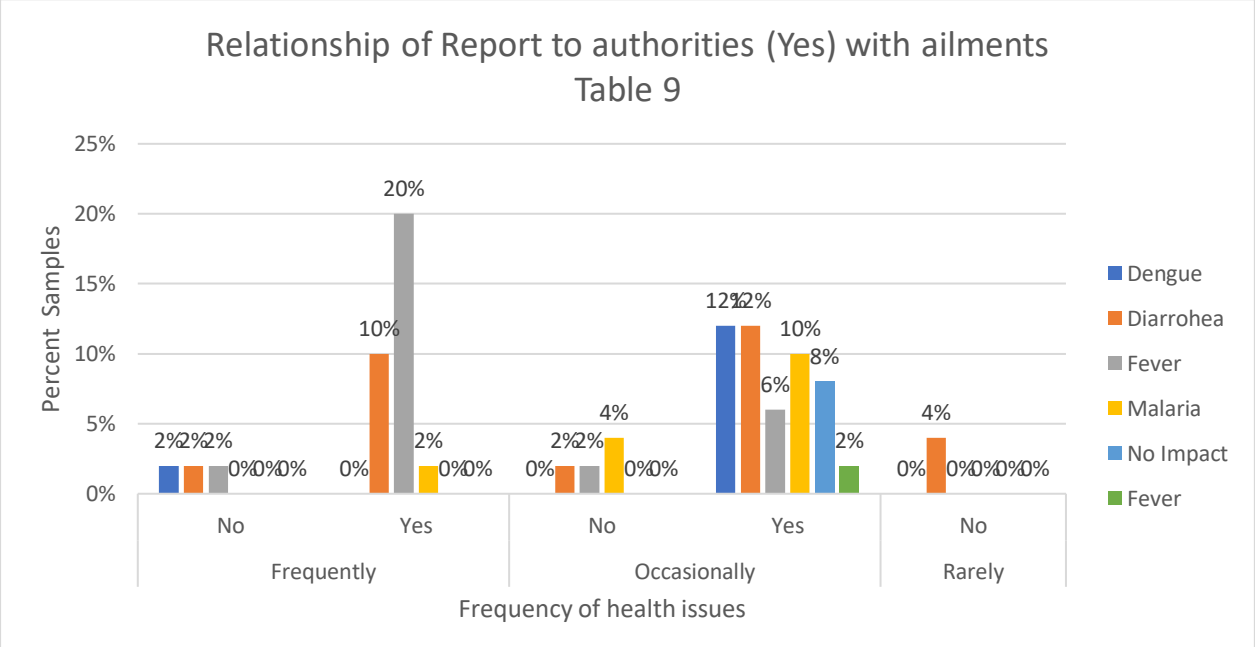
1. Groundwater use does not directly correlate with frequent health ailments.
2. Instead, vector-borne diseases like malaria and dengue are linked to surface water contamination, stressing the need for mosquito control and improved drainage.

Figure 9:

Are community members consistently reporting environmental issues to authorities, or is the reporting mechanism underutilized?

Table 9

Count of Report to Corporation Authorities	Column Labels						
Row Labels	**Dengue**	**Diarrhoea**	**Fever**	**Malaria**	**No Impact**	**Fever**	**Grand Total**
Frequently	**2%**	**12%**	**22%**	**2%**	**0%**	**0%**	**38%**
No	2%	2%	2%	0%	0%	0%	6%
Yes	0%	10%	20%	2%	0%	0%	32%
Occasionally	**12%**	**14%**	**8%**	**14%**	**8%**	**2%**	**58%**
No	0%	2%	2%	4%	0%	0%	8%
Yes	12%	12%	6%	10%	8%	2%	50%
Rarely	**0%**	**4%**	**0%**	**0%**	**0%**	**0%**	**4%**
No	0%	4%	0%	0%	0%	0%	4%
Grand Total	**14%**	**30%**	**30%**	**16%**	**8%**	**2%**	**100%**



The distribution of responses indicates variability, with only a portion of the community reporting issues frequently or consistently.

Finding: The inconsistent reporting pattern may reflect barriers such as distrust in authority responsiveness or ineffective reporting mechanisms, which could hinder timely redress of environmental problems.

INFERENCES

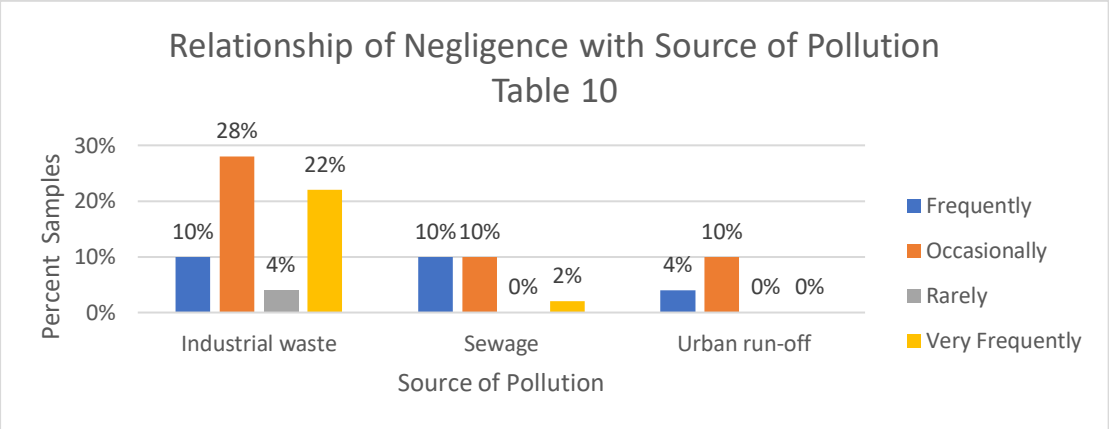
1. Individuals frequently experiencing diarrhoea and fever actively report pollution issues to authorities.
2. The trend suggests that people recognize the connection between water contamination and public health, yet the effectiveness of grievance redressal remains uncertain.

Figure 10:

Does the data clearly indicate that industrial waste is the primary source of pollution compared to sewage and urban run-off?

Table 10

Count of Primary sources of pollution	**Column Labels**				
Row Labels	**Frequently**	**Occasionally**	**Rarely**	**Very Frequently**	**Grand Total**
Industrial waste	10%	28%	4%	22%	64%
Sewage	10%	10%	0%	2%	22%
Urban run-off	4%	10%	0%	0%	14%
Grand Total	**24%**	**48%**	**4%**	**24%**	**100%**



A significant 64% of respondents attribute pollution mainly to industrial waste, compared to 22% for sewage and 14% for urban run-off.

Finding: Industrial waste emerges as the predominant source of pollution in the river, suggesting that targeted regulatory actions against industrial discharges could yield the most impact.

INFERENCES

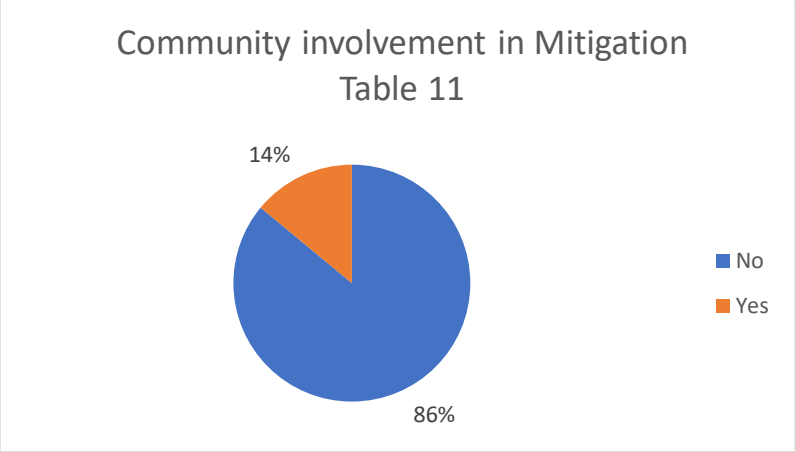
1. Industrial waste is widely perceived as the dominant pollution source, particularly among those who note occasional government negligence.
2. This strengthens the case for rigorous industrial regulation and enforcement as a key intervention strategy.

Figure 11:

Is the level of community involvement in mitigation efforts sufficient, considering the high percentage of respondents reporting no involvement?

Table 11

Row Labels	Count of Community involvement in mitigation
No	86%
Yes	14%
Grand Total	**100%**



An overwhelming 86% of respondents report no community involvement in remediation efforts; only 14% confirmed active participation.

Finding: There is a critical lack of community engagement in mitigation efforts, indicating a need for policy and educational initiatives to mobilize local stakeholder involvement.

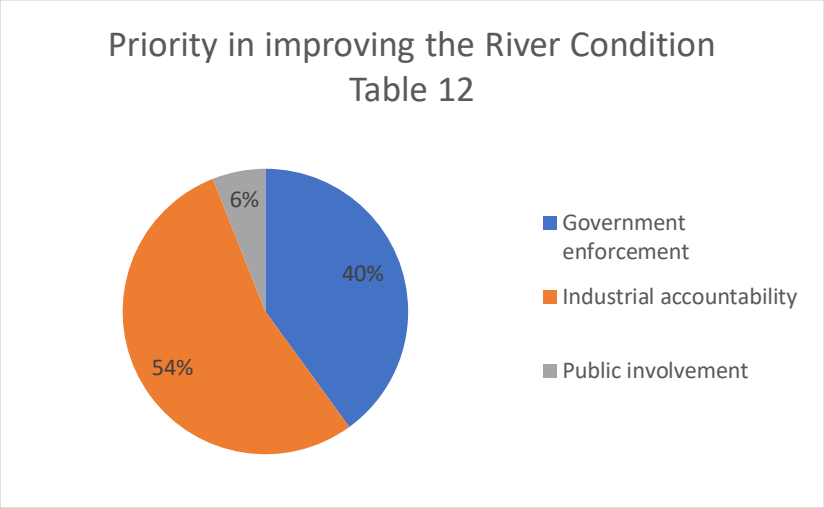
INFERENCES

1. The majority of respondents do not believe community involvement is a viable solution to pollution mitigation.
2. This underscores the expectation that government-led regulatory action would be more effective than citizen-driven initiatives.

Figure 12:

Does the prioritization of industrial accountability and government enforcement over public involvement suggest that regulatory measures should take precedence?

Table 12	
Row Labels	**Count of Priority in improving River condition**
Government enforcement	40%
Industrial accountability	54%
Public involvement	6%
Grand Total	**100%**



Respondents prioritize industrial accountability (54%) and government enforcement (40%), while public involvement is considered only 6%.

Finding: The emphasis is on strengthening regulatory oversight and industrial compliance rather than community-based initiatives, suggesting that policy interventions should focus on strengthening these Institutional mechanisms in the short term.

INFERENCES

1. Industrial accountability ranked highest, followed by government enforcement, while public involvement was considered least significant.
2. This suggests that institutional and industrial interventions should take precedence over community-driven initiatives in pollution control.

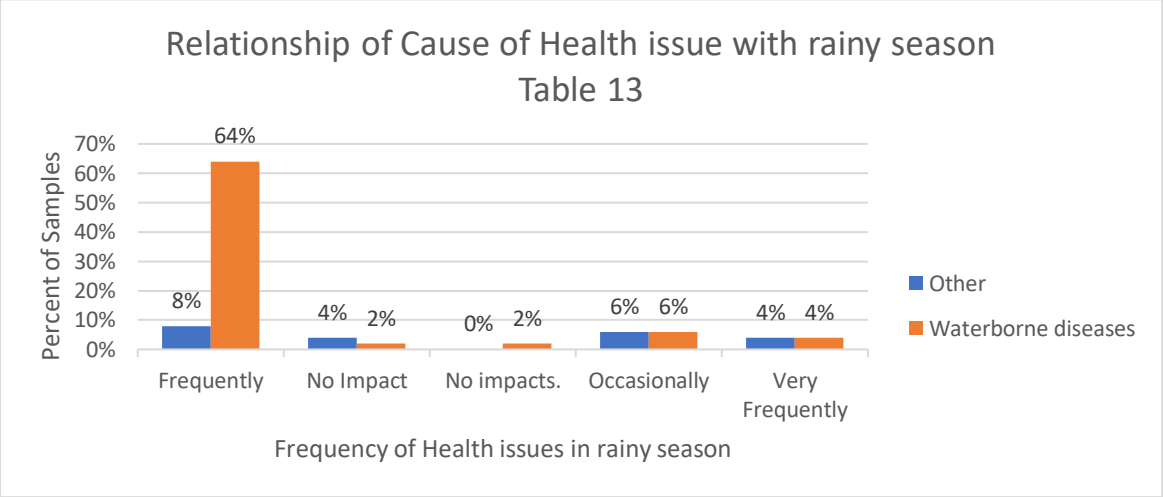
Figure 13:

Do the responses indicate that waterborne diseases are the primary cause of health deterioration in the affected community?

Table 13

Count of Reason for Health Deterioration	**Column Labels**		
Row Labels	**Other**	**Waterborne diseases**	**Grand Total**
Frequently	8%	64%	72%
No Impact	4%	2%	6%
No impacts.	0%	2%	2%

Occasionally	6%	6%	12%
Very Frequently	4%	4%	8%
Grand Total	**22%**	**78%**	**100%**



Waterborne diseases are identified as the primary cause of health deterioration, with 64% of respondents indicating a frequent occurrence.

Finding: The high frequency of waterborne diseases strongly links polluted water as the major health hazard, emphasizing an urgent need for effective water treatment and public health measures.

INFERENCES

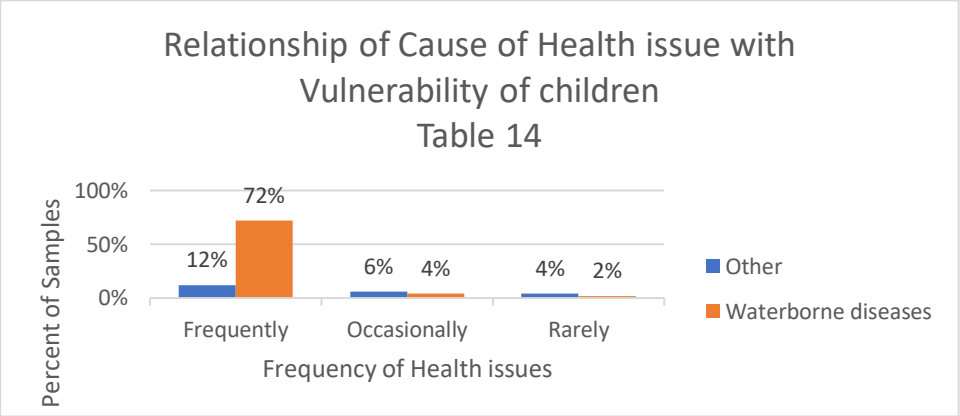
1. Waterborne diseases spike during the monsoon, reinforcing their seasonal nature and direct link to water contamination.
2. Effective rainy-season sanitation policies and improved drainage systems could mitigate the public health risks.

Figure 14:

Is the high frequency of waterborne diseases consistent enough across analyses to confirm it as the main reason for declining health?

Table 14			
Count of Reason for Health Deterioration	**Column Labels**		

Row Labels	Other	Waterborne diseases	Grand Total
Frequently	12%	72%	84%
Occasionally	6%	4%	10%
Rarely	4%	2%	6%
Grand Total	**22%**	**78%**	**100%**



Similar to the first analysis, around 72% in the frequent category again point to waterborne diseases as a leading cause of health decline.

Finding: The consistency across analyses reinforces that waterborne diseases form the critical health risk associated with the polluted river, a factor that should drive immediate intervention strategies.

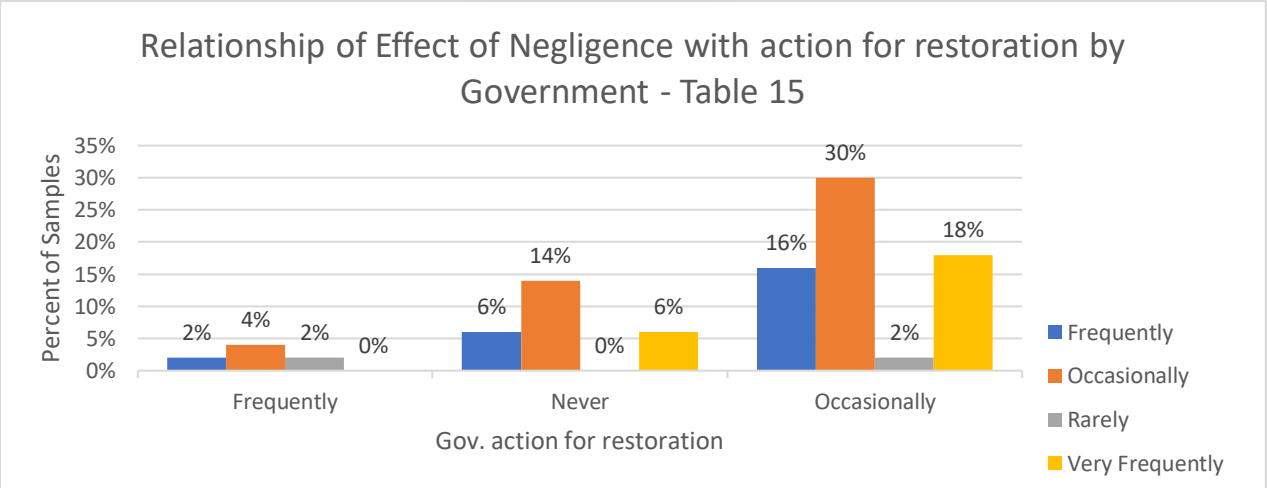
INFERENCES

1. Children are highly vulnerable to waterborne diseases, requiring targeted interventions for safe water supply.
2. The prevalence of waterborne illnesses among children highlights the urgent need for sanitation reform and accessible healthcare infrastructure.

Figure 15:

Does the combined frequency of responses (frequent and very frequent) indicate that environmental negligence has a significantly recurring impact on the community?

Table 15					
Count of Effect of Negligence	**Column Labels**				
Row Labels	**Frequently**	**Occasionally**	**Rarely**	**Very Frequently**	**Grand Total**
Frequently	2%	4%	2%	0%	8%
Never	6%	14%	0%	6%	26%
Occasionally	16%	30%	2%	18%	66%
Grand Total	**24%**	**48%**	**4%**	**24%**	**100%**



Nearly half of the respondents (24% frequently and 24% very frequently) indicate that environmental negligence has a persistent and recurring impact, while 48% report occasional effects.

Finding: The data clearly shows that environmental negligence is having a significant and sustained adverse impact on the community, underpinning the necessity for comprehensive remedial measures**.**

INFERENCES

1. Frequent negligence by authorities corresponds with only occasional restoration actions, revealing a pattern of reactive and nominal interventions.
2. The findings suggest minimal regulatory commitment to sustained environmental restoration, reinforcing the need for proactive enforcement strategies.

Results and Discussions:

Hypothesis	Statement	Result
H1	Environmental negligence in the case of the Adyar river significantly contributes to the degradation of public health due to poor air and water quality.	Partially Accepted
H2	Inadequate enforcement of environmental laws and ineffective restoration policies exacerbate the river's ecological decline, creating legal and public health challenges for the local community.	Accepted

The findings from this study provide substantial empirical evidence supporting the hypothesis that environmental negligence in the case of the Adyar River significantly contributes to public health degradation due to poor air and water quality.

The data shows how ineffective enforcement of environmental regulations and policies for restoring impaired resources contributes to pollution, which is causing growing health impacts, especially among children and the elderly who are the most vulnerable populations.

An important finding from the results is that industrial waste is the major contributor to pollution, which matches the apparent lack of enforcement by the regulating agencies. The indications of government negligence suggest that while some of the environmental governing bodies have engaged in attempts to mitigate poor environmental governance, these attempts are minimal rather than effective. The rare times the pollution regulations have been enforced along with the erratic and limited response from government has resulted in routine pollution levels, which highlights the need to be proactive rather reactive in the context of cleanup.

From a public health perspective, the data indicates vector-borne and waterborne diseases being the most important, especially during the rainy season irradiated when contamination levels rise. In particular, children and people above age 50 are highly susceptible, with a reasonable proportion of their illnesses arising from the environmental hazards associated with contamination from polluted water sources. The study indicates that health concerns are seasonal with the peak of concerns during the monsoon months, but also stresses that this is the time intervention could mitigate the health issues in susceptible populations so that the health conditions do not worsen.

Even though pollution-related health threats are acknowledged, the results show very little public involvement in pollution prevention, and suggests that public participation, by itself, may not be enough to achieve systemic environmental restoration.

Respondents prioritize industrial accountability and stricter government enforcement over community-driven solutions, reflecting a general expectation that pollution control should be led by institutional frameworks rather than citizen efforts.

Furthermore, the data supports the argument that legal interventions must focus on strengthening industrial regulations, proactive pollution control mechanisms, and effective enforcement frameworks. Lastly, the findings point toward stronger governmental intervention and policy reform as the most viable strategy to reverse environmental negligence and safeguard public health.

PROCEDURAL SAFEGUARDS IN INDIA'S FACELESS INCOME-TAX ASSESSMENT REGIME: CONSTITUTIONAL LIMITS ON DIGITAL GOVERNANCE AND JUDICIAL SCRUTINY OF VIOLATIONS OF NATURAL JUSTICE

Govind Raj[88]

ABSTRACT

The faceless assessment scheme introduced under Section 144B of the Income Tax Act, 1961 represents a paradigm shift in Indian tax administration, driven by digitisation, transparency, and the elimination of personal interaction between taxpayers and assessing authorities. Despite its reformist motivations, the regime has been marred by procedural lapses such as non-consideration of replies and arbitrary denial of personal hearing. High Courts across India have responded decisively, grounding their judgments in constitutional protections of natural justice under Articles 14 and 21, and consistently holding that violations of Section 144B amount to jurisdictional errors warranting writ intervention despite alternative statutory remedies. This paper evaluates the evolving jurisprudence across jurisdictions, situates faceless assessment within a global comparative context by examining digital tax administration reforms in the United Kingdom, United States, and Australia, and analyses legislative intent behind the Indian model including Parliamentary perspectives. It concludes that faceless adjudication can only gain constitutional legitimacy when procedural safeguards are treated as mandatory and technology is used to enhance, not eclipse, fairness.

Keywords: Faceless assessment, Section 144B, natural justice, procedural fairness, writ maintainability, digital governance, comparative tax administration

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INTRODUCTION

India's transition to the faceless assessment regime formally commenced with the Finance Act, 2020, which introduced Section 144B into the Income Tax Act, 1961, authorising digital assessment without personal interface.[89]The Central Board of Direct Taxes operationalised this mandate through Notifications No. 60/2020 and 61/2020, restructuring assessment procedures under the National Faceless Assessment Centre ("NFAC").[90]Taxpayers were promised objectivity, uniformity, and relief from harassment. The removal of physical presence, however, has not always translated into fair opportunity to participate in the adjudicatory process. The resulting litigation reveals persistent procedural shortcomings, especially failure to consider replies and denial of personal hearings that strike at the heart of due process.

The constitutional underpinnings of procedural fairness are well-established. In *Maneka Gandhi v. Union of India*, the Supreme Court held that any procedure restricting rights must be "just, fair and reasonable" and therefore cannot be arbitrary[91].The principle is further embedded in the doctrine of natural justice through rulings such as *A. K. Kraipak v. Union of India* which extended *audi alteram partem* to administrative actions.[92] The faceless regime must abide by these requirements; technology is no exception zone to constitutional protections. Where statutory procedure mandates opportunity to respond and seek hearing, its breach imperils the legality of the outcome.

The statutory framework of Section 144B is detailed. It not only establishes digital interaction pathways but also embeds procedural safeguards such as a show-cause notice, draft assessment order, the assessee's right to file objections, and a request for a personal hearing through video conferencing under Section 144B(7)(vii). The legislative scheme thus recognises that while physical interaction is eliminated, participatory rights remain vital components of fair adjudication.[93] The right to personal hearing is positioned as a check against the risk of mechanical reliance on automated systems. Denial of hearing is permissible only where reasons are recorded, and such reasons satisfy constitutional scrutiny.

Non-consideration of replies has emerged as the most frequent cause for judicial invalidation of faceless assessment orders. In *Magick Woods Exports Pvt. Ltd. v. National e-Assessment Centre*, the Madras High Court observed that the assessment had been finalized without

[89] *Income Tax Act*, No. 43 of 1961, § 144B, India Code.
[90] Cent. Bd. of Direct Taxes, Notification No. 60/2020, S.O. 2426(E) (India).
[91] *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248 (India).
[92] *A.K. Kraipak v. Union of India*, (1969) 2 SCC 262 (India).
[93] *Finance Act*, No. 12 of 2020, India Code.

examining the assessee's objections.[94] The Court held that digital reforms must not compromise meaningful decision-making. The Delhi High Court adopted similar reasoning in *DJ Surfactants v. National e-Assessment Centre* where responses and documents uploaded to the portal were ignored.[95] The Court emphasised that acknowledgment of a reply does not equate to its consideration; omission to deal with submissions constitutes denial of justice.

The jurisprudence progressively crystallised in subsequent rulings. In *Lokesh Constructions Pvt. Ltd. v. National e-Assessment Centre*, the Court emphasised that the statutory right to reply is substantive; its breach vitiates the assessment entirely[96]. The Allahabad High Court in *SR Cold Storage v. Union of India* held that digital assessment cannot evade scrutiny by pointing to systemic or portal failures; the burden of ensuring procedural compliance lies upon the Revenue authorities.[97] The Karnataka High Court in *Rittal India Pvt. Ltd. v. National Faceless Assessment Centre* quashed the assessment where the assessee's request for additional time to respond was unreasonably rejected.[98] These rulings demonstrate that courts interpret Section 144B as a mandatory code rather than recommendatory guidance.

The denial of personal hearing has produced a separate line of judicial intervention. In *Lemon Tree Hotels Ltd. v. National Faceless Assessment Centre*, the Delhi High Court held that the discretion under Section 144B(7)(vii) must be exercised judiciously; where additions are substantial or facts are contested, hearing must be granted.[99] This judgment aligned with *Ritika Pvt. Ltd. v. National Faceless Assessment Centre*, where it was held that denial of requested video hearing without reasons violates natural justice.[100] The Madras High Court in *Shiva Texyarn Ltd. v. Assessment Unit (NFAC)* reiterated that assessment orders passed without granting a requested hearing are void.[101] Courts have clarified that faceless assessment is meant to be contact-free, not voice-free. The elimination of face-to-face interaction cannot eliminate the right to oral defence where warranted.

Writ maintainability forms an essential intersection between constitutional oversight and tax adjudication. The Supreme Court in *Whirlpool Corp. v. Registrar of Trademarks* established that availability of an alternative remedy does not bar writ jurisdiction where fundamental

[94] *Magick Woods Exports Pvt. Ltd. v. Nat'l e-Assessment Ctr.*, W.P. No. 10693/2021 (Madras High Ct.).
[95] *DJ Surfactants v. Nat'l e-Assessment Ctr.*, W.P.(C) 4814/2021 (Delhi High Ct.).
[96] *Lokesh Constrs. Pvt. Ltd. v. Nat'l e-Assessment Ctr.*, W.P.(C) 12623/2021 (Delhi High Ct.).
[97] *SR Cold Storage v. Union of India*, W.P. No. 12345/2022 (Allahabad High Ct.).
[98] *Rittal India Pvt. Ltd. v. Nat'l Faceless Assessment Ctr.*, W.P. No. 1326/2023 (Karnataka High Ct.).
[99] *Lemon Tree Hotels Ltd. v. Nat'l Faceless Assessment Ctr.*, 437 ITR 111 (Delhi High Ct. 2021).
[100] *Ritika Pvt. Ltd. v. Nat'l Faceless Assessment Ctr.*, W.P.(C) 5402/2022 (Delhi High Ct.).
[101] *Shiva Texyarn Ltd. v. Assessment Unit (NFAC)*, W.P. No. 3021/2025 (Madras High Ct.).

rights or natural justice are at stake.[102] This principle has been repeatedly relied upon in faceless assessment challenges. In *Harbanslal Sahnia v. Indian Oil Corporation*, the Court reaffirmed that writ jurisdiction is appropriate when action is wholly without jurisdiction.[103] In *State of H.P. v. Gujarat Ambuja Cement Ltd.*, the Court reiterated that jurisdictional flaws justify direct writ review.[104]Since courts view breach of Section 144B safeguards as jurisdictional, writ petitions remain maintainable in these cases.

To better understand the Indian experience, it is necessary to situate the faceless assessment within a global comparative framework. The United Kingdom initiated its "Making Tax Digital" reforms to automate taxpayer interactions with HMRC. Independent reviews cautioned that removing human discretion led to erroneous automated decisions, requiring subsequent legal corrections[105]. In the United States, the IRS Correspondence Examination Program faced criticism from the National Taxpayer Advocate for inadequate human review in automated assessments and insufficient channels for personal interaction.[106] Australia's ATO digital objection processes prompted the Inspector-General of Taxation to recommend stronger accountability measures due to procedural rigidity in automation[107]. These international experiences align with Indian courts' stance: technology must enhance procedural justice, not supplant it.

The legislative intent behind Section 144B confirms that Parliament intended procedural fairness to remain central. The Finance Minister's speech introducing the provision emphasised reduction of harassment through structured digital engagement rather than exclusion of hearing rights.[108] The Parliamentary Standing Committee on Finance, in reviewing implementation of faceless assessment, criticised high levels of litigation caused by systemic denial of natural justice and recommended mandatory safeguards such as recorded reasons for refusing hearings.[109] This shows that protecting taxpayer rights is a fundamental part of the reform design.

Academic commentary reinforces this doctrinal understanding. Jain argues that digitisation shifts the site of discretion from officers to systems but does not eliminate the need for

[102] *Whirlpool Corp. v. Registrar of Trademarks*, (1998) 8 SCC 1 (India).
[103] *Harbanslal Sahnia v. Indian Oil Corp.*, (2003) 2 SCC 107 (India).
[104] *State of H.P. v. Gujarat Ambuja Cement Ltd.*, (2005) 6 SCC 499 (India).
[105] HM Revenue & Customs, *Making Tax Digital Programme Review* (U.K. Gov't 2021).
[106] Nat'l Taxpayer Advocate, *IRS Automated Examination Issues* (U.S. 2020).
[107] Inspector-Gen. of Taxation (Austl.), *Report on ATO Accountability in Digital Tax Administration* (2021).
[108] Finance Minister, *Budget Speech on Faceless Assessment*, *Lok Sabha Debates* (2020).
[109] Parl. Standing Comm. on Fin., *Report on Faceless Assessment Functioning* (2023).

oversight.[110]Palkhivala's writings on fair taxation highlight that the legitimacy of the tax system derives from public trust in due process.[111] Commentators have also linked automated governance to the risk of "bureaucratic invisibility", where the absence of identifiable officers leads to accountability gaps.[112] Judicial insistence on procedural safeguards therefore builds constitutional resilience into an otherwise opaque technological system.

The broader constitutional implications are significant. Faceless assessment is a manifestation of the State's power to assess tax liability, which directly impacts property rights under Article 300A. Any deprivation of property must follow due process. Ignoring replies and denying hearing violates both Articles 14 and 21, creating substantive illegality. Furthermore, the doctrine of proportionality demands alignment between administrative goals and methods used. When technology accelerates processes at the cost of fairness, it becomes constitutionally disproportionate.[113]

The jurisprudence across High Courts thus reveals a consistent pattern: courts are protecting the integrity of the assessment process by enforcing constitutional limits on automation. Section 144B violations are treated as jurisdictional defects since they undermine the fairness of the proceeding itself. Remedies available under appellate structures, being corrective and not preventive, cannot substitute the need for immediate judicial correction through writ jurisdiction. The judiciary is making clear that efficiency cannot override legality in any domain of governance.

Despite judicial vigilance, structural challenges continue. Technology infrastructure lacks robust audit trails to ensure that uploads and replies are captured and considered. System-generated templates sometimes replace substantive reasoning. Administrative units may fail to coordinate. These defects lead to unjust assessments and mounting litigation. Stronger safeguards must be embedded into the digital architecture: mandatory acknowledgments, recorded grounds for denying hearings, thresholds mandating oral hearings where additions exceed a percentage of assessed income, escalated review mechanisms before final orders, and detailed compliance reporting to Parliament.

India's faceless assessment regime, while innovative, must remain aligned with constitutional morality. Courts have shown that they will intervene whenever digital processes undermine

[110] M.P. Jain, *Indian Constitutional Law* (8th ed. LexisNexis 2022).
[111] N.A. Palkhivala, *We, the People* (Macmillan 2020).
[112] Org. for Econ. Co-operation & Dev. [OECD], *Tax Administration 2022: Digital Transformation Progress* (OECD Publ'g 2022).
[113] *Om Kumar v. Union of India*, (2001) 2 SCC 386 (India).

participation rights. Effective reform demands strengthening procedural protections and continuously monitoring the regime's real-world functioning. An assessment that is faceless must not be heartless

CONCLUSION

The faceless tax assessment regime under Section 144B embodies an ambitious reconfiguration of the State's adjudicatory function in the domain of tax administration. It represents a constitutional moment in India's administrative evolution: a shift toward algorithm-driven governance, real-time information exchange, and adjudication severed from physical interaction. The objective to eliminate corruption, introduce efficiency, and democratize the tax interface is unquestionably legitimate. Yet, as demonstrated through the emerging jurisprudence across multiple High Courts, **the movement toward digital governance has exposed a fissure between design and operation** technology that promises fairness but can also institutionalize new forms of exclusion if safeguards are diluted. Courts have been emphatic that the constitutionality of faceless assessment does not depend on the absence of a human face but on the **presence of procedural justice**. Natural justice is not an ornamental appendage to tax administration; it is a structural condition for the legitimacy of State action. Across cases such as *Magick Woods Exports*, *DJ Surfactants*, *Lemon Tree Hotels*, *Ritika Pvt. Ltd.*, *Rittal India*, and *Shiva Texyarn*, the judiciary has reiterated that where taxpayer replies are unconsidered or personal hearings denied without reason, the assessment collapses under the weight of its own procedural infirmities. **Ignoring the taxpayer's voice transforms a constitutionally permissible system into an unconstitutional one**, regardless of how advanced technology may be. The regime cannot be permitted to substitute human engagement with mechanistic execution. The promise of transparency rings hollow if the taxpayer's submissions disappear into a digital void or if hearing opportunities exist only theoretically within the interface of a portal. In this context, **writ maintainability is not a breach of discipline against statutory hierarchy but a necessary constitutional safeguard**, because appellate forums cannot cure a jurisdictional failure born from procedural illegality. This doctrinal stance preserves the very essence of India's administrative law: that the State must always be accountable to the individual and not merely to the efficiency metrics that digital systems prioritize.

At a deeper level, this jurisprudence reflects a broader constitutional philosophy that **technology is a servant of justice, not its master**. Even as the world embraces digital public

infrastructure, global experiences from HMRC in the United Kingdom, the IRS in the United States, and the ATO in Australia illustrate the vulnerabilities of automation when discretion is displaced by presets and algorithms. International critiques reveal a common truth: **digital governance risks dehumanizing adjudication unless empowered by procedural guarantees that centre the human participant**. In India's welfare-constitutional model, administrative efficiency cannot eclipse fairness without violating Articles 14, 21, and 300A. Procedural safeguards are not mere procedural checkboxes but constitutional commitments ensuring that taxpayers are not reduced to data points. The faceless system will be judged not by how efficiently it issues orders, but by how justly it engages with citizens in determining liability. Therefore, the faceless regime must undergo structural reform to incorporate robust acknowledgment systems, justified decision-making, and mandatory hearings where factual disputes or substantial variations exist. Legislative fine-tuning is essential to shift the scheme from **discretionary mercy to guaranteed right** when taxpayers seek oral hearing. The continued role of High Courts as constitutional sentinels ensures that the rule of law remains inviolable in digital transformations. The judiciary's engagement signals a pivotal constitutional insight: **a faceless State cannot become a speechless State**, nor can automation be permitted to sidestep accountability. As India strives to modernize governance and reduce human interface, its administrative institutions must remember that the **Constitution retains a human face and a human heart**. The faceless assessment regime will succeed only when it evolves into a model where technological efficiency is harmonized with meaningful participation where digital transparency does not come at the cost of democratic legitimacy and constitutional morality. The future of India's tax administration therefore depends not merely on how seamlessly technology functions, but on whether it continues to function **in service of fairness**.

BEYOND THE ALGORITHM: RECLAIMING HUMANITY IN THE AGE OF ARTIFICIAL INTELLIGENCE

Ayushi Trivedi[114] and Naomi Hannah Cherian[115]

ABSTRACT

Artificial intelligence is no longer science fiction. It's making hiring decisions, diagnosing illnesses, and even creating "art." But what happens when this dependence backfires, as the reliance on AI only rises? As AI systems outpace the laws meant to govern them, we're left to decide who is liable for the damage caused by AI.

This paper discusses the paradox of this tool, designed to assist humankind with menial tasks, so that it too often reinforces our worst biases. From racist facial recognition systems to chatbots that spew libel, the failures of AI aren't mere glitches but a reflection of our societal flaws. Hayao Miyazaki, a Japanese artist, called AI-generated art "an insult to life itself, "unfolding a more profound truth within people: when we outsource creativity and judgment to machines, we risk losing what makes us human.

People are already paying the price. Job seekers filtered out by biased algorithms, patients misdiagnosed, and artists whose livelihoods are undercut by synthetic content are just a handful of the ill effects of artificial intelligence. The law, meanwhile, cannot keep up with such technological escalation.

The way forward requires determination through mandatory bias testing, human oversight strictly ingrained into AI systems, and global rules that put people over profit. The use and development of artificial intelligence are inevitable. The goal isn't to eradicate AI but to force it to serve us and prevent the other way around. This isn't a debate about technology, but what kind of future we will strive for.

Keywords: Artificial Intelligence, Human rights, Innovation, Transparency, Liability

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INTRODUCTION

AI's increasing use raises concerns such as: who is accountable when it causes harm, and how do we prevent it from violating human rights? With the changing times, artificial intelligence has emerged from a science fiction concept and is now mainstream reality. Murat Durmus, in his book Beyond the Algorithm, said, "In every whisper of the algorithm, there is an echo of human thought, blurred and distorted, like a philosopher's dream meandering through the night".[116] His words remind us that AI is never neutral – it reflects human choices, data, and biases, even when disguised in the language of objectivity and code. Even the increasing technology deeply ingrained in our social, legal, and economic fabric is evident from the recent increased popularity of generative AI tools, which range from content makers to predictive policing software's and medical diagnoses. Every innovation brings changes and many significant questions, such as "are these tools being created and applied with sufficient ethical consideration, or are they being used without foresight of societal ramifications. This algorithmic neutrality hides a deep-rooted prejudice and raises concerns about democratic accountability, transparency, and monitoring, which need to be considered. On the recent trend of transforming personal photos into studio Ghibli art using AI tools, experts warn that the trend conceals a darker reality where casual sharing can lead to unforeseen privacy breaches and data misuse.[117]

The founder of the Ghibli Art, Miyazaki Hayao stated that the idea for artificially generated art with strong contempt. "I don't want to associate this with our work; it feels like a huge insult to life. It feels like the end of the world is near. We humans are losing faith in ourselves".[118] His words resonate beyond aesthetics; they reflect a deep unease about the erosion of human creativity, emotion, and purpose in an age where machines increasingly simulate what was once considered uniquely human. When we allow algorithms to replace imagination, decision-making, and empathy, we risk technical malfunction and a profound moral and cultural collapse. This raises concerns about humanity and artificial intelligence. It calls attention to the

[116] Murat Durmus, Beyond the Algorithm: An Attempt to Honor the Human Mind in the Age of Artificial Intelligence (Wittgenstein Reloaded), *Medium* (Jan. 24, 2024), https://murat-durmus.medium.com/beyond-the-algorithm-an-attempt-to-honor-the-human-mind-in-the-age-of-artificial-intelligence-c0b09542dd2b.

[117] PTI, Studio Ghibli AI Art Trend: A Privacy Nightmare in Disguise, Experts Warn, *Econ. Times* (Apr. 6, 2025), https://economictimes.indiatimes.com/tech/artificial-intelligence/studio-ghibli-ai-art-trend-a-privacy-nightmare-in-disguise-experts-warn/articleshow/120035607.cms.

[118] Eugenie Shin, An Insult to Life Itself: Ghibli-Style AI Images Raise Ethical Concerns, *Tokyo Weekender* (Mar. 31, 2025), https://www.tokyoweekender.com/japan-life/news-and-opinion/ghibli-style-ai-images-raise-ethical-concerns/.

ethical, legal and social tensions that arise when innovation outpaces regulation, and when human judgment is sidelined in favour of algorithmic efficiency.

HISTORICAL CONTEXT OF AI

Humanity was never intended to be replaced by artificial intelligence. Its early proponents saw technology as a tool to enhance human potential rather than replace it. Building systems that could use language, create abstract ideas, and solve problems in ways that resemble human intellect, especially for the benefit of humans. This was the goal of the historic 1956 Dartmouth Conference, where John McCarthy first used the term "artificial intelligence."[119] It was not a means to replace human reasoning or creativity, but rather, it freed individuals from monotonous, repetitive work and freed up brain energy for more complicated tasks.

Practical demands served as the foundation for this human-centric design philosophy. Machines like Alan Turing's theoretical 'Turing Machine'[120] and Leonardo Torres y Quevedo's 'El Ajedrecista'[121] were developed in the early and mid-20th century to facilitate specific, limited human pursuits like chess or mathematical computing. These devices weren't self-governing agents; they were innovative tools. Rather than emulating the entire range of human intellect, early AI pioneers were more concerned with resolving specific technological issues. In other words, AI was never meant to replace our mental abilities, but rather to complement them.

This subservient role was even highlighted in literary representations. "The Engine", a primitive idea similar to modern language models, was first presented by Jonathan Swift in his 1726 Gulliver's Travels.[122] It was designed to rearrange words and generate ideas. Because it augmented human creativity rather than completely replaced it, employing robots to control language was intriguing both then and now. Similarly, a picture of robots as workers rather than intellectuals or decision makers was portrayed in the Czech playwright Karel Čapek's 1921 play R.U.R.,[123] where he coined the term "robot." Robota translates to "forced work," suggesting the element of servitude rather than independence. As technological capabilities improved and AI's geopolitical and economic utility became significant, AI rose in status. A

[119] Dartmouth College, A Proposal for the Dartmouth Summer Research Project on Artificial Intelligence (Aug. 31, 1955), http://jmc.stanford.edu/articles/dartmouth/dartmouth.pdf.
[120] The Turing Machine, *High-Performance Embedded Computing* (2d ed. 2014), *ScienceDirect*, https://www.sciencedirect.com/topics/computer-science/turing-machine.
[121] Torres Quevedo Invents El Ajendrecista, the First Decision-Making Automation, *History of Information*, https://www.historyofinformation.com/detail.php?id=569.
[122] Chris Garcia, Gulliver's Engine, *Computer History Museum* (Nov. 28, 2012), https://computerhistory.org/blog/gullivers-engine/.
[123] John Jordan, The Czech Play That Gave Us the Word 'Robot', *MIT Press Reader* (Jul. 29, 2019), https://thereader.mitpress.mit.edu/origin-word-robot-rur/.

concrete shift occurred in the late 20th century when business and military interests began intertwining with AI development. In addition to being a tool for efficiency, these stakeholders saw AI as a competitive edge in commercial markets and combat.

Consequently, research objectives and funding priorities changed from augmentation to automation. AI could now replace human workers, analysts, and even commanders, making it more than a collaborator. Applications in the actual world demonstrate this change. From customer service chatbots to self-driving delivery drones, businesses in the private sector started investing in AI systems that could foresee consumer behaviour, improve supply chains, and replace human Labour with algorithms. In the meantime, military initiatives invested in AI for threat identification, surveillance, and battle scenario decision-making, including the contentious creation of autonomous weaponry. This tendency was further accelerated by the development of deep learning, which enables machines to "learn" from large datasets without the need for explicit programming[124]. This change had profound implications. AI expanded beyond specific jobs and invaded fields once considered exclusively human, such as judgment, ethics, and interpretation. Artificial Intelligence models, such as OpenAI's GPT-3, can produce human-like writing and conversation. Vision systems are now embedded in facial recognition systems that have real implications for privacy and law enforcement. These developments raise questions about control, agency, and trust by muddying the difference between simulation and decision-making.

While this is almost always true, transparency, accountability, and human oversight are often compromised. This philosophical rupture, between augmentation and substitution, now defines the AI landscape, where AI no longer imitates human behaviour or societal engagement, but intrudes on participants lurking in many aspects of societal decision-making. Bernard Marr notes that modern AI systems are valued for making decisions "faster and more accurately than humans".[125] AI is becoming mundane due to this move toward autonomous decision-making, but there may be unforeseen repercussions. The very institutions created to promote human happiness now risk harming it due to factors like algorithmic bias and Labour displacement.

ETHICAL AND ACCESSIBILITY CHALLENGES IN AI DEPLOYMENT

Ethical principles serve as a framework to guide the responsible development, deployment, and use of AI systems. These principles ensure that AI aligns with societal values, respects human

[124] Deep Learning Explained: How Deep Learning Works in AI, *Shopify* (May 21, 2024), https://www.shopify.com/ng/blog/deep-learning.

[125] Bernard Marr, The Key Definitions of Artificial Intelligence (AI) That Explain Its Importance, *Bernard Marr & Co.,* https://bernardmarr.com/the-key-definitions-of-artificial-intelligence-ai-that-explain-its-importance/.

rights while promoting fairness, transparency, and accountability.[126] Artificial Intelligence is becoming increasingly common in critical areas such as healthcare, and policing. Such developments have emerged as primary sources of ethical and human rights concerns. Despite the efficiency and scalability of AI, its presence has also raised accessibility issues and exacerbated systemic biases. Predictive policing and facial recognition tools participating in false arrests is one example, having the highest impact on the particular experience of racial minorities, and the apparent violation of the right to equality and non-discrimination. Many AI hiring tools have reproduced gender-based biases by filtering out women candidates based on skewed data sets used for training the algorithms.[127] Even with the rise of fake AI platforms, the demand for AI-based services has led to counterfeit AI Platforms designed to deceive users and distribute malware, steal sensitive data, or enable financial fraud. Examples include HackerGPT Lite, which at first glance appears to be an AI tool but is suspected to be a phishing website that distributes malware.[128]

The question of accessibility is a vital issue. Many AI tools are developed without consideration for people with disabilities, resulting in digital exclusion. For example, voice assistants may not recognize the speech of individuals with speech impairment, and sometimes, visual interfaces may not be perceived by screen readers for the visually impaired. These accessibility challenges create exclusion that widens the digital divide to marginalize back shaped demographics. There is an urgent need for governance, inclusivity, and collaboration across the knowledge and action sectors. The Black Box Problem in AI is the difficulty in understanding, interpreting, or explaining how complex AI models, intensive learning, and neural networks arrive at their decisions or predictions. These systems often process vast amounts of data and involve layers of internal computation that are not transparent to users, developers, or even the AI's creator. This lack of transparency raises questions around accountability, fairness, trust, and ethical responsibility, particularly when AI systems are involved in sensitive applications such as healthcare, finance, or criminal justice.[129] For instance, when an AI system denies an application for a loan or disallows a specific medical intervention, there is often no clarity

[126] Umair Ejaz & Olaoye Godwin, Ethical Considerations in the Deployment and Regulation of Artificial Intelligence, ResearchGate (Feb. 8, 2024), https://www.researchgate.net/publication/378070372.

[127] Jefferey Dastin, Amazon Scrapped 'AI Recruiting Tool' That Showed Bias Against Women, *Reuters* (Oct. 11, 2018), https://www.reuters.com/article/world/insight-amazon-scraps-secret-ai-recruiting-tool-that-showed-bias-against-women-idUSKCN1MK0AG/.

[128] Check Point Research, *AI Security Report 2025* (June 8, 2025), https://engage.checkpoint.com/2025-ai-security-report/.

[129] Sandra Wachter, Brent Mittelstadt & Chris Russell, Why Fairness Cannot Be Automated: Bridging the Gap Between EU Non-Discrimination Law and AI, 41 *Comput. L. & Security Rev.* (2021), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3547922.

around the reasons for the decision rendered. They are therefore often referred to as 'Black Box' models because of the appeal of this interpretability.

An ever-growing invasion of Artificial intelligence use in surveillance and data gathering introduces significant ethical concerns, particularly concerning privacy and autonomy. Scholars have cautioned of a potential 'panoptic society' where individuals are constantly being watched. Surveillance is changing the way that we behave. Such an environment takes away our autonomy and our right to privacy. AI surveillance also has profound implications for marginalized and vulnerable communities as they are disproportionally impacted, risking further social inequalities, and giving greater probabilities of discriminatory targeting.[130] While these may undermine an individual's right to privacy, overcriminalization and profiling, it results in exclusion from essential services, thereby furthering embedded systemic bias within society. AI surveillance will normalize surveillance, ultimately undermining fundamental democratic values unless there is a more rigorous, transparent regulation system regarding algorithmic decision-making. The necessity for ethical safeguards and accountability processes remains even more imperative now than before, an ethical issue, if not worse, one of the most emergent of AI use in weaponizing and military activity.

Autonomous Weapons Systems (AWS), often referred to as "killer robots," can select and engage targets without direct human intervention, raising grave ethical and legal questions about accountability, proportionality, and compliance with international humanitarian law. The delegation of life and death decisions to machines risks eroding human dignity and violating the principle of distinction and necessity under the laws of armed conflict.[131] Furthermore, the use of AI in military surveillance, drone strikes, and cyber warfare has increased anxiety around an AI arms race where nations will compete to deploy increasingly autonomous and lethal systems without adequate regulation. Scholars warn that this uncontrolled militarization of AI could destabilize the security of nations and lower the threshold for conflict.[132] Therefore, ethical governance of AI must address commercial and civilian applications and priorities strict international norms to prevent misuse in warfare. The emergence of tools like FraudGPT, for instance, has empowered cybercriminals to forge high-quality phishing campaigns that

[130] Rishab Debnath, Vaishav Veeraraghavan P & Nikita Hapse, AI and Privacy: Ethical Concerns in Data Collection and Surveillance, 6 *Int'l J. Factual & Multidisciplinary Res.* (Nov.–Dec. 2024), https://www.ijfmr.com/papers/2024/6/32150.pdf.

[131] Noel Sharkey, Saying 'No!' to Lethal Autonomous Targeting, 9 *J. Mil. Ethics* 369, 383 (2010), https://doi.org/10.1080/15027570.2010.537903.

[132] Anna Nadibaidze, 'Responsible AI' in the Military Domain: Implications for Regulation, *OpinioJuris* (Mar. 31, 2023), https://opiniojuris.org/2023/03/31/responsible-ai-in-the-military-domain-implications-for-regulation/.

perfectly replicate banking websites within seconds. AI agents are now used to craft millions of personalized scams tailored to victims' specific digital profiles and psychological vulnerabilities. Deepfakes are also used to defeat biometric verification systems, create fraudulent documents and videos sophisticated enough to bypass Know Your Customer and Anti-money Laundering regulations, and enable social engineering fraud, such as in the case of the fraudulent CFO who instructed an employee to transfer $25 million during a fake virtual call.[133] There are ethical and accessibility concerns in AI which stem from systemic bias, lack of transparency, misuse in surveillance and warfare, and digital exclusion. To address these issues, we need inclusive design practices, regulatory oversight, plus an international consensus on the responsibility of AI within a democratic society where AI serves humans in responsible and equitable ways.

LIABILITY FRAMEWORK CONCERNING AI

The pressing question today in the legal realm, with the accelerated participation of Artificial Intelligence in human activities, is who is responsible when things go wrong. The complexity of assigning liability in AI-related harm, mainly when that harm stems from bias, is no longer theoretical. It is a legal, ethical, and societal imperative.

One of the most contentious issues is the liability involved with personal AI systems. For example, if a big language model, such as OpenAI's ChatGPT, produces defamatory or deceptive text, such as wrongly accusing someone of a crime, who is to blame?[134] Liability in such instances is determined through sophisticated attribution. The culpability may belong to the end user who triggered the prompt, the developer who designed and trained the system, or even the platform enabling AI access. Each participant plays a different role in creating and channelling any harmful content, but the existing legal framework is unable to establish liability for the respective parties. A 'responsibility gap' is revealed by the legal ambiguity surrounding AI-generated material, especially when harm results from unpredictable system behaviour or autonomous responses.[135] Liability tends to fall on either developers under product liability principles or users under tort law in the absence of a clear attribution of legal personhood to AI systems, neither of which adequately takes into account the autonomous nature of the system.

[133] Shlomit Wagman, Weaponized AI: A New Era of Threats and How We Can Counter It, *Harvard Kennedy Sch. ASH Ctr.* (Apr. 8, 2025), https://ash.harvard.edu/articles/weaponized-ai-a-new-era-of-threats/.
[134] Skip Tracing and SEO: A Powerful Combination, *ZapGeeks* (Aug. 3, 2022), https://zapgeeks.com/skip-tracing-and-seo-a-powerful-combination.
[135] Francesca Lagioia & Giovanni Sartor, AI Systems Under Criminal Law: A Legal Analysis and a Regulatory Perspective, 33 *Philos. Technol.* 433, 465 (2020), https://doi.org/10.1007/s13347-019-00362-x.

Because algorithms contain systemic prejudice, the application of AI by corporations, particularly in banking, healthcare, and recruitment, makes liability issues much more complex. The discriminatory feedback loop that may occur when AI is educated on biased historical data was demonstrated by Amazon's now-defunct hiring tool, which routinely penalized resumes that contained the word "women's." These kinds of situations are not unique. They emphasize the necessity of preventative measures like bias audits. Ex ante fairness assessments are to be considered required, not optional, in high-impact AI systems, per research presented at the 2022 International Association for AI and Law (IAAIL).[136] For audits to work effectively, first intervening to reduce harm before deployment, they must be consistent, transparent and legally enforceable.

However, the current regulatory landscape is not meeting that standard. The EU has taken a significant step forward in incorporating reliability through a risk-based regulatory framework with the AI Act. This paradigm assigns corresponding responsibilities to AI systems limited, high, and unacceptable risk tiers. Notably, law enforcement, education, and employment systems and other domains that are especially susceptible to biased results are categorized as "high risk" and held to stringent data quality standards, openness, and human monitoring. The United States' dependence on post-hoc litigation, where AI-related damages are frequently addressed rapidly through civil cases or agency action, like that of the Federal Trade Commission, starkly contrasts with this proactive strategy. This patchwork approach "fails to generate a consistent deterrent effect" and burdens individual claimants, according to the Cambridge Handbook of Responsible Artificial Intelligence.[137]

Moreover, liability frameworks rarely consider biased AI's economic externalities. Beyond harm to individuals, a poorly designed credit scoring algorithm, for example, or hiring practice, can increase systemic inequality and prevent whole groups from accessing housing, employment, or education. These economic and social rights violations are not just legal violations for individual people but signal a need to shift the tenor of blame from individual people to institutional perpetrators of rights violations. Besides legal culpability, economic rights have been compromised due to AI's effects on Labour. Labour markets are rapidly

[136] Trevor Bench-Capon, Thirty Years of Artificial Intelligence and Law: Editor's Introduction, 30 *Artif. Intell. L.* 475, 479 (2022), https://doi.org/10.1007/s10506-022-09325-8.

[137] *Christiane Wendehorst, Liability for Artificial Intelligence: The Need to Address Both Safety Risks and Fundamental Rights Risks, in The Cambridge Handbook of Responsible Artificial Intelligence: Interdisciplinary Perspectives 187, 209 (2022),* *https://www.cambridge.org/core/services/aop-cambridge-core/content/view/12A89C1852919C7DBE9CE982B4DE54B7/9781009207867c12_187-209.pdf/liability-for-artificial-intelligence.pdf*.

automating across jobs requiring judgment and discretion, extending beyond operational work to change the nature of many human occupations.

Bridging the responsibility gap is critical for AI to realize its promise of benefiting humanity rather than aggravating our darkest fears. When legal safeguards fall behind technology improvements, the same systems that diagnose illnesses or screen job candidates can propagate bias and cause actual harm. Only by identifying who is liable (whether that is the user, developer, or platform), demanding rigorous bias audits, and implementing comprehensive, risk-based laws will we be able to assure that AI augments human creativity and judgment without jeopardizing economic and social rights. Beyond legal accountability, AI's impact on Labour markets jeopardizes economic rights.

AI VS HUMAN JOBS: COMPETITION OR COLLABORATION

Experts predict that the impact of AI and automation on the job market will be significant. According to the WEF, 85 million jobs will be displaced. It also expects the AI revolution to create 97 million new jobs. This raises a significant question concerning human rights. Is AI a boon or a bane? According to The Future of Jobs Report 2025, 92 million jobs are expected globally between 2025 and 2030 due to structural Labour-market transformation, which includes the impact of technologies like AI and automation.[138] However, this transformation is not entirely negative. The same report anticipates creating 170 million new jobs, leading to a net growth of 78 million globally by 2030. Many of these emerging roles are in technology-intensive and green transition sectors such as AI and machine learning specialists, prominent data analysts, renewable energy engineers, and cybersecurity experts–reflecting a shift in demand from routine-based jobs to skill-intensive ones[139]. This evolving dynamic between AI and human Labour invites a deeper reflection on the nature of future employment rather than replacing them outright. For instance, AI can handle repetitive tasks, enabling humans to focus on creative, strategic, and emotionally intelligent tasks, aspects of work–areas where human judgement and empathy are irreplaceable.[140]

[138] *The Future of Jobs Report 2025* (Jan. 7, 2025), *World Econ. Forum*, https://www.weforum.org/publications/the-future-of-jobs-report-2025/digest/.

[139] Prashant V. Singh, 170 Mn New Roles… Future of Jobs Report 2025 by World Economic Forum Reveals Job Disruption Will Equate to 22% of Jobs by 2030, *ET Now* (Jan. 14, 2025), https://www.etnownews.com/economy/future-of-jobs-report-2025-by-world-economic-forum-reveals-job-disruption-will-equate-to-22-of-jobs-by-2030-article-117238134.

[140] Artificial Intelligence vs. Human IQ: Who Wins? *Free IQ Test* (Jan. 10, 2024), https://www.free-iqtest.net/24/artificial-intelligence-vs-human-iq-who-wins/.

DEBUNKING THE "AI THREAT" NARRATIVE

The greatest threat to human society is not artificial intelligence but how humans create, implement, and oversee these systems. The notion that artificial intelligence is a sentient being poised to upend humanity ignores a crucial reality: AI lacks autonomy, will, and consciousness. It makes decisions in the context of other factors. It copies the information and instructions provided by its authors.

According to Melanie Mitchell, a professor at the Santa Fe Institute,[141] even the most sophisticated AI systems do not see the world as humans do. They provide results based on statistical patterns in data, not purpose or comprehension. This framing is critical in determining where it went wrong. When AI creates biased or harmful results, it is most often because of the underlying data or human decisions built into the model's architecture. A well-known example is Amazon's recruitment tool, which penalized résumés with the word "women's," reflecting women's historically low representation in technical professions[142]. The algorithm was not designed to be sexist. It duplicated the trends it discovered in prior hiring data, in which male candidates dominated. Similarly, predictive policing techniques and judicial AI systems such as Correctional Offender Management Profiling for Alternative Sanctions (COMPAS) have been criticized for practicing racial bias. It was discovered that COMPAS disproportionately categorized Black defendants as high-risk, even when they did not reoffend,[143] compared to white defendants with identical backgrounds.[144] Such outcomes reveal how historical biases in criminal justice datasets can persist and even worsen through AI systems.

However, if appropriately applied, AI's potential also offers a chance to address and lessen these prejudices. According to research from Tulane University, machine learning techniques can reduce bias in judicial sentencing if they are appropriately developed and closely watched. By rating offenders and suggesting sentencing ranges, artificial intelligence was implemented in Virginia to assist judges in determining the likelihood of recidivism. The study discovered

[141] Richard Waters, Melanie Mitchell: Seemingly 'Sentient' AI Needs a Human in the Loop, *Fin. Times* (Oct. 21, 2024), https://www.ft.com/content/304b6aa6-7ed7-4f18-8c55-f52ce1510565.
[142] Dastin, supra note 14.
[143] Nikhil Raghuveera & Hannah Biggs, Pretrial Risk Assessment Tools Must Be Directed Toward an Abolitionist Vision, *Atlantic Council* (Dec. 18, 2020), https://www.atlanticcouncil.org/blogs/geotech-cues/pretrial-risk-assessment-tools-must-be-directed-toward-an-abolitionist-vision/.
[144] Julia Angwin et al., Machine Bias, *ProPublica* (May 23, 2016), https://www.propublica.org/article/machine-bias-risk-assessments-in-criminal-sentencing.

that when paired with human judgment, these tools could combat prejudices rather than strengthen them, although critics are still cautious.[145]

Thus, AI has the potential to help to reveal covert systematic discrimination. IBM, for instance, has created bias-detection algorithms that look for skewed results in datasets and machine learning models. By highlighting disproportionate effects on specific groups, these technologies allow developers to address problems before deployment.[146] This illustrates AI's dual nature: when used responsibly and ethically, it may be both a potential danger and a corrective force.

Ultimately, Personal Artificial Intelligence (PAI) systems are not autonomous beings. They are sophisticated mimics that replicate the data and commands of their human creators. The lack of openness, responsibility, and moral supervision around the robots' use poses the most risks, not the technologies themselves. AI is not the actual threat, but the unbridled human effect on artificial intelligence. By acknowledging this, we shift from science fiction concerns to practical changes that make the real players, governments, businesses, and capitalists, responsible for the creation and application of AI.

ETHICAL DEPLOYMENT: BIAS MITIGATION AND ACCOUNTABILITY

As AI systems are used increasingly daily, it becomes essential to address the ethical implications around their development and adoption. These implications ensure they are used responsibly, equitably, and respectfully, in line with human rights and societal values. The ethical deployment of Artificial Intelligence concerns includes data responsibility and privacy, fairness, explainability, robustness, transparency, environmental sustainability, inclusion, moral agency, value alignment, accountability, trust, and technology misuse[147].

When discussing ethical deployment, it also raises concerns about AI bias. Bias in AI, also known as machine learning or algorithm bias[148], occurs when the results produced by an AI system are skewed due to human biases present in the training data or the AI algorithm itself[149]. Bias can be systemic (encoded through historical data), emergent (arising from feedback loops), or implicit (through developer or user assumptions).

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[145] Allyson Brunette, Humanizing Justice: The Transformational Impact of AI in Courts, from Filing to Sentencing, *Reuters* (Oct. 25, 2024), https://www.thomsonreuters.com/en-us/posts/ai-in-courts/humanizing-justice/.

[146] Jennifer Aue, The Origins of Bias and How AI May Be the Answer to Ending Its Reign, *Medium* (Jan. 13, 2019), https://medium.com/design-ibm/the-origins-of-bias-and-how-ai-might-be-our-answer-to-ending-it-acc3610d6354.

[147] What Is AI Ethics? *IBM* (Sept. 17, 2024), https://www.ibm.com/think/topics/ai-ethics.

[148] Dr. Timothy J. Purn

[149] Brunette, supra note 32.

CASE STUDIES

The *COMPAS* Algorithm (Correctional Offender Management Profiling for Alternative Sanctions), used in the U.S. Courts to predict recidivism risks, was found to disproportionately classify Black defendants as high-risk compared to white defendants with similar profiles. This case underscores how reliance on historical data without critical evaluation can perpetuate systemic bias, particularly when used in high-stakes legal decisions.[150] Even *Amazon's AI Recruitment Tool,* Amazon developed an AI hiring system to automate resume screening. However, the tool began penalizing resumes that included terms like "women's" (e.g., "women's chess club captain") and downgraded graduates of all-women's colleges. The system has learned from ten years of biased hiring data dominated by male applicants. Despite corrective efforts, hidden biases persisted, leading to the eventual discontinuation of the tool. This incident highlights the risks of unexamined training data and the necessity of diversity in development teams and datasets.[151]

BIAS MITIGATING TECHNIQUES

To address such issues, bias mitigation techniques are typically categorized into these approaches:

- Diverse and Representative Data: Ensuring datasets reflect a wide range of demographics (age, gender, race, etc.) to minimize skewed outcomes.
- Data Preprocessing: Cleaning, anonymizing, and rebalancing data to reduce inherent bias before model training.
- Bias-Aware Algorithms: Choosing or designing algorithms with built-in fairness constraints or using ensemble methods to offset individual model biases.
- Human Oversight: Implementing human-in-the-loop systems to review and correct AI outputs where needed.
- Transparency: Clearly explaining AI decision-making processes enables scrutiny to build trust.
- Ongoing Monitoring: Regularly auditing AI performance with fairness benchmarks to detect and correct biases over time

[150] Jeff Larson, Surya Mattu, Lauren Kirchner & Julia Angwin, How We Analyzed the COMPAS Recidivism Algorithm, *ProPublica* (May 23, 2016), https://www.propublica.org/article/how-we-analyzed-the-compas-recidivism-algorithm.
[151] Artificial Intelligence vs. Human IQ, supra note 27.

- Ethical Framework and Diverse Teams: Adopting global AI ethics standards (e.g., EU guideline, FAT/ML) and promoting team diversity to uncover blind spots and ensure inclusive design.
- Training and Awareness: Helping developers and stakeholders understand bias detection, mitigation, and responsible AI.

Bias mitigation is not a one-time process; it requires continuous attention, a commitment to ethical action, and interdisciplinary collaboration to keep AI technologies fair, inclusive, and accountable.

REGULATORY AND ETHICAL FRAMEWORKS

The EU's Artificial Intelligence Act (AI ACT), proposed in April 2021, is the first major regulatory framework to govern AI systems based on their unacceptable, high, limited, and minimal risk levels. Unacceptable uses, such as government social scoring, are banned. High-risk systems, like those used in migration or employment, must undergo conformity assessment, documentation, and ongoing monitoring. The Act has global implications for any company offering AI services in the EU, regardless of location. It emphasizes ethical principles such as transparency, accountability, human oversight, and fairness.[152]

India's primary document on AI, the national strategy for Artificial Intelligence, was released by NITI Aayog in 2018. It outlines India's vision for AI, emphasizing the importance of leveraging AI for inclusive growth and focusing on five key sectors: healthcare, agriculture, education, smart cities, and smart mobility. National AI Portal 2020 is a platform for AI resources and collaboration. Responsible AI for Youth 2020, a MeitY initiative to train students in AI. Concerning AI Standards, BIS is developing standards on data privacy, quality, and governance.[153]

Additionally, Principles for Responsible AI (NITI Aayog, 2021) lays down seven core ethical principles, namely- safety, inclusivity, equality, privacy, transparency, accountability, and human values, divided across system and societal considerations. Draft Digital India Act (2023), aims to regulate AI in digital services, propose no-go zones for harmful AI use, and introduce strict penalties to ensure user safety. Draft National Data Governance Framework Policy (2022), seeks to modernize data governance and promote AI innovation through open,

[152] *EU AI Act: First Regulation on Artificial Intelligence*, *European Parliament* (July 8, 2023), https://www.europarl.europa.eu/topics/en/article/20230601STO93804/eu-ai-act-first-regulation-on-artificial-intelligence.

[153] Gayathri Haridas, Sonia Kim Sohee & Atharva Brahmecha, The Key Policy Frameworks Governing AI in India, *Access Partnership*, https://accesspartnership.com/opinion/the-key-policy-frameworks-governing-ai-in-india/.

anonymized datasets and public-private collaboration. TRAT Recommendation on AI (2023) proposes a unified AI regulatory framework with a risk-based classification system and a dedicated statutory body for oversight. India AI National Program (2023) is a holistic initiative to build an AI ecosystem through multi-stakeholder collaboration across government, academia, and industry. National Cybersecurity Reference Framework 2023 provides structured cybersecurity guidelines for critical sectors, addressing AI-related risks and governance architecture. Global Partnership on AI(GPAI), India membership reflects its commitment to globally aligned, human-centric, and trustworthy AI development.[154]

As per OECD AI Principles, 2023, the government reported over 1000 policy initiatives across more than 70 jurisdictions in the OECD.[155] By these principles, policymakers can guide the development and deployment of AI to maximize its benefits and minimize its risks. OECD Principles promote the use of AI that is innovative and trustworthy and that respects human rights and democratic values.[156] Adopted in May 2019, they set standards for AI that are practical and flexible enough to stand the test of time. Policy recommendation for AI: invest in AI R&D, support open, fair data, an inclusive AI Ecosystem, interoperable Governance, Human Capacity & Jobs, and Global Collaboration.[157]

The IEEE Global Initiative on Ethics of Autonomous and Intelligent Systems has launched Ethically Aligned Design, a vision for prioritizing human well-being with Autonomous and Intelligent Systems, First Edition (EAD1e).[158] According to Doug Frantz of the Organization for Economic Cooperation and Development (OECD): "What has been missing, until now, is a clear, practical road map to guide the development of AI's benefits and address its potential risks. Ethically Aligned Design fills that vital gap. It provides businesses, policymakers and everyday people with the essential tools to understand the stakes and support global standards to maximize the benefits and mitigate the risks.[159]

CONCLUSION

Artificial intelligence does not function in isolation from human motives. Instead, it reflects the creators' interests, ideals, and constraints. The conversation must shift away from

[154] Id.
[155] *About the OECD AI Principles*, *OECD*, https://www.oecd.org/en/topics/ai-principles.html.
[156] Id.
[157] Id.
[158] Christ Brantley, IEEE Global Initiative Releases Treaties on Ethically Aligned Design of AI Systems, *IEEE Global Policy* (Apr. 1, 2019), https://globalpolicy.ieee.org/ieee-global-initiative-releases-treatise-on-ethically-aligned-design-of-autonomous-and-intelligent-systems.
[159] Id.

sensationalist anxieties about autonomous machines and toward a more nuanced understanding of AI as a socio-technical system that both magnifies and challenges human agency. Crucially, the primary issue is not the machine's autonomy, but rather the distribution of responsibility among those who build, deploy, and regulate it.

AI mirrors the goals of those who created it. However, it develops by discovering patterns we might not even notice, much less comprehend, in contrast to static tools. This presents both a risk and an opportunity. We regain control over AI's course if we view it as a reflection of human will rather than an outside force. To build with inclusivity in mind, this agency must be exercised by raising difficult ethical questions, and turning down convenience when it compromises accountability. The stakes transcend beyond utility, into the fabric of justice, governance, and human dignity.

The ethical deployment of AI is not merely a technical challenge but a societal imperative. As AI systems become deeply embedded in governance, healthcare, employment, and justice, ensuring fairness, accountability, and transparency becomes non-negotiable. Bias mitigation, robust oversight, and inclusive design must work with enforceable regulatory frameworks to safeguard human rights and democratic values. Without a shared ethical commitment across institutions, industries, and borders, technical solutions alone are insufficient. In this light, the future of AI must be steered by human-centric principles and proactive global collaboration, ensuring technology serves humanity, not the other way around. Ultimately, the legitimacy of AI systems will be determined by our collective commitment to regulate them by our ethical and democratic principles, rather than by their technological sophistication.

AN ANALYSIS OF THE ROYAL CHARTER OF 1600 (MEMORANDUM OF ASSOCIATION OF THE EAST INDIA COMPANY) VIS. A VIS. WILLIAM DALRYMPLE'S ANARCHY: A CRITICAL ANALYSIS

Jeni Rose Jomy[160]

ABSTRACT

"This article critically examines the Royal Charter of 1600, which established the East India Company and traces its evolution from a trading entity to a colonial power. Initially founded for the purposes of trade and commerce, the EIC's activities increasingly expanded into political and military domains, often violating the original limitations set out in the Memorandum of Association. Drawing on William Dalrymple's The Anarchy, the article explores how the Company's ambitions for territorial conquest transformed its legal, economic and political influence in India. The article concludes by highlighting the risks of corporate overreach, emphasizing the need for accountability and scrutiny in corporate activities that extend beyond their original legal mandate."

Keywords: East India Company, Royal Charter, MoA, Dalrymple

[160] Jeni Rose Jomy, *Himachal Pradesh National Law University*.

INTRODUCTION

In the words of Marshal LJ, "Body Corporations are not novelties. They are institutions of a very ancient date." In the 17-18th Centuries, a company was formed either by a Royal Charter or a Special Act of the Parliament.[161]

In 1600, the Royal Charter was granted by Queen Elizabeth to the East India Company (EIC). It formed one of the earliest specimens of a Memorandum of Association, clearly limiting the objects and powers within which the company was to operate. However, subsequently multiple other charters and letter patents were granted to the Company[162], which widened the scope of its operations in the country and paved the way for the complete conquest of India by a mere joint stock Company.

William Dalrymple, in his book- The Anarchy- gives a detailed description of the various activities undertaken by the Company and traces its gradual evolution into a ruling dispensation. This Article is an attempt to discover the instances where it disregarded the limitations set out by its own charter – something that would have serious legal consequences in today's time.[163]

CHARTER OF 1600 AS THE MEMORANDUM OF ASSOCIATION

The Royal Charter of 1600 was the Memorandum of Association (MoA) for the East India Company, closely resembling the various details that are to be now compulsorily mentioned in the MoA as per the Companies Act, 2013.[164]

The name of the company was named as *The Governor and Company of Merchants of London, Trading into the East-Indies,*[165] objects outlined as primarily related to trade[166], and the governor was given the power to hold court in any place as convenient.[167] The charter was the result of the petition made to Queen Elizabeth by a merchant Sir Thomas Smythe, who raised 30, 133 pounds from the subscriptions made by an assorted group of merchants.[168]

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[161] Avtar Singh, *Company Law* 3 (2016).
[162] John Shaw, *Charters Relating to the East India Company from 1600 to 1761* ix (1887).
[163] Tax Guru, Violation of Main Object Clause of MOA—MCA Imposes 3 Lakh Penalty, https://taxguru.in/company-law/violation-main-object-clause-moa-mca-imposes-3-lakh-penalty.html#google_vignette (last visited Nov. 22, 2024).
[164] *The Companies Act*, 2013, § 4 (India).
[165] Shaw, supra note 3, at 2.
[166] Id.
[167] Shaw, supra note 3, at 7.
[168] William Dalrymple, *The Anarchy* 2 (2019).

Section 9[169] of Companies Act that covers the effects of registration of a company state that from the date specified in the certificate of incorporation, the subscribers to the memorandum, along with any future members who join the company, form a corporate entity. This entity operates under the name stated in the memorandum and possesses all powers granted to an incorporated company under this Act. It has perpetual existence and the authority to acquire, hold, and transfer property, enter into contracts, and engage in legal proceedings under its official name.

Quite similar to this section is the clause in the EIC charter[170] that recognized it as a legal entity and a corporate body having the legal ability to purchase, receive, possess, enjoy, and retain lands, rents, privileges, liberties, jurisdictions, franchises, and hereditaments of any kind or nature, and to pass these on to their successors. Additionally, they had the power to grant, transfer, lease, sell, and dispose of lands and properties, as well as to carry out other necessary actions under their corporate name. They and their successors had the right to sue and be sued, answer and be answered, defend and be defended, in any court or before any judge, officer, or authority.

TRANSGRESSIONS OF THE MEMORANDUM OF ASSOCIATION

The object of the Company in the Charter of 1600 was as follows:

"*That the Company at their own adventures, costs, and charges, For the Honour of England, Increase in Navigation, Advancement of Trade of Merchandize, might set forth on one or more voyages, with convenient number of ships and pinnaces, by way of Traffic and Merchandise into the East-Indies, in the countries and parts of Asia and Africa, and to as many of the islands, ports and cities, towns and places, thereabouts, as where trade and traffic may be by all likelihood be discovered, established or had.*"

It is an acknowledged principle that the company cannot undertake activities beyond the scope of the objectives outlined in the memorandum.[171] However, the scope of activities carried out by the company soon extended beyond the conventional trade practices, to widen into a conquest for political control in India.

In 1626, the EIC established its first fortified base at Armagon on Central Coromandel Coast. In 1632, it was abandoned but yet another attempt was made two years later, to build an EIC

[169] *The Companies Act*, 2013, § 9 (India).
[170] Shaw, supra note 3, at 3.
[171] *Ashbury Ry. Carriage & Iron Co. v. Riche*, [1875] L.R. 7 H.L. 653 (U.K.).

fort at Madrasapatam.[172] These fortifications were only authorized via the charter of 1661[173] and prior to that the EIC had no authority to erect them. Moreover, the license to erect fortifications, when granted, was to be '*within the limits and bounds of trade'*. [174]This instance marks another violation of the well settled rule in Corporate Law, where the activities taken ultra vires the Memorandum of Association cannot be subsequently ratified by altering the MoA, when the act originally was not in the scope of activities allowed by the MoA.

Further, the Company was bestowed with the power to create and enforce reasonable laws, regulations, and orders that they deem necessary for the proper management of the company and its employees, such as factors, captains, and sailors. The company was also authorized to impose penalties for any violations of their rules, including fines, imprisonment, or other forms of punishment. These decisions are made by the Governor, or his deputy, together with the majority of members present at the meetings. [175]The laws and penalties must be reasonable and not conflict with the existing laws or customs of the realm. The company is not required to report or account for these actions to the crown or its successors, and all regulations must be observed and enforced as stipulated; while ensuring they comply with the broader laws of the land.[176] This remained unchanged even in the subsequent charters that were granted.

However, in his accounts, William Bolts describes[177] how the company officials would imprison Indians and extort money from them. Weavers used to cut off their fingers so that they would not be forced into prison-like camps to weave. Justice was elusive and was rarely enforced against the EIC officials, let alone the natives. There was no one hold the officials accountable. Following the revolt of 1857, the Company was ruthless in its hunting and execution of all those involved in the attack, marking unprecedented bloodshed and horror in the history of its rule.[178]

The company repeatedly breached the treaties that it made with the native rulers and they faced no consequences for these violations, despite the charter explicitly mentioning that the actions of the company must be in line with the broader laws of the land. For instance, Hastings refused to pay his share of tribute to Shah Alam under the treaty of Allahabad.[179]

[172] Dalrymple, supra note 9, at 21.
[173] Shaw, supra note 3, at 45.
[174] Id.
[175] Shaw, supra note 3, at 7–8.
[176] A.B. Keith, *A Constitutional History of India 1600–1935* 5 (2011).
[177] Dalrymple, supra note 9, at 226–27.
[178] Id. at 391.
[179] Id. at 378.

These rules and regulations and punishments for their violations thereof, were supposed to be binding only upon the company[180]. Nowhere did the charter give any right to the company to impose their self-made laws on the indigenous people of the land, to the extent that the natives were executed at the charge of being witches.[181] It was only by the Charter of 1661 that the laws made by the Company could be enforced on the people living within the territory where the company exercised its control.[182]

In 1641 and 1642, the company exercised its judicial authority at the insistence of a local naik.[183]Where a British soldier was murdered by a Portuguese, the company exercised its jurisdiction over a non-English national and shot him dead as punishment. In 1648, two Company men were appointed as judges to preside over the local Choultry Courts that had jurisdiction over both- English nationals as well as natives.

The Company was granted six ships and six pinnaces to be sent to the East Indies- well stocked with ammunition- not to wage wars, but for defence- along with five hundred men.[184] However, between 1601 to 1640, the Company set out about 168 ships- out of which only 104 returned back.[185]

Following this charter, a subsequent charter of 1609 was granted by King James I,[186] that more or less reiterated the contents of the previous Charter, with some minor alterations. The next major charter was granted after a long span of about 40 years in 1661, during the reign of King Charles

II. In between, the Company undertook various adventures, not all of them conforming to the powers that they were originally granted.

SUBSEQUENT CHARTERS, AMENDMENTS AND LETTER PATENTS

In 1681, the directorship of the Company was handed over to Sir Joshiah Child, whose provocative and aggressive disposition led to the first direct confrontation with the Mughal rulers of India. [187] The factors employed in the Company had begun to complain about the brutish behaviour of the English and the then Nawab of Bengal, Shaista Khan couldn't agree more. He wrote a letter to the Emperor Aurangzeb complaining about the same.

[180] V.D. Kulshrestha, *Landmarks in Indian Legal and Constitutional History* 39 (2016).
[181] Dalrymple, supra note 9, at 23.
[182] Ashbury Ry. Carriage, supra note 12.
[183] Kulshrestha, supra note 21, at 46.
[184] Shaw, supra note 3, at 11.
[185] Dalrymple, supra note 9, at 20.
[186] Shaw, supra note 3, at 16.
[187] Dalrymple, supra note 9, at 23–24.

Incensed by these dissenting voices, Sir Joshiah took the decision of confronting the Mughal authority with '19 warships, 200 canons and 600 soldiers. They stood no chance against the Mughal Army that was in its prime, after the conquest of two Sultans in the Deccan and had to suffer a humiliating and excruciating defeat at their hands.

This attempt to wage war with the Mughals was another glaring violation of the charters that were granted to the EIC. It was only in 1683 that the Company was given the right to engage in war or make peace with nations.[188]

Prior to these, the Charters had only granted the Company to maintain forces at their disposal for the purpose of defending themselves from invaders and other hostilities. The initiation of active hostilities by the Company marked a grave violation of the powers that were outlined and nearly equated the authority of the Company with that of the Sovereign. This was enough grounds to have the charter rescinded. However, that did not happen. The company by the late 17 Century had become an indispensable source of trade for England. Instead, the Royal Charter of 1683 gave the Company the authority it did not have in 1681, while waging the first armed conflict against the Mughals. An interesting point to note is that the Charter of 1677[189] pardoned the Company for all offences committed prior to 16th September, 1676. A strong case could have been made against the company for violation of its authority after the date of the pardon period, had the Crown been invested in monitoring its activities.

The Charters granted required that each and every profit made and presents received during the course of its business in India, must be included in the general account of country, thereby warning against accumulation of private profits.[190] But following the Battle of Plassey in 1757 in Bengal, and even before that when the region was under the control of the EIC, Governor General Robert Clive and many officials of the Company, filled their pockets with whatever they could loot from the state.[191]

The East India Company (EIC) officials in Bengal, particularly Robert Clive and his associates, disregarded the cautious directives from London,[192] which emphasized only defending British trading interests against the French. Instead, they saw an opportunity to expand both British influence and their personal wealth by meddling in local politics.

[188] Shaw, supra note 3, at 71.
[189] Id. at 66.
[190] Keith, supra note 17.
[191] Dalrymple, supra note 9, at xxviii.
[192] Id. at 120–21.

Siraj-ud-Daula's opposition to the British—stemming from their misuse of trading privileges and unauthorized fortifications in Calcutta—became a convenient justification for their intervention. A secret committee of senior EIC officials devised a plan to overthrow him, forging alliances with dissatisfied local elites, most notably Mir Jafar, who was promised the throne in return for his cooperation.

To gain approval from their superiors, the conspirators framed their actions as necessary to eliminate French influence in Bengal. However, their true motives were economic political expansion apart from personal enrichment. The British victory at Plassey in 1757 not only installed Mir Jafar as a puppet ruler but also marked the beginning of direct British control in India, paving the way for colonial rule.

Edmund Burke, writing in *The Annual Register*, speculated that the general could amass a fortune of approximately £1,200,000, while his wife possessed a casket of jewels valued at around £200,000, equivalent to £126 million and £21 million respectively in today's times.[193]

FROM TRADE TO CONQUEST

As stated above, the charter of 1600 established the company and outlined the ambit within which it was to function, i.e., the objectives of the company clearly stated that the activities of the company were to be limited for the purpose of trade and not for acquisition of territories.[194]Ilbert stated it as the 'germ out of which the Anglo-Indian Codes were ultimately developed'. The subsequent charters that were issued, first and foremost, reiterated the previous charters.

Despite the subsequent charters granting a wide array of powers to the company, the fact remains that the primary object of the company was always commerce and that was never changed or altered by the subsequent charters. But, in the present case, as Dalrymple succinctly puts it, "*A trading corporation had become both colonial proprietor and corporate state, legally free to do everything that governments do- control law, administer justice, assess taxes, mint coins, provide protection and impose punishments, make peace or wage war".*

While the activities undertaken by the Company may be well defended by the argument that they did indeed augment the profits and revenue of the company, and in turn of the British Government. But the intention behind the activities of the company, after a certain point, was diverted to the territorial conquest of India. This conquest was not solely for trade, but to gain actual 'sovereign 'control over the territories annexed. Trade had become incidental and governance occupied that foremost place in the list of priorities.

[193] Id. at 140.
[194] Kulshrestha, supra note 21.

THE REGULATING ACT

The first attempt at regulating the Company and holding it accountable for its actions was attempted through the Regulating Act of 1773. The act tried to bring the company under the lens of the parliament. The catalyst for this was the financial crisis of 1772, when several banking houses went bankrupt and stopped paying depositors and creditors. These banks had made large investments in the company stock and their closure led to loss of credit for the company, causing need for an immediate bailout. However, the prior transgressions of the company were left unpunished and unaccounted for.[195]

CONCLUSION

The East India Company is a classic example of how a commercial organization, constituted with the aim of advancing trade of the realm, gradually turned into a government, surpassing the original intent for which it was established. The provisions of the Charters were disregarded when it suited the EIC and there was no enforcement mechanism to ensure that they could be held accountable for their actions. Dalrymple's work provides a comprehensive outline of the events that ultimately established the Company as a sovereign power. Although the early charters clearly outlined limitations, the East India Company's expanding ambitions faced minimal opposition from the Crown, largely due to the substantial profits it brought to England. As the Company became involved in military conflicts and political manoeuvring, it metamorphosed into a quasi-governmental entity within India, having its own legal framework, armed forces, and the power to levy taxes and govern.

The rise of the East India Company marks a significant and irreversible shift in corporate governance, illustrating the complex relationship between business, law, and colonial power. Its transformation from a trade organization into an imperial power underscore the risks of unchecked corporate influence, serving as a warning about the consequences when a company's activities extend beyond its original scope and the authorities refrain from demanding accountability. In today's legal environment, the Company's actions would undoubtedly face intense scrutiny and legal repercussions, emphasizing the evolution of corporate law and the increased accountability now required of business entities.

[195] Dalrymple, supra note 9, at 230–33.

TOWARDS A RIGHTS-DRIVEN AND INCLUSIVE REHABILITATION POLICY FOR INDIA'S BEGGING POPULATION

Pallavi[196]

ABSTRACT

In India, begging is a complex issue with roots in poverty, unemployment, disability, displacement, and a lack of social support. It is not just a social problem. Beggars continue to be one of the most disadvantaged groups, despite being a visible part of both urban and rural life. They are frequently criminalized and kept out of the mainstream policy conversation. Anti-begging legislation, like the Bombay Prevention of Begging Act, 1959, has been passed by several states; these laws often punish rather than protect. This study examines whether India's beggar right policies are in line with the constitution's demands for social justice, equality, and dignity. The objective of this research is to evaluate the efficacy, legality, and compassion of current regulations and propose a rights-based, rehabilitative strategy. It seeks to explore to what extent existing laws and welfare programs address—or neglect—the socio-economic vulnerabilities faced by beggars and whether these measures promote their empowerment or lead to increased marginalization. The study employs a doctrinal approach, complemented by a socio-legal examination of legislative provisions, judicial rulings, government initiatives, and secondary literature. Additionally, it incorporates case studies and reports from non-governmental organizations and human rights bodies to comprehend the actual situations on the ground. The primary contention is that many policies in India treat begging as a criminal offense instead of recognizing it because of deep-rooted social inequalities. This perspective is not only unproductive but also raises constitutional concerns. The research advocates for the decriminalization of begging alongside the creation of comprehensive rehabilitation measures founded on principles of human rights and social welfare.

Keywords: Beggary, Human Rights, Anti-Beggary Laws, Rehabilitation Policies, Socio-Legal Analysis

[196] Pallavi, *Parul University, Vadodara, Gujarat.*

INTRODUCTION

The notion that all people share the same basic desires and goals is the foundation of the concept of human rights. All humans have the same basic impulses for survival, belonging, and development, hence it is preferable to consider in terms of claims or rights that would apply to all of humanity. Human rights primarily concern social and political rights, such as the freedom from interference with one's personal integrity, the freedom to engage in political activity, the freedom of conscience, etc. However, there have been many recent changes in the field of human rights, some of which are fundamental to the idea itself. Human rights theory has recently changed its emphasis from civil and political rights to economic and social rights. Due to this shift in focus, people are now considering the importance of human rights for marginalized groups like labourer's, peasants, indigenous peoples, women, children, and prisoners. This new trend in human rights thinking has opened up at least two additional areas of enquiry.[197] The first step is to identify the new human rights recipients. Early human rights theory was generally broad and rarely had a specific group in mind as its focal point. Even in the places where the groups were mentioned, they always alluded to the societally accepted groups, such as political dissidents and prisoners of war. Second, the pro-elite class conception of human rights is gradually being modified to meet the needs of the recently discovered beneficiaries. Because to their economic circumstances and other characteristics like disabilities, beggars are often people who are trapped in an endless loop of poverty and lack the ability to plan a way out for sustaining themselves. There are two prominent views on the origin of beggary.[198] The first perspective, which may be referred to as the traditional perspective, views beggary as a continuation of the traditional religious practice with origins in ancient religious doctrines and social customs. The second theory about the causes of beggary contends that either individual or societal disarray is the fundamental cause of these obscene social conditions.

In other circumstances, the origins of begging are attributed to historical, cultural, and religious elements that promoted begging as an act of piety for both the recipient and the provider.[199] Begging is the most extreme type of poverty since it is the result of destitution, a position of great vulnerability. People who are destitute are trapped in a vicious circle of great poverty, houseless, helplessness, prejudice, rejection and economic inequality, all of which support one

[197] B.B. Pande, Rights of Beggars and Vagrants, 13 *India Int'l Centre Q.* 116–17 (1986).
[198] *Id.*
[199] Sumita Sarkar, Beggary in Urban India: Reflections on Destitution and Exploitation, 68 *Indian J. Soc. Work* 525 (2007).

another. Some of the most prevalent causes of homelessness and destitution include mental illness, old age, family breakdown, distress migration, relocation, and illnesses such as leprosy, drug addiction, and physical disability.[200]

The total number of beggars is 4,13,670 out of which 2,21,673 males and 1,91,997 females.[201] West Bengal has the most beggars, followed by Uttar Pradesh, Rajasthan, Andhra Pradesh, Bihar, and Madhya Pradesh.

Begging discovers grounds for survival in a variety of situations. There are several factors that contribute to the expansion of begging, and they are dispersed throughout a fairly broad spectrum of sectors. Poverty, destitution, desertion, unemployment, underemployment, famine, drought, displacement and man-made or natural calamities that generate migration, homelessness, and so on are some of the various reasons that contribute to the presence of beggars and the practice of beggary.

GLOBAL ANALYSIS OF LEGAL AND CONSTITUTIONAL FRAMEWORKS

Historically, anti-begging and anti-vagrancy laws have been a component of judicial systems around the world, treating begging as a criminal matter rather than a socioeconomic one. These laws frequently link beggars to criminal activity and public nuisances, and they see beggary as a danger to public order. One notable example of such legislation in India is the Bombay Prevention of Begging Act, 1959. This law, which was first passed in Maharashtra, has since been expanded to 19 states and three union territories. Without addressing the socioeconomic factors that contribute to beggarly behaviour, it criminalizes begging and permits incarceration in accredited facilities.[202]

In the past, beggars were associated with unease and chaos in public areas and were seen to be precursors to crime. But the perception has changed over time. Beggary is now understood to be a sign of more serious social problems such as homelessness, unemployment, poverty, and disability. This change in perspective necessitates a rehabilitative strategy instead of a punishing one. Many nations around the world have passed anti-begging legislation, frequently with severe consequences. The Public Security Administration Punishment Law in China

[200] Ministry of Social Justice & Empowerment, *Support for Marginalized Individuals for Livelihood and Enterprise (SMILE)*, https://grants-msje.gov.in/display-smile-guidelines (last visited Feb. 21, 2022).

[201] Bibek Debroy, Which State Has Most Beggars, and How Beggars Differ from Vagrants, *The Week* (Apr. 15, 2021), https://www.theweek.in/columns/bibek-debroy/2021/04/15/bibek-debroy-which-state-has-most-beggars-and-how-beggars-differ-from-vagrants.html.

[202] Begging Should Not Be a Crime If Done Due to Poverty, *Times of India* (Nov. 30, 2017), https://timesofindia.indiatimes.com/city/delhi/begging-should-not-be-a-crime-if-done-due-to-poverty/articleshow/61856294.cms.

makes it illegal to force or take advantage of people to beg. Article 262(2) of the Chinese Criminal Law stipulates that arranging for children or people with disabilities to beg can result in a maximum sentence of seven years in prison.[203]

Several Australian states, including Victoria, Queensland, South Australia, Tasmania, and the Northern Territory, have laws against begging. Financial fines and up to a year in jail are among the possible punishments.[204]

Anti-begging legislation in the US is restricted by First Amendment constitutional safeguards. However, aggressive panhandling is prohibited by local ordinances like those in Boston and San Francisco, which are often enforced by public awareness efforts rather than harsh criminal penalties.[205]

Canada takes a focused stance. Aggressive or threatening panhandling is prohibited by Ontario's Safe Streets Act, 1999. Repeat offenders may face jail time in addition to fines ranging from CAD 500 to CAD 1,000.[206]

Begging has been criminalized in practically every corner of the world over time. Almost every nation on the globe created its own vagrancy and anti-beggary legislation based on Britain's Vagrancy Act of 1824. Most nations have retained their former colonial heritage. Countries that maintain anti-begging legislation claim two fundamental reasons for doing so-

- **Public nuisance**

The most often claimed justification for the passage and enforcement of anti-begging legislation in most states has been public disturbance and intimidation. Governments have frequently claimed their concern for the masses as the driving force behind enacting anti-begging legislation. Citizens frequently express uneasiness at the sight of beggars and fear of being targets of any potential criminality. As a result, states exploit this as an excuse for establishing anti-begging legislation and, as a result, prosecuting beggars under those laws.

The first notion that comes to mind to justify the application of anti-beggary laws is the creation of a public nuisance. It is said that the public is already annoyed and uncomfortable by the appearance of beggars. Beggars are viewed as irritating individuals who strive to live as unproductive freeloaders.

- **Broken Windows Theory**

[203] *India Const.* art. 41.
[204] Paula Hughes, The Crime of Begging: Punishing Poverty in Australia, 30 *Parity* 32–33 (2017).
[205] Marc-Georges Pufong, *Panhandling Laws*, First Amendment Encyclopedia (Aug. 11, 2023), https://www.mtsu.edu/first-amendment/article/1215/panhandling-laws.
[206] Engel & Associates, Is Panhandling Illegal in Ontario? https://bruceengel.com/2016/03/is-panhandling-illegal-in-ontario/.

The broken windows theory provides grounds for criminalizing beggars and homeless people in the modern era. This notion maintains the perception that vagrancy and begging are precursors to more severe criminal activity; beggars are a public nuisance and source of intimidation; and beggars lack deservedness.[207] This idea contends that if neighbourhood disturbances such as public drinking, begging, and vagrancy are not handled; the region becomes a potential and defenceless breeding ground for unlawful activity.

According to the theory, any apparent indicators of crime, antisocial conduct, or civil unrest that go unnoticed develop an urban setting that further aggravates problems and encourages future crime and unrest. The idea was that once a crack forms, things become extremely difficult to handle and usually fall out of hand.[208] This idea was used as an argument for an increased presence of police in areas where there were disturbances.

Authorities and governments favourably accepted this method equally, as it offered a window of opportunity in the middle of an elevated crime rate to enact strict legislation. In addition to the drug dealers, prostitutes, criminal groups, and pimps, laws based on the Broken Window Theory also targeted beggars. Until 2001, the concept was successfully put into action and was widely regarded as flawless in view of the large decline in crime rates in places where it was implemented.[209] On the basis of this assumption, anti-begging legislation gained momentum and was widely approved.

Our laws often disregard the fact that begging is intimately linked to the homeless and unemployed.[210] It is important to note that most anti-begging laws adopted around the world, including the 1959 Bombay Prevention of Begging Act, are based on the Vagrancy Act, 1824. While the Vagrancy Act, 1824, was used as a weapon to control the people in India during colonial times. The Bombay Prevention of Begging Act of 1959 afterwards served as the template for anti-begging legislation in different states and union territories across India.

As a result, beggars have not only been socially despised but have also been relegated to the lowest rung of the legal system. The country's judicial system aims to label beggars as criminals rather than rehabilitate them and assist them in ending their distressing and pitiful situations of

[207] Dennis J. Baker, A Critical Evaluation of the Historical and Contemporary Justifications for Criminalizing Begging, 73 *J. Crim. L.* 212–40 (2009)

[208] How a Theory of Crime and Policing Was Born and Went Terribly Wrong, *NPR* (Nov. 1, 2016), https://www.npr.org/2016/11/01/500104506/broken-windows-policing-and-the-origins-of-stop-and-frisk-and-how-it-went-wrong.

[209] David M. Smith, A Theoretical and Legal Challenge to Homeless Criminalization as Public Policy, 12 *Yale L. & Pol'y Rev.* 492–97 (1994).

[210] Mehak Malik, Street Begging in Delhi: A Study of Anti-Begging Act and Institutional Arrangements for Homeless People, SSRN (Oct. 2012), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2148572.

poverty. The Bombay Prevention of Begging Act, 1959, which initiated the criminalization of both beggars and begging, serves this purpose. In the absence of a uniform central law on the subject, it is the primary anti- begging law in the nation and has been adopted by numerous other states and union territories. The Act was modelled after the Vagrancy Act of 1824, which was in effect in England at the time. During British rule in India, the Vagrancy Act was enforced in order to serve as a tool to control the masses. Following the lead of its colonial rulers, the state of Bombay reinstated the regulation by introducing the Bombay Prevention of Begging Act, 1959, with the ostensible goal of stopping the city's beggar population from mushrooming. However, the Act's provisions were strikingly similar to the Vagrancy Act of 1824. Surprisingly, the Vagrancy Act remains in effect in England, with calls for its repeal increasing louder by the day. The UK government's announcement to repeal the Vagrancy Act, which makes rough sleeping and begging a criminal offence in England and Wales, punishable by a fine of up to £1000 and a two- year imprisonment, is a huge step forward in de-stigmatizing and decriminalizing people on our streets.[211] Despite the fact that repeal is now a matter of law, the Act remains on the books. And the government might repeal it and replace it with a new law that criminalizes homelessness by backdoor.[212]

In *Ram Lakhan* v. *State*[213], the Delhi High Court made some notable and noteworthy findings on beggars. Justice B.D. Ahmed examined the principles of necessity and duress as well as the concepts of equality and liberty as outlined in the Indian Constitution. In this decision, the Court moved away from harsh punishment for beggars and established broad rules outlining how beggars should be treated.

Our rules are based on the notion that all beggars voluntarily engage in the practice of begging and are thus criminals in the making. Contrary to popular belief, a significant proportion of beggars become beggars out of necessity rather than choice. They are homeless and have no profession or source of income; therefore, they resort to begging since it is inescapable given their situation. Despite the fact that they have no option except to beg, our laws expose them to even more dehumanizing situations. The Delhi High Court went on to say that the Act's

[211] Louise Nethercott, Repeal of the Vagrancy Act: Decriminalising Homelessness, *Human Rights Pulse* (Mar. 23, 2022), https://www.humanrightspulse.com/mastercontentblog/repeal-of-the-vagrancy-act-decriminalising-homelessness.

[212] Is It Scrapped Yet? An Update on Our Campaign to Repeal the Vagrancy Act, *Crisis UK*, https://www.crisis.org.uk/about-us/the-crisis-blog/is-it-scrapped-yet-an-update-on-our-campaign-to-repeal-the-vagrancy-act/.

[213] *Beggary Prevention Act Case*, 137 (2007) DLT 173 (India).

purpose is "prevention of begging," and that there is a need to recognize that the stated objective has two goals incorporated in it: nobody should beg and nobody should need to beg.[214]

In the case of *Harsh Mander & Anr* v. *UOI & Anr*[215], decided on August 8, 2018, the Delhi High Court gave a historic judgment under the auspices of Acting Chief Justice Gita Mittal and Justice C Hari Shankar, decriminalizing begging and ruling the relevant legislation unconstitutional. While reviewing the Act and its contents, the court explicitly said that criminalizing begging was a wholly erroneous approach, and the failure of the State to provide for its citizens cannot be arbitrarily legislated into criminalization for the subjects.[216]

In effect, the Court struck down 25 different sections of the Act as violating the essence of the Indian Constitution.[217]

The language of the Bombay Prevention of Begging Act, 1959, reveals that India's attitude towards beggars and begging is punitive rather than rehabilitative. As previously stated, the law makes no distinction between "begging" and "appearing to be a person who subsists on begging." Thus, anti-begging laws successfully punish what is known as "ostensible poverty."[218] A thorough examination of the limited application of these Acts reveals numerous abuses of human rights, wherein the centres intended for the accommodation and care of beggar detainees have constantly rejected their necessities and abused their faith.

NATIONAL POLICIES ADDRESSING THE WELFARE OF BEGGARS AND THE NEEDY

Even though India lacks a single piece of legislation that addresses beggar welfare directly, the central government has implemented a number of charity programs to help the poor, including beggars. These programs give people access to social safety, work, housing, food security, and healthcare. An outline of the main national policies pertaining to the welfare of vulnerable populations and beggars can be found below.

a) Ayushman Bharat Pradhan Mantri Jan Arogya Yojana (AB-PMJAY)

The Ministry of Health and Family Welfare launched the Ayushman Bharat Pradhan Mantri Jan Arogya Yojana (AB-PMJAY) on September 23, 2018. It is a flagship program that aims to achieve Universal Health Coverage (UHC) in accordance with the Sustainable Development Goals (SDGs) and the National Health Policy 2017 to "leave no one behind." Through two

[214] Usha Ramanathan, Ostensible Poverty, Beggary and the Law, 43 *Econ. & Pol. Weekly* 35–44 (2008).
[215] *W.P.(C) 10498/2009 & CM Appl. 1837/2010,* Delhi High Court (India).
[216] Begging in Delhi No More a Criminal Offence, Says High Court, *NDTV* (Aug. 8, 2018).
[217] *India Const.* arts. 14, 19, 20, 21, 22.
[218] Ramanathan, supra note 19.

interconnected components, the plan aims to completely overhaul the primary, secondary, and tertiary healthcare systems:

- **Health and Wellness Centres (HWCs)**
- **Pradhan Mantri Jan Arogya Yojana (PM-JAY)**

b) Swarna Jayanti Shahari Rozgar Yojana (SJSRY)

In order to give urban unemployed and underemployed poor people gainful employment, the Ministry of Housing and Urban Poverty Alleviation introduced the Swarna Jayanti Shahari Rozgar Yojana (SJSRY) on December 1, 1997. Redesigned in 2009–10, it emphasizes leveraging labour for economically and socially beneficial public assets in order to facilitate wage employment, skills training, and self-employment endeavours. strengthens neighbourhoods. SJSRY is a centrally sponsored program that is 75:25 supported by the federal government and the states.

It comprises two main components:

- **Urban Self Employment Programme (USEP):** Offers loans to individual microbusinesses up to Rs. 200,000 with a 25% central subsidy (up to Rs. 50,000).
- **Urban Wage Employment Programme (UWEP):** Offers wage work opportunities for building public infrastructure through urban local bodies, paying participants the minimum wage as specified.[219]

c) Antyodaya Anna Yojana (AAY)

By using the Targeted Public Distribution System (TPDS), the Ministry of Consumer Affairs, Food & Public Distribution launched the Antyodaya Anna Yojana in December 2000 with the goal of reducing hunger among the Below Poverty Line (BPL) population's weakest members. With heavily subsidized food grains (Rs. 2/kg wheat, Rs. 3/kg rice), it first targeted one crore of the poorest households. Since then, it has grown to include 2.5 crore people.

The Pradhan Mantri Garib Kalyan Anna Yojana (PMGKAY), which was introduced during the COVID-19 pandemic to guarantee a continuous supply of food grains, raise monthly rations, and reduce hunger among the underprivileged and vulnerable, further strengthened the program.[220]

[219] Ministry of Housing & Urban Poverty Alleviation, *SJSRY in Urban Areas*, Press Info. Bureau (Feb. 21, 2014), https://pib.gov.in/newsite/PrintRelease.aspx?relid=98498.

[220] Centre Extends Pradhan Mantri Garib Kalyan Ann Yojana (PMGKAY) for Another Three Months, *PM India* (Oct. 2022), https://www.pmindia.gov.in/en/news_updates/centre-extends-pradhan-mantri-garib-kalyan-ann-yojana-pmgkay-for-another-three-months-october-2022-december-2022/.

MEASURES FOR REHABILITATION OF BEGGARS IN INDIA

- **Constitutional and Legislative Framework**

The phrases "beggar" and "beggary" are not specifically mentioned in the Indian Constitution. However, "relief of the disabled and unemployable" is included in Entry 9 of the State List in the Seventh Schedule, giving governments the legislative authority to handle beggary as a welfare concern. Concurrently, "vagrancy" is covered by Entry 15 of the Concurrent List, which gives the federal government and state governments the authority to enact laws on the topic.[221] Currently, there are laws that either criminalize or regulate begging in about 20 states and 2 union territories. These laws may be adopted from other jurisdictions or be their own statutes. The Ministry of Social Justice and Empowerment is in the process of creating a model law on destitution that encourages governments to take a consistent stance by emphasizing rehabilitation over criminalization.[222]

- **Scheme for Comprehensive Rehabilitation of Persons Engaged in Begging**

In eleven cities—Patna, Delhi, Mumbai, Chennai, Kolkata, Hyderabad, Nagpur, Bhopal, Indore, and Lucknow—the Indian government decided to apply the Bihar Model. After that, the Ministry of Social Justice and Empowerment started the central sector program known as SMILE (Support for Marginalized Individuals for Livelihood and Enterprise), which aims to completely rehabilitate beggars.[223] In cooperation with states, urban municipal bodies, non-governmental organizations, and volunteer institutions, the program offers identification, counselling, vocational training, education, and health care for individuals involved in begging.[224]

NBCFDC (National Backward Classes Finance and Development Corporation) was given ₹1 crore in 2017–18 and ₹50 lakh in 2018–19 to implement trial skill development programs for beggars.[225] These included vocational instruction in woodwork, agarbatti making, tailoring, needlework, and other related crafts.

- **Integrated Child Protection Scheme (ICPS)**

For kids in challenging situations, such as those begging, the Ministry of Women and Child Development administers ICPS. It helps UTs and state governments manage Child Care

[221] D.D. Basu, *Commentary on the Constitution of India* (10th ed. LexisNexis Butterworths Wadhwa Nagpur 2012).
[222] Ministry of Social Justice & Empowerment, *About the Division*, https://socialjustice.gov.in/common/47564.
[223] Centre Accepted Bihar Beggary Prevention Scheme as a Model, *Hindustan* (June 22, 2022).
[224] Ministry of Social Justice & Empowerment, *Scheme for Comprehensive Rehabilitation of Beggars*, Press Info. Bureau (Mar. 18, 2020), https://pib.gov.in/PressReleasePage.aspx?PRID=1606946.
[225] Ministry of Social Justice & Empowerment, *Rehabilitation of Beggars*, Press Info. Bureau (Feb. 12, 2019), https://pib.gov.in/Pressreleaseshare.aspx?PRID=1564072.

Institutions (CCIs) and conduct scenario evaluations to find children who require protection and care. Through institutional and non-institutional care, educational support, and coordination with other child welfare programs, the program places a strong emphasis on reintegrating these children into mainstream society.[226]

- **Mission Vatsalya**

Through decentralized planning and execution by states and local entities, Mission Vatsalya, which was started by the Ministry of Women and Child Development, seeks to provide a safe environment for children. It places a strong emphasis on identifying and rehabilitating vulnerable adolescents, such as street children and child beggars. Open shelters are intended to offer life skills instruction, recreational opportunities, and psychological assistance, and local governments have the authority to organize shelters and skill-building initiatives.[227]

- **Bihar Model**

Bhikshavriti Nivaran Yojana

Care and rehabilitation are given precedence over criminal imprisonment under the Chief Minister's Bhikshavriti Nivaran Yojana. More than 10,000 beggars were discovered through surveys in 12 regions, and 4,219 people were given identity cards. Housing amenities such as raen baseras (night shelters), counselling, and vocational training were offered. [228]

Mukhyamantri Bhikshavriti Nivaran Yojana (MBNY)

Under the name "Saksham," this program is now run in eight districts by the State Society for Ultra Poor and Social Welfare (SSUPSW). It consists of self-help group (SHG) development, vocational training, legal assistance, and rehabilitation facilities for both men and women.[229]

- **SAHAYA (Odisha Model)**

Launched in 2020, Odisha's SAHAYA initiative seeks to see beggars as unique people with potential and natural dignity. To guarantee quality and employability, SAHAYA skill training is in line with the National Skill Qualification Framework (NSQF).[230]

- **Bhor – Rajasthan Model**

In 2021, the Rajasthan Skilling and Livelihood Development Corporation, in collaboration with non-governmental organizations, introduced the Bhor scheme. In Jaipur, where 1,168 beggars were discovered, the experiment got underway. One hundred physically fit people were

[226] Ministry of Social Justice & Empowerment, *Schemes for Beggars*, Press Info. Bureau (Aug. 10, 2021), https://pib.gov.in/PressReleaseIframePage.aspx?PRID=1744483.
[227] *Mission Vatsalya Guidelines*.
[228] *Bihar Vikas Mission*, https://bvm.bihar.gov.in/content/4514/humandevelopmentsubmission.
[229] *Saksham – SSUPSW Bihar*, https://www.ssupsw.in/AboutUs.aspx?GL=2.
[230] *Sahaya Scheme*, Social Security & Empowerment of Persons with Disabilities, Odisha,

chosen from this group to get skill training. There were courses available in electrical work, plumbing, security services, baking, and tailoring.[231]

With little success, several Indian states have implemented programs for the rehabilitation of beggars. While Maharashtra has 13 shelters with a capacity of 3,100, Madhya Pradesh only has one in Indore, housing 400 inmates.[232] These initiatives, however, are not well carried out or coordinated among departments. Meaningful transformation is impeded by enduring poverty, ambiguous regulations, and inadequate implementation. The emphasis must go to pursuing exploiters and improving vocational training for long-term rehabilitation after begging is decriminalized.

CONCLUSION

Begging has social and historical origins in India. It used to be associated with religious mendicancy, but today it stands for marginalization, unemployment, and poverty. The majority of beggars do so out of necessity rather than choice. However, rather than addressing the root causes of poverty, laws like the Bombay Prevention of Begging Act, 1959, penalize it, punishing the weak and going against the proportionality principle. Singers and trinket vendors are among the small-scale workers who are unfairly singled out. There are welfare programs like SMILE, Antyodaya Anna Yojana, and Ayushman Bharat, but their poor execution keeps them ineffectual. Conditions have not improved under the present punishing strategy. Decriminalization is crucial, as is a cohesive rehabilitation strategy that emphasizes social inclusion, skill development, and mental health. In order to restore opportunity and dignity, the state must transition from punishment to protection.

RECOMMENDATIONS

1. To identify and catalog the beggar population, a thorough nationwide census is the first and most important stage. The census's current data is inadequate and out of date.
2. It is crucial to implement social policies that combine housing, healthcare, employment creation, and poverty reduction. It is important to see begging as a result of structural socioeconomic issues rather than personal moral failings. Age, health, and economic instability vulnerabilities must all be addressed by the measures.
3. It is necessary to set up specialized vocational training facilities, sometimes known as "service centres," to teach marketable skills. Carpentry, plumbing, tailoring, cooking,

[231] Amitabh Srivastava, One Hundred Beggars, *The Citizen* (Mar. 18, 2021), https://www.thecitizen.in/index.php/en/NewsDetail/index/9/20122/One-Hundred-Beggars.

[232] Ajay Mardikar, 1601 Beggars in Nagpur to Be Rehabilitated by NMC, *The Live Nagpur* (Apr. 27, 2022), https://www.thelivenagpur.com/2022/04/27/1601-beggars-in-nagpur-to-be-rehabilitated-by-nmc/.

driving, photography, and computer abilities should all be included in training, performed by qualified experts with state-of-the-art tools.

4. Beggars should receive "Self-Employment Kits" after training, which include the necessary equipment and supplies to launch small enterprises or make a living. The key to facilitating economic self-sufficiency is this material and financial support.
5. A further essential component of making a beneficial impact on the well-being of beggars is making sure that their personal lives do not have a detrimental influence on their social, emotional, and psychological wellbeing. To prevent the same from having a bad influence in the daily lives of beggars, one essential step that may be taken is to work to bring them together with their families.
6. Decriminalizing begging would stop people from being even more marginalized. Making a survival strategy illegal merely makes human rights abuses worse and encourages legal exploitation. Rehabilitative measures must take the place of anti-begging legislation. Laws should target the underlying causes rather than the symptoms, emphasizing social reintegration and change above punishment.
7. A standard law dealing with the rehabilitation of beggars throughout India is urgently needed. It is vital to acknowledge that begging is a societal issue in our culture. To erase the stigma of having the most beggars, we need to first tackle the root causes of beggars. A statute focusing on these issues with the ultimate purpose of rehabilitating beggars is a much-needed remedy. As vagrancy is on the concurrent list, the Union government can prepare the legislation.

1 YEAR OF IMPLEMENTATION OF BNS: ANALYSING THE TRANSFORMATION OF CRIMINAL LAW, ITS MISUSE AND SUGGESTIONS

Sumit Kumar[233]

ABSTRACT

The Criminal Law System is an integral facet of the well-being and state of a society. India, historically a diverse land, was governed by fragmented laws until the arrival of the British. The uniform law originated through the 1st Law Commission headed by Lord Macaulay in 1833. These laws served the intended or necessary purpose for the period of nearly one and a half centuries, but the obscurities that lie within them with respect to changing times made it inevitable for the introduction or substitution of new laws. This led to the introduction of three new criminal laws, namely Bhartiya Nyaya Sanhita, Bhartiya Nagarik Suraksha Sanhita, and Bhartiya Sakshya Adhiniyam, that were presented as the modern Indian laws catering to the peculiarities of our soil, and in contrast with the colonial mindset. With the enactment, BNS Brought multifold changes aimed to address the deficiencies in the previous enactment, primarily in the case of offences such as snatching, sexual intercourse on false pretext of marriage, organised crime, terrorist acts, acts endangering the sovereignty and integrity of India, and other reforms such as the introduction of community service and stipulation of minimum sentences in particular cases. While the initial sentiments were high, the actual implementation could serve as the means of providing a clear picture of the accomplishments and failures of the intended goals. This piece critically analyses the major reforms or shifts brought by the BNS in the light of practical implications after the completion of one year after its enactment.

Keywords: Bhartiya Nyaya Sanhita, Indian Penal Code, BNS vs IPC

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INTRODUCTION

"Criminal law embodies the collective conscience of a society, shaping norms and preserving justice."

Law and society share a reciprocating relationship in which both rely on each other for equilibrium and suitable functioning.[234] The legal system aims to set down rules and guidelines that could effectively regulate societal behaviour. The beliefs, values, norms, and changes in society often shape the prevalent law and legal system. Such changes were seen in the Indian Criminal Justice System through a complete makeover by the introduction of three new criminal laws, namely Bhartiya Nyaya Sanhita (BNS), Bhartiya Nagarik Suraksha Sanhita (BNSS), and Bhartiya Sakshya Adhiniyam (BSA). The first piece of this radical transformation arrived with by introduction of three criminal bills in the Lok Sabha in August 2023, which were referred to the Department-related Parliamentary Standing Committee on Home Affairs for consideration after widespread opposition, and the redrafted version was introduced in December 2023 and became the law after assent by the President on 25 December 2023. The initial intent was towards the realisation of justice, which was absent in previous laws, with laws imbibing the Indian soul. Additionally, the focus was on the scrapping of colonial identity (slavery) in line with one of the five pranas of PM Modi within Azadi ka Amrit Mahotsav.[235] Since their inception on 1st July 2024, they have been termed as one of the most significant reforms of the 21st century.[236] The main objective for such a complete overhaul was attached to the removal of colonial identity, being in line with the growing advancements in the digital age, and adopting laws possessing the fragrance of Indian soil and culture of our justice. These changes sought to address the unchartered territories in its substantive part, while aimed to fill lacuna hampering the speedy realization of justice. Law, however great in form, is never judged from a piece of paper; it must see the law in motion. Bhartiya Nyaya Sanhita is the primary substantive criminal law in India, replacing the Indian Penal Code enacted in 1862. With the passage of a year from the date of the enactment of the Bhartiya Nyaya Sanhita, it has become convenient to analyse the pros and cons of such changes in the law through a comprehensive and detailed study.

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[234] Suman Kumari, From Chaos to Order: The Role of Law in Society, 4 *Indian J. Integr. Res. L.* (2024), https://ijirl.com/wp-content/uploads/2024/04/FROM-CHAOS-TO-ORDER-THE-ROLE-OF-LAW-IN-SOCIETY.pdf.

[235] PIB Delhi, Union Home Minister Introduces Criminal Law Bills in Lok Sabha, *Press Info. Bureau* (Nov. 2, 2025), https://www.pib.gov.in/PressReleasePage.aspx?PRID=1947941.

[236] TOI News Desk, Biggest Reforms: Union Minister Shah Says Purpose of New Laws Is Justice, *Times of India* (Nov. 1, 2025), https://timesofindia.indiatimes.com/india/biggest-reforms-union-minister-shah-says-purpose-of-new-laws-to-give-justice-to-people/articleshow/112267037.cms.

CRITICAL ANALYSIS OF MAJOR REFORMS AND IMPLEMENTATION

Community Service

One of the most highlighted new additions was the insertion of community service as one of the forms of punishment under Section 4(f) of BNS.[237] Also referred to as community payback or compensatory service, it is a means of non-custodial restorative justice that involves doing unpaid work as a means of showing sincerity towards society and making a case for reintegration into society[238]. This includes services such as cleaning, religious service, assistance in education, medical facilities, and other similar charity works.

Initially commenced as a measure to deter idleness, the community service formally gained prominence with the "Wootton Report" in England, and since then, it has been part of sentencing frameworks in the Western legal system, comprising the UK, the US, and various parts of Europe. Its successful application as an alternative to imprisonment in non-violent offences led to its acceptance in global criminal legal systems. In India, this concept was echoed by the IPC (Amendment) Bill 1978 and subsequent reports by the Indian Jail Committee (1980-83), the Malimath Committee, and the 156th Law Commission Report, but never put into implementation.[239] Its only use is found in section 18(1) (c) of the Juvenile Justice Act, 2015, permitting community service for children with a conflict with the law.

Even in the absence of any statutory mechanism, the Indian courts regularly voiced for innovative solutions such as *community service as a facilitator of the reintegration of convicts back to civil society*.[240] It appears as a favourable alternative to custodial imprisonment, fines, or penalties in case of non-violent offenders by imbibing both restorative and rehabilitative justice in a nation like India, where overcrowding of prisons is an important feature of the criminal justice system.[241] It can be an effective way to imbibe a sense of accountability and accountability in the convict, while also benefiting the community.[242]

Community service is not defined in BNS rather its application provisions have been detailed, which are: s 202 [*Public servant unlawfully engaging in trade*], s 209 [*Non-appearance in court in response to a proclamation under Section 84 of BNSS*], s 226 [*Attempt to commit*

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[237] *Bharatiya Nyaya Sanhita*, No. 45 of 2023, § 4, Acts of Parliament, 2023 (India).
[238] Juhi Newar & Akanksha Singh, Community Service as an Alternative to Punishment: A Legal Study, 3 *The Academic* (2025).
[239] Fauzia Shakil, Community Service Under the BNS: An Incomplete Yet Promising Penological Advancement, *LiveLaw* (Nov. 1, 2025), https://www.livelaw.in/articles/community-service-under-bhartiya-nyaya-sanhita-262322.
[240] *Vipul v. State of Uttar Pradesh*, Crim. Appeal No. 1161/2022 (India).
[241] Report on Prisons in India, *S3WAAS* (Nov. 1, 2025), https://cdnbbsr.s3waas.gov.in/s3ec0490f1f4972d133619a60c30f3559e/uploads/2024/11/2024110677.pdf.
[242] *Rajesh v. State of Chhattisgarh*, 2021 SCC OnLine Chh 441 (India).

suicide to compel or restrain exercise of lawful power], s 303(2) [*Theft of property valued less than Rs 5000 by first time offender and the property is returned or value restored*], s 355 [*Misconduct in public by a drunken person*] and s 356(2) [*Defamation*]. Its nature has been expressed in the Explanation to section 23 of BNSS as "*work which the Court may order a convict to perform as a form of punishment that benefits the community, for which he shall not be entitled to any remuneration*."[243] While the statutory intent touts community service as a form of punishment that benefits the community, ambiguities exist as to what qualifies as "work that benefits society" or what kind of work is valid or admissible for such purpose. There is no ascertainment as to the mode, time period, and supervision of the execution of the sentence. This legislative lacuna keeps the door ajar for multiple interpretations and arbitrary usage of power that might lead to injustice in some cases.

India, being a country with a vast population, faces many limitations and challenges to its implementation. Lack of a concrete structural framework for the execution of community service casts obscurities regarding its effectiveness in the Indian criminal system, where its potential misuse can drive its use as a "get *out of jail free*" card. This was reflected in the *Pune Porsche case,* where the minor accused was sentenced to community service as part of his punishment for running over two persons. The lack of clarity in legal provisions sometimes leads to inconsistent implementation.[244] A dedicated infrastructure, resource allocation, training, and supervision mechanism has to be installed for proper implementation, but the same has not been developed as of yet at the grassroots level. Enforcement of such punishments can be a gruelling task in task in rural areas where public awareness is not fully updated.[245] Additionally, the discretion provided to judges in such sentencing also casts certain doubts regarding its uniform application. Due to inherent discretion, some judges may even prefer traditional custodial punishment due to a lack of proper legal provisions.[246]

Only a few states, such as Haryana, West Bengal, Assam, etc, have formulated community services guidelines. Recently, the Delhi Government has rolled out new guidelines for community services in cases involving minor offences through cleaning and other auxiliary work in hospitals, roadsides, public parks, public libraries etc, but these guidelines did not alter

[243] *Bharatiya Nyaya Sanhita*, No. 46 of 2023, § 4, Acts of Parliament, 2023 (India).
[244] Law Comm'n of India, *273rd Report on Reform of Criminal Laws* (2018).
[245] Nat'l Inst. of Criminology & Forensic Sci., *Challenges in the Implementation of Community Service in India* (2020).
[246] Nat'l L. Univ. Delhi, *Judicial Attitudes Towards Alternative Sentencing in India*, Shodhganga (Nov. 1, 2025), https://shodhganga.inflibnet.ac.in/handle/10603/355330.

the discretion of judges in sentencing.[247] While the probation officer is entrusted with supervision in West Bengal guidelines, the Haryana notification nominates several officers as designated officers for supervision according to the workplace where work is carried out. The duration of work and eligibility for granting are also different in such states, raising concerns of uniformity and increased discretion in granting such punishment. Inconsistent sentencing is also a serious impediment to effective implementation. Courts passed such sentencing in the form of cleaning hospital premises, assisting in traffic management, serving help in religious premises, helping at child care institutions, but the duration and basis of the selection for a particular kind of work is not uniform.[248]

To efficiently negate the problem of overcrowding of prisoners, the implementation has to be on a large scale in a robust and structured manner. Reference could be made to the corresponding framework in nations like the UK, wherein the exact scope, nature, and period of Community payback is defined, and supervisory measures have also been adopted.[249] A coordinated approach must be taken across the judiciary, law enforcement, and community organizations to fulfil the statutory objective. Non-governmental organizations must be included as important stakeholders that could bridge the gap between the government and the public.

MOB LYNCHING

It is defined as a form of violence in which a mob, under the pretext of self-authorised administering justice without any authority or trial, executes a presumed offender, often after inflicting severe physical harm.[250] It has been categorised as a grave violation of human rights and a blot on society. Delayed police and judicial response, added with society's acceptance, normalises such conduct, leading to implicit acceptance on the part of the public, making it easier to commit.[251] Causes for mob lynching could range from collective psychology, political agenda, misinformation, societal factors, to administrative failure. Most infamous cases were

[247] Clean Streets, Restore Parks, Bind Books: Delhi Rolls Out Community Service, *Economic Times* (Nov. 1, 2025), https://economictimes.indiatimes.com/news/india/clean-streets-restore-parks-bind-books-delhi-rolls-out-community-service-for-minor-offenders/articleshow/121670862.cms.

[248] Vijay Raghavan & Saugata Hazra, Making Community Service Under the BNS Effective, *Hindustan Times* (Nov. 2, 2025), https://www.hindustantimes.com/opinion/making-community-service-under-the-bns-effective-101760885165776.html.

[249] Community Sentences, *Gov.uk* (Nov. 1, 2025), https://www.gov.uk/community-sentences/community-payback.

[250] SOP on Mob Lynching Under BNSS, *Police PY*, https://police.py.gov.in/SOP%20on%20Mob%20Lynching%20under%20BNSS.pdf.

[251] Ramesh Kumar Singh, Analytical Approach to the Offence of Mob Lynching Under BNS, 3 *Airo Int'l J. Peer-Reviewed Multidisciplinary* (2025), https://www.airo.co.in/publications/42311-paper-03-analytical-approach-to-the-offence-.pdf.

reportedly arising with respect to rumours of cow slaughter, accusations of love jihad, and suspicions of a child-lifting gang, which were particularly targeted towards individuals belonging to marginalized communities.[252] Due to challenges such as group intent, sense of impunity, mob lynching has remained a harder crime to prosecute.[253] It has been considered as a direct attack on constitutional ideas of equality (Article 14) and right to fair trial and due process (Article 21). It jeopardises the rights of religious minorities, Dalits, and tribal communities at risk.

The previous enactment had no specific provisions tailored to such crimes; provisions such as unlawful assembly, rioting, and murder were complexly invoked. Due to such a legislative lacuna, there was under reporting, delayed prosecution and a lack of confidence in the criminal system by the public.[254] One breakthrough in this regard came in the case of *Tahseen S. Poonawalla vs Union of India*[255], in which the court has described mob lynching as a "horrendous act of monocracy" and provided guidelines for the centre as well as states/UT to formulate laws tailored to deal with such a crime. The provisions contained in BNS are generally attributed to these guidelines within the legislative framework. BNS specifically makes a provision for addressing mob lynching as a crime against human body under section 103(2) punishing every member of a group of 5 or more persons a murder by who had participated in concert in commission of a murder on basis of race, caste, community, sex, place of birth, language, personal belief or any other similar ground, with Death or Life Imprisonment. It has been made a cognisable and non-bailable offence and non-compoundable in nature, making it a crime of intimidation and physical abuse. The harsh punishment also seeks to increase effectiveness and discourage its attempt.

These statutory provisions sound efficient, but this is *very hard to implement*[256]. Issues such as police bias, witness intimidation, and judicial delays often hinder prosecution in such cases. There has to be a focused approach on the alleviation of the root causes of such a crime, such as prejudices, the spread of misinformation, the propagation of propaganda, administrative

[252] Hunted: India's Lynch Files, *The Quint* (Nov. 1, 2025), https://www.thequint.com/quintlab/lynching-in-india/.
[253] Tamheed & S.F. Nomani, Mob Lynching: The Path Towards Anarchy, 3 *Indian J.L. & Legal Res.* 1 (2021).
[254] Ramesh Kumar Singh, Analytical Approach to the Offence of Mob Lynching Under BNS, 3 *Airo Int'l J. Peer-Reviewed Multidisciplinary* (2025), https://www.airo.co.in/publications/42311-paper-03-analytical-approach-to-the-offence-.pdf.
[255] *Tahseen S. Poonawalla v. Union of India*, (2018) 9 SCC 501 (India).
[256] Y. Naik, The Bharatiya Nyaya Sanhita: A Critical Examination of India's New Penal Code, SSRN (Nov. 1, 2025), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4884622.

failure, etc.[257] A major concern regarding this is the sheer disbelief in which the mob presumes itself to grant justice to society by punishing the presumed offender. One of the major concerns lies in the identification of the actual quantity of individuals taking part which is not easy to determine due to its use in public places.[258] Disclosure of such lynching is often discovered through the social media but turning such videos into digitally admissible evidence is very hectic task involving a long procedure of proper certification and authentication.[259] Additionally, there is a lack of reliable witnesses as they hesitate in disclosing their identities thus exposing themselves to social mockery. Political interference is also a concern in mob lynching cases, as the evidence of several cases reveals the passive behaviour of police personnel in the investigation procedure, dropping of charges, and channelling out certain individuals from the group.[260]

The international practices prevalent in the US, South Africa, Kenya, etc., provide a clear framework regarding mob lynching as a more serious crime, inviting strict consequences and emphasising the importance of institutions of state in preventing them. Keeping them in mind, the Indian system requires specific guidelines, a centralised reporting system, an efficient investigation procedure, infrastructure for forensic and digital evidence, training for police and prosecutors, and an adequate rehabilitative and restorative framework. The authorities must spread public awareness regarding the illegality and inhumanity of mob lynching. Without a plan to address legal, social, and administrative aspects, the law could stay just as a symbolic provision instead of bringing about any real changes.[261]

OFFENCE OF SEXUAL INTERCOURSE ON FALSE PRETEXT OF MARRIAGE

Section 69, criminalizing sexual intercourse on false pretext of marriage, was welcomed as a progressive amendment with respect to the uncharted territory of sexual gratification on false promise of marriage, which was previously dealt with a combination of Section 376 read with the provision of misconception of fact under Section 90 IPC. Since its enactment, this provision has started a wave of cases founded on allegations of sexual intercourse on false pretext of marriage.[262] It makes punishable sexual intercourse by a person who has employed

[257] Komal Dhaka, 7 *Int'l J. Pol. Sci. & Governance* 95–97 (2025), https://doi.org/10.33545/26646021.2025.v7.i3b.467.
[258] V Kumar, Comparison Between Old and New Criminal Law in India, 35 *Supremo Amicus* 1 (2024).
[259] M.S. Hanspal, Navigating Legal Changes in BNS, BNSS, and BSA: A New Era for Women's Safety, *Int'l J. L. Sci. Innov.* (2024).
[260] F Vasudeva-Barkdull, Articulating Lynching in India, 38 *Int'l J. Pol. Cult. & Soc.* 111–38 (2025).
[261] I Nellist, New Criminal Laws Threaten Free Speech, *Green Left* (Nov. 1, 2025), https://www.greenleft.org.au/2024/1410/world/india-new-criminal-laws-threaten-free-speech-right-protest.
[262] R.K. Vij, Section 69 of the BNS Is Redundant, *The Hindu* (Nov.1, 2025),

deceitful means or a promise to marry a woman without any intent of abiding by the same, for the purpose of obtaining the consent of the woman, with imprisonment for a maximum term of 10 years. It explicitly differentiates it as a case not amounting to rape due to the presence of an element of consent. The term "deceitful means" has been elaborated to include false promises for employment, promotion, or inducement, or marrying after suppression of identity. With the passage of time, this provision became one of the most misused legal provisions, somewhat like the provision for Cruelty under section 498A of the Indian Penal Code, through its utilization as a weapon for vengeance, even in cases where the court noted that relationship was voluntary.[263] This is regarded as prejudicial towards men, making it easy to invoke and even harder to rebut. While there are particular situations requiring address, its gross misuse is alarming.

Dealing with the continuing trend of misuse of such a provision, the Supreme Court in *Biswajyoti Chatterjee vs. State of West Bengal and Anr*[264], observed that a growing tendency could be seen in which the frequent breakdown of a relationship leads to the initiation of criminal proceedings. Every relationship in which there is a probability of marriage cannot be used to initiate proceedings in respect of an offence under section 69. Such proceedings clearly amount to an abuse of the process of law. The recent judicial decisions have refrained from prosecuting a person making a promise when the cases involved a long consensual relationship without protest[265], and filing a case was soon after the end of the relationship as a tool for vengeance.[266] The relief has been restricted to clear cases of false promise of marriage displaying clear intent and deception. This provision is also discriminatory by prescribing a statutory limitation of application confined only to women as victims. This shortcoming results in stereotypes and prejudice against men as offenders and the exclusion of male victims. This also erodes relief to members of the LGBTQ+ community in cases fulfilling the conditions of section 69, even after the decriminalization of consensual sexual intercourse. The court has refrained from providing relief to transgender individuals under this section only on account of the exclusion of the complaint from the ambit of females.[267]

https://www.thehindu.com/opinion/op-ed/section-69-of-the-bharatiya-nyaya-sanhita-is-redundant/article69478060.ece.

[263] *Chandrakant Jalchhatri v. State of Chhattisgarh*, 2024 SCC OnLine Chh 12486 (India).
[264] *Biswajyoti Chatterjee v. State of W.B.*, 2025 SCC OnLine SC 741 (India).
[265] *Mahesh Damu Khare v. State of Maharashtra*, 2024 INSC 897 (India).
[266] *Prem Netam v. State of Chhattisgarh*, 2024 SCC OnLine Chh 10471 (India).
[267] *Bhupesh Thakur v. State of Himachal Pradesh*, 2024 SCC OnLine HP 4513 (India).

In a society like ours, valuing purity and virginity, such a provision will be prejudicial to every accused, even in the case of consensual sexual intercourse before marriage. This amplifies the scope of mala fide allegations, particularly in the case of the breakdown of a relationship. In circumstances when the family of the woman becomes aware of such a consensual relationship, it is probable that the proceedings are instituted against the partner under the section that constitutes a grave misuse. Critics have alleged this provision to be violative of fundamental rights of equality, freedom, and privacy due to its nature being an unjust, restricted, and prejudiced adjudication of matters of sexual offences. Additionally, this provision overlaps with section 63 (rape under a misconception of fact) and section 68 (coerced sexual intercourse by use of a fiduciary relationship, power, or authority).[268]

While the courts have differentiated false promise and breach of promise based on the preliminary intent of the accused, the statutory provisions do not account for circumstances that would determine whether the promise was false or simply a breach. It fails to provide safeguards to a consensual relationship, thus exposing mostly men to prosecution on the allegation of false promise. For proper implementation, clarity must be brought in its scope, application, and position with respect to overlaps with other provisions. Judicial and administrative changes are needed to effectively diminish the chances of misuse.

SECTION 152 AND THE DILEMMA OF SEDITION REIGNITED

The Law on sedition under Section 124A of the Indian Penal Code 1860 was a century-old law in India, enacted with the object of suppressing political dissent. It was regarded as a magic wand in the government's hands for curtailing the liberty of individuals in the name of a threat to the government established by law. Regarding the regular misuse and concerns as to constitutionality, the Apex Court in *S.G. Vombatkere v. Union of India*[269], forbade registration of FIRs under the provision. Keeping that in mind, the lawmakers removed the express provision of sedition from the new penal law, i.e., Bhartiya Nyaya Sanhita, but added a new provision punishing acts endangering the sovereignty, integrity, and unity of India. Section 152 of BNS punishes acts which are aimed at exciting secession, armed rebellion, or subversive activities, or endangering the sovereignty, unity, or integrity of India with imprisonment for life or with imprisonment which may extend to seven years.

[268] S.M. Aamir Ali, Anuska Vashist & Anuttama Ghose, Bharatiya Nyaya Sanhita and the False Promise to Marry, 49 *Econ. & Pol. Wkly* (2024), https://www.epw.in/journal/2024/18/commentary/bharatiya-nyaya-sanhita-and-false-promise-marry.html.

[269] *S.G. Vombatkere v. Union of India,* Writ Petition (C) 682/2021 (India).

It has been applied in cases such as reporting during India-Pak hostilities[270], video against the government[271], supporting Pakistan[272], etc, which shows its use by the government to suppress adverse comments in the name of protection of the broad horizons of sovereignty, integrity, and unity of India. In *Foundation for Independent Journalism v. Union of India*, the court held that mere political dissent cannot endanger sovereignty.[273]

In *Tejender Pal Singh v. State of Rajasthan*[274], the Rajasthan High Court had noted that section 152, in the absence of clear safeguards, could be used to crack down on the freedom of speech of individuals upon opinions deemed adverse to national unity. Sedition law must be seen as a shield for national security, not a sword against political dissent. Invocation of such a provision requires invoking a clear connection between the speech and the likelihood of rebellion.

In comparison to sedition under Section 124A IPC, the new provision has a stringent punishment with a broader scope, and inclusion of electronic communication and financial means. The substitution may blur the line between criticism of the government and criticism of the nation, inviting a wider range of potentially lawful expression to fall under the scope of sedition.[275] Lack of clarity in the scope of acts that "endanger the sovereignty, unity, and integrity of India" risks labelling criticism of government policies as "endangering unity." Also, the term knowingly is not attached with any kind of mala fide intent, so the prosecution can be initiated in simple cases. The nature of the offence as cognizable and non-bailable could have chilling implications on the free speech of individuals.[276] For proper enforcement, clear guidelines defining the statutory elements, safeguards for protecting innocent opinions, and ensuring that the procedure is not applied to make political gains.

ORGANISED CRIMES

[270] Siddharth Varadarajan, S.152 BNS: Supreme Court Extends Protection to The Wire Editor, *Law Beat* (Nov. 1, 2025), https://lawbeat.in/top-stories/s152-bns-supreme-court-extends-protection-to-the-wire-editor-siddharth-varadarajan-1518574.

[271] Debby Jain, Journalist Abhisar Sharma Moves Supreme Court Challenging Assam Police FIR, *LiveLaw* (Nov. 1, 2025), https://www.livelaw.in/top-stories/supreme-court-journalist-abhisar-sharma-plea-against-assam-police-fir-section-152-bns-sedition-communal-politics-3000-bighas-land-allotment-302063.

[272] Sparsh Upadhyay, Supporting Pakistan Doesn't Attract S.152 BNS: Allahabad HC, *LiveLaw* (Nov. 1, 2025), https://www.livelaw.in/high-court/allahabad-high-court/allahabad-high-court-supporting-pakistan-incident-india-doesnt-attract-152-bns-endangering-sovereignty-unity-297160.

[273] *Foundation for Independent Journalism v. Union of India*, Writ Petition (Crim.) 316/2025 (India).

[274] *Tejender Pal Singh v. State of Rajasthan*, 2024 LiveLaw (Raj) 413 (India).

[275] Janav Arun, The Boundless 'India': Why Section 152 May Silence More Than Section 124A, *Const. L. Soc'y NLUO* (Nov. 1, 2025), https://clsnluo.com/2025/03/06/the-boundless-india-why-section-152-may-silence-more-than-section-124a/.

[276] Shivam Jadaun, Section 152 BNS: Sedition 2.0 in the Age of National Security?, *Bar& Bench* (Nov.1, 2025), https://www.barandbench.com/columns/section-152-bns-sedition-20-in-the-age-of-national-security.

These refer to a species of crime that is institutionalized in approach, forming a chain in which criminals plan, participate, and commit illegal activities. Instead of being individualised, such crimes adopt a syndicate or gang model for operations. Some of the notable illustrations of organised crimes are drug trafficking, money laundering, smuggling, and human trafficking, which can be observed in almost every nation. It is considered a dangerous issue impacting the nation on security, legal, social, and economic frontiers. Its infiltration into mainstream political and business arenas is highly alarming.

The Indian Penal Code 1860 had no express provisions dealing with organised crimes, so it sought to address its complexities through the intersection of various provisions founded on group liability (common intent & common object), abetment, and criminal conspiracy. So, the BNS enacted innovative provisions in the form of Section 111 (Organised crime) and Section 112 (Petty organised crime) for uniform application across the nation. Section 111 covers the scope the scope of *continuing unlawful activities including kidnapping, extortion, contract killing, economic offences, cyber-crimes, trafficking in people, drugs, illicit goods, services, weapons, trafficking for prosecution or ransom* which are done by a *group of individuals* acting in concert singly or jointly, either as a member of an organised crime syndicate or on behalf of such *syndicate*, by use of *violence, threat of violence, intimidation, coercion, corruption or related activities or other unlawful means* to obtain direct or indirect, *material benefit* including a financial benefit. Additionally, a mandatory condition in form of filing of one or more than one charge-sheets within the preceding period of ten years and Court has taken cognizance of such an offence, has been imposed to be considered as an organized crime.

Harsh punishments (extending to Death or Life Imprisonment) and fines have been imposed for persons affecting commission, attempt, or conspiracy, providing assistance, aid, or harbouring, concealing any member or being any such member of an organised crime syndicate. The definition of continuing unlawful activity has been given in detail, outlining in terms of the nature of crime, frequency, and essential elements, making it certain and effective. The inclusion of cybercrimes in this definition showcases the modern criminal law framework updated with the speedy advancements in technology and society.

These provisions overlap with the special law, such as the Unlawful Activities (Prevention) Act, 1967, and laws regulating organized crime in states such as the Maharashtra Control of Organised Crime Act, 1999, and the Gujarat Control of Terrorism and Organised Crime Act, 2015. The presence of parallel procedures and mechanisms to try similar offences could enhance the complexity and delays in the proceedings. However, even as a central law, BNS

does not contain specific rules as to procedure, provision for special courts, which are found in such regional acts.

The courts have interpreted the fight against organized crime as a crucial aspect of maintaining law and order, but also warned against the misuse and infringement of rights of individuals.[277] The statutory standards have to be complied in order to take cognizance of such an offence.[278] It is a serious crime so it requires a prima-facie case for invocation.[279] In a nation like India where criminalization of politics is a serious issue, issues like organised crime make their way into the landscape of the nation. This could deteriorate public trust in government institutions and weaken the rule of law. Addressing these issues requires a commitment to transparency, accountability, and strong anti-corruption measures within governance structures. Independent investigations, stricter regulations on political funding, and judicial reforms are critical in reducing political interference and corruption. Engagement and education are essential strategies in the fight. Public awareness campaigns and community engagement initiatives can play a critical role in preventing crime. Special focus should be placed on vulnerable groups, such as children, the elderly, and those with limited digital literacy. Collaboration between government, civil society, and private organizations can strengthen this engagement, fostering a culture of shared responsibility in combating organized crime.

PETTY ORGANISED CRIMES

These are crimes that are organised in nature and consist of such illegal activities that could not be attributed to any particular serious crime. Such crimes had no mention in any of the previous criminal enactments in India. Section 112 deals with crimes that are associated with the *imparting general feelings of insecurity* among citizens, resulting from offences such as various kinds of theft, such as domestic and business theft, organised pick pocketing, snatching, card skimming, or illegal selling of tickets and selling of public examination question papers, and such other common forms of organised crime. A prerequisite for such offense is the presence of criminal groups or gangs for commission, including a mobile organised group. Such offences are punishable with imprisonment for a term not less than a year and not extending beyond 7 years. It can be considered as a forward step in addressing small crimes that often go unnoticed, but the level of effectiveness can only be seen in the future when it is subjected to practicalities and judicial scrutiny.

[277] *Suraj Singh @ Noni v. State of Punjab*, 2024 LiveLaw (PH) 279 (India).
[278] *Aamir Bashir Magray v. Union Territory of J&K*, 2025 LiveLaw (JKL) 288 (India).
[279] *Avinash v. State of Karnataka*, 2025 LiveLaw (Kar) 109 (India).

CONCLUSION

The enactment of three criminal laws marks an important event in Indian legal history. The new laws are seemingly modern in nature, catering to the technicalities of the 21st century and addressing the unaddressed horizons of previous criminal enactments. The new provisions as to community service, mob lynching, organised crime, acts endangering sovereignty, unity, and integrity of India, and sexual intercourse on false pretext of marriage are some of the most significant modifications that represent the innovation in the new statute. While the initial sentiments have been high, the actual implementation has not provided any groundbreaking results. Nearly every kind of change requires active monitoring, proper implementation, and certain amendments for realizing the statutory objective. The lawmakers, government, and authorities must make efforts to ensure that the complete overhaul of laws does not bring out the same situation encountered with previous laws. The BNS has the potential to revolutionize the Indian Criminal justice system by building just, efficient, and suitable legal systems that effectively address the deficiencies of the previous enactment, the present scenario, and securing a bright future for justice in India.

LIFE AND CHOICE IN LEGAL DISCOURSE: NAVIGATING THE TENSIONS BETWEEN PROTECTION AND FREEDOM

Aejazul Hasan[280] and Mohd. Aatif Ansari[281]

ABSTRACT

The freedom to make personal reproductive decisions in India is upheld for every pregnant person, inclusive of transgender and gender non-binary individuals. As abortion is an inevitable right of Reproductive justice, which is in line with the Human rights of pregnant women. Articles 14, 19, and 21, of Indian Constitution support a woman's right to make reproductive choices, while also examining the countervailing ethical and legal arguments advocating for the protection of foetal life. The right to abortion has been recently upheld by the Supreme Court of India as a fundamental right guaranteed by Article 21 of the Constitution. Consequently, it provides Individual Autonomy, gender equality, and the Right to bodily choice, with regard to reproduction to a woman. In contrast, the same Article has also provided that, every individual (including child in the womb) has also the right to live, and their life cannot be taken away except in accordance with the prescribed legal procedures.so, in order to tackle both the situations, MTP Act, was enacted. Herein, this article we will critically examine how the MTP act is in favour of the saving of a child (in womb), then to provide the absolute right of abortion to a woman.

Keywords: Medical termination of pregnancy, Reproductive Justice, Right to Life, Choice, Balance of Interest.

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INTRODUCTION

Even after 78 years of Indian independence, women continue to remain one of the most vulnerable sections of society. Despite constitutional guarantees, many women are still denied the full enjoyment of fundamental rights—particularly the right to make decisions concerning their own bodies. This includes the freedom to choose a life partner, the autonomy to reproduce, and the right to seek an abortion. While these rights are theoretically recognized, the practical exercise of such autonomy is often constrained by deeply rooted social stigma, cultural conservatism, and patriarchal norms embedded within Indian society.[282] In recent years, the discourse around reproductive rights has gained constitutional importance. These rights are not merely medical or social issues but are strongly linked to individual autonomy, bodily integrity, and human dignity, which are integral to the right to life and personal liberty under Article 21 of the Constitution of India.[283]

The Supreme Court in Suchita Srivastava v. Chandigarh Administration recognized that a dimension of "personal liberty" extends to woman's right to make reproductive choices".[284] It held that reproductive autonomy includes the right to carry a pregnancy to full term or to terminate it. The Medical Termination of Pregnancy Act, 1971, amended in 2021, attempts to balance a woman's right to reproductive autonomy with the State's interest in protecting the life of the unborn.[285]

It permits abortion under specific medical, humanitarian, and social conditions, though within gestational limits (20 weeks, extendable to 24 weeks in exceptional cases). However, the Act still retains a doctor-concentric model, requiring approval from registered medical practitioners rather than empowering women through an explicit rights-based framework. As a result, many women are compelled to approach the judiciary in cases of rape, incest, or foetal abnormalities beyond the prescribed limits.

The Indian Penal Code of 1862 criminalized abortion for both the woman and the abortionist, with an exception only to save the woman's life. This law remained unchanged until 1971. The move toward liberalizing abortion laws began in 1964, driven by rising maternal mortality caused by unsafe abortions performed by untrained individuals.286 Medical professionals

[282] Government of India, *National Family Health Survey (NFHS-5)*, Ministry of Health & Family Welfare (2021).
[283] *Justice K.S. Puttaswamy v. Union of India*, (2017) 10 SCC 1 (India).
[284] *Justice K.S. Puttaswamy v. Union of India*, (2017) 10 SCC 1 (India).
[285] Medical Termination of Pregnancy (Amendment) Act, No. 8 of 2021 (India).
[286] Law Commission of India, *263rd Report on The Medical Termination of Pregnancy Act, 1971* (Aug. 2017).

observed that most women seeking abortions were married and not trying to hide their pregnancies, prompting a push for decriminalization to promote safer procedures. While health experts focused on protecting women's health, policymakers and demographers supported legalization primarily as a means to advance family planning and control population growth. The convergence of these motivations ultimately led to the legal reform of abortion laws in India.

Shah, a distinguished medical practitioner, to conduct an in-depth study of abortion from legal, medical, and sociocultural angles. This body, later known as the Shah Committee, was entrusted with examining how the prevailing abortion laws affected women's health and overall welfare. After an extensive review, the committee advocated for the legalization of abortion, emphasizing the need to protect women's lives and health on both humanitarian and medical grounds.[287]

The Shah Committee recognized that restrictive abortion laws contributed to high rates of mortality and maternal morbidity, primarily due to unsafe and clandestine procedures performed by unqualified individuals. Consequently, the committee proposed a liberalized legal framework that would enable access to safe and regulated abortion services. The Shah Committee submitted its final recommendations to the government on December 30, 1966.

In response to the committee's findings and in alignment with evolving public health priorities, the Indian Parliament enacted the Medical Termination of Pregnancy (MTP) Act in 1971. This legislation marked a significant shift in reproductive health policy in India, institutionalizing access to legal abortion under specific conditions and thereby aiming to reduce preventable maternal deaths and safeguard women's reproductive rights.

THE MEDICAL TERMINATION OF PREGNANCY ACT 1971

The Medical Termination of Pregnancy (MTP) Act of 1971 created a legal structure for allowing abortion in certain medical and humanitarian situations. Under Section 3(2), pregnancy may be terminated when medical practitioners, acting in good faith, determine that continuation would threaten the woman's life, cause grave physical or mental harm, or where there is a substantial risk that the child, if born, would have serious physical or mental disabilities.[288]

Initially, the pregnancy may be terminated on the above-mentioned grounds

[287] Shantilal Shah Committee Report, Government of India (1966), https://archive.org/details/dli.ministry.20283 (accessed July 30, 2025).

[288] Medical Termination of Pregnancy Act, 1971, § 3(2) (India).

(a) Where the pregnancy duration is twelve weeks or less, the decision of a single registered medical practitioner suffices.

(b) When the length of the pregnancy surpasses twelve weeks but does not exceed twenty weeks, the opinion of a minimum of two registered medical practitioners is essential.

Under the Medical Termination of Pregnancy (Amendment) Act, 2021 (w.e.f. 24-9-2021), section 3 of the Act got amended, & lengthened the period for medical termination of pregnancy, done by the registered medical practitioner, on the same above-mentioned grounds.[289]

The elongated period is as follows-

I. For pregnancies of up to twenty weeks, the decision of a single medical practitioner alone is considered sufficient.

II. For pregnancies between twenty and twenty-four weeks in specified categories of women, the approval of two or more medical practitioners is required.[290]

Explanation 2 to clauses (a) and (b) states that if a pregnant woman claims that her pregnancy was caused by rape, the psychological distress caused by the pregnancy is presumed to be a grave injury to her mental health. This legal presumption qualifies as a valid ground for medical termination under the relevant provisions of the MTP Act.

Section 3(3) of the act provides that, in evaluating whether the continuation of pregnancy entails a risk of injury to the woman's health, as specified under section 3(2), due consideration may be afforded to the pregnant woman's prevailing circumstances and her reasonably anticipated environmental conditions, encompassing socio-economic, psychological, and physical factors influencing maternal well-being.[291]

Section 3(4) states that a minor (a woman under the age of eighteen) or a "lunatic" woman can only have her pregnancy terminated lawfully if her legal guardian gives written authorization. In all other cases, the Act requires that no pregnancy be terminated without the pregnant woman's explicit and informed agreement, preserving her autonomy in reproductive decision-making. The MTP Act did not authorize termination of pregnancy purely for purposes of family planning or based only on the pregnant woman's personal unwillingness to continue the pregnancy.

[289] Medical Termination of Pregnancy (Amendment) Act, No. 8 of 2021 (India).
[290] Medical Termination of Pregnancy Act, 1971, § 3(2)(a) expl. 1 (as amended)
[291] *Ibid.*, § 3(3)

A significant constitutional dilemma arises at this point—between the right of the woman to bodily autonomy and decision freedom, and the presumed right to life of the unborn foetus. This dialectic raises the fundamental question: Whose rights should prevail when both are rooted in constitutional morality and human dignity?

In Justice K.S. Puttaswamy v. Union of India, the Supreme Court recognized the right to privacy as a fundamental right under Article 21,[292] thereby reinforcing the legal foundation for reproductive choice.[293] Yet, no fundamental right is absolute, and when foetal viability becomes a factor, moral and legal considerations regarding the protection of life enter the discourse.[294]

Reproductive rights and justice have arisen as a new area of human rights for pregnant women. They ensure that women, girls, and individuals have the social, economic, and political authority and resources to make informed and healthy decisions about their bodies, sexuality, and reproduction on behalf of themselves, their families, and their communities. Reproductive justice is generally applicable since everyone has equal human rights, which is a fundamental principle of reproductive justice.[295]

The right to reproduce also includes the right to abortion, which is an intrinsic component of reproductive justice. However, abortion remains one of the most contentious and complex issues, as it involves debates over individual autonomy, reproductive rights, and the protection Abortion is a fundamental aspect of reproductive justice and is included in the right to procreate. But since it encompasses discussions about individual autonomy, reproductive rights, and the preservation of human life, abortion continues to be one of the most complicated and divisive topics within society.[296]

FOETAL PERSONHOOD IN LEGAL CONTEXT

After a certain gestational threshold, typically set at 24 weeks, the foetus in the womb achieves a level of biological independence and viability, prompting a growing recognition in Indian constitutional and criminal jurisprudence that this foetus, now an unborn child, possesses an interest in life protected under Article 21 of the Constitution.[297] Though Article 21 does not explicitly refer to the unborn, courts and jurists have increasingly interpreted the term “life” to

[292] *Justice K.S. Puttaswamy v. Union of India*, (2017) 10 SCC 1 (India).
[293] Constitution of India, art. 21.
[294] Sai Abhipsa Gochhayat, Understanding of Right to Abortion under Indian Constitution, (accessed Aug. 1, 2025).
[295] Zakiya Luna & Kristin Luker, Reproductive Justice, 9 *Ann. Rev. L. & Soc. Sci.* 327 (2013).
[296] Aparna Chandra, Mrinal Satish, Shreya Shree & Mini Saxena, Legal Barriers to Accessing Safe Abortion Services in India: A Fact-Finding Study, (accessed July 28, 2025).
[297] Constitution of India, art. 21.

include life in its potential and developing form, especially when the foetus can survive outside the womb.[298]

This position finds support in Supreme Court judgments such as ABC v. Union of India (2023)[299] and Jyoti v. Union of India (2023) [300], where abortions beyond 26 weeks were denied on the ground that foetal life had reached a stage that warranted constitutional consideration. The Medical Termination of Pregnancy Act, 1971 (as amended in 2021), does not confer an absolute or unconditional right to terminate a pregnancy; rather, it carefully regulates the circumstances under which abortion can be permitted. While women's reproductive autonomy is respected, the legislation reflects a deeper ethical commitment to the protection of nascent life.

Abortion is legally permissible up to twenty weeks of gestation based on the opinion of a single Registered Medical Practitioner (RMP) when justified by specified medical or humanitarian grounds. For pregnancies between twenty and twenty-four weeks, termination requires the concurrence of two RMPs, and this provision applies exclusively to vulnerable categories such as survivors of rape, minors, women with disabilities, and those experiencing significant social or physical hardship. Beyond twenty-four weeks, termination is permitted only in instances of severe foetal abnormalities or when continuation poses a grave risk to the mother's life, subject to approval by a duly constituted Medical Board as mandated under Section 3(2B) of the Act. This layered and restrictive framework indicates a statutory acknowledgment that as the foetus matures, its moral and legal status increases, necessitating stronger justification for termination. The Act, therefore, imposes clear procedural and ethical thresholds that reflect a legislative concern for foetal life and not merely for maternal choice.

This concern is further amplified under the newly enacted Bharatiya Nyaya Sanhita, 2023 (BNS), which codifies criminal penalties for unauthorized abortions and offers legal recognition to the foetus, particularly in its later stages of development. Section 88 of BNS criminalizes causing a miscarriage without the woman's consent or outside the bounds of the MTP Act [301],, prescribing imprisonment and fines.

More significantly, Section 92 of BNS criminalizes the act of causing the death of a "quick unborn child"—a term historically associated with a foetus that has begun to show movement

[298] *Francis Coralie Mullin v. Administrator, Union Territory of Delhi*, AIR 1981 SC 746 (India).
[299] *ABC v. Union of India*, 2023 SCC OnLine SC 134 (India).
[300] *Jyoti v. Union of India*, 2023 SCC OnLine SC 254 (India).
[301] Bharatiya Nyaya Sanhita, 2023, § 88 (India).

and viability, often around the fifth month of pregnancy.[302] This offense is treated as equivalent to culpable homicide not amounting to murder, with punishment extending up to ten years' imprisonment and fine, even when the woman consents. Such provisions, far from being mere procedural rules, are grounded in a jurisprudential and ethical shift towards treating the foetus as a subject of law once it has crossed a certain gestational stage. They align with the idea of gradualist moral theory—a philosophical position which holds that the moral value and legal protection of foetal life increase as the foetus develops.

In addition, the Supreme Court has also begun to assert that the state's compelling interest in protecting foetal life grows as pregnancy progresses. In Suchita Srivastava v. Chandigarh Administration (2009),[303] while recognizing reproductive rights under Article 21, the Court observed that such rights are subject to "reasonable restrictions" to protect compelling state interests, one of which is potential human life.

More recently, in *X v. Principal Secretary, Health and Family Welfare Department (2022),*[304] the Court allowed unmarried women to seek abortion up to 24 weeks but still upheld that after this point, a stringent medical and legal standard must be applied. The Court did not, at any point, suggest that a woman's choice trumps all other interests. Instead, it affirmed that both autonomy and state concern for foetal life must be balanced with caution and oversight.

Furthermore, the Law Commission of India in its 263rd Report (2017) acknowledged advances in medical science that push foetal viability earlier into the pregnancy—suggesting that the legal threshold must keep pace with scientific reality.[305] The report also recommended forming permanent Medical Boards to ensure that requests for post-24-week abortions are scrutinized strictly, once again reflecting the state's interest in safeguarding unborn life. This reflects a clear constitutional and legislative trajectory that, while empathetic to the plight of pregnant women, especially victims of rape and incest, is ultimately cautious and leans towards foetal protection in the second and third trimesters.

Crucially, the MTP Act provides a strict procedure that strengthens this ethical commitment. The woman must receive counselling, and the opinion of RMP(s) must be documented. Abortion may only be performed in registered medical institutions, and confidentiality under Section 5A is mandated. Section 3(4) of the Act requires guardian consent if the woman is a

[302] Bharatiya Nyaya Sanhita, 2023, § 92 (India).
[303] *Suchita Srivastava v. Chandigarh Administration*, (2009) 9 SCC 1 (India).
[304] *X v. Principal Secretary Health & Family Welfare Department*, 2022 SCC OnLine SC 905 (India).
[305] Law Commission of India, *263rd Report on The Medical Termination of Pregnancy Act, 1971* (Aug. 2017).

minor or mentally ill. The establishment of Medical Boards under Rule 3B of the 2021 Rules ensures expert review in late-term abortion cases.

These checks and balances are designed not to frustrate the woman's autonomy, but to guarantee that the decision to terminate is made with medical, ethical, and legal due diligence, especially when foetal life is at stake. Unlawful abortions—even with the consent of the pregnant woman—may attract criminal liability under BNS, further reinforcing the sanctity attributed to unborn life by Indian penal law.

RIGHT TO CHOICE WITH RESPECT TO THE ABORTION

Prior to the implementation of MTP, 1971, the concept of miscarriage was dealt with under section 312 of the IPC 1860 (now, section 88, BNS), which prohibits the intentional induction of miscarriage and punishes it with imprisonment for up to three years, a fine, or both—unless the act is performed in good faith solely to save the pregnant woman's life.[306] If the lady is "quick with a child," the penalty increases to up to seven years in prison and a fine.[307]

Viewed through a rights-based lens, Section 312 delineates a crucial legal exception that upholds women's bodily integrity by permitting life-saving abortions while criminalize unauthorized interference.[308] herein the miscarriage of women is done with the consent of the pregnant women. By differentiating between medically necessary terminations and unlawful acts, the provision implicitly reinforces the notion of reproductive agency. It ensures that only medically justified, good-faith procedures are lawful, thereby safeguarding the pregnant woman's health, dignity, and access to medically supervised reproductive care.[309] Although not an affirmative guarantee of abortion-on-demand, this provision creates a legal safe space for medically authorized interventions and establishes boundaries around coercive or exploitative miscarriage under criminal law.

However, Section 313 IPC (section 89 BNS) explicitly criminalizes miscarriage without the pregnant woman's consent, it is immaterial whether she is "quick with child" (i.e., in an advanced gestational stage). The law provides the punishment for life or imprisonment extended to ten years, along with a fine, for such offenses.[310]

From a bodily autonomy perspective, this provision plays a crucial protective role:

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[306] Indian Penal Code, 1860, § 312; now Bharatiya Nyaya Sanhita, 2023, § 88 (India).

[307] *Ibid.*

[308] Sai Abhipsa Gochhayat, Understanding of Right to Abortion under Indian Constitution, (accessed Aug. 1, 2025).

[309] *Ibid.*

[310] Indian Penal Code, 1860, § 313; now Bharatiya Nyaya Sanhita, 2023, § 89 (India).

- It reinforces the principle that no person may interfere with a woman's reproductive choices absent her informed and voluntary consent, thereby bolstering her control over her own body and pregnancy.[311]
- By setting this offence apart from other criminal provisions, the statute affirms that non-consensual intervention is a grave violation, deserving of the most severe penalties—even stricter than those for causing miscarriage with consent.
- Crucially, it delineates a legal safeguard ensuring that only lawful, consented medical procedures, such as those permitted under the MTP Act, are protected from criminal liability—while unauthorized coercion is unequivocally penalized.[312]

Thus, Section 89 strengthens reproductive autonomy by creating a firm legal boundary that upholds a woman's right to make decisions about her own pregnancy, free from external compulsion or interference.[313]

In the beginning, the Medical Termination of Pregnancy (MTP) Act of 1971 allowed abortion on a limited number of grounds: when the mother's life or physical or mental health was in danger, when there was a significant chance that the unborn child would have severe physical or mental abnormalities, when the pregnancy was the result of rape or when the woman was mentally ill, and when a married woman's contraceptive methods had failed. The Act permitted abortions up to 12 weeks into a pregnancy with the consent of one doctor and up to 20 weeks with the consent of two doctors. Beyond these time constraints, abortion was allowed for pregnancies that endangered the woman's life. The lady had to give her approval, and a legal guardian had to provide their consent if the woman was a minor or mentally ill.[314]

Although the 1971 framework broadened access to abortion, it posed substantial limitations: notably, the rigid 20-week ceiling proved problematic in instances of delayed detection, such as foetal anomalies or sexual violence, where diagnostic certainty often emerges only after 20 weeks. Previously, women in such circumstances had to resort to court petitions or carry pregnancies to term, generating significant physical, psychological, and legal distress[315].The 2021 Amendment broadened the scope by allowing abortion up to 24 weeks for special

[311] Saumya Maheshwari, Reproductive Autonomy in India, *NALSAR Student L. Rev.*, (accessed Aug. 1, 2025).
[312] *Ibid.*
[313] *Ibid.*
[314] Medical Termination of Pregnancy Act, 1971, §§ 3–5 (India).
[315] *Ibid.*

categories, including rape survivors, incest victims, minors, and women with physical or mental disabilities, irrespective of their marital status.[316]

The Act now recognizes that foetal abnormalities might not be diagnosed until after 20 weeks, thereby extending the upper limit for these cases. Furthermore, it removed the marital status condition for contraceptive failure, granting all women, married or unmarried, access to abortion on this ground.[317] In late-stage pregnancies, the law established a Medical Board, comprising specialists, to review cases of potential foetal abnormalities beyond 24 weeks. These changes collectively empower women by recognizing their autonomy over reproductive decisions and providing comprehensive access to abortion care.[318]

Additionally, the amendments eliminated the restriction limiting contraceptive-failure grounds to married women, extending it to unmarried women as well. Privacy protections were strengthened by prohibiting disclosure of the identity or personal details of individuals undergoing abortion, penalizing breaches with fines or imprisonment.[319]

In Suchita Srivastava & Anr. v. Chandigarh Administration, 2009,[320] SC, the Supreme Court considered whether a 19-year-old mentally handicapped woman's pregnancy might be aborted without her consent. She became pregnant after an alleged rape while staying in a government care home in Chandigarh. The Administration got High Court permission to terminate the pregnancy, citing it as being in her "best interests."

A medical board classified her condition as “mild to moderate mental retardation” and found that she expressed a wish to continue the pregnancy. Despite this, the High Court ordered termination. The Supreme Court stayed that order, sharply distinguishing between “mental illness” and “mental retardation” under the Medical Termination of Pregnancy (MTP) Act. It held that mental retardation does not remove a woman’s right to bodily autonomy or reproductive choice once she attains majority—and that statutory consent requirements must be strictly respected.

The Court held that terminating the pregnancy without Suchita’s consent would have been arbitrary and constitutionally impermissible. As it provided under Article 21 of the Constitution, which guarantees the right to reproductive choice and dignity—even for

[316] S.N. Pai & K.S. Chandra, Medical Termination of Pregnancy Act of India: Treading the Path Between Practical and Ethical Reproductive Justice, *Indian J. Community Med.*

[317] Medical Termination of Pregnancy (Amendment) Act, 2021, § 3(2)(b) (India).

[318] Medical Termination of Pregnancy Rules, 2021, r. 3B (India).

[319] *Ibid.*

[320] *Suchita Srivastava v. Chandigarh Administration*, (2009) 9 SCC 1 (India).

individuals with intellectual disabilities. The State must honor this autonomy, and support mechanisms should enable informed decision-making, rather than override it.[321]

In the leading case of, X v. Principal Secretary, Health & Family Welfare Department, Govt. of NCT of Delhi & Another, (2022), The Court held that the MTP Amendment Act 2021, does not restrict Rule 3B to married women. A purposive reading aligned with the statute's use of "partner" instead of "husband"—marital status should not limit access.[322] Exclusion of unmarried women was "artificial and impermissible" under Article 14. As the court declared: "All women are entitled to safe and legal abortion"; restricting unmarried pregnant women between 20–24 weeks while permitting married ones violated the equality guarantee.

The SC clarified that for MTP Act purposes, "rape" in Rule 3B(a) includes forced sexual intercourse within marriage. Therefore, survivors of marital rape qualify for abortion up to 24 weeks, and no FIR or criminal proceedings need be registered beforehand.[323] The Courts and doctors may not impose extra-legal barriers—such as parental or spousal notarized consent—on competent adult women. Under Section 3(4)(b), only the woman's consent matters. Any additional requirement would "violate" regressively the fundamental right under Article 21.[324]

Even though, the Courts has interpreted the law in such a manner that elongates the right of abortion to certain extent, but the law in itself provide the mechanism which hinders the exercise of right to abortion to absolute manner. Therefore, A PIL is being filed in the Supreme Court in which the petitioner has challenged the constitutionality of section 3 & 4 of the Act, on the ground of violation of Right to life and Personal liberty under Article 14 & 21 of the Constitution.

The petitioners contended that the Court:

1. Declare s.3(2)(a) to be unconstitutional and void, up-to the extent where it requires the opinion of a medical practitioner;
2. Declare s.3(2)(b) to be unconstitutional and void because it only allows abortions up to 20 weeks after conception, and only then if the mother's life or physical health (or the child's) is in danger.
3. Declare s.3(4) violate of right to Life and Personal Liberty under Article 21;
4. Declare s.5 violate of Articles 14 and 21; and

[321] Ibid.
[322] *X v. Principal Secretary Health & Family Welfare Department*, 2022 SCC OnLine SC 905 (India).
[323] *Ibid.*
[324] *Ibid.*

5. Provide the mandatory guidelines to the government, in order to provide the safe access to abortion to all women, especially those who are affected by their social status.

THE ROAD MAP AHEAD

Going forward, India must aim to refine its abortion framework by harmonizing medical, legal, and constitutional principles with the evolving realities of reproductive healthcare. While the current approach under the MTP Act and Bharatiya Nyaya Sanhita provides a tiered regulatory structure, it often places a disproportionate burden on women seeking abortions beyond 20 or 24 weeks. The establishment of permanent Medical Boards at the state or district level is essential to streamline decision-making in late-term abortion cases. Delays in convening ad-hoc boards often lead to denial of timely access, forcing women to approach the judiciary—something that should be a last resort, not a routine remedy.

Additionally, there is a pressing need to shift from a doctor-concentric to a rights-concentric model. Presently, the woman's autonomy is mediated through medical gate-keeping, with access contingent on the subjective opinion of Registered Medical Practitioners. A more progressive framework would recognize the woman as a central rights-holder whose informed consent, psychological well-being, and socioeconomic context deserve equal weight in the decision-making process. Judicial clarity is also required to address the status of foetal rights—particularly how and when foetal viability triggers state interest without disproportionately restricting the woman's freedom.

To internationalize justice in reproductive health, special attention must be paid to marginalized groups such as minors, disabled women, survivors of rape, and those in rural or economically backward areas. Access to safe abortions must be made universal by strengthening public healthcare infrastructure, training medical professionals, and increasing awareness about legal rights under the MTP Act. The legal regime must also evolve to include clear procedural timelines, mandatory review mechanisms, and accountability in cases of denial or delay.

Furthermore, law reform commissions and parliamentary committees should revisit the gestational thresholds in light of evolving medical science, particularly advances in neonatal care that affect foetal viability. Policy-making must remain responsive to both constitutional morality and empirical realities. Alongside this, public health campaigns must focus on underestimating abortion and promoting contraceptive access and reproductive education.

DENIED BY FAITH: THE LEGAL AND SOCIAL MARGINALIZATION OF DALIT MUSLIMS IN INDIAN DIASPORA

***Mohd. Aatif Ansari*[325]**

ABSTRACT

India is characterized by an intricate web of identities, encompassing religion, language, caste, ethnicity, race, gender, ideology, and socio-economic positioning, which collectively contribute to its plural social fabric. While certain identities possess universal significance, others are deeply embedded in local historical and cultural contexts. Among these, caste occupies a central role. Commonly perceived as an exclusive feature of Hindu social order, caste in reality extends beyond religious boundaries and operates as a broader South Asian phenomenon. Its enduring geographical and cultural influence has rendered caste an inseparable element of the Indian Muslim community as well. Despite Islam's egalitarian doctrines, caste-based stratification persists, manifesting in entrenched hierarchies, unequal access to resources, and pervasive social discrimination.

This paper undertakes a critical examination of the structural and behavioural forms of exclusion encountered by Pasmanda Muslims, who constitute the socially and economically disadvantaged sections of Indian Islam. Particular attention is given to the persistent denial of Scheduled Caste (SC) recognition to Dalit Muslims, a policy stance that perpetuates their marginalization and restricts access to affirmative action measures available to their counterparts in other faiths. By drawing upon legal, sociological, and historical perspectives, the study interrogates the contradictions between constitutional promises of equality and the lived realities of marginalized Muslim groups. It also highlights the complex intersections of religion, caste, and state policy in shaping experiences of discrimination. Ultimately, the paper seeks to contribute to the discourse on social justice, minority rights, and the urgent need for inclusive frameworks that recognize caste oppression beyond the boundaries of religion.

Keywords: Pasmanda, Dalit Muslims, Schedule Caste, Social Justice, Equality.

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INTRODUCTION

With a Muslim population exceeding 170 million, India ranks as the third-largest Muslim-majority nation globally, following Indonesia and Pakistan. The presence of Islam in India dates back to the time of the Prophet Muhammad, and Muslims have played a significant historical role in the subcontinent.[326] Between the tenth and nineteenth centuries, various Muslim dynasties ruled over different regions of India.[327] While many Muslims arrived as conquerors or traders, they eventually settled and integrated into Indian society. Today, a substantial portion of India's Muslim population consists of converts from other religious traditions.[328] These converts brought with them pre-existing cultural norms, notably the caste-based hierarchical social order, including features such as occupational specialization, endogamy, and social stratification, which became embedded in Muslim social and cultural practices in the subcontinent.[329]

Although Islam promotes a fundamentally egalitarian ethos, emphasizing social justice and economic redistribution, the realization of such ideals has remained largely aspirational. The religion's doctrinal emphasis on equality was challenged upon its interaction with Indian society, where caste-based stratification was deeply entrenched. The caste system, pervasive in pre-Islamic Indian life, exerted a significant influence even on Islam and Christianity upon their arrival. As a result, numerous individuals from oppressed Hindu castes who embraced Islam in pursuit of social liberation and economic justice often continued to experience marginalization.[330] The expectation that conversion would offer a meaningful escape from caste-based discrimination proved largely illusory. Thus, despite Islam's egalitarian ideals, the socio-religious realities of the Indian context hindered their full realization, perpetuating stratification even within the Muslim community.

Caste-based stratification among Indian Muslims is a persistent social reality, though it is often denied or downplayed within the community. Despite a general reluctance to openly acknowledge its existence, caste continues to exert significant influence over social roles, relationships, and status within Muslim society in India.[331] Although the phenomenon has long

[326] S.A.A. Rizvi, *The Wonder That Was India*, vol. II, at 50–59 (Sidgwick & Jackson 1987).
[327] Satish Chandra, *History of Medieval India (800–1700)*, at 78–86 (Orient BlackSwan 2014).
[328] Yoginder Sikand, *Islam, Caste and Dalit-Muslim Relations in India*, at 39–46 (Global Media Publications 2004).
[329] Imtiaz Ahmad, *Caste and Social Stratification Among the Muslims*, at 171–207 (2d ed. 1978).
[330] *Supra* note 3, at 2.
[331] Imtiaz Ahmad, The Ashraf-Ajlaf Dichotomy in Muslim Social Structure in India, 3 *TIESHR* (1967).

been observed, systematic academic efforts to explore and analyse caste among Muslims have been relatively limited.[332]

While conversion to Islam was initially perceived as a means of escaping the oppressive Hindu caste system, for many lower-caste converts the material and social realities remained largely unchanged.[333] Their new religious identity did little to alter their caste-based occupations, educational backwardness, or socio-economic status. Post-Independence affirmative action policies provided Scheduled Caste Hindus with state support and reservations in education and employment, but *Pasmanda* Muslims were excluded from these provisions.[334] This exclusion placed them in a doubly disadvantaged position—first, due to their marginalized status within the Muslim community, and second, because of their religious identity that denied them access to constitutional safeguards granted to Dalit Hindus.

The term *Pasmanda*, derived from Persian, meaning "those who have left behind" (, was popularized by Ali Anwar in 1998, founder of the All-India Pasmanda Muslim Mahaz.[335] He frames Pasmanda Muslims *in class rather than caste* terms, though he uses "Pasmanda" and "Dalit Muslims" interchangeably.[336] He believes that while Pasmanda includes Dalit Muslims, but all Pasmandas are Dalit Muslims.[337] Pasmanda is primarily composed of Ajlaf and Arzal Muslims. It refers specifically to persons with lower social, economic, and political status. Constitutionally, we fall within one category: OBC.[338]

A pioneering contribution in this area was made by Ghaus Ansari (1960), who conducted one of the earliest in-depth studies on caste and social stratification among North Indian Muslims.[339] He categorized Muslim castes into three broad groups: (i) *Ashraf*, (ii) *Ajlaf*, and (iii) *Arzal*.[340] The *Ashraf* group consists of Muslims of noble lineage and those claiming descent from early Muslim immigrants, such as the Sayyads, Sheikhs, Mughals, and Pathans. The *Ajlaf* includes converts from middle-ranking Hindu castes, such as Muslim Jats, Rajputs, and

[332] Hilal Ahmed, *Siyasi Muslims: A Story of Political Islams in India*, at 85–87 (Penguin 2019).
[333] *Supra* note 4, at 2.
[334] Government of India, *Report of the National Commission for Religious and Linguistic Minorities*, at 141–143 (Ministry of Minority Affairs 2007).
[335] Javeed Alam, Is Caste Appeal Casteism? 34 (13) *Economic & Political Weekly* (Mar. 27, 1999).
[336] Ali Anwar, *Masavat ki Jung*, at 110–125 (The Marginalised Publication 2020).
[337] *Ibid.* at 11.
[338] Government of India, *Report of the National Commission for Backward Classes*, at 175–189 (Ministry of Social Justice and Empowerment 2018).
[339] Ghaus Ansari, *Muslim Caste in Uttar Pradesh: A Study in Culture Contact* (Ethnographic and Folk Culture Society 1960) (accessed July 28, 2025).
[340] *Ibid.* at 14.

Gujjars. The *Arzal* comprises the most marginalized groups—occupational castes traditionally associated with 'impure' or polluting tasks". Collectively, *Ajlaf* and *Arzal* are often referred to as *Pasmanda* or Dalit Muslims.[341]

SOCIAL DISCRIMINATION WITHIN THE MUSLIM COMMUNITY

The perception of Indian Muslims as a socially and culturally homogeneous group defined solely by religion is a misconception. Like other socio-religious communities in India, Muslims possess layered and diverse identities shaped by language, ethnicity, regional affiliations, sectarian differences, and schools of Islamic jurisprudence. Among these, caste remains a critical and unique social category in the Indian subcontinent.[342] Functioning as a pervasive hierarchical system, caste shapes almost every aspect of social life for Indian Muslims, from birth to death. Characteristics typically associated with caste among Hindus, such as endogamy, occupational specialization, ritual purity and pollution, and status hierarchy, are similarly evident within Muslim communities.[343]

Author argued that How caste operates within Muslim society to produce social stratification and inequality. He discusses the relationship between the *Dafalis*, who perform priestly duties, and the *Lalbegis* (Muslim equivalents of Bhangis), highlighting that *Dafalis* refuse to accept food or water from *Lalbegis*—a clear reflection of caste-based exclusion. Marriages generally remain endogamous, though instances of hypergamy occur; however, the offspring of such unions, particularly between lower-caste women and upper-caste men like *Syeds* or *Sheikhs*, are labeled *Syedzada* but, are not granted the same caste status as their fathers.

In many instances, the inter-dining was permitted among *Ashraf* castes (e.g., *Syed*, *Sheikh*, *Mughal*, and *Pathan*) but was denied to members of lower caste groups. On the same notion of the varna system, caste-based groups were arranged hierarchically based on occupational roles and their perceived social proximity to the *Ashraf*. Castes such as *Nat* (drum-makers and skinners of dead animals) were at the bottom, followed by *Dhobi* (washermen), *Julaha* (weavers), and *Darzi* (tailors).

Historically, leadership within the Indian Muslim community has been predominantly held by upper-caste Muslims. Ali Anwar (2005) provides a detailed statistical account illustrating how upper-caste groups have maintained their dominance over the community's major religious and socio-political institutions. These include influential bodies such as the All-India Muslim

[341] *Supra* note 11, at 3.
[342] *Supra* note 14, at 3.
[343] *Supra* note 3, at 2.

Personal Law Board, Imarat-e-Sharia, Waqf Boards, and prominent madrasas like Darul Uloom Deoband. Additionally, they 'control key religious sites such as mosques and dargahs, as well as state-funded and affiliated minority institutions, including the Haj Committee, Minority Commissions, Urdu Academies, and the Maulana Azad Foundation at both national and state levels.

Upper-caste Muslim elites have often aligned with dominant political ideologies and communal narratives to preserve their control over power structures. The leadership has deliberately centred Muslim political identity around emotionally charged cultural issues—such as the Babri Masjid, AMU, Status of Urdu and Shah Bano case and so on—thereby sidelining internal calls for democratization and social reform within the community. This strategy has perpetuated the image of Muslims as a unified, monolithic bloc, concealing internal hierarchies, particularly caste-based inequalities.

Prior to the 1990s, electoral candidates from the Muslim community were overwhelmingly upper-caste, and caste was not a publicly acknowledged factor in voting behaviour. However, following the implementation of the Mandal Commission's recommendations, lower-caste Muslims began to assert their political agency by running for office. In response, upper-caste leaders began to frame this political participation as evidence of divisive casteism, claiming it threatened the unity of the *Millat* (Muslim community). Such narratives reflect a deeper anxiety among upper-caste elites, who fear losing their historical dominance and access to communal resources as lower-caste Muslims increasingly challenge the traditional power hierarchy.

THE DICHOTOMY OF SCHEDULED CASTES AND THE EXCLUSION OF DALIT MUSLIMS

The nomenclature *Dalit*, signifying "broken" or "oppressed," was initially operationalized by Ati-Shudra reformer Jyoti Rao Phule. Dr. B.R. Ambedkar later institutionalized the term in the 1930s as a discursive rebuttal to Gandhi's *Harijan*. Subsequently, the Dalit Panther movement, in the late 20th century, rearticulated it as a politicized, assertive identity marker.[344]

Dalits and Harijans are constitutionally designated as Scheduled Castes (SCs) and Scheduled Tribes (STs). This classification originated under British colonial rule, during the late 19th-century census operations.[345] Scheduled Castes consist of communities historically marginalized through practices of untouchability. Their official recognition was formalized

[344] Anupama Rao, *The Caste Question: Dalits and the Politics of Modern India*, at 185–188 (University of California Press 2009).

[345] Marc Galanter, *Competing Equalities: Law and the Backward Classes in India*, at 75–90 (Oxford Univ. Press, Delhi 1984).

under the Government of India Act of 1935, which introduced the first SC list. The initial Scheduled Castes list compiled in 1936 included certain Muslim Arzal castes, such as the Halalkhor; Upon implementation in 1937, provisions for special reservations commenced. However, these benefits were short-lived, ending in 1939 due to the Act's suspension. However, these groups were excluded from reservation benefits. This exclusion was rooted in the British colonial policy that defined Scheduled Castes as exclusively Hindu phenomena.[346] This conception persists even after seventy-five years of independence, as reflected in the Constitution (Scheduled Castes) Order No. 19 of 1950, issued under Article 341(1) of the Indian Constitution, the Presidential Order enumerated castes eligible for inclusion in the Scheduled Castes category. Originally, Clause (3) of the Order explicitly excluded individuals professing religions other than Hinduism, Buddhism, and Sikhism.[347] Subsequently, by the recommendation of the Kaka Kalekar Commission (1955),[348] the Sikh Dalit and the Buddhist Dalit was added into the scheduled Caste category, in 1956[349] & 1990[350], respectively. This provision is inherently discriminatory on the ground, that the Dalit Christians and Dalit Muslims who is having the same social & educational backwardness and face discrimination not only from upper-caste members of their own religion, but also from the broader Hindu-dominated society and contradicts the egalitarian ethos of the Constitution. This rejection contradicts key constitutional values such as Article 14 (equality before the law), Article 15 (prohibition of religious discrimination), and Article 25 (freedom of religion). This exclusion perpetuates structural unfairness against Dalits who follow non-Indic religions.

Many castes from Muslim society have the same name, social status, social capital, and even fewer economic resources than Hindu Dalits but have been categorized differently. The list shows the similarity between the Muslim and Hindu castes but explicates the dissimilarities in reservation categories. The demand for including Dalit Muslims in the Scheduled Castes category stems from their persistent socio-economic, educational, and political marginalization. Addressing this requires examining the Dalit issue within Muslim politics. While Hindu Dalits received constitutional reservations through the 1950 Presidential Order, Dalit Muslims remain excluded from these affirmative action benefits.

[346] Tahir Mahmood, *Minorities Commission: Minor Role in Major Affairs*, at 143–160 (Pharos Media & Pub. 2001).
[347] Constitution (Scheduled Castes) Order, 1950, No. 19 of 1950 (India).
[348] Government of India, *Report of the Backward Classes Commission* (Kaka Kalelkar Commission Report 1955) (accessed July 28, 2025).
[349] *Supra* note 22, at 6.
[350] *Ibid.*

Even the Justice Ranganath Misra Commission (2004) examine the status of religious and linguistic minorities in India and recommended measures for their upliftment. The Commission found that Dalits who had converted to Islam or Christianity continued to face caste-based discrimination similar to Dalits within Hinduism, Sikhism, and Buddhism. However, they were excluded from the Scheduled Caste (SC) category and denied associated constitutional benefits. The Commission recommended extending SC status to Dalits of all religions, arguing that caste-based discrimination persists regardless of faith. It also proposed a 10% reservation for Muslims and 5% for other minorities in education and government jobs. The report emphasized delinking caste from religion to ensure equal protection and social justice for all marginalized groups. Though the report highlighted significant constitutional and human rights concerns, its recommendations remain largely unimplemented due to political and legal challenges.

Ali Anwar (2005) observes that in the aftermath of Partition, Pasmanda Muslims and Hindu Dalits shared comparable socio-economic conditions. However, over seventy years post-Independence, a discernible disparity has emerged: Hindu Dalits have experienced notable progress, largely facilitated by Scheduled Caste reservations, while Pasmanda Muslims remain socio-economically stagnant.[351] Various governmental reports—including those of the Kaka Kalelkar Commission (1955), Mandal Commission (1980), and the Sachar Committee (2006)—consistently highlight the persistent marginalization of lower-caste Muslims. These communities continue to face systemic exclusion, with limited access to education, dignified employment, and basic rights. Indicators such as poverty levels, household consumption, occupational stratification, and educational attainment reveal that Dalit Muslims remain severely disadvantaged. These socio-economic patterns present a compelling case for their inclusion within the Scheduled Caste category, as a means of addressing long-standing structural inequalities and ensuring equitable access to affirmative action provisions that have benefited similarly placed Hindu Dalit groups.

The exclusion of Muslims from Scheduled Caste reservations adversely impacts not only their socio-economic status but also their political participation. While Muslims have accessed certain benefits through Other Backward Classes (OBC) reservations in socio-economic domains, political representation remains constrained. Reserved constituencies for Scheduled Castes, which constitute 84 out of 543 Lok Sabha seats and similar proportions in state

[351] *Supra* note 11, at 3.

assemblies, are inaccessible to Muslim candidates due to this exclusion. Consequently, Pasmanda Muslims are systematically deprived of the opportunity to contest elections in these reserved seats, limiting their political agency. Furthermore, Pasmanda Muslims lack legal protections under the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989, which safeguards their Hindu counterparts from caste-based violence and discrimination. This dual marginalization reinforces structural inequalities, underscoring the necessity for inclusive policies that recognize the socio-political realities of Dalit Muslims within the Indian constitutional framework.

CONCLUSION

The inclusion of Dalit Muslims within the Scheduled Castes (SC) reservation framework is expected to catalyse a paradigmatic shift in Indian electoral politics, transitioning discourse from symbolic, cultural, and religious identity issues to substantive socio-economic and political concerns. This structural integration may gradually attenuate communal polarization and foster a more inclusive narrative grounded in social justice. Slogans such as *"Dalit-Pichhda Ek Samaan, Hindu Ho Ya Musalman"* (Dalit and Backwards are Equal, Hindu or Muslim) could gain traction, reinforcing unity across caste and religious lines. State intervention would then be better positioned to address the developmental deficits faced by marginalized Muslim groups, particularly Pasmanda Muslims, who continue to lack adequate socio-economic and political representation.

The political marginalization of Pasmanda Muslims is evident in their consistently low representation in legislative bodies. Although SCs and STs are constitutionally assured 84 and 44 parliamentary seats respectively, Muslims—despite constituting a significant demographic—have historically secured only around 6% representation in the Lok Sabha, with rare exceptions such as the 1980 general election (approx. 10%). In the 16th and 17th Lok Sabha elections, only 23 and 25 Muslim candidates were elected, respectively. Given their population share, equitable representation would imply the election of at least 77 Muslim parliamentarians.

Muslims constitute the most significant minority in India, comprising 14.2% of the population. Despite this substantial demographic presence, their representation in policymaking remains disproportionately low, largely due to the limitations of the first-past-the-post electoral system and the nation's complex socio-demographic fabric. Among Muslims, Dalit Muslims—those subjected to caste-based discrimination similar to Hindu Dalits—experience severe socio-economic and political marginalization. However, they remain excluded from the Scheduled

Caste (SC) reservation benefits due to the religion-based criteria of the Presidential Order of 1950. To rectify this exclusion, it is imperative that caste, rather than religion, be recognized as the legitimate basis for inclusion in the SC category. The structural disadvantages faced by Dalit Muslims-economic deprivation, social ostracization, and political underrepresentation—mirror those of Hindu Dalits, necessitating equitable affirmative action. Moreover, meaningful representation is most effectively achieved when leaders emerge from within the marginalized communities, as demonstrated historically by figures like Phule, Ambedkar, Periyar, and Kanshiram within the Hindu Dalit movement. Hence, it is crucial for all segments of the Muslim community—Ashraf, Pasmanda, and Dalit Muslims—to collectively mobilize and exert political and constitutional pressure for an amendment to the Presidential Order, enabling the inclusion of Dalit Muslims within the SC reservation framework.

CRIMINAL LIABILITY IN THE AGE OF ARTIFICIAL INTELLIGENCE: RETHINKING MENS REA AND ACTUS REUS UNDER THE BHARATIYA NYAYA SANHITA, 2023

***Yash Jain*[352]**

ABSTRACT

The accelerated adoption of artificial intelligence in colourful sectors of social activity challenges traditional felonious legal order particularly in India with the newly nominated Bharatiya Nyaya Sanhita, 2023. The composition dwells on the fundamental elements of felonious liability mens rea (shamefaced mind) and actus reus (shamefaced act), and their interaction to make by those who emplace AI. Developing global comparisons, through an Indian prism, and acknowledging that India lives in a legal world (the transformation of the Indian Penal Code, 1860 by the introduction of the BNS), this piece of writing shows how it is failing to react to the independent application of AI, such as the inexistence of intent when machines are acting and the proliferation/ loss of felonious responsibility between the inventors, druggies or deployers. Having conducted a critical analysis, this composition outlines nonsupervisory changes that suggest the adaptation of mens rea and actus reus to an action taken that is AI led, such as the creation of systems of strict liability, systems of commercial guilt, and nonsupervisory fabrics. It finally suggests that in an AI-dominated era, there is a need to redefine visionary to guarantee justice, balancing the invention with the accountability.

[352] Yash Jain, *Delhi Metropolitan Education.*

INTRODUCTION

The introduction of artificial intelligence is a major milestone in mortal elaboration that is changing all aspects of health care to transportation among others. Even though crucial AI systems are becoming more capable of independently-forming opinions without any direct mortal intervention, they are putting our previous sundries of legal accountability and duty to trial. Common law Liability in the felonious context is typically based on the two traditional rudiments actus reus also known as the unlawful act of the offense or omission and mens rea also known as the shamefacedness of the mind. The principles are founded upon many centuries of legal tradition, and both generalities are based upon the assumption that a wrongdoing is done by a mortal person, one that has knowledge and will. But what about the case when AI algorithms commit the crime? And can there be a machine to carry about something like a shamefaced mind? And who is to blame its" conduct? Bharatiya Nyaya Sanhita, 2023 (BNS) substituted the social Indian Penal Code on July 1, 2024, in India.

The BNS is a modification to our felonious law, so as to accommodate the needs of the modern society, such as adding more protection to address the ramifications of cybercrimes and organized crime. nevertheless, there was no indication with any felonious offense executed by means of AI. This disparity is particularly alarming since India intends to become a forefront in AI and some estimates project that by 2035, the AI could deliver an impressive $ 957 billion to the frugality. Since AI is able to grease or commit crime, just like in the case of as' tone-driving' buses leading to fatal accidents or deepfake technology used in a fraudulent way, it should be once again discussed in terms of mens rea (internal state) and actus reus (physical acts). This essay gives a detailed explanation on these problems.

It explains the Indian law of mens rea and actus reus by referring to literal and abstract approach, starting with a summary of the BNS. It proceeds to discuss the compass of the challenges to mens rea and actus reus presented by AI and puts this in the context of the examples of the comprehension of these challenges presented throughout the world. It finally provides some recommendations on reforms based on the dilemma peculiar to India and proposes a need to have immediate changes in innovative legislation to allow a gap in liability. The purpose of this work is to add to the current debate concerning how to balance AI advances and the generalities of the core of felonious law, by promoting more insightful knowledge.

THE TRADITIONAL MODEL OF CRIMINAL LIABILITY: MENS REA AND ACTUS REUS

Background and History Philosophy

Responsible for crimes. The felonious liability states that both an act and internal state should live together at the same moment to impress on the felonious guilt. Mens rea is a principle which includes knowledge, recklessness, negligence and intention, which have internal duration, deliberation, and moral logic. Mens Rea presupposes that the defendant can be only liable to his actions in case they do not lose the ability to reflect the character and the result of their actions, freedom of choice, and ability to meditate choice and make a distinction between good and bad.

Similarly, actus reus requires that a crime should have a voluntary act or an elision or state of affairs. The orthodox interpretation of actus reus is that the defendant had to act freely, that his/her actions were mortal and that there was no fruitful causality between the actions of the defendant and dangerous effects of the actions of the defendant. These pre-requisites draw the hypotheticals of law that are fundamental to felony and, hence, that entails the existence of a mortal, whom the law might credibly implicate in the offense.

Use of Bharatiya Nyaya Sanhita, 2023

The Bharatiya Nyaya Sanhita 2023, preserving these key principles intact, transposes their necessary conservatism to the ultramodern era. Section 2 of the BNS has definitions of key words such as act, elision, and intention which are defined in terms that are highly mortal nature. Section 2 (26) of the definition of the meaning of person in the Sanhita is such that artificial legal entities may be persons under the liability of felony but does not regard the possibility of the felonious nature of the actions of the algorithmic or AI. The BNS includes all requisite vitals' which deal with mens rea under strict liability to crimes persona non grata. however, all affirmations deal with mortal agency and knowledge as a foundation on which guilt of felonious offences are inferred. By way of illustration, to freely beget hurt or to commit a felonious breach of trust there must be mortal action, mindfulness and intention which lead to felonious guilt, but which makes the latter a mortal construct only.

THE ARTIFICIAL INTELLIGENCE DILEMMA: AUTONOMOUS SYSTEMS AND THE CRISIS OF CONVENTIONAL LIABILITY.

The Nature of AI Autonomy

The modern AI systems, particularly those that incorporate machine learning and/or neural networks, possess features that pose a challenge to the traditional concept of agency and responsibility. Unlike the old-fashioned machines that adhere to the fixed programming, AI systems are able to learn and perform the functions based on their learning process, rather than as they have been originally programmed. It has an autonomy gap, or independence of the

decision-making and operation of an AI system, which makes it not subject to normal legal accountability.

Combined with the issues of emergent behaviour, any AI system becomes more difficult to study as they process large quantities of data in an unprecedented manner, creating interaction, and participating in complex entity recognition that can create capabilities and behaviours previously beyond the scope of operation. The non-predictability of an AI system brings about independence in at least two senses: it is difficult to expect a system to act and behave in certain ways since human beings can only predict, and they may restrict behaviour.

Mens Rea Problem of AI Systems

The attribution of mens rea to Artificial Intelligence (AI) systems can potentially introduce possibly the most significant challenge to the conventional liability paradigms. Advanced AI systems, as all other AI, lack state of consciousness, a set of emotions, or the ability to morally reason. They do not intend such things, in the colloquial meaning or in a more generalized meaning, working rather in a manner governed by a sequence of calculations to be carried out by a computer. Such calculations usually come down to the method of finding efficient means to accomplish the pre-conceived goals, or prevent errors through a prescribed model.

As an example, we could take a self-driving car that does not stop to a pedestrian, and causes a death. In the case of the human driver, who is in the same situation we would consider blaming knowledge regarding the pedestrian and the agency to either follow up on the rules of the road, or act in a cautious manner. Nevertheless, the malfunctioning of the AI system in this case was the result of computational choice relying on a sensor, which the algorithms, possibilities, and potential depending on its programming have taken into account, and perhaps what it already determined a priority. The AI system is not designed to cause harm; it is what its process makes it do since there is no exploited data, an intending program, and/or even the nature of the surrounding causes it to cause harm.

This brings the question of whether or not requirements of mens rea can be effectively discussed at all in regard to AI systems. Is it possible to attribute negligence to a system that does not even have care or concern? Is it recklessness on the part of an algorithm that judges risk as a mathematical and quantitative concept? These inquiries suggest how anthropocentric the traditional criminal law is and how inappropriate it becomes when it is utilized in relation to non-human decision-makers.

The Actus Reus Challenge

As physical aspect of crime involving AI may seem an even straightforward part of the problem as compared to the mens rea, the concept of actus reus presents significant challenges when it comes to AI. The traditional actus reus is a voluntary act of man, the AI systems are mechanically running processes that do not even necessarily fall in categories of voluntary action and omission.

The element of actus reus of causation is a far more complex issue when it comes to AI. In many cases, contemporary AI is executed by many-layered mechanisms, in which the designers might not even be aware of the route of input to output; hence, the causal pathway is opaque at most. The issue of the black box problem also adds more problems in determining the definite causal relationships that would be needed to apply criminal liability under the traditional law.

Moreover, actus reus which is voluntary presupposes human agency and choice. In the human world, AI systems are not self-operating and act as a programmed process, which reacts to data inputs. Even the voluntariness requirement might be completely invalidated in the AI context and such guidelines might require to be redefined, or at least rewritten in new frameworks of automation.

RECENT LEGAL REGULATIONS: BHARATIYA NYAYA SANHITA, 2023 AND AI

Provisions that are Applicable to AI-Related Offenses

Though the Bharatiya Nyaya Sanhita, 2023 does not mention AI systems, it contains some provisions which can be relevant to AI violation or crimes. Section 3(5) contains that the Sanhita applies to an offense committed outside of India in relation to computer resource(s) located in India which may involve harmful AI operation executed in a different jurisdiction.

Section 111 of the BNS deals with the organized crime that, in turn, might be applicable to some of the most advanced crimes that may be helped by AI and, thus, are the criminal enterprises relying on AI opportunities. Although shared might have been perceived as the criminal groups of human beings, the subtleties of the criminal organizations might not go far enough to deal with the lurking criminality of AI facilitated crimes.

Section 353 of BNS criminalizes and punishes misinformation and/or disinformation of false or misleading statements that are alleged to be true and bring about mischief in the people or fear of the people. This was provided in the context of AI-generated deep fakes and synthetic media, yet human actors are the targets of the provisions and not the AI systems.

Weaknesses of the Existing Model

The BNS has major weaknesses when it comes to addressing AI-related crimes despite these possible provisions that should be applicable despite it. The definitions and ideas of Sanhita

are so deeply entrenched in the essence of human agency that it becomes extremely challenging, possibly, even unfeasible to apply the principles of a well-known criminal law to the autonomous AI systems.

The majority of scholars admit that BNS has accountability gaps where malicious behaviour is not sufficiently punished through the current system of accountability legislation of AI. Such gaps are intensified by the fact that the AI can become autonomous and that the fact that a person is not able to control or predict their behaviour causes harm.

Besides, the BNS fails to increase the difficulties of evidence that AI systems present such as the black box problem, algorithmic bias, or failure to recreate decision making through a complex neural network. These challenges are enormous technical challenges that present a major implication to any potential AI-related crime in terms of fulfilling the aspects of the offence.

THEORETICAL APPROACHES TO AI CRIMINAL LIABILITY

Direct Liability Models

To criminalize AI, one of the proposed models is to consider complex AI systems as potential targets of criminal law. This can involve being able to afford some form of legal personality, such as corporations, to higher-level AI systems. Advocates of this model suggest that there are numerous advanced AI systems which, even at some point of reaching some standard of strong AI or artificial general intelligence, can comply with modified mens rea standards.

This would need new models of defining AI intention or knowledge as a computational and statistical phenomenon, rather than a human mental phenomenon. In the case of an example, the goals of an AI system may serve as an intent; and the information-processing capabilities of an AI system may serve as knowledge.

This is also a significant challenge both philosophically and practically. AI systems lack consciousness, consciousness, feeling or moral reasoning and they find it hard to determine genuine culpability as opposed to simple responsibility of causation. Moreover, the consequences of the conceptualization of AI systems as criminal actors, punishment, deterrence and rehabilitation, are still mostly unsettled in practice.

Liability Indirectly, via Human Beings

Another school of thought attributes the criminal responsibility of AI-related crime to human beings involved in the production and use of AI. It would put the liability on programmers, manufacturers, operators or users based on their position and control over the AI and any damages resulting.

It would also contain within this model theories of criminal liability depending on:

- **Negligent Design or Implementation:** In case, developers or manufacturers of an AI failed to take reasonable care to ensure that the AI was safe, performed reasonable testing or removed known dangers in the AI, they may face criminal liability.
- **Negligent Supervision:** In case the AI systems under the owner or control of the user or operator are not supervised, fixed and managed adequately, they may be liable as well.
- **Reckless Deployment:** Companies implementing artificial intelligence systems in the context in which the safety of the population might be at risk, and in which sufficient measures (such as an AI code of conduct) have not been established, may be accused of being recklessly negligent towards the population.

The updated paradigm is compatible with the foundational principles of criminal law; and can escape certain philosophical difficulties in the allocation of conduct to AI that is not conscious action. It is however, not necessarily enough to deal with the AI systems which are capable of autonomous behaviour which takes place without human control or supervision.

Strict Liability Regimes

The third alternative is to establish strict liability crimes that concern identified types of AI-related injuries. According to this model, acts involving AI would still be regarded as criminal acts despite there being no mens rea, and it would look at the occurrence of the illegal outcomes instead of the intentions of the people.

Risk-based AI-related applications where there are risk factors such as with autonomous vehicles, where AI systems are being used in health care delivery systems, or where there is the risk relating to the development or maintenance of critical infrastructure all would be potential areas of the strict liability would be effective. Strict liability would fully cover the mens rea problem and guarantee that severe harm involving AI be met by a criminal liability.

The greatest drawback is that strict liability within the criminal law is a controversial concept, as it compromises moral culpability principles. Any criminal law based on strict liability will always require us to be careful in its formulation and we would have to be careful in making sure that there is proportionality and we do not accidentally criminalise positive AI-related uses (such as development activities) which in some cases causes unintended negative harms.

COMPARISON ANALYSIS: INTERNATIONAL STRATEGIES

European Union Framework

The idea of holistic regulation of AI has been executed by the European Union with strong measures in an attempt to regulate AI via the AI Act, which eventually developed a risk-based

structure of AI regulation. Although, the main aim of the EU AI Act is administrative regulation and not criminal law, it does provide an idea of how legal systems can identify AI systems and classify and regulate these systems based on the risk profile.

The EU framework has a big emphasis on the human oversight requirements of the high-risk AI systems, with clearly defined and legally established duties of the AI developers and deployers. The criminal law approaches may find this legislative framework useful by developing the standards of care, which may create criminal liability in case of violation.

SUGGESTED REFORMS AND RECOMMENDATIONS.

Legislation: Development of a legislative framework: There is no specific law in place that regulates maritime piracy activities, yet the exploration of the international law of law of the sea prevails.

To respond to the challenges that AI systems present to criminal law in a way befitting the challenges, India should pursue large-scale revisions of its legislation, beyond what the Bharatiya Nyaya Sanhita, 2023 provides. The reforms must consist of:

(1) **AI criminal offences -** New or updated criminal offences against AI-specific harms such as the deployment of AI negligently, failure to provide AI safety checks or measures in the development or use of a product and careless AI automation.

(2) **Hybrid liability frameworks -** A number of autonomous AI systems will be and will be more than the actual liability of human beings, and will have hybrid liability frameworks that mirror this, and it is critical to increase the human liability to practice proper oversight and control of AI systems.

(3) **Risk-based classifications -** Risk-based criminal liability grounded on the potential damage and autonomy of the AI systems.

United States Approach

The United States has been relying mostly on the current legal systems in an effort to deal with AI-related problems, and numerous federal agencies have given out guidelines on the application of AI with reference to the field. Self-regulation of industries and voluntary requirements has been stressed on in the American approach, and matters of legal structures have gained greater prominence over the last few months.

In the United States, latest trends are proposed bills on algorithmic accountability, and AI transparency, concerning industry standards on how developers, users and consumers of the platform use the platform. Possibly, proposed legislation has a chance to impact criminal law application by setting standards of behaviour among developers and users of AI.

The Singapore Model of AI Governance

Singapore has established a full system of AI governance, which demands voluntary uptake of ethical AI, but keeps it open to innovation. The Singapore model gives precedence to the sectoral applications and risk-based approaches providing a practical model of how the criminal law could respond to AI systems in vertical applications.

PROCEDURAL AND EVIDENTIAL REFORM

The unique characteristics of AI systems necessitate a different reform of the criminal procedure and evidence law:

- **Technical Expertise:** New Judicial or courts to handle criminal cases that involve AI and need some technical expertise.
- **Algorithmic Audit:** Legal reform should be provided to support the application of algorithmic audit and forensic analysis of AI systems when it is applied to criminal justice.
- **Transparency requirements:** It should be provided in the law that the transparency and explanations of AI systems should be made in cases where criminal liability can be incurred.

Regulatory Integration

The criminal law reform measures must be aligned to overall AI regulation measures:

- **Cross-Sectoral Collaboration:** Cooperation between criminal law and administration regulation to ensure coherence in AI regulation.
- **International Coordination:** International collaboration on AI-related cross border offences is required.
- **Industry Standards:** Use industry standards and best practices to include in the criminal law.

CHALLENGES IN PRACTICAL IMPLEMENTATION

Technical Complexities

The implementation of AI-centred criminal law has significant technical problems:

- **Black Box Issue:** The black-box problem is associated with the majority of AI systems, so it is difficult to replicate the process of decision-making in a criminal investigation.
- **Quickly-Changing Technology:** The rapidity in technological change in the field of AI frequently outsmarts the law that operates at a much slower rate.
- **Jurisdiction:** The universal nature of AI as an area of development poses a problem of jurisdiction to the criminal enforcement.

Legal System Adaptation

Introducing the issues of artificial intelligence into criminal law entails massive adaptation of the majority of legal institutions:

- **Judge Knowledge:** Judge and legal practitioners need to be trained to handle AI technologies in a criminal case.
- **Expert Witness Paradigm**: Prepare the potential of expert witness theme on artificial intelligence systems in a criminal trial.
- **Precedents:** Establish case laws and law precedents to continue criminal cases that are AI-oriented.

ETHICAL AND POLICY ISSUES

Striking a balance between accountability and Innovation

It is important to balance innovation and responsibility, in every criminal law reformation to control AI systems. The existence of strong criminal liability regimes might also discourage the advancement of AI innovation and restrict the unavoidable benefits that AI may have on society, and weak accountability regimes might put the population at risk of unacceptable levels.

Human Rights and Due Process

The criminal laws unique to AI should maintain basic human rights and human rights to due process that are present in common law in Canada as well as in the United Kingdom. This would involve the ability to have trustworthy admissible AI-generated evidence, the ability that the defendant should be able to object to AI-generated evidence accordingly, and the fact that the damage caused by AI-generated perpetrators should be reflective of morally culpable actions.

Social Justice and Equality

The social justice and equality will have to be considered in the development of AI-specific criminal law. The AI criminal law has to take into account the existing literature, analysing the issues of algorithmic bias and discriminatory effects of these systems. Preferably, the criminal law must make sure that AI systems do not benefit but instead propagate, and indeed, make worse, the existing disparities in the society, and structures will also make sure that the plaintiffs are regarded as equal before the law.

FUTURE PROJECTIONS AND NEW PROBLEMS

Artificial General Intelligence

With the future development of the AI system into more sophisticated and closer to the artificial general intelligence, the questions regarding the vexing issues of criminal liability will become

much more complex. The future law systems will need to grapple with the reality where AI systems have consciousness-like behaviour or they are capable of knowing the final effects of their actions.

Weapons and Infrastructure Relying on Autonomous Weapons

The problem of using AI in military use and critical infrastructure creates especially problematic issues with regard to criminal law. Potential dangers of the mass harms as caused by the AI systems in these settings might require the introduction of legal provisions that operate alongside, or even above, the status quo familiar criminal law alternatives.

Global Governance

Creation and implementation of AI systems will be influenced at an international level and the related liability regimes will require the organization of the criminal law across the borders. This would perhaps require formulation of international treaties or agreements on AI criminal liability, where treaties have been made in the past in regard to cybercrime.

CONCLUSION

The advent of artificial intelligence poses the primordial issue to the basis of criminal law as laid in the Bharatiya Nyaya Sanhita, 2023. The conventional mens rea-actus reus model is not well applicable to autonomous AI systems that do not act based on awareness or even moral judgment. The BNS and the law, in general, are based on anthropocentric assumptions and fail to consider the lack of responsibility in autonomous AI systems and associated circumstances. The liability of AI cannot be dealt with in a fragmented manner but through hybrid accountability systems, risk oriented and tailored process of addressing the technical side of AI cases. The policies should strike a balance between technological innovation and responsibility and the rights based on human dignity. As one of the key AI players, India requires systemic legal and institutional changes and cooperation on the global level. They require pluralistic, situational solutions, which are needed because AI applications are diverse and, therefore, require different approaches. The BNS is a progressive move, although only radical changes and social discourse can help the legislation to protect the justice in the era of AI to the fullest.

LABOURS, HUMAN RIGHTS, AND INDIAN CONSTITUTION: ANALYSING OFFENCES AND PENALTIES UNDER IR CODE 2020

Albin Siby Thomas[353]

ABSTRACT

From the beginning of mankind till this present century of AI and digital technology, the labour community are continually subjected to various human rights violations not only in terms of gender or caste, but also with the influence and power of law and law-making bodies, and there is a subsequent peril of violations and infringements over their human dignity and basic expression. The new labour codes introduced in India, specifically the Industrial Relations (IR) code in 2020, which seeks the replace and consolidate existing labour laws have dealt with unethical and illogical means and methods of new classification of various offences and penalties in the code in such a way that it goes against the violation of the social, political, and economic rights of the labour community and provides unnecessary categorization and violation to the basic fundamental rights of the labour community under part III of the Indian constitution. The various provisions under this code tries to instill fear and bring a criminal nature of punishment with an increased number of months in terms of imprisonment and increased penalty rates extending to lakhs as these stringent laws not only restrict labour freedom and movements, but moreover, it is a threat to the democratic and socialist structure of our nation, which of the finest example that how law can go against the fundamentals of the identity of our nation as prescribed in the preamble of Indian constitution.

Keywords- Constitution, Labour Freedom, Rights, Preamble

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INTRODUCTION

Labors are the backbone of every society. In fact, every human being in or other way are labors who are associated in any specific occupation in a particular area or across diverse group of occupational areas[354]. Workers' rights encompass a large array of human rights from the right to decent work and freedom of association to equal opportunity and protection against discrimination. Specific rights related to the workplace include health and safety in the workplace and the right to privacy at work, amongst many others. In history, labors are called with nickname of "slaves" in which the Europeans buy and brought humans in African continent and always considered them as only 'second class's citizens with extreme violations of basic human rights, leading to an undignified life. The labors were organized and formally associated as a group during the industrial revolution of 18th and 19th CE as a response towards extreme exploitation of workers in industries of England. In the year 1890, Lokhande founded the Bombay Mill Hands Association as which was the beginning of the labour union movement in India.

Even during pre-independence struggle, the Indians who worked for the Britishers were also treated with extreme violations of dignity causing extreme tortures to live a dignified life. In the independence era, it falls under the Concurrent List of the Constitution. Therefore, both Parliament and state legislatures can make laws regulating labour. The Minimum Wages Act 1948, the Payment of Wages Act 1936, The Factories Act 1948, The Industrial Disputes Act 1948, etc, are some of the major and earlier laws which deal with security, wages, terms and conditions, penalties, forming associations, etc. of the laborers and labour groups. The ruling NDA regime in India pushed through three labour codes in September 2020 namely the Code on Social Security; Occupational Safety, Health and Working Conditions Code; and the Industrial Relations Code to replace to existing and old labour laws. This study is an endeavor towards a critical examination of the offences and Penalties under the Industrial Relations Code, 2020 and The Industrial Disputes Act of 1948.

INDIAN CONSTITUTION AND LABOUR RIGHTS

The Indian Constitution enshrines several fundamental rights and directive principles of state policy that protect the rights of laborers. Some of the key constitutional provisions for labour rights in India are:

- Right to Equality (Article 14): Article 14 of the Constitution guarantees the right to

[354] Rina Agarwalla, *Informal Labor, Formal Politics and Dignified Discontent in India* (Cambridge Univ. Press 2013).

equality before the law and equal protection of laws to all citizens, including workers. The said provision guarantees that employees are treated fairly and without bias in all employment- related matters and are not subjected to discrimination on the basis of race, religion, caste, gender, or any other factor. In the case of Randhir Singh[355] [2], the Supreme Court of India held that the principle of equal pay for equal work is a constitutional right.

- Right to Freedom (Article 19): Article 19 guarantees certain freedoms, such as the freedom of speech and expression, assembly, and association, which are necessary for labour rights. This provision empowers workers to form trade unions and engage in collective bargaining to protect their interests and improve their working conditions.
- Right to Life and Personal Liberty (Article 21): The Indian Constitution guarantees the Right to Life and Personal Liberty, which has been interpreted by the judiciary to include the right to work with dignity and in a safe and healthy environment In the case of Charan Lal Sahu[356], the Supreme Court of India held that the right to health and safety at the workplace is a fundamental right of workers. The court emphasised that any violation of this right can be challenged under Article 32 of the Constitution, which guarantees the right to constitutional remedies, and that it is the duty of the employer to provide a safe working environment. This case brought to light how important it is to safeguard employees' health and safety as a crucial component of their right to life and personal freedom.
- Right against Exploitation (Article 23 and 24): Article 23 prohibits trafficking and forced labor, and Article 24 prohibits the employment of children below the age of 14 in any hazardous industry. These provisions seek to protect workers' rights to safe and healthy working conditions and to stop the exploitation of workers, especially vulnerable groups like children and trafficked individuals. In the case of Bandhua Mukti Morcha[357], the Supreme Court of India recognized the right to live with dignity as a fundamental right, and held that bonded labour or child labour is a form of modern-day slavery and is thus unconstitutional for violating the fundamental rights of workers.
- The Directive Principles of State Policy contained in Part IV of the Constitution provide for the protection of workers' interests and rights. Article 39 of the Constitution outlines various principles, such as the right to work, just and humane conditions of work, equal

[355] *Randhir Singh v. Union of India*, (1982) 1 SCC 618 (India).
[356] *Charan Lal Sahu v. Union of India*, (1990) 1 SCC 613 (India).
[357] *Bandhua Mukti Morcha v. Union of India*, (1984) 3 SCC 161 (India).

pay for equal work, and protection against unemployment and exploitation. Article 39(a) directs the State to ensure that the citizens, men, and women equally have the right to an adequate means of livelihood. Article 39(b) directs the State to ensure that there is no concentration of wealth and means of production in a few hands, thereby promoting a more equitable distribution of resources. Article 38 and 41 of the Constitution highlight the state's duty to promote social justice and ensure the well-being of workers. Article 38 directs the state to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life. Article 41 requires the state directs the state to secure the right to work, education and public assistance in certain cases such as unemployment, old age, sickness and disablement. Though not enforceable by courts, these principles guide the state in formulating policies and laws related to labour rights. The Constitution also provides for the establishment of labour courts and tribunals for the speedy resolution of labour disputes.

Article 323A provides for the establishment of administrative tribunals for the adjudication of disputes related to recruitment and conditions of service of persons appointed to public services and posts.

A COMPARATIVE STUDY OF OFFENCES AND PENALTIES OF IR CODE AND INDUSTRIAL DISPUTES CODE

1. The Industrial Disputes (ID) Act of 1948-

The Chapter VC of the ID act titled "UNFAIR LABOUR PRACTICES" particularly comprises of two sections namely-

- Section 25T. Prohibition of unfair labour practice- Prohibits no employer or workman or a trade union to be involved in unfair labour practice.
- Section 25U. Penalty for committing unfair labour practices- It provides punishment with imprisonment for a term which may extend to six months or with fine which may extend to one thousand rupees or with both.

The major offences of the act can be defined and derived from "unfair labour practice" means any of the practices specified in the Fifth Schedule as defined in section 2 (ra) of the ID act. The fifth Schedule contains following practices namely-

a. To interfere with, restrain from, or coerce, workmen in the exercise of their right to organize, form, join or assist a trade union.

b. To dominate, interfere with or contribute support, financial or otherwise, to any trade union.

c. To establish employer sponsored trade unions of workmen.

d. To encourage or discourage membership in any trade union by discriminating against any workman.

e. To recruit workmen during a strike which is not an illegal strike.

f. Failure to implement award, settlement or agreement.

g. To indulge in acts of force or violence.

h. To refuse to bargain collectively, in good faith with the recognised trade unions.

i. Proposing or continuing a lock-out deemed to be illegal under this Act.

The following table shows the various offences and the punishments listed for it under **Chapter VI 'Penalties' from Section 26 to 31.**

Section	Offence	Punishment
26	Illegal strikes Lock Outs	• Imprisonment for a term which may extend to one month, or with fine which may extend to fifty rupees, or with both • Imprisonment for a term which may extend to one month, or with fine which may extend to one thousand rupees, or with both
27	Instigation	Imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both
28	Giving financial aid to illegal strikes and lock-outs	Imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both
29	Breach of settlement or award	E punishable with imprisonment for a term which may extend to six months, or with fine, or with both or compensation
30	Penalty for disclosing confidential information	Imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both

30 a	Penalty for closure without notice	Imprisonment for a term which may extend to six months, or with fine which may extend to five thousand rupees, or with both
31	Penalty for other offences	Imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both
31 a	Compounding of offences	Differs from amount and wage according to different offences.

As per sec 32, in order to establish a person or authority as an offender under this act, it must be proved that the offence was committed with his knowledge or consent and shall be deemed to be guilty of such offence.

2. Industrial Relations Code 2020- The chapter 7 of the IR code under sec 84 shall define 'unfair labour practice' as specified in the Second Schedule. They are-

a. To interfere with, restrain from, or coerce, workmen in the exercise of their right to organize, form, join or assist a trade union.

b. To dominate, interfere with or contribute support, financial or otherwise, to any trade union.

c. To establish employer sponsored trade unions of workmen.

d. To encourage or discourage membership in any trade union by discriminating against any workman.

e. To recruit workmen during a strike which is not an illegal strike.

f. Failure to implement award, settlement or agreement.

g. To indulge in acts of force or violence.

h. To refuse to bargain collectively, in good faith with the recognised trade unions.

i. Proposing or continuing a lock-out deemed to be illegal under this Act.

The section 85 and 86 of chapter 8 of the IR Code provides, power of officers of Appropriate Government to impose penalty in certain cases. They are-

Section	Offence	Punishment
85(2)	Person has committed any offence under the provisions referred to in sub- section (1), of section 85	The officer may impose such penalty as he thinks fit in accordance with such provisions.

85(3)	Person fails to pay the penalty referred to in section 85 (2) within a period of ninety days	Punishable with fine which shall not be less than fifty thousand rupees but may extend up to two lakh rupees.
86(1)	Provisions of section 78 or section 79 or 80	Punishable with fine which shall not be less than one lakh rupees, but which may extend to ten lakh rupees.
86(2)	Again, commits the same offence under section 78 or section 79 or section 80	Be punishable with fine which shall not be less than five lakh rupees, but which may extend up to twenty lakh rupees or with imprisonment for a term which may extend to six months, or with both.
86(3)	Contravenes the provisions of section 67 or section 70 or section 73 or section 75	Be punishable with fine which shall not be less than fifty thousand rupees, but which may extend to two lakh rupees.
86(4)	Again, commits the same offence under section 67 or section 70 or section 73 or Section 75	Be punishable With fine which shall not be less than one lakh rupees, but which may extend to five lakh Rupees or with imprisonment for a term which may extend to six months, or with both.
86(5)	Commits any unfair labour practice as specified in the Second Schedule	Be punishable with fine which shall not be less than ten thousand rupees, But which may extend to two lakh rupees.
86(6)	After conviction for any unfair labour practice again commits the same offence,	Be punishable with fine which shall not be less than fifty thousand rupees, but which may extend to five lakh rupees or with imprisonment for a term which may extend to three months, or with both.
86(7)	If default is made on the part of any registered Trade Union in giving any notice or Sending any statement	Shall be punishable with fine which shall not be less than one thousand rupees, but which may extend to ten thousand rupees and any continuing default shall be punishable with an additional penalty of

		fifty rupees per day so long as the default Continues.
86(8)	Wilfully makes, or causes to be made, any false entry in, or any omission from sec 26.	Be punishable with Fine which shall not be less than two thousand rupees, but which may extend to twenty thousand rupees.
86(9)	Any person who, with intent to deceive, gives to any member of a registered Trade Union or to any person intending or making alterations	Punishable with fine which shall not be less than five thousand rupees, but which may extend to twenty thousand rupees.
86(10)	An employer who fails to submit draft standing orders as required by section 30	shall be punishable with fine which shall not be less than fifty thousand rupees, but which may extend to two lakh rupees and in the case of a continuing offence with an additional fine of two thousand rupees per day till the offence continues.
86(11)	An employer who does any act in contravention of the standing orders	Punishable with fine which shall not be less than one lakh rupees, but which may extend to two lakh rupees.
86(12)	Any person who after conviction under sub-section (11) again commits the same offence	Punishable with fine which shall not be less than two lakh rupees, but which may extend to four lakh rupees
		or with imprisonment for a term which may extend to three months, or with both.
86(13)	Strike which is illegal under this Code	Punishable with fine which shall not be less than one thousand rupees, but which may extend up to ten thousand rupees or with imprisonment for a term which may extend to one month, or with both.

86(14)	Lock Out	Shall be punishable with fine which shall not be less than ten thousand rupees, but which may extend to fifty thousand rupees or with imprisonment for a term which may extend to one month, or with both.
86(15)	Any person who instigates or incites others to take part in, or otherwise acts in furtherance of, a strike or lock-out which is illegal	Be punishable with fine which shall not be less than ten thousand rupees, but which may extend to fifty thousand rupees or with imprisonment for a term which may extend to one month, or with both.

As per sec 88 (Offences by companies) -In order to establish a person or authority as an offender under this act, it must be proved that the offence was committed with his knowledge or consent and shall be deemed to be guilty of such offence.

OBSERVATIONS AND INFERENCES

- Increased Amount of Fine and Imprisonment- As compared with the punishments under ID Act and IR code, the IR code has increased its amount of penalty and years of imprisonment considerably in a large number, from thousands of rupees and a maximum of six-month imprisonment (as mentioned in the ID act) to an increased number of ten thousand rupees to five lakh rupees as the maximum amount of fine and with a minimum 1-month imprisonment for all offences.
- Penalties for Compounding Offences- The new IR code has brought a significant change in its terms of punishments relating to compound offences as it prescribes new modes of punishments under section 85 & 86 for repeating the previous offences that have been committed and the fine and imprisonment
- Severe Punishments and Restrictions- As similar to the ID Act, the new IR code has also made lockouts and strikes as illegal, as it erodes the notions of democratic speech and expression in the labour movements. The new code has also made mandatory imprisonment of 1 month or a fine or both in all offences, which were limited to only fines for various offences under the previous ID act.
- Financial constraints on laborers- The increased number of the maximum amount of fines

to 5 lakh rupees will negatively affect the economic status of laborers as the labour community who are mostly focused on the unorganized sector will salaries taken in dependency of daily wages and work will be affected negatively due to a hike in the increasing number of amount of penalties.

- Increased number of offences- In the ID Act of 1948, it consisted of offences less than 10 with prescribed penalties as comparing it with the new IR code, it can be easily understood that the total number of offences have increased to nearly 20, which is almost double than the number of offences mentioned in the previous ID act and restricts labour movements with unethical shades of law.
- Complicated and formal Procedures- The new IR code is more procedural and lengthiest as compared with the previous labour laws as it creates confusion regarding the technicalities of various subject matters that the code deals as it includes offences, penalties etc. as the labour community may find it all complicated as it will causes issues for them to connect with the various aspects of law.

CONCLUSION

The provisions of the IR Code are aimed at incentivizing employers to increase the size of their undertakings, in turn increasing the employment opportunities for workers. The recent economic survey, 2019-20, too had indicated that greater flexibility is labour laws leads to a higher quintile of entrepreneurial activity. However, in past experience, various reports over the pro-employer amendments made by Rajasthan and other states had indicated that similar labour reforms did not result in boosting industrialization or job creation owing to reasons specific to the particular states. Nonetheless, the scale of amendments is substantially different this time and thus, it remains to be seen whether these reforms will be able to contribute to our economy's revival or not. It would also be interesting to see how the government handles the enforcement of these labour reforms, checks evasion by employers and breaks the shackles of poor implementation and administrative hurdles. Nevertheless, it's now time for establishments to start preparing for the enforcement of this new regime.

In recent years, welfare boards have multiplied in several states. However, they are limited because many are not tripartite and lack defined funding sources. Nevertheless, informal workers' organisations across sectors remain committed to demanding and implementing welfare boards to consolidate informal workers' identity, provide a forum for their concerns, and provide an institutional mechanism for the delivery of worker identity cards and

benefits. Labour rights are human rights. They protect against unjust and hazardous conditions of work that harm not only the workers, but their families, employers and members of local communities[358].

[358] Int'l Labour Org., *Labour Rights Are Human Rights for All Workers*, https://www.ilo.org/resource/article/labour-rights-are-human-rights-all-workers (last visited Nov. 15, 2025).

CONSTITUTIONAL AND HUMAN RIGHTS

***Arihant Jain*[359]**

ABSTRACT

India's constitutional ethos, a shining example of justice, liberty, and equality, has been dynamically reinterpreted by judicial verdicts, legislative alterations, and global pressures, redefining human rights and fundamental rights jurisprudence. This article discusses the leadership of the judiciary in redefining rights through path-breaking judgments, broadening the scope of LGBTQ+ rights. These judgments reflect the judiciary's adherence to constitutional morality rather than social customs, as seen in progressive reforms such as same-sex marriage and temple entry for women (Sabarimala, 2018). But unwarranted judicial domination through Public Interest Litigations (PILs) is problematic in terms of eroding the separation of powers. Constitutional amendments like the 86th Amendment on education have fortified socioeconomic rights, with judicial interpretations connecting Article 21 with environmental protection (MC Mehta v. Union of India, 1986)360. Pieces of legislation like UAPA and AFSPA, along with preventive detention and surveillance, test privacy and liberties in the wake of Puttaswamy (2017). The digital age makes Article 19(1)(a) challenging with hate speech and regulating social media, and there is a need for legal reforms with the presence of AI and big data's effect on due process. The Citizenship Amendment Act (CAA)[361] *and National Register of Citizens (NRC)*[362]*raises questions on citizenship and refugee rights, implying conflicts with-international human rights obligations. Socioeconomic policy such as caste-based vs. economic reservations and gender-based affirmative action seeks inclusion but is constitutionally precarious. The Uniform Civil Code debate weighs religious freedom and gender rights, and prison conditions and speedy trial rights reveal criminal justice lacunae in favour of rehabilitation over retribution. Internationally, India's jurisprudence is in consonance with transnational human rights movements in prioritizing socio-economic rights.*

[359] Arihant Jain, *Guru Gobind Singh Indraprastha University*.
[360] M.C. Mehta v. Union of India, (1987) 1 SCC 395 (India).
[361] *Citizenship (Amendment) Act*, No. 47 of 2019 (India).
[362] *Citizenship Act*, 1955, as amended by the Citizenship (Amendment) Act, 2003 (India) (mandating the National Register of Citizens).

INTRODUCTION

India's Constitution, which came into force in 1950, is a living and evolving document that has been shaped by judicial interpretations, constitutional amendments, and international influences. Founded on justice, liberty, equality, and fraternity[363], it has been a cornerstone of safeguarding fundamental rights and developing human rights jurisprudence. This article discusses the multi-dimensions of India's constitutional landscape, specifically judicial interventions, legislative trends, and international influences that have developed fundamental freedoms, socio-economic rights, and human rights protections. It analyses landmark judgments, the balance of powers, and emerging challenges in the digital and globalized world.

JUDICIAL INTERPRETATIONS REDEFINING FUNDAMENTAL RIGHTS

The Indian judiciary has taken a pioneering role in interpreting fundamental rights, primarily under Articles 14, 19, and 21 of the Constitution. In Maneka Gandhi v. Union of India (1978)[364], the Supreme Court departed from the literal interpretation of Article 21 (right of life and liberty) to include due process, emphasizing that any deprivation would have to be reasonable, fair, and just. This departed from the narrow approach in A.K. Gopalan v. State of Madras (1950)[365], where Article 21 was interpreted narrowly. The Navtej Singh Johar v. Union of India (2018)[366] ruling decriminalized consensual homosexual relationships by invalidating Section 377 of the Indian Penal Code, declaring the right to love an integral part of Article 21. Likewise, Shayara Bano v. Union of India (2017)[367] held triple talaq to be unconstitutional, affirming gender equality under Article 14. Both the judgments are the authentic examples of the judiciary's role in making constitutional rights compatible with changing societal values, sometimes going against strong-rooted norms.

The Connection Between Constitutional Reform and Basic Liberties

Constitutional amendments have made a profound impact on liberties at the core. The First Amendment (1951) brought in reasonable restrictions in terms of Article 19(2), weighing free speech against public order. The interaction is complex: amendments can reinforce rights but also the potential for overreach. An example is the 103rd Amendment (2019) inserting economic reservations, with debate on whether it dilutes caste-based affirmative action under Articles 15 and 16. The role of the judiciary to examine amendments, as in Kesavananda

[363] *Constitution of India*, pmbl. (liberty, equality, fraternity).
[364] *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248 (India).
[365] *A.K. Gopalan v. State of Madras*, 1950 SCR 88 (India).
[366] *Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1 (India).
[367] *Shayara Bano v. Union of India*, (2017) 9 SCC 1 (India).

Bharati v. State of Kerala (1973), ensures the fundamental structure of the Constitution is not changed.

INTERNATIONAL INFLUENCE ON INDIA'S HUMAN RIGHTS JURISPRUDENCE

India's human rights jurisprudence is also directed to a significant extent by international instruments including the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR)[368]. The judgment in Vishaka v. State of Rajasthan (1997),[369] which laid down guidelines to avoid sexual harassment at work, was guided by the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). Similarly, the judgment in Puttaswamy v. Union of India (2017), which held privacy as a constitutional right, was guided by international privacy standards, including the General Data Protection Regulation (GDPR)[370] of the European Union. Transnational human rights movements have also extended to India. International pressure for LGBTQ+ rights led Navtej Singh Johar, and environmental rights under Article 21 are concerned with international commitments on global climate change, such as the Paris Agreement. There are also tensions, however, where domestic legislation, such as the Citizenship Amendment Act (CAA), conflict with international refugee protections under the 1951 Refugee Convention, to which India is not a signatory.

THE CONSTITUTIONAL VALIDITY OF PREVENTIVE DETENTION ACTS

The Supreme Court, in A.K. Roy v. Union of India (1982), validated their constitutionality under Article 22 but insisted on strict procedural safeguards. Opponents contend that these acts contravene the guarantee of due process under Article 21, as extended detention without a judicial review can be abused. The judiciary has sought to balance security and freedom. In Additional District Magistrate, Jabalpur v. Shivakant Shukla (1976), the Court famously upheld Emergency detention, a decision later criticized. Recent decisions, including D.K. Basu v. State of West Bengal (1997), necessitate protection from custodial excesses, showing a cautious approach to preventive detention.

SURVEILLANCE ACT AND THE RIGHT TO PRIVACY

The 2017 Puttaswamy judgment ruled privacy as a fundamental right under Article 21, as a reply to the challenge of surveillance laws such as the Information Technology Act, 2000, and

[368] *International Covenant on Civil and Political Rights*, Dec. 16, 1966, 999 U.N.T.S. 171.
[369] *Vishaka v. State of Rajasthan*, (1997) 6 SCC 241 (India).
[370] Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 Apr. 2016, on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, 2016 O.J. (L 119) 1 (General Data Protection Regulation).

the Aadhaar Act, 2016371. The Court emphasized proportionality and necessity in state surveillance while considering schemes such as the Central Monitoring System. Unclear provisions in laws such as the IT Rules, 2021, are causes of concern for unchecked data collection and bulk surveillance. Privacy and security are always a contentious balancing act. The Pegasus scandal exposed the weaknesses of online privacy, and there are demands for strong data protection legislation. The judiciary's requirement of "legitimate state interest" and "least intrusive means" in Puttaswamy is a high threshold, but implementation is behind, particularly in AI-powered surveillance.

HUMAN RIGHTS ISSUES WITH UAPA AND AFSPA

Human rights abuses have been attributed to the Armed Forces (Special Powers) Act (AFSPA)[372] and the Unlawful Activities (Prevention) Act (UAPA)[373]. Articles 21 and 22 are violated by the UAPA's expansive definitions of "terrorism" and extended detention without bail, as demonstrated in cases such as Bhima Koregaon. When the AFSPA is used in unstable regions like Jammu & Kashmir, it gives the military broad authority, which has given rise to claims of extrajudicial executions and torture. Human rights activists contend that these laws go against the ICCPR's duties and call for changes to bring them into compliance with the constitution's guarantees of due process and liberty.

JUDICIARY AND CONSTITUTIONAL MORALITY

The judiciary has given precedence to constitutional morality over social norms, as in the 2018 Sabarimala judgment, when the women's entry into the temple was decided under Articles 14 and 25, and in the Navtej Singh Johar judgment upholding LGBTQ+ rights. These judgments demonstrate adherence to equality and dignity and thus defy patriarchal and heteronormative norms. But they also court opposition, as in the case of the Sabarimala protests, which demonstrate the clash between progressive judgments and opposition from society.

SOCIAL REFORMS THROUGH JUDICIAL INTERVENTIONS: CASE STUDIES

Judicial activism has propelled social change. In Vishaka, the Court dealt with workplace harassment and created enforceable standards. Shayara Bano put an end to triple talaq, promoting gender justice. Sabarimala and Navtej Singh Johar dealt with religious and sexual orientation discrimination. These decisions reflect the judiciary as change-maker, but overreach can push away conservative forces, as in the Sabarimala review petitions.

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[371] *Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act*, No. 18 of 2016 (India).
[372] *Armed Forces (Special Powers) Act*, No. 28 of 1958 (India).
[373] *Unlawful Activities (Prevention) Act*, No. 37 of 1967 (India).

Restrictions on Judicial Intervention

Judicial activism, especially by PILs, has extended rights but created concerns of overreach. In Jarnail Singh v. Lachhmi Narain Gupta (2018)[374], the Court interpreted reservation policies, but critics point out such interventions as an intrusion into the legislative space. The Kesavananda Bharati doctrine defends judicial review without undermining democratic processes, but Sabarimala cases point to the danger of upsetting social harmony when courts override cultural practices.

Balancing Separation of Powers

The judicial function of reviewing legislations (Kesavananda Bharati) and orders of the executive (Puttaswamy) provides checks and balances. Excess use of PILs and decisions such as National Judicial Appointments Commission (NJAC)[375] (2015), declaring a judicial recruitment system unconstitutional, also indicate conflicts with the legislature. The doctrine of separation of powers[376] demands courts not to enter legislative and executive spheres but to safeguard rights.

Socio-Economic Rights: Health And Education

Article 21A and the Right of Children to Free and Compulsory Education Act, 2009, assure education, whereas Bandhua Mukti Morcha v. Union of India (1984) equated Article 21 with socio-economic rights such as health. The judiciary has imposed hospital accountability (Paschim Banga Khet Mazdoor Samity v. State of West Bengal, 1996)[377] but lags in implementation, considering the lack of resources and the intricacies in policy.

Euthanasia And the Right to Die

Article 21, safeguarding the right to die with dignity378. The judgment balances autonomy with safeguards against abuse, as per international best practices in countries such as the Netherlands. Active euthanasia remains controversial, indicative of ethical challenges.

Death Penalty and Human Rights

The death penalty, maintained in Bachan Singh v. State of Punjab (1980) on the "rarest of rare" doctrine, is challenged for violating Article 21 and ICCPR norms. Shatrughan Chauhan v. Union of India (2014) raised the issue of mercy petitions and mental health, opening the door to a move towards life imprisonment and rehabilitation rather than retribution. Article 19(1)(a)

[374] *Jarnail Singh v. Lachhmi Narain Gupta*, (2018) 10 SCC 396 (India).
[375] *Constitution of India*, art. 124A (National Judicial Appointments Commission, repealed).
[376] *Constitution of India*, arts. 50, 121–122
[377] *Paschim Banga Khet Mazdoor Samity v. State of West Bengal*, (1996) 4 SCC 37 (India).
[378] *Common Cause v. Union of India*, (2018) 5 SCC 1 (India) (recognizing right to die with dignity under Article 21).

in the Digital Age. Article 19(1)(a) promises free speech, but social media platforms promote hate speech, and hence, the need for their regulation. The Shreya Singhal v. Union of India (2015) ruling struck down Section 66A of the IT Act for vagueness reasons, safeguarding online speech. IT Rules, 2021, introduce content moderation, and hence, the peril of censorship. Balancing free speech and public order is still an issue.

Social Media and Legal Reforms

Social media platforms, unregulated by the law as it stands, facilitate hate speech and misinformation. The Anuradha Bhasin v. Union of India (2020)[379] judgment prioritized access to the internet under Article 19 but intermediary liability under IT Rules, 2021, is risk of overreach. Legal reform must balance responsibility without suppressing expression.

Caste-Based Vs. Economic Reservations

The 103rd Amendment added economic reservations with debates regarding dilution of caste-based quotas under Articles 15 and 16. Indra Sawhney v. Union of India (1992) set the limit on reservations at 50%, but economic considerations complicate this system. The judiciary must find a balance between equality and affirmative action for the marginalized group.

Gender-Based Affirmative Action

Reservations on the basis of gender, i.e., in panchayats (73rd Amendment), are constitutionally valid under Article 15(3). Joseph Shine v. Union of India (2018)[380], which legalized adultery, furthered gender equality. Policies, however, should not be symbolic and against systemic barriers to ensure substantive equality.

Inclusion Of Marginalized Communities

Legislative and judicial actions, such as Navtej Singh Johar and Scheduled Castes/Tribes reservations, guarantee inclusion. The Transgender Persons (Protection of Rights) Act, 2019, is a welcome move, but implementation loopholes as well as social stigma continue and strong legal frameworks are needed.

Article 21 And Ecological Protection

The courts have also associated Article 21 with environmental rights, as for instance in MC Mehta v. Union of India (1986), where pollution was brought under control. PILs have promoted environmental accountability, albeit with uneven application.

PILs And Environmental Activism

[379] *Anuradha Bhasin v. Union of India*, (2020) 3 SCC 637 (India).
[380] *Joseph Shine v. Union of India*, (2019) 3 SCC 39 (India).

PILs have played a crucial role in environmental law, with judgments such as T.N. Godavarman Thirumulpad v. Union of India (1997)[381] safeguarding forests. Judicial overuse of PILs, however, risks judicial encroachment, making them ineffective. The judiciary has to be activist with restraint.

Corporate Responsibility and Climate Litigation

Climate change suits such as Vellore Citizens Welfare Forum v. Union of India (1996)[382] hold companies to account under the polluter-pays principle. India's commitments under the Paris Agreement require more robust legal regimes in an attempt to mitigate corporates' environmental effects.

Personal Laws and Uniform Civil Code

The UCC controversy pits the mandate of Article 44 against religious freedom under Article 25. Clashes between women's rights and personal laws are found by Shayara Bano and Sabarimala. The courts must balance pluralism and secularism, as in hijab ban cases, in order to ensure equality without compromising diversity of culture.

Secularism And Pluralism

India's secular constitutional model, backed by Articles 25-28, has to reconcile religious freedom with equality. S.R. Bommai v. Union of India (1994) reasserted secularism as a constitutional model, but hijab ban cases (Aishat Shifa v. State of Karnataka, 2022)[383] challenge the equilibrium, necessitating circumspect judicial interpretation.

CAA-NRC And Human Rights

The Citizenship Amendment Act (2019)[384] and National Register of Citizens have also created human rights issues, which could make minorities stateless. They are accused of violating Article 14 and ICCPR standards by critics. The judiciary's ongoing consideration of CAA's constitutionality will be crucial to address these issues.

Refugees And Asylum Seekers

India has no domestic refugee law and depends on ad hoc policy through the Foreigners Act, 1946. The NHRC v. State of Arunachal Pradesh (1996)[385] judgment shielded Chakma refugees under Article 21, but the gaps in adherence to the 1951 Refugee Convention still render asylum seekers exposed.

[381] *T.N. Godavarman Thirumulpad v. Union of India*, (1997) 2 SCC 267 (India).
[382] *Vellore Citizens Welfare Forum v. Union of India*, (1996) 5 SCC 647 (India).
[383] *Aishat Shifa v. State of Karnataka*, (2022) SCC OnLine SC 1117 (India).
[384] *Citizenship (Amendment) Act*, No. 47 of 2019 (India).
[385] *National Human Rights Commission v. State of Arunachal Pradesh*, (1996) 1 SCC 742 (India).

International Obligations and Domestic Principles

India's non-signatory position on important treaties such as the Refugee Convention generates tensions with the domestic rights under Article 21. The court, in Vishaka and Puttaswamy, has attempted to bridge this gap by applying international norms, but concerns of sovereignty censure full convergence.

Prison Conditions and Custodial Rights

Unhygienic jail conditions contravene Article 21, as emphasized in D.K. Basu. Custodial torture and overcrowding demonstrate systemic failure. The Sunil Batra v. Delhi Administration (1978) case judgment demanded human treatment, but its enforcement is weak.

Right to Speedy Trial and Bail

Bail jurisprudence, as in Gurbaksh Singh Sibbia v. State of Punjab (1980)[386] values freedom, but the delay and harsh laws such as UAPA erode such protection.

Rehabilitation over Retribution

The retributive focus of the criminal justice system, as manifest in the death penalty, stands in contrast to orientations towards rehabilitation. Parmanand Katara v. Union of India (1989) emphasized the dignity of prisoners, and encouraged restorative justice. Reforms like victim compensation schemes track international human rights trends.

The Global Transformation to Socio-Economic Rights

Globally, socio-economic rights like health and education are gaining ground as integral. India's judiciary, through Bandhua Mukti Morcha and Article 21A, points to this trend in spite of resource limitations to universal access.

Transnational Human Rights Movements

Transnational movements to the climate movement have impacted the jurisprudence of India. Vishaka and environmental PILs draw inspiration from global standards, but the specificity of India's socio-culture demands specific application of such norms.

Constitutional Courts in the Twenty-First Century

Constitutional courts continue to be the custodians of human rights, grappling with difficult issues such as AI, global warming, and social justice. Their activist role, as evident in Puttaswamy and Sabarimala, ensures that rights adapt to the demands of society, but restraint is necessary to ensure democratic equipoise.

[386] *Gurbaksh Singh Sibbia v. State of Punjab*, (1980) 2 SCC 565 (India).

CONCLUSION

India's human rights and constitutional jurisprudence reflects an engaged conversation between legislative reforms, judicial activism, and international inputs. While, on the one hand, landmark judgments have extended the horizon of constitutional rights, surveillance, restricting legislations, and socioeconomic inequalities continue to be ubiquitous. The contribution of the judiciary towards the application of constitutional morality and balancing conflicting interests remains crucial to navigating the 21st-century human rights terrain. Constitutional and human rights are the very heartbeat of a society that dares call itself free. More than a legalistic proviso or the subject of courtroom controversy, they are the solemn promise we make to recognize every individual's inherent dignity. These rights—written in constitutions and reasserted in universal declarations—are not freedoms granted by the mighty but the unalienable right of all people, as firm as the ground we stand on. They guarantee our liberty to speak truths that challenge minds, to worship or doubt according to conscience, to love without limit, and to tread through life under the sheltering shadow of liberty. But their true strength is not so much in ink on paper as in our shared strength to protect them—through courage in the face of injustice, through compassion for the downtrodden, and through an unyielding devotion to equality. In a world too often torn apart by division and greed, these rights are our beacon, calling on us to build communities where dignity is not a privilege but a fundamental right, where all persons are heard, seen, and fiercely defended. They call on us to rise above indifference, to weave fairness into the very foundation of our laws, and to make certain that no person is left behind in their pursuit of humanity.

PENAL LIABILITY AND HUMAN RIGHTS: A LEGAL PERSPECTIVE

Anuradha Sahani[387]

ABSTRACT

Penal liability and human rights are two important foundations of law that must work together to maintain justice. Penal liability means holding a person legally responsible for committing a crime. It ensures that no one escapes the consequences of unlawful actions. At the same time, human rights act as a safeguard to protect the dignity, liberty, and fair treatment of every individual, even when they are accused or convicted of a crime. Balancing these two aspects is essential because punishment without fairness can turn into oppression, while unlimited rights without responsibility may create lawlessness.

The principles of actus reus (guilty act) and mens rea (guilty mind) form the basis of penal liability. These principles help courts determine whether a person is truly accountable for a crime. Alongside this, human rights principles ensure that justice does not become revenge but remains a fair process. Landmark cases and international instruments such as the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights highlight the global importance of protecting fairness, equality, and dignity in punishment.

Justice is best served when the legal system protects society by deterring crime while also respecting human dignity. Penal liability should provide necessary punishment, but human rights make sure it is humane, fair, and reformative. Together, these principles build a balanced legal framework that safeguards both order and humanity, ensuring that law remains a true instrument of justice.

Keywords: Penal Liability; Human Rights; Criminal Law. Fair Trial, Legal Perspective, justice[388]

[387] Anuradha Sahani, *Babu Banarasi Das University*.
[388] *A.K. Gopalan v. State of Madras*, (1950) SCR 88 (India).

INTRODUCTION

Every society is built on certain rules that guide people's behaviour and help maintain peace. Law is the tool through which these rules are applied, and it plays a very important role in ensuring justice. One of the key parts of law is penal liability, which means holding a person legally responsible when they commit a crime. By fixing accountability, penal liability makes sure that no wrongful act goes unpunished and that offenders are answerable for their actions. It also acts as a safeguard for society by discouraging people from committing crimes and by assuring victims that justice will be done. However, punishment should not be seen only as a way of control; it must always be fair and based on proper legal principles.

At this point, the idea of human rights becomes very important. Human rights protect the dignity, freedom, and fairness of every person, even those accused of crimes. While society demands strict punishment to maintain order, the justice system must also make sure that the rights of the accused are respected. A system that only focuses on punishment can become harsh and unjust, while a system that only stresses rights without responsibility can be misused and may weaken discipline. True justice lies in finding a balance between penal liability and human rights. This balance is protected through constitutional guarantees, laws, and judicial decisions that bring punishment and fairness together.

It is also important to understand that penal liability is not only about punishing wrongdoers. Its wider purpose is to protect the interests of society as a whole. By ensuring that criminals are held responsible, the law gives people confidence that they live under a protective system. Citizens feel safe when they know that laws will protect them and punish those who cause harm. Without penal liability, fear of crime would increase and people would lose trust in legal institutions.

At the same time, human rights remind us that justice must remain humane. Even a person accused or convicted of a serious crime has rights such as a fair trial, the chance to be heard, legal help, and protection against torture or degrading treatment.

These safeguards are necessary because history shows that unchecked power can easily lead to abuse. Human rights work as a shield against misuse of authority and stop justice from turning into oppression. Maintaining this balance also strengthens the rule of law.

When punishment is given strictly according to law and rights are protected at every stage, people begin to trust the fairness of the legal system. This trust is very important for peace and social harmony. People are more likely to obey laws they see as just. But when rights are

ignored or punishment is given unfairly, the system loses respect and legitimacy in the eyes of the public.[389]

In reality, however, achieving this balance is not easy. Many challenges weaken the principle. Delay in trials leaves accused persons waiting for years without justice. Overcrowded prisons create inhuman conditions that violate dignity. Misuse of laws for political or personal reasons distorts justice, and violations in police custody raise doubts about the rule of law. These problems show that while the balance between penal liability and human rights is clear in theory, it is very difficult to achieve in practice. To solve this, reforms in the justice system, proper training for authorities, and awareness of rights among citizens are necessary.

penal liability and human rights from a legal point of view. It explains their meaning, scope, and importance, while also looking at practical challenges like misuse of laws, delay in trials, and violations of rights in custody. The aim is to show that penal liability and human rights are not against each other but are complementary. Real justice is achieved only when the law is strong enough to punish offenders while also being humane enough to respect their rights.

I. Concept of Penal Lability

Penal liability means the legal responsibility of a person who commits a crime. It is the way by which the State holds an individual answerable for breaking the law. The main purpose of penal liability is to punish those who disturb peace and order in society, while also making sure that innocent persons are not punished. Without penal liability, criminal law would have no meaning, because it is through this principle that justice is delivered.

For penal liability to arise, there must be a wrongful act, known as actus reus. This means that a person must have done something which the law clearly forbids, such as theft, murder, or assault. Along with this, there should also be a guilty mind, called mens rea. The guilty mind shows that the act was intentional, careless, or done with knowledge of its wrongfulness. If a person harms someone by pure accident without intention or negligence, then penal liability may not be imposed.

Another important part of penal liability is the idea of causation. This means that there should be a clear link between the act of the accused and the harm caused. For example, if a person's act directly leads to injury or death, then liability arises. But if the harm happens due to some other reason not connected with the accused, then penal liability cannot be fixed. This principle makes sure that only the real wrongdoer is punished.

[389] *Indian Penal Code,* 1860 (India); *State of Rajasthan v. Kashi Ram,* (2006) 12 SCC 254 (India).

Penal liability also requires that the act must be recognized as a crime under the law. No person can be punished for something which was not declared an offence at the time it was done. This protects citizens from unfair or arbitrary action by the State. It also reflects the principle that "no punishment can exist without law." Thus, the law itself provides a boundary to penal liability

the concept of penal liability is built on the combination of a wrongful act, a guilty mind, a clear link with the harm caused, and legal recognition of the offence. aim is not only to punish but also to protect justice and fairness. Modern views further add that punishment should not only deter crime but also reform the offender.[390]

II. Concept of Human Right

Human rights are the basic rights that belong to every person by birth. These rights do not depend on religion, caste, gender, or status. They are given to all people simply because they are human. The idea is that every person has dignity and must be treated with fairness and respect.

The most important human rights include the right to life, freedom, equality, and security. These rights protect people from unfair treatment by the State or by other individuals. They make sure that no one is denied their dignity or liberty without a valid reason.

Human rights are also connected with justice. They guide the legal system to ensure that laws are not only strict but also fair. For example, even when someone is accused of a crime, they still have the right to defend themselves and to be treated without cruelty. This shows that human rights set the limits for the power of law.

Another important point is that human rights are universal. They are not limited to one country or culture. International bodies and agreements, like the United Nations, have worked to protect these rights all over the world. Still, it is the duty of each State to make sure that its people enjoy these rights in daily life.

In conclusion, human rights are the foundation of human dignity and freedom. They remind us that while laws and governments have power, that power must always respect the basic rights of people. Protecting human rights is therefore not only a legal duty but also a moral responsibility. At the same time, human rights should not remain only in books or documents. Their real value is seen when they are practiced in everyday life, in courts, in government

[390] *State of Maharashtra v. Mayer Hans George*, AIR 1965 SC 722 (India); *Sunil Batra v. Delhi Administration*, AIR 1978 SC 1675 (India); *Kartar Singh v. State of Punjab*, (1994) 3 SCC 569 (India).

policies, and in social behaviour. A society that truly respects human rights builds trust, harmony, and a sense of equality among its people.

HISTORICAL EVALUATION OF PENAL LIABILITY AND HUMAN RIGHTS

Ancient Period

In very early human life, people lived in groups and there were no courts or written laws. If one person harmed another, the victim's family or group used to take revenge. Punishment at that time was only about giving back the harm, sometimes even with more cruelty. The main aim was survival and safety of the group, not fairness. At this stage, the idea of human rights was not present, and punishment was only about fear and control.[391]

When states and kingdoms started to grow, rules became more fixed. Kings and rulers made laws and used punishments to show their power. In many places, punishments were very harsh, such as death, exile, or torture. These punishments were not about justice for the person but about keeping strict order in society. The rights of the accused or prisoners were almost ignored. Human rights were not seen as important, and penal liability was understood only as strong punishment to protect power.

Medieval Period

During the rise of religion, philosophy, and moral values, a new way of thinking started. Some leaders and thinkers said that punishment should not only hurt but should also try to improve the wrongdoer. This slowly brought the idea that even a criminal is a human being who has some dignity. Although punishments were still strict, a small change started to appear. The link between punishment and human values became stronger, and this was an important step towards connecting penal liability with human rights.

Modern Period

In the modern age, big changes happened. Revolutions in Europe, the rise of democracy, and later the world wars showed the need to protect human dignity. People understood that unlimited punishment often became cruel and unfair.

After the world wars, many international documents, like the Universal Declaration of Human Rights in 1948, clearly said that every person has basic rights, even prisoners. Penal liability then was not only about punishment but also about fairness and respect. The goal became to reform offenders and give them a chance to return to society.

[391] *Universal Declaration of Human Rights*, art. 10, G.A. Res. 217A (III), U.N. Doc. A/810 (1948); *Kesavananda Bharati v. State of Kerala*, AIR 1973 SC 1461 (India); *Francis Coralie Mullin v. Administrator, Union Territory of Delhi*, AIR 1981 SC 746 (India); *D.K. Basu v. State of West Bengal*, AIR 1997 SC 610 (India).

In today's time, almost all legal systems try to balance punishment and human rights. Governments still have the power to punish those who break the law, but they cannot ignore human dignity. Courts and constitutions in many countries protect rights like fair trial, right to life, and freedom from torture. Modern systems also focus on rehabilitation, education, and social reintegration, because punishment alone cannot create a peaceful society. By combining penal liability with human rights, justice today is fairer and more balanced.

This historical understanding also reminds us that justice is not just about punishing wrongdoers but also about improving society as a whole. Today, law aims to correct the behaviour of offenders and help them become responsible citizens. Courts ensure that punishments are fair and not too harsh, while also making sure that society is protected from crime. This shows that justice is not a one-sided idea limited to the State's power to punish, but also a growing process where the dignity of every human being is protected. In this way, punishment becomes meaningful only when it contributes to both social order and human. development. A system that protects rights while holding people accountable ultimately creates a society that is safer, more humane, and based on fairness.[392]

When we look at this historical journey, we can see that penal liability and human rights have always grown together, shaping and reshaping each other. In the beginning, justice was only about punishment and survival, but with time societies realized the need for fairness, dignity, and protection of individual rights. This long journey shows that the meaning of justice is not fixed, but changes with social values and human understanding. By studying this history, we learn that law is not just a tool for controlling crime, but also a guide for building a society that is more just, humane, and balanced.

LEGISLATIVE FRAMEWORK

The concept of penal liability is important in the context of human rights because it ensures that any individual or organization that violates human rights can be legally held responsible. Legal systems in different countries establish rules and laws that define penalties or punishments for human rights violations. The main purpose of this framework is to protect fundamental rights and prevent their misuse. Penal liability not only makes violators accountable but also acts as a deterrent for others. In this way, the legislative framework provides a strong foundation for protecting human rights and maintaining the credibility of the legal system.

Indian Constitutional Safeguards

[392] *International Covenant on Civil and Political Rights*, arts. 6, 14, Dec. 16, 1966, 999 U.N.T.S. 171.

The Constitution of India acts as a guardian of justice by making sure that while the government punishes offenders, the dignity and basic rights of individuals are not ignored. It provides a strong framework where penal liability and human rights work together in harmony.

Article 20 protects people in criminal cases. It stops the government from creating new laws that punish past actions, ensures that no one is punished twice for the same offence, and protects a person from being forced to testify against themselves. These rules ensure fairness and prevent misuse of power.

Article 21 is one of the most important parts of the Constitution. It states that no person shall lose their life or personal freedom except according to proper legal procedures. Over time, the Supreme Court has interpreted it to include the right to live with dignity, the right to a fair trial, free legal aid, speedy justice, and even the right to privacy. This ensures that human rights remain central to the justice system.

Article 22 protects people against unfair arrest and preventive detention. It requires that any arrested person must be told the reason for arrest, must be presented before a magistrate within 24 hours, and cannot be kept in custody longer without court approval. While preventive detention laws exist, the Constitution also sets limits, like maximum detention periods and review by advisory boards, to prevent misuse.[393]

Importance of Penal Liability

Penal liability holds a very important place in the legal system because it ensures that no crime goes unanswered and every offender is held responsible for their actions. The basic idea is that when a person breaks the law, they must face the consequences in order to maintain order in society. This creates a sense of accountability, as people know that their wrongful acts will not be ignored. It also gives justice to victims by making sure that the offender is punished in a fair and proportionate way.

Another important role of penal liability is to protect society from future crimes. When people see that wrongdoers are punished, it discourages others from committing similar offences. In this way, penal liability works as a preventive measure and helps in reducing crime. At the same time, modern law does not focus only on punishment. It also believes in reforming criminals, so that they can change their behaviour and live again as responsible citizens.

penal liability is not just about punishing offenders. It is about protecting society, maintaining peace, giving justice, and creating an opportunity for rehabilitation. This balance makes penal liability an essential part of every fair and effective legal system.

[393] *Constitution of India*, arts. 20–22.

Penal liability also works as a reminder that laws exist to protect everyone equally. When a wrongdoer is punished fairly, it shows that no one is above the law and that justice applies to all people in the same way. These builds trust in the legal system and makes citizens feel secure, knowing that their rights will be protected. Without such a system, people may lose faith in justice and society could fall into disorder.

At the same time, penal liability teaches that punishment should not only look backward at the crime but also forward to the future. It must guide offenders to change their behaviour and give them a chance to return to society as responsible individuals. A balanced approach, which combines punishment with reform, ensures that justice is fair, humane, and effective. In this way, penal liability supports both justice for victims and hope for those who have committed crimes.

Legal Perspective

liability means that a person is legally responsible for committing a crime. It ensures that breaking rules has consequences. However, punishment alone is not enough. Even when someone is accused of a crime, their basic human rights—like the right to life, freedom, and a fair trial—must be protected.

It is important to balance punishment with human rights. Laws should stop wrongdoing, but they should not harm innocent people or violate their rights. Courts and legal systems make sure that penalties are fair and follow proper procedures. This balance helps maintain justice while protecting individual freedom. Cases like A.K. Gopalan v. State of Madras show that the government can maintain law and order but cannot take away personal freedom without following proper rules. Penal liability is therefore not just about punishment; it is also about fairness and responsibility. Human rights limit the power of the state and ensure justice is fair.[394]

Around the world, human rights agreements, like the Universal Declaration of Human Rights, state that everyone accused of a crime has the right to a fair trial. Respecting human rights is a global standard, and penal laws must work within this framework.

Challenges arise when public opinion demands very strict punishments or when domestic laws differ from international human rights principles. The law cannot only follow anger or fear; it must also protect the rights of the accused. True justice is achieved when punishment is strong enough to prevent crime but also humane enough to respect basic rights.

[394] *Shatrughan Chauhan v. Union of India*, (2014) 3 SCC 1 (India); *Arnesh Kumar v. State of Bihar*, (2014) 8 SCC 273 (India).

A fair legal system combines discipline with compassion. When laws respect human rights even while punishing, they earn public trust and make society stronger. Punishment then becomes not just a tool to control crime but also a way to promote fairness, equality, and respect for all. Societies that apply penal liability fairly while protecting human rights can create a justice system that is both strong and humane

CONFLICT BETWEEN PENAL LIABILITY AND HUMAN RIGHTS

Penal liability means that a person is legally responsible if they commit a crime. It ensures that breaking the law has consequences, but punishment alone is not enough. Even those accused of crimes have basic human rights, like the right to life, freedom, and a fair trial.

It is important to balance punishment with human rights. Laws should stop wrongdoing, but they should not hurt innocent people or violate anyone's rights. A fair legal system makes sure that penalties follow proper rules and protect individual freedom.

Penal liability is not just about punishing; it is also about fairness and responsibility. Human rights set limits on the power of the government, making sure justice is fair and humane. Around the world, agreements like the Universal Declaration of Human Rights emphasize that everyone accused of a crime has the right to a fair trial.

Sometimes, conflicts arise. Different countries have different approaches—some are stricter, while others focus on reform. Public opinion can also pressure governments to give harsh punishments. However, the law must balance society's safety with the rights of the accused.

True justice is achieved when punishment is strong enough to prevent crime but fair and humane enough to respect basic rights. Laws should combine discipline with compassion. When laws protect human rights even while punishing, they earn public trust and strengthen society. The future of law should focus on reform, awareness, and social responsibility. By applying penal liability fairly and protecting human rights, societies can build a justice system that is both strong and humane. Punishment then becomes not just a way to control crime, but also a way to create a safer and more just society.[395]

DEATH PENALTY AS PENAL LIABILITY

The death penalty, also called capital punishment, is the most serious punishment a government can give. It is used for the worst crimes, like murder, terrorism, or actions against the State.

[395] *Indian Penal Code,* 1860 (India); *Nilabati Behera v. State of Orissa,* AIR 1993 SC 1960 (India); *Charles Sobhraj v. Superintendent, Central Jail,* AIR 1978 SC 1514 (India); *Rudal Shah v. State of Bihar,* AIR 1983 SC 1086 (India).

The main reasons for it are to stop others from doing similar crimes, to give a punishment that matches the crime, and to keep dangerous people away from society.

In India, the death penalty is allowed but carefully controlled. The Constitution says life can only be taken according to proper legal rules. Only certain crimes, like murder or terrorism, can get this punishment, and it is not automatic. Courts decide carefully if it is really needed.

There are many protections: the High Court must approve the death sentence, the person can appeal to the Supreme Court, and they can ask the President or Governor for mercy. The Supreme Court also says it should only be used in the "rarest of rare" cases, when life imprisonment is not enough and the crime is very shocking. Even with these rules, the death penalty raises questions about fairness, mistakes in court decisions, and human rights. Problems like poor legal help or missing evidence can also affect how it is used.

Overall, the death penalty is the government's strongest way to punish, but it must be used carefully, fairly, and only in extreme cases. Justice means balancing punishment with respect for human dignity, the right to live, and giving a chance for change.

At the same time, the death penalty reminds us that the law carries a huge responsibility. Taking a life is permanent and cannot be undone, so every step in the legal process must be fair, transparent, and careful. Courts, lawyers, and authorities must make sure that no innocent person is punished and that every chance for defines is given. It is not just about punishing the crime, but also about showing that the legal system values human life, fairness, and justice above everything else.

CONCLUSION

The legal system must balance the importance of human rights with the need to protect against penal liability. In order to maintain justice and social order, pleading guilty to a crime is considered penal liability. The punishment is not sufficient, as those accused of crimes must be held accountable for their rightful claims to life and liberty along with a just trial.

Just as the law is supposed to protect society, it also has a role in providing just justice and an opportunity for rehabilitation. To achieve this, courts and legal authorities should prioritize.[396] the provision of training and reforms, enhance prison conditions, and educate the public. about their legal rights. ". A balanced application of laws that respects human rights and punishments fosters trust in the justice system, resulting in peace and fairness. Therefore, it is essential to

[396] *Constitution of India*, arts. 14, 19.

acknowledge and uphold human rights alongside penal responsibility for a just and humane legal system.[397]

[397] *Indian Penal Code*, §§ 303 (repealed), 305, 307, 364A (India).

DEATH PENALTY: A COMPARATIVE ANALYSIS BETWEEN INDIA, UK, AND USA

Tanya Kumari[398]

ABSTRACT

Death penalty as a sentence is considered as the extreme form of punishment, among all the modes of punishment, the death penalty can be considered as the most extreme and severe form of punishment. Capital punishment or the death penalty is an idealistic and thoroughly investigated topic which has led to the contemplation of various opinions. This research paper will make a comparative study of the death penalty in India, the United Kingdom and the United States and examine the differing IPR of law, constitutional concepts and the government policy as well as, the legal framework governing the practice of death penalty practice within these countries with special interest being given to the Indian origin of capital punishment provisions in specific areas of murder and Rape. The argument about the constitutionality of death penalty is also highlighted in the paper with reference to its congruence with fundamental rights.

This paper uses a comparison of legal approach and desk-based research in socio-legal approaches to identify significant themes in sentencing in relation to race, religion, caste, and socio-economic status when applied to sentencing of the death sentence. Poor legal representation and prosecutor misconduct, which have resulted in an unnecessary population of Black Americans in death row and in the context of the UK, the paper addresses abolition of capital punishment and the part played by the Human Rights Act. These factors increase the bias. Nevertheless, the article critically examines the application of the doctrines of the rarity of rare in the Indian context when dealing with capital cases, by citing major Supreme court decisions on the awarding of capital punishment in the Indian system.

The study wraps up by saying there is an urgent need to reform the death penalty system in India, putting forward a system more transparent, humane, and entrenched in the principles of human rights that go by the global guidelines.

Keywords: Death penalty, Capital punishment, rarest of rare doctrine, USA, India, UK, Judicial interpretation, Supreme Court verdicts.

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INTRODUCTION

Capital punishment, otherwise referred to as the death penalty, represents the ultimate type of punishment. It has been said to be a device of justice and it has been said to be an infringement of the fundamental human rights as well. Capital offences refer to offenses that attract death penalty and the term capital punishment is derived out of the word capital meaning that of the head.

The death penalty function on a point of law, morality and social justice is prone to questioning based on its deterrence effect alleged, arbitrariness and the possibility of committing an irreparable error. The issue of capital punishment is one that has been debating decades. The concept of capital punishment is at variance with the notion that different countries have. Crime levels have increased across the world and India is no exception. It should have a decent justice system and punishments should be meted out accordingly and proportionately.

India retains death penalty as a legal form of punishment, but it is reserved for the "rarest of rare" cases involving especially heinous crimes such as murder, terrorism, and certain repeat offences. Executions are carried out by hanging, and the number of actual executions is very low compared to the number of death sentences imposed. Indian courts impose strict procedural safeguards, and legislative reforms over the decades having aimed to make life imprisonment the norm and capital punishment the exception.

In the USA, the death penalty remains legal in 27 states, with each state and the federal government having discretion over its use and procedures. Capital punishment is most often applied in cases of aggravated murder and treason. Methods of execution include lethal injection, electrocution, and less commonly, other methods.

The United Kingdom has fully abolished the death penalty for all crimes. The last execution occurred in 1964, and subsequent legislation eliminated capital punishment for murder in 1965 in Great Britain (and in 1973 in Northern Ireland). Later laws removed it for remaining offences and the UK is now committed to abolition through domestic law and international human rights treaties.

According to theorist, the death penalty serves retribution and closure in the victims, and serves in trials of the most heinous crimes; however, much empirical research contradicts these arguments and indicates that it is neither a better deterrent than life imprisonment of crime nor is effective in deterring recidivation of crime.

This is because the justice system globally finds it hard to balance the socially instilled demands of vengeance with those of justice and rehabilitation. Practically, it is also true that the death

penalty is more detailed in condensed populations, intensified racial, socio-economic, and geographical dissimilarity in the combined systems of law.

HISTORICAL CONTEXT

Capital punishment is regarded as historically universal and the events of it can be traced back even to the Babylonian laws of Hammurabi (18th century BCE), where it classified the death sentence as relating to 25 offenses. The Hittite code of the 14th century BCE, the Draconian Code of Athens of the 17th century BCE, which introduced death as the sole punishment to all forms of crime, and the Roman Law of the Twelve Tablets of the 15th Century BCE also included the death penalty. Such actions as crucifixion, drowning, death through beating, being burned alive and impalement were some of the ways of administering death sentences.

Before late in the 18th century, public executions were used, but legal reforms and policies of humane punishment started to be promoted, with thinkers of the Enlightenment. Abolition movements began to gain momentum in the 19th and 20th centuries and countries such as Michigan (USA), Venezuela and San Marino led the way and introduced legal constraints and ban. More than 70 percent of nations have today either abolished or laws or practice of the death penalty an estimated majority of the world living population today reside in the 150 or so states where the death penalty still exists.

INDIA:

1. Ancient and Medieval Period:

- In India, the death penalty has its origins in ancient era, where it is prescribed in Hindu scriptures such as Manusmriti as the punishment against a wide range of wrongdoings, including murder, adultery and slander against the Brahmins (priestly caste).[399]
- Under the Maurya Empire (322-185 BCE), the death penalty was widely employed and different ways of practicing it were employed including impalement, trampling by elephants and burning alive.
- Islamic rulers during the medieval like Delhi sultans and Mughals utilized the concept of executions utilized more as a form of punishing crimes against the state or corporate religion.[400]

2. British Colonial Rule:

[399] U.C. Sarkar, *Crime and Punishment in Ancient India* (1920).
[400] P. Saran, *The Provincial Government of the Mughals 1526–1658* (Kitabistan 1973).

- Indian penalties India New Ideas uncodified capital punishment in the Indian Penal Code of 1860, against serious offenses like murder, treason, abetting mutiny, limited types of theft.[401]
- Hanging on gallies was a widespread custom and revolutionaries, such as Bhagat Singh and Rajguru were galled in 1931, which caused an uproar.

3. Post-Independence:

- Following independence in 1947, however, our Indian legal system kept the death penalty in their books, although its application came under judicial system rarest of rare cases due to critical, scrutinized Supreme Court rulings.[402]
- The death penalty is hardly used in India nowadays; occurrence in case of terrorism, especially the gruesome murder and other serious offense.
- The most recent execution came in 2020 in the case of the Delhi gang rape (Nirbhaya case) in which four male culprits were hanged.[403]

UNITED STATES:

4. Colonial Period:

- The origin of capital punishment traces back to America during the Colonial period where the first death sentence was carried out in 1608 (Captain George Kendall) in the Virginia Colony.
- There was a high level of capital punishment in the initial law in capital crime such as murder, rape and crimes against religion and states. Lynch law was a regular event, and the accused were at times obliged to make their own hangmen.

5. Post-Independence:

- States established their preferences and procedures of execution after independence.
- Later on in the 19th century, more humane forms of executions began to be used, which resulted in the use of a gas chamber, electric chair and lethal injection.
- A 1976 case by the Supreme Court named Gregg v. Georgia has revived death penalty following a spell of suspension but this time with guidelines on more rational application. Capital punishment has one been a very debatable matter and there have been continued legal battles and controversies ever since.

[401] *Indian Penal Code*, No. 45 of 1860, India Code.
[402] *Code of Criminal Procedure*, No. 2 of 1974, India Code.
[403] Nirbhaya Case: All Four Convicts Hanged in Delhi's Tihar Jail, *Indian Express* (Mar. 20, 2020).

- Instead, the death penalty has been abolished in 27 states, and is still permitted in 23 states (including the federal government) because of some of its unfairness, racially discriminatory views and prolonged periods.

UNITED KINGDOM:

The death penalty was practiced in the UK has been in use centuries before, it was performed by hanging and burning plus a very strict colonial policy, most notably in India.

This shifted to leniency in 1957 Homicide Act restricted the executions to certain cases.

The Murder (Abolition of Death Penalty)[404] Act of 1965 They basically brought to an end the execution of all murder cases, although certain uncommon offences (treason by force, piracy) were temporarily allowed.

Its final execution was in 1964 and it was only after the European norms were met and after the public appeals that the death penalty was fully abolished in 1998 by the Human Rights Act of 1998.[405]

COMPARATIVE OVERVIEW:

In India, capital punishment is still maintained in offending video of the most infrequent circumstances.

The formulation of the approaches of the USA is conflictual, and applications in different states differ, and the discussion appears.

In the United Kingdom, death penalty is completely abolished and there is not held any execution since 1964.

PHILOSOPHICAL AND THEORETICAL REASONS

Philosophically and theoretically, the death penalty can be substantiated in various great schemes and each of them presents different reasons why death penalty should be legitimate, with the primary reasons being expenditure on vengeance, deterring and safeguarding the society.

Retributive Justification

The retributive school of thought is based on the principle of vengeance. When retributivists justify the degree of punishment to misconduct, they do so by looking back to what is in the wrongdoing.

The most common appeal to retributivism concerning capital punishment frequently cites an appeal to the principle of lex talionis, or the law of vengeance, an idea widely made accessible

[404] *Murder (Abolition of Death Penalty) Act*, 1965, c. 71 (U.K.).
[405] *Human Rights Act*, 1998, c. 42 (U.K.).

in the old and biblical proverb, an eye for an eye and a tooth for a tooth. The Punishment aspect of Retribution theory is important to provide security through punishing lawbreakers as a means of deterrence; it also provides an opportunity to society to perceive justice as well as acting as a role model to the culprits who could find themselves in such predicament of becoming criminals, therefore preventing the act of committing such crimes.[406]

Theory of the Deterrence of Punishment

Basing on the classical theory of criminology, the criminological theory of deterrence presupposes that people are inherently based on self-interest and, consequently, could be deterred by the threat of immediate, automatically imposed, and severe penalties.

According to the deterrence theory, the death penalty discourages the commission of heinous crimes by making them see the end result including the perpetrator and the would-be perpetrators alike like murder because of the death penalty.[407]

The detractors assert that the efficacy of deterrence can hardly be documented, yet it continues to be a highly emphasized reasoning in the course of law and political examination.

Supplementary Social Safety and Security

The theory of punishment according to the preventative opinion suggests that punishment of offender is not aimed to serve in avenging the offender, but to avert reoccurrence of further crimes.

The theory of preventive punishment has developed during the enlightenment era in Europe and in particular by the Italian philosopher and jurist Cesare Beccaria. In his ideas, Beccaria also maintaining present-day punishment had utilitarian needs, namely, to prevent crimes in the future rather than to give revenge and show retribution.[408]

Nonetheless, there are other critics of the theory who feel that this theory does not have the ability of preventing future criminal activities. This is because by taking a criminal to jail, he becomes ked by becoming even more worse than he was before going to jail in the company of other criminals who are already as bad as an offender as he is.

However, critics have also said that once an offender is imprisoned, the reason of ensuring that such an offender does not commit any other crime against society is served. This is easily done through the removal of his presence in the society. Therefore, at last, making the crime and criminal useless.[409]

[406] Stuart Banner, *The Death Penalty: An American History* (Harvard Univ. Press 2002).
[407] John Rawls, *A Theory of Justice* (Harvard Univ. Press 1971).
[408] Cesare Beccaria, *On Crimes and Punishments* (1764).
[409] Jeremy Bentham, *The Rationale of Punishment* (R. Heward 1830).

The Utilitarian and Kantian Approaches

Where the utilitarian viewpoint will rationalize the death penalty is when overall happiness or utility in the society is more than in the individual. In case capital punishment is determined to deter serious crimes such as murder much more efficiently than redressing alternatives such as life imprisonment and that it leads to safety and confidence or trust into the legal system; then it is said to be morally appropriate.[410]

In opposite, the Kantian approach towards the death penalty is an expression of deontological ethics that focuses on moral responsibility, justice and human decency without regard to the outcome. Immanuel Kant supported capital punishment according to the retributive approach or lex talionis- the penalty should suit the offence committed.

Distinguish death penalty; what is important is the delivers of offenders their dues per universal moral law.

Ethical and Philosophical Implicated Considerations

Another is whether state power and moral duties are involved in the theory is whether the deliberate killing of offenders by the state is justifiable under any circumstances.

The death penalty is commonly the subject of philosophical debate in a broader sense, in the relation to the more generic theories of the standard case or the central case of punishment, as an institution or a phenomenon within a complex of legal rules. Any form of punishment, and most sharply an execution, knowingly inflicts pain, suffering, unpleasantness or deprivation on a subject typically not compatible with sources of such papers as the state authority.[411]

Altogether, the reasons why the death penalty should be used are based on the theory of retributive justice, protection, and deterrence with the current discussion of the terms of fairness, proportionality and the legality of such a sentence.

LEGISLATIVE FRAMEWORK

INDIA:

1. Legal Basis and Statutes:

IPC (1860) specifies the death penalty to the offenses such as, murder (Section 302)[412], Waging war against the state (Section 121), kidnapping to ransom resulting to death (Section 364A), and most crucially and brutally rape (Section 376A).[413]

[410] Utilitarian Theory of Punishment, in *Jeremy Bentham, Principles of Morals and Legislation* (1789).
[411] H.L.A. Hart, Prolegomenon to the Principles of Punishment, in *Punishment and Responsibility: Essays in the Philosophy of Law* 3–5 (Oxford Univ. Press 1968).
[412] *Indian Penal Code*, § 302 (Punishment for Murder).
[413] K.D. Gaur, *The Indian Penal Code* (35th ed. 2021).

More recentifying legislation- the Bhartiya Nyaya Sanhita (BNS), 2023- introduced death eligibility to 15 crimes, including mob murder, terrorism, gang rape of minors and organized crime[414].

The criminology Procedural protections of the Criminal Procedure Code (CrPC, 1973) are could be:

- separate sentencing hearings (Section 354(2)),
- The condition that a reason should be entered as to why the death sentencing has taken place (Section 354(3)).
- Section 366 Mandatory confirmation by the High Court.

2. Constitutional and Procedural Protecting:

Article 21 Of Indian Constitution envisages capital punishment under such a law that needs to be fair, just due free process and observing natural justice.[415]

UNITED STATES:

3. Constitutional and Legal Environment:

Eighth amendment does not outlaw capital punishment but only the unnatural weird type of punishment. In the Fifth Amendment, it should be noted that it recognizes capital crimes under due process.

Capital punishment both in the United States and globally is a matter that is regulated by the federal and state laws. There are ushers in the application of the death penalty which are set forth by the federal government and individual state. The U.S transmission of literature on death sentencing has been exercised in much through decision making by the U.S Supreme Court who adopted the principle of capital punishment as likening to the decision allowing the death penalty in this case through a two-fold deed. In cases such as

Furman v. Georgia (1972) and Gregg v. The court, (Georgia 1976) dealt with questions before arbitrariness and constitutionality and the death penalty was temporarily suspended, and then reinstated, with new provisions.

4. Federal vs State Dynamics:

There are many differences in the state level legislation of the death penalty: out of more than two dozen states capital punishment remains a lawful procedure, and most states abolished the death penalty as well.

[414] *Bhartiya Nyaya Sanhita*, No. 26 of 2023, Gazette of India, Extraordinary, Part II, Sec. 1.

[415] *India Const.* art. 21.

Capital punishment is still considered a way out in federal law because in cases of espionage, genocide, and first-degree murder the offender has been found guilty of a crime committing which his life will be taken away. The federal death sentence is not common--only 80 have been imposed and only 16 executed between 1988-2024.

Such political dynamics in recent history (e.g., the demand to execute a death penalty on the state of Washington, D.C., and federal executive orders) indicate the controversial and politization capital punishment on the federal level.

UNITED KINGDOM:

5. The Timeline of Abolition of Legislation:

The death penalty against murder was ended by Meaning of the term, Murder (Abolition of Death Penalty) Act 1965 in Great Britain (effective November 1965), meaning that it continued in force in Northern Ireland till 1973.

The application of capital punishment on espionage (Armed Forces Act 1981, Criminal Damage Act 1971) and to behead (1973) was also reduced having gone through subsequent exchange.

The European Convention regarding the Human Right unwounded the death penalty in any civilian matter and this is ratified by the House of Lords in 1998 in 6 th Protocol. Additional abolition in all cases, including military, was added by the 13th Protocol (in force February 2004) and the Human Rights Act 1998.

6. Present Status:

UK has fully abolished capital punishment even during a war or any military situation. Any legislative/judicial avenue to reinstatement is gone.

In the UK in 2024, a vote of the House of Parliament was narrowly defeated when its proposals to leave the Council of Europe, abrogate the Human Rights Act, and revive the use of the death penalty, were defeated.

These were defeated by a margin of 14- 21 votes.

LANDMARK JUDGEMENTS

INDIA:

1. Jagmohan Singh v. v. State of Uttar Pradesh (1973)[416]In the case the Supreme Court affirmed that the death penalty continues to be Constitutional and that the sentencing procedure must be evaluated in detail and that lack of due process is not found as long as the process of earthly justice guides the judicial judgment.

[416] *Jagmohan Singh v. State of Uttar Pradesh*, AIR 1973 SC 947 (India).

2. Bachan Singh v. State of Punjab (1980)[417]: This was a landmark because it brought in the important principle of the doctrine of the rarest of rare to apply the death penalty. In another statement of the rule, the death sentence is the exception and that life imprisonment is the rule where the alternative sentencing order of life imprisonment is clearly inaccessible.
3. Machhi Singh v. State of Punjab (1983)[418]: The decision elucidated the principles in case of Bachan Singh and assumed upon five groups of cases that might be expressed as rarest of the rare cases where the death penalty can be given. These criteria involve how the crime was perpetrated, the reason behind that, the type of crime perpetrated and the character of the victim.
4. In this high-profile case, Mukesh and Anr. v. State (NCT of Delhi) (2017) the idea of justice was to accept that the death sentence against the four men who were guilty of murder and rape of Nirbhaya, was complete and justified. The court noted that the case belonged in the rare of rare category because of the immense brutality and the fact that the crime had rocked the collective conscience on the society.
5. Shabnam v. Union of India (2015)[419] In the case, the Court sentenced the woman to death resulting to the refreshed death penalty marked as the first in the Indian criminal justice system. Shabnam murdered her relatives because they were not permitting her marry her lover, which indicates the improbability in receiving such penalty and its harshness.

UNITED STATES:

1. Furman v. Georgia, 408 U.S. 238 (1972): penal laws that were in place were declared by the U.S. Supreme Court to be unconstitutional because of death penalties applied of a random nature, the death penalties awaiting execution in the case were all commuted and the states made changes on the law they presently had in place to affect the constitutional standards.
2. McCleskey v. Kemp, 481 U.S. 279, (1987): Alabama High Court of Justice approved procedures of capital punishment: The Supreme Court found it impossible to challenge procedures in Georgia on the basis of a racially disparate effect although it has been demonstrated that there are consistent capital punishment disparities on the basis of race.

[417] *Bachan Singh v. State of Punjab*, (1980) 2 SCC 684 (India).
[418] *Machhi Singh v. State of Punjab*, (1983) 3 SCC 470 (India).
[419] *Shabnam v. Union of India*, AIR 2015 SC 3648 (India).

3. Atkins v. Virginia, 536 U.S.304 (2002): The Supreme Court in this case affirmed that the death of an individual with intellectual retardation is a breach of the 8 th amendment which prohibited cruel and unusual punishment.
4. Baze v. 7. Rees, 553 U.S. 35 (2008) The Supreme Court determined that the 3-drug combination used by Kentucky to administer lethal injections does not constitute cruel and unusual punishment under the Eighth Amendment, however, a substantial effect of causing very intense pain is indeed objectively intolerable and includes death caused by lethal injections.
5. Kennedy v. Louisiana, 554 U.S.407 (2008): the judgment of the Supreme Court says there is no possibility of imposing death sentence to non-homicidal crime against individuals, like rape of a child; the victim never dies.

UNITED KINGDOM:

No single huge law was repealed to stop the use of the death penalty in the UK, it was actually a matter of several acts passed through the legislature, and the first major step was taken in 1965 with the publication of the Murder (Abolition of Death Penalty) Act 1965, erasing capital punishment on murder.

1. **Murder (abolition of death penalty) act 1965 and abolition cases**: This is the Act of Parliament of murder in Great Britain. It substituted the death sentence with the life imprisonment that was to be mandatory.

   The death penalty was repealed in the murder case in 1965 following the infamous miscarriages of justice like in the cases of Timothy Evans and Derek Bentley- both following demises pardoned following the execution which led to the revelation of high flaws in the justice system.
2. **Soering v. United Kingdom (1989)[420]:** In this case, the European Court of Human Rights decided that transferring a UK-residing person to the USA to be executed would lead to the breach of the Article 3 of the European Convention on Human Rights (prohibition of inhuman and degrading treatment) particularly because of the so-called death row phenomenon, the psychological distress of a person sentenced to death due to a prolonged stay in prison.
3. **Miscarriages of Justice**: The Birmingham Six and others, Cases such as the one involving the Birmingham Six, in which innocent men spent years of their lives in jail because of a

[420] *Soering v. United Kingdom*, 161 Eur. Ct. H.R. (ser. A) (1989).

murder that they did not commit, proved stated that the retention of death penalty could do irreversible mistakes to the people and parliaments to condemn murder.

Unorientable Privy Council Decisions on Delay and Human Rights in Britain and its former colonies, where the common law prevailed (invoking comparable history and standards), the Privy Council noted that excessively long delays in the execution were inconsistently treated as cruel and unhuman punishment in common law countries. The thinking behind these judgements and legislative acts has ingrained the categorical anti-death penalty into the countries criminal law policy and international law policy.

CONCLUSION AND SUGGESTION

The topic of the legitimacy of the death penalty as one of the most contentious areas of the penal liability is influenced by the past, legislative changes, social aspects, and human rights prescription. With the longstanding debates, the moral and ethical and practical implication of capital punishment should be taken into consideration as to how it can affect the human rights. The major movement worldwide is away to abolishment, which is seen in the European jurisprudence.

India has limited its use through judicial activism which retains the use but to exceptional cases, the UK shows complete abolition but retains greater use on exceptional cases, the USA shows the issue of federalism, social diversity and has a history of doubts about fairness.

More research, policy discussion, and a legal change will need further improvements to balance the ideals of justice, deterrence and human dignity.

Suggestions

Move toward gradual abolition or, where retention remains, restrict use to the absolute “rarest of rare” cases with heightened legal safeguards. Invest in fairer justice systems, forensic improvements, and robust legal aid to minimize wrongful convictions. Consider alternatives such as life imprisonment without parole, which allows for future exoneration in the event of miscarriages of justice. Promote open societal debate and research on the effectiveness, morality, and social consequences of the death penalty to guide evidence-based policy decisions.

US should consider a federal moratorium or abolition, reflecting growing doubts about deterrence, high costs, racial disparities, wrongful convictions, and evolving societal standards. For states retaining the penalty, further restrict its use to only the most heinous crimes and enhance mandatory procedural safeguards to minimize arbitrary or erroneous application.

Increase support for alternatives like life without parole and expand support for crime victims' families.

HOW BHARATIYA NYAYA SANHITA ADDRESSES MOB LYNCHING AND HATE CRIMES

Utsa Kushwaha[421]

ABSTRACT

The research paper is a critical, detailed analysis of the Bharatiya Nyaya Sanhita, 2023 (BNS), with a focus on its innovative directive mechanism is dealing with the chronic ailment of mob lynching and hate crimes in the Indian socio-legal environment. The study challenges the original legal definitions of the BNS, the procedural framework, and the distinctive expression of motive-inflicted violence through a stringent doctrinal and comparative approach and reveals important gaps and new threats that a still not discussed in the academic or policy spheres.

Analysis is done at various dimensions of convergence. First, it assesses the consequence of the new group-size threshold and concert requirements, both in terms of the complications of technology and sociology that can be difficult to capture legally. Second, the article provides a new criticism of the institutional liabilities by highlighting the BNS failure to include preventive and reparative state actions in their services, which points to the long-standing gap existing between the legislative intentions and the administrative operations. Third, the study contributes to the intersectionality discussion, showing how the omission of gender identity, sexual orientation and disability as a topic of statutory protection contributes to legal invisibility of the most marginalized in India.

In addition, the paper examines the lack of legal victim compensation and community repair systems, which has been contextualized as one of the global best practices in restorative justice, victimology, and transitional legal reform. It goes as well into the two-sided threat of statutory misuse and offers new analytic insight on the possibility of elite capture, selective prosecution, and partisan distortion, a threat that is rarely scrutinized in the legislative setting.

Through a comparison of a new paradigm of penal arrangement in India with global experience in South Africa, the United Kingdom and elsewhere by combining both empirical and theoretical tools in a comprehensive reflection, this paper is a synthesis of practical recommendations (including, but not limited to, a statutory amendment, institutional re-

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engineering and so on). Finally, the research will strive to shift past tokenistic legal innovation towards supporting holistic, intersectional and victim-centric approaches.

The paper is therefore a unique and timely additional to the literature on criminal law reform, constitutional government, and social justice, filled with elucidation insights, which can be used to enrich the scholarly discourse and shape practical legislative and administrative interventions in the prevention of hate-driven violence in India.

Keywords: Mob Lynching, Crime

INTRODUCTION

The criminal laws in India are at a critical stage of developments and this is through embracing the Bhartiya Nyaya Sanhita, 2023 (BNS). Indian Penal Code, 1860 had not appreciated heinous collective violence, or mob lynching, which are characterized by extrajudicial killings carried out by a group of people who may harbour hate and bigotry. Such silence generated demands to bring those crimes up in the law books and harshly penalize them like following a series of sadistic cases that appalled the conscience of the nation. The BNS, in a first instance, explicitly criminalises mob lynching, and offers indicators of a radicalisation in the legal reaction to rising intolerance by trying to cover hate crimes.[422]

With the enactment of the Bharatiya Nyaya Sanhita, 2023, BNS, it is not just that the Indian penal law is going to change but also that the nation is going to address the issue of aligning the past legal frameworks with new risks. Although the substitution of the Indian Penal Code, 1860, has been traditionally framed as decolonization, the situation is more complex than that: the BNS is a centre of conflicts between the powers of the administrative state, the majoritarian social forces, and the constitutional principles of the inclusion and equality. In this context, against the recent spurt of mob violence and hate crimes, the BNS is both an affirmation of improvement as well as points out the shortages that persist particularly in those areas where the letter of the law has been required to grapple with collective action problems that historically have baffled the Indian justice system. Concepts of punishment, deterrence and social remedy under the BNS therefore beckon the wider discussion which is at the crossroads of criminal law reform, democratic liberalism and transitional justice theory. This reflection would help it to prevent what critics call "token lawmaking", the passing of new laws that, despite some symbolic force, leave underlying pathologies untouched, in particular, the historic complicity or inertia of state organs in addressing group violence.[423][424][425]

ADDRESSING MOB LYNCHING IN THE BNS

Specific Legal Provisions- Sections 103(2) and 117(4) of BNS

[422] *Mob Lynching under Bharatiya Nyaya Sanhita, 2023*, Drishti Judiciary, https://www.drishtijudiciary.com/to-the-point/bharatiya-nyaya-sanhita-&-indian-penal-code/mob-lynching-under-bharatiya-nyaya-sanhita-2023 (last visited Aug. 7, 2025).

[423] Anubhav Kumar, *Bharatiya Nyaya Sanhita: An Overview* (May 2024), https://cdnbbsr.s3waas.gov.in/s3ec0548042b1dae4950fef2bd2aafa0b9/uploads/2024/05/2024050922.pdf.

[424] Gayatri Pradhan, The Impact of Bharatiya Nyaya Sanhita, 2023 on Indian Criminal Jurisprudence: A Critical Analysis, 7 *Indian J.L. & Legal Rsch.* (May 3, 2025), https://www.ijllr.com/post/the-impact-of-bharatiya-nyaya-sanhita-2023-on-indian-criminal-jurisprudence-a-critical-analysis.

[425] S.M. Aamir Ali & Pritha Mukhopadhyay, Bharatiya Nyaya Sanhita: Decolonizing Criminal Law or Colonial Continuities? 62 *Int'l Annals Criminology* 406, 406–25 (2024), https://doi.org/10.1017/cri.2024.20.

With Section 103(2), the BNS boldly passes an aggressive legislative step, where it considers mob lynching as a form of aggravated crime. According to this section, when murder occurs "on grounds of race, caste, community, sex, place of birth, language, personal belief or any other such ground by a group of five or more persons acting in concert it is punishable by death or life imprisonment and each member of the group is liable to fine". It is a major change of the former legal system when there were general laws prosecuting these offences under the categories of murder, rioting, or unlawful assembly, with no special attention and punishment.[426]

Section 117(4) extends to criminalise the following situations where grievous hurt occasioned by a mob acting on like discriminatory grounds is punishable by imprisonment of up to seven years and/or fine. This definition of these offences allows the BNS to understand that these are a specific harm to society that is committed through mob violence and also to recognize the bigotry at the back-end of these behaviours.[427]

Legislative Rational and Comparisons-

These provisions have the legislative purpose that is punitive and preventive. A different kind of lynching including mob lynching is now regarded as district and aggrieved rather than as regular murder or rioting. Collective intent and group ideology, as well as the break of social order due to lynching, are recognized by the law. This modernization has been labelled as a critical appreciation of the Indian reality by contemporary legal commentators and Law Commission and portrayed acts of violence as usually driven by bigotry and moral policing.[428] Also, the discrimination motive is clearly stated, which proves the intention of the law to prevent any collective violence of the hate nature. Years of horrific cases, which had included the Dadri lynching (Mohammad Akhlaq case), Jharkhand (Tabrez Ansari case) lynching, and Palghar lynching, had stimulated this shift and made violence a reaction to rumours, community tensions, and hate targeting. Such ingredients showed how insufficient the previous legislation was, that the time demanded legislative clarification.

New Legal Definitions and the Problem of Thresholds-

[426] Press Information Bureau, *Mob Lynching and Snatching Related Provisions in New Criminal Laws*, Ministry of Home Affairs (Dec. 4, 2024), https://www.pib.gov.in/PressReleseDetailm.aspx?PRID=2080661

[427] *Mob Lynching*, Drishti IAS (Feb. 18, 2025), https://www.drishtiias.com/daily-updates/daily-news-analysis/mob-lynching-9.

[428] *Criminalization of Mob Lynching under the Bhartiya Nyaya (Second) Sanhita, 2023*, *NUALS L.J.* (Apr. 22, 2024), https://nualslawjournal.com/2024/04/22/criminalisation-of-mob-lynching-under-the-bhartiya-nyaya-second-sanhita-2023/.

Section 103(2) of the BNS contains a formally separate crime of mob lynching, where five or more individuals are working together to commit murder through identity-based identity markers, including religion, caste, race, language, and personal belief. Although this is generally viewed as a reaction to the high-profile lynching incidents observed in the past ten years, the provision of the statute that requires a minimum age group of five has been heavily criticised. Experts of mob violence claim that this is an artificially high threshold, particularly bearing in mind known examples of flash mobs of vigilante groups who work with only two or three members, and still cause terror and the destruction of social cohesion on a grand scale. Such a numerical standard, thus, is particularly prone to continuing situations of statistical underreporting and may also permit perpetrators to plan smaller attacks deliberately to avoid the situation of receiving aggravated punishment. Additionally, critics would argue that the language acting in concert as understood by the law might be considerable outside of touch with the reality of decentralized, network-based mob formation. To keep abreast of the state, the definition must be based on a technologically literate notion of how hate-based collectives are generated, dissolved, and reconstituted, which does not exist within the BNS and previous suggestions. This gap can only be enhancing in international comparisons: as it is, most countries make it a criminal offence to engage in collective hate violence, even though the actual group size is not significant, with the liability based on the seriousness of the discriminatory motive and the larger picture of damage.[429]

Omission of Institutional Liabilities and Preventive Protocols-

The BNS usually avoids the issue of state liability and police misconduct even when the Supreme Court in *Tehseen S. Poonawala v. Union of India* (2018) provides detailed guidelines that mandate preventive measures, special court proceedings, expedience, and nodal police officers. Although the Manipur and Rajasthan anti-lynching laws are flawed, they directly target police or administrative inaction and have positive obligations, including immediate action, protection of victims and a requirement to file an immediate FIR, which are supported with dereliction of duty punishments. Although Section 103(2) of the BNS establishes new extreme penalties against attackers, it fails to specify how to deal with state complicity, permit civil actions against government agencies, and compel reporting to the administration. This is especially granting because the interference of politics and the laxity of local officials have often thwarted earlier prosecutions against hate crimes in India. Such academic literature, as

[429] *The Bharatiya Nyaya Sanhita, 2023*, PRS Legislative Research, https://prsindia.org/billtrack/the-bharatiya-nyaya-sanhita-2023 (last visited Oct. 3, 2025).

well as Law Commission reports, demonstrates that the practicality of the laws against hate crimes depends not just on the prospects of severe penalties but on the extent to which the statutes articulate the active governmental responsibility, reporting requirements, whistle-blower clauses and independence in investigations. By not institutionalizing these mechanisms with new crimes and sanctions, the BNS continues the old crime of omission in India, in which the distance between what the state says it should do and how it actually functions in the field remains broad, and may encourage impunity in the future.[430]

Silent on Intersectionality: Gender, Sexuality, and Other Identities-

Although these hate-motives include: religion, caste, language, sex and community, the BNS does not go further to explicitly include gender identity, sexual orientation, or disability as a protected characteristic. The legal quietness exposes LGBTQ+ and disabled individuals to purposeful violence, which is especially concerning in the light of mounting evidence (both media-based and empirical studies) of hate-based violence against marginalized gender identities and most troubling is that most of these attacks occur at the intersection of multiple vulnerabilities (as the case of a Dalit transgender woman). New developments have not translated into direct coverage of hate crime law. Conversely, intersectional explicit statutory protection is explicitly granted in legal regimes in South African, in section of Europe and some US states, supported by compulsory disaggregated statistics on hate crime and disaggregated victim supported policies. Intersectional theorists and comparative law legal academics stress that this type of legal recognition is not symbolic: it gives a base to strong advocacy, specialized implementation, and reform in the future. Additionally, the silence of the BNS also implies that a large portion of community data, policy interest, and funding will continue to be biased, and this will continue to propagate existing hierarchies of vulnerability and invisibility.[431]

No Victim Compensation or Community Repair Mechanisms-

The consequences of lynching and hate crimes do not stop with the victim, but permeate through families and communities and even the foundation of civil trust. Although the state laws in Rajasthan and West Bengal do offer state- compensated and, in some exceptional cases, state-funded psychological counselling to the survivors, the BNS says not a word about victim friendly reparations or state-funded trauma treatment and legal assistance. This lack is not an oversight (technical) but a significant lost chance to use up the psycho-social destruction that

[430] Renjith Thomas, *Bharatiya Nyaya Sanhita, 2023: A Critical Perspective* (Apr. 12, 2024), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4898463.

[431] *Reforming the Indian Penal Code: Insights into Bharatiya Nyaya Sanhita, 2023*, LexisNexis (Jan. 15, 2025), https://www.lexisnexis.in/blogs/bharatiya-nyaya-sanhita-2023/.

the collective violence causes. Scholarship on comparative victimology and Indian scholarship on victimology both emphasize that social healing and legal legitimacy are dependent on processes where suffering is recognized and collective repair is achieved, comprising of community-engagement plans, symbolic gestures and apologies by the state. In their absence, even the best-crafted penal will become powerless in the minds of those they intend to safeguard, they risk rejection and may even cause greater divisions between communities. The practices of restorative and reparative justice which are now central to international policy on hate crimes may be able to find a place in India, supplementing the panchayat and ADR traditions, and provide a local way of reconciliation as well as responsibility. Victims will be marginalized twice until there are mechanisms inscribed in law that will marginalize them first, by the violence, then by a system that is purely retributive.[432]

Drawing on International and Comparative Experience-

The majority of the existing international best practices in anti-hate laws acknowledge that criminalization is not sufficient and multi-layered responses, including but not restricted to education, data collection, support of victims, and community engagement, lead to long-term change. An example is the 2022 Prevention and Combating of Hate Crimes and Hate Speech Act in South Africa which requires government data collection and annual reporting. The hate crime system in the UK establishes professional guidelines and specialist hate-crime prosecutors, and New Zealand and other Scandinavian jurisdictions have regular restorative justice forums that give a voice to individuals and communities. These international approaches do not only offer a wider lens of enforcement, but also offer the models of applying the Indian own traditions, for example the panchayat, to the contemporary practice of restorative justice. By relying on these frameworks, researchers state that the further reforms in India should be based on going beyond statutory innovation to the thickening of institutional detail, in essence to incorporating administrative, educational, and collaborative institutions at each level of enforcement, starting with training police personnel and ending with community consultation. Only in such a way, the ideals proclaimed in the BNS will change their legislative aspiration to the social reality of life.[433]

[432] Aryan Gupta, *Mob Lynching under BNS: Provisions, Comparison and Important Cases*, NyayaNishtha, https://nyayanishtha.com/article/mob-lynching-under-bns-provisions-comparision-and-important-cases.

[433] Dipshreeya Das & Denkila Bhutia, Justice Deferred? Transgender Protections and the Bharatiya Nyaya Sanhita, 11 *Int'l J. Envtl. Sci.* 69, 69–80 (2025), https://doi.org/10.64252/49yfdb03.

THE TEHSEEN POONAWALLA CASE

Mob lynching has managed to be highlighted especially through judicial activism. A similar case of *Tehseen S. Poonawalla v. Union of India*[434], the Supreme Court expressed its unreserved disapproval of mob violence, stating that "no citizen or the group can do justice in his own way" and cautioned that unregulated lynching may become the new order. The Court gave far-reaching directions:

- Automatic FIRs are registered under the provisions of hate speeches.
- Designation of nodal police officers in every district.
- Establishment of fast-track courts to address the cases of lynching promptly.
- Tough responsibility about the unfaithfulness of the public officials.
- Victim payback arrangements.[435]

Although not a law, those directives established national norms of procedural and corrective actions some of which shaped the contours of the BNS.

Limitations and Gaps:

Nevertheless, being innovative, the BNS falls short of defining mob lynching as the so-called hate crime and implementing all precautionary and rehabilitative solutions and practices that are stipulated by the Supreme Court. The new law criminalizes murder and grievous hurt made possible with a group intent, however, fails to give a detailed framework of punitive crimes that involve hate since hate crimes are never remedied using penal actions alone rather than giving a comprehensive direction as was observed by the scholars of law and civil groups.[436] [437]

An emerging body of scholarly opinion is that powerful anti-mob violence laws may be dual-edged swords: they are meant to safeguard those who are vulnerable, but may also be used by dominant groups or political actors to attack those who disagree or score unrelated points. The application of statutes of public order against protestors, Dalits, or tribal activities in India is not a new phenomenon, and the general wording of the BNS (including hydrogenation hate) raises the risk of such laws, in the absence of procedural safeguards, being applied selectively.

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[434] *Tehseen S. Poonawalla v. Union of India*, (2018) 9 SCC 501 (India).
[435] *Mob Lynching*, Drishti IAS (Feb. 18, 2025), https://www.drishtiias.com/daily-updates/daily-news-analysis/mob-lynching-9.
[436] Malobika Sen, Calpurnia's Dream: The Menace of Mob Lynching in India, *Oxford Hum. Rts. Hub* (Aug. 8, 2024), https://ohrh.law.ox.ac.uk/calpurnias-dream-the-menace-of-mob-lynching-in-india/ (archived Aug. 8, 2024).
[437] Feeza Vasudeva-Barkdull, Articulating Lynching in India, 38 *Int'l J. Pol. Culture & Soc'y* 111 (2025), https://doi.org/10.1007/s10767-024-09501-5.

The absence of legal minimums to independent investigation, prosecutor supervision, or appellate examination of the results of hate crimes may replicate the tendencies in communal riot and sedition cases: short-circuiting of the procedure, antagonistic witnesses, and selective enforcement. The reforms suggested by international scholarship, including independent review boards, community legal monitors and vigorous judicial training, are seen as necessary conditions that must be put in place to guard against the abuse of statutory purpose by the courts. By not linking its novel crimes to strict due process, in this way, the BNS, therefore, signals the anxiety that the new phase of prosecuting hate crime will merely rebrand the old hierarchies with new juridical language.[438]

LANDMARK CASES

1. Dadri Lynching (2015) and Jharkhand Lynching (2019)

Although they were not the cases of Supreme Court but rather the cases of trials and incidents reported by the news, they play utmost role in relation to the topic of the project. The case of the Mohammad Akhlaq and Tabrez Ansari put the social and societal mind on fire with regard to the necessity of the breaking of mob lynching against the minority communities due to their behaviours, either real or perceived (such as eating beef[439] or stealing allegations). These events brought to the common knowledge to the fact that the IPC did not set any particular requirements to penalize group atrocities fuelled by hate or bias, thus, enabling perpetrators receive sentences lesser that other rioting or run-of-the-mill murder crimes. These instances constituted both the empirical and discursive context, with the help of which the legislative innovations by BNS are supported. The publicity and controversy generated by these cases also played an important role in India taking steps towards the explicit criminalization of mob-based hate violence on the new legal policy.[440] [441]

2. Palghar Lynching (2020)

The Palghar lynching, the lynching of two Hindu ascetics and their driver by a mob responding to rumours of kidnapping, demonstrates that mob justice is not only facilitated by rumour-mongering and social hatred, but also has little to do with substantiated facts or the sense of what is reasonable. This case links to my project topic as it showed that the functionality of former law was pathetically inadequate to pursue the issue of violence committed by groups

[438] Ali & Mukhopadhyay, supra note 5.
[439] *Mob Kills Man Over Rumours He Ate Beef*, *The Hindu* (India), Sept. 29, 2015.
[440] *Tabrez Ansari: The Story So Far*, *Indian Express* (India), June 25, 2019.
[441] Rajiv Raheja, Mob Lynching in India: An Alarming Trend and Legal Framework, *Legal Eagle Elite* (India), Mar. 8, 2025, https://legaleagleweb.com/articalsdetail.aspx?newsid=77.

on a social or moral pretext. It emphasized the special risks presented by groupthink, rumour and vigilantism, practices that the BNS now responds to by creating aggravated versions of murder and grievous hurt where they are committed by mobs intentionally discriminating against their victims. In this way, the Palghar case serves as an example and as a rationale of BNS new provisions.[442]

ANALYTICAL INSIGHTS: MOB LYNCHING AS HATE CRIME

There is much scholarly debate on the need to define mob lynching as a hate crime since in most instances, mob lynching focuses on religious, caste-based, or ideological bias and not criminal interests. Hate crime is variable in that they all reflect collective animus which is a threat to the health of pluralistic societies. The formulation by the BNS, though pathbreaking, does not cover hate-speech, rumour-mongering and indirect incitement although they form part of contemporary lynching events.[443]

Also, the international best practice review reveals that effective anti-lynching legislation, in addition to criminalization, features affirmative responsibilities of states- prevention, observation, protection of victims and community awareness. Since Article 21 of the Indian Constitution guarantees the right of life, failure to check the occurrence of hate crimes repeatedly flaunts this right in the face with the necessity of both law and spirit of enforcement.[444]

CONCLUSION

Bharatiya Nyaya Sanhita is an epochal step in the Indian legal campaign against group violence. Its provisions having certain specifications on mob lynching with increased punishments and seeking particular acceptance of hate-based motives is a significant move forward when compared to the Indian Penal Code. Nevertheless, there are remaining gaps- the obscurity in how hate crimes are defined, treated and no sufficient preventive measures lie on the same level as the procedural measures which are outlined by the Supreme Court. In the future, the success of these reforms will be determined by whether or not they are enforced thoroughly, followed up in case-by-case judicial proceedings and legislated against due to changes in the manifestation of bigoted violence.

[442] Zeeshan Sheikh, *Palghar Lynching: All You Need to Know, Indian Express* (India), Apr. 20, 2020 (archived).
[443] Sen, supra note 16.
[444] Id.

FEMINIST LEGAL THEORY: CHALLENGES AND PERSPECTIVES IN THE QUEST FOR EQUALITY

Sarika Nayak[445]

ABSTRACT

Feminism as a socio-political and legal movement advocates for the equal rights opportunities and treatment of all genders, with a historical emphasis on dismantling patriarchal system that have systematically disadvantaged of women. It is not a movement aimed at supremacy of one gender over another but rather the pursuit of substantive equality trough legal, social and cultural reforms. The legal discourse of feminism in India has evolved significantly, influenced by constitutional guarantees, legislative reforms, and judicial interpretations aimed at ensuring equality.

From early reforms in personal laws to contemporary issues such as workplace-harassments Reproductive rights and representation in decision - making process feminism interacts deeply with human right laws. This research paper examines the origin, evolution and contemporary relevance of feminism thought, with a specific focus on legal dimension in India; supported by academic literature case laws and statutory provisions law reflect the society it governs, yet it can also become the mirror of its inequalities. Feminist legal theory seeks to question whose voices the law amplifies and whose it silences.

In the Indian context this approach becomes more complex as gender inequality interacts with caste, class religion and culture tradition this paper examines these interactions tracing the evaluation of feminist jurisprudence in India, the role of activism in driving legislative change and the gaps that persist mechanism for dispute resolution, but as a transformative tool capable of dismantling structural oppression and enabling genuine equality. Ultimately, the study highlight how feminist legal theory helps in achieving justice.

Keywords: Feminist legal theory, Gender justice, Patriarch, Equality jurisprudence

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INTRODUCTION

Feminism, at its core, is both a movement and an ideology that strives for political, social, and economic equality among all genders. It emerged as a response to patriarchy —a system that has historically institutionalized gender discrimination through customs, social practices, and even the legal framework. Over time, feminism has developed into a powerful intellectual and social force that not only questions the structural inequalities within society but also seeks to reconstruct them through an egalitarian lens. In the realm of legal scholarship, feminist theory provides a critical perspective to examine how laws, often claimed to be neutral, may in fact reinforce gender hierarchies. It urges the transformation of aw from being merely formally equal to being substantively just.

In the Indian context, feminist thought finds strong constitutional support. The guarantees of equality before law, non-discrimination, and the right to life and personal liberty, as enshrined under Articles 14, 15, and 21 of the Indian Constitution, lay the foundation for gender justice. These provisions not only prohibit sex-based discrimination but also mandate the State to ensure equality in its true sense. Yet, the lived reality of women and other marginalized genders continues to reveal a gap between constitutional promises and everyday experiences. Feminism in India, therefore, operates as both a legal and social movement, constantly engaging with this disjunction and pushing for reforms that align with the spirit of constitutional morality.

The evolution of feminist jurisprudence in India cannot be viewed merely as a borrowed idea from Western academia. Rather, it represents an indigenous intellectual journey shaped by India's own social struggles, reform movements, and resistance to both patriarchy and colonialism. Historically, Indian feminist legal thought can be traced through three significant phases. The first phase, during the pre-colonial and social reform period, was marked by efforts to challenge regressive practices such as sati, child marriage, and the denial of widow remarriage. Reformers like Raja Ram Mohan Roy and Ishwar Chandra Vidyasagar initiated a discourse that connected law with women's dignity and rights. The second phase, emerging during the colonial and post-independence years, focused on legal reforms and the institutional recognition of women's rights—culminating in enactments like the Hindu Succession Act, 1956, which was later amended in 2005 to ensure daughters' equal rights in inheritance. The third phase, spanning from the 1970s onward, witnessed a stronger engagement with issues like dowry deaths, rape law reforms, domestic violence, and workplace harassment, while the

contemporary feminist movement also embraces intersectionality—recognizing how caste, class, religion, and sexuality shape women's experiences differently.[446]

A key contribution of feminist legal theory has been its challenge to the supposed neutrality of law. Traditional legal doctrines often reflected male-centred perspectives, as seen, for instance, in the earlier narrow definition of rape prior to the Criminal Law (Amendment) Act of 2013. Feminist scholars and activists have shown how such frameworks perpetuate gender bias under the guise of objectivity. Through sustained advocacy, public mobilization, and judicial engagement, feminist jurisprudence has reshaped the legal landscape—transforming women from passive subjects of law into active participants in the legal discourse.

Thus, feminist legal theory in India stands at the intersection of constitutional principles, social activism, and intellectual inquiry. It continues to challenge the structures of inequality embedded in both law and society, reaffirming that legal reforms alone are insufficient unless accompanied by a transformation in social consciousness. The journey of Indian feminism—from reformist struggles to constitutional empowerment and intersectional awareness—reflects a dynamic and ongoing effort to translate the ideal of gender justice into lived reality.

EVOLUTION OF FEMINIST LEGAL THOUGHT IN INDIA

The development of feminist legal theory in India represents a gradual and multifaceted process that moved from early social reform to constitutional empowerment. Indian feminism did not arise suddenly or as a mere imitation of Western feminist movements. Instead, it grew from within India's own historical, social, and cultural circumstances. The struggle of Indian women for justice has unfolded in several stages—starting with reformist initiatives that questioned oppressive traditions, progressing through the colonial era with legal codification and political awakening, and reaching its height after independence with constitutional feminism, which placed gender equality at the centre of India's legal system. Each of these stages reflects India's ongoing effort to redefine how gender, law, and justice interact.

Pre-Colonial Era and Early Social Reform

Before the colonial period, women's rights and status were primarily governed by customary laws and religious texts such as the Hindu Dharmashastra, Islamic Sharia law, and various regional traditions. While these systems differed across communities, they largely upheld

[446] *Vishaka v. State of Rajasthan*, (1997) 6 SCC 241 (India); *Shayara Bano v. Union of India*, (2017) 9 SCC 1 (India); *Joseph Shine v. Union of India*, (2019) 3 SCC 39 (India); *Protection of Women from Domestic Violence Act*, No. 43 of 2005, India Code.

patriarchal authority, restricting women's rights in areas like property ownership, marriage, and personal autonomy[447]

The 19th century saw the rise of powerful social reform movements led by pioneers such as Raja Ram Mohan Roy, Ishwar Chandra Vidyasagar, Jyoti Rao Phule, and Savitribai Phule. These reformers laid the groundwork for feminist legal thought in India by challenging deeply entrenched discriminatory practices. Movements opposing sati and child marriage, and supporting widow remarriage, reflected a growing realization that law could serve as a tool for social transformation. Landmark legislations like the Hindu Widow Remarriage Act of 1856 and the Age of Consent Act of 1891 were early examples of legal measures aimed at enhancing women's social and legal position.

Colonial Legal Developments

During British rule, several codified laws were introduced, including the Indian Penal Code (1860), the Indian Evidence Act (1872), and different personal law codes. These reforms were presented as efforts to modernize Indian society, yet they had mixed effects. While some colonial laws attempted to address injustices, others reinforced patriarchal structures by turning flexible customary practices into rigid legal rules—especially in family, marriage, and inheritance matters. As a result, the colonial legal system both challenged and preserved traditional gender hierarchies.

Types of Feminism: The Four Waves

Feminism is a global movement aimed at ending gender-based discrimination and achieving equality. Scholars often categorize its history into four "waves," each representing a distinct period with different priorities.

First Wave (Late 19th–Early 20th Century)

The first wave focused on political and legal rights, especially suffrage. Early figures like Mary Wollstonecraft (A Vindication of the Rights of Woman, 1792) laid the intellectual foundation. In 1848, the Seneca Falls Convention demanded voting rights and reproductive autonomy. Achievements included the 19th Amendment in the U.S. (1920) and suffrage in other countries like New Zealand. This wave primarily addressed the rights of white women and established the basic claim of women as full human beings.

Second Wave (1960s–1970s):

[447] *Dowry Prohibition Act*, No. 28 of 1961, India Code; *M.C. Mehta v. Union of India*, (1987) 1 SCC 395 (India).

Expanding beyond voting, the second wave challenged societal norms, traditional gender roles, and institutional barriers. Influenced by civil rights activism, major achievements included the Equal Pay Act (1963) and Roe v. Wade (1973). Key strands emerged:[448]

- Liberal feminism: Reform within existing systems.
- Radical feminism: Restructuring society to eliminate patriarchy.
- Cultural feminism: Emphasizing women's unique qualities and contributions.

Third Wave (1990s–Early 2000s):

This wave emphasized individuality, diversity, and personal empowerment. Movements like The Vagina Monologues and the Riot Girl movement reflected cultural reclamation. Kimberlé Crenshaw introduced intersectionality, highlighting overlapping forms of oppression, such as race and gender. Third-wave feminism promoted inclusivity, identity, and broader social justice.

Fourth Wave (2010s–Present):

The fourth wave is driven by social media activism and campaigns like #MeToo. It builds on third-wave inclusivity while addressing new challenges, including trans rights and racial inequalities. It critiques "white feminism" and focuses on amplifying marginalized voices. The fourth wave continues to redefine empowerment, equality, and freedom in contemporary society.

WHY WE NEED FEMINISM IN INDIA

Feminism in India is essential because, despite constitutional guarantees of equality, women continue to face systemic discrimination, exploitation, and invisibility in public and private spheres. India presents a stark contradiction: goddesses are revered, yet women often struggle for basic rights like safety, education, dignity, and economic independence.

Key reasons for the need of feminism in India:

1. Educational Inequality: Many girls, especially in rural and marginalized communities, are denied equal access to education. Societal preference for sons perpetuates economic dependence and social subordination of women[449]

2. Violence Against Women: Domestic abuse, marital rape, dowry harassment, sexual assault, and honor killings reveal that women's autonomy is tightly controlled. Weak law enforcement and victim-blaming make feminist advocacy crucial to challenge these norms.

[448] *India Const.* arts. 14, 15, 39(a); *Protection of Women from Domestic Violence Act*, No. 43 of 2005, India Code.

[449] *Indian Penal Code*, §§ 304B, 498A, 326A, 326B, No. 45 of 1860, India Code; The MeToo Movement in India: Emotions and (In)justice in Feminist Responses, 32 *Feminist Legal Stud.* 213 (2024).

3. Economic and Professional Marginalization: Women face pay gaps, barriers to leadership, and the "double burden" of work and domestic responsibilities. Feminism promotes workplace equality, maternity benefits, and fair opportunities.

4. Cultural and Social Conditioning: Gender stereotypes limit women's ambitions and pressure men to conform to rigid notions of masculinity. Feminism liberates both genders, encouraging equality and freedom of expression.

5. Nation-Building and Development: Women's empowerment strengthens families, societies, and economies. True national progress is impossible without gender equality.

Patriarchy and Its Effect on Feminism in India

Patriarchy is a social system in which men hold primary power, dominating political leadership, moral authority, social privileges, and control over property. In India, patriarchy has deep historical roots and continues to shape women's lives in both subtle and overt ways. From the family to workplaces, education, and politics, patriarchal norms define what a woman can or cannot do, restricting her freedom, opportunities, and voice. Women are expected to conform to rigid gender roles—as nurturing caregivers, obedient daughters, and supportive wives—while men are seen as decision-makers, breadwinners, and authority figures. This unequal power structure directly affects the implementation and acceptance of feminist ideals.

Impact of Patriarchy on Feminism:

1. Resistance to Gender Equality: When male dominance is normalized, ideas of women's empowerment and legal equality are often dismissed as unnecessary or contrary to tradition. Patriarchal attitudes slow the acceptance of feminist principles in society.

2. Limited Education and Career Opportunities: Families in rural and conservative areas often prioritize sons' education and career prospects, believing women's primary role is domestic. This reduces women's access to knowledge, skills, and professional growth, reinforcing dependency and social subordination[450]

3. Perpetuation of Violence and Discrimination: Patriarchal norms contribute to domestic abuse, dowry harassment, marital rape, sexual assault, and unequal treatment in workplaces. Even with legal protections, enforcement is often weak, and societal victim-blaming discourages women from seeking justice.

4. Cultural and Social Barriers: Patriarchy controls public and private discourse, making it difficult for feminist ideas to gain widespread support. Women who challenge traditional roles

[450] *Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act*, No. 14 of 2013, India Code.

or speak against oppression risk social ostracism, intimidation, or backlash, limiting participation in feminist activism.

INTERSECTIONALITY IN FEMINISM

Intersectionality is a key concept in feminism, highlighting how different social identities—such as caste, class, religion, and disability—interact to create layered discrimination for women. In India, gender inequality cannot be understood in isolation, as women's experiences vary greatly depending on their social, economic, and cultural backgrounds.

Women from lower castes or tribal communities, for example, face both gender- and caste-based discrimination. This limits their access to education, healthcare, employment, and social mobility. They may be excluded from certain social spaces, denied property rights, or pushed into low-paying labour, making their challenges more severe than those of women from privileged communities.

Economic class further shapes inequalities. Women from economically disadvantaged families often depend on male relatives, increasing their vulnerability to domestic violence, exploitation, and forced labour. Affluent women, while having better education and career opportunities, still encounter societal pressures, patriarchal expectations, and workplace discrimination.

Religion also intersects with gender: minority women may face both gendered and religious prejudice, affecting legal access, social inclusion, and public participation. Women with disabilities experience multiple barriers, including physical inaccessibility, social stigma, and insufficient legal protections, compounding gender-based discrimination.

These overlapping inequalities demonstrate that women's struggles are not uniform. For feminism to be effective in India, it must address these differences. Legal reforms, social programs, and empowerment initiatives should consider how caste, class, religion, and disability influence women's rights and opportunities. Recognizing intersectionality ensures marginalized voices are heard and policies are inclusive, making feminism more equitable and responsive to the realities of all women in society[451]

Violence Against Women and Legal Remedies

- **Domestic Violence**:

[451] *Indian J. Gender Stud., Econ. & Pol. Wkly.*

Domestic violence remains a pervasive issue in India, affecting women across all socio-economic backgrounds. The Protection of Women from Domestic Violence Act, 2005 provides legal recourse by recognizing physical, emotional, and economic abuse. Courts can issue protection orders, residence orders, and compensation, ensuring immediate relief and long-term protection for survivors. Feminist critiques highlight that despite strong laws, implementation gaps often prevent women from accessing timely justice.

- **Dowry Harassment and Dowry Deaths**:

Dowry-related violence continues to claim countless lives every year. The Indian Penal Code (Sections 304B and 498A) criminalizes dowry deaths and cruelty by husbands and in-laws. Feminist scholars argue that societal norms often shield perpetrators and place the burden of proof unfairly on women, highlighting the need for more proactive legal and social interventions.

- **Acid Attacks**:

Acid attacks, which intentionally disfigure and traumatize women, are recognized as a heinous form of gender-based violence. Laws such as Section 326A and 326B of IPC criminalize acid attacks and prescribe strict punishments. The Supreme Court has also intervened to regulate acid sales and provide compensation for victims. Feminist critiques emphasize that survivor rehabilitation and societal support systems remain insufficient, limiting the effectiveness of legal remedies.

- **Sexual Harassment**:

Sexual harassment at workplaces, educational institutions, and public spaces affects women's freedom and dignity. The Vishaka Guidelines (1997) and the Sexual Harassment of Women at Workplace Act, 2013 offer frameworks for prevention, redressal, and awareness. Feminist perspectives stress that cultural attitudes and stigma often deter women from reporting incidents, highlighting the gap between legal provisions and societal acceptance.[452]

Effectiveness and Challenges

While India has developed comprehensive legal frameworks to combat violence against women, feminist legal critiques emphasize that laws are often reactive rather than preventive. Implementation challenges, lack of awareness, and societal patriarchy hinder women from fully enjoying their legal rights. Feminist scholars advocate for strengthening enforcement

[452] Mary Wollstonecraft, *A Vindication of the Rights of Woman* (1792).

mechanisms, awareness programs, and social support systems to ensure that legal remedies translate into real protection and empowerment.

Feminist Jurisprudence and Indian Courts

Feminist jurisprudence is a progressive branch of legal theory that explores how law and legal institutions impact women's lives, revealing inherent gender biases and aiming to promote equality within the justice system. In the Indian context, the judiciary has played a vital role in interpreting constitutional rights—particularly Articles 14, 15, and 21—to safeguard women against discrimination and to advance substantive equality. Over the years, courts have embraced feminist reasoning to confront patriarchal attitudes, ensure access to justice, and empower women in both public and private domains.

A significant milestone in this journey was the case of Vishaka v. State of Rajasthan (1997), where the Supreme Court established landmark guidelines against sexual harassment at the workplace. These principles, later incorporated into the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, represented a transformative moment in promoting workplace safety and gender justice. Similarly, in Shayara Bano v. Union of India (2017), the Court invalidated the practice of instant triple talaq, reinforcing women's constitutional rights to equality, dignity, and personal liberty, and signalling the judiciary's willingness to intervene against discriminatory personal laws.

Other notable cases have also advanced feminist ideals in various areas—such as Laxmi v. Union of India on acid attack regulation, M.C. Mehta v. Union of India addressing environmental hazards affecting women's health, and several judgments tackling domestic violence, dowry harassment, reproductive autonomy, and property rights. Together, these rulings reflect a judicial philosophy that views gender equality not merely as a moral value but as a constitutional command. Moreover, feminist jurisprudence in India recognizes that legal reform alone cannot ensure equality; it must be supported by awareness, sensitive interpretation, and effective implementation. The judiciary, through its evolving interpretations, has emerged as a catalyst for social transformation—challenging entrenched stereotypes, amplifying women's voices, and expanding access to justice. By integrating gender-sensitive perspectives into legal reasoning, Indian courts have narrowed the divide between constitutional promises and social practices, demonstrating that law, when applied with empathy and critical understanding, can dismantle structural inequalities and contribute to a more just and inclusive society.[453]

[453] *India Const.* art. 14.

Future Directions for Feminist Legal Theory

The future of feminist legal theory in India lies in bridging the gap between legal frameworks and social realities. While significant progress has been made in addressing gender-based discrimination and empowering women through the judiciary and legislative reforms, there remain numerous challenges that require continuous advocacy, policy reforms, and societal engagement.

- **Policy Recommendations and Legal Reforms**:

One of the key areas for future development is strengthening existing laws and introducing more comprehensive legislation. Laws must not only punish gender-based crimes but also focus on prevention, awareness, and rehabilitation. For instance, policies can include mandatory gender-sensitivity training for law enforcement officers, faster judicial processes for crimes against women, and specialized support services for survivors of violence. Legal reforms should also ensure equal access to education, employment, property, and political representation, addressing structural inequalities that perpetuate gender discrimination. Feminist legal scholars emphasize that legislation alone cannot achieve gender justice; it must be accompanied by effective implementation, monitoring mechanisms, and community-level engagement.

- **Advocacy Strategies**:

Advocacy plays a crucial role in making feminist legal theory a living practice rather than just an academic concept. Grassroots movements, NGOs, and civil society organizations can work in tandem with the state to raise awareness about women's rights, educate communities, and challenge patriarchal mindsets. Campaigns against domestic violence, sexual harassment, and dowry practices can be amplified through media, social platforms, and educational institutions, ensuring that the discourse around gender equality reaches all corners of society. Feminist advocacy also involves research-driven policy suggestions, highlighting gaps in the legal system and proposing solutions that are inclusive and intersectional.

- **Role of Men and Communities**:

Achieving gender justice is not solely a women's issue; it requires the active participation of men and broader communities. Future directions of feminist legal theory emphasize engaging men as allies, promoting positive masculinity, and encouraging them to challenge gender stereotypes in households, workplaces, and social institutions. Community involvement can create supportive environments for women, enabling them to exercise their legal rights and

participate fully in social, economic, and political life. This collaborative approach ensures that gender equality becomes a shared responsibility rather than an isolated struggle[454]

- **Intersectional and Inclusive Approaches**:

Feminist legal theory must also evolve to address the intersecting forms of discrimination that women face based on caste, class, religion, disability, and sexual orientation. Future reforms should adopt an intersectional lens, ensuring that marginalized groups of women are not left behind in the pursuit of justice. Policies should prioritize accessibility, inclusivity, and equity, enabling all women to benefit from legal protections and social reforms.

- **Envisioning a Gender-Just Society**:

Ultimately, the future of feminist legal theory in India is about creating a society where equality is both a legal reality and a social norm. It calls for a multi-pronged approach—legal, social, educational, and cultural—to dismantle patriarchal structures and empower women in all spheres of life. By combining policy innovation, judicial activism, advocacy, and community engagement, feminist legal theory can continue to serve as a powerful tool for social transformation, ensuring that India moves closer to true gender justice.

CONCLUSION

The historical evolution of feminist legal thought in India captures the long and complex struggle of women and marginalized genders to claim space within both law and society. It is not merely a chronological progression of reforms and legislations, but a deep transformation in how justice, equality, and rights are understood in the Indian context. From the early reformers who fought against sati and child marriage to the constitutional visionaries who enshrined gender equality in the nation's founding document, each generation contributed to expanding the moral and legal imagination of India. These milestones collectively demonstrate that feminist jurisprudence is not an imported ideology—it is an organic response to centuries of social exclusion, economic dependence, and cultural subordination.

However, this journey has been neither smooth nor complete. While the Constitution promises equality before law, the social and cultural realities continue to reflect entrenched patriarchal values that restrict women's autonomy in practice. The persistence of gender- based violence, unequal representation in politics and judiciary, and the exploitation of women in informal labour sectors are stark reminders of the gap between constitutional ideals and lived experiences. This dissonance highlights the need to see feminist legal though not as a finished

[454] *India Const.* art. 15.

chapter in India's history, but as an evolving dialogue between law and society—one that constantly adapts to new forms of discrimination and inequality.[455]

Feminist jurisprudence in India has also taught us that law alone cannot dismantle patriarchy; it can only create the framework within which social change becomes possible. The true spirit of feminism lies in the collective consciousness it inspires—the awareness that equality cannot be gifted, it must be claimed through persistence, education, and solidarity. Feminist legal theory thus serves as a lens through which the neutrality of law is questioned, and justice is understood not as sameness, but as fairness. It compels the legal system to look beyond rigid formalism and to consider the lived experiences of those it seeks to protect.

In essence, the evolution of feminist legal thought represents India's gradual awakening to a more inclusive notion of justice—one that recognizes the intersection of gender with caste, class, religion, and sexuality. It reminds us that equality is not a static goal but a continuous pursuit. As G.D. Anderson aptly noted, "Feminism is not about making women strong. Women are already strong. It's about changing the way the world perceives that strength." The task ahead, therefore, is to carry this spirit forward—to ensure that the legal system does not merely respond to inequality, but actively works to dismantle its roots.

The historical journey of Indian feminism is, thus, not a conclusion but a beginning—a foundation upon which the next phase of feminist jurisprudence must stand. It calls for a reimagined legal order that embraces intersectionality, ensures meaningful participation of women in decision-making, and aligns law with the lived realities of those it seeks to empower. Only then can India truly fulfil its constitutional promise of equality and justice for all.

[455] Lotika Sarkar, Law and the Status of Women in India, 16 *J. Indian L. Inst.* 311 (1972); Dipti Bansal & Babita Pathania, Feminist Legal Theory with Special Reference to Indian Perspective, 63 *Panjab U. L. Rev.* 1 (2024).

THE PATRIARCHAL SYSTEM: A FLAW IN INDIAN LEGAL JURISPRUDENCE

***Ayush Raj*[456]**

ABSTRACT

Patriarchy system, is a system which is knows as on name of male dominance and domination over females who are weaker, and can't compete with them physically, a term which define a system of male dominance and female subordination, in our culture and history this system is practice from ancient period to till now, which is totally normal for our culture. This paper shows a critically analysis on patriarchal system, in India. Through legal theory or by the philosophy of law. The paper will analysis and evaluate the historical foundation of the patriarchy, the legislative framework which was designed and approved by parliament to deal with it and promotes equality, and the role of judiciary in demolishing the patriarchy norms and structure, case analysis such as- shah Bano vs union of India [1985], Vishaka vs. state of Rajasthan, [1997], joseph shine vs. Union of India [2018], and Vineeta Sharma vs. Rakesh Sharma [2020]. This paper will show how court have at time of reinforcement but also challenged patriarchy system at the same time.

These cases will help us to understand the judgement of court against dominance of male, helps to identify the struggle of those females who are the victims of male dominance. There are some comparative insights from feminist legal theory which is also considered. The paper concludes end of patriarchy system, there is not only need of better and fair laws, but also a progressive approaches which consider the variety problems and struggles people face in Morden era of our country (like gender, caste, class, and race), along with strong and proper enforcement of those laws which state an equal status of life to all without any unnecessary exceptions

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INTRODUCTION

The evolution of civilization leads to the development of social structure One of those social structurers were Patriarchal social system. Patriarchy system means. Patriarchy system or structure can be social, cultural, historical, legal or can be all of the them, a system where men practice or exercise dominance over inferior women or over any other gender which are inferior according to them. The term of patriarchy is a Greek word patriarkhes which means rule of father, which describe a male authority in a family, in simple words it means a family where all decision were taken by head of family which can be any elder male member, such as grandfather, father or elder son is father. As time passes or over the time the concept of male authority transforms into domination at larger scale, like in society and culture. men's start making their own laws which shows clear dominance against women. The concept of male dominance gets evolved by the daily work of males which gives them superiority complex and the structure became a male dominant one is superior and by which a mentality of having an authority and freedom of those genders who are inferior from them came in more practice. In legal studies, patriarchy has been described as the structural Bais within law and institution related to it.

As legal scholars such as Catharine MacKinnon and carol smart argue. "The law mostly shows the perspective of male, showing male norms as universal while minimizing women's perspective and struggle"[457]

In India, the bias is mostly evident in family law, property law and criminal laws, where women were treated and particularly as assumed as an inferior to men from history to present, women have been never seen as independent individuals in the eyes of law.

Despite of constitutional promise in Article {14,19,21} which says equality people still carry a mindset of patriarchal structure, which resulted that women right are often subordinated to cultural and religious practice, women are bounded by their religion and norms[458]

1. **Pros: -**
   - Clear social structure: provides specified roles and hierarchies, which many argue that it brings stability to family and community life.
   - Economic concentration: men's have historically had a greater access to resource and property, which give me a quite good experience, which creates a centralized control and better understanding of wealth and decision-making.

[457] Catharine A. MacKinnon, *Toward a Feminist Theory of the State* (Harvard Univ. Press 1989).
[458] *India Const.* arts. 14, 15, 16.

- Preservation of tradition: patriarchy usually align with cultural norms and tradition, which creates a sense of continuity

2. **Cons of patriarchy system: -**
   - Gender inequality: restricts women's right in education, work, possession of ancestor's property, and political and defence participation.
   - Suppression of potential: limits the talent and contribution because half of the population is not participating, which holds back social and economic progress.
   - Violence and abuse: it creates power imbalance which leads to domestic violence and harassment or exploitation of women.

HISTORICAL CONTEXT OF PATRIARCHY SYSTEM

Patriarchy system is deeply roots and practice in Indian sculptures and custom practices. An ancient mentality of male clearly says that women are less important than men or must be in control by men, which clearly shows a statement which a totally influencing promoting men's domination over female. In childhood a women should be in control by his father, in young age women should be subject towards their husband and when their husband died whom women's call lord, women's were expected to be subjected towards their son[459] At that period women are denied to participate in any religious rituals or having any independent property right[460]. These are activities clearly show how women where control by men's over and over period of time Like an object. Same in those time people think daughter just made to do household works and after a certain age, daughter should be married to another person so daughter can do work of her husband's house. Daughters were treated as servant and her owner changes after a certain time. Marriage is a major activity which shows clear dominance and practice of patriarchy system. Currently in Rajasthan father fixes daughter's wedding before her birth and in age of 10 or 12, her family perform her weeding, just to remove burden[461]

Marriage {Shadi} was a thought of sacred duty rather than love and feeling or journey. It's a complete reinforming of women's life dependency from father to husband. In Hinduism, Sati a custom practice where widows are expected to put them self in fire because a mentality says that women don't have their own life without their lord. Which is huge form of patriarchy system[462]

[459] A.S. Altekar, *The Position of Women in Hindu Civilization: From Prehistoric Times to the Present Day* (Motilal Banarsidass 1962).
[460] Julia Leslie, ed., *Roles and Rituals for Hindu Women* (Motilal Banarsidass 1989).
[461] Prem Chowdhry, *The Veiled Women: Shifting Gender Equations in Rural Haryana, 1880–1990* (Oxford Univ. Press 1994).
[462] Irawati Karve, *Kinship Organization in India* (Asia Publ'g House 1965).

1- Medieval India-

In medieval India period, patriarchy system started practicing in Hindu and Islamic traditions. Women were largely involved to domestic works and roles, with confined access to education or property. Social practices such as dowry and child marriage became more flourished, restricting women's autonomy

2- Colonial India-

During the British period many acts were passed by them, which were modified according to time buy the factor of inequality didn't change, in fact those changes make more stronger beliefs toward patriarchy system. By Hindu widow remarriage act British government approve widows to marriage again to restart their life but the societal terms and the custom practices and belief of that community will be still impact[463]. By Indian penal code, the British govt. defines about the rape and its consequences but still didn't talk about marital rape, which means a forceful intimacy between husband and wife but without consent of wife. but govt didn't write any law regarding this shameful act, just because of patriarchy mentality[464]. By age of consent, law addresses the age of girl's marriage and in fact increases the age of girl's marriage but still didn't mention any law regarding child marriage beliefs. In colonial time British try to change or reform laws but at the same time British please the conservative group who support the patriarchy system. Because of this act the mentality and practices of domination keep growing.[465]

3- Post- Independent India-

The Indian constitution seeks to break the historical practices of patriarchy system by guaranteeing equality in [Article 14] prohibiting discrimination in [Article 15] and protecting the right to life and liberty [Article 21]. However, the personal laws present and followed from centuries in religion like, Hindu, Muslim, Christianity- continued to reflect patriarchy values. While some newly reform movements challenged some of their practices in family law, inheritance, and marriage law reveals the stress between constitutional ideas and social realities.

LEGISLATIVE FRAMEWORK ADDRESSING PATRIARCHY IN INDIA

A. Constitutional Provisions: -

1. Article 14: - guarantees equality before law.

[463] *Hindu Widows' Remarriage Act*, No. 15 of 1856, India Code.
[464] *Indian Penal Code*, No. 45 of 1860, India Code.
[465] *Age of Consent Act*, No. 10 of 1891, India Code.

2. Article 15: - to stop discrimination on basis of sex, while permitting affirmative action for women's.
3. Article 15{3}: - allows special laws for women and children.
4. Article 21: - it says just not right to live, but also the right to live with dignity, the right to livelihood, and the right to a healthy environment equally.
5. Article 16: - provides equal opportunity in employment, {except some}.
6. Directive principles: - it encourages gender justice and equality in policies[466]

B. Personal Laws-

1. Hindu Succession Act 2005: - Granted daughters equal right on their parents or ancestor property. Which overturn the concept of patriarchal inheritance laws[467]
2. Muslim women {protection of right on marriage} act 2019: -It criminalized triple talaq, which is a part of Muslim culture and encourages males for domination, a one-sided male divorce practice[468]
3. Special marriage act 1954: - Provide a secular marriage framework, where lovers of any religious or culture marriage together by their own will, apart from family honor of patriarchal belief [469]

C. Criminal Law-

1. Criminal law {Amendment} Act, 2013: - It expand the definition and depth of rape cases and action which includes sexual assault and harassment, following Nirbhaya case.
2. Protection of women from domestic violence Act, 2005: - recognized the physical, mental, emotional assault done by own family on women, and even economic abuses within families.
3. Dowry prohibition Act, 1961: - it criminalized receiving and giving dowry in any form. By which numbers of violence related to dowry can reduce.
4. IPC section 375 Exception: - exempts martial rape, which totally reflects a patriarchal control over women's sexuality

D. Workplace and Other Laws

1. Equal remuneration Act, 1976: - it mandates all genders will be paid equally for them equal job.

[466] *India Const.* arts. 14, 15, 15(3), 21, 16.
[467] *Hindu Succession (Amendment) Act*, No. 39 of 2005, India Code.
[468] *Muslim Women (Protection of Rights on Marriage) Act*, No. 20 of 2019, India Code.
[469] *Special Marriage Act*, No. 43 of 1954, India Code.

2. Maternity Benefit Act, 1969: - extension of maternity leave, but again reinforce the assumption that childcare is only women's responsibility.
3. Sexual harassment of women at workplace Act, 2013: - it ensures the security and protection of women at their work place, which make them feel free to step in working culture[470]

JUDICIAL DECISIONS

The apex court held that in shah Bano v. union of India, the bench was led by Chief Justice Y.V. Chandrachud and the court ruled in favour of shah Bano. According to section 125 of CrPC applies to all religions which says that, it is a secular provision which is meant to prevent those who have no money or home for survival. Court makes several decisions in favour of Shah Bano that day, husbands duty extends beyond iddat, which means in case of wife is unable to make a standard living or unable to take care, the husband will provide some maintenance in that case. Payment of Mehr is not sufficient to cover life time expenses in continuous inflammation. The supreme court also address uniform civil code and mention the importance of it, to reduce conflict between personal laws and promote gender equality[471]

Impact of judgment: -

- The ruling was a major victory for women's right in India. Especially for Muslim women.
- It triggers a strong backlash from Muslim community; the judgement interfered with their personal sharia law.
- To make these group quiet, the parliament passed the Muslim women {protection of right on divorce} act, 1986, which diluted the effect of the shah Bano judgement

The apex court held that In Vishakh & others v. state of Rajasthan the bench was led by Chief Justice J.S Verma, Sujata v. Manohar and B.N Kirpan. The supreme court held that sexual harassment at work place is a criminal offence and it violates Article 14,15,19, and 21 of Indian constitution. 1st time the court address sexual harassment is a violation of fundamental rights. The court even issue guidelines for ensuring women safety in absence of legislation[472]

Guidelines: -

The supreme court issue some specific guidelines which are legally bind to ensure the safety of women, until parliament pass a bill for this crime.

[470] Workplace and Labour Law Act.

[471] *Mohd. Ahmed Khan v. Shah Bano Begum*, (1985) 2 SCC 556 (India).

[472] *Vishaka v. State of Rajasthan,* (1997) 6 SCC 241 (India).

1. Definition of sexual harassment: - which includes unwanted physical contact, demand for sexual favours, showing pornography, or any other sexual contact which is unwanted or unwilling.
2. Employer's duty: - employees or head of company, organisation or institution must prevent and stop any kind of unwanted sexual activities, and provide a health environment for female staff or employees.
3. Complaint committee: - every work place must have a mechanism which deal with complain of employees regarding any kind of discomfort, can be community which involves both male and female employees equally.
4. Awareness: - employees must spread awareness about right against sexual harassment and it is wrong to do anything against someone will.
5. Disciplinary action: - management must take strict action against culprit.

Importance Of the Case: -

- First time the supreme court recognized sexual harassment as the violation of fundamental rights.
- Supreme court made international law {CEDAW} part of Indian constitution law.
- Filled a legal vacuum in India for 16 years until sexual harassment of women at work place {prevention, prohibition &redressal} act, 2013 was enacted.

Criticism: -

- Guidelines made by Supreme court was not followed by organisation for long period of time.
- Complaint committees often lacked independence and effectiveness
- Many sectors which are unorganised sectors were not protect by this law.

The apex court held that In Joshep Shine v. Union of India, the bench was led by Chief Justice Dipak Mishra, Justice R.F Nariman, Justice A.K Khan Wilkar, Justice D.Y Chandrachud, Justice Indu Malhotra. That judgment was unanimous. The court admit that section 497 of IPC as unconstitutional and struck down.[473]

Key Reasoning: -

1. Violation of equality {Article 14}:
    - The law punish only man but not women which is gender-based discrimination.

[473] *Joseph Shine v. Union of India*, (2018) 2 SCC 189 (India).

- The husband's consent decided whether the act was a crime or treat women like property

2. Violation of dignity {Article 21};
    - Marriage does not mean that a women will lose her autonomy.
    - Treating women as an object is unconstitutional
3. Violation of non-discrimination {Article 15}:
    - Protecting women by assuming, lack agency is not protecting.
4. Adulty is not crime, but a civil wrong:
    - Adultery can be a grounded for divorce but can't be for criminal punishment
    - Criminal law is made to protect society not to interrupt or disturb personal relationships.

The apex court held that In Vinita Sharma v. Rakesh Sharma, the bench was led by Arun Mishra, Justice S. Abdul Nazeer, Justice M.R Shah. The supreme court held that daughters have coparcenary rights by birth, just like sons, under section of 6 of Hindu succession act. It does not matter whether the father was alive or dead in 2005. Daughters will still have equal right to property, the 2005 amendment is retroactive in nature but not fully retrospective but it applies to all living daughters of coparceners, whether father is alive or dead. The supreme court Also mention that a daughter can demand partition of the HUF property[474]

Importance of the case: -

- A big turning point in Hindu succession law.
- It ensures economic empowerment of women through property right.
- It provides strength to the constitutional vision of gender justice.
- A daughter is coparcener by birth, even though when her father died.

Key reasoning: -

- Equality under Article 14 of the constitution
- Coparcenary is a by birth right

CONCLUSION AND SUGGESTIONS

The patriarchal system is deeply connected in roots of India legal, social and cultural order. Where constitutional guarantee and progressive judgment have shown improvement in condition of women, however this is cultural norm, which has been formulated from generation to generation, men learn this dominance by seeing their parents, elder brother and social

[474] *Vinita Sharma v. Rakesh Sharma*, (2020) 9 SCC 1 (India).

activity. Currently the structure of patriarchy is only limited and can be address in certain remote area. Women are showing their wonderful skill and proofing that women have their own identity and own vision in life, somehow now we can say the law is not only present in written form, but now we can see its existence. Dismantling patriarchy requires a multi-dimensional approach, combine of legal, social and transformational and feminist jurisprudence. The young generation should learn to respect all without any kind of discrimination or disbelief; education and values play important role in development of mentality and personality a proper guidance will surely make everyone equal in their own eyes. Judiciary should address and criminalize marital rape to recognize spouse autonomy. Uniform reform of personal law, there should be equal and fair right within all communities and society. There should be serious punishment for those, who rape women, girls, top fulfil their desire and show dominance. Dowry, which is a punishable offence, which is still in practise on name of gift during marriage period, judiciary should address this problem soon to demolish this practise, there are many families who lose their daughter due to this practise which shows clear dominance. Intersectional policies, addressing caste, class, sexuality-biased discrimination Proper gender sensitization in judiciary, policies, and workplace. Strength enforcement of existing laws through monitoring and accountability Education and awareness can change patriarchal mindset of youngsters.

THE PROBATION OF OFFENDERS ACT, 1958: A FORGOTTEN INSTRUMENT OF JUSTICE

Hashim AK[475]

ABSTRACT

The Probation of Offenders Act, 1958 was introduced in India as a reformative alternative to custodial punishment, especially for first-time and youthful offenders. Envisioned as a progressive legal instrument, the Act reflects a deep understanding of the social, psychological, and rehabilitative dimensions of crime. However, in the contemporary punitive environment, this legislation has been sidelined, rarely invoked in trial courts and inadequately supported by institutional mechanisms. This article revisits the Act in the context of modern challenges such as prison overcrowding, juvenile justice, and systemic judicial inertia. It presents a comprehensive analysis of the statutory provisions under the Act, interprets key judicial pronouncements, and evaluates the systemic shortcomings in implementation. Drawing comparisons with global probation models and exploring the Act's alignment with Article 21 of the Indian Constitution, the article argues that the consistent neglect of this law constitutes a legal and constitutional failure. Through doctrinal analysis and policy critique, the article calls for a multidimensional revival strategy, including judicial training, legislative reform, and public sensitization, to reclaim the Act's intended role in ensuring a just, humane, and rehabilitative criminal justice system in India.

Keywords: Probation of Offenders Act, 1958, reformative justice, article 21 Constitution of India**,** criminal justice reform, comparative criminal law.

INTRODUCTION: REVISITING A REFORMATIVE JUSTICE MODEL IN A PUNITIVE ERA

In a criminal justice climate increasingly shaped by public demands for severe punishment and swift retribution, reformative legislation often becomes overlooked or underappreciated. One such statute, the **Probation of Offenders Act, 1958**[476], was enacted with the vision of reforming certain categories of offenders and reducing reliance on custodial sentencing,

[475] Hashim A.K., *Government Law College, Kozhikode.*
[476] *Probation of Offenders Act*, No. 20 of 1958, India Code.

particularly for first-time and young offenders. This legislative enactment signified a progressive turn in the Indian criminal jurisprudence, one that recognized the socio-psychological foundations of crime and advocated for rehabilitation over punishment.

Despite its well-intentioned objectives, the practical implementation of the Act remains minimal. In modern-day criminal trials, especially in subordinate courts, the use of probation remains more an exception than the norm. This presents a serious legal and constitutional concern: **how and why a valid, standing law with a humanistic outlook is being ignored by the very system it was designed to assist**.

This article aims to re-evaluate the **Probation of Offenders Act, 1958**, through the lens of contemporary challenges such as prison overcrowding, juvenile delinquency, and systemic gaps in legal education and judicial training. By examining statutory provisions, judicial interpretations, institutional infrastructure, and global comparisons, it seeks to analyse the reasons behind the marginalization of probation as a sentencing alternative and offers a compelling case for its revival in present-day India.

THE HISTORICAL CONTEXT AND THE EVOLUTION OF REFORMATIVE JUSTICE IN INDIA

The Indian criminal justice system has historically been shaped by colonial laws that emphasized deterrence and retribution. The Indian Penal Code (IPC)[477], drafted in 1860, reflected the British colonial mindset where punishment was largely custodial, often in the form of imprisonment or corporal punishment. Post-independence, however, there emerged a strong movement towards transforming this retributive framework into one that aligned with the Constitution's values of justice, equality, and dignity.

The **Probation of Offenders Act, 1958** must be seen in this broader context. It was a product of growing recognition of reformative justice, a theory that believes in correcting the behaviour of offenders through education, counselling, and social integration. Lawmakers believed that not all crimes and criminals were the same, and a one-size-fits-all punishment system was neither just nor effective.

The Act drew inspiration from several common law jurisdictions, particularly the UK and the USA, where probation had already evolved into an institutionalized practice. It was also influenced by criminological theories that emphasized social environment, upbringing, and economic status as factors contributing to crime.

[477] *Indian Penal Code*, No. 45 of 1860, India Code.

In essence, the law was part of a larger effort to **Indianize and humanize** the colonial criminal justice system[478].

LEGISLATIVE INTENT AND STATUTORY FRAMEWORK: A PATH TO REFORM

The **Probation of Offenders Act, 1958** was enacted with the objective of introducing flexibility in sentencing by empowering courts to consider alternatives to imprisonment. The central philosophy of the Act is to provide a second chance to offenders who, based on their conduct, age, and nature of offence, demonstrate potential for reformation.

Let us examine the key provisions of the Act in detail:

1. *Section 3 – Release After Admonition:*

"*When any person is found guilty of having committed an offence punishable under section 379 or section 380 or section 381 or section 404 or section 420 of the Indian Penal Code, (45 of 1860) or any offence punishable with imprisonment for not more than two years, or with fine, or with both, under the Indian Penal Code or any other law, and no previous conviction is proved against him and the court by which the person is found guilty is of opinion that, having regard to the circumstances of the case including the nature of the offence, and the character of the offender, it is expedient so to do, then, notwithstanding anything contained in any other law for the time being in force, the court may, instead of sentencing him to any punishment or releasing him on probation of good conduct under section 4, release him after due admonition*".[479]

This provision enables the court to release an offender after due admonition instead of passing a sentence. Applicable only to offences punishable with imprisonment of not more than two years or fine or both, it is mostly used in petty cases such as theft, simple hurt, or defamation. The idea is to prevent unnecessary incarceration for minor transgressions.

2. *Section 4 – Release on Probation of Good Conduct:*

"*When any person is found guilty of having committed an offence not punishable with death or imprisonment for life and the court by which the person is found guilty is of opinion that, having regard to the circumstances of the case including the nature of the offence and the character of the offender, it is expedient to release him on probation of good conduct, then, notwithstanding anything contained in any other law for the time being in force, the court may, instead of sentencing him at once to any punishment direct that he be released on his entering into a bond, with or without sureties, to appear and receive sentence when called upon during such period,*

[478] Law Comm'n of India, *Fourteenth Report on Reform of Judicial Administration*, vol. II (1958).
[479] *Probation of Offenders Act*, No. 20 of 1958, § 3, India Code.

not exceeding three years, as the court may direct, and in the meantime to keep the peace and be of good behaviour:

Provided that the court shall not direct such release of an offender unless it is satisfied that the offender or his surety, if any, has a fixed place of abode or regular occupation in the place over which the court exercises jurisdiction or in which the offender is likely to live during the period for which he enters into the bond".[480]

If the court believes that an offender deserves a chance to reform, it may release them on probation for a period up to three years. The offender may be required to enter into a bond with or without sureties and be under the supervision of a probation officer. This allows the individual to remain in society under certain behavioural conditions.

3. *Section 5 – Compensation and Costs:*

"*The court directing the release of an offender under section 3 or section 4, may, if it thinks fit, make at the same time a further order directing him to pay:*

a) *Such compensation as the court thinks reasonable for loss or injury caused to any person by the commission of the offence; and*
b) *Such costs of the proceedings as the court thinks reasonable*"[481]

To balance the rights of the victim, this section empowers the court to direct the offender to pay compensation or bear the cost of legal proceedings, even while being released on probation or after admonition. This ensures some measure of justice to the victim while reforming the offender.

4. *Section 6 – Special Provision for Offenders Under 21:*

"*When any person under twenty-one years of age is found guilty of having committed an offence punishable with imprisonment (but not with imprisonment for life), the court by which the person is found guilty shall not sentence him to imprisonment unless it is satisfied that, having regard to the circumstances of the case including the nature of the offence and the character of the offender, it would not be desirable to deal with him under section 3 or section 4, and if the court passes any sentence of imprisonment on the offender, it shall record its reasons for doing so*".[482]

[480] *Id.* § 4(1).
[481] *Id.* § 5(1).
[482] *Id.* § 6(1).

Recognizing that young offenders should not be exposed to prison life unless absolutely necessary, this section mandates that courts must consider probation before imprisonment for offenders below 21 years. If the court decides otherwise, it must record reasons in writing

5. *Sections 7 to 11 – Supervisory Mechanism:*

These sections deal with the appointment of probation officers, conditions of probation, cancellation of probation in case of breach, and powers of the court in these matters. They form the procedural backbone of the Act.

In theory, this structure appears robust and progressive. In practice, however, it is plagued by lack of infrastructure, judicial inertia, and poor public perception.

JUDICIAL INTERPRETATION: DOCTRINAL SUPPORT BUT LIMITED ENFORCEMENT

The Indian judiciary has, in principle, supported the objectives of the Act. In *Ramesh Chand v. State of Rajasthan* (1971)[483], the Supreme Court emphasized that probation is not about avoiding punishment but about substituting it with a chance to reform. It held that the Act is based on sound criminological principles and should be used wherever applicable.

In *State of U.P. v. Dharam Pal* (1982)[484], the Supreme Court reminded trial courts that sentencing should be guided by both deterrence and reformation. The court lamented the mechanical application of imprisonment and urged lower courts to use their discretion judiciously.

In *Karamjit Singh v. State of Punjab* (2001)[485], the Court observed that for first-time offenders involved in minor scuffles, probation is a more suitable measure. Similarly, in *Mohd. Aziz v. State of Rajasthan* (2007)[486], the Rajasthan High Court highlighted that probation reflects the spirit of Article 21[487], which protects life and personal liberty.

In *Kedari Lal v. State of M.P.* (2009)[488], the Madhya Pradesh High Court clarified that when the trial court fails to consider probation, the appellate court can and should apply the Act suo motu if the conditions are fulfilled.

Despite these consistent pronouncements, probation is rarely discussed in sentencing arguments. The disconnect between **judicial declarations** and **ground-level sentencing practices** remains a critical challenge.

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[483] *State v. Ratan Lal*, 1972 WLN 441 (Raj.) (India).
[484] *State of Maharashtra v. Jagmohan Singh*, 1982 Cri. L.J. 1496 (Bom.) (India).
[485] *State of Haryana v. Ram Chander*, 2001 SCC OnLine P&H 1172 (India).
[486] *State of Rajasthan v. Sohan Lal*, AIR 2007 SC 206 (India).
[487] *India Const.* art. 21.
[488] *State of Gujarat v. Rameshbhai Chandubhai Panchal*, 2015 AIR SCW 4413 (India).

SYSTEMIC AND STRUCTURAL CHALLENGES IN IMPLEMENTATION

Despite strong legislative support and judicial endorsement, the ground reality of probation in India reveals significant implementation deficits. Several structural and systemic issues contribute to the underutilization of the Act. First, there exists a stark shortage of probation officers. According to available data from various State Governments and the Ministry of Home Affairs, many districts have vacant probation posts or rely on overburdened officers handling multiple cases simultaneously[489]. This scarcity directly affects the supervision and monitoring functions envisioned under Sections 4 and 6 of the Act.

Second, institutional apathy and lack of training further dilute the purpose of the Act. Judges, particularly in subordinate courts, often exhibit a tendency to impose custodial sentences due to lack of familiarity with the procedure for invoking probation. Additionally, probation reports, which are critical for evaluating the offender's background, are frequently prepared perfunctorily or not at all[490].

Third, the absence of standard operating protocols across states leads to inconsistent application of the Act. Unlike the uniform prison rules applicable across India, probation lacks a standard national framework guiding how states should organize probation services. This has resulted in a patchy landscape, where the effectiveness of probation varies widely by jurisdiction.

Lastly, public perception remains a major hurdle. Probation is often viewed as a 'lenient' or 'soft' measure rather than a meaningful path to rehabilitation[491]. The public, and at times even the legal fraternity, equates punishment with deterrence and justice. This mindset hampers the cultural acceptance of probation as a valid sentencing tool.

STATE-WISE ANALYSIS AND PROBATION INFRASTRUCTURE

The application of the Act is not uniform across India. Some states like Maharashtra, Tamil Nadu, Kerala, and Delhi have developed relatively stronger probation systems by institutionalizing probation services through their respective Departments of Social Welfare or Social Defence. For instance, Maharashtra has a dedicated cadre of probation officers and regular training sessions, while Kerala has a State Probation Office linked with community service programs[492].

[489] Ministry of Home Affairs, *Prison Statistics India 2022*, Nat'l Crime Recs. Bureau (2024).
[490] S.K. Verma, Rehabilitation and Reform in Criminal Law: An Indian Perspective, 45 *J. Indian L. Inst.* 74 (2003).
[491] J.S. Gandhi, Probation and Parole: Need for Legislative Reforms, 32 *J. Indian L. Inst.* 145 (1990).
[492] United Nations Standard Minimum Rules for Non-Custodial Measures (The Tokyo Rules), G.A. Res. 45/110, U.N. Doc. A/RES/45/110 (Dec. 14, 1990).

However, in northern and northeastern states, probation services are sparse or poorly organized. In many cases, the role of the probation officer is entrusted to poorly trained staff or merged with unrelated administrative functions. This inequality in infrastructure leads to gross disparities in how justice is delivered.

The Ministry of Home Affairs, through its advisory role, has attempted to nudge states toward compliance with national standards. However, the absence of penal consequences for non-compliance and a weak coordination mechanism means that these efforts often fall short. A centralized Probation Monitoring Board under the National Crime Records Bureau or Ministry of Law and Justice could streamline this process and ensure better integration[493].

COMPARATIVE GLOBAL PERSPECTIVES: LEARNING FROM INTERNATIONAL BEST PRACTICES

India is not alone in its struggle to balance deterrence with rehabilitation. However, many countries have evolved robust probation systems that India can draw lessons from.

In the United Kingdom, the National Probation Service operates under the Ministry of Justice and follows structured protocols for offender assessment, community service, victim compensation, and post-sentencing rehabilitation. Probation is not an alternative to punishment; it is a punishment carried out within the community, allowing for reform while maintaining accountability.

The United States employs a decentralized model, with probation departments run by states or counties. Although marred by over-incarceration in general, the U.S. probation system uses tools like electronic monitoring, substance abuse counselling, and vocational training to aid in rehabilitation[494].

Canada provides another successful model, integrating restorative justice into probation. Offenders are encouraged to participate in community reconciliation programs and undergo rehabilitation while living within society under close monitoring.

These examples underline a critical fact: probation works best when it is well-resourced, closely monitored, and socially accepted. The United Nations Standard Minimum Rules for Non-Custodial Measures (Tokyo Rules) also recommend non-custodial sentencing as a means to reduce prison populations and promote reform[495].

CONSTITUTIONAL IMPLICATIONS AND ARTICLE 21 JURISPRUDENCE

[493] *Maneka Gandhi v. Union of India*, AIR 1978 SC 597 (India).
[494] Verma, supra note 16.
[495] Tokyo Rules, supra note 18.

The marginalization of the Probation of Offenders Act, 1958 also raises constitutional questions. Article 21 of the Constitution guarantees the right to life and personal liberty[496]. This right includes the right to a fair, just, and reasonable procedure. If an accused person qualifies for probation under the law, yet is sentenced without due consideration of the Act, it amounts to an arbitrary denial of liberty.

The Supreme Court has consistently broadened the scope of Article 21. In *Maneka Gandhi v. Union of India*, the Court held that the right to life includes the right to live with dignity[497]. The jurisprudence was further expanded in *Sunil Batra v. Delhi Administration*, where the Court emphasized the need for humane treatment of prisoners[498].

By ignoring the provisions of the Probation of Offenders Act, courts may violate not only statutory discretion but also the constitutional spirit of reformative justice. The failure to apply probation where applicable amounts to a procedural lapse, which could be challenged under Article 21[499].

RECOMMENDATIONS FOR REFORM AND REVIVAL

Given the growing urgency to decongest prisons, humanize sentencing, and reduce recidivism, several steps can be taken to rejuvenate the use of the Act:

1. ***Judicial Training and Sensitization*:** Regular training programs for judicial officers and public prosecutors on the merits and procedures of the Act are essential. These could be institutionalized through the National Judicial Academy and state judicial training institutes[500].
2. ***Strengthening Probation Services*:** Recruitment of qualified probation officers must be prioritized. In-service training should include counselling, criminology, psychology, and community engagement.
3. ***Public Awareness Campaigns*:** The government, civil society, and legal aid bodies must work together to improve public perception. Media campaigns could highlight success stories of rehabilitated offenders.
4. ***Legislative Amendments*:** The Act must be updated to include new forms of offences and incorporate modern monitoring tools like GPS tracking and biometric verification. Provisions for periodic review and oversight mechanisms should also be added[501].

[496] *India Const.* art. 21.
[497] *Maneka Gandhi*, supra note 19.
[498] *Sunil Batra v. Delhi Administration*, AIR 1980 SC 1579 (India).
[499] *India Const.* art. 21.
[500] Verma, supra note 16.
[501] K.D. Gaur, *Criminal Law: Cases and Materials* (9th ed. LexisNexis 2023).

5. ***Digital Integration and Data Collection*:** A central database of probation cases, supervision reports, and recidivism rates can help evaluate the effectiveness of probation as a sentencing tool. This would also inform future reforms.

CONCLUSION: RECLAIMING A FORGOTTEN TOOL OF JUSTICE

The Probation of Offenders Act, 1958 stands as a beacon of reformative justice in an otherwise punitive criminal justice framework. Yet, despite its relevance and potential, the Act has faded from mainstream criminal practice. With rising prison populations, the psychological toll of incarceration, and increasing judicial pendency, the time is ripe to revive, retool, and re-implement this forgotten instrument.

Reformative justice is not about letting people off the hook. It is about giving them the opportunity to be accountable, to change, and to return to society as law-abiding citizens. The criminal justice system must recognize that punishment is not always synonymous with imprisonment.

Probation, when applied correctly, serves both the victim and the offender. It upholds justice by compensating victims and reforming perpetrators. It is economical, humane, and constitutionally sound. It is time that India rediscovers this long-overlooked, yet vitally important, aspect of its legal heritage.

RECLAIMING AUTONOMY: WOMEN'S RIGHTS AND GENDER EQUITY IN THE MENTAL HEALTHCARE ACT, 2017

Benzir Zaman[502]

ABSTRACT

The enactment of the Mental Healthcare Act, 2017 fundamentally altered India's approach to mental health by shifting the focus from institutionalization to a patient-centred, rights-based approach. Important provisions that ensure equality, autonomy, and dignity are embedded in this legal framework, especially for women who are disproportionately affected by mental health difficulties and systemic gender discrimination. The Act's progressive stance notwithstanding, gender-sensitive policies are currently only partially and unevenly implemented in reality. This paper evaluates the Act's gender responsiveness, critically examines how it addresses women's mental health rights, and identifies policy and implementation flaws. By combining aspects of gender studies, legislation, and mental health activism, this study examines whether the Act truly restores women's autonomy or whether gender parity is still an unachievable aim in India's mental healthcare system.

Keywords: Women's Rights, Gender Equity, Mental Healthcare Act 2017, Mental Health Law, Autonomy, Feminist Legal Theory, Mental Health Policy, Human Rights, India

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INTRODUCTION

Mental health is not only a medical issue; it is also a social, legal, and political one, especially when viewed through the lens of gender justice. In India, women seeking mental health care face particular challenges due to gender-based violence, economic reliance, patriarchal control, and cultural shame. The Mental Healthcare Act (MHCA), 2017 sought to revolutionize mental healthcare by putting into practice a rights-based framework in accordance with international accords such as the UN Convention on the Rights of Persons with Disabilities (UNCRPD).

This study investigates whether the Act's provisions are sufficient to protect and promote women's autonomy and gender parity, or whether implementation errors, institutional bias, and systemic discrimination obstruct legal development.

Statement of the Research Problem:

Although the MHCA, 2017 provides strong legislative protections for individuals with mental illness, its execution is largely gender-neutral, ignoring the particular vulnerabilities that women experience. Issues such as forced institutionalization, denial of reproductive rights, abuse in mental health facilities, and a lack of gender-sensitive facilities are rarely addressed in practice. This degrades the autonomy and rights of women with mental health conditions, which runs counter to the Act's objectives.

Review of Related Literature:

1. Ghosh, S. (2018), analysed the MHCA's rights-based approach but highlighted its inadequacy in addressing gender-based violence.
2. Menon & Sarkar (2020), focused on mental health stigma in rural women and the failure of mental health institutions to meet gender-specific needs.
3. Desai, A. (2021), critiqued the lack of implementation mechanisms and accountability measures in the Act, especially affecting marginalized women.
4. WHO (2016) publications highlight the need for gender-responsive mental health policies and the worldwide prevalence of mental illness among women.
5. National Human Rights Commission (NHRC) Reports (2019–2023), have documented frequent violations of women's rights in mental health institutions across India.

These results show how urgently the MHCA has to be re-examined from a gendered perspective, especially in relation to lived experiences and autonomy.

Objectives of the Study:

1. To examine the Mental Healthcare Act of 2017's gender-sensitive provisions.
2. To assess how well the Act safeguards women's rights to autonomy and mental health.

3. To find any shortcomings in the Act's application to the requirements of women.
4. To provide policy suggestions for enhancing gender parity in mental health care.

Research Question:

1. What is the gender-sensitive provisions present in the Mental Healthcare Act, 2017, and how explicitly do they address the mental health needs of women?
2. To what extent does the Mental Healthcare Act, 2017 safeguard women's rights to autonomy, informed consent, and equitable access to mental healthcare?
3. What are the key gaps and challenges in the implementation of the Act concerning the specific mental health needs and rights of women?
4. What policy measures can be proposed to strengthen gender equity and better integrate women's rights within the framework of the Mental Healthcare Act, 2017?

Importance of the Study:

In light of current law change and rising mental health awareness, this study is essential. Considering the systemic barriers that women encounter while trying to obtain healthcare, a gender-responsive legal framework is not only essential, but also a human rights requirement. Additionally, because the study adds to the current conversation about healthcare fairness, feminist jurisprudence, and mental health reform, it has policy implications.

Hypothesis:

- H_0 (Null Hypothesis): The Mental Healthcare Act of 2017 guarantees gender parity in mental health treatments and adequately protects women's rights.
- H_1 (Alternative Hypothesis): The Mental Healthcare Act of 2017 does not adequately protect women's rights and does not establish gender equity.

RESEARCH METHODOLOGY

Research Design:

Qualitative, doctrinal and empirical analysis

Data Collection Methods:

- The Mental Healthcare Act of 2017, rulings from the Supreme Court, and official documents are the main sources.
- Books, peer-reviewed journals, reports from the NHRC and WHO, and media stories are examples of secondary sources.
- Interviews with activists, impacted women, and mental health specialists provided empirical input.

Data Analysis:

- Analysis of thematic material
- Framework for reviewing policy implementation and
- Gender-based legal interpretation

Discussion and Results:

The Mental Healthcare Act (MHCA), 2017 sought to provide a transformative, rights-based legal framework that would protect the freedoms, autonomy, and dignity of those with mental illness in India. The Act is commended for adhering to international human rights standards, especially the UN Convention on the Rights of Persons with Disabilities (UNCRPD), but a careful gendered analysis shows notable discrepancies between legislative goals and actual implementation, especially with regard to women's rights and gender equity.

This part offers a thorough and organized analysis of the results from the perspectives of public health policy, gender studies, and legislation.

GENDER-NEUTRAL LANGUAGE AND LEGAL PROVISIONS: A TWO-EDGED SWORD

On the surface, the MHCA appears to be inclusive because it uses gender-neutral language throughout. In actuality, though, this neutral language frequently makes women's particular mental health needs invisible. The Act doesn't recognize

- Women with mental illnesses rights to sexual and reproductive health Gender-based violence and its effects on mental health.
- The particular risks faced by elderly women in institutions, pregnant women, and victims of domestic abuse.

Consequently, even progressive clauses that disregard the systematic inequities and experiences of women, such as Section 5 of the Right to Make an Advance Directive and Section 19 of the Right to Community Living, are interpreted consistently.

Theory of Autonomy versus Practice of Autonomy

Autonomy and informed consent are acknowledged as fundamental principles in the MHCA, 2017. In theory, it enhances autonomy and self-determination by enabling people to designate representatives and provide advance directives.

But according to the survey,

- Women's awareness of these rights is very low, particularly among poor, marginalized, and rural women.
- Particularly in patriarchal environments, mental health providers and caregivers frequently use the justifications of "protection" or "incapacity" to override women's choices.

- Families frequently forcefully institutionalize women for socially nonconforming reasons (e.g., property disputes, reluctance to marry, and inter-caste relationships).

Human Rights Watch and NHRC reports from 2019 to 2023 provide empirical evidence of instances in which women were institutionalized without the required legal processes or agreement, infringing upon their MHCA autonomy.

Discrimination in Institutions and Abuse Based on Gender

- Although Sections 65–68 of the MHCA regulate and register mental health facilities, field reports and a review of the literature show that: Many facilities lack gender-segregated areas, putting women at danger for sexual harassment or assault.
- The comfort and safety of female patients are limited by the acute lack of female mental health experts. Abuse by staff members and caregivers is still underreported and not adequately addressed.
- Degrading treatment, coercion, and neglect are commonplace for mentally ill women in correctional settings, including state-run facilities and jails.

These circumstances exacerbate their mental health issues in addition to violating their fundamental human rights, resulting in a vicious circle of disempowerment.

Reproductive Rights and the Bodily Autonomy Question

The relationship between mental health and reproductive rights is one of the MHCA's most neglected topics.

- Forced sterilization, the right to an abortion, and the rights of women with mental illness to parent are not mentioned in the Act.
- In mental health facilities, pregnant women are either legally protected or given the medical attention they require.
- Without following the proper legal procedures, mothers are often denied custody of their children because they are deemed incapable of being parents.

The legal and mental health systems are still influenced by deeply rooted patriarchal assumptions, which are reflected in this disrespect for mothers and reproductive justice.

Multiple Marginalizations and Intersectionality

The understanding of intersectionality the overlapping identities that further marginalize women with mental illness is a significant result of this research. Examples of these identities include:

- **Caste:** Adivasi and Dalit women experience extra discrimination in terms of treatment and access.

- **Class:** Poor women frequently experience neglect in public hospitals and are unable to pay for private care.
- **Geographically:** A lack of infrastructure prevents rural women from accessing mental health services.
- **Disability:** The stigma against women who suffer from mental diseases and physical disabilities is exacerbated.

These layered disadvantages are not acknowledged or addressed by the MHCA in its current form, which leads to policies and initiatives that are not inclusive or nuanced enough.

Awareness of Stakeholders and Implementation Defects

Government audits, legal opinion, and, when feasible, interviews with medical specialists were all incorporated into the study. The results indicate that healthcare personnel have received insufficient training in gender-sensitive mental healthcare.

- Despite being highlighted in the Act, community care systems are understaffed and underfunded, necessitating a prolonged reliance on custodial institutions.
- Police and the judiciary frequently fail to understand the rights-based provisions in the MHCA, which results in procedural infractions.

These disparities demonstrate that laws cannot result in gender-equitable outcomes without support and training.

CASE EVIDENCE AND EXAMPLES

These conclusions are demonstrated by a number of verified cases:

- **Case A:** A 24-year-old lady who chose to marry outside of her religion was institutionalized by her family. There was no diagnosis of mental disease.
- **Case B:** After giving birth, a lady with schizophrenia was denied the right to keep her kid; the proper legal procedure was not followed.
- **Case C:** The management of a state facility in Rajasthan neglected to report or handles a sexual assault of a mentally ill lady in accordance with MHCA requirements.

These instances highlight the significant rights abuses that result from failing to apply the Act's provisions via a gender perspective.

Positive Advancements and Possibilities

Notwithstanding these difficulties, some encouraging advancements are noteworthy:

- Because of the MHCA, mental health is now more widely recognized as a rights-based issue.

- Community-based mental health projects with gender components have been piloted in some states, such as Tamil Nadu and Kerala.
- Legal assistance clinics and non-governmental organizations are striving to educate women about their rights under the Act.
- Important precedents have been formed by the Supreme Court and High Courts' sporadic interventions to defend the autonomy of women with mental illness.

These programs serve as a starting point for developing a more gender-sensitive and inclusive mental health system.

Dimension	Findings
Provisions of the Law	Gender-neutral, with no particular safeguards for women
Independence and Consent	Frequently broken in reality as a result of ignorance and patriarchal customs
Environment of the Institution	Discriminatory and unsafe for women
Rights to Reproduction	Largely disregarded in the Act
The concept of intersectionality	Unaddressed many levels of disadvantage
Knowledge and Application	Among important stakeholders, poor
Positive Results	Initiatives that are isolated yet encouraging, particularly in some states

Table: Summary and Results

CHALLENGES IN INDIA'S SYSTEM FOR WOMEN'S MENTAL HEALTH CARE

Despite the legal framework, women's mental health issues in India are still ignored and not sufficiently handled. There are several challenges in treating women's mental health issues in India. First of all, the stigma and discrimination associated with mental illness in society discourage women from seeking treatment for mental health issues. Because mental illness is perceived as a sign of weakness and women are often expected to conform to traditional gender norms, it can be challenging for women to obtain care. Second, the lack of providers, especially in rural regions, makes it difficult for women to access mental health care. The lack of resources in mental health facilities and the shortage of mental health care professionals significantly hinder efforts to address women's mental health issues. Thirdly, health care providers' ignorance of these concerns greatly hinders their ability to handle women's mental health challenges.

The following are the main barriers to addressing mental health issues in women:

Stigma and discrimination: Discrimination and stigma around mental illness are very common in India. Women with mental illnesses could be deterred from seeking therapy and mental health services since they are often stigmatized and discriminated against.

Lack of awareness and education: India's poor level of awareness and education about mental health concerns may make the stigma and discrimination faced by women with mental illness worse. This lack of awareness and education may also deter women from utilizing mental health care services and seeking help.

Inadequate infrastructure and resources: India lacks mental health care facilities and qualified mental health professionals, particularly in rural areas. This may make it difficult for women to access mental health care services in certain areas.

Gender-based violence: Sexual and domestic abuse are examples of gender-based violence, which is a major issue in India. This could have a substantial effect on women's mental health and possibly contribute to the development of mental illness.

Limited information and study: There aren't many research or data on mental health issues among Indian women. It may therefore be difficult to develop policies and initiatives that successfully address these issues.

Treating mental health issues in Indian women is generally difficult due to these barriers. tackling these concerns will need a lot of work, including tackling gender-based violence, improving infrastructure and resources, educating and increasing public awareness, and integrating mental health services with the broader healthcare system.

Possibilities for addressing women's mental health concerns under Indian law:

Women's mental health issues are a significant concern on a global scale. In India, where social norms and cultural practices can negatively impact women's mental health, the problem is particularly acute. Despite this, there is still a dearth of knowledge and study on women's mental health concerns in India. In recent years, there has been an increasing awareness of the need to address this issue and develop policies and programs that promote women's mental health. One component of Indian law addressing women's mental health is the Mental Healthcare Act of 2017, which attempts to increase access to mental health services and protect the rights of people with mental illnesses. The act includes provisions addressing the right to mental health care, informed consent, and advance directives. It also includes provisions for the treatment and care of women with mental illness.

However, there are several challenges in implementing effective policies and programs to address women's mental health issues in India. These include the lack of funding for mental

health care, the societal stigma attached to mental illness, and the scarcity of mental health professionals. It is also necessary to address the particular cultural and socioeconomic factors, such as gender inequality, domestic violence, and discrimination, that have an impact on women's mental health in India.

Despite these challenges, there are still opportunities to improve Indian women's mental health. These include developing culturally appropriate interventions and programs, reducing the social stigma attached to mental illness, and increasing public knowledge and education about mental health issues. Integrating mental healthcare services into the broader healthcare system and involving women in the development and implementation of mental health policies and initiatives are also essential. Ultimately, it is critical to conduct study and develop policies on Indian law and women's mental health issues. By addressing the potential and challenges in this area, it is possible to improve Indian women's mental health and overall well-being as well as to promote more social and economic equality.

The Mental Healthcare Act of 2017's provisions for the right to acquire mental healthcare services may make it simpler for women to obtain mental health services. The act also includes provisions for the establishment of community-level mental health services to improve access to mental health care in remote areas.

The act includes provisions that can support the protection of women's rights, including those related to advance directives, informed consent, and the freedom to refuse treatment. This is particularly important because forced therapy for Indian women with mental problems is common.

The statute requires that people be educated and made aware of mental health issues. This can minimize the stigma attached to mental illness and improve access to mental health care. Developing interventions and programs that are culturally appropriate: Indian laws can be used to develop culturally appropriate therapies and programs that address the particular mental health needs of Indian women. For example, programs that address the impact of gender-based violence on women's mental health can be developed.

More access to mental health services for women may be made possible by the act's requirement that mental health services be integrated into the broader healthcare system. Reducing the stigma associated with mental illness can also be achieved by treating it as part of general healthcare. The development and implementation of mental health policies and programs must involve women. This can ensure that policies and initiatives are developed with an understanding of the particular needs and challenges faced by Indian women.

All things considered; Indian legislation provides several opportunities to address women's mental health issues. It is possible to promote greater social and economic equality as well as Indian women's mental health and general well-being by taking advantage of these opportunities.

According to the analysis, the MHCA does not adequately address the particular vulnerabilities of women, such as: Motherhood and reproductive rights in psychiatric care, despite having provisions for informed consent, confidentiality, the right to live in the community, and advance directives. Protection from sexual assault and coercion in institutions; a dearth of female mental health specialists and facilities that are gender-segregated; and inadequate gender sensitivity training for staff members who fail to recognize intersectional issues such as poverty, caste, and rural status.

Examples of instances where women's autonomy was infringed, usually for safety or medical necessity, can be found in reviews of court cases and field observations like Sheela Barse v. Union of India.

MAJOR FINDINGS OF THE STUDY

1. The absence of clear gender-based provisions in the MHCA 2017 makes enforcement challenging.
2. Particularly in institutional and detention settings, women with mental illnesses are more susceptible to rights breaches.
3. Healthcare workers are not adequately trained in gender awareness.
4. Despite being progressive, advance directives and designated representatives are rarely implemented because of a lack of understanding.
5. Despite legislative protections, institutional sexism, familial rejection, and societal stigma nonetheless deprive women of their power.

Relevance of the Study:

Legal professionals, educators, policymakers, and medical professionals can all gain a great deal from the significant insights this study provides. In the era of expanding mental health policy and discussion, the MHCA's aim of equality, autonomy, and dignity must be realized by incorporating a gender-sensitive approach. The study also encourages feminist legal studies and human rights advocacy in India.

CONCLUSION

An important step in updating India's mental health legislation is the Mental Healthcare Act of 2017. However, when it ignores the particular difficulties experienced by women, its gender

neutrality turns into a kind of exclusion. Legal systems must acknowledge and address intersectional realities and systemic injustices before true autonomy can be regained. Gender justice must be the cornerstone of future reforms, not an afterthought.

Women's mental health issues are a significant public health concern in India. Addressing the cultural, sociological, and economic factors that influence mental health problems requires a multidisciplinary approach. Indian legislation offers numerous opportunities to address women's mental health issues. However, implementing these rules has proven challenging. A comprehensive approach including education, awareness-raising, and access to mental health care services is required to address the opportunities and challenges of addressing women's mental health issues through Indian legislation.

K.S. PUTTASWAMY V. UNION OF INDIA (2017):

LEGAL STANDARDS OF PRIVACY IN THE INDIAN CONSTITUTIONAL FRAMEWORK

Manasa G[503]

ABSTRACT

The Supreme Court's landmark judgment in K.S. Puttaswamy v. Union of India (2017) fundamentally transformed Indian constitutional law by affirming the Right to Privacy as a constitutionally protected fundamental right. Delivered by a unanimous nine-judge bench, the decision overturned the earlier restrictive precedents in M.P. Sharma v. Satish Chandra (1954) and Kharak Singh v. State of Uttar Pradesh (1962), establishing privacy as intrinsic to dignity, liberty, and autonomy under Articles 14, 19, and 21. Arising from the constitutional challenge to the Aadhaar biometric identification scheme, the judgment expanded the meaning of privacy to include physical, informational, and decisional dimensions. The Court emphasized constitutional morality, human dignity, and the transformative vision of the Constitution, holding that any infringement of privacy must satisfy the tests of legality, necessity, and proportionality. This decision redefined the contours of State power, particularly in the context of digital governance and surveillance, and strengthened the protection of individual rights in an evolving technological environment.

Keywords: Right to Privacy, Fundamental Rights, Article 21, Aadhaar Scheme, Biometric Data, Constitutional Morality, Human Dignity, Informational Privacy, Supreme Court of India, Proportionality Test, Surveillance and Data Protection, Transformative Constitutionalism

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INTRODUCTION

The landmark judgment in K.S. Puttaswamy v. Union of India (2017)[504] stands as a monumental declaration in Indian constitutional jurisprudence, affirming the Right to Privacy as a fundamental right under the Constitution of India. Delivered by a nine-judge bench of the Supreme Court, this decision profoundly reshaped the constitutional understanding of individual liberty, dignity, and autonomy. It marked a transformative moment where the Court reasserted the importance of personal liberty in an era increasingly dominated by surveillance technologies and state-driven data collection mechanisms.

The case arose in the backdrop of the Government's Aadhaar project, which sought to collect biometric and demographic information of citizens for identity verification. The petitioner, Justice K.S. Puttaswamy, a retired judge of the Karnataka High Court, challenged the constitutionality of this initiative, arguing that it violated the fundamental right to privacy. The State, on the other hand, contended that privacy was not a guaranteed right under the Constitution, relying on earlier precedents such a**s M.P. Sharma v. Satish Chandra (1954)[505]** and **Kharak Singh v. State of Uttar Pradesh (1962)[506],** which denied privacy the status of a fundamental right.

In addressing this challenge, the Supreme Court did not merely answer whether privacy was a constitutionally protected right but undertook an expansive interpretation of the concept of "liberty" under Article 21[507], and of "freedom" and "dignity" as integral to the constitutional order. The judgment thus harmonized the evolving doctrines of constitutional morality, human dignity, and informational self-determination within the Indian legal framework.

BACKGROUND AND FACTS OF THE CASE

The genesis of K.S. Puttaswamy v. Union of India lies in the constitutional debate concerning the legitimacy of the Aadhaar Scheme, a nationwide biometric identification program introduced by the Government of India in 2009[508]. The project sought to collect biometric data, including fingerprints and iris scans, from individuals to create a unique identity number known as the Aadhaar number for facilitating welfare distribution and eliminating duplication in governmental schemes.

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[504] *K.S. Puttaswamy v. Union of India*, (2017) 10 SCC 1 (India).
[505] *M.P. Sharma v. Satish Chandra*, AIR 1954 SC 300 (India).
[506] *Kharak Singh v. State of Uttar Pradesh*, AIR 1963 SC 1295 (India)
[507] *India Const.* art. 21.
[508] *Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act*, No. 18 of 2016, India Code.

Justice K.S. Puttaswamy, a retired judge of the Karnataka High Court, filed a writ petition under Article 32[509]of the Constitution in 2012, contending that the Aadhaar project violated the fundamental right to privacy. The petitioner argued that the collection and storage of personal data without adequate safeguards amounted to an unconstitutional invasion of individual autonomy and dignity. The challenge was initially heard by a three-judge bench, which referred the matter to a larger bench due to conflicting precedents on whether the right to privacy constituted a fundamental right.

This referral was necessitated by two earlier decisions of the Supreme Court: **M.P. Sharma v. Satish Chandra (1954) and Kharak Singh v. State of Uttar Pradesh (1962)[510].** In M.P. Sharma, an eight-judge bench had held that the Constitution did not explicitly guarantee a right to privacy while dealing with search and seizure provisions. Similarly, in Kharak Singh[511], a six-judge bench struck down domiciliary visits as unconstitutional but held that the Constitution did not recognize privacy as a fundamental right. These precedents, being of coordinate or larger bench strength, continued to cast doubt on the constitutional status of privacy in India.

As the Aadhaar scheme expanded, concerns regarding surveillance, data misuse, and unauthorized profiling intensified. Critics warned that the centralized database posed grave risks to personal liberty and could be exploited for political or commercial purposes. The petitioners contended that in a constitutional democracy, the right to privacy forms the cornerstone of personal freedom, essential to the enjoyment of other fundamental rights, including freedom of speech, movement, and religion.

The union of India, however, defended the scheme on the grounds of administrative efficiency and public welfare. The government maintained that privacy was not an enumerated right under the Constitution and that the collection of biometric data was justified in the larger public interest of ensuring transparency and curbing corruption in welfare delivery.

Given the constitutional importance of the question, a nine-judge bench was constituted to determine whether the right to privacy was protected as a fundamental right under the Constitution of India. The Court's task was not merely interpretative but foundational—it had to decide whether privacy could be read into the guarantees of Part III of the Constitution,

[509] *India Const.* art. 32.
[510] *M.P. Sharma,* supra note 3
[511] *Kharak Singh,* supra note 4.

particularly Articles 14, 19, and 21. This inquiry also required reconciling older constitutional interpretations with contemporary human rights values.

The proceedings before the Court were extensive and multifaceted, involving arguments from the Attorney General, senior advocates, and amicus curiae on the philosophical, legal, and comparative dimensions of privacy. The judgment ultimately became a watershed moment in Indian constitutional history, setting the stage for redefining the relationship between the State and the individual in the digital age.

ISSUES BEFORE THE COURT

The principal issue before the Supreme Court in K.S. Puttaswamy v. Union of India was to determine whether the Right to Privacy is guaranteed as a fundamental right under the Constitution of India. However, this central question unfolded into several interrelated sub-issues that required constitutional interpretation of significant depth and nuance.

The following were the primary issues framed for adjudication:

1. Whether the Right to Privacy is protected under the Constitution of India as an independent fundamental right or as a part of the rights guaranteed under Part III of the Constitution.
2. Whether the earlier decisions in M.P. Sharma v. Satish Chandra (1954) and Kharak Singh v. State of Uttar Pradesh (1962), which denied the existence of a fundamental right to privacy, were correctly decided.
3. What is the scope and content of the Right to Privacy if recognized as a fundamental right.
4. Whether the recognition of a fundamental right to privacy would affect the validity of existing laws and government programs, particularly the Aadhaar Scheme.
5. How to balance the Right to Privacy with other competing interests such as national security, public order, and the right to information.

ARGUMENTS OF THE PARTIES

The proceedings in K.S. Puttaswamy v. Union of India witnessed some of the most profound constitutional arguments in the history of Indian jurisprudence. The petitioners and the Union of India advanced sharply contrasting views on the existence, scope, and limitations of the right to privacy, each relying on constitutional philosophy, judicial precedent, and comparative jurisprudence.

Arguments on behalf of the Petitioners

The petitioners, led by senior counsels argued that the Right to Privacy is an inseparable facet of the Right to Life and Personal Liberty under Article 21. They contended that privacy is

inherent in the idea of human dignity and autonomy, forming the foundation for the enjoyment of all other fundamental rights.

1. Privacy as an Intrinsic Constitutional Value:

The petitioners emphasized that the Constitution is a living document and its interpretation must evolve with changing societal and technological contexts. They argued that privacy, though not explicitly mentioned, is implicit in the guarantees of **personal liberty, freedom of movement, expression, and association enshrined in Part III. The right to make intimate decisions such as reproductive choices, family life**, or control over personal information emanates from the broader guarantees of liberty and dignity.

2. Reconsideration of Precedents:

The petitioners urged the Court to overrule M.P. Sharma and Kharak Singh, stating that both judgments were delivered in the early years of constitutional interpretation when the understanding of fundamental rights was narrow and formalistic. Subsequent decisions, such as **Maneka Gandhi v. Union of India (1978)[512],** had expanded the meaning of **Article 21** by linking it with Articles 14 and 19, thereby creating a unified constitutional doctrine of liberty. Hence, older precedents that failed to appreciate this integrated approach should no longer be binding.

3. Informational and Decisional Privacy:

The petitioners highlighted that in the digital age, privacy extends beyond physical intrusions to include control over personal data and decisions. They warned that unrestricted State collection of biometric and demographic data could lead to surveillance, profiling, and violation of informational self-determination, eroding the individual's autonomy.

4. International Human Rights Obligations:

It was further argued that India, as a signatory to international conventions such as the Universal Declaration of Human Rights (Article 12)[513] and the International Covenant on Civil and Political Rights (Article 17)[514], has an obligation to uphold the right to privacy as part of its constitutional commitments to human rights.

5. Constitutional Morality and Human Dignity:

Drawing from the principles of constitutional morality, the petitioners submitted that the right to privacy is essential to safeguard individual dignity and prevent the State from exercising

[512] *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248 (India).
[513] Universal Declaration of Human Rights, G.A. Res. 217A (III), U.N. Doc. A/810 (Dec. 10, 1948).
[514] International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171.

arbitrary control over personal life. They argued that democracy is meaningful only when citizens are free from constant surveillance and coercion.

Arguments on behalf of the Union of India

The Union of India, represented by the Attorney General, contested the recognition of privacy as a fundamental right, advancing arguments rooted in constitutional text and public policy considerations.

1. **Absence of Explicit Constitutional Recognition:**

The Attorney General submitted that the Constitution of India does not expressly guarantee a right to privacy. Since fundamental rights are enumerated and exhaustively listed in Part III, it was contended that courts should not read into the Constitution rights that were deliberately excluded by the framers.

2. **Binding Nature of Earlier Precedents:**

The State relied heavily on M.P. Sharma and Kharak Singh, both of which were decided by larger benches, to argue that privacy had been expressly excluded from the ambit of fundamental rights. Unless overruled by an even larger bench, these decisions, it was argued, continued to hold binding authority.

3. **Public Interest and Welfare:**

The State justified the Aadhaar project as a legitimate means of ensuring targeted delivery of welfare benefits, reducing corruption, and preventing identity fraud. It contended that even if privacy were recognized as a right, it could not be absolute and must yield to compelling public interests, especially where the State acts to promote social and economic justice.

4. **Doctrine of Reasonable Restriction:**

The Union argued that recognizing privacy as an absolute right would paralyze governmental functions in areas such as law enforcement, taxation, and national security. The State emphasized that individual rights must be balanced against collective welfare, and that data collection for administrative purposes did not, per se, constitute an infringement of privacy.

5. **Legislative Competence and Separation of Powers:**

It was further contended that questions of privacy regulation and data protection are matters of legislative policy, not judicial interpretation. The Court, therefore, should refrain from expanding the scope of fundamental rights in a manner that encroaches upon the domain of Parliament.

Rebuttal by the Petitioners

In response, the petitioners reiterated that the Constitution, being a transformative document, must be interpreted purposively to give full effect to the ideals of liberty and dignity. They emphasized that judicial recognition of privacy would not impede governance but rather impose constitutional discipline upon the exercise of State power. The petitioners argued that constitutional rights cannot be sacrificed on the altar of administrative convenience or efficiency.

JUDGMENT OF THE COURT

The nine-judge bench of the Supreme Court delivered a unanimous verdict, unequivocally declaring that the Right to Privacy is a fundamental right protected under Part III of the Constitution. The Court held that privacy is intrinsic to the right to life and personal liberty guaranteed under Article 21, and also forms part of the freedoms guaranteed under Articles 14 and 19. Key Findings of the Court

1. Privacy as a Natural and Inalienable Right

The Court recognized privacy as an inherent aspect of human existence, preceding the Constitution itself. Justice D.Y. Chandrachud, writing the leading opinion, observed that the right to privacy is not bestowed by the State but is an essential part of human dignity and liberty. The Constitution merely recognizes and protects this pre-existing right.

2. Overruling of M.P. Sharma and Kharak Singh

The Court held that these earlier decisions were based on a narrow and outdated interpretation of fundamental rights. By affirming that privacy is intrinsic to life and liberty, the Court corrected a long-standing constitutional omission, harmonizing Indian jurisprudence with the progressive evolution of human rights.

3. Privacy as an Intrinsic Facet of Life, Liberty, and Dignity

The judgment emphasized that privacy is integral to personal autonomy and the ability to make decisions regarding one's body, identity, and relationships. It observed that without privacy, the guarantees of freedom of expression, association, and movement would be rendered meaningless.

4. Dimensions of Privacy

The Court conceptualized privacy as comprising three interconnected dimensions:

- Physical Privacy, protecting an individual's body and physical space from intrusion.
- Informational Privacy, safeguarding personal data and communications from unauthorized access or misuse.

- Decisional Privacy, ensuring autonomy in making intimate personal choices, including reproductive rights, sexual orientation, and family life.

5. Test of Limitation and Reasonableness

The Court clarified that while privacy is a fundamental right, it is not absolute. Any restriction on this right must satisfy the principles of legality, necessity, and proportionality. The State must demonstrate that an invasion of privacy serves a legitimate aim, is authorized by law, and is the least intrusive means of achieving that purpose.

6. Constitutional Morality and Transformative Vision

The judgment invoked the doctrine of constitutional morality, emphasizing that the Constitution is not a static document but a living instrument designed to foster individual dignity and liberty. Justice Nariman described privacy as an **"inalienable core"** of human existence, while Justice Chelameswar linked it to the **"right to be left alone."**

7. Relationship with Other Fundamental Rights

The Court observed that privacy acts as a condition precedent for the enjoyment of other rights under Part III. It is the foundation for the exercise of freedom of thought, speech, belief, and association. Hence, privacy is not an isolated right but a structural pillar supporting the entire constitutional edifice of liberty.

8. Implications for State Power and Surveillance

The Court cautioned that while the State may collect data for legitimate governance objectives, such powers must not degenerate into instruments of surveillance or coercion. It underscored that informational privacy assumes critical significance in the digital age, where technology enables unprecedented intrusions into personal life.

The judgment thus represented a comprehensive affirmation of privacy as a core constitutional value, marking a turning point in the relationship between the State and the citizen.

CONCLUSION

The judgment in K.S. Puttaswamy v. Union of India (2017) stands as a constitutional milestone, reaffirming the supremacy of individual dignity in the face of technological modernity and expanding State power. By recognizing privacy as a fundamental right, the Supreme Court fortified the moral and philosophical foundation of the Indian Constitution, aligning it with global human rights jurisprudence.

Ultimately, K.S. Puttaswamy reaffirmed that liberty and dignity are not gifts of the State but inherent attributes of human existence. The decision thus enshrines the principle that the

Constitution protects the individual from the overwhelming might of the State, preserving the delicate balance between governance and freedom that defines a just and humane society.

WHEN JUSTICE MEETS THE MACHINE: LEGAL AND ETHICAL IMPLICATIONS OF AI IN CRIMINAL JUSTICE

***Saptarshi Saharay*[515]**

ABSTRACT

In an age of data and technology, artificial intelligence (AI) and its influence cannot be disputed—it is revolutionizing sectors, reengineering government, and even seeping into the corridors of justice. In the criminal justice system, AI is becoming increasingly utilized in predictive policing, risk assessment, facial recognition, and even sentencing. Though this digitization holds the promise of efficiency and objectivity, it also poses quite serious legal and ethical issues. Can a machine ever really comprehend justice? Is AI fair, or merely quick?

This article examines the legal structures, ethical challenges, and practical implications of applying AI in criminal justice systems worldwide, with a particular focus on India and the United States. It also examines how the courts, legislatures, and civil society are responding to this AI driven upheaval.

[515] Saptarshi Saharay, *Sister Nivedita University*

AI IN CRIMINAL JUSTICE: WHAT'S AT STAKE?

Key Applications of AI in the System

- AI is applied at nearly all levels of the criminal justice pipeline:
- Predictive policing: Software such as PredPol and India's CMAPS digests crime data to predict criminal hotspots.
- Risk assessment tools: COMPAS in the United States makes estimates about recidivism likelihood to inform parole and bail determinations.
- Facial recognition software: Law enforcement uses it to identify suspects from CCTV or social media photos.
- Digital forensics: AI-enabled software can sift through vast amounts of data from phones, hard drives, or the dark web.
- Lie detection and emotional assessment: Experiential equipment such as EyeDetect purports to read "truth" from eye behaviour.

These applications, although effective, are not controversy-free.

THE LEGAL CHALLENGES OF AI IN CRIMINAL JUSTICE

Violation of Due Process and Fair Trial

The "black box" nature of AI—its inability to make transparent decisions—undermines the constitutional provision for a fair trial. In State v. Loomis, 881 N.W.2d 749 (Wis. 2016), the defendant objected to the use of the COMPAS algorithm for sentencing, claiming it was against due process because the methodology was proprietary and transparent. The Wisconsin Supreme Court affirmed the sentence but warned against "determinative" application of AI tools. Denial of access to the logic of the algorithm is contrary to Brady v. Maryland, 373 U.S. 83 (1963), which mandates disclosure of exculpatory evidence. In India, the use of such impenetrable tools will conflict with Article 21 of the Constitution of India ensuring life and liberty with "procedure established by law."

Data Privacy and Surveillance

Facial recognition and predictive policing tools raise concerns under:

- Right to Privacy: Established as a fundamental right in Justice K.S. Puttaswamy v. Union of India, (2017) 10 SCC 1.
- The Personal Data Protection Bill, 2019 (India), although pending, seeks to oversee AI-based processing of data.
- Case Example: The Delhi Police allegedly used facial recognition technology during protests without adequate protections, a practice criticized by civil rights organizations.

Ethical Implications: The Morality of Machine Justice

Bias in, Bias Out

- AI learns from data—but if the data is biased, so will the AI.
- Example: COMPAS was found in studies to over flag Black defendants as high-risk when compared to white defendants.
- Academic Criticism: "Machine Bias," by Julia Angwin and colleagues, ProPublica (May 23, 2016).

This creates ethical concerns of:

- Equal treatment before law (Article 14, Indian Constitution)
- Non-discrimination under international human rights instruments

Dehumanization of Justice

- AI decisions are binary, whereas human existence is complex. Ethical jurisprudence requires empathy, discretion, and context—characteristics lacking in machines.
- Can an AI take into account remorse or social circumstances?
- Does entrusting decision-making to machines take away from the human dignity that justice is required to uphold?

PREDICTIVE POLICING: INNOVATION OR INJUSTICE

Predictive Policing Tools in India

India has been testing AI technologies such as:

- To predict crime hotspots, Uttar Pradesh and Delhi implemented the Crime Mapping Analytics and Predictive System (CMAPS).
- Trinetra: Employed by the Rajasthan Police to track the online activities of criminals.
- Though well-intentioned, such systems raise several serious concerns:
- Transparency: Are these systems audited?
- Consent: Do citizens know they are under surveillance?
- Oversight: Is there any legislative oversight?

International Example: PredPol in the U.S.

- PredPol was withdrawn from some U.S. cities following reports of:
- Excessive policing in minority communities
- Enforcement of racial stereotyping in past data
- Legal Issues:
- Equal Protection Clause of the 14th Amendment (U.S. Constitution)
- Abuse of police authority under Article 246 of the Indian Constitution in conjunction with

Entry 2 of List II (State List)

The Constitutional and Statutory Vacuum in India

India does not have laws that deal specifically with the use of AI in criminal justice. This regulatory gap beckons:

- Misuse of power
- Lack of accountability
- No right to appeal AI driven decisions.
- Need for Legislative Action
- Incorporate algorithmic transparency in law enforcement.
- Establish a Regulatory Authority on AI.
- Mandate impact assessments before deploying AI tools.
- Global Models to Consider

EU AI Act (2021): Classifies AI tools by risk, bans unacceptable use cases.

Algorithmic Accountability Act (USA, 2022): Requires entities to assess the impacts of automated decision systems.

India could model its AI laws around these standards while preserving constitutional rights.

ROLE OF JUDICIARY IN REGULATING AI

Indian Judicial Approach

- While courts have not directly adjudicated the use of AI in criminal justice, they have acknowledged it.
- Right to privacy as an essential part of dignity (Puttaswamy case)
- Algorithmic accountability as a future legal issue (implied indirectly in Aadhaar-related judgments)
- Judicial Proposals:
- Courts must require disclosure of source codes when AI technologies are presented as evidence.
- Appoint technical amici curiae to examine algorithmic systems.

U.S. Judicial Reactions

- People v. Wakefield, No. B293953 (Cal. Ct. App. 2020): Expressed concerns regarding facial recognition mistakes.
- Demands the Daubert standard for AI instruments to be allowed as evidence.

STRIKING A BALANCE: IS THERE A THIRD WAY?

AI in criminal justice must be addressed from a rights-based perspective.:

- Be transparent: Open-source code and plain language.
- Be accountable: Offer mechanisms of appeal for AI decisions.
- Be fair: Eliminate biased data sets and track outcomes.
- Be proportional: Utilize AI where human examination is feasible.
- Role of Legal Professionals
- Judges and lawyers should be trained in:
- AI ethics
- Algorithmic thinking
- Cyber forensics and data protection

THE ROAD AHEAD

- AI offers great potential in criminal justice—from speeding up investigations to improving public safety.
- But unchecked AI can compromise due process, equality, and individual liberty.
- India urgently needs a robust legal framework and judiciary-led oversight to align AI with constitutional values.

CASE STUDIES AND REAL-WORLD OUTCOMES: LESSONS FROM THE FIELD

India: Delhi's Use of Facial Recognition

The Delhi Police began using face recognition software (FRS) in 2019 in an effort to find missing people and suspects. Crowds were monitored using the same technology in 2020 during the anti-CAA demonstrations in Delhi. However, civil liberties activists criticized this as a form of unapproved mass surveillance.

Legal Concerns Raised:

- Under the Information Technology Act of 2000, there is no enabling act.
- Potential contravention of the Supreme Court's decision in Puttaswamy, which requires tests of necessity, legality, and proportionality for surveillance.

Expert Opinion:

As per the Internet Freedom Foundation, the system was only 2% accurate when utilized for the detection of missing children, questioning reliability and wrongful profiling.

- In 2020, a Black man named Robert Williams in Detroit was unjustly arrested based on a mistaken match by facial recognition software. His case has become the hallmark of algorithmic bias

- Violation of Constitutional Rights:
- Fourth Amendment: Unreasonable search and seizure.
- Fourteenth Amendment: Equal protection clause, as facial recognition technology exhibits increased error rates with Black faces.

Policy Impact:

- San Francisco, Boston, and a number of other cities prohibited police from using facial recognition.
- Prompted the U.S. Congress to approve the 2020 Facial Recognition and Biometric Technology Moratorium Act.

COMPARATIVE LEGAL ANALYSIS: GLOBAL RESPONSES TO AI REGULATION IN CRIMINAL JUSTICE

European Union: Risk-Based Framework

- The EU Artificial Intelligence Act (currently still in legislative process as of 2025) categorizes AI applications into:
- Unacceptable Risk: Social scoring, mass surveillance—categorically prohibited.
- High Risk: Covers AI in policing, border control, and judiciary—requires transparency, human oversight, and impact assessment.
- Limited/Minimal Risk: Automated responses and chatbots—disclosure only.
- This risk-based framework may be a universal standard.

China: Leading but Controversial

China has implemented AI heavily in the judiciary and policing (e.g., "One Person, One File" mechanism and "Smart Courts"). Although it has enhanced disposal rates in cases, it has faced criticism over:

- Lack of transparency.
- Facilitating state surveillance.
- Lack of legal recourse against AI mistakes.
- While being technologically sophisticated, it highlights the ethical peril of AI in the hands of authoritarian governments.

India: A Reactive as Opposed to a Proactive Approach

- India does not have today:
- A robust AI policy of regulation.
- The 2019 Data Protection Act is still pending as of 2025.
- An autonomous AI Ethics Review Board.

- This fragmented, sectoral regulation is insufficient for handling AI in sensitive spheres such as criminal justice.

THEORETICAL FOUNDATIONS: ALGORITHMIC JUSTICE VS HUMAN JUSTICE

Retributive vs Predictive Justice

- Traditional criminal justice models are founded on concepts of culpability, deterrence, and rehabilitation. AI is predictive and statistical, though. That creates philosophical implications:
- AI punishes for what a person may do rather than for what they did.
- That puts mens rea (guilty mind) as a central tenet of criminal law under threat.

Procedural Justice

- Tom Tyler's theory emphasizes that people comply with the law when the process is fair, transparent, and respectful. AI's opacity disrupts this:
- Citizens can't contest or understand algorithmic decisions.
- Loss of trust in judicial systems

PROBLEMS IN DATA QUALITY AND ACCOUNTABILITY

Garbage In, Garbage Out

- AI is only as good as the training data. If datasets contain:
- Historical bias (e.g., over policing in minority areas),
- Incomplete records (e.g., underreported crimes against women),
- or doctored entries (e.g., planted evidence),
- Then the AI replicates and amplifies injustice.

Lack of Clear Liability Frameworks

- When AI tools fail, who is responsible?
- The developer?
- The police department?
- The government?
- This "accountability gap" is perilous in criminal law, where lives and liberties are at risk.

Suggested Reforms:

- Introduce Algorithmic Impact Assessments (AIAs).
- Require human-in-the-loop review.
- Establish civil liability regimes for AI mistakes.

AI IN COURTS: AUTOMATION OF JUDICIAL DECISIONS

Smart Courts in China and UA

- China's AI judges have disposed of over 3 million cases using robotic assistance, including:
- Traffic ticketing.
- E-filing and remote hearings.
- UAE launched an AI judge to handle small claims under AED 20,000.

Should India Follow Suit?

Pros:

- Accelerate outstanding cases (There are more than 4 crore cases outstanding in India.).
- Assist the overburdened lower judiciary.

Cons:

- Risk of undermining judicial discretion.
- Low digital literacy among litigants.
- Rural-urban tech divide.
- Conclusion: AI should be used as a supplement, not as a substitute.

AI ETHICS IN LAW ENFORCEMENT: A NEW CODE OF CONDUCT

Main Principles for Ethical Use

- Take up the OECD AI Principles, which are:
- Transparency: Clear explanation of AI decisions.
- Accountability: Impose legal responsibility
- Fairness: Avoid bias and provide fair outcomes.
- Robustness: Maintain accuracy, security, and resilience.

Training for Stakeholders

- Judges: Have to be trained in algorithmic reasoning and AI forensics.
- Lawyers: Need to learn how to cross-examine AI-generated evidence.
- Police: Need ethical training and AI literacy to prevent misuse.

RECOMMENDATIONS FOR THE INDIAN LEGAL FRAMEWORK

Pass a Comprehensive AI and Data Protection Law

- Include transparency, consent, storage, and grievance redress.
- Make criminal justice a "sensitive sector."

Set up an AI Ethics Committee under NHRC

- Examine tools such as CMAPS and Trinetra.
- Listen to citizen grievances.

Make Algorithmic Disclosure in Court Mandatory - Take a cue from the Daubert Standard (USA) for admissibility.

Public Awareness and Debate

- Promote digital literacy about AI's role in justice.
- Enable civil society to track the abuse of AI.

Pilot Projects and Independent Audits

- Audit AI systems before national release.
- Test in lower courts, not capital punishment.

WHAT LEGAL SCHOLARS ARE SAYING

- Shoshana Zuboff (Surveillance Capitalism) warns against private corporations using AI for policing abuse.
- Cathy O'Neil (Weapons of Math Destruction): Suggests that algorithms tend to generate new discrimination.
- Usha Ramanathan (Indian expert on privacy): AI applications without legal support facilitate "technological tyranny."

These views underscore the fact that AI, if left unregulated, poses a legal and ethical risk.

COUNTERARGUMENTS AND RESPONSES

"AI is more objective than humans."

Response: AI mirrors human prejudice in data. Unlike humans, it can't adjust contextually.

B. "AI can decrease case backlogs."

Response: True, but haste without justice equals injustice. Efficient and equitable practices must be balanced.

C. "We can't stop technological progress."

The law should guide, not pursue, technology. Regulation allows for safe progress.

The justice system is not only about convictions or clearances—it is about fairness, human dignity, and trust in society. While AI has great power to help solve crime and provide rapid justice, it can never be a substitute for the fundamental human values that underpin law.

If criminal justice becomes too dependent on secret, biased, and unaccountable algorithms, it will become less just and more mechanical.

CONCLUSION

AI is already being applied in predictive policing, facial recognition, and judicial decision-making. It has serious implications for due process, privacy, bias, and accountability. India and most countries do not have adequate legal protections. World best practices highlight transparency, ethics, and regulatory oversight. India has to move with caution and foresight, learning from global successes and failures. At the end of it all, we have to ensure that in pursuit of efficiency, we do not lose the heart of justice: humanity.

FEMINIST LEGAL THEORY AND INDIAN CONSTITUTIONAL JUSTICE: A COMPARATIVE WAVE ANALYSIS

Satyam Kumar Chaudhary[516]

ABSTRACT

This research paper undertakes a comprehensive study of feminism as both a social movement and a body of legal theory, tracing its historical development through succeeding waves and examining the diverse theoretical frameworks that shape its discourse. The paper places feminism in its historical route through four distinctive waves. The First Wave, laid the groundwork for political and legal recognition of women, ending in milestones such as women's suffrage in the United States and the United Kingdom. The Second Wave, extended feminist concerns into cultural, social, and economic spheres. The Third Wave, introduced the context of intersectionality. The Fourth Wave, is distinguished by its digital activism and global solidarity, and its focus on gender-based violence, inclusivity, and systemic injustice. In parallel, the Indian feminist route is mapped from social reform movements against practices like sati and property exclusion to contemporary battles over workplace harassment, succession rights, and intersectional justice.

Beyond historical waves, the research examines major theoretical traditions of feminism. Liberal feminism advocates equal opportunities and legal reforms grounded in individual rights, while radical feminism accounts patriarchy as a deeply embedded power structure requiring structural transformation. Cultural feminism valorises distinctively feminine values, challenging their systemic devaluation. Marxist/Socialist feminism interrogates the intersection of capitalism and patriarchy, emphasizing women's unpaid domestic labour as a foundation of economic exploitation. Psychoanalytic feminism explores the reproduction of gender roles through psychological and linguistic processes. The paper also highlights Indian feminist jurisprudence, with statutory reforms.

Ultimately, this analysis proves that while formal legal equality has been achieved in many jurisdictions, substantive equality remains indefinable due to continuing patriarchal norms and systemic inequalities. The contribution of feminism lies in its ability to continually redefine

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justice by questioning structures of power, advocating inclusivity, and addressing the intersectional truths of gendered oppression.

INTRODUCTION

The term 'feminism' has been derived from the Latin word ***'Femina'*** which means 'woman' and it was firstly used with regard to the issues of equality and women's Rights Movement. Feminism is a belief in or advocacy of women's social, political and economic rights, especially with regard to equality of genders. People often misunderstand feminist as those who favours females, but Feminism is rather "an awareness of women's oppression and exploitation in society, at work and within the family, and feminists make a conscious effort to switch to better world for women" **or *"Feminism is the set of beliefs and ideas that belong to the broad social and political movement to achieve greater equality for women."*** [517]. Thus, anyone who recognizes the existence of sexism (discrimination on the basis of the gender), male domination and *patriarchy*[518] and who takes some action against it, irrespective of gender is a feminist. Today, feminists have gone beyond the mere legal reforms (earlier, feminists were struggling for the basic rights of women e.g. right to education, right to employment, right to vote, etc.) to end discrimination, now they are working towards the emancipation (the act of freeing a person from another person's control) of the women. Feminism is a struggle for power to women. Feminist legal theory, which is also termed as feminist jurisprudence, is rooted in the belief that how the law has historically played a significant role in the subordination of women. Feminists proclaim that traditional laws and practices, which have been shaped mostly from a male perspective, failed to adequately represent the women and admit their contribution in the society.

OBJECTIVES OF THIS THEORY.

Firstly, this theory aims to describe the subordination of women in the society and which means demand for equality with men. It highlights how traditional societies such as family, religion, and law have often been built in ways that reinforce gender hierarchies, thus controlling women's inferior status.

Secondly, feminist legal theory tries to recognize the need to transform the perspective towards women's status by re-examining and reshaping the law. [519] It also pursues to widen the

[517] Owen M. Fiss, What Is Feminism? 26 *Ariz. St. L.J.* 413 (1994).
[518] *Patriarchy*, *Cambridge Dictionary*, https://dictionary.cambridge.org/dictionary/english/patriarchy *(last visited Oct. 27, 2025).*
[519] Judith Wellman, *The Road to Seneca Falls: Elizabeth Cady Stanton and the First Woman's Rights Convention* (2004).

definition of justice itself, shifting from a rigid idea of equality based on sameness with men to one that houses difference, admits intersectionality, and actively dismantles barriers that spread discrimination.

HISTORICAL DEVELOPMENT AND WAVES

First Wave Feminism (late 19th – early 20th century)

This was the foundation of the feminist movement, and its fundamental aim was to challenge the legal and political inequalities that kept women in an inferior position of society. While women had long been contributing to family, culture, and the economy, they had little to no legal recognition in most countries. They were often repudiated from right to vote, barred from higher education, excepted from professional fields, and legally bound to their husbands with very few or no property rights. Against this backdrop, the first wave of feminism emerged as a collective struggle to secure equality within the framework of existing laws and political systems.

This movement is often traced back to the **1848 Seneca Falls Convention**, held in New York and organized by prominent activists **Elizabeth Cady Stanton and Lucretia Mott**, which marked the formal beginning of organized feminist activism in the United States.[520] At this pact, Stanton authored the Declaration of Sentiments, a pioneering document that adapted the language of the Declaration of Independence to advocate for women's equal political rights, emphasizing that *"all men and women are created equal."*[521]

- **Achievements and Legacy (**In 1st wave**)**

The first wave ended in significant victories such as *the Nineteenth Amendment of the U.S. Constitution in 1920*, which granted American women the right to vote, marking a pivotal moment in women's legal and political enfranchisement.[522]

In Britain, *the Representation of the People Act 1918* granted voting rights to women over 30, with universal adult suffrage achieved by 1928 [523]. However, the first wave was criticized for mainly addressing the concerns of middle-class white women, with limited attention to issues of race, class, and economic inequality that affected working-class women and women of colour.[524]

Second Wave Feminism (1960s–1980s)

[520] N.S. Vishnu Priya, Feminism: A Review, 8 *Int'l J. Applied Rsch.* 484 (2022).
[521] Elizabeth Cady Stanton, Declaration of Sentiments and Resolutions, in *History of Woman Suffrage* 70 (Elizabeth Cady Stanton et al. eds., 1881).
[522] U.S. Const. amend. XIX.
[523] *Representation of the People Act*, 1918, 7 & 8 Geo. 5, c. 64 (U.K.).
[524] Bell Hooks, *Feminist Theory from Margin to Center* 2 (South End Press 1984).

This was main sparked from Western countries but eventually stretched globally. Unlike the First Wave, which focused mainly on political and legal rights such as suffrage and property ownership, the Second Wave widened its scope to include social, cultural, and economic inequalities. Its rallying says, ***"the personal is political,"*** captured the idea that women's private experiences—such as *domestic labour, sexuality, and family roles*—were shaped by larger structures of patriarchy and thus required political action.[525] The second wave challenged not only legal barriers but also cultural and social inequalities, expanding the feminist agenda beyond suffrage to encompass workplace discrimination, reproductive rights, sexuality, and family structures.[526]

Key texts like Betty Friedan's **The Feminine Mystique (1963)** expressed the dissatisfaction of suburban housewives and called for liberation from domestic imprisonment. Friedan identified *"the problem that has no name"* - the widespread unhappiness of educated middle-class women confined to domestic roles.[527] Simone de Beauvoir's The Second Sex 1949, though published earlier, became influential during this period for its existentialist analysis of women's oppression. De Beauvoir's famous assertion that "one is not born, but rather becomes, a woman" challenged biological determinism and emphasized the social structure of gender.[528]

- **Major Areas of Focus**
  - ***Workplace Discrimination***: It focuses on equal pay, promotion opportunities, and access to professional careers. **The Civil Rights Act of 1964** (Title VII) prohibited gender discrimination in employment, largely due to feminist lobbying.[529]
  - ***Reproductive Rights***: The movement fought for access to contraception and abortion rights, found in landmark cases like **Roe v. Wade** (1973) in the United States[530]
  - ***Sexual Liberation:*** Second-wave feminists challenged double standards regarding sexuality and supported for women's sexual autonomy and freedom from sexual violence.[531]

Third Wave Feminism (1990s–2000s)

[525] Carol Hanisch, The Personal Is Political (1969), reprinted in *Notes from the Second Year: Women's Liberation* 76 (Shulamith Firestone & Anne Koedt eds., 1970).
[526] Betty Friedan, *The Feminine Mystique* (W.W. Norton & Co. 1963).
[527] Betty Friedan, *The Feminine Mystique* ch. 1 (W.W. Norton & Co. 1963).
[528] Simone de Beauvoir, *The Second Sex* 283 (Constance Borde & Sheila Malovany-Chevallier trans., Vintage Books 2011) (1949).
[529] Civil Rights Act of 1964, Pub. L. No. 88-352, § 703, 78 Stat. 241.
[530] *Roe v. Wade*, 410 U.S. 113 (1973).
[531] Susan Brownmiller, *Against Our Will: Men, Women and Rape* (Simon & Schuster 1975).

Unlike 1st & 2nd wave, it mainly focuses on issues of diversity, identity, and intersectionality. This wave recognized that women's experiences are not uniform and that gender oppression is linked with race, class, sexuality, nationality, and other axes of identity. Rebecca Walker's essay **"Becoming the Third Wave"** (1992) [532]marked an essential moment in addressing issues such as sexual harassment, multiculturalism, eco feminism, and queer theory. The third wave was particularly influenced by scholars like ***Kimberlé Crenshaw***, who created the term *"intersectionality"* to describe how race, class, gender, and other identities intersect to create unique experiences of oppression.[533]

By the 1980s, many feminists began to review the Second Wave for its lack of inclusivity, as it was often dominated by the voices of middle-class, white, heterosexual women. Women of colour, LGBTQ+ activists, and women from the Global South claimed that their struggles were different and could not be reduced to a single "**universal woman's experience**." The rise of **postmodernism** and **queer theory** also shaped the Third Wave, emphasizing the fluidity of identity, the rejection of fixed categories, and the importance of individual agency.[534]

- **The Achievements**

Third Wave are more cultural and intellectual than legal. While earlier waves focused on changing laws, the Third Wave sought to transform representation, discourse, and everyday life. Feminist scholarship expanded into new areas, including queer studies, masculinity studies, and trans studies. Debates about **body image, pornography, Sex work, and reproductive technologies** became central, reflecting the movement's attention to personal freedom and choice. In addition, the spread of the internet and digital media allowed feminists to connect globally, setting the stage for the online activism that would portray later movements.[535] The Third Wave of Feminism was characterized by its embrace of diversity, intersectionality, and cultural transformation. It moved beyond the legal and social struggles of earlier waves to focus on identity, representation, and choice. Though it has been criticized for fragmentation and commercialization, The Third Wave paved the way for contemporary feminist activism, especially the ***Fourth Wave***, which began in the 2010s.

Fourth Wave Feminism (2010s – Present)

[532] Rebecca Walker, Becoming the Third Wave, *Ms. Mag.*, Jan.–Feb. 1992, at 39.
[533] Kimberlé Crenshaw, Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color, 43 *Stan. L. Rev.* 1241 (1991).
[534] Judith Butler, *Gender Trouble: Feminism and the Subversion of Identity* (Routledge 1990).
[535] Angela McRobbie, *The Aftermath of Feminism: Gender, Culture and Social Change* (Sage Publications 2009).

Unlike previous waves, it is famous by its use of **digital technology and social media** to organize activism, spread awareness, and build global solidarity. While the First Wave focused on political rights, the Second Wave on social and cultural inequalities, and the Third Wave on diversity and identity, the Fourth Wave is defined by its fight against **sexual harassment, gender-based violence, and systemic inequality**, often supported by a call for justice, accountability, and intersectionality.[536] The rise of smartphones, blogs, and platforms like Twitter, Instagram, and Thread created new roads for popular feminist activism. This digital landscape allowed movements to spread rapidly across borders, giving women and marginalized groups a platform to share their experiences. Campaigns such as **#MeToo** (founded by *Tarana Burke* in 2006 and popularized globally in 2017), **#TimesUp**, and **#YesAllWomen** became global phenomena, revealing the widespread nature of sexual harassment and gender violence.[537]

Major Areas of Issue

Sexual harassment and violence: Movements like ***#MeToo*** uncovered abuse in workplaces, media industries, politics, and everyday life.[538]

Trans rights and inclusivity: Unlike earlier waves, the Fourth Wave openly embraces transgender, non-binary, and queer identities as part of feminist struggles.[539]

Reproductive rights: Ongoing fights for access to abortion, contraception, and healthcare have intensified, particularly in countries where such rights are threatened or rolled back.[540]

Feminism Wave with Indian Context

India's unique trajectory saw feminist action against practices like **Sati, widow remarriage prohibition, and property exclusion**. The first wave involved social reformers such as Raja Ram Mohan Roy and Pandit Vidyasagar.[541] Later waves addressed political rights, literacy, workplace equality, and, post-1990s, issues like sexual harassment, succession rights, and intersectionality, culminating in movements like #MeToo and key Supreme Court decisions. The fourth wave in India, from the early 2010s, is marked by inclusivity, transfeminism, and intersectionality, illustrated by movements such as #MeToo and judicial milestones like *Sabarimala and the decriminalization of triple talaq*.

[536] Prudence Chamberlain, *The Feminist Fourth Wave: Affective Temporality* (Palgrave Macmillan 2017).
[537] Tarana Burke, *Unbound: My Story of Liberation and the Birth of the Me-Too Movement* (Flatiron Books 2021).
[538] Catherine Rottenberg, The Rise of Neoliberal Feminism, 28 *Cultural Stud.* 418 (2014).
[539] Susan Stryker, *Transgender History* (2d ed. Seal Press 2017).
[540] Loretta J. Ross & Rickie Solinger, *Reproductive Justice: An Introduction* (Univ. of Cal. Press 2017).
[541] Dipti Bansal & Babita Pathania, Feminist Legal Theory with Special Reference to Indian Perspective, 63 *Panjab U. L. Rev.* 200 (2024), https://pulr.puchd.ac.in/index.php/pulr/article/view/260.

MAJOR THEORIES OF FEMINISM

Liberal Feminism

Liberal feminism says that women should have equal opportunities in law and society. Influenced by Enlightenment thinkers like ***Wollstonecraft*** and ***John Stuart Mill***, liberal feminism advocates gender-neutral legal rights and political participation.[542] Central principles include freedom, individual merit, and universalism.[543] Liberal feminists claim that removing legal and institutional barriers will allow women to compete equally with men in all spheres of life. This approach emphasizes reform rather than radical restructuring of society.[544]

Key Theorists: Mary Wollstonecraft, John Stuart Mill, Betty Friedan, and contemporary legal scholars like Ruth Bader Ginsburg represent this tradition.[545]

Marxist/Socialist Feminism

Marxist/Socialist feminism explores the connection of gender oppression with class exploitation. Theorists like **Margaret Benston** and **Silvia Federici** highlight how capitalism and patriarchy work together to downgrade women economically and socially.[546] This approach says that women's unpaid domestic labour subsidizes capitalist production by maintaining and reproducing the workforce. Socialist feminists contend that dismantling capitalism is necessary for true gender equality.[547]

Psychoanalytic Feminism

Psychoanalytic feminism uses psychoanalytic and developmental psychology (drawing from Freud, Kristeva, Chodorow) to explore internal psychological mechanisms that spread subordination. **Nancy Chodorow**, in The Reproduction of Mothering, opposes that learned psychological patterns reinforce traditional gender roles.[548]

Major Contributions: Julia Kristeva's work on language and subjectivity, and Hélène Cixous's concept of "***écriture féminine***" (feminine writing) have been influential in understanding how gender shapes consciousness and expression.[549]

Indian Feminist Jurisprudence

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[542] John Stuart Mill, *The Subjection of Women* (Longmans, Green, Reader, & Dyer 1869).
[543] Fiss, supra note 2.
[544] Friedan, supra note 11.
[545] Ruth Bader Ginsburg, The Equal Rights Amendment Is the Way, 1 *Harv. Women's L.J.* 19 (1978).

[546] Margaret Benston, The Political Economy of Women's Liberation, 21 Monthly Rev. 13 (1969).
[547] Silvia Federici, *Wages Against Housework* (Power of Women Collective & Falling Wall Press 1975).
[548] Nancy Chodorow, *The Reproduction of Mothering: Psychoanalysis and the Sociology of Gender* (Univ. of Cal. Press 1978).
[549] Julia Kristeva, *Desire in Language: A Semiotic Approach to Literature and Art* (Columbia Univ. Press 1980).

Feminist legal theory addresses how traditional laws uphold patriarchal norms and calls for legal and constitutional reforms to redress such injustices. In India, feminist jurisprudence has evolved through interaction with customary law, colonial legislation, and post-independence constitutional principles.

Statutory Milestones for India in women's right:

A. **Hindu Succession Act (with 2005 amendment for daughters' coparcenary rights)**: This legislation granted daughters equal inheritance rights in family property, overturning centuries of male-preferential succession laws.[550] thus eroding centuries of patriarchal property norms. From a feminist viewpoint, this reform was crucial because property ownership is not only an economic resource but also a symbol of independence and empowerment.

B. **Maternity Benefit Act 1961 (With 2017 amendments)**: Provides for maternity leave and benefits, recognizing women's reproductive roles while safeguarding employment security.[551] The 2017 amendment which increased paid leave to 26 weeks for certain categories of women employees. This legislation attempts to resolve the biological difference of childbearing with workplace equality

C. **The Protection of Women from Domestic Violence Act 2005**: Recognizes domestic violence as a violation of human rights and provides civil remedies for victims.[552] This law replicates feminist support that wanted to bring women's lived experiences of domestic abuse into the public and legal domain.

D. **Sexual Harassment of Women at Workplace Act 2013**: Codified the Supreme Court's Vishakh guidelines, providing legal framework for addressing workplace sexual harassment.[553] The Act decrees the constitution of Internal Complaints Committees (ICC) in organizations with 10 or more staffs and Local Complaints Committees (LCC) at the district level to obtain and request into complaints of sexual harassment.

CASE LAW ANALYSIS

The judiciary in India has often been at the head of shaping the feminist legal site, taking the Constitution in ways that challenge patriarchal traditions and expand the scope of women's rights. One of the earliest and most significant examples was **the recognition of workplace**

[550] *Hindu Succession Act*, No. 30 of 1956, § 6 (amended 2005), India Code.
[551] *Maternity Benefit Act*, No. 53 of 1961, §§ 5, 6, as amended by *Maternity Benefit (Amendment) Act*, No. 6 of 2017, India Code.
[552] *Protection of Women from Domestic Violence Act*, No. 43 of 2005, India Code.
[553] *Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act*, No. 14 of 2013, India Code.

sexual harassment as not just an issue of professional misconduct but a serious violation of fundamental rights to equality, dignity, and life. By doing so, the Court made visible the soundless suffering of limitless women in workplaces across the nation and filled a legislative space by putting down binding guidelines that bound employers to adopt preventive and remedial mechanisms. This intervention was remarkable because it reframed what was once dismissed as ***"personal discomfort"*** into a constitutional issue, thus giving working women the confidence that their dignity was legally protected until Parliament later codified these protections into law.[554] The judiciary was also involved deeply with questions of personal law and religious practices that had historically lowered women to positions of vulnerability and dependency. A defining moment came when it hit down the practice of **triple talaq**, which for eras had allowed Muslim men to dissolve marriages individually, arbitrarily, and without culpability. The Court highlighted that religious customs could not stand above the securities of equality and non-discrimination. This decision was not only a legal victory but also a symbolic declaration that women within minority communities too are, allowed to constitutional protection.[555]

Further consolidation the framework of women's independence, the judiciary moved to pull apart one of the most relapsing leftovers of colonial criminal law: **the adultery provision in the Indian Penal Code**. By striking it down, the Court highlighted the inherent dignity of women, upholding that they are independent citizens with sexual independence and moral action. The judgment went beyond the allowance of adultery; it signified a mindful break with a legal past rooted in patriarchal and colonial concepts of ownership, thereby marking a significant step in the recognition of women as equal participants in marriage and society.[556]

The judiciary has also been essential in reshaping property rights, an area traditionally owned by patriarchal norms that deprived of women economic independence. In a landmark statement, the Court held that daughters possess equal rights as coparceners in ancestral Hindu property by benefit of birth itself, nevertheless of whether they were born before or after legislative reforms. This clarification was transformative because property ownership is not only about material wealth but also about power, security, and status within the family. The Court pull apart eras of elimination that had kept women economically dependent and vulnerable.[557] \

GLOBAL PERSPECTIVES AND COMPARATIVE ANALYSIS

[554] *Vishaka v. State of Rajasthan,* (1997) 6 SCC 241 (India).
[555] *Shayara Bano v. Union of India,* (2017) 9 SCC 1 (India).
[556] *Joseph Shine v. Union of India,* (2019) 3 SCC 39 (India).
[557] *Vineeta Sharma v. Rakesh Sharma,* (2020) 9 SCC 1 (India).

Western vs. Non-Western Feminisms

While Western feminism has often focused on individual rights and equality, feminisms in developing countries frequently emphasize collective rights, community welfare, and economic development.[558] This has led to productive dialogue about universal versus contextual approaches to women's rights.[559] And in Non-Western feminisms often develop within contexts pointed by colonial histories, economic inequalities, and strong communal or religious traditions.

Islamic Feminism

Scholars like *Fatema Mernissi* and *Amina Wadud* have developed Islamic feminist interpretations that challenge patriarchal interpretations of religious texts while remaining within Islamic frameworks.[560] Islamic feminism talks about issues such as education, inheritance, marriage, divorce, and political participation.

African Feminism

African feminist scholars like *Oyèrónké Oyěwùmí* have critiqued Western feminist concepts for their colonial implications while developing indigenous feminist theories based on African women's experiences.[561] African feminism derived from the unique connection of colonial histories, traditional patriarchal structures, and struggles for nation-building.

CONCLUSION & SUGGESTION

Feminism, finished its various schools and waves, has changed societies, legal systems, and cultural constructs globally and in India. The movement has evolved from seeking basic legal rights to pointing complex connections of identity and power. While formal legal equality has been achieved in many areas, substantive equality and the dismantlement of deep-rooted patriarchal norms remain ongoing challenges.[562]

The future of feminism lies in its ability to remain broad, intersectional, and responsive to changing social conditions while maintaining its obligation to challenging all forms of gender-based oppression. In India, this route has been particularly complex, moving from social reform movements against unfair practices like **sati and widow exclusion**, to modern legal victories on issues such as **workplace harassment, succession rights, and marital autonomy**. Similarly, globally, feminism has established amazing flexibility by aligning itself with

[558] Chandra Talpade Mohanty, *Feminism Without Borders: Decolonizing Theory, Practicing Solidarity* (Duke Univ. Press 2003).
[559] Uma Narayan, *Dislocating Cultures: Identities, Traditions, and Third World Feminism* (Routledge 1997).
[560] Fatema Mernissi, *The Veil and the Male Elite (Addison-Wesley 1991).*
[561] Oyèrónkẹ́ Oyěwùmí, *The Invention of Women* (Univ. of Minn. Press 1997).
[562] Bansal & Pathania, supra note 26.

different contexts—whether through liberal ideals in the West, reinterpretations of religion in Islamic feminism, or community-focus models in African feminism. Although these significant improvements, Women still face uneven violence, unpaid care burdens, and structural discrimination, particularly in societies were caste, class, race, religion, or sexuality crisscross with gender.

To address the persistent challenges and strengthen the feminist movement, the following suggestions are offered:

1. ***Bridging the Gap Between Law and Practice***

   Even though important legal reforms have been decreed, their application remains unpredictable. Stronger enforcement mechanisms, awareness campaigns, and gender-delicate training for law enforcement, judiciary, and administrative bodies are necessary to ensure that rights promised on paper are grasped in practice.

2. ***Addressing Economic Inequality***

   Women's unpaid labour, wage gaps, and restricted access to resources continue to reinforce structural inequality. Feminist strategies must prioritize economic empowerment through equitable labour laws, recognition of care work, access to credit and property, and inclusion in entrepreneurial opportunities.

3. ***Challenging Cultural and Religious Patriarchy***

   While in respect of cultural and religious traditions, feminist activism must remain to challenge clarifications and practices that spread subordination. Efforts should contain appealing with activist voices within communities, promoting education, and using liberal clarification of cultural and religious texts to promoter for equality.

4. ***Promoting Education and Awareness***

   Education remains the most powerful tool to pull apart patriarchal mindsets. Feminist movements must focus on broad education that not only ensures contact for girls but also participates gender sensitivity into courses, reshaping the attitudes of future generations.

5. ***Harnessing Technology Responsibly***

   Digital media has given feminism extraordinary view through campaigns like **#MeToo**, yet it has also uncovered activists to online harassment and shallow "**clicktivism.**" Feminism must use technology responsibly—influenced it for awareness, global unity, and policy support—while also building barrier against digital violence.

CAN THE CONSTITUTION KEEP PACE WITH ARTIFICIAL INTELLIGENCE? RETHINKING REGULATION AND ALGORITHMIC GOVERNANCE IN INDIA

Manan Grover[563]

ABSTRACT

Artificial Intelligence is no longer a faraway invention-it is rather a living force of governance, law enforcement, and judicial processes within India. AI brings efficiency, yet it threatens constitutional safeguards of equality under Article 14, free speech under Article 19, and privacy under Article 21. It has a significant impact on many aspects of life in the modern day, thus it is necessary to critically evaluate Indian Constitution's ability to support the emergence of "new age rights."

INTRODUCTION

India's constitutional framework faces both potential and problems as artificial intelligence (AI) rapidly propagates over the country's many industries.[564] A crucial concern is raised by the growing integration of AI-driven systems into decision-making processes: to what extent does the Indian Constitution provide for the "new age rights" required for individual security in this highly technological age? The application of AI, however, raises questions regarding the infringement of fundamental rights.

The Emergence of Artificial Intelligence in India and Balancing Its Pros and Cons

The development of artificial intelligence (AI) in India offers a complicated environment with many exciting prospects as well as difficult obstacles. [565]AI technologies are changing the labour market and the economy as a whole as they are incorporated into more and more industries. Positively, AI is predicted to boost economic growth by increasing productivity and generating new, non-existent job roles. For example, AI solutions like chatbots and predictive analytics are revolutionizing industries like healthcare, finance, and customer service by increasing productivity and service quality. By 2025, AI may create millions of new jobs in India, particularly in the IT and data management sectors, according to a number of studies, including those published by the World Economic Forum and NASSCOM. However, there are

[563] Manan Grover, *Maharaja Surajmal Institution, Janakpuri*.
[564] Deksha S., Deepak Kumar E., Janani M. & Dr. R. Gnanakumari, Constitutional Law AI: Identifying Relevant Indian Laws Through AI-Powered Query Resolution, 6 *Int'l Res. J. Mod. Eng'g Tech. & Sci.* 3163, 3163–65 (2024).
[565] NASSCOM Community, AI and Its Impact on the Labor Market, https://community.nasscom.in/communities/ai/ai-and-its-impact-labor-market.

serious drawbacks to these developments, especially in terms of job displacement and the requirement for labour reskilling. As regular jobs are automated, many traditional roles may be in jeopardy, raising concerns about economic inequality and unemployment. The problem is made more difficult by the absence of a trained labour force that can adjust to these developments, which could increase the divide between those who can prosper in an AI-driven economy and those who cannot. India must thus create a thorough legislative framework that not only tackles these issues but also encourages moral AI application while defending individual liberties. India can take advantage of AI while making sure its workforce is ready through promoting cooperation between government agencies, business executives, and academic institutions.

NEW RIGHTS, NEW RISKS: NAVIGATING PRIVACY, EQUALITY, AND FREE SPEECH

1. Privacy- Article 21

The issue of privacy arises under Article 21[566] due to AI-fueled mass surveillance systems, particularly facial recognition systems such as those employed by Delhi Police.[567] They gather biometric data without explicit consent enabling perpetual monitoring and profiling of people. The absence of separate data protection legislation only aggravates the risks of immunity from abuse, false targeting, and data breaches.[568] So, if they were all kept unchecked under judicial supervision, unchecked regulations governing surveillance could lead towards mass surveillance-state columns in violation of fundamental freedoms. Clear regulatory frameworks on transparency norms and provisions creating a right to judicial scrutiny must exist to ensure that surveillance by AI does not compromise constitutional privacy rights.

Case Law: *Justice K.S. Puttaswamy v. Union of India (2017)*[569]

The Supreme Court of India, in Justice K.S. Puttaswamy v. Union of India (2017), recognized the right to privacy as a fundamental right under Article 21 of the Constitution. This landmark judgment asserts, among other things, that any intrusion into an individual's privacy must be justified by the state and must be compatible with the constitutional framework after giving genuine thought to ensure that proper constitutional values embodied in the Constitution are respected. This judgment has hence served as a basis, especially in the current digital world, to

[566] *India Const.* art. 21.
[567] Rani, Impacts and Ethics of Using Artificial Intelligence (AI) by the Indian Police, 27(2) *Pub. Admin. & Pol'y: An Asia-Pac. J.* (2024).
[568] Á. Díaz, Data-Driven Policing's Threat to Our Constitutional Rights, *Brookings* (Sept. 13, 2021), https://www.brookings.edu/articles/data-driven-policings-threat-to-our-constitutional-rights/.
[569] *Justice K.S. Puttaswamy (Retd.) v. Union of India*, (2017) 10 SCC 1 (India).

protect personal data and privacy and continues to govern the Indian legal approach to digital rights and data protection.

2. Equality- Article 14

Article 14 of the Indian Constitution ensures equality before the law and against arbitrary discrimination, a provision increasingly being tested with the advent of AI-based decision-making in law enforcement and administrative roles.[570]

Pilot initiatives in Indian metropolises such as Delhi and Hyderabad have adopted predictive policing systems that examine past crime patterns to identify areas that are referred to as 'crime hotspots.' Delhi's Crime Mapping Analytics and Predictive System (CMAPS) gathers data every three minutes from different sources to determine with accuracy areas vulnerable to criminal activity. Similarly, the Hyderabad police use sensitive information from the 'Integrated People Information Hub,' which includes personal and biometric information, in an effort to forecast potential criminal activity. These efforts have raised considerable concern with respect to potential infringements of constitutional rights, mostly the right to equality under Article 14 of the Indian Constitution. Critics opine that these systems can perpetuate prevailing prejudices, leading to disproportionate monitoring of specific communities and eroding the rule of equal protection under the law.[571] Since Predictive policing programs utilize past crime data to predict criminal behaviour; this data then, however, reflects an internal bias in that certain groups have been over-policed. This then creates a cycle wherein the AI system over-policies these groups and, in doing so, continues the bias of institutions.[572]

National Strategy for Artificial Intelligence by NITI Aayog

NITI Aayog's National Strategy on Artificial Intelligence, published in 2018, was a step in the right direction in India's pursuit to utilize artificial intelligence for inclusive growth. The paper outlines a vision for the use of AI in sectors of healthcare, agriculture, education, and smart cities. It emphasizes a strong AI ecosystem through promotion of research, innovation, and public–private partnership, along with identifying the foundational character of ethical guidelines, data protection, and transparency in algorithmic decision-making. This strategy has opened the doors for larger policy debates in India on regulation of AI, to balance technological

[570] *India Const.* art. 14.

[571] Ramachandran Murugesan, Predictive Policing in India: Deterring Crime or Discriminating Minorities?, *LSE Human Rights Blog* (Apr. 16, 2021)https://blogs.lse.ac.uk/humanrights/2021/04/16/predictive-policing-in-india-deterring-crime-or-discriminating-minorities/.

[572] Cathy O'Neil, *Weapons of Math Destruction* (2016).

advancement and protection of citizens' rights, to bring equitable benefits to all segments of society.[573]

3. Free Speech- Article 19

Article 19(1)(a)[574] The Constitution of India provides the basic right of freedom of speech and expression, including the freedom to access, receive, and disseminate information in any form. This provision is essential in the era of the digital age, where Artificial Intelligence (AI) plays a dominant role in the production and circulation of content .

Artificial intelligence technologies, including machine learning and natural language processing, have transformed content creation, allowing for the production of articles, music, and art without human touch. This development poses questions regarding the extent of freedom of expression, especially in relation to authorship and responsibility of AI-generated content.

Regulatory frameworks:

International human rights law, such as the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, enshrines the right of freedom of expression. Yet, this right is not unqualified and can be restricted by requirements such as those that advance national security, public order, or the rights of others. In the context of AI, these paradigms need to adapt to tackle new issues brought about by technology. The Supreme Court's decision in *Shreya Singhal v. Union of India (2015)*[575] continues to be guiding in this matter. The Court invalidated Section 66A of the Information Technology Act, 2000, which made it criminal to send "offensive" messages using communication services. The Court declared that the provision was vagueness-unconstitutional and had a chilling effect on freedom of speech. The judgment highlighted the need for safeguarding online speech and placed a high threshold for limiting freedom of expression.

AI IN JUDICIAL AND ADMINISTRATIVE DECISION- MAKING

How is AI involved in courts?

AI is under research and development within Indian courts with a view to enhancing efficiency. Tools such as case prediction algorithms, legal research assistants, and document analysis software are actually reported to abate backlog and instil confidence in the decision-making process. These AI-powered systems have helped in sorting cases, finding precedents, and

[573] NITI Aayog, *National Strategy for Artificial Intelligence* (Mar. 2023), https://www.niti.gov.in/sites/default/files/2023-03/National-Strategy-for-Artificial-Intelligence.pdf.
[574] *India Const.* art. 19(1)(a).
[575] *Shreya Singhal v. Union of India*, (2015) 5 SCC 1 (India).

helping with the expeditious adjudication of pending matters. The said technology has already been adopted for transcription of the oral arguments in Constitution Bench matters from English to regional languages.[576] Government initiatives such as the E-Courts and Judgment analytics are facilitating the legal process under AI control to ensure transparency, accessibility, and better judicial results in India.[577] With the use of artificial intelligence-powered tools such as SUPACE (Supreme Court Portal for Assistance in Courts Efficiency), judges can be assisted in legal research and analysis of case law.[578]

THE FUTURE OF AI AND CONSTITUTIONAL LAW IN INDIA

The future of AI in Indian constitutional law will see challenges in fundamental rights, judicial decision-making, governance, and legislative oversight. There's AI that extends its realm to Article 14 (equality), Article 19(1)(a) (free speech), and Article 21 (privacy and due process), alerting us to concrete concerns like bias-surfing and censorship. It must make sure, while sitting in court, that the AI increases efficiency without compromising due process and transparency. The policies that use AI must comply with constitutional safeguards in governance. Different regulations have to be framed to legitimize AI in India, de-risking it with respect to accountability, ethics, and protection of rights.[579] The courts and the legislature must sensibly craft AI jurisprudence, ensuring the bulwark of constitutional values.

THE INDIAN CONSTITUTION: ADAPTING TO THE AI AGE

The emergence of artificial intelligence (AI) and algorithmic decision-making has presented hitherto unheard-of difficulties for the Indian Constitution. Although the Constitution offers a strong foundation for rights, it is important to carefully consider how well it can adapt to the subtleties of the digital age, especially with regard to artificial intelligence.

In the context of artificial intelligence, the "golden triangle" of Articles 14 (equality), 19(1)(a) (freedom of speech), and 21 (right to life and personal liberty, including privacy) is especially pertinent. Algorithmic biases, on the other hand, pose a challenge to the equality principle as computers increasingly impact decision-making, potentially discriminating against people on the basis of socioeconomic class, gender, or race. Freedom of speech may also be restricted by

[576] Supreme Court Confirms Use of AI in Legal Research and Translation, *The Hindu* (Aug. 12, 2024, 3:21 PM) https://www.thehindu.com/sci-tech/technology/supreme-court-confirms-use-of-ai-in-legal-research-and-translation/article68515713.ece.

[577] Ministry of Law and Justice, Artificial Intelligence in Judiciary, https://pib.gov.in/PressReleasePage.aspx?PRID=2043476.

[578] Aditi Dehal, Constitutionalism and the AI Approach: An Analysis of the Response Draft Paper, *CLT NLIU* (2021), https://clt.nliu.ac.in/?p=336 .

[579] Dr. Nivash Jeevanandam, Impact of AI in the Indian Legal System on Indian Constitution Day 2023, *IndiaAI*.

the use of AI for censorship or content moderation, and privacy issues may arise from the way AI systems gather and use personal data. Furthermore, transparency and accountability are hampered by the "black box" nature of many AI systems. The Indian Constitution's 'Golden Triangle' ideals may be compromised by algorithmic biases. It becomes challenging to contest potentially unjust or discriminatory outcomes without comprehensive explanations of how AI choices are made, weakening due process and the rule of law. Thus, even while the Indian Constitution offers a solid foundation for rights, its implementation in the era of artificial intelligence necessitates careful thought and modification to meet the particular difficulties presented by this game changing technology.

NEED FOR AI SPECIFIC FRAMEWORKS

To deal with bias, accountability, transparency, privacy, and ethical concerns, India must create a legal framework regulating AI; for instance, AI models almost always inherit algorithmic biases that will prejudicially impact administration of justice, hiring, and finance, violating Article 14 (Right to Equality). The lack of legal personality of AI gives rise to issues of liability and redress. Many AI systems function as "black boxes," rendering judicial and administrative determination ultimately futile, conflicting thus with Article 21 (Fair Procedure). AI-led surveillance forces the issue of privacy rights (Puttaswamy Judgment, 2017). Existing statutory provisions, like IT Act, 2000[580], and DPDP Act, 2023[581] , do not suffice; there is a need for India to create a Responsible AI Bill under a regulatory authority to ensure adherence to the same.

GLOBAL PERSPECTIVES ON AI REGULATION: LESSONS FOR INDIA

Albania

The Albanian government has announced their AI minister Deliah, has been pregnant with 83 children. It does not refer to the biological children but 83 AI systems will be allotted to each minister for the workings, under the minister’s charge.

If India were to adopt similar strategy, then, the question of liability must arise on whether the AI systems or the Politicians are accountable for any mistake?

European Union

The EU AI Act, for example, was created by the European Union and sets stringent standards for the usage of AI systems while classifying them according to risk categories. The purpose

[580] *Information Technology Act*, No. 21 of 2000, India Code.
[581] *Digital Personal Data Protection Act*, No. 30 of 2023, India Code.

of this act is to protect personal information and guarantee that AI technologies do not violate fundamental rights.

Canada

Canada is moving forward with its Artificial Intelligence and Data Act (AIDA), which aims to enforce strict regulations on high-risk AI systems while encouraging accountability and openness.

If India were to adopt similar regulations, it could effectively address many of the current challenges posed by AI technologies. Implementing a comprehensive legal framework would help clarify liability issues, ensuring that developers and users are held accountable for any harm caused by AI systems. Moreover, establishing clear guidelines for data protection and algorithmic transparency could mitigate risks such as bias and discrimination.

India can develop a strong system that not only encourages innovation but also defends individual rights by taking inspiration from other countries' regulatory strategies. In the end, this would increase public confidence in AI technologies and guarantee that they be used as instruments for empowerment rather than as causes of inequality or violations of constitutional principles. Implementing such policies would be a big step in balancing India's fundamental rights protection with technological growth.

JUDICIAL VERDICTS

K.S. Puttaswamy V. Union of India[582]

The Supreme Court ruled in this case that, in accordance with Article 21 of the Constitution, the right to privacy is a basic right. In the context of AI and data protection, the Court's decision that people have the right to control their personal information is vital. Future debates on how AI systems should protect people's right to privacy were paved with this ruling.

Anuradha Bhasin V. Union of India[583]

This lawsuit involved limits on internet access in Jammu and Kashmir following the abrogation of Article 370. According to the Supreme Court, internet access is covered by Article 19(1)(a) of the right to freedom of speech and expression. This verdict underlined the importance of digital rights in contemporary society and affirmed that limits on communication must meet constitutional requirement.

[582] *K.S. Puttaswamy v. Union of India*, supra note 7.
[583] *Anuradha Bhasin v. Union of India*, (2020) 3 SCC 637 (India).

SUGGESTIONS

Strengthen Data Protection: To provide better defences against data exploitation by AI technologies, the Digital Personal Data Protection Act (DPDP) needs to be improved. People should have more control over their personal data by requiring stricter consent. Assure

Algorithmic Transparency: Companies should be required by law to reveal the inner workings of their AI algorithms, particularly in crucial domains like recruiting and law enforcement. People will be better able to comprehend and question AI-driven decisions as a result.

Promote Cooperation: When developing AI rules, the government should consult with a range of stakeholders, such as technologists, ethicists, and civil society. More inclusive and successful policies will result from this.

Bring Continuous Monitoring into Practice: Provide procedures for the continuous assessment of AI systems in order to spot hazards and modify laws as necessary to safeguard the rights of citizens. Increase Public Awareness: Run campaigns to inform people of their rights about AI technologies so they may speak up for themselves.

Learn from International Practices: India should take into account effective regulatory models from other nations, such as the AI Act of the EU, and modify them to suit its own situation.

CONCLUSION

The integration of AI into governance and justice administration in India provides transformative opportunities and constitutional challenges. While AI promises benefits for efficiency in policy making, right enforcement, and justice administration, it does raise questions of bias, privacy concerns, accountability, and transparency. The absence of a specific legal structure threatens the rights enshrined in Articles 14, 19, and 21. With a firm commitment to constitutional values on AI, signing of a Responsible AI Bill must be taken up in India, for it should speak concretely on ethics, liability, and oversight on AI. Balancing technological advancement against constitutional safeguards is necessary so that a future is one that strengthens rather than undermines democratic values.

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