LEX MENTE LAW REVIEW

VOLUME - 2
ISSUE- 1
2026

SUMMER ISSUE- JANUARY- JUNE, 2026

ISSN: 3139-0927 (O)

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PREFACE

The publication of Volume 2, Issue 1 of Lex Mente marks another significant step in our commitment to fostering student-led legal research and academic discourse. Building upon the foundation established through our inaugural volume, this edition continues our objective of providing a platform where emerging scholars can engage with contemporary legal issues through thoughtful analysis, critical inquiry, and original research.

The contributions featured in this issue reflect a diverse range of legal perspectives and explore subjects that are relevant to both academic discussions and practical developments in law. Through these papers, we aim to encourage readers to examine legal questions critically, engage with evolving jurisprudence, and contribute meaningfully to the broader legal community.

At Lex Mente, we believe that legal scholarship should remain accessible, inclusive, and driven by intellectual curiosity. This publication seeks to support students and young researchers in developing their analytical and writing skills while providing them with an opportunity to share their work with a wider audience.

We extend our sincere gratitude to all contributors, reviewers, mentors, and members of the editorial team whose dedication and efforts have made this issue possible. Their commitment to academic excellence continues to strengthen the vision and purpose of this journal.

As Lex Mente continues to grow, we remain committed to creating a space that promotes quality legal research, encourages diverse viewpoints, and inspires future scholars to participate in meaningful academic engagement. We hope that Volume 2, Issue 1 serves as a valuable resource for readers and motivates further contributions to legal scholarship.

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

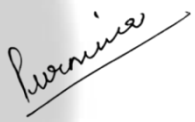
Senior Counsel with the Union of India

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
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REGULATION OF IN- SITU RESOURCES UTILIZATION (ISRO) ON LUNAR AND MARTIN SURFACES

Aaradhya Nagyan[1]

VOLUME 2, ISSUE 1 (JANUARY-JUNE 2026)

ABSTRACT

The anatomy and potential colonization of extraterrestrial bodies such as the Lunar and Martin surfaces have necessitated the development of In– Situ Resources Utilization (ISRU) technologies. The resources involve harnessing and processing regional resources like martin ice and lunar regolith to produce essential commodities such as water, oxygen and construction materials. The advancement of In-Situ resource utilization technologies had increased interest in lunar and martin exploration, which has brought significant legal, ethical and regulatory challenges. Existing international space treaties, such as the outer space treaty, 1967 and the moon agreement, 1979 provide broad provisions but fail to state clear legal guidelines on the extraction, ownership and commercialization of extra-terrestrial resources. The absence of comprehensive regulatory framework creates ambiguity regarding the rights of nations, international organizations and private entities involved in ISRU. Further there is lack of consensus on equitable resource distribution and environmental sustainability in outer space activities. The paper is attempted to analyze these gaps by examining existing legal provisions, identifying challenges and proposing a structure, regulatory framework for smooth functioning of ISRU on lunar and Martin surfaces.

Keyword: Space, Extraterrestrial, In- Situ Resource Utilization, Space Mining, Geopolitical.

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INTRODUCTION

In- Situ Resource Utilization (ISRU), is a process of generating on products with local material on other planets is a process of generating own products with local material on other planets with aim to make human space, exploration, more sustainable, and permanent.[i] ISRU create sustainable commodities on other planets. The processes of ISRU includes water, evolution, solid oxide, electrolysis and hydrogen reduction, also technologies such as advanced, propulsion, advanced power systems and cryogenic fluid management. The evolution of ISRU method for the extensive exploration of extra-terrestrial and in particular for the exploration of lunar and martin will become increasingly important in the upcoming decades. It is impossible to transport required resources from earth such as commodities, hence, raw products need to be collected and modified. Some of the most important resources that need to be produced include water, oxygen, and methane along with construction and radiation shielding materials. The new space technologies that are being considered additive, manufacturing of lunar and martin is a probability. The moon and Mars regolith is the layer of loose, heterogeneous region that covers the solid rock, including soil, dust, broken rocks and other required material presented on the surfaces. With the exploration of new technologies, the processing of critical resources, such as water, metals, salt and useful volatiles may be concentrated on the extraterrestrial surface. The resource utilization scientists will require processing such as collection, storage, drilling, sorting and chemical processing of lunar and martin regulate for development. Mining tendering are focused on robotics. Extraterrestrial mining on lunar will likely start with extraction of water from the moon as it is estimated that moon accommodates the amount of water contained in ice sheets found in permanently shaded craters, i.e. 40 of these craters' states 600 million metric tons of water ice.[ii] This amount of water ice would be enough to launch one space shuttle quotidian for 2,200 years. Water can further be processed for extraction of hydrogen, which can be used as jet fuel or be used to drink and produce food further more provide radiation protection. However, In-Situ Resources Utilities is not limited to water, metals, mind from these terrestrial bodies can be used to 3D print spaceship integrate.

ISRU practice of resource exploration could provide materials for life, support, construction, material, propellant and energy to Spacecraft payloads. Several field tests in late 2000s were done to understand the environmental technique in outer space though production has not yet

been implemented. ISRU technique aims to discover water, rocket propellant solar cell production, and building materials on locations such as moon, mars, asteroids, martin, moons and planetary atmosphere.

Water: it is an essential element which is use for life support such as for drinking, producing oxygen, growing food and numerous other industrial processes the extra territorial water has been stumble in many forms throughout the solar system and numerous water extraction technology have been discovered the investigation includes chemically bound regolith, some manner of permafrost or solid ice on heating can discover the water. Though it is not as easy as it appears because permafrost could be harder than plan rock. Therefore, necessitating tough mining operations on Mars water can be extracted, simply through the process of WAVAR. Rocket propellant: the production of rocket propellant has been tendering from the moon's surface by processing water ice. The difficulties in this process are faced during extraction of water from the regolith and at extreme extremely low temperatures.[iii] Many discoveries electrolyze the water to produce oxygen, hydrogen and cryogenically as liquids. This scheme requires large amount of equipment's and power. The monopropellant hydrogen peroxide (H2O2) can be produced from water on moon and Mars. Solar cell production: it can be produced from material present in lunar soil.[iv] Aluminum, glass, and silicon: these three primary materials are required for solar cell production. They are found in high concentration, a lunar soil and could be used to produce solar cells. Solar arrays manufactured on lunar surface can be used to support operations and satellites. Building materials: the colonization on extra-terrestrial will require obtaining local resources available such as. The study explores artificial mars soil mix with Tetraethoxysilane (TEOS) and epoxy resin; it produces high values of resistance, strength, strength and flexibility parameters. Space mining involves extraction of metals from space which may be cost effective than bringing such material from earth or any other large body like mars or moon.[v]

With the development of space technology, the thought of human settlement on the moon and mars is changing from science fiction to reality. One of the critical concerns in deep space mission is resource depend on earth which is not logistically and economically viable for long-term missions. ISRU recommends a solution by utilizing the available material on lunar and Martian to support human and robotic consideration. As technological advancements have made

In-Situ resources, utilization feasible, it's legal and regulatory implication remain largely undetermined. The unclear legal framework creates uncertainties regarding environmental sustainability, resource ownership, and the rights of different space actors.

LEGISLATIVE FRAMEWORK AND CHALLENGES

Key Challenges

1. Lack of clear ownership rights: outer space treaty, 1967 provisions prohibit national appropriation of outer space stating it and clear whether private nations or companies can claim ownership of extracted resources.
2. Conflicts between international and national laws: nations like United States and Luxembourg have their own legislature permitting private entities to extract extra-terrestrial resources potentially conflicting with international laws.
3. Absence of comprehensive ISRU framework: the existing provisions of international treaties do not specifically address In- Situ Resources Utilization, due to not clear regulation it leads to ambiguity.
4. Environmental and Ethical Considerations: existing space treaties focuses on minimizing harmful contamination but there is no comprehensive guideline on sustainable ISRU activities.
5. Dispute Resolution Mechanism: There are no legal provisions to arbitrary disputes related to outer space operations, leading to potential conflicts over extraction rights and resource claims.

Legislative Framework

International regulations and treaties applicable to extraterritorial activities lack behind rapid technological development. Currently, there are no legal provisions on outer space activities. Hence, there is significant legal uncertainty on how to proceed in mining and exploration on the lunar and martin under existing international and national laws. The international agreement asserts that no government can claim celestial body or outer space as their own, due to such assertion private companies interested in investing in outer space faces uncertainties as a measure impediment to upcoming commercial development of moon and mars. The private companies argue that the absence of rights is in impudent to obtaining external financing, be a

hindrance to the protection of their expenditure in space and adequate guarantee of their expenditure.

- Outer Space Treaty is the official available international space law which came into existence in 1967 and has been signed and rectified by above hundred nations. Article 1 of the treaty states: the exploration and use of outer space shall be carrying out for benefit and in interest of all nations.[vi] Outer space includes the moon and other celestial bodies, it further states that the outer surface shall be free for exploration and use by all nations without discrimination of any kind, i.e. on a basis of equality and there shall be free access to all areas. The article does not clearly state whether the extraction of extraterrestrial is lawful.
- The international Institute of space law addresses that: as the outer space treaty provisions do not express right to extract space resources, hence it does not prohibit such action. Article 1 provides the countries for free exploration and use of celestial bodies in space without discrimination. The treaty does not clarify on the free use of non-renewable natural space resources. It can be addressed that outer space treaty is the constitution of international space law.
- Moon treaty: Addresses resource extraction from the lunar. It states that lunar and other celestial bodies in space, including their natural resources are the province of all mankind (Marboe 2016) and common heritage of all mankind (Roth 2015). The moon treaty has not been signed by many countries, including United States and other space faring nations because it was believed that the moon treaty is obsolete and could create a significant barrier to private space mining.[vii]
- The liability convention: addresses damage caused by space objects that includes the agreement on rescue and return of astronauts and objects instigated into extra-terrestrial. It creates a liability regulation for damage affected by spacecraft and creates strict liability standards for negligence and accidents on earth surface or elsewhere. The provision of liability convention resolves disputes through the claims commissions which are decided with the consent of the parties.
- The Hague international Space resources, governance working group: the goal of the group is to prepare regulatory framework. It supports international laws for the benefits and interest of all nations and humanity for peaceful scientific development.

- United Nation Office for Outer Space Affairs: Outer space affair was established in year 1958, it was to ensure peaceful exchange of affairs among different countries relating to space. Many developing countries believe that space material and space exploration can be an economic help to them. In 2005 international committee on global navigation satellite system (ICG) was established with aim to advance, similarity, straightforwardness and interoperability between all the satellites navigation system. In 2006 UN-SPIDER strategy was made to provide open stage to utilize the space innovations for fiasco.[viii] The body also regulates international treaties and international agreements related to outpace laws.
- US legal framework: United States was the first country to start working on space legislative structure and has been successfully leading the world in space matters. US has definite public space law, most powerful regulation and admin administrator system exercising on space activities.
- India is one of the biggest hubs in developing extraterrestrial exploration, but still lacks with strict legal structure. Though India has policies and regulations for functioning:
    1. Remote Sensing Data Policy of 2011: it allows obtaining, disposal and executive of far of detecting information.
    2. The Satellite Communication Act 1997: the act regulates and develops satellite communications.
    3. The Draft Space Activities Bill: it was drafted in 2017; the bill is still yet to become a working act.

CONCLUSION

The ordinance of In-Situ Resource Utilization activities on lunar and Martian surfaces is a concern that requires immediate attentiveness as space exploration make headway. Presently international treaty stipulates general principles, but lack specific regulation for resource utilization. The research concludes that a multilateral framework is essential to preside over ISRO activities, ensuring equitable access to space resources. Alliance among nations, legal clarity on ownership, rights and environmental shield must be embodying into succeeding space policies to facilitate sustainable extraterrestrial investigation.

The current international regulatory framework and guidelines governing extra-terrestrial resource utilization is in adequate to address the challenges of ISRU on the lunar and martin

surfaces. A well-structured, multilateral and legal framework, incorporating principles of equity, sustainability and International Corporation will facilitate fair and responsible In- Situ resources utilization activities.

RECOMMENDATIONS AND SUGGESTIONS

1. Environmental and ethical considerations: strict guidelines on minimum ecological damage to auto space and maintain planetary protection.

2. International Corporation and Treaty Amendment: amending existing space treaties, such as including mechanisms for fair resource allocation and dispute resolution

3. Development of Unified Legal Framework: an international legislative framework needs to be established under the governance body to regulate the ISRU functioning and ensuring equitable, excess and sustainability principles. The lawmakers must periodically review ISRU activities and amend legal provision according to the development.

i NASA, 'Overview: In-Situ Resource Utilization' (NASA, no date) https://www.nasa.gov/overview-in-situ-resource-utilization/

ii Shreya Mane, 'Overview on In-Situ Resource Utilization on Mars' (2024) https://www.researchgate.net/publication/380066511_Overview_on_In-Situ_Resource_Utilization_on_Mars

iii Stanley O Starr and Anthony C Muscatello, 'A comprehensive review of in-situ resource utilization for lunar and Martian exploration' (2019) Planetary and Space Science https://www.sciencedirect.com/science/article/abs/pii/S0032063319301618

iv International Space Exploration Coordination Group, In-Situ Resource Utilization Gap Assessment Report (April 2021) https://www.globalspaceexploration.org/wordpress/wp-content/uploads/2021/04/ISECG-ISRU-Technology-Gap-Assessment-Report-Apr-2021.pdf

v Peng Zhang, Wei Dai, Ran Niu, Guang Zhang, Guanghui Liu, Xin Liu, Zheng Bo, Zhi Wang, Haibo Zheng, Chengbao Liu, Hanzhe Yang, Yifan Bai, Yang Zhang, Dong Yan, Kefa Zhou and Ming Gao, 'Overview of the Lunar In Situ Resource Utilization Techniques for Future Lunar Missions' (2023) Space: Science & Technology https://www.sciopen.com/article/10.34133/space.0037

vi Christopher Daniel Johnson, 'The Outer Space Treatylocked' (2018) Oxford Research Encyclopedia of Planetary Science https://doi.org/10.1093/acrefore/9780190647926.013.43

vii Janani A, 'The Moon Agreement & India' (ILE Legal Blog, 2 January 2023) https://blog.iledu.in/the-moon-agreement-india/

viii United Nations Office for Outer Space Affairs, 'United Nations Office for Outer Space Affairs (UNOOSA)' (Sustainable Development Goals Knowledge Platform, 2024) https://sdgs.un.org/un-system-sdg-implementation/united-nations-office-outer-space-affairs-unoosa-49126

AUTONOMY OF RELIGIOUS DENOMINATION AND STATE REGULATION IN INDIA

Aditya Narayan Dash[1]

VOLUME 2, ISSUE 1 (JANUARY-JUNE 2026)

ABSTRACT

Religious denomination played a very significant role in our society and in the Indian Constitution. The rights of religious denominations are protected under Article 26 of our constitution; however, the main problem concerns the extent of state regulation of religious denominations. This paper focused mainly on rights protected under the Constitution and on the state's regulation of religious denominations. This paper primarily examines the extent to which the state regulates a religious denomination. Regarding this, there are significant judicial precedents that highlight the rights and limitations of a religious denomination. These precedents suggest how far a state may go in enacting legislation and regulating a religious denomination. This paper examines denominational autonomy and the state's regulation within it. Lastly, a religious denomination played a pivotal role in India, and this paper clearly demonstrates the autonomy conferred on a denomination and the state regulation of that autonomy.

Keywords:- Religious denomination, Article 26 autonomy, state regulation, Essential religious practice, public order, morality and health

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INTRODUCTION

Freedom of religion is provided under articles 25 to 28, but the main issue concerns state law. In various instances, the parliament frames the law, but it is often unclear to what extent the state exercises its powers. State law often falls within the ambit of this autonomy, thereby violating a denomination's autonomy. For this reason, it is very important to understand the boundaries of a legislature for framing laws. This paper explained the power of a competent legislature to enact laws concerning a religious denomination.

Meaning of Religious Denomination: -

A religious denomination is not properly defined in our constitution, but in S.P. Mittal, the Supreme Court highlighted its nature. Like, if a body has a

1. Common faith
2. Common Organisation
3. Distinctive Name, then it is categorized as a religious denomination.[2]

Autonomy conferred to religious denomination:-

Articles 26(1) to 26(3) of the Indian Constitution protected the autonomy status of religious denominations. However, under this autonomy, various limitations were set by the Supreme Court.

1. **Establishment and maintenance of an institution for religious and charitable purposes** [3]

Article 26 (a) empowers a religious denomination to establish an institution and maintain it. It is important to note that establishing and maintaining an institution must proceed in tandem. A religious denomination has full autonomy to maintain the established institution. A state subject to health, morality, and public order has no right to prohibit a denomination from establishing an institution. Further, it is important to note that an institution, which is not established by a denomination, falls outside the scope of Article 26. In other words, a denomination has no authority over the institution that it never established. In this regard, there was a landmark case titled S. Azeez Badshah v. Union of India. In this case, there was a university named Aligarh Muslim University, which was established by a statute called the 1920 University Act. The

[2] S.P. Mittal vs Union of India AIR 1983 S.C. 1 (India).
[3] INDIA CONST. art.26, cl.1

major issue arose in 1965, when the government made certain amendments, and the petitioner challenged them. However, the apex court stated that as a statute established the educational institution, the denomination had no right to control it, and the government was entitled to make the amendments[4].

2. **Manage religious affairs**[5]:-

Under Article 26 (b), a religious denomination has the right to manage its own religious affairs. However, it is important to note that 26(b) is not immune from 25(2)(b)[6];Article 25(2)(b) talks about 2 things:-

1. It empowers the state to frame any law for social welfare.
2. It empowers the state to open a Hindu religious institution of a public character to all classes and sections of Hindus.

Hence, if a legislation is framed with the intention of social welfare, and it infringes Article 26(b), then in that situation, the validity of the act will not be vitiated. Similarly, this article empowers a state to open a Hindu religious institution of a public character to all classes and sections of Hindus. The intention behind this provision is to eradicate untouchability and discrimination in the temple premises. This provision empowers all communities to enter the temple premises. Hence, if a government opens a Hindu institution for a class or section of people, then that class of people cannot prohibit a specific class of people on the shield of Art:-26(b). Still, it is also clear from 25(2)(b) that a religious denomination can exclude a person from performing a special task, like the job of a pujari or achraka[7]. In this regard, there was a famous case titled Sri Venkataramana vs State of Mysore. In this case madras government enacted legislation called madras temple entry authorization act, which allows Harijans to enter the temple premises, but subsequently a private temple trustee opposed this, and contended that as their temple was a private temple, it fell outside the scope of this act, but supreme court rejected this contention and held that Art 26(b) must be subject to 25(2)(b)[8].

It is also essential to note that the government cannot interfere in a religious activity of a religious denomination under the guise of secular activity. With this respect, there was a

[4] S. Azeez Basha vs Union of India AIR. 1968 S.C. 662(India).
[5] INDIA CONST. art. 26 cl. 2
[6] INDIA CONST. art.25 cl.2(b)
[7] M.P. Jain, Indian Constitutional Law 1307(8th ed. 2018).
[8] Sri Venkataramana Vs State of Mysore, AIR. 1958 S.C. 255 (India).

prominent case named:- The Commissioner, Hindu Religious Endowments, State of Madras vs Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt, it was held that:-

"If the tenets of any religious sect of the Hindus prescribe that offerings of food should be given to the idol at particular hours of the day, that periodical ceremonies should be performed in a certain way at certain periods of the year or that there should be daily recital of sacred texts or ablations to the sacred fire, all these would be regarded as parts of religion and the mere fact that they involve expenditure of money or employment of priests and servants or the use of marketable commodities would not make them secular activities partaking of a commercial or economic character; all of them are religious. practices and should be regarded as matters of religion within the meaning of Article 26(b)[9]."

But a government can frame a law to conduct a secular activity, like in the case of Bira Kishore Deb vs. the State of Orissa[10]. There was an act named the Sri Jaganath Temple Act 1954, which took sole control of management from the Raja of Puri to a committee. The act provided that it shall be the duty of the committee to arrange for the proper performance of Sevapuja in accordance with the record of rights. The court held that Sevapuja has 2 aspects: 1. Religious, and 2. The secular aspect, the act deals with secular activity and does not interfere with the religious aspect of the sevapuja. Hence, the court validates the act.

Right to acquire property[11]:-

Article 26 (c) empowers a religious denomination to acquire property. It is important to note that Article 26 (c) only empowers a religious denomination to acquire property. Still, this article does not address the administration of the property, meaning that a religious denomination can only acquire land. Still, the administration must be done in accordance with 26(d). Article 26(d) suggests the administration of property in accordance with the law. Hence, no religious denomination can claim the administration of a property in the broad ambit of matters of religion, which is given under 26(b).

It is further essential to observe the relation between Article 31(2)[12] and Article 26(c). Article 26 (3) is not immune from article 31(2), and subject to the provision of article 31(2). Article 31(2) vests in the state the power of acquisition of land. A religious denomination cannot use

[9] The Commissioner, Hindu Religious Endowments, State of Madras vs Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt, AIR. 1954 S.C. 282 (India).
[10] Raja Birakishore vs State of Orrisa, A.I.R. 1964 S.C. 1501 (India).
[11] INDIA CONST. art.26 cl.3
[12] INDIA CONST. art. 31cl 2

Article 26(3) against the state acquisition. It is also well observed by the apex Court in Acharya Maharajshri v. The State of Gujarat & Ors[13]. In which case, it was highlighted that although a religious denomination has the right to acquire movable and immovable property, this right does not deprive the state of its right of compulsory acquisition. However, the question of acquisition is sometimes controversial: it may affect a denomination's religious practice, and some places may have religious significance. In this regard, the Supreme Court, in the case of Gulam Kadar Ahamad Bhai Menon vs Surat Municipal Corporation[14], held that A place of worship that has such religious significance must stand on a different footing, and the acquisition of such a place must be avoided if such a place is used in the extension of a religion. But other places of worship, which have no such religious significance, stand on a different footing.

State regulation of a religious denomination: -

Articles 25 and 26 also impose some limitations; A religious denomination has only the power to regulate the management of religious affairs. However, the main point is that the constitution does not explicitly distinguish between a religious and a secular part.

So, there are various limitations of a denomination under Article 26, which are addressed below: -

1. **Administration of property[15]:-**

Article 26(d) empowers a government to frame laws for the regulation of the property of a religious denomination. A religious denomination cannot claim that the property affair is falling under the ambit of a matter of religion, and claim protection under 26(b). The administration of property is purely a secular function and regulated by state laws.

It is further important to understand the distinction between Article 26(d) and Article 26(b). Under article 26(b) is subject to public order, health, and morality, but under 26(d), a state has full autonomy to frame laws.

However, it is essential to note that this right to frame law about a religious denomination is not absolute. In many cases, the Supreme Court has set the bar for state laws, as seen in Parvani Sridhar Rao v. State of A.P.[16] In this case, the Supreme Court stated that a law that interferes with a religious denomination must be reasonable.

[13] Acharya Maharajshri v. The State of Gujarat & Ors AIR 1974 SC 2098
[14] Gulam Kadar Ahemad Bhai vs State of Gujarat, A.I.R. 1998 Guj. 234 (India).
[15] INDIA CONSTI. art.26 cl.4
[16] Parvani Sridhar Rao vs Union of India, AIR. 1996 S.C. 1334 (India).

2. **Essential religious practice**: -

One of the major limitations of religious denominations is the requirement of essential religious practice. Article 26 (b) does not apply to all religious practices of a religion, but it applies only to essential religious practices of a religion. The determining factor is the practices, whether crucial or not; our constitution does not specify any criteria for a religious practice. Therefore, the interpretation of essential religious practices falls entirely under judicial interpretation. Like in the case of Tilkayat Govindlal Ji Maharaj vs State of Rajasthan, the court stated that to determine whether a practice is essential or not, the court needs to determine 2 things: 1. Whether the practice is religious or not, 2. Whether that practice is essential to the religion. It is further essential to take into account that the court must decide these factors based on the evidence adduced in court.

The 3-step enquiry is also very important for determining the essential religious practice. The steps are 1. Whether the practice is religious, 2. Whether the practice is essential for faith,3. Whether the practice complied with public interest and the reformist approach[17]. These tests are analysed and taken by various judgments of the Supreme Court.

Furthermore, it is important to note that the essential religious practice cannot be amended by any particular denomination. In this regard, there was a landmark judgment titled Acharaya Jagdishwaranda Avadhuta vs Commissioner of Police, Calcutta[18]. In this case, the Tandava dance was performed by the Ananda Margi sect. The dance includes the use of a skull, a knife, and a trident, so the police denied the dance from performing in a public procession. The Ananda Marga sect claims that the Tandava dance is an integral part of their religious practice. Still, the apex court rejected their argument, holding that it is not an essential spiritual practice. After this judgment, the founder of this sect published their new holy book, named "Carya", where they stated that dancing is an integral part of their religion. The matter was further taken to the High Court of Calcutta, which ruled in favor of Ananda Marga. Later, the matter was taken to the Supreme Court, which ruled against the religious denomination. The reason advanced was that a religious denomination cannot make a practice essential by a mere amendment. However, there are other criticisms of the essential religious practice, such as the claim that it lacks fixed parameters for determining the essential part of a religion.

[17] Rajeev Dhavan & Fali S. Nariman, The Supreme Court and Group Life: Religious Freedom, Minority Groups and disadvantaged communities, in Supreme Court but Not Infallible: Essays in honor of the Supreme Court of India 256 -57(B.N. Kirpal et al. eds., 2000).

[18] Acharaya Jagdishwarnda Avadhuta Vs Commissioner of Police, AIR. 1984 S.C. 512(India).

3. **Law under public order, Morality, and Health: -**

Our constitution doesn't confer an absolute right to practice religion because religious practice might undermine law and order in a state or be inconsistent with the state's welfare. So, our constitution explicitly states in Article 26 that a state may enact laws with respect to a religious denomination on the grounds of public order, morality, and health.

I. Public Order: -

The religious denomination cannot be inconsistent with the state law and order. A state can enact laws with respect to a religious denomination to maintain public order. Various states enact laws to maintain public order within their states, such as the Places of Worship Act[19], which was passed by parliament in 1991. The main feature was to freeze the religious status of all religious places. This legislation helps maintain public order by freezing the status of religious denominations and prohibiting arbitrary claims over religious structures.

II. Health: -

Religious belief or religious law cannot be inconsistent with public health. A state has an obligation to maintain the country's health and hygiene; it can enact laws, even if they may contravene religious beliefs. Like in BNS under section 271[20]states that the person who spreads the infectious disease must be punished for a term of 6 months. This legislation helps regulate public health by penalizing negligent acts that can spread infectious diseases.

III. Morality: -

Restriction to a religious denomination is justified if the ground for framing the law is morality. A religious denomination cannot violate a state's public morality. If a religious denomination violates public morality, then state law must take effect and prohibit that practice. Like, the Devdasi practice was banned in Madras by the enactment of the Tamil Nadu Devadasi (Prevention of Dedication) Act 1947[21]. Devadasi means the dedication of a girl to a deity.

CONCLUSION

The Indian Constitution provides autonomy to religious denominations, but it simultaneously confers power on the state for secular management. The Indian Constitution, along with various judgments of the Supreme Court, sets the boundaries within which a religious denomination may exercise autonomy.

[19] The Place of Worship (special Provisions) Act, No.42 of 1991, § 3 (India).
[20] Bhartiya Nyaya Sanhita, No.45 of 2023, §271(India).
[21] The Tamil Nadu Devadasi (Prevention of Dedication) Act, No. 31 of 1947 (India).

AI IN JUSTICE OR AI INJUSTICE?

Adv. Sayantan Dutta[1]

VOLUME 2, ISSUE 1 (JANUARY-JUNE 2026)

ABSTRACT

Technology is rooted in local ecosystems to be effective and useful. For an AI-driven future, we need to re-skill our people. The core of the Indian legal system lies not only in statutes but also in judicial decisions. Precedent plays a vital role in shaping India's law. Therefore, as technologies such as AI make their way into the areas of justice, administration and governance, it is essential to evaluate them not just in theory but also considering judicial interpretations. Today, the world is divided into two categories.

The first includes countries that have their own AI systems, servers and data making them digitally sovereign and secure in their technology whereas the second category comprises of such countries that rely on foreign technology and data making them dependent. For India, in order to become a self-reliant and developed nation by 2047, Aatm Nirbhar Intelligence is the need of an hour and as such it must be developed. AI is the most significant revolution in human history. It presents a challenge to humans in ways that have never been seen before.

What will human brains do, if AI bots take over tasks performed by human since the era of computers? The rapid spread of AI across various sectors like healthcare, finance, consumer markets and public administration has outplaced India's legal and regulatory structure.

India's current approach based on ad-hoc ministry level advisories and the non-binding responsible AI principles issued by NITI Aayog lacks the necessary legal authority to regulate high risk AI deployments. This study explores the shortcomings of the existing legal framework in addressing AI-induced harm. It also focuses on consumer facing AI applications.

By comparing the 2024 Artificial Intelligence Act of the European Union, the world's first comprehensive AI law and the sector specific approach of the UK, this paper argues that a purely horizontal AI law is not suitable for India's regulatory and judicial system.

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Instead, it suggests a sector specific regulatory model that integrates AI accountability standards into existing legislation, such as the Consumer Protection Act, 2019 and the Digital Personal Data Protection Act, 2023. This study also proposes the establishment of a central AI oversight authority. The study concludes with specific legislative recommendation aimed at creating a coherent and constitutionally sound national AI governance framework.

Keywords: Artificial Intelligence Regulation; AI Liability; Consumer Protection Act 2019; Digital Personal Data Protection Act 2023; EU Artificial Intelligence Act 2024.

INTRODUCTION

India's legal framework for data privacy and protection

1- IT Act 2000

Before the Digital Personal Data Protection acted, 2023 (DPDP Act), we had the Information Technology Act of 2000. A major problem with the 2000 Act was that it did not adequately address the challenges faced by businesses when dealing with vast volumes of personal data. Although Section 43 (A) imposes legal liability on organizations in the case of data breaches, it is not sufficient.

2- The Supreme Court Privacy Judgment 2017

In 2017, The Hon'ble Supreme Court delivered A landmark ruling in K.S Puttaswamy versus The Union of India, recognizing privacy as a fundamental right under Article 14, 19 and 21. The case revolved around the use of Aadhar biometric identification as part of government welfare schemes. It raised concerns about whether the government's collection of personal data violated individuals' fundamental rights. The absence of a protective law increases the vulnerability to data security risks. This judgment highlighted the need for a data protection law that aligns with international standards.

3- The Digital Data Protection Act 2023.

The focus shifted to how to form a data protection law that benefits all stakeholders after the Digital Personal Data Protection Bill of 2019, which was inspired by the Puttaswamy judgment. The Data Protection Act is based on the principle of user consent which gives individuals more visibility and control over their data. The formation of the Data Protection Board of India, which aims to safeguard privacy rights is a significant innovation. Failure to comply with the

law can result in heavy penalties of up to Rs. to 250 crores. From a DPDPA perspective, there are concepts similar to those found in the General Data Protection Regulation (GDPR) of the European Union, EU. GDPR defines roles such as the controller, processor data subject where the data fiduciary refers to the organization that collects data, and the individual is the data principal.

This study also seeks to answer whether AI is compatible with the Indian constitutional framework, natural justice and judicial conscience.

4- Article 14 and AI: equality versus algorithm bias.

In the case of Royappa versus the state of Tamil Nadu 1974, It emphasized that Article 14 aims to prevent arbitrary actions by the state. If the state adopts an AI based decision making system that is opaque or based on biased data, the decision would be considered arbitrary and in violation of Article 14.

5- Article 21 Natural Justice and AI.

In Kraipak versus The Union of India 1969, the court stated that natural justice applies to administrative decisions as well.

The two main principles of national justice are as follows; Audi Alteram Partem (the right to be heard) and Nemo Judex in Causa Sua. (No one should be a judge in their own cause). AI cannot “hear” anyone nor understand moral impartiality.

6- Mohinder Singh Gill v. Chief Election Commissioner, 1978

The decision is based on what was recorded at the time of the decision. If an AI system cannot explain the reasoning behind a decision or generates it later the decision would be invalid.

7- The right to privacy, data, and AI.

Justice KS Puttaswamy VS The Union of India 2017.

Privacy was declared a fundamental right. The court stated that data collection must be necessary, proportionate and for a lawful purpose. In AI based governance, large scale data processing occurs. The potential for profiling and surveillance increases and AI can violate Article 21 without a robust data protection law.

8- Anuraga Bhasin VS The Union of India 2020.

The Court applied the doctrine of proportionality. If AI imposes excessive control over civil liberties and operates without transparency, it will be unconstitutional.

9- Criminal justice system and Artificial Intelligence.

State of Rajasthan versus Kashi Ram 2006.

The Supreme Court stated that 'suspicion', however strong, cannot take the place of proof. "If AI engages in predictive policing and declares an individual a suspect based merely on probabilities then it will be considered against the core principles of criminal justice.

Administrative law, accountability, and artificial intelligence-

From the above case analysis, the Indian Constitution is based on the concept of human-centric justice. AI, equality, privacy, and natural justice pose serious challenges to judicial discretion. Without a robust legislative framework, the use of AI may be unconstitutional. As such, Artificial intelligence can only be a tool in the Indian legal system, and not merely a decision maker. Its limited use is permissible only under the Constitution, judicial precedent, and human dignity.

Hence, the future of AI in law is projected to involve increased reliance on AI for legal research, with potential shifts in how litigants seek advice. While AI is unlikely to substitute judges in the next five years, its role as a facilitator in judgment writing may expand. The democratization of content creation through AI is also highlighted, enabling smaller entities to produce content more affordably. However, the dual nature of AI as a tool for creating and combating misinformation is acknowledged. The overarching consensus is that while AI offers significant advantages in efficiency and accessibility, the human element, particularly empathy, legal reasoning, and ethical judgment, remains indispensable in the legal profession. The importance of continuous lending, identifying the right tools and maintaining a critical approach of "trust but verify" is emphasized for legal professionals to remain relevant in the AI age.

RESPONSIBLE AI IN DECISION MAKING.

Global and Indian data governance and compliance

The Global Data Production Regulation (GDPR) came into picture on May 25, 2018. It is the most robust data previously frameworks in the world. The European Union produced its GDPR

to set a regulation for the safety and security of personal data of individuals who use the Internet for multiple purposes.

Two concepts are crucial to rely upon:

1. controller;

2. processor.

Controller: Any organization that decides how our data will be processed and for what purpose it will be processed whereas A processor is an organization that works on behalf of a controller, either a cloud service provider or a 3rd party vendor working on the controller's instructions.

For liability, a controller is the organization which shall be held liable for ensuring that all the technical and security measures are taken into safeguard the data. The other aspect of law is the individual's right to access for a user.

What happens during a Data breach?

Data breach means that if an organization have all the data about the user and some other 3rd party without the user's permission has taken access, then it will be considered as data breach. Therefore, it is crucial for any organization to have measures on Incident Response Plan, so if a cyber-attack occurs, there should be a core committee to reach cyber-attack.

The use of AI in the Indian legal system is not a cure all for the legal system. If lawyers rely on it without checking, it can hallucinate, produce fixed citations and create serious risks. Using AI also requires training, technical skills and time specially when the tool has many functions.

Legal research is a major example of the practical uses of AI in legal work because lawyers, firms and academics must work through large volumes of case law, journal, articles, books and other materials. AI tools can help search, classify, and identify relevant cases and produce summaries. Legal databases and research tools have already moved in this direction and some are now integrated with large language models. I warn that any output must be checked carefully, since a false citation or invented authority can weaken or destroy a case.

AI also helps with due diligence and contract work. In complex business matters, especially contracts with many parties, long-term obligations, cross border terms and heavy compliance needs. It can also summarize wrong documents into short, useful overviews. This is especially helpful in cases such as IPO filings, wherever even a small mistake can be significant. Contract

analysis and management are presented as central uses of legal AI because business depends on contracts, and large law firms, banks and lenders need to carefully review them.

Entity recognition and relationship mapping are another key use. AI can identify names, dates, roles, liabilities and links across documents. This helps when a matter involves several parties, many transactions, are disputed ownership across multiple properties. AI can turn a large, confusing record into a short summary that provides a clear picture of the issue. It can also help map transactions chains and show how different entities relate to one another.

AI can study earlier judgments, identify patterns and estimate likely outcomes based on precedent, arguments, and judicial behaviour in litigation. It can also support risk analysis by showing the case's strengths and weakness. This connects to how lawyers already resign from past cases, But AI can do it faster and at larger scale. Simultaneously, a question raises a larger issue, whether AI could eventually replicate expert legal thinking closely enough to change the role of lawyers.

The Covid 19 Pandemic pushed courts, firms, and lawyers towards digital systems, virtual hearings, and digital document handling. This change made it easier to connect legal databases with AI tools. The arrival of ChatGPT and other large language models subsequently accelerated adoption. One example is a legal Chartbook, Ni Guru, which is free and available in several Indian languages. Another example is a platform that provides citizens with legal information, guidance, and case tracking.

ETHICS IN AI

Data privacy and cross border data transfer

This means that the data have been transferred from India to other countries. This is a major aspect of international trade. Now, India does not have any guidelines for how data transfer will occur. However, Indian regulators approach shows that by-default data can be transferred to another country. However, if the Indian government has forbidden certain countries that do not have adequate data protection, data transfer is restricted. Blacklisted nations that do not comply with the data protection standards and where national security, sovereignty and public safety are reasons for denial of cross border data transfer.

AI ethics is crucial because as AI becomes more powerful, its decision have real world consequences, requiring ethical framework to guide development deployment. The increasing capabilities of AI, especially toward Artificial General Intelligence (AGI), necessitate a

dedicated field of ethics focused on its unique challenges. Existing ethical theories may need to be adapted or new ones created.

Ethical issues arising from AI:

Academic dishonesty: Using AI to complete assignments without proper attribution, example claiming that the AI-generated work is your own.

Autonomous System safety: AI driven systems, such as self-driving cars, make decisions that could cause harm or violate laws.

Lethal Autonomous Weapon Systems, LAWS: Ethical concerns about developing and deploying autonomous weapons in warfare. Questions of accountability and the morality of delegating decisions to machines.

Fundamental question: how do we define AI to apply ethical principles? Acknowledges the lack of a single, universally accepted definition.

Example- Imagine AI as a powerful tool like a hammer. A hammer can build a good house but can also cause bad injuries. AI ethics is about designing that hammer and establishing the rules for how it is used to maximize good outcomes and minimize harm.

IS AI AN INVENTOR OR AUTHOR?

AI copyright: The core problem is authorship. Traditional copyright law centres on human authors, but AI can now create works challenging this foundation. This is not just a technical issue; it strikes at the heart of what copyright protects and who it protects.

Imagine an author as the creator, although the author may not own the copyright. Authorship is considered an essential part and cannot be ignored; a work of art requires an author's attributable contribution. The debate centres around whether AI can be an author or whether its output requires a human author for copyright protection.

Can an AI be considered an author?

What constitutes originality when content is generated by AI? Is it the AI process, the programmers, or the user input?

Is using copyrighted works to train AI considered fair use?

Example; think of AI as a sophisticated copying machine. A basic copier simply duplicates; copyright is not an issue. Now imagine a copier that slightly modifies what it copies, creating

something new. Is that new creation copyrightable? Who is the author, the copier manufacturer, the person who pressed the copy or nobody?

A key debate revolves around copyright ownership of AI created works. Under the current Indian law, AI is not recognized as an author. While there have been instances where AI was considered as a Co-author, these cases have been complex and are still pending decisions, potentially setting precedents for future applications. Other countries have varying approaches, with some recognizing AI as an inventor for patents, while others maintain that only humans can be authors.

AI itself is unlikely to be held liable for intellectual property infringement by AI-generated content. Since AI often uses publicly available data or data provided by humans, the responsibility typically falls on the individual who developed the work using the AI. The current Indian laws are not fully equipped to handle AI-created works. The Indian Copyright Act offers some ambiguity, potentially allowing for computer generated works to be authored by the E person who caused them to exist. However, the distinction between using a computer and using (AI) artificial intelligence is unclear.

To address these issues, we will update the legal definitions of "author" and "person" to include AI. Ultimately, we should understand the importance of using AI wisely, respecting intellectual property rights, and being aware of privacy concerns, as AI's impact on the future is significant.

IP VIOLATIONS IN CYBERSPACE; COPYRIGHT AND TRADEMARK ISSUES

With rapid technological growth, cyberspace has become a major platform for business creativity and communication. This expansion has increased the risk of IP misuse. As digital content can be easily copied and shared, cyber laws and IPR now operate together to protect creators, businesses, and consumers from digital exploitations. The rise of online platforms has led to new forms of IP related cybercrimes. A common problem is when a person gains financial or commercial benefit by using another person's intellectual creation without consent.

Copyright infringement

Copyright law protects provides legal protection to the creator of any original literary, artistic, material, or scientific work This protection allows the owner to control how the work is used and prevents others from copying, sharing or profiting from it without permission. Copyright infringement occurs in cyberspace when someone uses another person's digital content without consent.

Cyberspace includes:

unauthorized downloading or sharing of movies, music, books and software.

Piracy through websites, torrents, or streaming platforms.

Reposting digital content without credit or permission.

Such acts followed the Creator's exclusive rights and harm economic and moral interests. Copyright and cyber laws provide remedies such as injunction, damages or ultimately faces criminal liability.

Trademark concerns in the cyberspace.

A trademark is any mark that can be visually represented and helps distinguish one businesses goods or services from those of others. It may include a brand name, logo, symbol, colour combination, packaging style or even the overall appearance of A product. A service mark performs the same function for services.

Trademark infringement occurs when a mark is used without permission in a way that creates confusion, deception or misunderstandings about a product or services real source.

Trademark (™) violates online platforms and often includes the following:

1- Use of identical or deceptively similar brand names, logos or websites.
2- Cyber squirting and domain name.
3- Sale of counterfeit goods through online marketplaces.

These apps mislead consumers and damage the brand reputation. They protect brand identity in cyberspace and allow digital action against misuse. Such misuse can easily mislead consumers in cyberspace because online interactions lack physical verifications.

AI IN LEGAL PRACTICE, COURTS AND THE FUTURE OF JUSTICE

AI law and Justice focus on AI, law, justice and innovation building on discussion of AI and its implications for constitutional law, democracy and the concept of digital constitutionalism. The course aims to explore research issue in AI law, justice and innovation recognizing AI as a driver of change that impacts legal systems,

The engagement of the legal profession with AI dates back to the 1960s, were early explorations of AI as expert systems for legal assistance. While significant work has been done over the past six decades, the relevance and importance of AI in law have served in the last 15

years due to advancements in AI, particularly generative AI. Although current generative AI is not as advanced as depicted in science fiction, its evolution is rapid making it challenging to predict its full impact on justice.

Generative AI is already demonstrating its potential in areas such as online dispute resolution (ODR) where it can assist human facilitators in pretrial as an assessments and real time settlements. This can lead to more efficient and accurate dispute resolution, potentially avoiding litigation and reducing backlogs. AI can also help parties more objectively understand their issues and solutions provide accurate legal information, improve the efficiency of legal professionals and offer better risk assessment tools. AI tools can be a particularly beneficial for unrepresented litigants, offering accessible assistance for various legal matters, such as benefits claims eviction suits and family disputes.

However, the full potential of generative AI in the legal sphere is yet to be realized. Barriers, such as reluctance to the use of technology, discomfort with electronic filing, and burden on family or work can hinder access. AI tools can democratize access by providing summaries, answering queries and generating preliminary legal documents. The complexity of legal language is another hurdle that generative AI can address by simplifying legal texts. AI can assist self-represented litigants in understanding case dismissals, making arguments, and navigating court procedures. At a macro level, AI can identify patterns, improve legal arguments, enhance legal decisions, and bring transparency and accountability to the legal process. It can also rationalize complex legal systems and redefine the metrics used in BL and parole assessments

While AI offers numerous, concerns exist about the potential for a two tired legal system, where the wealthy have access to sophisticated AI assisted legal services, whereas the poor receive inferior AI based assistance. To ensure equitable access, AI systems should be developed as sophisticated, pro bono public service tools that are comparable to those used by the affluent. These necessities are framework for equitable access to legal AI, moving beyond mere legal aid.

Technological innovations combine including artificial intelligence can expand the quantity quality, diversity and access to legal problem solving. Online guides, automated intake process, chat boards, and enhance legal literacy can be used to achieve this. AI powered chat boards can direct consumers with legal service contours and assist with document automation and client intake.

Natural language processing can enable users to post legal queries in conversational language, and AI can make efficient e-discovery process accessible. Despite the potential, increased reliance on AI may diminish critical thinking in legal services. While AI security may emerge, it could be expensive or superficial. Affordability is not only a technological issue but also involves cost, language, culture, and trust. AI is not a panacea for all issues related to equitable access to law and justice.

The Supreme Court of India has also launched a new artificial intelligence portal named SUPES (Supreme Court Portal for Assistance in Court efficiency). This system inaugurated by Chief Justice S.A Bobde in designed is designed to collect and process case information much faster than humans, thereby assisting judges in their decision-making process. The Chief Justice emphasizes that SUPES is a hybrid system that combines human intelligence with machine learning and will not replace judges' autonomy or discretion. Justice N.V Ramana also welcomed the initiative highlighting its potential to serve save time and reduce the backlog of cases.

Legal experts suggest that while AI can significantly enhance judicial efficiency by managing data and identifying precedents, its initial focus should be on docket management before progressing to judicial purposes. The system is expected to aid judges by providing relevant past judgments, identifying similar offenses by an accused, and quickly managing large volumes of data. This technological advancement is seen as a natural progression, similar to the adoption of AI powered search engines by lawyers for real legal research.

The implementation of AI in the judiciary is anticipated to improve 'ease of justice' which in turn enhances the case of ease of living and doing business in India, potentially attracting foreign investment. However, challenges remain including the need for greater e-filing adoption and a generational shift in the comfort of judges with technology. Experts also point to the necessity of upgrading technological infrastructure ensuring system security and improving Internet speed to fully leverage AI's capabilities.

Concerns about trust and accountability are addressed by the assurance that AI will serve as an assistant to judges, not as a replacement. The discussion also touched on the potential of ODR systems for specific case categories such as traffic violations and certain income tax disputes which could further streamline the judicial process. The overall sentiment is that the optimal use of technology is crucial to avoid undue delays in justice delivery, especially given the current shortage of judges.

The AI revolution in law is ongoing and will being bring significant structural and process transformations. Understanding the relationship between AI, law and innovation in the context of justice is crucial. The next session will explore AI, law and Justice beyond techno solutionism introducing the concept and building on the issues.

While AI is not completely replacing judges, understanding its implications, potential benefits and drawbacks are crucial for effective and efficient judicial use. Human judgment in judicial decision making is complex, incorporating not only logic but also emotional, empathy and contextual understanding, which AI struggles to replicate. While discriminative AI can categorize information, generative AI has the potential for practical judgment.

Generative AI (Gen AI) can significantly aid judges in legal research, drafting arguments, identifying statutes and summarizing complex documents. However, over-reliance on AI outputs without critical scrutiny poses a risk. Examples from Mexico and India illustrate that judges directly consult AI tools such as ChatGPT, highlighting the need for mechanisms to verify the truthfulness and impact of AI on decisions. An ex-ante verification process for AI-generated tools is recommended to ensure responsible AI interrogation. Legal adherence, ensuring that AI systems are coherent, rely on correct precedents, and use appropriate laws is paramount. Judicial decision-making bar for Gen AI should set as high as human judgment.

Challenges include the quality of AI output and the limitations of human-designed prompts, which may be misunderstood by AI. The automated Prompt design offers an alternative pretested option. Gen AI should use cautiously in high-risk areas, such as criminal sentencing or complex civil cases with significant emotional factors. A graduated approach, moving from low risk to higher risk cases, with continuous review mechanisms is recommended.

Judges cannot evade responsibility for AI-assisted judgements, even if the AI provides correct outcomes with flawed reasoning. Disclosure of the extent of AI usage to all parties is mandatory, allowing them to opt out of AI-based systems in high stock cases. This enables parties promotes fairness and builds trust.

CONCLUSION

From the above case law analysis, the Indian Constitution is based on the concept of human centric justice. AI presents serious challenges to equality, privacy, natural justice, judicial discretion. The use of AI without a robust legislative framework could be unconstitutional.

The paper began by introducing fundamental AI concepts, such as machines learning and natural language processing, followed by an exploration of the rule of law, its historical evolution and its significance in the Indian context. The importance of data for AI, data governance and this concept of big data was highlighted. Real-world applications of AI in India's legal and judicial systems, the adoption of AI based tools by the judiciary, the broader context of e-courts modernization and India's balanced approach in embracing AI are examined.

The impact of AI on intellectual property rights, copyrights and patents raised fundamental questions about authorship, inventor ship, and creativity in the context of AI-generated works. The course also addressed AI ethics and responsible AI, emphasizing their critical importance for AI's credibility and acceptability in law and justice. It also broadened the scope to examine the implications of AI across various legal domains including labor law, health law and competition law highlighting the need for ethical considerations, data governance and dynamic legal frameworks. A global overview of AI trends in law and justice was presented, followed by discussions on the transformation of the judicial process by AI, its implications for human rights and its impact on legal education, with an emphasis on sustainability and environmental justice. Further, it explodes the constitutional implications of AI, examining its potential challenges to constitutional morality and fundamental assumptions about rights and responsibilities. The study concluded by focusing on innovation, technological solutions and the future of AI in law and Justice, advocating for a balanced perspective. The key takeaways include the crucial role of data and the rule of law, the necessity of ethical, responsible and explainable AI and the ongoing challenges in translating AI applications into practice.

AI can be a supporting tool in the Indian legal system but not a reason maker. Its limited use is acceptable only when subjected to the constitution, judicial precedents and human dignity. However, India now has many legal-tech start-ups, but the field is still not mature, and it remains unclear whether it's producing enough truly new products for legal practice and public use.

NOTA AND ELECTORAL DEMOCRACY IN INDIA

CASE COMMENTARY - PUCL V. UNION OF INDIA, (2013) 10 SCC 1

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VOLUME 2, ISSUE 1 (JANUARY-JUNE 2026)

ABSTRACT

Election lies in the heart of democracy. Secrecy lies in the heart of elections. Voting is one of the most crucial decisions a citizen takes in a democracy. While deciding to vote for a candidate, if the voter is not satisfied with the quality of candidates being put up for elections, the voter can also choose to note vote at all. This would otherwise lead towards absenteeism which is negative for the entire election process, however, with the NOTA button the dissatisfaction is conveyed and it prevents absenteeism as well. But, what about secrecy? The voters voting for NOTA also deserve the same level of secrecy as any other voter voting for real candidates. The present case dealt with this major secrecy issue for NOTA voters. The court observed, among other things, when two voters are treated differently based on their decision regarding voting, it is violation of article 14 of the Constitution, equality principle. Moreover, if NOTA gets the highest number of votes, the candidate receiving the next highest number of votes is declared the winner of the elections. However, this does not serve the purpose of NOTA, that is, conveying the dissatisfaction. At best, the improvement in the quality of candidates may be seen in the next elections. This case comment seeks to trace the trajectory of the PUCL judgment and address the gaps that persist therein.

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FACTS

The constitutionality of Rules 41(2) and (3) and 49-O of Conduct of Elections Rules[2] was challenged under article 32[3] of the Constitution of India. These rules were challenged for violating secrecy of voters during voting which comes under the fundamental aspect of free and fair elections in a democracy. Representation of People Act[4] requires secrecy to be maintained of the voters during elections under section 128[5], along with Rules 39[6] and 49-M[7] of the 1961 Rules. Rule 41(2) and (3) and 49-O of the 1961 Rules acknowledge the right of the voters to not vote, however, the secrecy of not voting is not maintained, violating section 79(d)[8] and 128[9] of the Representation of People Act, 1951 and article 19(1)(a)[10] and 21[11] of the Constitution of India. The petitioners prayed to declare the above-mentioned rules unconstitutional and to issue an order for the Election Commission of India to facilitate adequate amendments in the ballot papers, along with the EVMs in order to maintain the secrecy of the voters while exercising their right not to vote.

HISTORICAL BACKGROUND

- The concept of negative voting was explored in the 170th report by the Law Commission of India in 1999[12]. However, the final recommendations were yet to come because of the problems faced in the practical application. Later, in its implementation in the elections, the records of the voters who chose not to vote were maintained by the Presiding Officer from the Election Commission which violated the 'right to secrecy' of the voters.
- The Representation of People Act, 1951[13] mainly governs the Indian elections by controlling voter qualifications, delimitation of constituencies, corrupt practices, and electoral rolls. This act was amended in 2003. The amendments included introduction of Open Ballot for Rajya Sabha (Council of States), which was a shift from the traditional secret ballots. The Open Ballot system impacted transparency in upper house polls.

[2] Conduct of Elections Rules, 1961.
[3] India Const. art. 32.
[4] Representation of People Act, 1951.
[5] Representation of People Act, 1951, § 128.
[6] Conduct of Elections Rules, 1961, rule 39.
[7] Conduct of Elections Rules, 1961, rule 49-M.
[8] Representation of People Act, 1951, § 79(d).
[9] Representation of People Act, 1951, § 128.
[10] India Const. art. 19(1)(a).
[11] India Const. art. 21.
[12] 170th report of Law Commission of India, 1999.
[13] Representation of People Act, 1951.

- Kuldip Nayar v. Union of India[14] challenged this amendment as it goes against the core democratic principle of secrecy in voting and is in violation with article 19(1)(a). However, the court ruled that the amendment in question was not in violation of Article 19(1)(a) and secrecy principle. It highlighted the importance of open ballots in preventing corruption in indirect elections. It would also prevent practices like cross-voting.
- In People's Union for Civil Liberties v. Union of India[15], petitioners challenged the Conduct of Elections, 1961 in the Supreme Court, to seek measures to protect the 'right to secrecy' of the voters. The Supreme Court in 2013 directed the EC to introduce NOTA as an option in the EVMs and ballot papers in order to maintain the secrecy of the voters who chose not to vote.
- People's Union for Civil Liberties v. Union of India[16] set forth the argument that right of negative voting was included in the right to vote in secrecy. They sought quashing of rule 41(2) and 49-O of the Conduct of Elections Rules, 1961 for violating the secrecy principle. The petitioners prayed for releasing guidelines to the election commission for making appropriate changes to the EVMs and ballot papers to allow the voters to exercise negative voting and maintain the secrecy of the exercise of this right as well.

ISSUES

i. Whether a writ petition can be issued for a statutory right to vote?

ii. Whether the Association for Democratic Reforms and PUCL judgments stand overruled?

iii. Whether Rules 41(2), 41(3), and 49-O of the Conduct of Election Rules, 1961, are unconstitutional and violative of a voter's fundamental rights?

HOLDING/DECISION

The court answered the questions raised as follows:

i. The Constitution provides for remedies when there is a breach of the fundamental rights under Article 226[17] and 32[18]. These articles give the right to the citizens to move the High

[14] Kuldip Nayar v. Union of India, (2006) 7 SCC 1.
[15] People's Union for Civil Liberties v. Union of India, (2004) 2 SCC 482.
[16] People's Union for Civil Liberties v. Union of India, (2009) 3 SCC 200.
[17] India Const. art. 226.
[18] India Const. art. 32.

Court and the Supreme Court, respectively, for challenging such violation of a fundamental right. On the contention regarding the maintainability of the petition filed by the PUCL, since right to vote is not a fundamental right, rather a statutory right, and to file a writ petition there should be a breach or violation of a fundamental right, the court clarified that the right to vote in a democracy is more than just a mere statutory right. The right carries with it more importance because it is concerned with the voter's fundamental right of speech and expression as envisaged under article 19 to choose their representatives for the governance of the nation. Moreover, the maintainability of the secrecy of voters is concerned with the fundamental Right of Privacy under Article 21[19]. Therefore, the petition was maintainable as the statutory right of voting, in reality, is related with the core fundamental rights of the citizens, and the breach of these core fundamental rights fulfilled the essentials required for filing a writ petition.

ii. In Association for Democratic Republic (ADR) v. Union of India[20], it was established that Indian voters have a fundamental right to have information regarding the background of the electoral candidates. People's Union for Civil Liberties (PUCL) v Union of India[21] was initial case for None of the Above (NOTA) button in the Indian elections. In this case the court established that the right to not vote is also available to the voters. This was termed as negative voting. As an outcome of this ruling, the Election Commission was mandated to provide for a NOTA button on Electronic Voting Machines (EVMs) and ballot papers. The court clarified on the question regarding these judgments that it is the voter's right to know the candidate's complete background in order to make a sound decision. In 2004, the court held in the case of PUCL that voters have the right to know the candidate's criminal, financial, and educational background as part of article 19(1)(a). Further, in 2006, in the Kuldip Nayar[22] case the court reaffirmed this principle however noted some doubts regarding the extent of mandatory disclosure of a candidate's information. In further rulings, the court reaffirmed the right to know of the voters and also highlighted the transparency principle.

[19] India Const. art. 21.
[20] Association for Democratic Republic (ADR) v. Union of India (2002).
[21] People's Union for Civil Liberties v. Union of India, (2004) 2 SCC 482.
[22] Kuldip Nayar v. Union of India, (2006) 7 SCC 1.

iii. The Court highlighted the importance of free and fair elections as a core principle of democracy. It emphasized on the voter's right of voting for the best candidate and also their right to reject all the candidates if the voter wishes to do so by exercising the NOTA (None of the Above) button. Regardless of the decision of the voter, of whether to choose a candidate or to reject all the candidates and select the NOTA button, the secrecy of the decision taken by a voter needs to be maintained by the Election Commission. The core of free and fair elections in a democracy is secrecy which, the court clarified, can only be removed in a situation when there exists a tussle among secrecy principle and a 'higher principle' of free elections.[23] The positive right not to vote is included in the right to vote and thus, needs to be given importance equal to the right to vote. A candidate may abstain from voting due to multiple factors including the reason that he or she may think that none of the elected candidates are worthy of his vote. The ways to refrain from voting include absenteeism from the voting exercise altogether, which is not the right alternative for a citizen who is responsible for showing his dissatisfaction with the quality of candidates nominated for elections. Therefore, it becomes vital to enable the NOTA button for voters to appear for voting and reject all candidates and choose NOTA even if they don't want to vote for any candidate.[24] Furthermore, it is important to maintain the secrecy of the candidates who decide to exercise the NOTA button just like the secrecy of other voters is maintained. The Court held that Rules 41(2) and 41 (3) and 49-O clearly goes against section 79(d) and 128 of the Representation of People Act.

REASONING

Court elucidated the meaning of the term 'voting' in Lily Thomas v. Union of India and Others as "the formal action of will or option by the person entitled to exercise his right on the subject and issue in question. Right to vote means right to exercise the right in favor or against the motion. Such a right implies the right to stay neutral as well."[25] It implies that the right to vote also extends to right not to vote, known as negative voting. Therefore, when a person is not given the right to not vote, it is essentially depriving the person from his or her right to vote. Even though the right in question is a statutory right, from a wider perspective, it is related with the freedom

[23] People's Union for Civil Liberties v. Union of India, (2013) 10 SCC 1.
[24] People's Union for Civil Liberties v. Union of India, (2013) 10 SCC 1.
[25] Lily Thomas v. Union of India and Others, (2013) 7 SCC 653.

of speech and expression of the voter, covered under article 19. Thus, it is essential for the EC to implement NOTA option for the voters who don't want to vote for any candidate.

The court analyzed the challenged rules. As per the rules, when a voter decides not to vote, the Presiding Officer writes the remark in Form 17-A and gets the voter's thumb impressions or signatures for the same. Moreover, the ballot papers of these voters are kept separately in a different packet which makes it evident that the concerned voter chose not to vote, defeating the principle of privacy. Therefore, it is also essential to maintain the secrecy of the voters who rejects all the candidates in the same manner as the other voter's secrecy is maintained. When two voters are treated differently based on their decision regarding voting, it is violation of article 14 of the Constitution, equality principle.

Taking these aspects in concentration, the court held that as a citizen of a vibrant democracy, one must have the option to choose the NOTA button to show his or her disapproval regarding the standards of candidates elected by parties. This would not just compel the political partied to enhance the quality of candidates that are being put up but also enhance the overall quality of elections. Furthermore, it would reduce absenteeism in the elections as even if the voter wants to reject all the candidates that decision will be registered and corrective measures for the same can be taken. The court held that the challenged rules are ultra vires and violates section 79(d) and 128 of the Representation of People Act[26].

CRITICAL COMMENTARY

In either case of choosing to vote or not to vote altogether, the principle of secrecy is of utmost importance in a vibrant democracy. The voters who vote and the ones who don't, need to be treated equally, adhering to the right of equality. In free and fair elections, an essential element is secrecy. If the secrecy is not maintained for the voters voting for NOTA, then the absenteeism rate would increase. The elections will no more be able to serve the purpose. Therefore, the decision of the court in declaring the rules challenged was a significant and needed change in the election procedure. Additionally, the guideline for the situation where NOTA gets the highest votes is also clear, which is- the second highest voted candidate wins the election. However, this, in a way defeats the purpose of the whole idea of enabling NOTA as an option. Even though, NOTA receiving the highest vote would set the statement for the political parties regarding the dissatisfaction of the voters, however, any steps taken for improving that would be applied in the

[26] Representation of People Act, 1951.

next elections and one of the candidates nominated for the current year would ultimately win the elections, despite the fact that the majority of voters did not approve the quality of the candidate. This is a gap in the system yet. This can be cured by the political parties by putting up their best candidates only in the first place who are worthy of the votes.

CONCLUSION

Election lies in the heart of democracy. We have witnessed over the span of several years how the entire procedure of election is being carried out in our country, through rallies, propagandas, schemes, promises, promotional stunts and more. Elections are treated with great importance by the political parties. When in reality, the citizens or voters should be more serious and diligent about the elections because the decision we make at the voting booth impacts the working of the nation for the next five years. When a right carries such a great importance, it becomes crucial for the voters to exercise this right with diligence and ensure that they vote for the right candidate because every vote is important and it can make a great difference. The court has cleared that even though voting is a statutory right, yet it is deeply connected with citizens fundamental right of speech and expression under article 19(1)(a) and therefore, deserves to be treated equally.

In order to choose an ideal representative for the masses, the first step is for the political parties to put up candidates who meet the expectations of the voters and are worthy of their votes. When the political parties fail to meet these expectations, the voters have the right to abstain from voting as well. This means the voters have the right to reject all the candidates. It is important to understand that this right of not voting can be exercised in either a negative way or a positive way. The negative way would be by not showing up for voting at all, resulting in absenteeism. The positive way is to show up for voting and choose the NOTA button which conveys the dissatisfaction and disapproval of the voter.

Secrecy lies in the heart of elections. In any given scenario, the choices of the voters need to be treated equally. Ensuring that elections are free and fair and the secrecy of voters is maintained, is the duty of the Election Commission. The court has time and again decided cases to improve and evolve the procedures and working of EC in order to make the entire process of elections better. The declaration of Rules 41(2) and (3) and 49-O being unconstitutional was one of the crucial decisions, protecting the fundamental rights of the voters and enhancing the quality for future elections as well.

CORPORATE SOCIAL RESPONSIBILITY IN INDIA: A CONSTITUTIONAL AND JURISPRUDENTIAL CRITIQUE OF ITS MANDATORY NATURE UNDER THE COMPANIES ACT, 2013

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VOLUME 2, ISSUE 1 (JANUARY-JUNE 2026)

ABSTRACT

This paper examines the transformation of corporate social responsibility from a voluntary ethical practice into a statutory obligation and its implications on our fundamental rights. Historically, corporate contributions to the society were viewed as moral duties arising from the relationship between corporations and society that provides with labor and resources, however, the companies act 2013, particularly the schedule seven mandates certain Corporation to undertake corporate social responsibility activities, thereby converting a moral obligation to a legal requirement. The jurisprudential perspective, including the theories of Austin, Salmond and Allen, this paper analyses whether such mandatory obligations represent a legitimate correlative duty or an excessive regulatory requirement. This paper seeks to argue that while the corporate social responsibility legislation seeks to promote social welfare and sustainable development, but it's compulsory nature, can you restrict corporate autonomy and raise concern regarding economic freedom and individual liberty. This paper examines whether the mandatory corporate social responsibility framework under section 135 of the companies act 2013 is constitutionally valid in light of the fundamental rights guaranteed involving critical evaluation of the violation of article 14 by imposing obligations exclusively on companies while excluding other economically capable business entities such as partnerships and also examine whether the requirement restrict corporate autonomy and freedom of trait under article 19(1)(g). The provision requires companies meeting the prescribed financial threshold, including specified levels of net worth or turnover or profitability to allocate at least 2% of the average net profits of the preceding three financial years towards socially beneficial activities and enumerated in the schedule. At the same time, It also investigates how the directive principles of state policy influence the government, to involve corporate social responsibility strategies, indirectly,

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encouraging businesses to be responsible towards society and environmental concerns and considering arguments, which support constitutional validity of CSR by situating the provision with India's broad constitutional framework of social economic Justice. Judicial observations in cases such as the national textile workers union versus PR Ramakrishnan and Consumer education and research Centre versus the union of India are examined to illustrate the constitutional expectations that economic activities must align with social welfare and environmental responsibility. At the end, it examines the constitutional aspects of CSR focusing on the tension between corporate independence and the Government's role in fostering social justice through mandatory corporate donations.

Keywords- corporate social responsibility, constitution, tax, jurisprudence, social vs legal duty

INTRODUCTION

Corporate Social responsibility refers to the responsibility of organizations for their impact on society, making companies socially accountable to themselves, the stakeholders and the public. It involves practices and policies intended to have a positive influence beyond legal obligations and profit maximization. Some countries have implemented mandatory CSR regulations. India requires qualifying companies to spend 2% of average net profits on CSR activity. It comprises four dimensions, economic responsibility, legal responsibility, ethical responsibility and discretionary responsibility. It involves environmental sustainability efforts, ethical labor practices, responsible, sourcing, transparency, and workplace diversity.

In India with effect from April 2014, it is a mandatory requirement for certain companies under the section 135 of companies act which compels them to engage in activities that contribute to the social and environmental and economic development of the country. companies with net worth more than 5 million turnover more than 10 billion and net profit more than 50 million must spend a minimum of 2% of the net profit over the last three years on CSR activities. for newly incorporated companies with less than three years of operation, the average net profit of available year is considered. The statutory mandatory duty of CSR races fundamental questions at one level. It reflects the vision of India as a welfare state committed to social and economic justice at another level. Its critical inquiry into the limits of state regulation over private enterprises by compelling companies to divert a portion of the profits towards prescribed activities, the law enters a conflict with constitutional freedom and corporate autonomy. constitutional analysis of the mandatory CSR can be examined under article 14 and article 19, along with the directive principles of state policy. The interplay between fundamental rights and director principles becomes central to assessing the Leisy of mandatory CSR. this paper seeks to critically examine the constitutional and juries' potential foundations of mandatory CSR under section 135 of the companies act by situating the CSR framework within India's constitutional structure.

MEANING AND EVOLUTION OF CORPORATE SOCIAL RESPONSIBILITY IN INDIA

Corporate social responsibility is a business model where companies integrate social and environmental concerns into their operations. India became the first country in the world to make CSR legal mandate through the companies act 2013, which is governed by section 135. The eligibility criteria are Company, which meets anyone of the following thresholds during the immediately preceding financial year that is net worth of ₹500 crore or more, turnover of ₹1000

crore or more and net profit of ₹500 crore or more are required to spend at least 2% of their average net profit made during three immediately preceding financial years on CSR activity, which must fall under the schedule seven of the act, which includes eradication of hunger and poverty, promotion of education and vocational skills, gender, equality and empowerment of women, environmental sustainability, protection, and promotion of national heritage and welfare of armed forces and supporting research, innovation and other government welfare funds. India shifted from a comply or explain model to a comply or be penalized model in 2021. If the amount is not being used for these activities, it must be transferred to a special and spent CSR account within 30 days of the financial year and or it must be transferred to a government specified fund within six months and the penalty is twice the spent amount of ₹1,00,00,000, which is less and defaulting officers are also fined 1/10 of the unpaid amount of ₹2,00,000 whichever is less.

EVOLUTION OF CORPORATE SOCIAL RESPONSIBILITY IN INDIA

The history of corporate social responsibility has been divided into four phases-.[2]

First phase- it includes charity and philanthropy as the main drivers of CSR culture, religion and family values and industrialization had an influential effect on CSR in the pre-industrialization period which lasted till about 1850. Well, the merchants share a part of their wealth with the public by setting up temples for religious causes or providing food and shelter to them, and also help them in the epidemic. With the arrival of the colonial role in India, the approach towards CSR changed the industrial family such as Tata, Godrej, Bajaj, Modi and Birla were inclined towards economic as well as social consideration.

The second phase- during the independence movement involved, increased emphasis on Indian industrial list to demonstrate their dedication towards the progress of the society, and this was when Mahatma Gandhi introduced the concept of trusteeship according to which industry leaders had to manage their level so as to benefit the common man. " I desire to end capitalism is not quiet, as much as the most advanced socialist but methods differ, My theory of trusteeship is no make shift, no camouflage. I am confident that it will survive all other theories." this was Gandhi's words which highlight the argument towards his concept of trusteeship. He put pressure on various industries to act towards binding the nation and its social economic development and under this influence businesses established trust for schools and colleges and also help in the training and scientific institutions.

[2] Pooja Srivastava, The jurisprudence of CSR, European economic letters, https://www.eelet.org.uk/index.php/journal/article/download/566/480/580

Third phase from- 1960 to 1980 had its relation to the element of mixed economy, which is the emergence of public sector undertaking and various laws relating to labor rights. During this period, the private sector was forced to take a backseat and the public sector was seen as the prime mover of development because of the strict legal roles and regulations surrounding the activities of the private sector. The period was described as an era of command and control the policy of industrial licensing, high taxes and restrictions on the private sector led to corporate malpractices. This led to the development of the legislation is regarding corporate governance and labor rights issue. Public sector undertaking set up by the state to ensure suitable distribution of resources to the needy people. however, the public sector was effective only to a total limit this shift of expectation from the public private sector and their active involved with the social economic development of the country, in 1965, Indian scholars and businessman set up a national workshop on CSR aimed at transparency and social accountability.

The fourth phase- 1980 until the present involved Indian companies abandon that traditional engagement with CSR and integrating it into a sustainable business strategy in the 1990s. The first initiation towards globalization and economic liberalization were undertaken by the help of LPG reforms, controlling and licensing system were partly done away with which gave a very good boost to the economy.

CURRENT STATUS OF CSR IN INDIA

CSR is not a new concept in India because ever since its inception corporate groups like the Tata and the Aditya Birla group have been involved in serving the community through donations and charity events, and many other organizations have been doing their part for the society. The basic objective of CSR now is to maximize the company's overall impact on the society. These practices have been integrated by a number of companies in their business operations. Because now they feel that it is not just another form of indirect expense but is also important for protecting the goodwill and reputation and increasing the business competitiveness. Companies have specialized CSR teams which formulate policies and strategies for their programs and set aides budget to fun time. These programs are determined by social philosophy which have now very clear objectives and well defined. For example, a more comprehensive model of development is adopted by corporations like Maruti Suzuki India Limited and Hindustan Unilever Limited, where they have incorporated provisions of improved, medical and sanitation facilities and empowering the villages in the process making them more self-reliant by providing vocational training and knowledge of business operations. On the other hand, the CSR Programmes of corporations like

GlaxoSmithKline pharmaceuticals which focus on the health aspect of the community where they set up health camps and tribal villages, which Offer medical checkups and treatments also, corporate are now increasingly joining their hands with non-government organizations, for example, a lot of work is being undertaken to rebuild the lives of tsunami affected victims.

CSR has now gone through many different phases in India. The ability to make a significant difference in society and improve the overall quality of life has been clearly proved by the corporates.

MANDATORY NATURE OF CORPORATE SOCIAL RESPONSIBILITY IN INDIA- SECTION 135 OF COMPANIES ACT, 2013

Under the section 135 of companies act, CSR will become a mandatory duty for companies from April 2014[3], where all companies with turnover ₹1000 crore and More or a net worth of ₹500 crore or a net profit of ₹5 crore or more will have to spend at least 2% of the three-year average profit every year on CSR activity. any activity must have been the part of the CSR policy of the company, which is also made available on the Company website, once a company crosses any of these eligibilities, it is legally obligated to comply with the CSR provisions. Therefore, now it is not optional but it is a statutory duty activated by financial capacity. Section 135[4] mandates that eligible companies much spent at least 2% of their average net profit of the preceding three financial years on the CSR activities. Profit calculation is done as per the section 198 of the act newly incorporated companies. Calculate the profit based on available years. Surplus generated from the CSR activities must be reinvested only for CSR purposes and pending, and we only carried forward subject to rules. Companies have discretion to select the CSR project, but these projects must fall within the activities listed in the schedule seven of the act which include poverty, radiation, education, environment, Sanitation, gender equality, disaster management, and contribution to specified government funds. The mandatory nature is further strengthened through governance requirements of CSR committee. Companies must constitute a CSR committee of the board and frame a CSR policy, recommend projects and monitor its implementation. The board must approve these policies and ensure its implementation. The strongest indicator of the mandatory nature is the imposition of penalties on any failure to comply Company penalty up to 10,000,000 or twice the unspent amount whichever is less and officer penalty up to 2 lakh rupees

[3] Sneha Sengupta, CSR in India, A constitutional and theoretical commentary, Lawctopus, https://www.lawctopus.com/academike/corporate-social-responsibility-in-india/amp/

[4] Companies Act, 2013 (Act No. 18 of 2013), s. 135

or 1/10 of the unspent amount, whichever is less. If a company fails to spend the required CSR amount, it must transfer to specified funds or a special an unspent CSR account.

CSR under Indian law is now no more voluntary philanthropy, but a structured and enforceable obligation integrated into corporate governance. this shows the mandatory nature of CSR in India because a fixed percentage of profit must be spent and it is restricted to only the listed activities and non-compliance attracts penalties and surplus cannot be retained by the company. It must be transferred to a specific account.

The net profit is calculated as per the provisions of section 198 and any profit arising from any overseas branch or any dividend receive from other companies in India is not included in the calculation of the net profit for the purpose of CSR.

The different modes of entering CSR expenditure can be done in three ways, activities route, contribution to funds route and contribution to incubators and R&D projects. The activities route is a direct note where a company undertake CSR projects as per the schedule seven, the contribution to funds is specified in the schedule seven of the hour and the contribution to incubators as specified in schedule seven of the act and in any research and development activity. A company can undertake CSR activity by itself or by any of the established Implementing agencies. Every company on which CSR provisions are applicable shall furnish a report on corporate social responsibility to the concerned ROC in form CSR-2. A company on which CSR provisions are applicable shall disclose the content of CSR policy in the board report. The unpaid amount on CSR does not go to an ongoing project, but shall make the disclosure in a board report and shall specify the reasons for not spending the prescribed amount and the company share within six months from the floor of the financial year, transfer the unfit amount to schedule specified funds. It goes to the following specified funds clean Ganga fund, Swachh Bharat fund, Prime Minister's national relief fund and any other central assistance and relief in emergency situations while set up by the central government for social economic development and relief and welfare of the schedule, cast and schedule tribes and other backward classes, minorities, and women. If the unpaid amount relates to an ongoing project, the boat shall make a disclosure and the company shall within 30 days from the closure of the financial year transfer this amount to a special account opened by the company called the unspent corporate social responsibility account. if a company has spent an excess amount that is in existence of the CSR obligation, then the excess amount may be set against the future CSR obligation up to the immediate succeeding three financial years provided at the boat resolution has been passed by a company.

IS CSR A TAX?

It is argued that CSR contribution is made as a mandatory requirement as per the section 135 and not as a voluntary charitable donation, and it was held in the case of Goldman sachs services Pvt Ltd. Versus JCIT[5] that CSR expenditure cannot be treated as deduction under income tax act and is not a tax. because tax has compulsory imposition by law and it is paid into the consolidated fund of India. It is clearly mentioned in article 265 of the constitution that no tax shall be divide or collected except by authority of Law CSR is mandatory in nature and is imposed by a statute but is not paid to the government. It is paid and spent by the company itself. it can be described as a statutory obligation, but not tax. but when corporate contribute for NGOs in the CSR activities, they do get some tax benefits and exemptions.

It is clearly mentioned in the Section 37 of the Income Tax Act [6] that CSR shall not be deemed to be an expenditure incurred by the assessee for the purposes of the business or professional, and it cannot be termed as tax[7].

CSR AS A QUASI-FISCAL LEVY

The shift from comply or explain model to a mandatory comply or penalty model has made CSR a compulsory financial action. tax should be compulsory imposed by law collected by the state. CSR satisfies the two requirements which is compulsory and imposed by a but it does not fully satisfy direct collection by the state. However, when unspent amounts are transferred to schedule seven funds, including government funds. The character begins to resemble a fiscal levy. But according to the income tax act, it is not deductible as a tax because it is not incurred wholly and exclusively for business purposes. But now CSR is mandatory and legally enforceable and backed by penalties, this creates doctrinal tension. A company earns profit and pays the corporate income tax and then it's compelled to spend 2% of its profit and the company cannot even deduct that amount. This makes the company suffer and additional financial burden over and above the income tax, some treat it as, it's not paid into the consolidated fund, so, company retains discretion over its project selection, so this hybrid character places CSR at the intersection of taxation and social welfare.

[5] Goldman Sachs (India) Securities Pvt. Ltd. v. JCIT, (2016) 69 taxmann.com 347 (Mumbai ITAT)
[6] Bharat Vasnani, New CSR regime, A tax or a philanthropy, Cyril Amarchand mangaldas, https://corporate.cyrilamarchandblogs.com/2021/05/new-csr-regime-is-it-a-philanthropy-or-a-tax-levy/
[7] Income-tax Act, 1961 (Act No. 43 of 1961), s. 37

IS CSR A PENALTY?

The nature of penalty is punitive in nature as it is imposed by law or a contract for violation of rules such as fine or implement. It is a corrective measure for failure to perform a duty or for breaking a rule. It can be pecuniary or corporal that is imprisonment. CSR obligation arises before any wrong doing. It is not triggered by a violation or a misconduct, but it is triggered by financial eligibility, when a company meets that specific financial eligibility dress code, it is obliged to contribute its funds to CSR activity and any failure to do so will attract penalties. CSR itself is not a penalty but non-compliance with CSR attracts so it is not in nature. It is an obligation and penalty is a secondary consequence of its non-compliant.

IS CSR A REGULATORY COMPLIANCE MECHANISM?[8]

Regulatory compliance involves mandatory governance structure, disclosure requirement, monitoring mechanisms and statutory reporting. CSR includes a formation of a CSR committee framing of a policy mandatory 2% pending filing of CSR return and transfer of and spent amount and penalties for default. Therefore, the framework is compliance driven and disclosure-based CSR forms a part of corporate governance. The repeated use of mandatory language in section 135 of shall spend, shall constitute and shall disclose, confirms a legislative intent and therefore it is best understood as a corporate governance regulatory compliance obligation.

IS CSR A SOCIAL DUTY?

Corporate social responsibility is not a charity, but a duty and responsibility towards society inspired by the highest values of seeking to return to society. A part of what we have received in whatever capacity and whatever extent we can social responsibility has always been a part of our ancient Indian tradition. The spirit of contributing towards the welfare of society is inherent in every individual, but sometimes it needs inspiration and direction. For example, Swami Vivekanand inspired Jamshedji Tata to spend on healthcare when he established institutions like the national Centre for performing art and the Tata Memorial Hospital. Our former Prime Minister Dr Manmohan Singh started that business is an obligation to the society. No one appreciated this better than JRD who invested liberally in socially useful activities. He urged industrialists to consider what their applications were. It is not a charity, not a philanthropy but an investment in our collective future, he added for a president of India. Pranav Mukherjee pointed that the notion of CSR is not new to India, Mahatma Gandhi had a spouse, the social economic philosophy of

[8] https://csrtimes.org/csr-is-not-a-charity-but-a-duty-responsibility-towards-society/

trusteeship which reiterated that for welly people to be trustee to Cook. After the welfare of the common man, inclusive growth is objective of our public policy calls for an intensive collaborative effort of the government and the corporate sector to provide the basics for improving the quality of life in rural and urban areas. Companies can adopt specific activities to tackle health related problems, education and malnutrition issues. Importance of inclusive growth is widely recognized as an essential part of India's quest for development. The government of India is willing to take up measures to facilitate ease of doing business by creating an effective and receptive CSR legal framework. This will in Calicut social consciousness in a company and therefore CSR expenditure can even more meaningfully contribute towards the sustainable development goals. The schedule seven clearly alliance with the welfare goals of India which include welfare, state, philosophy and social justice orientation. But unlike traditional moral obligation, CSR is not a voluntary obligation, but it carries sanctions with it so it's not merely a moral duty but a legal social obligation.

Therefore, CSR is neither a penalty nor a tax but a hybrid model, combining welfare, state ideology and corporate governance regulation backed by sanctions. This hybrid character gives rise to a constitutional and jurisprudential debate. It is primarily a regulatory mechanism but grounded within social responsibility.

JURISPRUDENTIAL ANALYSIS OF CSR[9]

The jurisprudence of corporate social responsibility examines the legal and ethical foundations that justify the obligation of Corporations to contribute to social welfare.

In the early ages, following the Industrial Revolution, Corporations to needed a specific portion of their profit to Society out of respect for business support, historically businesses saw these activities as fundamental to their morals and ethics and they engaged in such activities to influence their moral and ethical behaviour. Although it's well settled that ethical and moral behaviour can only be maintained in the long-term through legal obligations. overtime governments recognize that corporate activities significantly affect social welfare and environmental sustainability. And as a result, CSR evolved from a moral expectation to a legal obligation. The Indian CSR regime reflects this transformation by requiring certain companies to allocate a portion of their profits towards activities which promote social welfare and education and sustainable development.

Therefore, according to Salmond, a corporation's moral obligations have been elevated too legal

[9] Pooja Srivastava, The jurisprudence of CSR, European economic letters, https://www.eelet.org.uk/index.php/journal/article/download/566/480/580

obligations or burden and corporate. Social responsibility is a correlative duty that they must fulfil in exchange of the resources, labor, and other services. The services they avail make the corporate entity, a person through legal fiction. Salmond argued that every legal right correspondence with a legal duty corporations, enjoy several rights in society, including the right to conduct business to use natural resources and to employ labor from the society and it creates a correlative duty requiring the corporations to return a portion of that benefit to the community.

According to German jurist Savigny[10], corporations are recognized as persons and hence they have rights and obligations imposed by the state offers corporations some rights, but also impose obligations which they must follow. Here it is pointless to argue whether the legislation is moral or immoral because the law was enacted for two purposes: to guide the businesses' ethical behaviour and advance towards society's social good, gradually activities which promote social welfare gained popularity, making CSR an overused acronym among corporate circles. This meant that even corporations were aware of their accountability towards the community and the shareholders, and when a firm adopts a CSR policy indicates ethical commitment and dedication towards people, community and the environment. In addition, the Corporation commit to monitoring and reporting on its compliance with its stated CSR policy, similar to how it reports financial outcomes. The German Jurist argued that corporations possess legal personality similar to individuals, and they also bear legal responsibilities and CSR is justified on the principle that if corporations' benefit from the society, they must also contribute to the society.

The primary purpose of CSR is that it is for the greater benefit. This type of law is enacted for the benefit of the majority, the greatest good as defined by Jeremy Bentham. but individual validity becomes secondary year. Another argument is that because the company uses the society resources, they should be held accountable for it. Wood's stakeholder theory presents its contradiction by saying that the concept of giving back to the society began as a voluntary return, but it evolved into a legal requirement because laborers are already compensated for their work and society benefits from the products produced by the Corporations and turning this social responsibility to a legal compulsion makes law an absolute duty conferred by state as stated by Austin. Further, according to John Locke's social contract theory, anything for the God of the society is for the social good of the people who live together, but in contradiction, Dworkin possesses that when a pragmatic approach is utilized wrongly, the law loses validity because it is based on achieving the greatest good of the society at the expense of individual interest. And as a

[10] Sneha Sengupta, CSR in India, A constitutional and theoretical commentary, Lawctopus

result, while the law is meant to serve the greater good of the people, some individual liberty maybe jeopardized. Dworkin emphasized that law must balance society, welfare and individual rights. CSR illustrates this tension between corporations who seek to maximize their profits and society who expect Corporation to contribute to social welfare and the CSR framework attempts to reconcile these by imposing limited social obligations while allowing the corporations to continue operating profitably.

Libertarian critique of CSR, not all scholars support mandatory CSR, Robert Nozick argue that individuals and businesses should have complete freedom over their property and profits from this perspective, mandatory CSR interfere with property rights and violate the principles of economic liberty and free market economy.

Austin's command theory and legal enforcement, According to John Austin law is a command of the sovereign backed by sanctions, CSR fits within this framework because section 135 mandates spending of CSR and non-compliance results in penalties, so it can be interpreted as a legal command imposed by the state to regulate corporate behaviour.

The Jurisprudence of CSR demonstrates that corporate law is no longer limited to regulating business operations. Instead, it integrates broader principles of ethical responsibility, accountability and social justice. CSR represents a modern legal approach. Corporations are viewed as partners and achieving society progress rather than purely economic characters that are private in nature.

IS CSR CONSTITUTIONALLY VALID?

The constitutional debates surrounding CSR arises when it moves from the domain of voluntary business ethics to that of mandatory legal applications.[11]

Article 14[12] of the Indian Constitution ensures that every person in India has equality before the law and equal protection of law. It also allows categorization of the legislation that is permitting reasonable classification based on understandable differentia. (Re special courts bill 1979) The spending on corporate social responsibility is essential for just business type organizations. It does not apply to partnership forms or any other type of Organisation. Even if the net worth exceeds the

[11] Muchamad Ali Safat, CSR A constitutional perspective, https://www.researchgate.net/profile/Muchamad-Safaat/publication/362108628_Corporate_Social_Responsibility_A_Constitutional_Perspective/links/66df14a064f7bf7b19a2dd42/Corporate-Social-Responsibility-A-Constitutional-Perspective.pdf?origin=publication_detail&_tp=eyJjb250ZXh0Ijp7ImZpcnN0UGFnZSI6InB1YmxpY2F0aW9uIiwicGFnZSI6InB1YmxpY2F0aW9uRG93bmxvYWQiLCJwcmV2aW91c1BhZ2UiOiJwdWJsaWNhdGlvbiJ9fQ

[12] Constitution of India, art. 14

statutory limit according to section 135 of the companies act, if a business reaches certain threshold level, it falls under the eligibility of section 135. Therefore, even if a corporation does not exceed the requirement in future, it is still required to spend on CSR activities. Section 135 specifies that the net profit shall be calculated according to section 198 of the companies act and section 198 allows for the set of accumulated losses incurred after the implementation date but not for periods before such date against net profit to calculate the average profits required by section 135, therefore, our Corporation that has produced profits over the last three financial years, but has not yet recovered. It's carried forward losses from the time before the effective date of 198 will be forced to spend on CSR. A loss-making business has the same requirement to contribute to CSR as a profit-making business as long as the average net profit test is met. Also, section 135 applies to corporations registered under the section 8 of the act. This section mandates corporations to use their profits exclusively to promote their objectives, but under the section competition of net profit for a foreign company with a subsidiary in India is ambiguous because the classification requirement is not met. Section 135 violates article 14 in certain instances. The state may justify this classification by arguing that companies are separate legal entities which enjoy rights and liabilities and imposing additional social obligations may be constitutional justified.

CSR violates article 19(1)(g) of the Indian constitution[13], which guarantees freedom of trade, commerce and profession. Section 135 of the companies act mix CSR activities spending a mandatory requirement for companies who made the eligibility criteria section 135 constitute such a restriction since it requires the company to divert the money which could have been otherwise re-invested into the company's business for being spent on CSR activities. However, article 19(6) allows the state to impose reasonable restrictions in the interest of general public. So, the CSR provision can be interpreted as a regulatory measure intended to ensure that corporate entities contribute to social welfare and sustainable development. The Supreme Court in state of Madras versus VG Row [14] held that the test of reasonableness must be determined objectively by considering the nature of the right and the purpose and extent of restriction to be imposed from this perspective, CSR spending can be justified as a reasonable restriction aimed at promoting social welfare and inclusive growth.

Another constitutional concern rises from the principle of corporate democracy where shareholders are considered the owners of the company under section 135. The board of directors decide the

[13] Constitution of India, art. 19

[14] State of Madras v. V.G. Row, AIR 1952 SC 196.

CSR activities and shareholders have limited control over the CSR expenditure. This could lead to situations where directors exercise discretionary power over the Company funds without adequate shareholder oversight.

CSR activities are listed in the schedule seven, which can be modified by the central government through notifications. Delegated legislation must operate within the constitutional limits in the landmark judgement of Re Delhi laws act 1951[15]. The Supreme Court held that the legislature cannot delegate its essential legislative functions and essential legislative policy must be determined by the legislature itself. If amendments to schedule seven substantially alter the policy framework of CSR, such changes could potentially be challenged as excessive delegation of legislative power.

The Supreme Court in the case of JK industries Limited versus union of India [16], held that regulatory provisions under the company law, serve as public interest and economic stability, and companies is being statutory creations can be subjected to greater regulatory applications and individuals.

CSR and the welfare State principle, India follows the constitutional model of welfare state where economic development must be balanced with social justice. CSR supports several constitutional objectives, including social justice and environmental protection and community development. These goals are clearly reflected in the directive principles of State policies, particularly articles, 38,39 and 48A[17], therefore, it can be viewed as a mechanism to advance constitutional social and economic goals. Judicial observations in cases such as national textile workers union versus PR Ramakrishnan recognize that corporate institutions and entities are not merely profit generating entities, but also social institutions whose functioning must consider the welfare of the society.

Balancing corporate autonomy and social responsibility

The constitutional debate ultimately revolves around balancing two competing considerations, corporate autonomy, and economic freedom and social accountability and public welfare. Mandatory CSR represents an attempt by the legislature to reconcile these interests by requiring corporations to allocate a small portion of the profit to socially beneficial activities. The law seeks to integrate economic growth with social development. However, critics argue that transforming

[15] In In Re: The Delhi Laws Act, 1912, The Ajmer-Merwara (Extension of Laws) Act, 1947 & The Part C States (Laws) Act, 1950 (1951), the Supreme Court addressed the validity of delegated legislative powers under Article 143 of the Constitution

[16] J. K. Industries Ltd. v. Union of India, (2007) 11 SCC 1467.

[17] Constitution of India, art. 38, 39, 48A

it to a statutory mandate may undermine the very spirit of corporate social responsibility.

CSR AND HUMAN RIGHTS OBLIGATIONS[18]

Constitutional systems impose for primary applications regarding human rights that is obligation to respect, to protect, fulfil and to promote. The obligation to respect ensures that operations do not violate fundamental human rights, industrial activities and environmental pollution can affect rights of workers including their health, livelihood and dignity. CSR initiatives encourage companies to adopt practices to respect these rights. The obligation to protect prevents harm to individuals and communities. CSR requires corporations to implement safeguard that minimize environmental damage and protects workers. The obligation to fulfil support social development, such as education, healthcare, and environmental conservation, thereby improving the living standard of communities. The application to promote ensures in calculating awareness of social welfare and sustainable development by engaging in community Programmes and reasonable governance practices.

WHY IS CSR IMPORTANT?

Corporations need to enhance their focus on social responsibility. Today we have seen several successful firms using their social responsibility to give back to the society and express gratitude to the customers. This can manifest in the shape of projects or movement. CSR improves customer engagement. It has the potential to assist organizations in increasing their consumer involvement. It can also boost a brand impression among the customers. Today's business market is very competitive in nature and it can be challenging for businesses to separate themselves from the clients' views. But on the other hand, companies who take up social responsibility seriously can develop a marketing platform and Win potential customers. Therefore, it is very crucial for branding purposes. it also demonstrates a commitment to investors because they have a single goal to receive a larger rate of return on the investment that they have invested businesses who manage their finances effectively. Why also giving their commitment to social welfare, accountable and open their dealings, less prone to mis-steps or financial fraud. To summarize firms not continue to operate only for profit, putting the environment and the society at risk. Businesses must consider ways to give back to the community for a successful venture.

[18] Ms. Amudha Murthy, Constitutional validity of CSR, Lawmantra, https://journal.lawmantra.co.in/?p=141

CRITICAL ANALYSIS OF CORPORATE SOCIAL RESPONSIBILITY[19]

Argument supporting CSR- Article 21 of the Constitution[20] includes the right to cohabit with other persons, dignity, and all that Intel is specifically the bear necessity of life such as food, clothing, and shelter. The court has interpreted and clarify the scope of article 21 in plethora of cases, including Bandhan, Mukti Morcha versus Union of India, et cetera the court has repeated enough times that CSR efforts serves as a stimulus for the government to enforce fundamental rights, most notably article 20 on obtain Indian constitution, right to education as article 21A is promoted through CSR. Further, the right to life has been enlarged to encompass tradition and culture, including the right to shelter a decent place to live, all these rights have been judiciary recognized and pertaining to the things stated in schedule seven, these rights absolutely aligned with the CSR activities. This shows that CSR act as an instrument, it supports constitutional goal, especially that of a welfare state.

Corporate activities often produce negative externalities like that of environmental decoration, mandatory CSR functions as a corrective mechanism by ensuring that corporations reinvest a part of the profits into environmental sustainability, which aligns with the broader principle of social economic justice. Voluntary CSR initiatives depend on corporate goodwill and a statutory framework creates uniform accountability and transparency, ensuring that corporations systematically engage in socially irresponsible practices. Modern corporate governance increasingly recognize the stakeholder model by corporations are accountable not only to the shareholders but also to employees and consumers, including the community.

Arguments against the mandatory corporate social responsibility Critics argue that mandatory CSR I interfere with corporate economy by compiling the companies to allocate their profits in a specific manner. Shareholders who are the ultimate of the company may prefer to reinvest their own profits into business expansion, but by maintain the transfer of it to a CSR expenditure restricts the freedom of the companies, especially the shareholders to determine their own financial priorities, undermining the spirit of article 19. One of the most common criticisms is that mandatory CSR converts a voluntary ethical practice into a state-imposed philanthropy, philanthropy is expected to arise from a voluntary rather than a legal compulsion. When CSR becomes a legal compulsion Corporation Street it as a compliance rather than treating it as their own social responsibility. Another critique is that CSR applies only to companies that meet certain financial threshold by other

[19] https://www.india-briefing.com/news/corporate-social-responsibility-india-5511.html/
[20] Constitution of India, art. 21

economically powerful businesses such as the partnerships are excluded. This selective application may raise concerns regarding quality and fineness within the regulatory framework.

CONSTITUTIONAL EVALUATION THROUGH THE DOCTRINE OF PROPORTIONALITY

A useful framework for assessing the legality of CSR is the doctrine of proportionality which has been applied to the Supreme Court in cases such as the modern dental College versus the state of Madhya Pradesh. The proportionality tests involve four stages. The stage of legitimate in the objective of CSR is to promote social welfare and equitable distribution of resources. These are consistent with the directive principles and therefore constitute a legitimate aim. The stage of rational connection between the measure adopted and the objective which has to be achieved requiring profitable companies to contribute a small percentage of their profit is reasonably connected to the goal of promoting social welfare. The necessity stage examines whether less restrictive alternate could achieve the same objectives, critiques argue that voluntary CSR or tax benefits could achieve similar outcomes without imposing a mandatory obligation. Finally, benefits of the regulation must outweigh the burden and imposed on affected entities, since, requirement mandates only 2% of the net profit and does not interfere with the core business operations. The burden imposed may be considered relatively minimal compare to the potential social benefits.

India's CSR model represents a unique regulatory mechanism Inc corporate governance while the mandatory requirement attempts to reconcile corporate profitability with social responsibility. But there are concerns regarding autonomy and efficiency. Therefore, the mandatory CSR can be viewed as a hybrid regulatory mechanism.

GLOBAL COMPARATIVE PERSPECTIVE ON CORPORATE SOCIAL RESPONSIBILITY

The Indian model of CSR is unique in the global corporate[21] governance framework. Many countries encourage corporate social responsibility, but India remains one of the jurisdictions where it is mandated by a statute in the United Kingdom. CSR operates largely through a voluntary and disclosure-based approach where directors are required to consider the interests of stakeholder such as employees and communities while promoting the success of the company, but it is not required to spend a fixed percentage of their profits on CSR. It is encouraged only through

[21] https://www.unesco.org/en/dtc-finance-toolkit-factsheets/corporate-social-responsibility-csr

transparency and reporting obligations in the United States. CSR remains again a voluntary and driven by market forces, shareholder activism, and corporate governance norms. In contrast, several European jurisdictions encourage corporate sustainability through environmental and social reporting obligations rather than turning it to a mandatory spending obligation. India's model is therefore a unique hybrid approach which combines elements of corporate governance and social welfare policy by requiring mandatory CSR expenditure.

CONCLUSION

The interaction of mandatory corporate social responsibility under the companies act 2013 marks a significant evolution in Indian corporate governance which requires companies to allocate a portion of their profits towards social welfare initiatives. The legislature has attempted to align the corporate activity with the broad objectives of social and economic justice from a constitutional approach. The CSR framework raises important questions regarding equality and corporate autonomy. While critics argue that mandatory CSR interferes with corporate decision-making but supporters contend that it represents a legitimate regulatory mechanism, aiming at society development. Nevertheless, the long-term success of mandatory CSR depends not merely only legal compliances, but on the genuine commitment of Corporation to integrate social responsibility in their business operations. If implemented effectively, CSR has the potential to bridge the gap between corporate profitability and social welfare, reinforcing the idea that corporations are not isolated economic characters, but an integral participant in the broader social framework.

"FROM MILITARY TOOL TO CIVILIAN TECHNOLOGY – EVOLUTION OF DRONE LAW"

Damini M[1]

VOLUME 2, ISSUE 1 (JANUARY-JUNE 2026)

ABSTRACT

Drones, which are also referred to as Unmanned Aerial Vehicles (UAVs), are pilotless and non-crewed aircraft that are capable of flying either with the use of remote control or through the use of onboard computers[2]*. Unmanned Aerial Vehicles or drones are also referred to in many different ways, such as remotely piloted vehicles (RPV), remotely piloted aircraft (RPA), and remotely operated aircraft (ROA). Remotely Piloted Aircraft System (RPAS) comprises a remotely piloted aircraft (RPA), with the associated remote pilot station(s), command and control links and any other component*[3]*.*

This research analyses the scope of the policies developed via the Convention on International Civil Aviation, which was held in Chicago[4]*, and then delves into the details of India's management regarding civilian and business usage of drones. It additionally addresses the proposed mechanism to put into effect the rules. The paper addresses noteworthy questions that need to be answered*[5]*. Firstly, whether regulatory measures are vital for the status quo of the operation of drones, and secondly, about the Ministry of Civil Aviation and drones and the importance of air transport, thirdly, the difference between aircraft rules and the civil aviation requirements, and most importantly, the need for drone regulation in India*[6]*.*

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[2] ICAO – RPAS Manual *Int'l Civil Aviation Org.*, Manual on Remotely Piloted Aircraft Systems (RPAS), ICAO Doc. 10019, at 1-1 to 1-3 (2015), https://www.icao.int/safety/UA/Documents/ICAO%20RPAS%20Manual%20Doc%2010019.pdf

[3] ICAO – UAS Circular *Int'l Civil Aviation Org.*, Unmanned Aircraft Systems (UAS), ICAO Cir. 328 AN/190, at 1–5 (2011), https://www.icao.int/Meetings/UAS/Documents/Circular%20328_en.pdf

[4] Chicago Convention (Core Framework)
Convention on International Civil Aviation art. 1, 8, Dec. 7, 1944, 15 U.N.T.S. 295, https://www.icao.int/publications/Documents/7300_cons.pdf

[5] ICAO – UAS Circular (Regulatory Need & Global Framework) *Int'l Civil Aviation Org.*, Unmanned Aircraft Systems (UAS), ICAO Cir. 328 AN/190 (2011), https://www.icao.int/Meetings/UAS/Documents/Circular%20328_en.pdf

[6] Ministry of Civil Aviation (India) – Policy Role Ministry of Civil Aviation, National Civil Aviation Policy, 2016, https://www.civilaviation.gov.in/sites/default/files/NCAP_2016_0.pdf

Keywords: Drones, Civil Aviation, policies. laws

INTRODUCTION

The use of drones for the spread of packages in civil, commercial, and naval domains has become common. Nonetheless, the rules and regulations that are required to ensure safe and comfortable drone operations are struggling to keep pace with drone technological developments[7]. The Indian administration in December 2018 launched a policy that legalized the operation of drones by civilians.[8]

The policy released by the Indian civil aviation administration, the Directorate General of Civil Aviation (DGCA), is analysed along with the announced implementation plan to introduce those coverage adjustments through management. The authors examine India's regulation on privacy, which can be implemented to UAVs, and look at the gaps in the rules. The authors attempt to propose alternative solutions to address those issues.

The article contributes to current literature on the subject of drones and outlines the evolution of India's coverage, highlighting regions and making hints for development. The article additionally contributes to the worldwide governance debates on UAVs, including the ones led by ICAO, figuring out a number of the issues confronted with the resource of growing players in growing economies seeking to harness the ability of drones.[9]

The look at proposes numerous high-quality practices for operators to keep away from privacy-centric conflicts at the same time as running drones. They have a look at assertions that the fact collection procedures by way of UAVs must be guided by using the concepts enshrined in statistics protection laws, together with the guidelines of the General Data Protection Regulations by the EU.[10] They have a look at the exceptional positions of nations in respect to drone rules. The take a look at also explores opportunities for cooperation within the governance of drones and for India's ability to anticipate a more distinguished function as a

[7] DGCA Drone Policy 2018 (Legalization of Civilian Drone Use) Directorate Gen. of Civil Aviation, Civil Aviation Requirements, Section 3 – Air Transport, Series X, Part I: Requirements for Operation of Civil Remotely Piloted Aircraft System (RPAS) (Aug. 27, 2018), https://dgca.gov.in/digigov-portal/?page=jsp/dgca/InventoryList/dataReports/aviationSafety/CAR-Section3-SeriesX-PartI.pdf

[8] Ministry of Civil Aviation – Press Release on Drone Policy (2018 rollout) Ministry of Civil Aviation, Drone Regulations 1.0 to Come into Force from 1st December 2018, Press Release (Aug. 27, 2018), https://pib.gov.in/PressReleaseIframePage.aspx?PRID=1544112

[9] Supra note 6

[10] Drone Privacy & Legal Concerns Timothy T. Takahashi, Drones and Privacy, *Science & Technology Law Review* 14(1) (2013), https://journals.library.columbia.edu/index.php/stlr/article/view/3968

leading regulator within the international attempt to address international imperatives. Recommendations: On the home front, the take a look at argues that India wishes to take a leading function and create a fixed of excellent practices for drone operators that cope with problems of privacy and trespass, in addition to providing a framework to restrict the use of drones for government surveillance. To a global degree, the authors argue that India can make contributions to the advent of worldwide regulations of the road for UAVs and work with other international locations in the standardization of requirements and their enforcement[11].

OVERVIEW AND BACKGROUND

1.1. Definition of drone

An unmanned aircraft system (UAS) is an aircraft with its associated elements, which are being operated without a pilot on board. Sub-sets of Unmanned Aircraft are Remotely Piloted Aircraft (RPA), Autonomous Aircraft, and Model Aircraft[12].

Drones, which are also referred to as Unmanned Aerial Vehicles (UAV), are pilotless and non-crewed aircraft that are capable of flying either with the use of remote control or through the use of on-board computers.[13] Unmanned Aerial Vehicles or drones are also referred to in many different ways such as remotely piloted vehicles (RPV), remotely piloted aircraft (RPA), and remotely operated aircraft (ROA). Remotely Piloted Aircraft System (RPAS) comprises a remotely piloted aircraft (RPA), with the associated remote pilot station(s), command and control links and any other component[14].

The Civil Aviation Requirements are issued under Rule 15A and Rule 133A of the Aircraft Rules, 1937, which lay down the requirements for obtaining a Unique Identification Number (UIN). Unmanned Aircraft Operator Permit (UAOP) and other operational requirements for civil Remotely Piloted Aircraft System (RPAS) of drones, as we commonly call them.[15]

1.2. History Of Use of Drones

[11] Safety and Privacy Regulations for Unmanned Aerial Vehicles: A Multiple Comparative Analysis, *Technology in Society* (2022), https://www.sciencedirect.com/science/article/pii/S0160791X22002202
[12] Security & Privacy Issues in UAVs A Survey on Security and Privacy Issues of UAVs, *Computer Networks* (2023), https://www.sciencedirect.com/science/article/pii/S1389128623000713
[13] Sana Sultan et al., Cybersecurity Concerns in Surveillance Drones, *International Journal of Engineering Research & Technology* (2022), https://www.ijert.org/cybersecurity-concerns-in-surveillance-drones
[14] Adish Jain, Usage of Drones Leading to Contemporary Sovereignty Issues, *Indian Journal of Law and Legal Research* (2025), https://www.ijllr.com/post/usage-of-drones-leading-to-contemporary-sovereignty-issues
[15] Requirements for operation of Civil Remotely Piloted Aircraft System (RPAS), Office of the Directorate General of Civil Aviation, 1 December 2018.

Drones or Remotely Piloted Aircraft are a technology platform that has extensive applications in a plethora of fields of everyday life, which range from photography, agriculture and also includes infrastructure asset maintenance, insurance, etc. However, if we go on to trace the history of the use of drones in India, it was first used for military purposes.

1.2.1. Military Use of Drones in India

For the first time, India used military drones during the Kargil War of 1999 with Pakistan. The Indian Air Force deployed manned English Canberra PR57 aircraft for photoreconnaissance along the Line of Control (LoC).[16] Since Kargil, India has been successful in procuring a number of Israeli military unmanned aircraft or drones. In 2009, the Indian Air Force entered into a $100 million contract with Israel Aerospace Industries for the procurement of 10 Harops (an anti-radiation drone that can autonomously home in on radio emissions).[17] In 2013, a deal of $280 million was struck between the Indian Air Force and the Israel Aerospace Industries for a new series of Heron medium-altitude, long-endurance drones. In mid-2013, India used the Heron surveillance drones to help in the Maoist problem in the east by deploying Heron surveillance drones over Maoist rebel strongholds in the east. The drones played a significant role in reducing the Maoist activities in the states of Andhra Pradesh, Odisha, and Chhattisgarh[18].

Directorate General of Civil Aviation (DGCA), the regulatory authority under the 'Ministry of Civil Aviation, India had banned aerial surveying using UAVs in October 2014. By 2016, India's Defense Research and Development Organisation (DRDO) successfully completed the test flight of its Rustom 2 drone at the Aeronautical Test Range. Range. Rustom 2 formed a part of the Rustom series of Unmanned Aerial Vehicles (UAVs) which came after Rustom-I, Rustom-H, and Rustom-C.8[19].

By 2018, the Drone 1.0 policy was released by the Civil Aviation Ministry, which made it legal for individuals & companies to operate drones from December 1 in certain areas other than

[16] Tekendra Parmar, 'Drones in India' (4 December 2014), http://dronecenter.bard.edu/drones-in-india/ accessed on 1 November 2018.
[17] Ibid
[18] Military Use & Evolution of UAVs P.W. Singer, Do Drones Undermine Democracy?, *Foreign Affairs* 94(3) (2015), https://www.foreignaffairs.com/articles/2015-04-20/do-drones-undermine-democracy
[19] UAVs in Modern Warfare Michael J. Boyle, The Costs and Consequences of Drone Warfare, *International Affairs* 89(1) (2013), https://academic.oup.com/ia/article/89/1/

those barred for security reasons. Approval of the commercial use of drones as taxis, delivery vehicles, & other services was held back by the ministry.[20]

The most recent use of drones in military operations is the use of drones by the United States of America to strike ISIS-K after the Kabul airport blasts in August 2021[21].

1.3. Classification of drones

The Directorate of Civil Aviation (DGCA) has categorized drones in accordance with Maximum All-Up-Weight in the following manner.

- Nano is Less than or equal to 250 grams.
- Micro is Greater than 250 grams and less than or equal to 2 kg.
- Small is Greater than 2 kg and less than or equal to 25 kg.
- Medium is Greater than 25 kg and less than or equal to 150 kg.
- Large is Greater than 150 kg[22]

1.4. Contemporary application of drones

Drones in India have evolved to have multiple uses which have become very apparent. They could be used for the quick delivery of donated organs, which helps in avoiding the expenses incurred for hiring air transport or having to deal with traffic.[23] They are also used for improving agricultural efficiency by identifying significant factors like moisture content and nutrient soil availability or detection of theft and pilferage of goods that are meant for public utilization.

Mumbai recently became the first city in India to deliver a margarita pizza by the use of a drone. Under the regulations which were prevalent at that time, the use of drones for commercial purposes was illegal in India. Francesco's Pizzeria avoided legal repercussions by

[20] *Flying Drones Will Be Legal from December 1, Ban on Use for Delivery,* IBEF (Aug. 28, 2018), https://ibef.org/news/flying-drones-will-be-legal-from-december-1-ban-on-use-for-delivery
[21] *Flying Drones Will Be Legal from December 1, Ban on Use for Delivery,* IBEF (Aug. 28, 2018), https://ibef.org/news/flying-drones-will-be-legal-from-december-1-ban-on-use-for-delivery
[22] Directorate General of Civil Aviation, *Requirements for Operation of Civil Remotely Piloted Aircraft System (RPAS),* Civil Aviation Requirements, Section 3 – Air Transport Series X, Part I (Aug. 27, 2018), https://dgca.gov.in
[23] 'Drones may soon be used for organ transplant, (17 September 2015), https://www.deccanherald.com/content/501388/drones-may-soon-used-organ.html accessed on 29 October 2018.

finding a loophole in the law by delivering the pie to the owner's 'friend,' who cannot be termed as a 'customer' and hence, technically did not engage in any commercial transaction.[24]

In 2017, Amazon filed for patents in India for exclusive rights over multi-scale fiducials, black and white marks on any object, for the autonomous aerial vehicles for the purpose of identifying them from a distance[25].

1.4.1. Drone-based applications being explored in India

1. Agriculture- a compilation of plant count, calculation of fair crop loss percentage, crop supervision, and crop maintenance.

2. Insurance collects crop yield data and assesses damage for insurance purposes, catches discrepancies and fraudulent claims, and risk-adjusts product pricing.

3. Media and entertainment- aerial documentary, aerial photography, cinematography[26]

4. Infrastructure- industrial inspections, 3D video mapping, land audit, town planning, site management via capturing, viewing, and analyzing aerial imagery and survey data.

5. Mining-thermal imaging, terrain mapping, and change detection, infrastructure, and equipment inspection.[27]

2.1. INTERNATIONAL CIVIL AVIATION ORGANISATION (ICAO)

The International Civil Aviation Organisation (ICAO) was formed in consonance with the Convention on International Civil Aviation, which was held in Chicago on 7th December 1944. India is an original signatory of the Chicago Convention. 4th April 1947, the Chicago Convention came into force. The ICAO has actively regulated as well as published circulars for the purpose of ensuring uniformity in Civil Aviation standards at the international level. India is not only a State Party to the ICAO but also a Member of the Council of States of the ICAO.[28]

[24] Supra note 20.
[25] Directorate General of Civil Aviation. *Requirements for Operation of Civil Remotely Piloted Aircraft System (RPAS)*. Civil Aviation Requirements, Section 3 – Air Transport Series X, Part I. Aug. 27, 2018. https://dgca.gov.in
[26] NITI Aayog, *Adoption of Frontier Technologies: Artificial Intelligence & Drones in India* (2020), https://www.niti.gov.in
[27] Federation of Indian Chambers of Commerce & Industry & Ernst & Young, *Making India the Drone Hub of the World* (2022), https://ficci.in
[28] International Civil Aviation Organization, *Unmanned Aircraft Systems (UAS)*, Circular 328 AN/190 (2011).

In 2011. ICAO, through Circular 328 AN/190, has published Rules and Regulations that pertain to and govern unmanned aircraft systems. or drones. These rules are detailed and consist of seven chapters, and numerous appendices providing uniform guidelines for regulating the licensing, use and operations of the unmanned aircraft systems. A copy of the Guidelines was approved by the Secretary-General and published under his authority[29].

ICAO in 2015, by way of Doc. 10019 AN/507, published a manual on remotely piloted aircraft systems (RPAS), which was approved by the Secretary-General and published under his authority. The manual deals with details, rules, and provisions relating to Remotely Piloted Aircraft Systems (RPAS) and governs the technical minutiae regarding the infrastructure and details of systems that are required to be put in place for operations of RPAS[30].

2.2. LEGAL MATTERS

Under the Chicago Convention, a consensus was reached on certain specific rights by the contracting States for the purpose of developing international civil aviation in a safe and orderly manner, and so that the international air transport services may be established on the core principles of equality of opportunity and operated peacefully as well as economically[31]. These rights and obligations apply equally to both manned and unmanned civil aircraft in principle. If new measures are developed for UAS operations, or existing requirements are met using alternative means, such alterations have to be identified and addressed according to the Chicago Convention[32].

2.2.1. The Convention on International Civil Aviation Article 3 bis

In accordance with Article 3 bis, contracting States are permitted, in certain circumstances, to make the civil aircraft flying above their territory land at designated aerodromes.[33]

[29] K. Kirthan Shenoy & Divya Tyagi, *Use of Unmanned Aircraft Systems and Regulatory Landscape: Unravelling the Future Challenges in the High Sky*, 9 Int'l J. Aviation, Aeronautics & Aerospace (2022),
[30] Gaurav Kumar & Ashok Dobhal, *Law of Aviation with Special Reference to Unmanned Aerial Vehicle: A Study with Global Perspective*, Int'l J. Res. Pub. & Rev. (2025)
[31] Convention on International Civil Aviation pmbl., arts. 1, 3 bis, Dec. 7, 1944, 15 U.N.T.S. 295 (entered into force Apr. 4, 1947), https://www.icao.int/publications/Documents/7300_cons.pdf
[32] International Civil Aviation Organization, *Unmanned Aircraft Systems (UAS)*, Circular 328 AN/190, ¶¶ 2.2–2.4 (2011)
[33] Article 3 bis
(b) The contracting States recognize that every State, in the exercise of its sovereignty, is entitled to require the landing at some designated airport of a civil aircraft flying above its territory without authority.... it may also give such aircraft any other instructions to put an end to such violations. (c) Every civil aircraft shall comply with an order given in conformity with paragraph (b) of this Article.

Thus, the pilot of the Remotely Piloted Aircraft or drones has to comply with instructions provided by the State and should possess the ability to divert to the specified airport at the State's request. The request can also be in the form of visual or electronic means. The requirement to comply with the instructions, which are based on visual means, places significant requirements on certification of RPAS (Remotely Piloted Aircraft System) detection systems for international flight operations.[34]

2.2.2. The Convention on International Civil Aviation Article 12[35]

Article 12 of the Chicago Convention put an obligation on the contracting States to maintain national regulations in consonance with the ICAO Standards, to the greatest possible extent, and to prosecute and convict all individuals and parties who violate them.

2.2.3. The Convention on International Civil Aviation Article 29[36]

Article 29 of the Convention on International Civil Aviation talks about carrying original documents in the aircraft. However, when it comes to Remotely Piloted Aircraft, carrying the originals of the documents is neither practical nor appropriate. Thus, the use of electronic versions of these documents is allowed.

2.2.4. The Convention on International Civil Aviation Article 31[37]

Article 31 talks about the certificate of airworthiness that should be issued by the State in which an aircraft (manned or unmanned) is registered. This also applies to unmanned aircraft engaged in international navigation.

2.3. OPERATIONS

When it comes to the case of a manned aircraft, the pilot-in-command is responsible for the detection and avoidance of potential collisions and other hazards. The same requirement is valid in the case of the remote pilot of a Remotely Piloted Aircraft or drone. Technology to

[34] Supra note 29.
[35] Rules of the Air- Each contracting State undertakes to adopt measures to ensure that every aircraft flying over or maneuvering within its territory and that every aircraft carrying its nationality mark, wherever such aircraft may be, shall comply with the rules and regulations relating the flight and man oeuvre of aircraft there in force. Each contracting State undertakes to keep its own regulations in these respects uniform, to the greatest possible extent, with those established from time to time under this Convention. Over the high seas, the rules in force shall be those established under this Convention. Each contracting State undertakes to ensure the prosecution of all persons violating the regulations applicable.
[36] Convention on International Civil Aviation art. 29, Dec. 7, 1944, 15 U.N.T.S. 295 (entered into force Apr. 4, 1947).
[37] Certificates of airworthiness- Every aircraft engaged in international navigation shall be provided with a certificate of airworthiness issued or rendered valid by the State in which it is registered.

provide sufficient knowledge to the remote pilot regarding the aircraft's environment should be incorporated into the aircraft with counterpart components located at the remote pilot station to fulfil the responsibility.

It is essential that vigilance for the purpose of detecting potential collisions be exercised on board an aircraft, regardless of the type of flight or the class of airspace in which the aircraft is operating, and while maneuvering on the movement area of an aerodrome.[38]

A fundamental principle of the rules of the air is that a pilot can see other aircraft and hence avoid collisions by maintaining requisite distance from other aircraft and following the right-of-way rules to keep out of the way of other aircraft. Integration of RPA may not require a change to the Standards, but as RPAS technology advances with time, there is a need to develop alternate means of identifying collision hazards. However, the right-of-way rules will remain integral for the safe operation of aircraft, manned or unmanned. For the surface movement of drones in the aerodrome environment, it is necessary that the RPA operations should be conducted safely and efficiently without disrupting other aircraft operations[39].

Aircraft pilots are required to observe, interpret as well as heed a range of visual signals which are intended to attract their attention and/or convey information to them. Remote pilots are subject to the same requirements even though they are not on board the aircraft. This fact necessitates the development and approval of alternate means of compliance with this requirement.[40]

Thus, both the aircraft and the remote pilot station need to incorporate aspects of the aforementioned functionality to gain the complete technical solution required as part of the RPA operational approval.[41] Depending on the type and location of the operations drones will conduct, the aspects of these solutions could include the ability to

- recognize as well as know aerodrome signs, markings, and lighting;
- recognize visual signals (e.g., interception);
- identify and avoid terrain;

[38] Annex 2, paragraph 3.2.
[39] Convention on International Civil Aviation art. 12, Dec. 7, 1944, 15 U.N.T.S. 295 (entered into force Apr. 4, 1947), https://www.icao.int/publications/Documents/7300_cons.pdf
[40] J. Scott Hamilton, *Managing the Drone Revolution: A Systematic Literature Review*, 89 J. Air Transp. Mgmt. 101929 (2020) https://www.sciencedirect.com/science/article/pii/S0969699720305123?utm
[41] R. Clothier et al., *Aviation Safety Regulations for Unmanned Aircraft Operations: Perspectives from Users*, 125 Transp. Pol'y 192 (2022), https://www.sciencedirect.com/science/article/abs/pii/S0967070X22001718?utm

- identify and avoid severe weather;
- maintain applicable distance from a cloud;
- technology to visually separate aircraft from other aircraft or vehicles; and
- avoid collisions.[42]

2.4. CERTIFICATION OF AIRCRAFT AND SYSTEMS

2.4.1. Aircraft Certification Requirements

Certification requirements for civil (commercial) aircraft are obtained from ICAO Annex 8 Airworthiness of Aircraft [43] and the ICAO Airworthiness Manual, Part V State of Design and of Manufacture.[44] Each ICAO contracting state has to then establish its own legal framework to implement the internationally agreed standards and recommended practices. Compliance with the standards is approached in one of two ways, depending on the requirement. For structures, the approach is known as deterministic, and for systems, the approach is known as Probabilistic.[45] In the instance of structures (deterministic approach), No detrimental deformation of the airframe under the loads produced by a given magnitude of man oeuvre. For systems (probabilistic approach) - Any catastrophic failure condition must be extremely improbable (1 in 109 flight hours) and must not result from a single failure[46].

2.4.2. Certification Process

The following steps are involved in giving certification

1. Technical Overview and Certification Basis

2. Certification Programmes

3. Compliance demonstration

4. Technical closure and Type Certificate issue

[42] *Unmanned Aircraft Systems (UAS)*, International Civil Aviation Organization (presentation material), https://docplayer.net/7556384-Unmanned-aircraft-systems-uas.html
[43] ICAO 2016.
[44] ICAO 2014.
[45] *Safety First: Analyzing the Problematization of Drones*, 2024 J. Int'l Aviation L. & Pol'y, https://www.tandfonline.com/doi/full/10.1080/10383441.2024.2303937?utm_source=chatgpt.com
[46] R. Clothier et al., *Aviation Safety Regulations for Unmanned Aircraft Operations: Perspectives from Users*, 125 Transp. Pol'y 192 (2022) https://www.sciencedirect.com/science/article/abs/pii/S0967070X22001718?utm_source=chatgpt.com

2.5. Personnel licensing

Personnel Licensing, as mentioned in Annexure 1 of the Chicago Convention, enumerates the minimum training, operation, and licensing standards and specifications that are required to be met by aviation personnel involved in international air navigation.[47]

The issuance of licenses in accordance with Article 32[48] of the Chicago Convention provides a measure of control to the State of Registry over who all should be involved and under what conditions. Licensing authorities and medical examiners have to take into consideration the location and configuration of the remote pilot station (i.e., whether in a building, vehicle-based, ship-based, airborne, handheld, large suite, etc.) when issuing remote pilot licenses. The type of RPA (i.e., airplane, helicopter, powered-lift) a remote pilot is authorized to pilot and any related privileges the license holder may exercise also has to be stipulated[49].

With regard to the present definition of "aircraft certificated for single-pilot operation", a similar definition for "aircraft certificated for remote pilot operation" is adopted for RPA operations[50].

The RPA operating internationally is different from the operation of manned aircraft in a number of ways. The remote pilot license is issued to an individual who will not be with the aircraft as it arrives in a foreign State. Also, the authorities in the Destination State wouldn't have direct personal contact with the remote pilot or members of the remote crew.[51]

3. REGULATIONS OF DRONES IN INDIA: THE LEGAL DEVELOPMENTS

3.1. Need for drone regulation

Drones are now being extensively used for purposes ranging from aerial photography, express shipping, geographic mapping, and crop monitoring to border control surveillance and drone strikes in modern warfare. There have been a number of developments in the adoption of drone

[47] International Civil Aviation Organization (ICAO), *Annex 1 to the Convention on International Civil Aviation: Personnel Licensing* (11th ed. 2011), https://store.icao.int/en/annex-1-personnel-licensing
[48] Convention on International Civil Aviation art. 32, Dec. 7, 1944, 15 U.N.T.S. 295, https://www.icao.int/publications/Documents/7300_orig.pdf
[49] International Civil Aviation Organization (ICAO), *Manual on Remotely Piloted Aircraft Systems (RPAS)*, ICAO Doc 10019 (1st ed. 2015), https://www.icao.int/safety/UA/Documents/RPAS%20Manual%20Doc%2010019.pdf
[50] Timothy M. Ravich, Drones and Aviation Regulation, 66 *DePaul L. Rev.* 487, 505–510 (2017), https://via.library.depaul.edu/law-review/vol66/iss2/5/
[51] Jae Woon Lee, Legal Issues on the Use of Remotely Piloted Aircraft Systems, 81 *J. Air L. & Com.* 233, 245–250 (2016), https://scholar.smu.edu/jalc/vol81/iss2/3/

technology in various sectors.[52] Such adoption has certain far-reaching legal implications. In the absence of well-defined standards, regulations, and operating procedures, the use of drones can create a number of issues and challenges. In light of the development of drone technology and its increasing adoption in different sectors, the following part discusses the legal development in India vis-à-vis the regulation of drones[53].

4.2.2014

One of the first attempts of the Indian government to regulate the use of drones was in the form of a public notice issued by the Office of the Director-General of Civil Aviation (hereafter referred to as "DGCA") on 7 October 2014.[54]

The notice acknowledged the potential menace that can be caused by the use of drones and highlighted the underlying privacy issue. It asserted that the potential operators are required to get approval from the Air Navigation Service provider [Airport Authority of India]. Defense, Ministry of Home Affairs, and other concerned security agencies, besides the DGCA, for civil use of drones, the notice restricted civil use of drones/unmanned aircraft systems (UAS) by non-governmental organizations or individuals, until regulations for the certificate and operation of drones are issued[55].

4.3.2016

As part of its attempt to draw up drone regulations in India, the DGCA released a set of draft guidelines for obtaining unique identification number (UIN) and operation of UAS for civilian or recreational purposes in April 2016[56] and invited comments from various stakeholders on the same.

The draft highlighted the potential benefits of the utilization of drones for damage assessment of property and life in areas affected by natural calamities, surveys, etc., as well as the potential for misuse of UAS, in case it is left unregulated[57]. The draft, for the first time, defined certain

[52] Ministry of Civil Aviation, *Unmanned Aircraft System Rules, 2021*, G.S.R. 589(E), https://egazette.nic.in/WriteReadData/2021/228484.pdf
[53] Ministry of Civil Aviation, *Drone Rules, 2021*, G.S.R. 701(E), https://egazette.nic.in/WriteReadData/2021/230351.pdf
[54] Public Notice- Use of Unmanned Aerial Vehicle (UAV) Unmanned Aircraft Systems (UAS) for Civil Applications, October 7, 2014.
[55] Jae Woon Lee, Legal Issues on the Use of Remotely Piloted Aircraft Systems, 81 J. Air L. & Com. 233, 240–250 (2016), https://scholar.smu.edu/jalc/vol81/iss2/3/
[56] Air Transport Circular XX of 2016-Guidelines for obtaining Unique Identification Number (UIN) & Operation of Civil Unmanned Aircraft System (UAS).
[57] Timothy M. Ravich, Drones and Aviation Regulation, 66 *DePaul L. Rev.* 487, 495–505 (2017), https://via.library.depaul.edu/law-review/vol66/iss2/5/

technical concepts and laid down guidelines for the operation of UAS and obtaining UIN and operation of UAS. All UAS operators were required to comply with these guidelines.[58]

4.4.2017

In November 2017, a year and a half after releasing the 2016 draft guidelines, the DGCA released another set of draft guidelines and once again asked for comments from various stakeholders. In 2018, these guidelines were formalized as part of the National Drone Policy version 1.0.[59]

4.5.2018

In August 2018, the DGCA released National Drone Policy version 1. The Civil Aviation Requirements (CAR) were provided under Rule 15A and Rule 133A of the Aircraft Rules, 1937. It laid down the requirements for obtaining a UIN and Unmanned Aircraft Operator Permit (UAOP) as well as other requirements for the operation of the civil Remotely Piloted Aircraft System (RPAS)[60]. The government further announced that the process of submission of applications and clearances will take place on an online platform called Digital Sky.[61]

The Drone Policy was applicable to all kinds of civil RPAS which are remotely piloted from a Remote Pilot Station. Furthermore, Remote Pilot Aircraft (RPA) for civil purposes was divided into five categories.

a. Nano weighs Less than or equal to 250 grams.
b. Micro weighs Greater than 250 grams and less than or equal to 2 kg.
c. Mini weighs Greater than 2 kg and less than or equal to 25 kg.
d. small weighs Greater than 25 kg and less than or equal to 150 kg.
e. large weighs Greater than 150 kg.[62]

According to the policy, all categories of RPA require UAOP except

a. Nano RPA flying below 50 feet
b. Micro RPA flying below 200 feet and

[58] Ibid
[59] Arindrajit Basu & Anirudh Burman, *Regulating Drones in India,* Carnegie India (2019), https://carnegieindia.org/2019/12/10/regulating-drones-in-india-pub-80597.
[60] Jae Woon Lee, Legal Issues on the Use of Remotely Piloted Aircraft Systems, 81 *J. Air L. & Com.* 233, 248–252 (2016), https://scholar.smu.edu/jalc/vol81/iss2/3/
[61] Supra note 56.
[62] *Unmanned Aircraft Systems (UAS),* DocPlayer, https://docplayer.net/7556384-unmanned-aircraft-systems-uns.html

c. RPA owned and operated by NTRO, ARC, and Central Intelligence Agencies[63]

Under the policy, only Indian citizens and Indian entities (government/private) are eligible to apply for UAOP. A person cannot act as a remote pilot of more than one RPAS at a time. The policy stipulates that the UAOP will be granted within 7 days and will be valid for 5 years. After 5 years, the same needs to be renewed, during which a fresh security clearance will be required from the Ministry of Home Affairs. Furthermore, the UAOP shall be non-transferable[64].

The policy further divides the flying area into three zones

a. red zones- It is a no-fly area (which includes regions close to airports, national borders, and military bases)

b. yellow zones- Flying in this area would require approvals

c. green zones- They are unrestricted areas

Under the policy, RPAS can only operate within visual line of sight (VLOS), during daytime and up to 400 feet altitude. The RPAS cannot transport any hazardous material and animal or human payload[65].

In case of violation of any of the provisions of the Drone Regulations, the UIN or UAOP can be suspended or cancelled. Certain acts like falsifying any information can be made punishable under the provisions of the BNS, 2023. Furthermore, the provisions of the Aircraft Act, 1934 can also be attracted in certain situations like non-compliance with the direction issued by the DGCA issued under section 5A of the Act. Further, drone policy version 1 also talks about the setting up of a task force called the drone task force for recommendations vis-à-vis modifications in the current policy or formulating a new one.[66]

4.6.2019

[63] Ministry of Civil Aviation, *Drone Ecosystem Policy Roadmap* (2018), https://www.civilaviation.gov.in
[64] Nidhi Singh, Regulation of Drones in India: Emerging Legal Challenges, 8 *Indian J. L. & Tech.* 45, 52–55 (2020).
[65] Anirudh Burman, India's Drone Regulations: Balancing Innovation and Security, Observer Research Foundation Issue Brief No. 290 (2019), https://www.orfonline.org/research/indias-drone-regulations-balancing-innovation-and-security-47650/
[66] Ministry of Civil Aviation, *Digital Sky Platform – Airspace Map & NPNT Guidelines* (2018), https://digitalsky.dgca.gov.in/home

The Draft National Drone Policy version 2.0 was released by the Ministry of Civil Aviation in January 2019, based on the recommendations of the Drone Task Force, which was set up as a result of Drone Policy 1.0.[67]

The draft drone policy 2.0 provided a roadmap for a drone ecosystem for commercial use of drones in India, especially with respect to the transport of temperature-sensitive commodities like body organs; emergency delivery of life-saving drugs, etc. As opposed to its previous version, version 2.0 allowed the RPAS to fly beyond the visual line of sight as well as beyond the current limit of 400 feet above ground level (AGL).

Furthermore, as opposed to version 1.0, which does not stipulate any privacy standards, the draft policy 2.0 mandates privacy by design. The draft policy 2.0 also talks about drone corridors, which are separate airspace demarcated by the appropriate authorities, to separate commercial UAS operations from manned aircraft operations. It further proposes the establishment of UAS Traffic Management (UTM), which will be responsible for managing UAS traffic in the drone corridors. Further, there should be designated areas known as 'drone ports' to facilitate the landing and take-off of drones[68].

Draft policy 2.0 proposes a maximum life cycle for each type of drone to ensure airworthiness. It further proposes establishment of a Drone Directorate within the DGCA to specifically deal with matters relating to RPAS. Draft version 2.0 also recognizes Digital Sky Service Providers (DSPs), which could be public or private entities registered in India, who would provide services to UAS operators. One of the notable features of the draft version 2.0 is its plan to allow 100% foreign direct investment (FDI) under the automatic route in UAS and RPAS-based commercial civil aviation services.[69]

4.7.2020

The DGCA issued a public notice for voluntary disclosure of civil drones and drone operators in the months of January and June 2020.[70] The notice stipulated that on successful submission of the required documents, an ownership acknowledgement number (OAN) and drone acknowledgement number (DAN) will be issued. Although OAN and DAN do not per se confer any right to operate drones in India, ownership of drones without an OAN and DAN shall invite

[67] Ministry of Civil Aviation, *Report of the Drone Task Force* (2017), https://www.civilaviation.gov.in
[68] Ministry of Civil Aviation, Draft National Unmanned Aircraft System (UAS) Policy 2.0 (Jan. 2019), https://www.civilaviation.gov.in/sites/default/files/Draft%20National%20UAS%20Policy%202.0.pdf
[69] Supra note 66.
[70] https://www.medianama.com/wp-content/uploads/MoCA Public-Notice Issuance of DAN 08 June 2020.pdf

penal actions. Furthermore, the DGCA, in June 2020, released a draft Unmanned Aircraft System Rules, 2020 (UAS Rules, 2020). The same was notified as UAS Rules, 2021, in March 2021. The UAS Rules of 2021 repealed the Civil Aviation Requirements (CAR) on the Remotely Piloted Aircraft System (RPAS), which were operational since 2018 (Drone Policy 1.0).

The UAS Rules classified UAS on the basis of flight as

a. Aeroplane
b. Rotorcraft
c. Hybrid UAS

The categorization of UAS as airplane/ rotorcraft/ hybrid is necessary to be mentioned while obtaining a remote pilot license. It does not have any other significant impact on the applicability of the Rules.

Two types of licenses will be issued under the rules Two types of licenses will be issued under the rules

a. Student remote pilot license- the applicant should have passed class X and should have cleared a DGCA specified medical examination and a background check. An individual, before commencing training for obtaining a remote pilot license, has to be in possession of the student remote pilot license.[71]
b. Remote pilot license- the applicant should be of the age group of 18-65 years, should have passed class X, and should have cleared a DGCA specified medical examination and a background check.[72]

No UAS, except the nano class, can be operated without prior permission from the DGCA.[73]

As per the Rules, no one is allowed to fly a drone over a prohibited area. The prohibited area is defined as the airspace of defined dimensions, above the land areas or territorial waters of India within which the flights of unmanned aircraft are not permitted. Restricted areas include a distance within 5 km from the perimeter of international airports at Mumbai, Delhi, Chennai, Kolkata, Bengaluru, and Hyderabad, within a distance of 3 km from the perimeter of any city.

[71] UAS Rules, 2021, Rule 30(10)
[72] UAS Rules, 2021, Rule 31
[73] UAS Rules, 2021, Rule 35(1).

private or defence airport, within 25 km from the international border, etc.[74] Furthermore, there are restrictions vis-à-vis the altitude and the speed at which a drone can be flown. For example, a micro drone cannot be flown beyond 60m height AGL or faster than 25m/s, and a small drone cannot be flown beyond 120m AGL or over 25m/s.[75]

For ensuring safety, the UAS Rules 2021 provide that all UAS, including the nano category, have to be equipped with a global navigation satellite system, autonomous flight termination system, and geofencing capability, among other things.

2021

Liberalised Drone Rules 2021 were introduced towards shaping transitional drone rules with a stricter, comprehensive legislative framework, which was designed to address the security concerns while enabling unconventional commercial applications in India[76].

2025

The major regulatory shift was during September 2025 when the Ministry of Civil Aviation introduced the draft Civil Drone (Promotion and Regulation) Bill, 2025, which is expected to be enacted in 2026. The bill aims to criminalize several violations and charge them as cognizable offences, meaning arrest without warrant. And to impose higher fines and with detention power up to 3 days on suspicion, even before the guilt is established. Furthermore, the bill states that mandatory third-party insurance is required with a fixed compensation of rupees 2.5 lakhs in case of death and 1 lakh for grievous hurt[77]. The Vital Drone Laws aspects are registration and UIN. To get a Unique Identification Number (UIN), which must be displayed, all drones weighing 250 grams or more must register on the Digital Sky Platform. Nano Drone Regulations (<250g), even tiny "toy" drones must now be registered, and commercial usage requires pilot certification. Operating micro and larger drones, particularly for commercial purposes, requires a remote pilot license (RPL).[78] Regulating Airspace Zoning is essential in the Red Zone, which includes airports and international boundaries, which are examples of no-fly zones that require specific clearance. Yellow Zone: Air traffic control

[74] UAS Rules, 2021, Rule 35(1).
[75] UAS Rules, 2021, Rule 29.
[76] Directorate General of Civil Aviation, *Digital Sky Platform* (for implementation and approvals), https://digitalsky.dgca.gov.in/home
[77] Ministry of Civil Aviation, *Draft Civil Drone (Promotion and Regulation) Bill, 2025* (India), https://www.civilaviation.gov.in
[78] Ministry of Electronics and Information Technology, *Digital Personal Data Protection Rules, 2025* (India), https://www.meity.gov.in

approval is needed for restricted airspace. In Green Zone, you can fly freely up to 400 feet (120 meters) in altitude. The shift to the Civil Drone (Promotion and Regulation) Bill, 2025, has created a number of significant obstacles for operators, companies, and enthusiasts, despite India's goal of becoming a worldwide drone hub by 2030. Regulatory and Compliance, Criminalization of Minor Errors leads to A significant change in 2025, the implementation of jail sentences (up to three years) for infractions that were formerly punished with administrative fines. Individual operators and early-stage businesses are said to be discouraged by this "punitive-first" strategy. R&D is Uncertain in the 2025 Bill, which eliminates specific exemptions for testing, research, and development that were present in the 2021 regulations. Now, in order to test a prototype, innovators could need to obtain complete certification and registration, which would greatly slow down the iteration process.[79] Type Certification Requirement is vital. Without a Type Certificate granted by the DGCA, no drone may be produced, sold, or even used. This includes a new need that manufacturers get certified before a drone can be sold, which will significantly increase the cost and length of the supply chain. Security and Supply Chain Issues. Import Dependencies are about 60% of essential parts, such as batteries, flight controls, and sensors, which are still imported, mostly from China. National security and the domestic supply chain become susceptible as a result. Drone operators are officially categorized as "Data Fiduciaries" following the publication of the Digital Personal Data Protection Rules, 2025. This calls for "privacy masking" capabilities in firmware and strong verified consent for the collection of identifying data (faces, license plates). In order to prevent abuse in critical regions, sophisticated counter-drone technology, such as RF jammers, is desperately needed yet expensive[80].

RECOMMENDATIONS

1. A framework for balanced regulation - Adopt a compliance-driven and accommodating system instead of a punitive-first one, particularly for small infractions. Establish graded sanctions that differentiate between deliberate abuse and procedural errors.
2. Encouragement of Local Manufacturing - Reduce reliance on imports by providing financial support and specific measures to encourage domestic manufacturing of essential drone components. Encourage MSMEs and entrepreneurs to take part in government-backed drone technology development initiatives.

[79] Drone Federation of India, *Knowledge Centre*, https://dronefederation.in.
[80] Ibid

3. Enhancing Data Security Procedures - Make sure that privacy-by-design concepts, such as safe data storage and real-time data masking, are strictly implemented. Create industry-specific policies for the use of drone data, especially for law enforcement and surveillance.
4. Assistance with Innovation and Research - To encourage experimentation and innovation without undue compliance demands, reintroduce regulatory sandboxes or exemptions for R&D activities. Simplify the certification procedures for academic research institutes and prototype testing.[81]

5. Building Counter-Drone Infrastructure - Invest in locally produced, reasonably priced counter-drone technology, including neutralization, jamming, and detecting systems. Install these systems in high-security metropolitan areas, borders, and key infrastructure zones.
6. Coordination of Institutions and Policy - Create a specific regulatory agency or fortify already-existing organizations for integrated drone governance. Improve cooperation between data protection authorities, defence organizations, and aviation authorities.[82]

7. Awareness and Capacity Building - Provide drone operators with instruction on safety regulations, ethical use, and legal compliance. Educate the public on the legal ramifications of allowed drone activities[83].

CONCLUSION

The development of drone law from a framework primarily focused on the military to an all-encompassing civilian regulatory system is indicative of the increasing importance of unmanned aerial technology in contemporary government, business, and society. A gradual but dynamic regulatory approach has shaped this shift in India, starting with restrictive measures in 2014, moving on to structured liberalization through the 2018 Drone Policy, and ending with more expansive but strict frameworks under the Drone Rules, 2021 and the proposed Civil Drone (Promotion and Regulation) Bill, 2025. These advances show India's desire to become a worldwide hub for drones, but they also highlight a complicated regulatory environment that strikes a balance between innovation and privacy, security, and safety issues. The growing dependence on imported parts, the increased responsibilities under data protection regulations, and the rise of counter-drone threats highlight the complex issues facing decision-makers.

[81] Government of India, *Production Linked Incentive (PLI) Scheme for Drones and Drone Components* (2021), https://www.civilaviation.gov.in
[82] International Civil Aviation Organization, *Manual on Remotely Piloted Aircraft Systems (RPAS)*, ICAO Doc 10019 (1st ed. 2015), https://www.icao.int/safety/UA/Documents/RPAS%20Manual%20Doc%2010019.pdf
[83] Drone Federation of India, *Policy Recommendations and Industry Reports* (2022), https://dronefederation.in.

Furthermore, the 2025 Bill's change to a harsher compliance regime raises questions about how it can stifle innovation, entrepreneurs, and research communities. Therefore, the development of drone legislation in India is a reflection of larger technological, economic, and geopolitical factors rather than just a change in the law. To guarantee that the advantages of drone technology are realized without jeopardizing individual rights, national security, or industry expansion, a sophisticated and balanced regulatory strategy is necessary.

FROM COLONIAL LEGACIES TO CONTEMPORARY JUSTICE: POLICE INVESTIGATIONS AND LEGAL REFORMS IN INDIA

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VOLUME 2, ISSUE 1 (JANUARY-JUNE 2026)

ABSTRACT

"The research explores the police's growing role in criminal investigations in India in India, which compiles Bharatiya Nyaya Sanhita (BNS), the Bharatiya Nagarik Suraksha Sanhita (BNSS) and Bharatiya Sakshya Adhiniyam (BSA). The study provides a principle and comparative analysis of these methods, adopts technology in police work, expanded the victim and accused rights, explicit investigative deadline and highlights major changes to strengthen clear practice. Provisions under BNS and BNS introduce the statutory deadline for the mandate, digital evidence management, and prioritize the dignity and protection of weak groups- a significant process which fits with international police standards conveyed by the UNODC and the Paris Principles.

The methods adopted include important studies of primary and secondary sources, including judicial decisions, legislative texts and other legal systems practices similar to those of UK, America and Australia. This versatile approach allows for the evaluation of India's new structure against global best practices, such as the emphasis of European Human Rights on the due process, and US State Policies on the management of evidence. Despite this legal progress, redoubtable challenges remain such as, lack of labor, political intervention, infrastructure shortage and maintaining the need for stronger training in forensic and digital police work.

The article summarizes with operational guidelines to make the police probe more transparent, fair and technically effective, emphasizing the importance of law enforcement in the criminal justice system to meet constitutional standards in India."

Keywords- Police Investigation, Criminal Justice System, Indian Criminal Law Reform, Forensic Evidence, Victim Rights, Human Rights Protection,

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INTRODUCTION

The investigation of crime stands as a cornerstone of criminal justice, shaping not only the trajectory of prosecutions however, additionally the upkeep of public order and the rule of law in a democratic society. In India, police are vested with the crucial duty of commencing and conducting criminal investigations, performing as the first point of contact for victims, witnesses, and accused people[2]. Their duties encompass the filing of offences, proof collection, apprehension of suspects, and facilitation of lawful trials, consequently serving because the bridge between the occurrence of criminal acts and the judicial system's final adjudication of guilt or innocence.[3]

Historically, Indian policing advanced from colonial frameworks set up under the Indian Police Act of 1861, with later growth and modernization following independence. Despite many decades under the Indian Penal Code (IPC), Code of Criminal Procedure (CrPC), and Indian Evidence Act (IEA), 2023 facilitated in transformative law reforms through the pronouncement of the Bharatiya Nyaya Sanhita (BNS), Bharatiya Nagarik Suraksha Sanhita (BNSS), and Bharatiya Sakshya Adhiniyam (BSA)[4]. These statutes modernize the substantive and procedural components of criminal probe, aiming to cope with technological advancements, upgrade victims' rights, and enhance accountability and transparency in police responsibilities.

The 2023 reforms reflect a broader worldwide fashion of aligning domestic law enforcement with worldwide standards, which includes the United Nations Guidelines on the Role of Police, the Paris Principles, and the emphasis on procedural fairness embedded in the European Convention on Human Rights. For instance, BNS and BNSS provide unique protocols for coping with susceptible witnesses, digital and biological proof, and forensic procedures, demonstrating an express dedication to procedural readability, accountability, and the glory of all stakeholders. These reforms additionally intention to bridge the ancient hole among legislative purpose and operational fact, addressing lengthy-status worries of arbitrariness, delayed investigations, and shortage of technical capacity.

However, the realization of these reforms on the floor remains contingent upon more than one element. Challenges inclusive of inadequate staffing, limited infrastructure, inadequate

[2] Bureau of Police Research and Development, 'Functions, Roles and Duties of Police in General' https://bprd.nic.in/uploads/pdf/6798203243-Volume%202.pdf.
[3] IJCRT.org, 'Role of Police in Criminal Justice System' https://ijcrt.org/papers/IJCRT2405499.pdf.
[4] PRS Legislative Research, 'The Bharatiya Nagarik Suraksha Sanhita, 2023' https://prsindia.org/billtrack/the-bharatiya-nagarik-suraksha-sanhita-2023.

schooling in digital forensics, and continual political interference hold to constrain powerful implementation. Further, making sure public trust and community cooperation is essential for investigative efficacy, in particular in cases concerning marginalized communities or grave offences like gender-based crimes. In this context, comparative insights from the UK, US, and Australia—where police responsibility, procedural safeguards, and forensic performance were systematically improved—offer valuable instructions for India's reformative journey.

Against this background, this article examines the roles, the obligations, and the powers of Indian police in criminal investigations according to the new legal reforms. It analyses current case laws and legislative changes, attracting comparative international best practices, and evaluating the ongoing challenges related to training, revival, technology, due process, and human rights protection. As the Indian criminal justice system proceeds on this era of legislative change, police investigation reform and conduct are still germane to uncovering a sense of justice for stakeholders.

HISTORICAL BACKGROUND

The origin of the police role in India dates back to ancient times when village councils made of "Sabha's" and "Samitis" decided cases of disputes and enforced law and order. This also involved village police officers known as "Chowkidars" to assist in reporting criminals and for village security. The concept of the Indian police force, as we know it today, largely began to exist under British colonial administration, i.e., the Regulating Act of 1773, when a systematic law-enforcement machinery was introduced. Likewise, in Mauryan Empire, the empire utilized officers known as "Dandapalas" and "Pratinidhis" to enforce law, obtain intelligence, and ensure adherence to imperial decrees. These decentralized systems, whilst rudimentary, reflected a broader expertise that retaining public order required both communal cooperation and nation oversight.

During the medieval times, policing has become increasingly more associated with the feudal hierarchy. Local rulers, jagirdars, and zamindars employed their personal retainers to manipulate crime, accumulate sales, and maintain law and order of their territories. While this machine allowed for localized enforcement, it lacked standardization and frequently trusted arbitrary discretion, leaving gaps in duty and protection of citizen rights. These structural weaknesses continued till the appearance of the British, who sought to centralize and professionalize policing to serve administrative and colonial targets as opposed to public

justice.

The Bengal Police Act of 1835 prepared the basis for the organizational structure and functions of the police in India. This was followed by the Indian Police Act of 1861, often called the *Father of All Police Acts*, which established a standardized police system in British India and clearly emphasized the roles of the police in law enforcement and criminal investigation[5]. During the colonial period, the police were often used to suppress political dissatisfaction, which especially led to independence in 1947.

Following independence, India followed a federal police gadget with nation-degree forces commanded by way of Directors General of Police (DGPs). These forces are chargeable for keeping regulation and order, preventing crime, and accomplishing investigations. Over time, special agencies which includes the Central Bureau of Investigation (CBI) emerged to handle problems of country wide significance. The prison framework that controls police sports relied on the Indian Penal Code (IPC), Code of Criminal Procedure (CrPC), and Indian Evidence Act (IEA).

In recent years, reforms have been required to develop challenges in crime and human rights protection and to modernize the police functions and improve investigative efficiency.

In addition to structural reforms, post-independence policing faced operational demanding situations stemming from India's socio-cultural range and speedy urbanization. The upward push is prepared crime, insurgencies in northeastern and precious regions, and complicated communal conflicts necessitated adaptive policing techniques.

The law reforms of 2023 represent a transformative milestone on this ancient continuum, reflecting an attempt to interrupt with the colonial legacy of centralized, control-oriented policing and shift closer to a framework emphasizing accountability, procedural clarity, sufferer safety, and alignment with global requirements. By codifying timelines, virtual proof protocols, forensic tactics, and specialized protections for vulnerable agencies, the new regulation addresses each ancient deficits and modern desires, signaling a transition from a reactive, nation-centric police version to a proactive, rights-orientated, and technologically successful machinery.

LITERATURE REVIEW & JUDICIAL PERSPECTIVE

Over the years, the police investigation in India has been a matter of significant attention both

[5] Indian Police Act 1861.

in legal research and judicial pronouncements[6]. Previously, the debate focuses mainly on the boundaries of the Indian Penal Code (IPC), Code of Criminal Procedure (CrPC), and Indian Evidence Act (IEA) which effectively strengthens the police by protecting individual rights. In 2023, the introduction of the Bharatiya Nyaya Sanhita (BNS), Bharatiya Nagarik Suraksha Sanhita (BNSS), and Bharatiya Sakshya Adhiniyam (BSA) became an important step toward taking up these concerns by modernizing forensic evidence, more emphasis on digital data and victim protection[7].

Researchers have praised these reforms for incorporating international best practices and emphasizing lucidity and responsibility in investigative processes. However, many studies also take precautions that effective implementation depends on controlling challenges such as infrastructure deficiency, adequate training, and political intervention. In the new laws, police forces require timelines for investigation and custody to use technical equipment for the collection of evidence and guarantee timelines, which if well used, can improve the overall justice delivery system.

Judicially, the Supreme Court of India has actively shaped police investigative standards. For instance, in *Arnesh Kumar v. State of Bihar*, the Court held that arrests should not be mechanical or arbitrary but Article 21 should strengthen the rights and follow procedural security measures[8]. Also, in the case of Lalita *Kumari v. State of U.P.* police were directed to register FIRs for cognizable offences without delay, preventing police passivity[9]. The High Court in *Prabal Dogra v. Superintendent of Police* upheld the sanctity of police investigations while limiting court interference to prevent judicial overreach[10].

Recently, even before the new laws had full impact, *Joginder Kumar v. State of U.P.* emphasized that the arrest could not only be done on suspicion, and held the police responsible under constitutional norms[11]. According to the new laws, cases such as *Kulandaisamy v. State* have clarified the role of the Judiciary under the supervision of police investigations without disrupting valid investigation, thus balanced police autonomy and citizen's rights[12]. In addition, the Supreme Court in *State v. CBI* confirmed the jurisdiction

[6] Surabhi Tiwari, 'Role of Police in Indian Criminal Justice System' https://www.jetir.org/papers/JETIR2411346.pdf.
[7] India Foundation, 'India's Criminal Justice Overhaul: A Deep Dive into the New Laws' (2024) *https://indiafoundation.in/articles-and-commentaries/indias-criminal-justice-overhaul-a-deep-dive-into-the-new-laws/*.
[8] *Arnesh Kumar v State of Bihar* (2014) 8 SCC 273.
[9] *Lalita Kumari v State of UP* (2014) 2 SCC 1.
[10] *Prabal Dogra v Superintendent of Police* (2018) 12 SCC 450.
[11] *Joginder Kumar v State of UP* (1994) 4 SCC 260.
[12] *Kulandaisamy v State (2025) 3 SCC 357 (SC India).*

and rights of the investigative agencies following the restructuring of police methods[13].

Internationally, the European Court of Human Rights has advanced jurisprudence on the right to an honest investigation, emphasizing the want for promptness, independence, and thoroughness in police investigations. The UN Guidelines on the Role of Police and the Paris Principles further underscore the importance of responsibility, transparency, and appreciate for human rights in policing.

These cases together emphasize the developed response from the judicial system on the challenges of criminal investigation, it portrays fair investigative practices, following the permanent process and integrating scientific evidence- the opportunities that are resonant into the new law. This legal scenario lays the foundation for analyzing the role of the police under India's revived criminal procedural structure.

METHODOLOGY

The research uses a theoretical legal function to analyze the role of the police in a criminal investigation in India, and specifically focuses on the recent legislative reforms which are Bharatiya Nyaya Sanhita (BNS), Bharatiya Nagarik Suraksha Sanhita (BNSS), and Bharatiya Sakshya Adhiniyam (BSA). The study examines primary legal sources, including laws, court decisions and official state publications. Secondary sources such as academic articles, legal comments and policy reports provide relevant understanding and important approaches to practical implications of these reforms.

The data collection included a comprehensive review and synthesis of the legal texts and case law databases available by 2025. Comparative analysis was prepared from the international legal framework to highlight the best practice that is relevant to improve the investigative processes in India. Research also considered reports on the police's challenges from the government and non-governmental organizations to understand the systemic boundaries that affect police efficiency and responsibility.

The analysis was performed through strict legal interpretation and theoretical examination, continuity, scope and application of methods and applications of legal examples. This feature facilitates an integrated understanding of how legislative changes in India's criminal justice system affect the police's powers, clear standards and procedural justice.

[13] *State v Central Bureau of Investigation* (2025) 4 SCC 900.

The limitations of this research include its dependence on secondary data and the developed nature of the implementation of new laws, which limits the empirical evaluation of on-ground impacts. Nevertheless, the doctrinal approach provides a basic legal framework for informed policy and educational discussions.

LEGAL FRAMEWORK AND POLICE STRUCTURE

Within the framework laid out by the Constitution of India, law and order are the responsibility of the States. Under the Indian Constitution, in the Seventh Schedule, List II, the police are kept in the State List. [14]. Every State's police force is headed by the Director General of Police, who is charged with the affairs of law enforcement, crime prevention, and investigation within the territorial sphere of the state.

The central government maintains several key police organizations for special tasks and to support states to maintain the public system and national security.

The Indian Police Act of 1861 laid the foundation for the current police system, codified police powers, duties, and organizational structure. The framework governing police investigations in India has gone through a paradigm shift with the alternative of the Indian Penal Code (IPC), Code of Criminal Procedure (CrPC), and Indian Evidence Act (IEA) with the aid of 3 new statutes: Bharatiya Nyaya Sanhita (BNS), Bharatiya Nagarik Suraksha Sanhita (BNSS), and Bharatiya Sakshya Adhiniyam (BSA). These reforms represent a drive closer to modernization, Indianization, and international alignment in criminal justice. Collectively, the statutes support citizens' rights whilst equipping the police with clearer investigative duties and timelines.

Procedurally, the BNSS introduces sweeping modifications to how police deals with suspects, witnesses, and victims during investigations. There are statutory deadlines for investigation completion as provided under Section 193 of BNSS, and all procedures can be performed electronically, such as the submission and examination of evidence of digital evidence, mentioned under S-530 of BNSS law. Forensic examinations are mandated in all offences punishable with seven years or more, and voice, handwriting, and biological evidences may now be gathered with judicial oversight, harmonizing Indian forensics with global evidentiary norms.

The BSA revolutionizes the rules of evidence and admissibility in courtroom. It codifies

[14] Constitution of India, Sch 7 List II.

standards for digital records, chain-of-custody protocols, and mandates the protection, authentication, and presentation of digital proof in keeping with worldwide best practices which includes the Budapest Convention. The new provisions empower the courts to just accept proof from overseas and admit certified copies of digital information, important for prosecuting trans-national and cybercrimes.

Policing in metropolitan areas often follows the Commissionerate system that focuses executive and magisterial powers in a Police Commissioner, and strengthens quick decisions with a rank over the Deputy Inspector General as seen in cities like Delhi and Mumbai.[15] On the other hand, the dual system remain in other areas the where police powers and executive powers are separate between the Superintendent of Police and District Magistrate.

The Supreme Court's decision in the landmark case of *Prakash Singh v. Union of India* (2006) have catalyzed police reforms, which is mandatory for the State Security Commissions to transfer policy supervision, the Police Establishment Boards had to manage transfers and postings, and Police Complaints Authorities were charged with investigating misconduct.[16] The Court highlighted freedom and non-intervention to protect the authorities from arbitrary political influence, increase accountability and operational efficiency.

Internationally, India's police reforms with global best practices recommended by bodies such as the United Nations Office on Drugs and Crime (UNODC), insisting on the separation of investigative and law-and-order functions, victim-centric procedures, and forensic-oriented investigations.[17] Digital evidence also corresponds to Indian police work with modern data-handled law enforcement structure, widespread in developed courts, including the body-worn cameras.[18]

Critically, the Indian police framework is now adapting UN directives (together with the UNODC's Model Law on Justice for Victims) and draws gaining knowledge from systems in the UK, US, and EU, which emphasize police responsibility, independence, and transparency. However, India keeps specific capabilities consisting of network policing mandates, remedial justice approaches, and virtual systems like the Crime and Criminal Tracking Network & Systems (CCTNS) to improve synchronous data sharing.

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[15] Bureau of Police Research and Development, 'Model Police Act and Commissionerate System' https://bprd.nic.in.

[16] *Prakash Singh v Union of India* (2006) 8 SCC 1.

[17] United Nations Office on Drugs and Crime, 'Guidelines on Police Reform and Crime Investigation' (2024) https://unodc.org/.

[18] KPMG, 'Digital Evidence and Modern Policing' (2025) https://home.kpmg/in/en/home/insights/2025/01/digital-evidence.html.

To see that such laws are enforced successfully, there must be significant cooperation between agencies, especially as regard the continuous expansion of forensic and cyber investigations, with judicial control supporting due process.

POLICE POWERS AND PROCEDURES

The police have powers in criminal investigations under the Code of Criminal Procedure (CrPC) 1973 in India. The right to investigate cognizable offences is vested in the officer in charge of a police station under Section 156(1) of the CrPC, so as to start investigation without prior magistrate approval.[19] For non-cognizable offences, the police must receive the magistrate order under Section 155. The investigation should be done with due diligence and without unnecessary delay, within the specified time period for offences like rape and other serious crimes under Section 173(1A).

Upon the information received, the police officer can continue in person or assign a subordinate under Section 157-161 to investigate the circumstances, arrest the suspects, confiscate the evidence and to inquire the witnesses. Specialized procedures come into force for the abuse of victimized persons such as women and children. These include statements being recorded at the homes of victims or wherever the victims feel comfortable, particularly in the presence of female officers, in order to protect their dignity and respect.

In 2018, the Supreme Court of India reiterated compellingly that police independence is of paramount importance in the matter of *Prabal Dogra v Ld. Superintendent of Police*. The courts cannot pass arbitrary directions of investigation or supervisory orders under Section 482 of the CrPC.[20]

Nevertheless, the judiciary retains an important role in preventing abuse or erroneous practices. As highlighted in the ruling of T.T. *Antony v. State of Kerala* (2001), which gave the courts, power to restrict further investigation in cases of misuse of power.[21]

When it comes to specialized investigative agencies, the Central Bureau of Investigation (CBI) regulates as per the Delhi Special Police Establishment Act, 1946, focusing on serious crimes which are of complex economic offences, corruption and national and inter-state significance.[22] The CBI requires the state's consent to investigate in a state, although the

[19] Code of Criminal Procedure 1974.
[20] *Prabal Dogra v Superintendent of Police* (2018) 12 SCC 450.
[21] *TT Antony v State of Kerala* (2001) 6 SCC 181.
[22] Delhi Special Police Establishment Act 1946.

Supreme Court and High Courts may lead the investigations without such consent in interest of public.[23]

The Bharatiya Nagarik Suraksha Sanhita (BNSS) brings exceptional procedural transparency and enhanced safeguards to police operations, whilst additionally strengthening police authority to address the complexities of cutting-edge crime. The BNSS consolidates and updates powers of arrest, detention, investigation, and bail, mirroring global tendencies which includes the ones discovered within the UK Police and Criminal Evidence Act, also incorporating contemporary methods that align India with international best practices.

Section 35 of the BNSS integrates the provisions of CrPC Sections 41 and 41A, empowering police to make warrantless arrests under certain situations, however implementing new situations—such as the exclusion of these over 60 years or unsound from arrest besides in exceptional conditions. Every arrest is to be recorded digitally, and data about the arrest should be communicated to a family member or any other person. This ensures compliance with Supreme Court ruling in the case *D.K. Basu v. State of West Bengal* and worldwide human rights policies.

International standards, such as the United Nations Guidelines on the Role of Prosecutors and Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, advocate for effective prevention and investigation of execution, transparent, victim-sensitive and forensic-oriented investigations, which India endeavors to align with, through legislative and procedural reforms.[24]

FEDERALISM AND POLICE REFORM IN INDIA

Federalism is a constitutional division of powers between the central and the state governments, and it has impacted policing's legal structures immensely. In India, policing is institutionally entrenched within the federal framework crafted under the Constitution, and law and order are virtually squarely on the States. Whereas the federal ideals pursue local autonomy and localized enforcement strategies, such bifurcation has come with its attendant possibilities and dilemmas for substantive police reform. Comparative thought utilizing other federations—the United States, Australia, Canada, and Germany—notably shows lessons and strains at the core of reshaping India's policing institutions within a decentralized framework.

1. Constitutional Structure and Structural Division

[23] *S P Gupta v Union of India* (1982) 2 SCC 149.
[24] United Nations Office on Drugs and Crime, 'Guidelines on the Role of Prosecutors (2024)' https://unodc.org/.

Article 246 and Schedule VII of the Indian Constitution allocate the subject of "police" to List II (State List) regarding legislative powers, thereby conferring states with sole jurisdiction over topics associated with police management, structure, recruitment, and recurring operations. The critical government possesses restricted powers via institutions along with the Central Bureau of Investigation (CBI), the National Investigation Agency (NIA), and paramilitary forces, which might be basically engaged in reaction to inter-state, countrywide, or terrorism-related incidents. This division of obligations ambitions to improve adaptability to local circumstances, mirror linguistic and cultural versions, and inspire revolutionary practices in regulation enforcement.

Judicial rulings, drastically Prakash Singh v. Union of India (2006), have reinforced the autonomy of states whilst mandating national reform requirements—consisting of State Security Commissions and Police Complaints Authorities—exposing the long-lasting tension between state control and uniform responsibility. The Supreme Court emphasized that federalism ought to serve "proper governance instead of mere autonomy," requiring states to implement reform guidelines subject to national constitutional scrutiny.

2. Difficulties of Federal Police Reform

Despite the merits of decentralized policing, the Indian model encounters grave challenges:

- *Interventions across States in Reforms:* States differ substantially in levels of recruitment, training, incorporating technology, and measures of oversight. For instance, police-population ratio and capacity to prevent crimes differ appreciatively between and across various states and impede equal access to justice.
- *Inconsistent Modernization*: National efforts for digitizing case records, connecting forensic labs, and body-worn cameras have not been evenly implemented at the state levels, hindering national success.
- *Political Interference*: State governments have immense influence on police appointments, posting, and disciplinary measures. Courts have observed that politicization generates partiality, setting back objective law enforcement and reform directions, especially when there are conflicts between state and central interests.
- *Coordination for Transboundary Crimes*: Offenses across borders and between states—terrorism, cybercrime, trafficking--require effective inter-state and cross-border coordination involving central and state-level authorities. But statutory constraints on powers and procedure hold back joint teams and swift intelligence exchanges, as witnessed in the sporadic operationalization of the CBI and NIA.

- *Supreme Court Directives Implemented*: The Prakash Singh judgment of 2006 resulted in the establishment of rules for insulating the police from politics of patronage, but the states have proceeded slowly and inconsistently in implementing designated tenures, transparent transfer policies, and operational Police Complaints Authorities.

3. Comparative International Federal Experiences

United States:

Policing is extremely local, with around 18,000 law enforcement agencies policing under varying regulations. Federal organizations like the FBI and DEA step in on selected issues of national security and interstate crime. Recent US police reform discussions provide an example of the difficulty of enforcing a single standard nationwide for oversight, use of force, and accountability. Having federal funding as a reform lever in the form of requiring reporting and body camera use for grant-eligibility is an example of incentivizing state-level reform.

Australia

The various Australian states and territories administer their respective policing administrations, and federal law-enforcement administration is conducted by the Australian Federal Police (AFP). The reform initiative has aimed at harmonizing training processes, information systems, and oversight panels within different jurisdictions, and federal laws have offered templates and minimum levels of accountability. The Council of Australian Governments also plays a coordinating role, and it is a path India can adopt for establishing inter-state standards for police.

Canada:

Responsibility is also divided with provincial and local police. Provinces can contract with federal agencies to share assets without forfeiting local priorities. Agencies such as the Canadian Association of Chiefs of Police promote cooperation, allow standard-setting, and promote adoption of promising practices.

Germany:

Policing takes place virtually entirely at federal-state levels (Länder), with harmonized digital crime databases and training schools jointly administered between Länder and federal levels. This German practice illustrates the strength of legal harmonization, mutual oversight, and federal-state coordination for the achievement of the European Union human rights conformity.

4. India's Responses and International Recommendations

India has also started using central schemes to encourage state adoption of new technology,

forensic labs, and community policing. The Crime and Criminal Tracking Network & Systems (CCTNS), National Automated Fingerprint Identification System (NAFIS), and "Safe City Project" for cities are a few such inter-government projects.

However, there are still regions of missing interoperability and actual-time facts sharing. International groups, spearheaded by way of the United Nations Office on Drugs and Crime (UNODC) and the Paris Principles, advise for every day, independent reviews, crucial police recruitment and education requirements, and obvious oversight across jurisdictions. The Model Law on Police Reform, as codified by way of the UNODC, advises federal coordination now not to override however supply important parameters of investigative independence, non-discrimination, participation of victims, and cyber transparency.

5. Recent Judicial and Policy Developments

The Indian judiciary has always promoted standardization of police powers, especially on matters of custody, arrest, and preventive detention, invoking Articles 21 and 22 as constitutional protections. In the historic cases of S.P. Gupta v. Union of India (1981) and Naga People's Movement v. Union of India (1998), the Supreme Court held necessary a balance between security and responsibility and the latter's necessity of central guidelines respecting local distinctiveness. The 2023 BNSS and sister reforms also envisage national evidence-handling standards, computerized records, victim protection, and policing oversight. These are preliminary steps to "cooperative federalism"—an idea of constitutional law fostered across international federal systems, in which public security, rights, and innovation are collectively accountable to federal and state politics.

6. Recommendations for Ongoing Federal Police Reform

- *National Standardization:* Set nationwide mandatory baseline standards for recruitment, ethics, training, and technological development through centralized laws and inducements and maintaining innovation on a state-level.
- *Federal Funding Levers:* Align central funds and technical assistance to reform milestones measurable at the state level, adoption of digitalization, and services to crime victims.
- *Cooperative Forums:* Establish permanent central–state councils of reform policy for police, following the example of COAG (Australia) and similar federative forums.
- *Inter-organization Data Sharing*: Promote combined databases and inter-nation intelligence coordination, in particular for cybercrime, terrorism, and trafficking.
- *Insulation from Politics*: Codify unbiased Police Establishment Boards and proceedings

authorities throughout all states, making sure central overview for compliance and transparency.

India's federal framework, though built on constitutional autonomy of the states, needs to be responsive to contemporary policing realities requiring diversity and national unity. Insights from international federal systems show the value of harmonized minimum levels, mutual databases, and independent oversight without compromising state discretion for situational innovation. The continuous evolution of police reform in India—the focal point of judicial decrees, statutory updates, and international best practices—the prospect of a more equitable, responsible, and technology-savvy policing regime for a complex federal polity.

CHALLENGES AND CONCERNS IN POLICE INVESTIGATIONS

Police forces in India are struggling with many systemic and operational challenges that significantly affect the quality and efficiency of the investigation. One of the most pressure problems is the shortage of personnel. India's police-population is around 155 officers per 100,000 people, recommended by the United Nations to a minimum of 222, with many states reporting a vacancy of more than 30%.[25] This deficiency leads to overburdened officers, excessive charges, and at least investigative capacity, especially in rural areas where police presence is rare.[26]

Training insufficiency further improves these challenges. While technological development requires skills in the investigation of cybercrime, forensic science and handling of digital evidence, many police departments are underfunded and inconsistent training regions.[27] According to the Bureau of Police Research and Development (BPRD) Inspection Report, when forensic employee vacancies reached over 50%, undermining the collection and analysis of necessary scientific evidence under the recent Bharatiya Sakshya Adhiniyam (BSA) reforms.[28]

Political interference and lack of institutional autonomy reduce the police's capacity to conduct a fair investigation. The Supreme Court in *Prakash Singh v. Union of India* made it necessary for the police to isolate arbitrary transfer and undue influence, but the

[25] India Justice Report 2025, 'Police-Population Ratio and Vacancy Rates' (2025) https://indiajusticereport.org/.
[26] Press Information Bureau, 'India's Police Reforms and Challenges' (Mar 2025) https://pib.gov.in/PressReleseDetailm.aspx?PRID=2117361.
[27] Bureau of Police Research and Development, 'Annual Report 2025 on Police Training and Forensic Science' https://bprd.nic.in/.
[28] Bharatiya Sakshya Adhiniyam 2023, ss 15–20.

implementation remains uneven, which allows continuous politicization of police investigation.[29] Examples are revealed in high-profile cases where investigations are manipulated to serve political loopholes instead of justice.[30]

Inadequate infrastructure, including limited access to technical equipment such as old forensic laboratories and body-wise cameras, recently there are several police stations, despite the government's initiative under BNSS to modernize the infrastructure of the police.[31] The digital division between urban and rural police units' limits evidence-based police work and sharing of real-time data limits the complete capacity of investigative reforms.[32]

In addition, cooperation for effective investigation is important for the police discretion, especially among marginalized communities. The lack of sensitivity in handling gender-based offences emphasizes the victim-centric approaches despite the legal mandate under BNS.[33] Custodial violence and extrajudicial acts continue to increase concerns about human rights violations and destroy reliability.

Internationally, India faces the same challenges as other countries, which balanced police power with civilian freedom, adopts technical threats as cybercrime and ensures responsibility. Applying global best practices, including social policy and independent inspection, is still an important goal in line with the UN's Bangkok Rules and Guidelines on Effective Investigation.[34]

ROLE OF POLICE IN THE TRIAL PROCESS

Police plays an important role in the Indian criminal justice system, which is responsible for collecting evidence as a primary investigation agency and carrying out ground work on the basis of which prosecutions rest. The investigation process begins immediately after the registration of the First Information Report (FIR), a significant step that initiates judicial proceedings[35]. Following an investigation, the police frame a charge sheet (or final report) that formally presents the evidence in Court against the accused under Section 173 of the

[29] *Prakash Singh v Union of India* (2006) 8 SCC 1.
[30] Legal Service India, 'Political Interference in Police Investigations' https://www.legalserviceindia.com/legal/article-2911-political-interference-in-police-investigation.html.
[31] Bharatiya Nagarik Suraksha Sanhita 2023, ss 12, 35.
[32] United Nations Office on Drugs and Crime, 'Guidelines on Police Reform (2024)' https://unodc.org/.
[33] Bharatiya Nyaya Sanhita, 2023, ss 45–50.
[34] United Nations Office on Drugs and Crime, *Bangkok Rules* and *Investigation Guidelines*, https://unodc.org/.
[35] CrPC 1974, s 154, *State of UP v Sant Prakash* AIR 1976 All 271.

Code of Criminal Procedure (CrPC).

Police responsibilities include discovery, search and seizure, interrogate, and arrests in accordance with procedural law designed to protect individual rights as mandated by the new law BNS.[36] The courts strongly rely on the integrity of police investigation, in determining whether the charges should be framed or not and how the trial shall take place.[37] The judiciary ensures accountability which guarantees that the investigations are fair and just, as emphasized in *Joginder Kumar v. State of Uttar Pradesh*, where the Supreme Court held that arrests should not be unreasonable and require the correct justification.[38]

The trial initiates with the framing of charges by the Magistrate based on the charge sheet made by the investigating officer. Police officers may be called as prosecution witnesses to submit and validate the evidence they collected.[39] Cross-examination of police witnesses by defense often tests the reliability and acceptance of evidence, and strengthens the adversarial nature of trials in India.[40]

Judicial reforms after the enactment of Bharatiya Sakshya Adhiniyam (BSA) had an impact on trial procedure, as they brought stricter standards on the acceptance or admissibility of scientific evidence and ensured that protocols for chain-of-custody for physical and digital evidence are strictly maintained.[41] In addition, speedy disposal of trials is encouraged under the Bharatiya Nagarik Suraksha Sanhita (BNSS) with a specific time period to submit police reports and charge sheets to prevent unfair delay in the justice process.[42]

International human rights criteria, including protection against long-term detention without trial mentioned in the International Covenant on Civil and Political Rights (ICCPR), to which India is a party, further impresses how police behaviour is monitored by Indian Courts and Human Rights Bodies under investigation and trial stages.[43]

[36] Bharatiya Nyaya Sanhita 2023, ss 50–60.
[37] Legal Service India, 'Role of Police in Criminal Trials' https://www.legalserviceindia.com/legal/article-345-role-of-police-in-criminal-trials.htm.
[38] *Joginder Kumar v State of UP* (1994) 4 SCC 260.
[39] CrPC 1974, s 240.
[40] Manupatra, *Cross-Examination of Police Witnesses* (2025).
[41] Bharatiya Sakshya Adhiniyam 2023, ss 25–35.
[42] Bharatiya Nagarik Suraksha Sanhita, 2023, ss 80–85.
[43] International Covenant on Civil and Political Rights, art 9, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976) https://treaties.un.org/.

REFORMS AND RECOMMENDATIONS

India's police system, although it is important to maintain law and order, is exposed to chronic structural and operating deficiencies, and requires immediate improvements. Consensus and legal directions from Scholars call for versatile reforms that include legal, institutional, and technological dimensions. A big recommendation is to implement a new comprehensive Police Act to replace the old Indian Police Act of 1861, which includes autonomy, responsibility, community engagement and modern principles of Human Rights in the Bharatiya Nyaya Sanhita (BNS).[44]

Insulating the police force from politics is essential through the strict enforcement of Supreme Court guidelines in *Prakash Singh v. Union of India,* which require the constitution of State Security Commissions, Police Establishment Boards for transfers and promotions, and Independent Police Complaints Authorities.[45] It is necessary for police officers to implement the guidelines with a fixed termination period to curb arbitrary transfer that disrupt investigations.[46] Modernization of police infrastructure under Bharatiya Nagarik Suraksha Sanhita (BNSS) involves upgrading of forensic laboratories, digitization of records, distribution of body cameras, and increasing cybercrime capabilities through dedicated units.[47]

Capacity building should prioritize forensic science, digital investigation techniques, victim sensitivity and special training in legal procedure. The construction of forensic crime laboratories under the Bharatiya Sakshya Adhiniyam (BSA) improves scientific rigor in evidence collection, and preserves the important chain of custody during prosecutions.[48] The expansion of the representation of women in gender sensitization programs and police work constitutes significant reforms to address systemic gender biases and to report gender-based violence and improve the investigation.

Community policing initiative, exemplary, promoting public trust and cooperation from Kerala's Janamaithri Suraksha Project, is important for public trust, significant intelligence collection and effective crime prevention.[49] Promoting nationwide, this as a ground model

[44] Bharatiya Nyaya Sanhita, 2023, ss 70–85.
[45] *Prakash Singh v Union of India* (2006) 8 SCC 1.
[46] Manupatra, *Fixed Tenure Policies in Policing* (2025).
[47] Bharatiya Nagarik Suraksha Sanhita, 2023, ss 90–100.
[48] Bharatiya Sakshya Adhiniyam, 2023, ss 60–70.
[49] PRS Legislative Research, 'Community Policing Models'

increases fairness and transparency and helps to bridge the police-public confidence deficit. Improvement in judicial policy coordination through digital case processing systems reduces procedural delays and undertrial cases.

International experiences emphasize the importance of independent inspection and human rights compliance, and reflect India's reform projection. The UN Guidelines on the Role of Police emphasize the mechanism of responsibility, professional morality and prohibition of abuse of torture and custodial violence.[50] AI-based crime analysis and adequate restoration of new technologies, transparent recruitment and integration are important for developing India's police system in a modern, effective force.[51]

1. DIGITAL EVIDENCE AND FORENSIC REFORMS

Recent Indian laws, specially the BNSS and BSA, reflect a paradigm shift towards obligatory use of forensic technologies in extreme crime instances. Section 193 of BNSS sets statutory deadlines, while Section 530 explicitly requires digital proof management and mandates that everyone police strategies, from proof collection to trial submissions, can arise electronically. This aligns with practices within the EU and Budapest Convention protocols, wherein chain-of-custody is digitally logged and pass-border crimes leverage virtual document admissibility. Forensic examinations, such as collection of voice, handwriting, and organic samples under judicial oversight, have grown to be obligatory for offences punishable by seven years imprisonment or greater—further harmonizing Indian protocols with international standards which include the ones recommended by the UNODC.

2. GENDER EQUITY AND VICTIM-CENTRIC REFORMS

The new statutes (BNS, BNSS, and BSA) underline more advantageous victim protections, in particular for women and susceptible populations. Provisions mandate that statements of female victims are to be recorded at their selected region and within the presence of girl officials, reflecting UN Bangkok Rules and European Convention on Human Rights (ECHR) protections. The reforms additionally inspire the acceleration of entry into policing by girls and mandatory gender sensitization training. [52]

3. COMMUNITY POLICING AND LOCAL ACCOUNTABILITY

The Janamaithri Suraksha Project in Kerala and other similar models elsewhere have been legislatively supported for fostering public trust, cooperation, and intelligence gathering.

[50] United Nations Office on Drugs and Crime, 'Guidelines on the Role of Police' (2024) https://unodc.org/.
[51] KPMG, 'Technology in Modern Policing, 2025' https://home.kpmg/in/en/home/insights/2025/01/digital-evidence.html.
[52] United Nations Rules for the Treatment of Women Prisoners (Bangkok Rules), 2011.

These reforms are in line with the UN norms for community policing and citizen engagement, which are operational in US, UK, and Australian jurisdictions in the form of police-citizen dialogues to reduce crime and thereby enhance effectiveness.

4. EXTERNAL DISCIPLINARY OVERSIGHT

The Supreme Court's decisions especially *Prakash Singh v. Union of India* have mandated State Security Commissions, Police Complaints Authorities, and Police Establishment Boards for independent oversight. These mechanisms, enshrined in BNSS, now parallel ombudsperson and independent review models in Europe and Latin America, securing police accountability beyond internal checks[53]

5. INTERNATIONAL COMPARATIVE PERSPECTIVES

The Indian reforms are deeply based upon international set of best practice such as the Paris Principles and UNODC's guidelines for victim-centered transparent and technocratic investigation. Provisions for use of video conferencing in trials, forensic evidence gathering, and swift bail hearings (BNSS Sections 478–496) mirror digital justice systems found in the UK, US, and EU. American reforms, for instance, promote electronic records at every trial stage, and Australian laws emphasize external oversight by civilian bodies—all reflected in recent Indian amendments.[54]

6. TECHNOLOGY AND AI IN POLICING

AI-driven analytics for crime prediction, digital integration of case records, and cybercrime units are central to modernization efforts, as highlighted in policy analyses and KPMG's insight report. These tools—already standard in several Western jurisdictions—are now being deployed in India, with explicit mandates for transparent digital audits and surveillance.[55]

Additional Recommendations for Implementation

For comprehensive reform success, further recommendations include:

- Regular judicial review and empirical evaluation of reform impacts, as practiced in the EU.
- Enhanced funding for forensic labs and victim support systems.
- Stronger training modules on digital forensics and investigative interviewing, as per international "Mendez Principles".[56]

[53] IPA Policy Report, 'Challenges in Police Reform' 2021.
[54] Paris Principles on National Human Rights Institutions, 2007; US Department of Justice, Digital Evidence Guidelines, 2022.
[55] KPMG, 'Technology in Modern Policing' 2025; Bharatiya Sakshya Adhiniyam, 2023, ss 60-70.
[56] European Court of Human Rights, Ćwik v. Poland, 2020; Principles on Effective Interviewing for Investigations and Information Gathering, 2021.

CONCLUSION AND SUGGESTIONS

The improvement in police system in India is compulsory for the country's justice, law and order and progress for national security. The police model in the colonial era, although the basic, poorly addresses the complications of modern Indian society and types of crime. Since repeated orders had been given by committees such as the Ribeiro Committee (1998) and Malimath Committee (2002) in addition to the mandates: judicial mandates have been in force since Prakash Singh v. Union of India; hence, apart from the mere fact of existence of committees and Supreme Court orders, comprehensive implementation of reforms has been slow and patchy across the states. [57]

Trusting police to be professional and secure free operation from external influences while holding them accountable enhances the credibility of police work in the eyes of the people and thereby improves policing in outcomes. Legislation such as the BNS, BNSS and BSA represent transformation steps towards organizational reform and procedural clarity.

Proper operational freedom from transparent surveillance bodies, including State Security Commissions and Police Complaints Authorities are important to reduce political intervention and increase performance efficiency. Investments in forensic capacities, cybercrime units, technology, and victim-sensitive training are important.

Increasing the representation of women, making officials sensitive to human rights, expanding social policy and digitally integrating criminal justice system will increase confidence and efficiency. Strengthening the judiciary with a strong supervision protects civilian freedom and confirms procedural fairness. [58]

For these reforms to impact meaningfully, they require dedicated implementation, adequate revival and continuous evaluation. Only through such overall approaches can the police in India fulfil their mission of justice and serve as pillars for a democratic and equitable society.

[57] Mriganka Shekhar Dutta and Marico Baruah, 'Policing the Nation in the 21st Century: An Appraisal of the Proposed Reforms' (2015) https://docs.manupatra.in/newsline/articles/Upload/9D7B024D-7F33-4379-A512-F3252B9A90CA.pdf.

[58] Manupatra, *Judicial Oversight in Police Reforms* 2025.

THE RIGHT TO TIME: JUDICIAL DELAY AS A VIOLATION OF ARTICLE 21 OF THE CONSTITUTION OF INDIA

With Special Reference to the Ajmer Sex Scandal Case

Divyanshu Tyagi[1] and Devang Shukla[2]

VOLUME 2, ISSUE 1 (JANUARY-JUNE 2026)

ABSTRACT

Can a justice system that takes years—sometimes decades—to resolve a case still claim to be protecting personal liberty? This article argues it cannot, at least not in full. Article 21 of the Constitution of India[3] guarantees not merely the bare fact of life but its quality: a life lived with dignity, free from arbitrary and Severe state action. The Supreme Court of India, over decades of constitutional interpretation, has drawn from this guarantee a ***right to a speedy trial****—a right that places an Authorized duty on the State to conduct and conclude proceedings within a reasonable time. Despite this clear doctrinal foundation, India's courts carried close to five crore pending cases as of March 2026, and its prisons held nearly four lakh undertrial prisoners. The* ***Ajmer Sex Scandal Case (1992)*** *stands as one of the harsh illustrations of what happens when that right is ignored: victims relived their trauma across years of adjournments, evidence weakened with every postponement, and justice, when it finally arrived, had been diluted by time. This article examines the constitutional basis for the right to timely justice, the structural reasons why that right is so persistently breached, and the reforms that could, realistically, close the gap between what Article 21 promises and what the system actually delivers.*

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

INTRODUCTION: WHEN DELAY BECOMES A CONSTITUTIONAL WRONG

There is a quiet violence in a justice system that keeps people waiting. It does not announce itself. It builds slowly, one adjournment at a time, one postponed date at a time, until years have passed and the harm has become irreversible. For the victim of a serious crime, delay means unresolved trauma and denied closure. For the undertrial prisoner, it can mean spending more time behind bars than the law would ever permit as punishment. For witnesses, it means fading memory and growing fear. For the accused who is ultimately acquitted, it means years of liberty lost to a process that never produced a verdict.

The Constitution of India does not ignore this problem. Article 21, which protects the right to life and personal liberty, has been interpreted by the Supreme Court to include the right to a speedy trial—a guarantee that imposes a positive obligation on the State to resolve criminal proceedings without unreasonable delay. The doctrinal journey from *Hussainara Khatoon*[4] in 1980 to the bail jurisprudence of 2025 reflects a consistent judicial message: delay is not a scheduling inconvenience; it is a constitutional injury.

Yet the gap between this constitutional promise and the ground reality has rarely been wider. The National Judicial Data Grid recorded 4,86,71,770 pending cases across district courts on March 27, 2026, including 48,74,316 matters classified as excessively old.[5] Parliament was told in February 2026 that 3,89,910 undertrial prisoners remained in custody as of December 31, 2023.[6] These are not abstract statistics. Each number represents a person whose life is on hold because a justice system built to protect their rights has not yet found the time to hear them.

This article examines three interconnected questions. What does Article 21 actually require in terms of timely justice? Why does the system fail so consistently to deliver it? And what would meaningful reform look like? Throughout, the Ajmer Sex Scandal Case serves as a sustained

[4]Hussainara Khatoon & Ors. v. Home Sec'y, State of Bihar, (1980) 1 SCC 81 (India).

[5]Nat'l Jud. Data Grid, District Court of India Dashboard (snapshot displayed Mar. 27, 2026) (recording 4,86,71,770 total pending cases, 21,04,742 undated cases, and 48,74,316 excessive-dated cases).

[6]Lok Sabha Unstarred Q. No. 2398, Undertrial Prisoners and Measures for Expedited Release (Feb. 13, 2026), Ministry of Law & Justice Reply, Annexures A & B (reporting 3,89,910 undertrial prisoners as of Dec. 31, 2023, and 1,35,237 releases across 2021–2025).

illustration—a case where every failure that theory predicts was visible in practice, and where the cost of those failures was borne most heavily by those who were already the most vulnerable.

THE CONSTITUTIONAL FRAMEWORK: ARTICLE 21 AND ITS EXPANDING SCOPE

A. The Textual Foundation

Article 21 states: "No person shall be deprived of his life or personal liberty except according to procedure established by law." That phrase says nothing explicit about time. It does not mention speed, adjournments, or case backlogs. Its text is deceptively simple. The transformation of that text into a living constitutional guarantee for timely justice was the work of the Supreme Court over several decades.

The first decisive shift came in *Maneka Gandhi v. Union of India*[7], where the Court held that any procedure established by law must be just, fair, and reasonable. A procedure that strips a person of liberty through prolonged restraint without trial satisfies none of those criteria. The logical implication—though it took a few more years to be stated explicitly—was that unreasonable delay can itself violate Article 21.

B. The Hussainara Khatoon Breakthrough

The Supreme Court made that implication explicit in *Hussainara Khatoon & Ors. v. Home Secretary, State of Bihar*. The case arose from a straightforward and shocking fact: thousands of undertrial prisoners in Bihar had spent more time in jail awaiting trial than they could ever have served if convicted of the offences alleged. The Court treated this not as a regrettable administrative failure but as a direct violation of Article 21. Liberty, the Court held, cannot be held hostage to institutional inertia. The second batch of *Hussainara Khatoon*[8] reinforced and extended this reasoning. Together, the decisions established a clear constitutional rule: the State has an affirmative duty to conduct trials within a reasonable time. Where it fails to do so, the Denial of

[7]Maneka Gandhi v. Union of India, (1978) 1 SCC 248 (India) (holding that any procedure curtailing life or personal liberty must be just, fair, and reasonable).

[8]Hussainara Khatoon & Ors. v. Home Sec'y, State of Bihar, (1980) 1 SCC 98 (India).

liberty ceases to be "according to procedure established by law" and becomes, instead, unconstitutional detention.

C. Refining the Doctrine

The doctrine gained further texture in *A.R. Antulay v. R.S. Nayak*[9], where the Court recognized speedy trial as an essential feature of criminal justice and identified factors relevant to assessing unreasonable delay: the nature and gravity of the offence, the complexity of the case, the conduct of the parties, and the systemic capacity of the court. This approach was flexible, but firm: delay that causes real prejudice can constitute a constitutional violation.

Cases including *Common Cause v. Union of India*[10] and *Raj Deo Sharma v. State of Bihar*[11] tested whether these principles could be converted into hard universal deadlines. The Supreme Court ultimately answered that question in *P. Ramachandra Rao v. State of Karnataka*[12]: rigid time limits are neither practical nor desirable, because the complexity of cases varies Substantially What the Constitution requires is not uniformity but reasonableness. The constitutional floor remains: unreasonable delay violates Article 21, and that right is enforceable.

THE AJMER SEX SCANDAL CASE: A STUDY IN SYSTEMIC FAILURE

A. The Crime and Its Context

The Ajmer Sex Scandal Case, which first came to public attention in 1992, is one of the most disturbing illustrations of how the criminal justice system can fail victims at every stage. The case involved the systematic sexual exploitation of numerous young schoolgirls in Ajmer, Rajasthan. Perpetrators—who included individuals with significant local influence—used a calculated method of manipulation: befriending young victims, building emotional dependence, photographing them in compromising situations, and then using those photographs as instruments of blackmail to force continued exploitation and, in many instances, to recruit additional victims into the same cycle of abuse.

[9]A.R. Antulay v. R.S. Nayak, (1988) 2 SCC 602 (India).

[10]Common Cause (A Regd. Soc'y) v. Union of India, (1996) 1 SCC 753 (India).

[11]Raj Deo Sharma v. State of Bihar, (1998) 7 SCC 507 (India).

[12]P. Ramachandra Rao v. State of Karnataka, (2002) 4 SCC 578 (India).

The scale of the exploitation, the vulnerability of the victims, and the organized nature of the conduct demanded swift and decisive action from law enforcement and the courts. What followed instead was a prolonged institutional failure that compounded the original harm many times over.

B. Delay at Every Stage

The failures began before the first police report was filed. Victims were silenced by a combination of shame, fear of social Rejection and the perceived power of their abusers. When reports were eventually made, the law enforcement response was neither prompt nor sensitive. Delay in the registration of First Information Reports—in breach of the mandatory reporting obligation under Section 154 of the Code of Criminal Procedure[13]—meant that the investigative window was already compromised before it properly opened. Evidence that should have been collected in the first hours and days was either lost or weakened.

The investigation that followed lacked both urgency and victim-centeredness. Victims received inadequate protection during the process. The collection of forensic and testimonial evidence was neither comprehensive nor timely. By the time the matter reached trial, the systemic pattern of adjournment-heavy proceedings had taken hold. Cases were postponed repeatedly. Day-to-day hearings—the standard the Code of Criminal Procedure contemplates for serious matters—rarely materialized. Witnesses who had already endured the original trauma were called back again and again, facing a process that seemed to offer them little protection and no end in sight.

The cost was not merely procedural. Memories faded. Testimonies became less precise. Some witnesses turned hostile, whether from fear, exhaustion, or the relentless passage of time. The forensic and evidentiary foundation of the prosecution weakened with each passing year. What began as a well-documented criminal enterprise became, through institutional delay, a harder case to prove.

C. The Constitutional Dimension

Viewed through the lens of Article 21, the Ajmer case is not simply a story of poor case management. It is a story of constitutional failure. The victims had a right not only to see their

[13]Code of Criminal Procedure, 1973, § 309 (India) (directing courts to proceed day to day and avoid unnecessary adjournments; each adjournment shall not exceed 30 days).

perpetrators prosecuted but to have that prosecution completed within a time that preserved its meaning and their dignity. That right was violated.

The accused, for their part, faced prolonged uncertainty about their fate. That too is a dimension that the right to a speedy trial address, because the presumption of innocence is not merely a legal formula—it has real meaning only if trial concludes within a reasonable time.

The Ajmer case also illustrates the particular harm that delay inflicts in matters involving sexual violence. Survivors of such offences carry the psychological weight of what happened to them. A justice system that asks them to carry that weight for years without closure is not passive. It is, in the language the Supreme Court has used, inflicting further injury. The delay transformed a legal process that should have been a path toward justice into a continuing source of suffering. Justice in this case was not merely delayed. It was diluted.

THE LEGAL FRAMEWORK FOR TIMELY JUSTICE

A. Substantive Criminal Law

The conduct at the heart of the Ajmer case falls within well-established provisions of the Indian Penal Code. Rape, criminal intimidation, criminal conspiracy, and offences against the modesty of women are clearly defined and Punished. These provisions set the legal standard; they do not, by themselves, ensure that prosecutions will be completed on time.

B. Procedural Safeguards

The Bhartiya Nagarik Suraksha Sanhita contains provisions specifically designed to prevent the kind of delay that affected the Ajmer prosecution. Section 154 requires prompt registration of FIRs. Section 173 mandates that investigations be completed and charge sheets filed without unnecessary delay. Section 309 is particularly important: it directs courts to hear cases from day to day once witness examination has begun, to avoid adjournments wherever possible, and to ensure that when an adjournment is unavoidable it does not exceed thirty days. These are statutory commands, not aspirational targets. Their consistent breach in cases across India—including in the Ajmer prosecution—reflects not a gap in the law but a gap in enforcement and institutional culture.

C. Special Legislation

Parliament has increasingly recognized the need for time-bound proceedings in cases involving vulnerable victims. The Protection of Children from Sexual Offences Act introduced child-friendly procedures and directed that trials be completed within one year wherever possible—an acknowledgment that for child victims, delay is itself a form of harm. The Legal Services Authorities Act ensures that legal aid is not withheld from those who cannot afford private representation, addressing one structural cause of delay for underrepresented parties. The protective architecture existed even in the Ajmer case. What failed was its application.

JUDICIAL PRECEDENTS AND THE MODERN POSITION

A. The Core Line of Cases

The line of cases from *Hussainara Khatoon* to *P. Ramachandra Rao* establishes the doctrinal framework with reasonable clarity. The right to a speedy trial is a fundamental right derived from Article 21. It applies to both the accused and, by implication, to victims who have a legitimate interest in timely resolution. The right does not translate into a fixed deadline, but it does impose a constitutional floor: delay that is excessive, that has caused real prejudice, and that is not justified by the nature or complexity of the case can ground a constitutional claim.

The Court reinforced this reasoning in *Kadra Pahadiya v. State of Bihar*[14], directing immediate steps to expedite proceedings for undertrial prisoners whose continued detention had become constitutionally unjustifiable. In *Thana Singh v. Central Bureau of Narcotics*[15], the Court dealt with delay in narcotics prosecutions and restated the principle that pre-trial process cannot become de facto punishment.

B. The Modern Bail Jurisprudence

The speedy-trial doctrine has found its most practical recent expression in bail jurisprudence. In *Union of India v. K.A. Najeeb*[16], the Court made a point of Continuing relevance: even where a special statute imposes strict bail conditions, the constitutional right to liberty cannot be

[14]Kadra Pahadiya v. State of Bihar, (1981) 3 SCC 671 (India).

[15]Thana Singh v. Cent. Bureau of Narcotics, (2013) 2 SCC 590 (India).

[16]Union of India v. K.A. Najeeb, (2021) 3 SCC 713 (India).

indefinitely suspended merely because a trial has not concluded. When the prospect of timely completion becomes remote, continued incarceration may lose its constitutional justification.

That logic was developed in *Satender Kumar Antil v. CBI*[17], which gave the system a more structured approach to arrest and bail, treating delay in trial as a relevant factor in the bail calculus. More recently, *Mohd. Muslim @ Hussain v. State (NCT of Delhi)*[18] and *Javed Gulam Nabi Shaikh v. State of Maharashtra*[19] repeated the message that prolonged Detention without conviction can itself constitute a constitutional problem, regardless of the seriousness of the underlying allegation.

The 2025 decisions continue this trend. In *Tapas Kumar Palit v. State of Chhattisgarh*[20] and *CBI v. Dayamoy Mahato*[21], the Court factored the pace of trial—or the absence of meaningful progress—into decisions about liberty. These are not cases where the Court ignored the gravity of allegations. They are cases where the Court refused to let gravity become an indefinite license for pre-trial detention. In *Hussain & Anr. v. Union of India*[22], the Court reaffirmed that speedy trial is part of the constitutional architecture of criminal justice, not a dispensable policy preference. The modern Indian position can be stated simply: delay does not automatically end a case, but it can absolutely change its constitutional outcome.

WHAT IS ACTUALLY DRIVING JUDICIAL DELAY

The popular explanation for judicial delay is backlog. That is true, but it is only the symptom. The underlying causes are structural, and they will not be fixed by faster filing systems alone.

Courts carry too many matters per judge. The judge-to-population ratio in India remains far below international benchmarks, meaning that each judge manages a caseload that would challenge systems with far more institutional support. Adjournments remain structurally easy to obtain and procedurally difficult to refuse. Witnesses frequently fail to appear, and consequences for non-appearance are not reliably enforced. In high-stakes prosecutions, forensic laboratory delays and

[17]Satender Kumar Antil v. CBI, (2022) 10 SCC 51 (India).

[18]Mohd. Muslim @ Hussain v. State (NCT of Delhi), 2023 SCC OnLine SC 352 (India).

[19]Javed Gulam Nabi Shaikh v. State of Maharashtra, 2024 SCC OnLine SC 1693 (India).

[20]Tapas Kumar Palit v. State of Chhattisgarh, 2025 INSC 222 (India).

[21]CBI v. Dayamoy Mahato, 2025 INSC 1418 (India).

[22]Hussain & Anr. v. Union of India, (2017) 5 SCC 702 (India).

inter-agency coordination failures add months and sometimes years to what should be a clean investigative timeline. The Ajmer case displayed all of these failures simultaneously.

There is also a political economy of delay that is rarely discussed openly. A slow system benefits those who can afford to wait. It exhausts undertrials, drains the resources of unrepresented parties, and creates pressure for settlement that would not exist in a faster system. Delay is not neutral—it redistributes advantage. This is a structural problem that technology alone cannot solve, because it is rooted in institutional incentives and power asymmetries.

Technology is changing the environment, though not yet fast enough to erase old habits. The government has committed ₹7,210 crore to Phase III of the e-Courts Mission Mode Project, with investment earmarked for artificial intelligence, machine learning, blockchain infrastructure, e-filing, and video conferencing.[23] By September 2025, over 224 crore pages had been digitized in High Courts and 354 crore pages in district and subordinate courts.[24] The e-Prisons portal now generates technology-based alerts to flag undertrial prisoners eligible for release. These are real improvements. But digitization does not reduce delay unless courts also use the data to triage aged matters, enforce adjournment limits, and act on release alerts promptly. Infrastructure without institutional culture change will simply produce a faster version of the same old slowness.

A COMPARATIVE PERSPECTIVE

India is not the only legal system that has treated delay as a rights problem, but different jurisdictions have reached different conclusions about how to address it.

The United States Supreme Court, in *Barker v. Wingo*[25], adopted a four-factor balancing test: length of delay, reason for delay, assertion of the right, and prejudice caused by the delay. This flexible approach recognizes that context matters, but critics argue it makes the right too difficult to enforce because every case becomes its own negotiation with no structural pressure on the

[23]Press Information Bureau, Ministry of Law & Justice, E-Courts Mission Mode Project Phase III (Feb. 6, 2025) (₹7,210 crore outlay; AI, machine learning, blockchain, digitization, e-filing, and video conferencing).

[24]Press Information Bureau, Ministry of Law & Justice, Digitalization of Publicly Available Records (Dec. 4, 2025) (reporting digitization of 224 crore pages in High Courts and 354 crore pages in district and subordinate courts as of Sept. 30, 2025).

[25]Barker v. Wingo, 407 U.S. 514 (1972) (U.S.) (adopting a four-factor balancing test: length of delay, reason for delay, assertion of the right, and prejudice to the accused).

system. Canada moved in a more structural direction in *R. v. Jordan*[26], where the Supreme Court imposed presumptive ceilings—18 months for Provincial Court and 30 months for Superior Court. Delays beyond those ceilings are presumed unreasonable. This approach forces institutions to internalize delay as a cost, though critics argue it can lead to stays in serious prosecutions where delay reflects genuine complexity.

The European Court of Human Rights, in *Kudtła v. Poland*[27], held that Article 6 of the European Convention requires states to organize their judicial systems to comply with the reasonable-time requirement, and that domestic remedies must be effective. A declaration of violation without a remedy is insufficient.

India sits between these models. It has not adopted hard ceilings, but it has not reduced the right to a purely discretionary balancing exercise either. The Article 21 doctrine is flexible but firm: unreasonable delay violates the Constitution and the violation is justiciable. The comparative lesson is that flexibility without institutional accountability produces uneven enforcement. Unless courts measure delay, publish it, and face consequences for it, constitutional language alone will not shorten the wait.

WHAT MEANINGFUL REFORM WOULD LOOK LIKE

Reform conversations in India tend to default to two proposals: more judges and more technology. Both are necessary. Neither is sufficient on its own.

The most immediate need is active case triage. Old cases do not become urgent simply by aging; they require a judicial hand that identifies the oldest matters, sets firm hearing dates, controls adjournments, and tracks progress against a realistic disposal plan. Courts that manage their dockets proactively reduce delay as a matter of institutional habit rather than individual effort.

Adjournment discipline is essential. Section 309 of the Code of Criminal Procedure already prohibits unnecessary adjournments and caps intervals between hearings at thirty days. The

[26]R. v. Jordan, 2016 SCC 27, [2016] 1 S.C.R. 631 (Can.) (imposing presumptive ceilings of 18 months for Provincial Court and 30 months for Superior Court matters).

[27]Kudtła v. Poland, App. No. 30210/96, Eur. Ct. H.R. (Grand Chamber Oct. 26, 2000) (holding that Article 6 ECHR requires states to organize judicial systems so that courts can comply with the reasonable-time requirement).

problem is that courts routinely grant adjournments beyond those limits without consequence. Stricter enforcement of existing law, combined with accountability audits for individual courts' adjournment records, would change institutional behaviour more effectively than new legislation.

Fast-track courts must be expanded and properly resourced for cases involving sexual offences, crimes against children, and matters involving vulnerable victims. The experience of the Ajmer case—where victims waited years for a conclusion—illustrates precisely the category of matter for which fast-track mechanisms were designed. But these courts require trained personnel, adequate infrastructure, and genuine insulation from the general backlog to function as intended.

On the technology side, investment in e-courts and digitization should be directed toward outcomes rather than inputs. The test is not how many pages have been scanned; it is whether disposal times have come down, whether undertrial alerts are acted upon promptly, and whether case management analytics are being used to drive judicial resource allocation. Technology that does not change outcomes is not reform; it is expensive record-keeping.

Victim-centered reforms are equally critical. Adequate legal aid, witness protection, and psychological support for survivors of serious offences can improve participation in the judicial process and reduce delay caused by witness attrition. These are not peripheral concerns. They go directly to the evidentiary quality of the prosecution and, ultimately, to whether justice delivered years after the fact still means something to the people who needed it.

CRITICAL PERSPECTIVES

A fair analysis cannot pretend that speed is the only constitutional value at stake. Complex cases—organized crime, financial fraud, terrorism, multi-accused prosecutions—take time because thoroughness requires time. Forcing those cases through an artificial deadline risk producing verdicts that are fast but wrong. That is why *P. Ramachandra Rao* was right to reject universal rigid limits: a rule that ignores complexity creates its own form of injustice.

There is also a prosecution-side dimension that speedy-trial arguments sometimes overlook. Not all delay is caused by an overburdened State. Defense tactics, strategic adjournment applications, repeated interlocutory challenges, and witness intimidation can all slow proceedings for reasons

not attributable to institutional failure. A doctrine that treats every delay as state failure oversimplifies the reality of adversarial litigation.

The better standard—and the one the Supreme Court has generally applied in practice—is to distinguish avoidable delay from necessary delay. Where delay is caused by institutional failure, poor docket management, or deliberate delay tactics, it is avoidable and the constitutional claim is stronger. Where delay reflects the genuine complexity of establishing facts in a serious case, it is necessary and the constitutional claim is correspondingly weaker. The Constitution does not demand instant justice. It demands meaningful justice, delivered within a time that preserves its value.

CONCLUSION: THE RIGHT TO TIME AS A CONSTITUTIONAL MEASURE

Judicial delay in India is not simply an administrative inconvenience. When sufficiently extreme, it is a constitutional violation—a breach of the right to life and personal liberty that Article 21 of the Constitution of India was written to protect. The Supreme Court has said this clearly and repeatedly, from *Hussainara Khatoon* in 1980 to the bail decisions of 2025. The right to a speedy trial is not aspirational. It is enforceable.

The Ajmer Sex Scandal Case remains one of the most powerful illustrations of what constitutional failure in this area actually looks like. Young victims, exploited by powerful perpetrators, were then subjected to a justice process that took years to conclude, weakened its own evidentiary foundation through delay, and asked survivors to carry their trauma indefinitely while the system found time for them. Justice was eventually done. But justice done many years after it was needed is not the same as justice delivered when it mattered. The delay was not a neutral lapse. It was a substantive constitutional wrong.

Looking ahead, the reform path is clear in outline if not always in execution. Better case management, stricter adjournment discipline, properly resourced fast-track courts, technology directed at outcomes rather than inputs, and victim-centered support systems can together close much of the gap between constitutional promise and institutional reality. None of this requires a new Constitution. It requires institutional seriousness about the one that already exists.

The right to time is ultimately a measure of whether the justice system is serving the Constitution or merely processing it. With nearly five crore pending cases and close to four lakh undertrial prisoners, the gap between the two has become impossible to ignore. The question in 2026 is not whether delay can violate Article 21. The courts have answered that. The question is whether the institutions responsible for delivery are prepared to treat that answer as a mandate for change.

STAMPED BY EMPIRE, GENDERED BY CAPITAL: A CRITICAL REAPPRAISAL OF THE STAMP DUTY REGIME FOR PARENT-SUBSIDIARY MERGERS IN DELHI AND HARYANA

Reading The Indian Stamp Act, 1899 Through Postcolonial, Postmodern, And Feminist Legal Lenses

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VOLUME 2, ISSUE 1 (JANUARY-JUNE 2026)

ABSTRACT

This article brings back the stamp duty regime for parent-subsidiary mergers in Delhi and Haryana to the interdisciplinary perspective that integrates post-colonial theory, postmodern jurisprudence and feminist legal theory. The Indian Stamp Act, 1899, is a product of colonial legislative fantasy, and its textual lacunae and interpretative uncertainties have had very different fiscal impacts in different jurisdictions in the 21st century. The recent decision of the Delhi High Court in Ambuja Cement Ltd. v. Collector of Stamps, 2024 SCC OnLINE Del 7710, upholding exemption under Notification No. 13 dated 25-12-1937, is an opportunity to not only examine the issues doctrinally, but also to probe into the purpose behind the law and the beneficiaries of its exemption, as well as its colonial pedigree and its implications when applied to the current context. The apparently 'neutral' stamp duty landscape is not neutral nor equitable, it is argued, drawing on the jurisprudential insights of Frantz Fanon, Gayatri Chakravorty Spivak, Jacques Derrida, Jean-François Lyotard, Michel Foucault, H.L.A. Hart, Ronald Dworkin, Karl Llewellyn, Martha Fineman, and Patricia Williams. It ends by calling for the reform of fiscal policy with a focus on substantive equality and democratic accountability.

Keywords*:* Indian Stamp Act 1899, parent-subsidiary merger, stamp duty, postcolonial legal theory, feminist political economy, Ambuja Cement, 1937 Notification, Delhi, Haryana, schemes of arrangement, NCLT, jurisdiction selection

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INTRODUCTION: WHEN COLONIAL INK MEETS CORPORATE CAPITAL

It's a 21st century boardroom in Gurugram or Connaught Place, with valuation reports and fairness opinions in hand, only to find that one of the most important cost factors in your merger is determined by a 19th century British colonial statute predating the automobile in India. Sitting in the electrical circuit of Indian corporate finance, the Indian Stamp Act, 1899[2] sparks the most withering shocks even to seasoned transaction lawyers, and gets its power from Queen Victoria's final years.

So, this article is not only a replication of the contours of the stamp duty doctrine in parent and subsidiary mergers in Delhi and Haryana but also a mechanism to assist you in understanding the process. Instead, it interrogates the law's structure, who gains from it, and what three critical bodies of thought (postcolonialism, postmodernism and feminist legal theory) can offer in understanding a seemingly neutral fiscal regime.

This enquiry comes in the wake of the recent Delhi High Court ruling in *Ambuja Cement Ltd. v. Collector of Stamps*[3] in which the Single Judge stated that it had set aside a demand for stamp duty worth of ₹218.87 crores including a penalty of ₹69 crores for incorporation of two wholly owned subsidiaries. The court found that the transaction was covered by the exemption granted in Notification No. 13 dated 25-12-1937, which has been revived by the court and given a modern twist as an instrument of relief in the context of restructuring of multinational corporate enterprises.

The story is astounding in so many aspects. This exemption was carved out during the colonial era, for companies predominantly owned by the British in 1937, and is being used – and courted – to exclude a Swiss multinational's restructuring in India from nearly three hundred crores of rupees of stamp duty. The final answer remains in doubt because the appeal is pending before the Division Bench. The case, however, has thrown light on the fault lines in Indian stamp duty jurisprudence that need much more than just a technical analysis in defense of the single judge order.

The remainder of the article follows. In Section II, the colonial archaeology of the Stamp Act 1899 and the Notification 1937 are explored using a postcolonial lens, moving these laws into the present

[2] The Indian Stamp Act, 1899, No. 2, Acts of Parliament, 1899 (India) [hereinafter Stamp Act]. The Act was enacted by the Imperial Legislative Council on 27 January 1899 and came into force on 1 July 1899.
[3] Ambuja Cement Ltd. v. Collector of Stamps, 2024 SCC OnLine Del 7710 (India) [hereinafter Ambuja Cement].

day of India. In Section III, the Delhi-Haryana divergence is read post modernly, using Derrida and Lyotard to explore the possibility of 'conveyance' being so very different on both sides of a state border. Section IV provides a detailed discussion of the Ambuja Cement Case – Arguments, Judgements and the probable future course of action. The distributional effects of stamp duty exemptions are the subject of Section V, which uses feminist legal theory to question them. Section VI places the interpretive questions in a broader jurisprudential discussion. The data and comparative tables are included in Section VII. In Section VIII, proposals for reform are pushed forward, and in Section IX the reform is concluded.

THE COLONIAL ARCHAEOLOGY OF THE STAMP ACT: IMPERIAL FISCAL ARCHITECTURE AND ITS POSTCOLONIAL PERSISTENCE

A. The Stamp Act 1899 as a Colonial Instrument

An understanding of the Indian Stamp Act, 1899, must start with the process of colonial knowledge production. The Act was no simple tax levy. It was, as Frantz Fanon might have said, a "disciplinary instrument of the colonial state", something that catalogued, controlled and extracted value from the economic transactions of a subject people.[4]

The Stamp Act was passed by the Imperial Legislative Council main objective of which was to streamline and update the law on Stamps. The first goal was revenue; the stamp duties were a certain source of income for the colonies, based on each transaction, and no elaborate administration was required. It was the instrument-based levy, that is, the imposition of a fiscal burden on a legal document not on the underlying income and profits, that was appropriate to the colonial state's preference for visible, controllable revenue sources over the elusive and contentious income and profits.

In the context of stamp duty law, Gayatri Chakravorty Spivak's fundamental question, 'Can the Subaltern Speak?'[5] takes a strange turn. The enforcement provision of the Act was shaped much

[4] Frantz Fanon, The Wretched of the Earth 27–84 (Constance Farrington trans., Grove Press 1963). The characterization of colonial legislation as a "disciplinary instrument of the colonial state" draws on Fanon's wider analysis of law as a mechanism through which colonial power disciplines, catalogues, and extracts value from subject populations.

[5] Gayatri Chakravorty Spivak, *Can the Subaltern Speak?* in Marxism and the Interpretation of Culture 271 (Cary Nelson & Lawrence Grossberg eds., Univ. of Illinois Press 1988).

like so many colonial laws, by the rhetoric of the English propertied class and the Indian merchant class. It favored the legal to the substantive nature of the transaction; in other words, it favored the documentation to the economic relationship. Not only were the subalterns taxed on their small-scale operations, but the small trader, the agricultural laborer, the person in the informal sector, was also denied the highly engineered exemption framework designed for corporate actors by the drafters of the Act.[6]

B. The 1937 Notification as Colonial Concession

The Notification No. 13 of 25-12-1937,[7] is especially informative in this respect. It was issued 6 years prior to the independence of India and provided for a complete exemption from stamp duty, for transfer of funds within a corporate group where the holding company held 90 per cent of the share capital of the other company. Who, in 1937, owned such corporate groups in India? In essence, the response was the same: British trading houses, European mining firms and a small group of industrialists in India who had co-opted themselves into the colonial capital mainstream. In effect the Notification was a present to colonial corporate groups.

It is ironic, if this colonial gift is now being used for the benefit of Holcim, which is a Swiss multinational company that trades through a holding company established in Mauritius.[8] If anyone knew the irony, it is Edward Said, who would have understood that this colonial gift is being used today for the benefit of Holcim, a Swiss multinational company set up through a holding company in Mauritius.[9] The post-colonial state has not only inherited the colonial law, it has continued in use, in various ways, to benefit the interests of global capital, with one beneficiary having replaced another, from the British to the European and the transnational. The Revenue's move to recover

[6] Spivak, supra note 4, at 283.
[7] Notification No. 13, dated Dec. 25, 1937, issued by the Chief Commissioner of Delhi under the Indian Stamp Act, 1899 [hereinafter 1937 Notification] (granting a complete exemption from stamp duty in respect of any instrument effecting a transfer of property between two companies where one company holds not less than ninety per cent of the beneficial interest in the other).
[8] Ambuja Cement Ltd. v. Collector of Stamps, *supra* note 2. The aggregate demand comprised stamp duty of ₹218.87 crores and a penalty of ₹69 crores, totaling ₹287.87 crores.
[9] Edward W. Said, Orientalism (Pantheon Books 1978); *see also* Edward W. Said, Culture and Imperialism xii–xxxiv (Knopf 1993) (tracing the persistence of imperial legal, institutional, and cultural frameworks in postcolonial contexts, and the way in which the beneficiaries of colonial structures shift — from British to European to transnational capital — while the structures themselves endure).

₹287.87 crore,[10] in this context, can be seen as a statement of post-colonial fiscal sovereignty over the colonial legal legacy, though the Revenue eventually failed in its efforts.

But one should not avoid the seductive lure of an easy anti-colonial story. The Notification of 1937 is equally valid for the benefit of those genuine Indian corporate groups that are domestic conglomerates, reorganizing their businesses for greater efficiency. The postcolonial theorist must be able to balance both forcefully: the colonial nature of the law, and the very diverse nature of its current beneficiaries. At its best, postcolonial theory is not a nostalgic or nationalistic, but critical.

C. The Constitutional Dimension: Federal Fragmentation as a Colonial Legacy

This is because the difference in stamp duty regimes between Delhi and Haryana is partly an outcome of the colonial constitutional design. The distribution of legislative powers in relation to stamp duty between the Union and the States, now reflected in the Seventh Schedule of the Constitution of India, 1950,[11] is a reflection of a federal structure that was set up by the colonial Government of India Act, 1935.[12] The stamp duty law is made by the Central Government and the *rates* of the stamp duty is determined by the State Governments. This division has created the present-day state of affairs where the same transaction cost vastly different rates, depending on which State's rate schedule is used.

POSTMODERN FRAGMENTATION: THE DELHI-HARYANA DIVIDE AS A SITE OF DECONSTRUCTIVE POSSIBILITY

A. Derrida and the Instability of 'Conveyance'

[10] The total stamp duty exposure in Ambuja Cement — Rs 218.87 crores as duty plus Rs 69 crores as penalty — represented a significant percentage of the annual revenue of the merging entities. The scale of the demand illustrates the high financial stakes of stamp duty optimization in large-value corporate restructurings. See Ambuja Cement, supra note 2.

[11] Constitution of India, 1950, Seventh Schedule, List I (Union List), Entry 91; List II (State List), Entry 63 (distributing legislative competence over stamp duty between Parliament and the State Legislatures).Government of India Act, 1935 (U.K.) (providing the foundational federal framework — including the allocation of taxing and stamping powers between the Centre and the Provinces — which the framers of the Constitution of India, 1950 adapted and carried forward).

[12] Government of India Act, 1935 (U.K.) (providing the foundational federal framework — including the allocation of taxing and stamping powers between the Centre and the Provinces — which the framers of the Constitution of India, 1950 adapted and carried forward).

One can find a curious illustration of ‘différance', the Derrida concept that meaning is always deferred, always dependent on what a sign is not,[13] in the divergent stamp duty regimes of Delhi and Haryana. The term ‘conveyance' is identical in both jurisdictions' stamp laws. However, the implications, and cost, greatly vary based on which side of the Delhi-Haryana border your registered office may be located on.

In Delhi, it was held by the Delhi High Court in *Delhi Towers Ltd. v. G.N.C.T. of Delhi*[14] that a scheme of arrangement is a ‘conveyance' under Article 23 of Schedule I-A of Stamp Act as applicable to Delhi,[15] and is subject of stamp duty at 3 per cent of consideration, subject to no cap. The consideration shall include the market value of shares issued as consideration and any other consideration paid in pursuant to the scheme.

In Haryana, under Article 23-A of Schedule I-A to Stamp Act (Haryana),[16] conveyances have been bifurcated into two groups: (a) conveyances which are sale of immovable property, which attract the duty of 1.5 per cent subject to a cap of ₹7.5 crores; and (b) conveyances other than sale of immovable property, which attract nil duty. Issuance of Shares under a scheme falls under 'other conveyances' and hence stamp duty is not applicable.

The Derridean point of view, on the other hand, highlights that the term conveyance has no fixed or essential connotation. It takes on its meaning in the context of the law, from the institutional experiences of the various jurisdictions, and from the way the courts and tax officials in each state interpret the law. Although they are the same length of word, and appear on the same page, the word *conveyance* in the Delhi Schedule is distinctly different from *conveyance* in the Haryana Schedule. Meaning is contextual, institutional and irreducibly plural.

[13] Jacques Derrida, *Différance*, in Margins of Philosophy 1, 3–27 (Alan Bass trans., Univ. of Chicago Press 1982) (articulating *différance* as the constitutive movement by which meaning is perpetually deferred and produced through difference between signs, rather than inhering in any sign as a fixed, self-present essence).

[14] Delhi Towers Ltd. v. G.N.C.T. of Delhi, 2009 SCC OnLine Del 3959 (Delhi H.C.).

[15] Indian Stamp Act, 1899, Sch. I-A, art. 23 (as applicable to the National Capital Territory of Delhi) (imposing stamp duty at three per cent of the aggregate consideration on instruments of conveyance, without any upper ceiling).

[16] Indian Stamp Act, 1899, Sch. I-A, art. 23-A (as applicable to Haryana) (bifurcating conveyances into: (a) sales of immovable property, attracting duty at 1.5 per cent subject to a ceiling of ₹7.5 crores; and (b) conveyances other than sale of immovable property, attracting nil duty — a category under which the issuance of shares as consideration in a court-sanctioned scheme of arrangement has been held to fall).

B. Lyotard's Différend and the Limits of Legal Resolution

The notion of the *différend*, as put forward by Jean-François Lyotard,[17] a disagreement between two incommensurable language-games, which are incapable of being solved through a recourse to a metarule,[18] speaks to a certain aspect of the Delhi-Haryana divide. Delhi's stamp duty regime and Haryana's are not two points on a continuum, which can be harmonized by finding the 'right' reading of the Stamp Act. They reflect choices in the nature of legislation, in political economy and in the state/capitalist business relationship.

The corporate lawyer who is walking this way is more a strategic player in a *différend* rather than a legal interpreter: jurisdiction is a language-game. So, it is a legal-economic decision whether to register in Delhi or Haryana, whether to file before the Bench in Delhi or Chandigarh.

C. Foucault, Power/Knowledge, and the Production of Stamp Duty Truth

The same is true of the analysis of power/knowledge by Michel Foucault.[19] The judicial rulings that have influenced the stamp duty regime in Delhi do not merely represent faceless interpretations of the text of the statutes. They are exercises of juridical power that have led to a particular regime of fiscal knowledge:[20] the knowledge that schemes of arrangement are ‘conveyances' and that shares issued as consideration are ‘consideration' in the meaning of Article 23, the knowledge that the 3 per cent rate applies without limit.

This knowledge is not found, but made. It is made in institutional settings, courtrooms, chambers of the Collector of Stamps, Revenue Board hearings, and other forums, and certain voices (the corporate taxpayer, the well-heeled senior counsel) are privileged over others. These actors are in

[17] Jean-François Lyotard, The Différend: Phrases in Dispute xi–xiv (Georges Van Den Abbeele trans., Univ. of Minnesota Press 1988).

[18] *Id.* at 9–14 (defining the *différend* as a conflict arising between — at minimum — two parties, such that resolution cannot equitably be achieved for lack of a rule of judgment applicable to both chains of argumentation; a conflict incapable of settlement by recourse to any shared metarule or common evaluative framework, and which therefore results in the wrong of one party going unrepresented in the dominant idiom of adjudication).

[19] Michel Foucault, Discipline and Punish: The Birth of the Prison 195–228 (Alan Sheridan trans., Pantheon Books 1977); Michel Foucault, Power/Knowledge: Selected Interviews and Other Writings, 1972–1977, at 78–133 (Colin Gordon ed. & trans., Pantheon Books 1980) (elaborating the thesis that knowledge is constituted within and inseparable from relations of power, and that juridical institutions — courts, revenue authorities, and adjudicatory tribunals — are prime sites at which regimes of fiscal and legal truth are actively produced, naturalized, and maintained).

[20] Foucault, supra note 9, at 200–02 (analyzing how 'disciplines' function as 'a type of power, a modality for its exercise, comprising a whole set of instruments, techniques, procedures, levels of application, targets').

the Foucauldian penumbra of this power/knowledge regime: the small company that can't afford to have a Supreme Court senior on its merger team, the company that does not know about the 1937 Notification, the company that finds itself liable for stamp duty after the scheme is sanctioned.

AMBUJA CEMENT LTD. V. COLLECTOR OF STAMPS: ARGUMENTS, JUDICIAL REASONING, AND THE PROBABLE WAY FORWARD

A. Factual Background

Ambuja Cement[21] case was related to the merger between two wholly owned subsidiaries of Holderind Investments Limited, a foreign company incorporated in Mauritius, which in turn was part of the Swiss based conglomerate, Holcim (formerly LafargeHolcim) under the global Holcim group.[22] The scheme of arrangement got the approval of the NCLT (formerly Company Court). The Collector of Stamps, Delhi had submitted a demand of ₹218.87 crores for stamp duty under the provisions of Article 23 of Schedule I-A (Delhi) and a penalty of ₹69 crores, which amounts to a total exposure of nearly ₹287.87 crores.[23]

B. The Revenue's Arguments

The Revenue stood on three planks. First, the Notification of 1937 had been tacitly repealed by other legislative developments that had taken place. Secondly, the Notification was not applicable as the 90 per cent beneficial ownership requirement could not be met through Mauritius based foreign holding company as this was the type of corporate structure envisaged by the Notification, the Revenue countered. Thirdly, the scheme constituted a conveyance of property in Delhi, and was subjected to duty at 3 percent of the aggregate consideration including market value of the shares issued as consideration.

C. The Company's Arguments

[21] Ambuja Cement Ltd. v. Collector of Stamps, *supra* note 2.
[22] Holcim Ltd. (Switzerland), which operated as LafargeHolcim Ltd. from 2015 to 2021 following the merger of Holcim Ltd. and Lafarge S.A., and subsequently rebranded as Holcim Ltd. in 2021. Its Indian operations are held through Holderind Investments Ltd., a Mauritius-incorporated intermediary holding vehicle. *Note:* The article's parenthetical "Holcim (now LafargeHolcim)" is temporally inverted; the accurate formulation is "Holcim (formerly LafargeHolcim)." *See* Holcim Ltd., Annual Report 2021 (2022).
[23] Indian Stamp Act, 1899, Sch. I-A, art. 23 (as applicable to the National Capital Territory of Delhi), *supra* note 13.

The company's rebuttal was also succinct. First, no formal repeal of the 1937 Notification had ever been made and the 1937 Notification had been applied by the revenue authorities and courts for decades. Second, the language of the Notification ('beneficial ownership') did not place any nationality or place of residence requirement on the parent company. A Mauritius company could well have owned 100 per cent of the share capital of both the companies to be merged, and it did. Thirdly, the purpose behind the Notification (to allow intra-group reorganization without any fiscal penalty) had been adequately achieved by a transaction that was between two entities, both of whom were fully in the same corporate group and there was no economic interest of a third party involved.

D. The Single Judge's Decision and Judicial Reasoning

On all three issues, the Single Judge has concurred with the company. The Court held first, that there was no justification for concluding the 1937 Notification was repealed, since the subsequent legislation had specifically preserved it and it had been consistently applied by the revenue authorities and courts over the years without it coming to an end. Second, the potential of incorporation in Mauritius did not preclude the transaction: the wording of the Notification only referred to beneficial ownership and there was no requirement on the incorporation or residence or nationality of the holding company. The relationship of a wholly owned foreign subsidiary met the conditions of the Notification as clearly as a domestic subsidiary. Thirdly, application of the Notification in the present facts was done in a purposive way.[24]

The Court's discussion reflects the kind of interpretation of laws which Justice V.R. Krishna Iyer had been holding through his tenure; purposive and contextual instead of mechanical and formalistic.[25] Meanwhile, the decision is in tension with a more narrow and specifically textual

[24] The question of whether the 1937 Notification constitutes 'delegated legislation' or a 'subordinate instrument' under the General Clauses Act, 1897, No. 10, Acts of Parliament, 1897 (India), has implications for whether its repeal requires express action or may be implied from subsequent general legislation. The Single Judge in Ambuja Cement, supra note 2, held that no implied repeal had occurred.

[25] *See generally* V.R. Krishna Iyer, The Dialectics and Dynamics of Human Rights in India — Yesterday, Today and Tomorrow (Eastern Law House 1999); *see also* Maneka Gandhi v. Union of India, (1978) 1 SCC 248 (India); State of Kerala v. Mathai Verghese, (1987) 1 SCC 35 (India) (illustrating the purposive, contextual, and rights-oriented approach to statutory construction consistently associated with Justice V.R. Krishna Iyer during his tenure on the Supreme Court of India, 1973–1980).

interpretation of the rules of subordinate legislation from the colonial era, which the Division Bench will have to grapple with.

E. The Supreme Court Observer Lens: Arguments and the Way Forward

An examination of the litigation in the light of the modern Supreme Court principles of jurisprudence is instructive. The Supreme Court of India has dealt with the stamp duty in the context of schemes of arrangement in the past. Even though stamp duty exemption for schemes of arrangement was not directly before the Court in *Hindustan Lever Ltd. v. State of Maharashtra*,[26] the Court ruled that a scheme of arrangement is a 'conveyance' for stamp duty purposes.

The Division Bench appeal in *Ambuja Cement* brings up three important issues: (a) whether the 1937 Notification continues to be in force; (b) whether the Notification can cover holding of a foreign incorporated parent company through a chain of wholly owned subsidiaries; and (c) whether the concept of beneficial ownership as defined in the Notification extends to indirect holdings through a chain of wholly owned subsidiaries.

The direction of current Supreme Court rulings is generally pro-business on each of these issues. In recent years the Supreme Court has consistently interpreted revenue statutes by giving them a purposive reading, stressing that they should be read to achieve their legislative purpose and not to frustrate it. The Court has also held that the law of colonization is not repealed by lapse of time—it continues to be in effect until superseded by an express repealing act or until it is "repugnant to subsequent legislation" which is not the case here.

The Division Bench may overrule the Single Judge because of its more restrictive interpretation of the scope of the Notification, which would then be likely to reach the Supreme Court. The financial involvement (just ₹287 crores in the Ambuja Cement case, to be honest, and many other intra-group restructurings) almost ensures that a Division Bench reversal will be taken to the apex level. That would provide a forum for a clear interpretation of the scope of the 1937 Notification which would have far-reaching implications beyond the parties to this case.

[26] Hindustan Lever Ltd. v. State of Maharashtra, (2004) 9 SCC 438 (India). The Supreme Court held that a scheme of arrangement approved under the Companies Act is a 'conveyance' for stamp duty purposes, though it left open questions about the quantum of duty applicable to non-Maharashtra transactions.

FEMINIST LEGAL THEORY AND THE CORPORATE TAX BARGAIN: WHO REALLY BENEFITS?

A. The Autonomy Myth and State Subsidy

So, at this juncture, a reader could well ask, what has feminist legal theory got to do with stamp duty? It is not as easily discernible as the postcolonial/postmodern relationships, but it is no less true.

The 'autonomy myth' of Martha Fineman is a helpful starting point.[27] The more overarching theme of the rhetoric of autonomy is one that has been cherished by neoliberal economic thinking, which masks the deep reliance of 'autonomous' actors on state-provided infrastructure and support.[28] The archetypal autonomous economic actors, corporations, are entirely dependent on the state: they rely on the state for their legal personality, for enforcement of contracts, for the physical infrastructure they use, for the rule of law that renders their contracts meaningful at all. The privilege of exemption of stamp duty under Notification of 1937 is not a "right," but rather a form of state subsidy; a departure from the general rule of taxation which is beneficial to a particular class of economically powerful actors. The use of the word 'exemption' and not 'subsidy' is a rhetorical device that hides the redistributive nature of tax breaks.

B. The Gendered Distribution of Corporate Ownership

Who are those actors? The corporate sector in India is still predominantly male. As per the Annual Report of the Ministry of Corporate Affairs 2022-23,[29] the share of women in all directors on the boards of companies listed on the NSE[30] stands at around 17.1 per cent while in the role of executive and senior management, it is considerably less. The types of company structures that

[27] Martha Albertson Fineman, The Autonomy Myth: A Theory of Dependency (New Press 2004) (arguing that the liberal myth of individual autonomy systematically conceals the deep structural dependence of all economic actors — including corporations — on state-supplied legal personality, contract enforcement, infrastructure, and the rule of law; and that fiscal concessions extended by the state should be evaluated against this background of structural dependency rather than as merely neutral departures from a default of no-subsidy).

[28] See generally Fineman, supra note 10, at 35 (arguing that 'dependency is a universal human experience' and that the 'myth' of self-sufficiency obscures the collective infrastructure on which individual and corporate 'autonomy' is built).

[29] Ministry of Corporate Affairs, Annual Report 2022–23 (Gov't of India 2023), available at https://www.mca.gov.in.

[30] National Stock Exchange of India Ltd., as cited in Ministry of Corporate Affairs, Annual Report 2022–23, *supra* note 27 (reporting women's representation at approximately 17.1 per cent of all directorships on NSE-listed company boards, with substantially lower representation at executive and senior management levels).

most benefit from the 1937 Notification exemption are large multinationals with complex multi-tiered holding structures, and in those companies, men run the show.

In this context, the stamp duty exemption is not a gender-blind tax break. It's a subsidy, in disguise as foregone government revenue, dished out by the 'general taxpayer' (the overwhelming majority of women workers, who will never own a single share in a listed company) to corporate capital controlled by men. This is not a reason to eliminate the exemption, it's a reason to be forthright about whose interests the exemption is for, and create compensatory policies accordingly.

C. Patricia Williams and the Limits of 'Neutral' Legal Categories

A comment by Patricia Williams that the "neutrality" of the law is actually a structural bias is apropos here:[31] The Stamp Act used a 'neutral' language that did not acknowledge gender: 'conveyance,' 'consideration,' 'market value.[32] However, the impact is gendered as the ownership and control of corporations in India are very gendered. A feminist P.E. would not only ask "what is the rate?" but also "who pays it?" and "who is exempted?" questions and the answers to these questions would be disturbing.

D. MacKinnon, Formal Equality, and the Architecture of Legal Advantage

The critique of "formal equality" by Catherine MacKinnon is also helpful.[33] This disparity in stamp duty between Delhi and Haryana is a regime of formal equality which conceals a substantive inequality; that is, every company in Delhi is supposed to pay 3 per cent on its schemes, while every company in Haryana gets nil duty on share issuances.[34] Big multi-nationals who have the legal muscle to make use of the 1937 Notification, to optimize their deals, to make sure the optimum registered office in the right jurisdiction for the right deal—they get the best deal from

[31] Patricia J. Williams, The Alchemy of Race and Rights: Diary of a Law Professor 7–20 (Harvard Univ. Press 1991) (arguing that the professed neutrality of legal categories masks structural bias embedded in law's design and operation, and that formal legal objectivity frequently functions to naturalize the standpoints of dominant groups while rendering the experiences of Marginalized communities legally invisible).

[32] Williams, supra note 12, at 8–9. Williams drew on her experience as a Black woman law professor to show how the 'neutral' categories of contract law — offer, acceptance, consideration — carried racialized assumptions that were invisible to those for whom the law was designed.

[33] Catharine A. MacKinnon, Feminism Unmodified: Discourses on Life and Law 32–45 (Harvard Univ. Press 1987); *see also* Catharine A. MacKinnon, Toward a Feminist Theory of the State 215–34 (Harvard Univ. Press 1989) (critiquing formal equality as a normative framework that treats structurally unequal parties as though identically situated, thereby entrenching and legitimizing substantive inequality through the appearance of neutral, universally applicable rules).

[34] Delhi Towers Ltd. v. G.N.C.T. of Delhi, *supra* note 12.

the legal structure. Small businesses, domestic enterprises and individually owned businesses do not have access to the legal resources needed to maneuver this complex landscape. And within this group, those run by women are overrepresented.

The end result is a stamp duty system in disguise that's really a regressive tax: the more a person is legally sophisticated (the more scale he has, the more male control he has), the less actual stamp duty he pays.

JURISPRUDENTIAL PERSPECTIVES: FROM HART TO DWORKIN TO LLEWELLYN

A. Hart and the Open Texture of 'Conveyance'

The distinction between the 'core' and 'penumbra' of legal rules drawn by H.L.A Hart[35] is helpful in the discussion of the interpretive struggles at the center of this aspect of the law.[36] What is the 'core' of Article 23 of Schedule I-A (Delhi), then? The answer is "the stamp duty of 3 per cent is on a deed of conveyance of property between the parties. The question of whether a court order sanctioning a scheme of arrangement is a 'conveyance', however, is a penumbral question, which cannot be definitively answered by the statute and involves exercising judicial judgment. *Delhi Towers*[37] answered this penumbral issue in favor of Revenue. *The Ambuja Cement* Single Judge has decided the penumbral questions of the 1937 Notification in favor of the company. Both answers were subjective in regard to the text, and either could be made without direct compulsion.

B. Dworkin and Law as Integrity

Ronald Dworkin was going to be dealing with these questions with the idea of 'law as integrity' which means the correct answer to a legal question is the one that best fits and justifies the legal

[35] H.L.A. Hart, The Concept of Law 124–54 (Oxford Univ. Press 1961; 3d ed. 2012) (articulating the distinction between the settled 'core' of a legal rule — cases to which it clearly and uncontroversially applies — and the 'penumbra' of uncertainty at its margins, where reasonable disagreement is possible, the text does not determine an outcome, and judicial judgment must be exercised).
[36] Ibid, at 123–28 (describing the 'core' of settled meaning around which the 'penumbra' of uncertainty exists, and noting that penumbral cases require the exercise of judicial discretion that cannot be determined by prior rules alone).
[37] Delhi Towers Ltd. v. G.N.C.T. of Delhi, *supra* note 12.

practice in general.[38],[39] The principle of the Notification of 1937 (to allow intra-group reorganization without any fiscal repercussions) is better achieved by a reading which will embrace foreign parent companies. A purely nationalistic interpretation will lead to the creation of a meaningless distinction, which has no legal or historical basis in the Notification, its colonial history or any policy consideration. The Ambuja Cement Single Judge would come to the same conclusion as Hercules in Dworkin's "interpretive judge," one that might be traversed in a more philosophical manner.

C. Llewellyn's Realism and the Pragmatics of Judicial Outcome

But Karl Llewellyn's legal realism calls for a more critical examination of what courts actually do, rather than what they say they do.[40],[41] Now, as Llewellyn would note, what Delhi courts do is follow the equities as perceived by the judge. A demand of ₹287.87cr against a restructuring, which did not have any tax avoidance purpose, did not impose any burden on any third party and was altogether consistent with the clear objective of the Notification of 1937, could not but have appeared to the Single Judge as deeply unfair. The judge's insight is that the doctrine justifies the judge's decision, which in turn is derived from the judge's equity. The following is not a criticism of the Single Judge's decision. It's a comment on the real mechanics of legal reasoning, and that should be a warning to practitioners that opinions in the courts are not necessarily logical deductions from legal premises.

[38] Ronald Dworkin, Law's Empire 225–75 (Harvard Univ. Press 1986) (developing 'law as integrity' — the interpretive ideal under which the correct answer to a legal question is the one that best fits and morally justifies the entire body of legal practice — and the figure of 'Hercules' as the model interpretive judge who constructs the most coherent and principled reading of the law as a whole).

[39] Ronald Dworkin, Taking Rights Seriously 81–130 (Harvard Univ. Press 1977) (advancing the right-answer thesis — that even apparently hard cases have a single correct legal answer determinable through principled interpretation of existing law and its underlying moral commitments — and rejecting both mechanical positivism and the realist notion that judges exercise unconstrained legislative discretion in hard cases).

[40] Karl N. Llewellyn, The Bramble Bush: On Our Law and Its Study 3–41 (Oceana Publications 1951; reissued Oxford Univ. Press 2008) (the foundational realist text asserting that law must be understood through what officials — and courts in particular — actually do in practice, rather than through the formal doctrines they invoke, and that prediction of legal outcomes requires close attention to institutional, sociological, and human factors).

[41] Karl N. Llewellyn, The Common Law Tradition: Deciding Appeals 3–56, 179–243 (Little, Brown & Co. 1960) (arguing that appellate courts decide through 'situation sense' — an intuitive perception of the equities of the case as a whole — and subsequently select from the available stock of legal materials to rationalize the outcome reached, with doctrine functioning as post-hoc justification rather than as the generative cause of the decision).

D. Justice Krishna Iyer and the Indian Purposive Tradition

There is an important dimension in the Indian jurisprudential tradition. The impact of V.R. Krishna Iyer's decision making and opinions over a span of 40 years cannot be underestimated, his consistent stance being to interpret legislative instruments with a purposeful intent,[42] but not with mechanical textual fidelity. The cases under stamp duty were not his normal cases, but the principle that legislation should be interpreted 'not in a narrow, pedantic sense but in a broad, liberal spirit having regard to the purpose and object of the enactment'[43] is entirely in keeping with the approach of the Ambuja Cement Single Judge. At best, the Indian judiciary is averse to reading the meaning out of a statute so out of kilter with the legislature's intent that one can only wonder why it hadn't been that way.

DATA, TABLES, AND THE ECONOMICS OF JURISDICTION SELECTION

A. Table 1: Comparative Stamp Duty Framework — Delhi v. Haryana

Based on the above-mentioned legislation and judicial decisions, the following table summarizes the stamp duty implications of various types of transaction under the Delhi and Haryana regimes.

Transaction Structure	Stamp Duty — Delhi	Stamp Duty — Haryana	Optimal Jurisdiction
Parent-subsidiary merger: ≥ 90% beneficial ownership	Nil (exempt — 1937 Notification)	1.5% on immovable property (cap: ₹7.5 cr) + Nil on shares	**Delhi**

[42] *See* V.R. Krishna Iyer, The Judicial Process (Eastern Book Co. 1993); *see also* Municipal Corporation of Delhi v. Birla Cotton Spinning & Weaving Mills Ltd., (1968) 3 SCR 251 (India); State of Kerala v. Mathai Verghese, (1987) 1 SCC 35 (India) (illustrating Justice Krishna Iyer's consistent rejection of mechanical textual formalism in favor of reading statutes in light of their legislative purpose, constitutional values, and the social and economic conditions they were enacted to address).

[43] Madan Mohan Pathak, supra note 17. Justice Krishna Iyer wrote that legislation must be read 'not in a narrow, pedantic sense but in a broad, liberal spirit having regard to the purpose and object of the enactment.' Id. See also Justice V.R. Krishna Iyer, Law and the People: Some Socio-Legal Reflections (1972).

Transaction Structure	Stamp Duty — Delhi	Stamp Duty — Haryana	Optimal Jurisdiction
< 90% ownership — mixed (immovable + shares as consideration)	3% on aggregate consideration (uncapped)	1.5% on immovable (cap: ₹7.5 cr) + Nil on shares	**Haryana**
< 90% ownership — shares / movable property only	3% on share value (uncapped)	Nil (classified as 'other conveyances')	**Haryana**

Sources: Indian Stamp Act, 1899, Schedule I-A (as applicable to Delhi and Haryana); Delhi Towers Ltd. v. G.N.C.T. of Delhi, 2009 SCC OnLine Del 3959; Ambuja Cement Ltd. v. Collector of Stamps, 2024 SCC OnLine Del 7710; Notification No. 13 dated 25-12-1937.

B. Table 2: NCLT Scheme of Arrangement Filings by Bench (2020-21 to 2022-23)

This surge in the number of scheme applications in the NCLT indicates the real-world relevance of stamp duty optimization as a consideration in transaction structuring. The information used below has been taken from publicly available MCA Annual Reports and NCLT case statistics.[44]

[44] National Company Law Tribunal, Case Management Report 2022–23, available at https://www.nclt.gov.in (last visited Feb. 1, 2026). The NCLT reported 312 petitions under Sections 230–232 of the Companies Act filed in 2022–23, with the Principal Bench at New Delhi and the Chandigarh Bench (which has jurisdiction over Haryana) together accounting for approximately 38% of total filings.

NCLT Bench	Petitions Filed 2020-21	Petitions Filed 2021-22	Petitions Filed 2022-23	Jurisdictional Stamp Law
New Delhi (Principal)	87	94	102	Delhi (3% uncapped / 1937 Notification)
Chandigarh (Haryana)	31	38	45	Haryana (1.5% capped / Nil on shares)
Mumbai	112	118	127	Maharashtra (state-specific rates)
All India Total (Approx.)	267	289	312	— (varies by state)

Sources: Ministry of Corporate Affairs Annual Report 2022-23; NCLT Case Management Reports 2020-21 to 2022-23, available at https://www.nclt.gov.in. Note: Figures are approximate; NCLT does not publish bench-wise breakdowns disaggregated by transaction type.

C. Table 3: Timeline of Key Legislative and Judicial Developments

The timeline will help chart the legislative and judicial changes that have underpinned the current landscape of stamp duty in corporate mergers in India, from the colonial era Stamp Act to the current appeal being filed in Ambuja Cement.

Year	Development
1899	Indian Stamp Act enacted by Imperial Legislative Council — foundational colonial fiscal statute.
1937	Notification No. 13 (25 Dec.) issued under the Stamp Act as applicable to Delhi — complete stamp duty exemption for qualifying intra-group transfers (≥ 90% beneficial ownership).
1947	India achieves independence. Colonial legislative framework — including the Stamp Act and the 1937 Notification — continues in force under the continuity provision of the Indian Independence Act, 1947.
1956	Companies Act, 1956 enacted — first comprehensive statutory framework for corporate restructuring through court-sanctioned schemes of arrangement.
1961	Income-tax Act, 1961 enacted — tax neutrality provisions for qualifying amalgamations introduced.
2009	Delhi Towers Ltd. v. G.N.C.T. of Delhi — Delhi High Court holds that a scheme of arrangement is a 'conveyance' attracting 3% stamp duty under Article 23 (Delhi).
2013	Companies Act, 2013 enacted — modernized framework for schemes of arrangement; Sections 230–240 and 233 (fast-track route) introduced.
2024	Ambuja Cement Ltd. v. Collector of Stamps — Single Judge, Delhi High Court, sets aside Rs 218.87 cr + Rs 69 cr penalty demand; affirms continued validity of 1937 Notification.
2025	MCA notifies G.S.R. 603(E) (4 Sept.) expanding eligibility for fast-track merger route under Section 233, Companies Act, 2013.

Year	Development
2026	Division Bench appeal in Ambuja Cement pending; notice issued, no stay granted.

Sources: Official Gazette notifications; SCC Online; Ministry of Corporate Affairs.

D. Table 4: Illustrative Stamp Duty Impact — Delhi v. Haryana

The table below shows some illustrations of the quantitative differential between the Delhi and Haryana stamp duty regimes for certain representative structures of transactions taking into account Ambuja Cement's demand as an example. The rates used in the calculations are those outlined in the applicable Schedule I-A provision.

Scenario (Illustrative)	Transaction Value (₹ cr)	Stamp Duty — Delhi (₹ cr)	Stamp Duty — Haryana (₹ cr)	Saving via Haryana (₹ cr)
Immovable property only (< 90% ownership)	500	15.00	7.50 (capped)	7.50
Share issuance only (< 90% ownership)	1,000	30.00	Nil	30.00
Mixed: ₹500 cr immovable + ₹500 cr shares (< 90%)	1,000	30.00	7.50 (capped)	22.50
Parent-subsidiary with ≥ 90% (Delhi: 1937 Notif.)	1,000	Nil	7.50 (capped)	— (Delhi preferred)

Scenario (Illustrative)	Transaction Value (₹ cr)	Stamp Duty — Delhi (₹ cr)	Stamp Duty — Haryana (₹ cr)	Saving via Haryana (₹ cr)
Ambuja Cement (actual demand — Delhi, pre-exemption)	~7,295*	218.87	N/A	N/A

*Note: * The Ambuja Cement demand of ₹218.87 crores at 3% implies an assessed consideration of approximately ₹7,295 crores. This is a back-calculation from the publicly reported demand figure and is not independently verified. Scenarios 1–4 are illustrative only, using round figures.*

Sources: Ambuja Cement Ltd. v. Collector of Stamps, 2024 SCC OnLine Del 7710; Schedule I-A to the Indian Stamp Act, 1899 (Delhi and Haryana); authors' calculations.

E. Figure 1: Jurisdiction Selection Decision Tree

The analytical framework for choosing a jurisdiction for a parent-subsidiary merger is summarized below in a decision tree, incorporating the legislative, judicial and strategic factors outlined throughout this article. It is presented in text form.

FIGURE 1 — JURISDICTION SELECTION DECISION TREE

START: Is the parent company / one group entity the beneficial owner of ≥ 90% of the other?

│

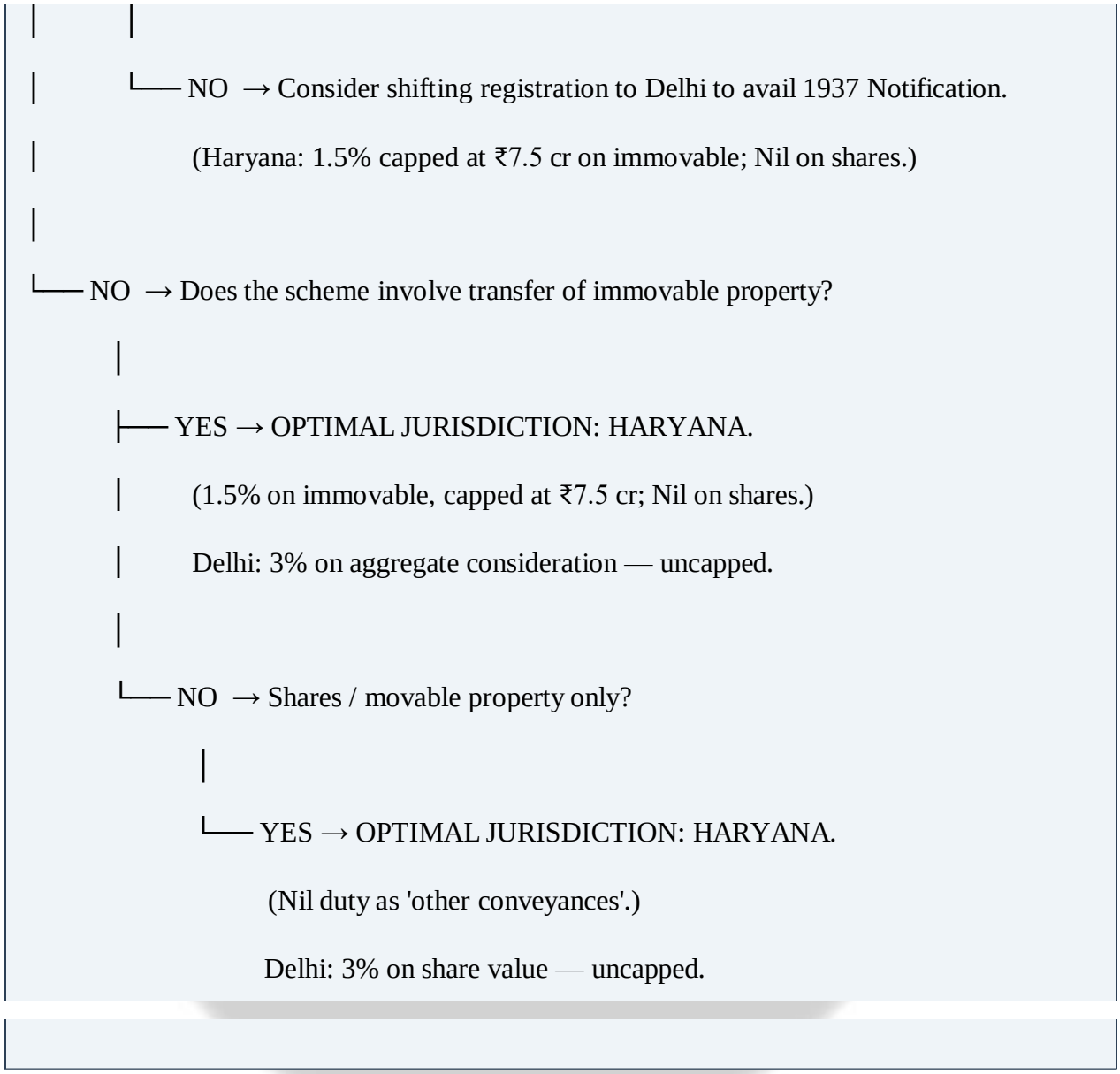
├── YES → Is the scheme registered/filed in Delhi?

│ │

│ ├── YES → Obtain certificate from Designated Officer under 1937 Notification.

│ │ Stamp duty: NIL (subject to pending Division Bench appeal in Ambuja Cement).

│ │ OPTIMAL JURISDICTION: DELHI.



THE WAY FORWARD: TOWARD SUBSTANTIVE EQUALITY AND DEMOCRATIC ACCOUNTABILITY IN STAMP DUTY LAW

A. Legislative Harmonization

The difference between the stamp duty regimes of Delhi and Haryana is not economically sensible. It gives rise to jurisdiction shopping of sorts that has no relation to the real decision of location where the business is to be set up – companies have to choose which NCLT Bench to go to because one stamp duty regime is cheaper than another. It would eliminate this arbitrage and provide more

predictability if there was a uniform national scheme of arrangement, either passed by Parliament under its Entry 44 (Union List) or as a model legislation recommended to the States.

The announcement of the proposed amendment of the fast-track merger rules of 2025[45] makes it clear that the Ministry of Corporate Affairs is conscious of the need to make the process of corporate restructuring more efficient. It is overdue, indeed, to do a parallel exercise on stamp duty harmonization.

B. Progressive Rate Structures

The current systems are flat-rate or capped ones, and do not take into consideration the volume of the transaction and the economic strength of the parties. A feminist PE approach would argue for the rate of such stamp duty to be dependent on the size of the transaction, with lower or no rates for SMEs (including those with high proportions of women owners or managers) and graduated rates for larger value transactions by large corporate groups.

This isn't a new concept. Many countries have well-designed stamp duty systems that feature thresholds and a graduation mechanism. India's own income tax system applies a progressive rate structure, because it acknowledges that there is a difference in capacity to pay as the size of the tax base changes. It is hardly obvious on principle why this simple principle should not apply as much to stamp duty on corporate transactions as it does to other types of transactions.

C. Democratic Accountability for Colonial Exemptions

It is important to note that the 1937 Notification is a subordinate instrument of colonial law that remains in effect as a major fiscal accommodation and concession to corporate groups and has never been put under the scrutiny of the legislature since Independence. All of this has taken place without Parliament's active involvement and the provisions of the Stamp Act have been followed by Parliament in their successor. These are the provisions of the Stamp Act's successor, the changes in rates and innumerable amendments to it, which the 1937 Notification has sailed over, without direct Parliamentary involvement.

[45] Ministry of Corporate Affairs, G.S.R. 603(E) (notified on Sept. 4, 2025) (amending the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 to expand eligibility for the fast-track merger route under Section 233 of the Companies Act).

All stamp duty exemptions given in colonial times should be examined and re-enacted (or be deliberately retained with changes, if appropriate) by a democratic government that values transparency in a deliberate legislative process. This would also ensure democratic legitimacy and an opportunity to realign the concessions in view of the current economic situation and distributional values.

D. The BEPS Dimension

The *Ambuja Cement* case also throws up an issue of inter-play between stamp duty and Base Erosion and Profit Shifting (BEPS) norms.[46] The 1937 Notification has been in force to cut down transaction costs of corporate groups, such as *Ambuja Cement*, which has an offshore holding structure (Mauritius parent). Interestingly, the 90 per cent beneficial ownership threshold under the Notification for stamp duty purposes can be tied to the same offshore structures that would be subject of the GAAR[47] and BEPS provisions to prevent avoidance. These frameworks would need to be read together and in a coherent anti-avoidance approach—although they are currently read in silos.

CONCLUSION: NAMING WHAT WE HAVE INHERITED

At the heart of the Delhi and Haryana stamp duty structure in relation to the parent-subsidiary merger is a colonial legacy, which has been selectively modernized, judicially reworked and structurally distorted in favor of big corporate capital. The *Ambuja Cement* ruling, which upheld a colonial exemption for a Swiss-based multinational entity restructuring its Indian business via a Mauritius holding company is neither a right nor a wrong. It is a manifestation of a legal system that has yet to reconcile itself with its colonial past, with its postmodern dispersion between jurisdictions, with its gendered redistributive effects.

[46] OECD, Explanatory Statement: OECD/G20 Base Erosion and Profit Shifting Project — 2015 Final Reports (OECD Publishing 2015), available at https://www.oecd.org/tax/beps/; *see also* OECD, BEPS Actions 8–10: Aligning Transfer Pricing Outcomes with Value Creation (OECD Publishing 2015) (establishing the international normative framework for addressing profit-shifting through offshore holding structures and intra-group transactions, directly relevant to the Mauritius-holding-company structures that also benefit from the 1937 Notification).

[47] Income Tax Act, 1961, §§ 95–102 (India) (General Anti-Avoidance Rules (GAAR)), as introduced by the Finance Act, 2012 and made operative with effect from Assessment Year 2018–19, empowering the Revenue to disregard, recharacterize, or deny tax benefits arising from any arrangement that lacks commercial substance or is entered into primarily for the purpose of obtaining a tax advantage inconsistent with the objects of the applicable provision.

The message for the transaction lawyer is simple: be aware of the jurisdictional matrix, ensure that there is a meticulous tracing of beneficial ownership, get the 1937 Notification certificate from the Designated Officer prior to filing your scheme, and closely monitor the appeal before Division Bench. The stakes involved are too high to be taken lightly; the risk of having to pay hundreds of crores in stamp duty is too great.

The legal scholar's message, however, is different: the technical surface of the stamp duty law hides profound questions about the distribution of legal advantage, about power, and about colonialism, which demand extensive conceptual work. An embarrassment, a "datum" that shows something about the work of the law, is not a colonial exemption.

And the message to the policy maker is the easiest to understand. The demand of ₹287.87 crore, which finally got waived off by a Notification issued at a time when India was still a part of the British Empire, is one of the signs that the system needs a reform. It's not only on the margins, it's not only by filling in this gap or that hole, but in the basic structure: harmonizing law across jurisdictions, introducing progressive rates, putting colonial-era exemptions under the spotlight of a democratic legislature.

Postcolonial theory reminds us that decolonization is not a one-off political action but an ongoing legal and institutional process. The law's sense of security with legal categories is temporary and always disputed, according to postmodern theory. As feminist theory has taught us, the face of the law is neutral, and the hand is gendered. Put together, they remind us that there is more going on in the stamp duty lawyer's office than first meets the eye; and that to get it right, matters the clients deal with, but matters just as much to what kind of legal system we want to be.

THE SILENT THREAT: UNCOVERING WHITE COLLAR TERRORISM IN THE MEDICAL FIELDS

Dr. Shalini Nagpal Ahuja[1]

VOLUME 2, ISSUE 1 (JANUARY-JUNE 2026)

ABSTRACT

"With guns you can kill terrorists; with education you can kill terrorism."

Nobel Laureate Malala Yousafzai

It shows a much-repeated belief that low-level education and poverty are the driving forces behind violent terrorism but after the terrorist attack in Delhi on November 10, 2025, which killed at least a dozen people, this belief is not accepted now. Investigating agencies have arrested several doctors on charges of plotting the bomb attack.

INTRODUCTION

White collar terrorism is related to terrorist activities done by highly educated professions like doctors, engineers, professors etc. who use their knowledge and societal position to execute the crime.

White collar crime is different from white collar terrorism as it is financially motivated and non-violent but white-collar terrorism is very serious and dangerous type of crime whose ideology is political and religious belief.

India, a victim of terror activities sponsored from Pakistan experience a new face of terrorism i.e. white-collar terrorism. On November 10, 2025, a car exploded near the parking area of red fort, New Delhi killed 14 people and its occupant Dr. Umar Nabi and injuring many people and causing property loss. After that incident, three other doctors were arrested from Al Fala University, Faridabad related to the same network. It shows that a terror network was operating by highly educated medical personnel who were getting order from abroad also.

[1] Dr. Shalini Nagpal Ahuja, Assistant Professor, Babu Banarasi Das University, Lucknow

Police also recovered 3000 kg of explosives from their possession clearly indicates their planning of mass destruction. After that NIA and state police raid many places in India resulted recovery of automatic rifles and pistols and inflammable materials also.

India has just witnessed this new terror module based on well-educated professional particularly doctors. The recently identified white collar terrorism is a matter of serious concern.

THE CONCEPT OF JIHAD

The idea of jihad is a focal fundamental in Islam. In opposition to misinterpretations basic in the West, the term in a real sense implies a holy battle or exertion instead of an outfitted struggle or obsessive sacred war. Although a jihad can surely be showed as a blessed conflict, it all the more

accurately alludes to the obligation of Muslims to actually endeavor "in the method of God". This is the essential significance of the term as utilized in the Quran, which means an inner exertion to change detrimental routines in the Islamic people group or inside the individual Muslim.

However, when we see a closer look at the examples of terrorism carried out in the name of religion, the purpose behind it reveals that religion is acting as a means on large scale rather than an end. We can hear from terrorist who is under custody of the police that they will go to heaven after their death because they are given training like this. They are manipulated in such a way that they consider act of creating terror is spiritual faith towards their religion. Infect no religion support violence by killing innocent people. The short- and long- term goals of al-Qaeda and other terrorist organization are essential political.[2]

IMPACT OF TERRORISM

I. Loss of Life and Human Suffering

The most direct impact of terrorism is the death and injury of innocent civilians. Families lose their loved ones, children are orphaned, and survivors often suffer permanent disabilities. This human cost cannot be measured in numbers alone, as it creates lifelong emotional and financial hardships for victims and their families.

II. Economic Damage

[2] Ahamd, I (2003) Religious Terrorism. Encyclopedia of Religion and Terrorism New York

Terrorist attacks harm the economy by destroying infrastructure, reducing tourism, and discouraging investment. Governments must spend huge amounts on security instead of development programs like education and healthcare. In Jammu and Kashmir, after Pahalgam attack, where tourists were killed by the terrorist, there was widespread fear and many has cancelled their plan in Jammu and Kashmir. In some reports, tourist numbers dropped by more than 90%. Locals offer heavy discount to lure visitors back.

III. Arise of Communal Tensions

Terrorism can increase misunderstanding and lack of trust between communities, especially when attacks are linked to particular religion. This may lead to discrimination, and communal conflicts. Social harmony weakens, and unity among citizens is replaced by suspicion and hate.

IV. Impact on education

In terrorism-affected regions, schools may close or operate irregularly, disrupting children's education. Young people growing up in violent environments may become vulnerable to radicalization or lose hope in peaceful social progress, affecting the future stability of society.

V. Displacement and Refugee Problems

Terrorism forces many families to flee their homes in search of safety. This creates refugee crises, pressure on cities, and challenges in providing housing, jobs, and basic services, further straining social resources.[3]

INVOLVEMENT OF MEDICAL PRACTITIONER IN TERRORISM

On 10 November 2025, a powerful blast from a vehicle-borne improvised explosive device (car bomb) exploded near the historic Red Fort in New Delhi, killing around a dozen people and injuring several others. It was quickly treated by the government as a terrorist activity, with investigators calling it "heinous" and barbaric act.

Unlike most terror attacks where doctors serve as caregivers, several qualified medical professionals were alleged to be involved in planning or facilitating the Red Fort blast. According to official statements and reports:

Three doctors including individuals identified from Kashmir and Lucknow were arrested by India's counter-terrorism agency in connection with the blast investigation. Authorities said they

[3] K.N Chandrasekharan Pillai, "Terrorism and Criminal justice system" Eastern book company, 2014.

played "key roles" in the terror plot, though families denied the charges. Investigations suggested that at least one suspect in the blast was himself a doctor, and that others in the network had provided assistance relating to logistics or planning, because of these allegations, the **National Medical Commission** canceled the medical registrations of some of the doctors implicated, pending further legal process.

This aspect was widely covered in the media and became a surprising and disturbing feature of the case — showing that radicalization can influence even highly educated professionals.

LEGAL PROVISIONS RELATING TO TERRORISM

- **Unlawful Activities (Prevention) Act, 1967 (UAPA)** — It is considered the main Anti-Terror Law.
- **National Security Act, 1980 (NSA)-** It allows preventive detention to protect: National security, public order, Maintenance of essential services. In this act - Detention up to 12 months can be done and no immediate trial is required.
- **Prevention of Money Laundering Act, 2002 (PMLA)-** Under Prevention of money Laundering Act, Terror funding is treated as money laundering in which property can be attached and confiscated. Enforcement Directorate (ED) has powered to investigate and take action.
- **National Investigation Agency Act, 2008 (NIA Act)-** Under this act, NIA was established for investigating terror offences. It can take over cases from states and has power to Investigate cross-border terrorism. Special NIA Courts are also established for speedy trial.

INTERNATIONAL COOPERATION FOR ERADICATING TERRORISM AT THE GLOBAL LEVEL

I. The **United Nations (UN)**- It plays a central role in global counter-terrorism efforts. In **UN Security Council, the Resolution 1373 (2001)** was adopted after 9/11 attacks, its main obligation is to Criminalize terrorist financing, freeze terrorist assets and deny safe haven to terrorists.

II. **International Conventions and Treaties**

There are **19 universal counter-terrorism conventions**, including:

Convention for the Suppression of Terrorist Financing (1999), Convention against Bombings (1997), Convention against Hijacking of Aircraft (1970)

NEED TO COMBAT TERRORISM

The Challenges of terrorism is so critical and more extensive spread that it comprises a real risk to the human kind and security of any country or it turn the entire world. It has become a global threat which needs to be controlled from the initial level.

Today the rapid use of computers and mobile technology tools are easily connected with global world. It is the easiest way of communication and over 90, 0000 million peoples use the internet and social media daily. *Social media platforms have a huge global reach and audience, with YouTube boasting more than 1 billion users each month. This breaks down into 6 billion hours of video that are being watched each month and 100 h of video are uploaded to YouTube every month. The use of cyber-terrorism through the Internet and social media has been used by extremist groups in order to manufacture a process of online hate. In the case of many of the tweets and videos analyzed in these cases, the Internet and social media sites act as a knowledgeable database on how to promote violence as a strategy through the social learning. The terrorist groups also used these tools to influence more and more people in the global arena.*[4]

In Pulwama's Koil hamlet, 40 to 45 km from Srinagar, people struggle to believe on the news of involvement of Dr. Umar Nabi in Delhi 's suspected car bombing on November 10 near Delhi's Red Fort that killed at least 13 people and injured more than 20. An elderly villager could not believe that it can be Umar. Some refer to a particular area of Koil village as a 'village of doctors'.

"What needs to be understood is the intersection of ideology and theology. The intellectual class is often the source of radicalism. Socialism, philosopher Friedrich Hayek noted, did not begin as a working-class movement. It was a construction of second-hand dealers in ideas, including professional men and technicians, such as scientists and doctors.

WHY DO PEOPLE ENTER IN TERRORISM[5]

[4] Ashok Kumar & Vipul Anekant, "Internal Security of India", McGraw Hill Education India, 2017.
[5] Randy Borum, "Psychology of Terrorism", 2004

Injustice- Perceived injustice has long been considered an important cause of terrorism. they have the desire to take revenge not only for injustice done to him but for their whole community.

Belonging- People who joined a terrorist group after a lifelong rejection of their community become the family member of that group.

This strong sense of belonging has critical importance as a motivating factor for joining, a compelling reason for staying, and a forceful influence for acting.[6]

CAUSES OF TERRORISM BY MEDICAL PRACTITIONER

Question can be asked what prompt a doctor to become a killer whose work is to save the people. It is a common belief that religious issues are the main cause of terrorism. There are many evidences to support this statement.[7]

- **Use of Professional Networks:** The recent Delhi blast investigations revealed a "white-collar" terror network using encrypted channels and raising funds under the guise of social or charitable causes. The strange thing about this incident was that it was performed by well educated people. The suicide bomber Umar was an Assistant Professor of medicine. He was a very bright student from his childhood. Other accused were also arrested who were part of the conspiracy including Dr. Shaheen Sayeed, Dr. Muzammil Ahmed. Dr. Shaheen was a class topper. She had cracked union public service commission to join as an assistant professor in Kanpur. They all are radicalized by Maulvi Irfan Ahmad, who was also a doctor. The background of these accused given rise to the term 'White Collar Terrorism' for radicalizing them, social media played very important role.
- **Use of social media:** The internet plays a significant role in spreading extremist ideas. Professional may be exposed to radical ideas because of global network.
- **Feeling of discrimination and anger:** It may push persons to extremist organizations. They can spread extremist ideology under the cover of social respectability.

OBJECTIVES OF TERRORISTS

[6] Freeman, Liam (Ed.) (2015): The Islamic State and ISIS Crisis: An Examination. (The Middle East in Turmoil).New York: Nova Science Publishers.

[7] "Public Opinion on the Root Causes of Terrorism and Objectives of Terrorists" by Adesoji O. Adelaja, Abdullahi Labo (Late) and Eva Penar, "Perspective on Terrorism_, Volume 12, Issue 3.

In general, it can be said that terrorists work with particular goal. They have religious objective in their mind. Mostly, they use violence for bringing change. Initially poverty and unemployment were the main causes of terrorism but now very efficient doctor who is highly educated are involved in terrorist activities so it can be said that their mentality has grown on violence regardless of their educational qualification. They always target busy public places for terrorist attack like markets, place of worship etc. where casualties on large scale are possible.

Terrorist do not consider them as terrorist but as a warrior who has the legitimate cause behind their crime. The use violence because they are of the view that it is the appropriate method of fulfilling their objective.

Terrorists do not see themselves as terrorists nor do they apply any other socially negative label to their identity. They view themselves as soldiers or warriors with a legitimate cause and, therefore, may share the same psychology as government soldiers. They use violence because they believe it is the only appropriate or available method of achieving the changes they seek. [8]

CONCLUSION AND SUGGESTIONS

Doctors are regarded as a symbol of compassion and humanity with spirit of social service. The main base of medical is to save lives but involvement of medical professionals in terrorist activities shock society because they contradict the ethical foundation of medicine and arise serious issues about misuse of professional knowledge. When we hear the news of their involvement in violent act, it represents a betrayal of public trust. The main reason behind it is ideological radicalization. Education in medicine does not automatically protect a person from radical beliefs.

The Challenges of terrorism is so critical and more extensive spread that it comprises a real risk to the humankind and security of any country or it turn the entire world. It has become a global threat which needs to be controlled from the initial level.

Terrorism has spread its roots not only among poor and illiterate people but among well settled and well-educated professionals.

[8] Maajid Nawaz, "Radical: My journey out of Islamist Extremism", Lyons Press, 2012.

There is a great need of combating terrorism financing. Terrorist use money by fake currency or by foreign funds so the combating financing of terrorism cell should be strengthened.

Artificial Intelligence should also be used to monitor transaction for terrorism purpose and track terrorist networks. There should be check and balance on social media also who promote online radicalization in society among different religious groups and strict punishment should be given to them.

UAPA, 1967 and NIA Act, 2008 should be rigorously implemented for prosecuting those individuals supporting terrorist activity by any means.

"There is a need to Improve intelligence system sharing between central, state, and specialized agencies (RAW) to detect threats of terrorist activities from academic institutions. Strengthen partnerships with other nations for intelligence exchange and legal cooperation. Ensure speedy trials through specialized courts for terror-related cases".

The government should Implement programs to prevent educated youth from falling for extremist ideology or cross-border propaganda and provide quality education to reduce vulnerability to extremism.

"The government should take initiative to promote harmony and awareness to prevent community-based, targeted violence. The new global environment and modern technology have enabled terrorists to plan their operation worldwide. Terrorism by educate professionals is a great threat because human knowledge is used in destruction rather than in progress. It is a reminder to the society that education without ethical grounding can be misused. Educational Institutions must actively promote tolerance, constitutional morality and respect for human life, and finally, terrorism is not over yet, in future our governments have to go a long way to end terrorism and for it the government should take effective steps in this direction very soon ".

COPYRIGHT CHALLENGES IN AI-GENERATED CONTENT: AN INDIAN LEGAL PERSPECTIVE

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VOLUME 2, ISSUE 1 (JANUARY-JUNE 2026)

ABSTRACT

The rapid development of generative AI clearly exposes three deep issues with the Indian Copyright Act, which courts and the law are not easily able to resolve: The computer-generated works provision (2(d)(vi)) was added to the Copyright Act by the 1994 Amendments, and was originally intended to govern computer-generated works, but it's not working now because it wasn't explained who is the owner when the AI builders, operators and users all claim the output. In the interim, the amount of protected content that can be copied to train models falls outside the narrow "fair dealing" exceptions of Section 52(1). Beyond ownership, it remains unclear how legal responsibilities can be distributed in the roles in the AI pipeline. The similarities and differences between how these issues are dealt with in the U.S., U.K., and E.U. systems reveal a few practical solutions, including a raised bar for authorship when humans are using AI. Another idea has come from Europe, which proposes a data mining exception if there's no objection from rights holders. A third shift would distinguish accountabilities according to the part played by each party in creating or using the AI outputs.

Keywords: Copyright Act, 1957; Artificial Intelligence; AI-Generated Works; Human Authorship; Originality; Text and Data Mining; Fair Dealing; Moral Rights; Comparative Copyright Law.

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INTRODUCTION

Out of nowhere, machines now write stories, paint pictures, play sounds, even draft software - pulling it all from oceans of data they've studied. That throws a wrench into old ideas about who owns what in creative work. Laws meant to handle authorship? They're stuck in the past. While tech races forward, rules drag behind like shadows at sunset.

That part of India's copyright law changed in 1994[2] to cover software guided closely by people still struggles today when it comes to deciding who made what - a person using an AI tool, the company that built it, or someone else entirely. While the rules allow some uses without permission under certain conditions found in another section, they say nothing about machines reading data to learn patterns automatically. A case now waiting to be decided in Delhi[3] might show how poorly old laws fit new tech when judges try to stretch them too far. Because there is no clear legal responsibility spelled out for those involved with artificial intelligence systems, confusion grows on multiple fronts at once. Fixing these issues needs fresh laws shaped around actual problems instead of relying only on court rulings to inch forward over time.

Long ago, India made its Copyright Act because people thought only humans could create art. Not every bit of effort counts - the top court said there must be real thinking behind it. A rule says whoever makes a machine produce something owns what comes out. Still, nobody agrees if that includes smart machines working on their own. One judge refused to give rights to robots, calling them unfit for legal ownership.

Across nations, clarity remains absent. Still, the U.S. Copyright Office holds firm - protection applies solely to creations by people. In contrast, the UK names as author whoever sets up a machine to produce a work. Meanwhile, the EU pushes openness: its AI Act and copyright rules demand clear sourcing of training data, along with limits on automated mining for profit.

REVIEW OF LITERATURE

Most writings about AI and copyright grew fast, yet many came before big language tools spread widely. Instead of humans, machines now raise questions about who creates what. WIPO pointed

[2] Copyright (Amendment) Act, 1994, No. 38 of 1994, § 2(d)(vi), India Code.
[3] *ANI Media Pvt. Ltd. v. OpenAI OpCo, LLC*, CS(COMM) 1028/2024 (Delhi High Court) (pending).

out that ownership and newness sit at the core of tension[4] - when smart software makes things on its own, old rules struggle. While legal systems were built around people making art or texts, automatic output challenges their base idea. Guadamuz found current laws assume a person writes[5]; shifting rights to machines could twist why those laws exist in the first place

Indian scholars like Sibal and Dalmia pointed out that Section **2(d)(vi)** never meant to cover self-learning AI systems[6]. From another angle, Ramanujan pushed hard for a legal carve-out for text and data mining, saying current limits in Section 52(1)(a) fall short when it comes to structured AI learning[7]. Then there is Balganesh, whose thinking on creativity in Indian copyright law[8] helps frame how rulings like Eastern Book Company might apply to what AI produces. Yet despite these insights, past studies miss two key things - deep discussion on moral rights under Section 57, along with a line-by-line look at how Sections 2(d)(vi), 17, 51, 52, and 57 connect when dealing with generative AI.

RESEARCH OBJECTIVES AND METHODOLOGY

One aim here is to figure out how far the Copyright Act, 1957 reaches when it comes to material made by artificial intelligence - especially who counts as an author, whether something qualifies as original, and what moral rights might apply. Though often overlooked, the level of creativity needed for AI-made works slips into view through court views and legal interpretations across time. Looking at laws in India alongside those in the U.S., UK, and Europe shows contrasts that quietly shape how rules get built. Where rulings differ, patterns emerge - not neatly, but enough to notice shifts in thinking about ownership. Instead of assuming current law fits new tech, this work leans on close reading of statutes, changes over years, and key decisions from India's top courts. Behind each argument sit official papers from WIPO, national copyright offices, plus academic writing tested by experts abroad and within. Because gaps linger where law meets machine output,

[4] World Intell. Prop. Org. (WIPO), *WIPO Conversation on Intellectual Property (IP) and Artificial Intelligence (AI): Revised Issues Paper*, WIPO/IP/AI/2/2020/1 REV. (May 21, 2020).
[5] Andres Guadamuz, *Do Androids Dream of Electric Copyright? Comparative Analysis of Originality in Artificial Intelligence Generated Works*, 2 Intell. Prop. Q. 169 (2017).
[6] Raghav Sibal & Siddharth Dalmia, Copyright and AI-Generated Works, 12 Indian J. Intell. Prop. L. 45, 52–58 (2022).
[7] Adarsh Ramanujan, Text and Data Mining Under Indian Copyright Law, 14 J. Intell. Prop. Stud. 77, 88-95 (2023).

[8] Shyamkrishna Balganesh, Codifying the Common Law of Copyright, 22 Nat'l L. Sch. India Rev. 1, 17–21 (2010).

suggestions for change tie directly to sections in need of update. While no single answer rises above noise, small fixes rooted in real parts of the act could make room for clarity.

THEORETICAL FOUNDATIONS: AUTHORSHIP, ORIGINALITY, AND THE PURPOSE OF COPYRIGHT

Most ideas about copyright rest on one thing: a person must create it. Though incentive, effort, or self-expression shape these views, they all assume human origin. Shifting focus slightly, rewards for creators' drive can extend even when machines produce work. Instead of ignoring those who design artificial systems, their role fits best within updated motivation-based thinking. On the flip side, treating machine-made output as personal expression crumbles under scrutiny. Because identity cannot anchor itself in code, such reasoning fails. For India, adapting rules around purposeful creation offers clearer ground than emotional or existential claims. Not every framework bends well to new tech; some snap.

A short-term monopoly comes from copyright, under the idea that people make more when they expect reward. Machines do not weigh choices about creating - they just run. Still, if someone sets up the inputs or guides results through decisions, those actions might qualify under adjusted rules. Effort matters in another view - only work shaped by purposeful thinking counts - but machines chase patterns, not goals. Even so, a person tuning prompts or refining outcomes could claim credit. Expression tied to inner self finds no echo in code; programs lack presence, point of view, soul. What emerges reflects design, not being.

For something to count under the **Eastern Book Company** rule, a person must actually shape it with creative choices[9], not just press enter. Instead of handing off a single request and using whatever comes out, better results come when someone tweaks their queries, picks from several versions, then rewrites deeply based on personal intent. What separates those two approaches becomes the core problem lawmakers need to solve.

THE COPYRIGHT ACT, 1957 AND AI-GENERATED CONTENT: A PROVISION-BY-PROVISION ANALYSIS

[9] *Eastern Book Co. v. D.B. Modak*, (2008) 1 S.C.C. 1, ¶ 36 (India).

A. Sections 13 and 2(d)(vi): Scope of Protection and the Authorship Trilemma

Outside the law's reach sits what lacks a clear maker. When creation flows solely from artificial processes, originality finds no home. Protection under Section 13 applies only where human touch shapes expression[10]. Works born without meaningful input from people miss the threshold entirely. Uncertainty creeps in when edges blur between what counts and what does not. Judges step in absent clear rules, yet their rulings shift case by case. Business deals stumble on ground that changes beneath them.

Whoever triggers the creation of a piece might mean different people - sometimes the one typing a short instruction, sometimes the builder behind the system's design, other times the operator setting usage boundaries. Each interpretation stumbles in its own way. A minimal input from someone asking for output hardly counts as inventive effort. Though foundational, the creator of the framework acts long before any individual result appears, more like supplying an instrument than making art. Those deploying the technology usually add almost nothing imaginative. Judges in India have yet to untangle these overlapping claims. Past records around the law changed in 1994 offer only faint clues.

B. Section 17: First Ownership and the Employment Dimension

Missing entirely from current discussions on AI and copyright, Section 17 assigns ownership of work created during employment to the employer, unless stated otherwise[11]. When a journalist employed by a news outlet applies a company-approved AI tool to produce an initial article draft - then reworks it heavily - a tension emerges between Section 17 and Section 2(d)(vi), leaving unclear who truly owns the output. Ownership uncertainty grows sharper when considering that treating the AI creator as legal author of each generated piece undermines what countless professionals reasonably expect. Because such an outcome clashes with real-world usage patterns, lawmakers need to revise both Section 9 and Section 2(d)(vi)[12] together - not in isolation.

C. Sections 51 and 52(1): Training-Data Infringement and the TDM Lacuna

[10] Copyright Act, 1957, § 13 (India); *Eastern Book Co. v. D.B. Modak*, (2008) 1 S.C.C. 1 (India).
[11] Copyright Act, 1957, § 17 (India).
[12] Copyright Act, 1957, §§ 9, 2(d)(vi).

What lies behind Section 51 is the starting point for determining infringement. Building large language models means making digital copies of vast amounts of written material something that falls under copying as defined by Section 14(a)(i)[13], which typically needs permission. If there is wrongdoing identified under Section 51, the analysis then turns to the exceptions under Section 52, and it would be logical to discover what is wrong and then ask why. The allowed uses are set and limited, as they are in Section 52(1) - there is no provision for data mining of text[14]. For the purposes of fair dealing or private or personal use (including research) most works (not software) may be used regardless of their size, but the above does not apply to broad commercial uses of AI training. The profit-motives are ruled out in such use. The mechanical approach is quite different than the careful, case-specific investigation which the rule was meant to enable.

D. Section 57: Moral Rights and the Integrity of Human Creative Identity

Rules that are often viewed by legal experts as non-waivable and are the sole source of credit and expressive protection for authors are not discussed much in the context of AI. Proper recognition is lost when AI models steal the work of known creators and mimic their distinctive style without mentioning their names. The use of outputs that twist original expressions in a manner that is damaging to an author's reputation may be a violation of integrity protections. Whether the unintended alteration created by the self-operating machines is covered by the scope of this section, has not been considered by the courts in India so far. Infringing transparency requirements in such a way pass unnoticed by the person or persons whom the infringements affect.

THE ANI MEDIA LITIGATION: A CASE STUDY IN STATUTORY INADEQUACY

ANI Media Pvt. Ltd. v. OpenAI OpCo LLC[15], it is currently before the Delhi High Court and poses serious issues regarding the copyright aspects of AI training.

- Can you copy news articles to train machines?
- Does this go against copyright rules like Section 51?

[13] Copyright Act, 1957, § 14(a)(i) (India).
[14] Copyright Act, 1957, § 52(1) (India).
[15] *ANI Media Pvt. Ltd. v. OpenAI OpCo, LLC*, CS(COMM) 1028/2024 (Delhi High Court) (pending).

- What if you are training AI on a scale?
- Can you say it is fair dealing under Section 52(1)(a)?
- What if the AI outputs are like the works?
- Are they adaptations under Section 14(a)(vi)?
- Who is responsible then — the model developers, the ones who deploy it or those who give it prompts?

The answers, to these questions are not clear. If the court says AI training does not fit under Section 52(1) then it might be a copyright infringement. This could make lawmakers act fast. Or the court could say Section 52(1)(a) covers AI training. This might delay the issue. It could also change what fair dealing means. A stronger move would be for judges to send this issue to Parliament. They could say that lawmakers, not courts should decide these rules. Then there can be a discussion when there is time.

COMPARATIVE ANALYSIS: THE UNITED STATES, UNITED KINGDOM, AND EUROPEAN UNION

A. The United States: Strict Human Authorship

Copyright in the United States is for things that people create says the U.S. Copyright Office. They will not register anything that was made completely by a computer program[16]. This rule is clear. It is also very strict. It says that only people can be creative and it does not consider the money that can be made from intelligence.

Because of this rule artists who use computer programs to make their work might not use the legal protections. Instead, they might make deals or use secret methods. This means that things are not as open and honest as they could be.

Some people do not agree with this rule. They think it is not fair to say that something created with the help of intelligence does not deserve protection even if a person made many of the creative decisions. It is hard to justify this rule if we want to encourage people to make interesting things.

[16] U.S. Copyright Off., *Copyright Registration Guidance: Works Containing Material Generated by Artificial Intelligence*, 88 Fed. Reg. 16,190, 16,192–93 (Mar. 16, 2023).

Artificial intelligence is a part of this and the rule does not take that into account. The idea of copyright in the United States and how it applies to intelligence is important and the rules, about copyright should consider the role of artificial intelligence.

B. The United Kingdom: Statutory Attribution to the Arranger

This rule does not involve a question of whether artificial systems can create, but rather it refers to the closest human who has made the "key preparations" for producing the computer-generated work under the UK's Copyright, Designs and Patents Act, 1988, section 9(3)[17]. Uncertainty remains in today's AI world as to who is protected - for works which are "preparations" it's fifty years, and the justification for such a period is not obvious given the fact that the costs of reproduction are virtually negligible. Unlike the latest European developments, Britain tightened up its rules in 2023, refusing to permit text and data mining for profit motives, whereas the EU did so.

C. The European Union: Transparency and Controlled TDM Exceptions

It's a different start each time and so is one path: authorship and training data are split according to EU rules and dealt with separately via targeted fixes. A copyright law from 2019[18] has provided room for innovative approaches - on the one hand a freedom to use text and data for studies without a profit motive, and on the other a right to use the creation for business purposes, provided the creators signal their refusal through automated tags. Some years later, when the 2024 AI Act[19] was enacted, it further weighed in by calling for disclosure of what had fed the general AI systems. But beyond the clear lines of policy are the dirty ones: machines cannot tell if anyone is following the rules, owners have no way to readily determine if someone is violating the rules, and the process of enforcement involves lengthy court battles that cost money – burdening rightsholders rather than builders. Out from this configuration, India could learn first: 'Keep these two issues apart'. Second insight? Even good ideas don't work unless there are weak tools or weak supervision when they're being used commercially.

[17] Copyright, Designs and Patents Act 1988, c. 48, § 9(3) (UK).
[18] Directive (EU) 2019/790 of the European Parliament and of the Council of 17 April 2019 on Copyright and Related Rights in the Digital Single Market, 2019 O.J. (L 130) 92.
[19] Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024 Laying Down Harmonised Rules on Artificial Intelligence.

FINDINGS

There's one thing that is obvious at the outset. When works are solely created by artificial intelligence, without any involvement by real human beings in shaping the works, the Copyright Act, 1957 likely does not provide any protection[20].

- In the Eastern Book Company case, the Court set forth the criteria for legal protection for fully automated AI-generated content, which requires some level of originality in the work and a strong focus on human creators of the work. This limit is supported by the moral rights contained in Section 57.

- Section 2(d)(vi) mentions a potential owner, but doesn't specify whether it is the programmer, operator or user. Questions of ownership add to the confusion; these questions are involved in rules in Section 17, which thus far have not been addressed by courts or lawmakers.

- It could also be argued that there is no provision in the Copyright Act to permit text and data mining[21] and that Section 52(1) does not provide any support for wide-ranging commercial AI learning.

- If the same copyrighted content is copied multiple times throughout AI development, it can be easily seen as an infringement of the copyright, as contemplated in Section 51.

RECOMMENDATIONS

A. Amendment of Section 2(d)(vi): Qualified Authorship Threshold

Parliament should amend Section 2(d)(vi) to define 'the person who causes the work to be created' by reference to a qualified authorship threshold. Someone must decide what counts as real input when machines help make art or text. The law needs clearer rules about who made something if artificial intelligence was involved. Not every click or command means a person truly shaped the result. Only those whose effort shows clear choice and thought deserve rights over such work. This

[20] *Eastern Book Co. v. D.B. Modak*, (2008) 1 S.C.C. 1 (India); U.S. Copyright Off., *Copyright Registration Guidance: Works Containing Material Generated by Artificial Intelligence*, 88 Fed. Reg. 16,190 (Mar. 16, 2023).
[21] Copyright Act, 1957, § 52(1) (India); Adarsh Ramanujan, *Text and Data Mining Under Indian Copyright Law*, 14 J. Intell. Prop. Stud. 77 (2023).

could mean someone fine-tuning prompts many times until the outcome fits their vision. It might also cover picking one version from several machine-made options based on personal taste or insight. If no human adds anything of substance, then nothing gets protected.

B. Amendment of Section 52(1): A Two-Track Text-and-Data Mining Exception

Instead of blanket rules, Parliament ought to craft a specific TDM exemption modifying Section 52(1). Following the EU's dual approach, one path opens wide non-profit research bodies may freely analyses legally available materials when their goals stay outside market gain. On another track, businesses could carry out text mining, even for artificial intelligence development, so long as rightsholders can block use via digital tags set by the Copyright Office alongside India's standards body. Ignoring such a signal would count as breach under Section 51. Since small creators lack means to chase violations, a support pool funded by AI builders - paying fixed shares should deliver uniform payouts, covering both those who speak up and those who do not

C. Statutory Liability Framework for AI Stakeholders and Moral Rights Compliance

A new legal structure for AI responsibility could take shape through changes to Chapter IX or separate laws. Instead of shared blame, duties might shift based on role. Those who build systems carry main accountability if training data includes works gathered illegally or ignores clear withdrawal requests. Responsibility then extends to those deploying tools when proper checks are missing - especially if outputs copy large parts of protected texts under Section 14(a)(i), or visual material covered by Section 14(c)(i). People using these systems face consequences solely when intent is evident: asking for known infringing content while aware such prompts bypass safety layers. Regarding Section 57, deployment actors must reveal, upon demand, that content originated via artificial intelligence; including the specific model involved whenever possible. A new body focused on intellectual property could manage the payment pool, set technical rules, while offering steady direction to businesses. Such changes might allow India to handle machine-made works under copyright, keeping intact the emphasis on human invention that grounds legal legitimacy.

CONCLUSION

The ramifications of the ANI Media case will influence the approach of Indian courts to such activity. The reason is quite clear: There are no clear guidelines determining responsibility in the AI chain in India. These are important because if they're not in place, then conflicts get into

expensive court cases rather than being solved in a consistent way, and it affects individual creators more than big companies. What makes this worse is that when the machine produces the work, ownership seems to fall, and as Section 57 does anything to fix this, it simply amplifies the reach of the original. This omission has been completely ignored by researchers thus far.

THE ROLE OF PUBLIC POLICY IN INTERNATIONAL COMMERCIAL ARBITRATION IN INDIA

Keerthana Sarin[1]

VOLUME 2, ISSUE 1 (JANUARY-JUNE 2026)

ABSTRACT

Arbitration is a mechanism under Alternative Dispute Resolution in which the parties in an arbitration select a qualified expert known as an arbitrator who acts as a neutral party reach a binding decision that resolves the dispute. International Commercial Arbitration is a variant of arbitration in which at least one of the disputing parties is a resident or body corporate of a nation other than India. Arbitration with the government of a foreign country is also considered to be an ICA. Under Sections 34 and 48 of the Arbitration and Conciliation Act 1966, the violation of the public policy of India is a ground for setting aside of an arbitral award[2]*. The New York Convention and the Model Law have a similar approach of giving importance to public policy. The conflict of foreign arbitral award and public policy remains controversial. The definition of public policy of a nation is a dynamic concept. This article intends to analyze provides a proper understanding of ICA and public policy by exploring the comparative study of the conflict between Public Policy and ICA tracing its evolution. It also examines the case laws in India related to this topic.*

Keywords: International Commercial Arbitration, Public Policy, Foreign Arbitral Award, Judicial Intervention in arbitration

[1] Keerthana Sarin, *Kerala Law Academy.*
[2] Arbitration and Conciliation Act 1996.

INTRODUCTION

Modern days, arbitration is an effective mechanism for resolution of disputes. Arbitration is a consensual procedure in which a dispute is submitted, by agreement of the parties, to one or more arbitrators who make a binding decision on the dispute. In selecting arbitration, the parties opt for a private dispute resolution procedure instead of going to court.[3] Under the Section 2 (a) of the Arbitration and Conciliation Act 1996 defines arbitration. It is popular for its feature of confidentiality and is mostly preferred by companies. Arbitration may be domestic or international. Most of the international arbitrations are related to commercial disputes. International Commercial Arbitration resolves disputes between individuals, companies or governments and even cross-border disputes between nations.

ICA is indeed an expensive procedure; it requires time, effort. After the completion of the arbitration process, the arbitral award is adopted to resolve the conflict between the parties. The enforceability of a foreign award is in conflict with the public policy of the nation. The doctrine of public policy is a wide concept, and there is no universal definition for it. An arbitral award can be set aside if it violates the public policy of the nation or the domestic law. This provision often hinders the parties from enjoying the benefits offered by the arbitration mechanism. The doctrine of public policy is often used by courts to set aside arbitral awards and it is mainly due to the unclear understanding. This article deals with the evolution of public policy in India and ICA.

INTERNATIONAL COMMERCIAL ARBITRATION

According to Clause (f) of subsection (1) of section 2 of the Arbitration and Conciliation Act 1996, defines the term "international commercial arbitration as an arbitration relating to disputes arising out of legal relationships, whether commercial or non, considered as commercial under the law in India and where at least one of the parties is –

i. An individual or a resident from a country other than India; or
ii. A cooperate which is incorporated in any country other than India; or
iii. A company or an association or a body of individuals whose central management and control is exercise outside India; or

[3]World Intellectual Property Organization, *What is Arbitration?* WIPO, https://www.wipo.int/amc/en/arbitration/what-is-arb.html last visited (Octo 17 2025).

iv. The Government of a foreign country.[4]

Companies from different countries generally prefer to arbitrate their disputes rather than adjudicate them in the courts of one side or another. The reason behind this is the international tribunal is much time efficient and confidential as compared to court proceedings[5]. Also, they could select expert arbitrators who are equipped with experience in dealing matters related to business etc.

International commercial arbitration is regulated by several international conventions and national laws, including the United Nations Commission on International Trade Law (UNCITRAL) Model Law on International Commercial Arbitration.

Enforcement of Foreign Arbitral Award in India

An arbitral award made in the territory of a State other than the State where a recognition and enforcement of the award is sought is a foreign arbitral award. An arbitral award made in India under Part I of the Arbitration and Conciliation Act, 1996 is considered as a domestic award. Any arbitral award which is not domestic award is considered as a foreign award in India.[6]

The term "arbitral awards" includes not only awards made by arbitrators appointed for each case but also those made by permanent arbitral bodies to which the parties have submitted.[7] Public policy is one of the grounds for setting aside the arbitral award in India.

PUBLIC POLICY

The Black's Law Dictionary defines the term public policy as "*a phrase of common use in estimating the validity of contracts. Its history is obscure; it is most likely that agreements which tended to restrain trade or to promote litigation were the first elicit the principle that the court would look to the interest of the public in giving efficacy to contracts*."[8] Courts sometimes use the term to justify their decisions, as when declaring a contract void because it is the violation of public policy also termed policy of the law. [9]

[4] A.K. BANSAL, LAW OF INTERNATIONAL COMMERCIAL ARBITRATION 14,15 (Universal Law Publishing Co. Pvt Ltd).
[5] Katie Shonk, *International Arbitration: How it Works?* HARVARD LAW SCHOOL (July 24,2025), last visited (09 November 2025).
[6] *Supra* note 3 at 43.
[7] Article 1(2) of the New York Convention.
[8] BRYAN. A. GARNER, BLACK'S LAW DICTIONARY, 1245, (7th Ed. 1999)
[9] *Id.*

Public Policy has been defined by Winfield as *"a principle of judicial legislation or interpretation founded on the current needs of the community".*[10] Public policy connotes some matter which concerns the public good and the public interest. The concept of what is for the public good or in the public interest or what be injurious or harmful to the public good or the public interest has varied from time to time. Section 23 of the Indian Contract Act has used the terms "opposed to public policy" but Indian Contract Act does not define the expression "public policy" and there is lack of precise definition.

Public policy has been described as 'a principle of judicial legislation or interpretation founded on the current needs of the community' When courts perform this function undoubtedly, they legislate judicially. That is however, a kind of legislation implicitly delegated to them to further the object of the legislation and to promote the goals of society.[11]

GLOBAL PERSPECTIVE ON PUBLIC POLICY

The doctrine of public policy is not same in all countries because it is based on various factors such as the nature of the government, interest of people and laws of the nation. This divergent view of the interpretation of public policy often creates chaos among countries. Especially when there is a conflict between domestic law and international law.

In 1853, the House of Lords stated the term public policy means "*that principle of law which holds that no subject can lawfully do that which tends to be injurious to the public, or against public good."*[12] The courts in United Kingdom have been reluctant to precisely define public policy and laid down certain fundamental values:- "*Consideration of public policy can never be defined, but they should be approached with extreme caution. . It has to be shown that there is some element of illegality or that the enforcement of the award would be injurious to the public good or, possibly, that enforcement would be wholly offensive to the ordinary reasonable and fully informed member of the public on whose behalf the powers of the state are exercised*. "[13]

[10] *Public Policy in English Common Law,* 42 HARV. L. REV. 76 (1928).
[11] O.P. MALHOTRA, *The Scope of Public Policy under the Arbitration and Conciliation Act, 1996,* 19 Nat'l L. Sch. India Rev. 2 (2007).
[12] Egerton v. Brownlow 4 HLC 1 (1853).
[13] ANSHU SINGH RATHORE, *Public Policy Conundrum in the Enforcement of Arbitral Award* MANUPATRA, (Oct 7, 2022), last visited (Nov 10, 2025).

In France, Article 1514[14] of the France Code of Civil Procedure, an arbitral award shall be recognized or enforced if the party relying on it can prove its existence and if such recognition or enforcement is not displaying the violation to international public policy. The scope of public policy was enumerated in the case of *European Gas Turbines SA v Westman International Ltd*[15] where the Paris Court of Appeals held that enforcing an arbitral award related to an agreement based on bribery is contrary to public policy. While in Australia, the court has accepted the restrictive view of public policy that is prescribed in Section 8 (7) of the Arbitration Act, 1974[16], and the interpretation of the public policy is limited to fraud, corruption, or violation of natural justice principles.[17]

PUBLIC POLICY IN INDIA

In India, the foreign award can be set aside on the ground that "(i) fundamental policy of Indian law; or (ii) the interests of India; or (iii) justice or morality". The Section 34 of Arbitration and Conciliation Act 1996 states that an arbitral award can be set aside if it is violating the public policy of India similarly the Section 48 specifies a foreign arbitral award can invoke if it violating the public policy of the nation.

By considering the international conventions and treaties, Article 3 of the New York Convention embodies the pro-enforcement policy of the convention, it states that "*Each Contracting State shall recognize arbitral awards as binding and enforce them per the rules of procedure of the* territory where the award is relied upon, under the conditions laid down in the following *articles....*" This provision makes unclear about the enforcement of the foreign award.

The Article 36[18] of the UNCITRAL Model Law on International Commercial Arbitration in 1985 states an award can be refused if the subject matter is not capable of arbitration and its recognition would violate the public policy of the state. The Article 5 of the UNCITRAL and Section 5 of Arbitration and Conciliation Act 1996 provides limitations or minimalize the intervention of courts in arbitration proceedings.

[14] Arbitration awards shall be recognized or enforced in France if their existence is established by the person relying on them and if such recognition or enforcement is not manifestly contrary to international public policy.
[15] European Gas Turbines SA v. Westman International Ltd, Paris Cour d'appel (1re Ch.), 30 Sept. 1993.
[16] International Arbitration Act 1974.
[17] Traxys Europes SA vs Balaji Coke Industry Pvt Ltd [2012] FCA 276.
[18] Grounds for refusing recognition or enforcement.

The doctrine of public policy in arbitration was evolved in India through various judgments which shaped the present meaning of public policy.

JUDICIAL APPROACH IN INDIA

The arbitral award is a binding document but it can be set aside due to various reasons such as incapacity of arbitrator or party, invalid agreement and most importantly if the arbitral award is against public policy of India. This invokes the validity of the arbitral award and cause difficulties to the parties. In the case of International Commercial Arbitration, it is very common for the courts in India to check whether it is violating or not. The notion behind this provision is to protect the public good and public interest.

The case of *Renusagar Power Electric Company Vs. General Electric Company*[19] serves as the landmark case of the enforceability of foreign award in India and the ICA. The facts of case the Indian Company Renusagar Power Co. Ltd was engaged in electric power production entered into a contract with General Electric Company, a New York-based entity. It was for the supply and erection of a thermal power plant. The main issue regarding this case was the enforceability of arbitral awards under the Foreign Awards Act, 1961 followed by the tax exemption, payment of interest. The Apex Court upheld the enforceability of the arbitral award made by the International Chamber of Commerce (ICC) against Renusagar Power Co. Ltd. The award comprised various components including regular interest, delinquent interest for delayed payments, compensatory damages, and costs. Renusagar case contested the enforcement of this award on grounds including violations of the Foreign Exchange Regulation Act (FERA), public policy considerations, and issues related to the calculation of interest. It questioned the validity of Section 7(1)b(ii)[20] of the Foreign Awards (Recognition and Enforcement) Act, 1961. The Supreme Court three-member bench comprising Agrawal S.C J. Venkatachalliah M.N CJ, Anand, A.S J, "*The enforcement of a foreign award would be refused on the ground that it is contrary to public policy if such enforcement would be contrary to (i) fundamental policy of Indian law; or (ii) the interests of India; or (iii) justice or morality."*[21] This case provided a narrow interpretation with respect to the private international law.

In the second landmark case of *ONGC vs SAW Pipes Ltd*[22], The Oil and Natural Gas Commission (ONGC) ordered to Saw Pipes for the supply of equipment for offshore

[19]Renusagar Power Electric Company Vs. General Electric Company, 1994 Supp (1) SCC 644.
[20] The enforcement of the award will be contrary to public policy.
[21] *Id.* at 18.
[22] ONGC vs SAW Pipes Ltd, 2003 (5) SCC 705.

exploration, specifying procurement from approved European manufacturers. Due to a general strike by steel mill workers in Europe, the delivery was delayed. The timely delivery was a crucial aspect of the contract. Despite ONGC granting an extension of time, it exercised the right to recover Liquidated Damages by withholding the amount from the payment to Saw Pipe. The dispute was taken to arbitration and the award was favorable to the respondent. The petitioner took the case to the Bombay High Court and the court upheld the award. While issue came before the Supreme Court the Bench comprising of M.B Shan J and Arun Kumar J held the doctrine of public policy in the context of Section 34, giving a wider meaning than in the previous case of Renusagar and observed the public policy connotes some matter which concerns the public goods and public interest. What is for the public good or in the public interest or what would be injurious or harmful to the public good or public interest has varied from time to time. An award which, prima facie breaches statutory provisions cannot be considered as the public interest, because it is likely to negatively affect the administration of justice. Accordingly, in addition to the three heads set forth in Renusagar, an award can as well be annulled, being in conflict with public policy of India, if it is patently illegal.[23] The Court held that an arbitral award could also be set aside if it were so unfair and unreasonable that it shocked the conscience of the court. Such an award must be adjudged void and opposed to the public policy of India.

The facts of the case of *Shri Lal Mahal Ltd. Vs. Progetto Grano Spa*[24] concerned the dispute between an Indian supplier and an Italian buyer in a contract for the supply of wheat. The seller relied on a quality certificate issued by a certifying agency at the Indian port of loading to claim that the wheat met the required standards. The buyer questioned the reliability of the quality certificate at the port of loading and on the basis of various reports that argued about the quality of wheat was below that which was contractually agreed. The dispute was taken to Grain and Feed Trade Association (GAFTA) which was seated in London. The arbitral tribunal was in favor of the buyer and awarded damages against the seller. An application by the seller before the High Court of Justice in London to set aside the award under section 68 of the English Arbitration Act 1996 was also rejected. The three bench comprising of Kurian Joseph J., Madan B. Lokur J., R.M. Lodhat J., the Supreme Court overruled the judgment of *Phulchand Exports Ltd vs Ooo Patriot*[25] case which the test laid down in ONGC Saw pipes should be succeeded in case of foreign awards, thereby permitting Indian courts to deny the enforcement of the

[23] *Id*. at 17.
[24] Shri Lal Mahal Ltd. Vs. Progetto Grano Spa, (2013) 3 SCC 437.
[25] Phulchand Exports Ltd vs OOO Patriot (2011) 10 SCC 300.

foreign arbitral award on the ground of "patent illegality".[26] The Renusagar case was reinstated concerning the enforcement of the foreign arbitral award and confirmed that the test held in the Renusagar case will be applied henceforth for the refusal of the arbitral award on the ground of public policy. The decision limited the inference of 'public policy' in the impugned section remove patent illegality of the award.

The *ONGC Ltd. Vs. Western GECO International Ltd*[27], the ONGC contracted with the Western GECO for procuring U.S. origin Hydrophones Due to the post 9/11 regulatory measures in the U.S. GECO suggested ONGC that it would impossible to provide for the desired U.S. Hydrophones. The dispute arose between the parties regarding the interpretation of the contract and the amount payable by the ONGC to GECO. The parties moved for arbitration in accordance of International Chamber of Commerce (ICC). The award was favorable to GECO and the ONGC was liable to pay the amount. The ONGC moved to the Bombay High Court but it favored the decision of ICC. The three-bench of the Supreme Court upheld the award, concluding that ONGC failed to exhibit any clear violation of public policy of India. The Court carefully scrutinized whether the award violated the public policy of India. They accepted on the ratio given in the Case of Saw pipes and further elaborated on the meaning of *'fundamental policy of Indian law'*. The court determined that *'three distinct and fundamental juristic principles'* form a part and parcel of the fundamental policy of Indian law - first, the adjudicating authority must adopt a 'judicial approach' when determining the rights of a citizen. [28]

The Arbitration & Conciliation (Amendment) Act, 2015 made major changes to Section 34 of the Act, the changes had been suggested by the 246th law commission report. These changes were focused on restricting courts from interfering with the arbitral awards on the ground of *"public policy". The amendment added, explanation 2 to Section 34(2) as well as Section 2A. Explanation 2 of Section 24(2) states "For the avoidance of doubt, the test as to whether there is a contravention with the fundamental policy of Indian Law shall not entail a review on the merits of the dispute."* This made to ensure that there is no misreading of the ONGC judgment. Since the 2015 Amendment, there is no more stress towards the courts to give a wider meaning of public policy.

[26] *Id.*at 10.
[27] ONGC Ltd. Vs. Western GECO International Ltd ,(2014) 9 SCC 263
[28] *Id.* at 10.

CHALLENGES

The emergence of Alternative Dispute Resolution is a relief to both citizens and the courts, as it offers dual advantages. Arbitration stands as an efficient mechanism for dispute resolution, preserving time and effort and resulting in a binding arbitral award, especially in business disputes, international trade disputes, and other similar cases. But if the procedure is expensive, and it is not enforceable in the country, then all the effort done by the parties will be meaningless.

The lack of clarity of the doctrine of public policy may be misused as a loophole, and the uncontrolled judicial intervention when it is not necessary also creates difficulties and discourages parties from resolution of disputes through arbitration. The judiciary has to intervene in the matter when it is a concern to the public good or public interest because it is needed for safeguarding of the interests of the citizens.

CONCLUSION

The concept of public policy in ICA in India has significantly, evolved reflecting the balance between judicial supervision and respect for arbitral autonomy. When public policy serves as a shield against an arbitral award contrary to the fundamental laws and interests of the country is not uniformly defined across numerous jurisdictions. This will narrow the scope by Courts to align with international arbitration standards.

The Arbitration and Conciliation Act, 1996 and other landmark judicial interpretation has expanded India toward arbitration. Recently the Indian courts restrict the application of public policy to the fundamental policy of Indian law, principles of natural justice, and basic notions of morality and justice, thereby ensuring regulated interference in foreign arbitral awards.

For the enhancement of the clarity and effectiveness of public policy grounds, the collective involvement of lawmakers, judges, and lawyers is required. It also includes the establishment of specialized tribunals and ensuring consistent application. The adoption of these strategies in India can strengthen the arbitration system in India and enhance its standard for international arbitration.

CYBERCRIME AND CRIMINAL LIABILITY IN THE DIGITAL ERA: CHALLENGES AND LEGAL RESPONSES IN INDIA

M. David Ziegan Paul[1]

VOLUME 2, ISSUE 1 (JANUARY-JUNE 2026)

ABSTRACT

The development of digital technology has changed the way people communicate, conduct business, and access information. Crimes such as hacking, phishing, identity theft, cyberstalking, ransomware attacks, and online financial fraud have become common in recent years. These offences not only affect individuals and businesses but also pose serious threats to national security and public infrastructure. Traditional criminal laws were not originally designed to address crimes committed in cyberspace, which created the need for specialized cyber legislation. This paper examines the concept of cybercrime and analyses criminal liability under Indian law, especially under the Information Technology Act, 2000. The paper discusses important statutory provisions, judicial decisions, and constitutional concerns relating to privacy and freedom of speech in the digital environment. It further examines practical challenges faced by investigating agencies and courts, including jurisdictional difficulties, lack of technical expertise, and problems associated with electronic evidence. The paper also highlights emerging concerns involving artificial intelligence, cryptocurrency, and digital surveillance.

The study adopts a doctrinal research methodology based on statutes, judicial precedents, books, journal articles, and government reports. The paper argues that although India has made considerable progress in developing cyber laws, the legal framework still faces challenges in effective implementation. It concludes that stronger institutional mechanisms, technological preparedness, public awareness, and continuous legal reforms are essential to combat cybercrime effectively in the digital era.

Keywords: Cybercrime, Criminal Liability, Information Technology Act, Digital Evidence, Cyber Law, Cyber Terrorism.

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INTRODUCTION

The digital revolution has fundamentally altered the structure of modern society. Internet-based services now influence nearly every aspect of human life, including education, healthcare, governance, finance, and business transactions. India has emerged as one of the fastest-growing digital economies, supported by increasing internet penetration, smartphone usage, online banking systems, and digital governance initiatives such as Digital India. While these developments have created new opportunities for economic and technological growth, they have simultaneously exposed individuals and institutions to serious cyber threats.

Cybercrime has become one of the most significant challenges in the contemporary legal landscape. Cybercriminals exploit technological vulnerabilities to commit offences such as hacking, phishing, identity theft, financial fraud, data breaches, cyberstalking, and online harassment. The anonymous and borderless nature of cyberspace complicates investigation and prosecution, making cybercrime a complex issue for criminal justice systems across the world.[2]

India has witnessed a sharp increase in cybercrime incidents over the last decade. Online financial frauds, unauthorized access to databases, ransomware attacks on institutions, and misuse of social media platforms have become increasingly common. High-profile incidents such as the AIIMS ransomware attack highlighted the vulnerability of critical digital infrastructure and demonstrated the urgent need for effective cybersecurity measures.[3] The growth of artificial intelligence, cryptocurrency transactions, and encrypted communication has further complicated the legal and regulatory framework governing cyber offences.

The traditional provisions of criminal law under the Indian Penal Code were insufficient to address offences committed through digital means. In response, Parliament enacted the Information Technology Act, 2000 to provide legal recognition to electronic records and regulate cyber activities.[4] The Act was later amended in 2008 to include stricter provisions relating to identity theft, cyber terrorism, obscenity, privacy violations, and intermediary liability. Judicial decisions have also played an important role in shaping cyber jurisprudence in India, particularly in balancing criminal liability with constitutional rights such as freedom of speech and privacy. [5]

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[2] JONATHAN CLOUGH, PRINCIPLES OF CYBERCRIME 8–10 (2d ed. 2015).

[3] NINA GODBOLE & SUNIT BELAPURE, CYBER SECURITY: UNDERSTANDING CYBER CRIMES, COMPUTER FORENSICS AND LEGAL PERSPECTIVES 25 (2011).

[4] Aparna Viswanathan, Cybercrime and Jurisdictional Issues in India, 12 INDIAN J.L. & TECH. 45, 49 (2021).

[5] Press Trust of India, AIIMS Ransomware Attack Highlights Cybersecurity Concerns, THE HINDU (Nov. 28, 2022), https://www.thehindu.com.

This paper examines the concept and scope of cybercrime, analyses the framework of criminal liability under Indian law, evaluates judicial approaches, and identifies major challenges in cybercrime regulation. It further discusses reforms necessary for strengthening India's cyber legal regime in the digital era.

RESEARCH QUESTIONS

What constitutes cybercrime under Indian law?

How does Indian legislation determine criminal liability in cyberspace?

What are the major challenges in investigating and prosecuting cyber offences in India?

Whether the existing legal framework is sufficient to address emerging cyber threats?

RESEARCH METHODOLOGY

This study adopts a doctrinal and analytical method of research. Primary sources such as statutes, judicial decisions, government reports, and legal provisions have been examined. Secondary sources including journal articles, books, research papers, and online databases have also been referred to for comprehensive analysis.

UNDERSTANDING CYBERCRIME

Cybercrime refers to offences committed using computers, digital devices, or communication networks. In some cases, the computer itself becomes the target of the offence, while in others it acts as a tool for committing the crime.[6] Cybercrime differs from conventional offences because it can be committed remotely and anonymously without physical contact between the offender and the victim.

The nature of cybercrime has evolved along with technological advancement. Earlier cyber offences mainly involved unauthorized access to computer systems or simple hacking activities. However, the expansion of internet services, online banking, social media, and cloud computing has led to more sophisticated forms of digital crime. Today, cybercriminals use advanced technologies to steal financial data, spread malware, commit identity theft, and disrupt computer systems.[7]

Cybercrime may broadly be divided into three categories: crimes against individuals, crimes against property, and crimes against the state. Crimes against individuals include cyberstalking,

[6] Information Technology Act, No. 21 of 2000, INDIA CODE (2000).

[7] GODBOLE & BELAPURE, supra note 2, at 28.

online harassment, identity theft, and phishing scams. Crimes against property involve hacking, ransomware attacks, data theft, and intellectual property infringement. Crimes against the state include cyber terrorism and attacks on critical digital infrastructure.

One of the most common forms of cybercrime in India is phishing. Fraudsters send fake emails or create fake websites resembling genuine institutions to obtain confidential information such as passwords and banking credentials. Many individuals become victims because they are unable to distinguish between authentic and fraudulent communication. Identity theft has similarly increased due to unauthorized access to personal information available on digital platforms.

Cyberstalking and online harassment have also become serious social concerns. Women and children are particularly vulnerable to digital abuse through social media platforms. The misuse of private photographs, fake online profiles, and threatening messages has increased substantially in recent years. Such offences affect not only personal safety but also mental health and dignity.

Ransomware attacks represent another major cyber threat. In these attacks, malicious software encrypts digital data and demands payment for restoring access. The ransomware attack on AIIMS disrupted hospital services and exposed weaknesses in cybersecurity infrastructure. These incidents show that cybercrime can have serious consequences for public administration and national security. The investigation of cybercrime presents several practical difficulties. [8] Digital evidences can easily be altered or deleted. Cybercriminals often use fake identities, encrypted communication systems, and virtual private networks to conceal their activities. As a result, tracing offenders becomes extremely difficult for investigating agencies.

EVOLUTION OF CYBER LAW IN INDIA

The increasing use of electronic communication and internet-based services highlighted the need for a specialized legal framework in India. Before the enactment of cyber legislation, offences involving computers were dealt with under traditional criminal laws, which were not equipped to handle technological complexities.

India enacted the Information Technology Act, 2000 based on the UNCITRAL Model Law on Electronic Commerce. The primary objective of the legislation was to provide legal recognition to electronic records and digital signatures while facilitating electronic commerce and e-governance. The Act also introduced provisions dealing with cyber offences and penalties.

[8] Press Trust of India, supra note 4.

The original legislation focused mainly on electronic transactions and digital authentication. However, the rapid increase in cybercrime soon exposed the limitations of the law. Consequently, Parliament enacted the Information Technology (Amendment) Act, 2008 to strengthen cybercrime regulation. The amendment introduced provisions dealing with identity theft, cyber terrorism, privacy violations, and intermediary liability.

Section 43 of the Information Technology Act imposes civil liability for unauthorized access, downloading of data, introduction of computer viruses, and disruption of computer systems. Section 66 converts these acts into criminal offences when committed dishonestly or fraudulently. Section 66C criminalizes identity theft, while Section 66D punishes cheating by personation through digital means.

Section 66E deals with violations of privacy involving unauthorized capture or transmission of private images. Section 66F criminalizes cyber terrorism and recognizes the growing threat posed by attacks on digital infrastructure and national security systems.

The legislation also regulates obscene and sexually explicit online content. Sections 67 and 67B prohibit the publication and transmission of obscene material and child sexual abuse content in electronic form. These provisions aim to prevent online exploitation and abuse.

Another important provision is Section 79, which deals with intermediary liability. Social media platforms and internet service providers are granted conditional immunity if they comply with due diligence requirements and government directions. The role and responsibility of intermediaries have become increasingly important due to the growth of digital communication platforms.

The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 further expanded the responsibilities of intermediaries by introducing grievance redressal mechanisms and compliance obligations. These developments indicate that cyber governance in India is continuously evolving in response to technological changes.

CRIMINAL LIABILITY IN CYBERSPACE

Criminal liability in cyberspace involves determining responsibility for offences committed through digital technology. Establishing liability in cyber offences is often more difficult than in conventional crimes because cybercriminals frequently operate anonymously and across international borders.

One of the essential elements of criminal liability is mens rea or guilty intention. In cyber offences, intention is usually inferred from digital records, communication history, and technical evidence.

Courts examine the conduct of the accused and surrounding circumstances to determine criminal intent.

The Information Technology Act creates both civil and criminal liability for cyber offences. Section 66 punishes computer-related offences committed dishonestly or fraudulently. Fraudsters often misuse passwords, OTPs, and confidential credentials to gain unauthorized access to bank accounts.

Section 66D addresses cheating through personation using communication devices. Online investment frauds, fake customer care scams, and fraudulent online advertisements are commonly prosecuted under this provision. Such offences have increased significantly with the expansion of digital transactions.

The issue of intermediary liability has become one of the most debated aspects of cyber law. Social media platforms and online intermediaries play an important role in facilitating communication and sharing information. Questions often arise regarding their liability for unlawful content posted by users. Section 79 grants safe harbor protection to intermediaries if they comply with due diligence obligations.

The constitutional validity of restrictions on online speech was examined by the Supreme Court in Shreya Singhal v. Union of India. The Court struck down Section 66A of the Information Technology Act on the ground that it violated freedom of speech guaranteed under Article 19(1)(a) of the Constitution. The judgment emphasized that vague restrictions on online expression are unconstitutional.

Cyber law also intersects with the constitutional right to privacy. In Justice K.S. Puttaswamy (Retd.) v. Union of India, the Supreme Court recognized privacy as a fundamental right under Article 21 of the Constitution.[9] The judgment has important implications for digital surveillance, data protection, and state monitoring powers.

Corporate liability has similarly gained importance in recent years. Companies handling sensitive personal data may face legal consequences for failing to implement adequate cybersecurity measures. Data breaches affecting financial institutions and healthcare organizations demonstrate the need for stronger corporate accountability in cyberspace.

[9] Justice K.S. Puttaswamy (Retd.) v. Union of India, (2017) 10 S.C.C. 1 (India).

JUDICIAL APPROACH TOWARDS CYBERCRIME

One of the earliest cybercrime convictions in India was State of Tamil Nadu v. Suhas Katti.[10] The accused was convicted for posting obscene and defamatory messages online. The case demonstrated that existing cyber laws could effectively address online harassment and cyber abuse.

The admissibility of electronic evidence was clarified in Anvar P.V. v. P.K. Basheer.[11] The Supreme Court held that electronic records are admissible only if accompanied by a certificate under Section 65B of the Indian Evidence Act. This judgment established important evidentiary standards for digital evidence in criminal proceedings.

The landmark judgment in Shreya Singhal v. Union of India significantly influenced India's cyber jurisprudence.[12] The Court held that Section 66A of the Information Technology Act violated constitutional protections for free speech because its language was vague and susceptible to misuse. The decision reaffirmed the principle that restrictions on speech must satisfy constitutional standards of reasonableness.

In Avnish Bajaj v. State (NCT of Delhi), commonly known as the Bazee.com case, the issue concerned liability of intermediaries for objectionable online content. The case highlighted the difficulties in balancing intermediary responsibility with protection from excessive liability.

Indian courts have increasingly recognized the seriousness of cyber offences. High Courts in various states have repeatedly emphasized the need for stronger cyber forensic infrastructure, trained personnel, and specialized cybercrime investigation units. Judicial observations also indicate concern regarding delays in cybercrime investigation and lack of technological expertise among investigating authorities.

CHALLENGES IN CYBERCRIME REGULATION

Despite legislative developments, India continues to face several challenges in regulating cybercrime effectively. One major issue is jurisdiction. Cyber offences frequently involve multiple jurisdictions because offenders, victims, and servers may be located in different countries. Determining territorial jurisdiction becomes difficult in cross-border cybercrime cases. Existing procedural mechanisms often fail to ensure timely international cooperation.

[10] State of Tamil Nadu v. Suhas Katti, C.C. No. 4680 of 2004 (Tamil Nadu Dist. Ct. Nov. 5, 2004) (India).
[11] Shreya Singhal v. Union of India, (2015) 5 S.C.C. 1 (India).
[12] Shreya Singhal, (2015) 5 S.C.C. at 35.

Another significant challenge is the lack of technical expertise among law enforcement agencies. Cybercrime investigation requires specialized knowledge of digital forensics, encryption systems, malware analysis, and blockchain technology. Many police officers and prosecutors lack adequate training in handling technologically advanced offences.

The collection and preservation of electronic evidence also create practical difficulties. Digital evidence is highly volatile and can easily be altered or destroyed. Improper handling of electronic records may render them inadmissible before courts. The requirement of certification under Section 65B further complicates evidentiary procedures.

The rise of artificial intelligence has introduced new forms of cyber threats. Deepfake technology can be used to create fabricated videos and manipulate public perception. Artificial intelligence systems may also facilitate automated cyberattacks and large-scale phishing operations. Existing laws do not comprehensively regulate such emerging technological threats.

Cryptocurrency-related crimes have similarly increased in recent years. Anonymous digital transactions enable money laundering, online fraud, and financing of illegal activities. The absence of a comprehensive cryptocurrency regulatory framework complicates criminal enforcement.

Underreporting of cybercrime remains another concern. Many victims avoid reporting cyber offences due to embarrassment, fear of reputational damage, or lack of confidence in investigative authorities. Women and children facing online harassment often hesitate to approach law enforcement agencies.

Balancing cybersecurity with constitutional freedoms presents an additional challenge. Government powers relating to interception, surveillance, and online content blocking must be exercised carefully to prevent violations of privacy and freedom of speech. Excessive state control over digital platforms may create concerns regarding democratic accountability.

SUGGESTIONS AND REFORMS

India's cyber legal framework requires continuous reform to address evolving digital threats effectively. First, there is a need for specialized cybercrime courts to ensure speedy disposal of technologically complex cases. Delays in investigation and trial reduce the effectiveness of criminal enforcement.

Second, law enforcement agencies should receive advanced training in digital forensics, artificial intelligence, blockchain investigation, and cyber intelligence. Modern cybercrime requires technical expertise beyond conventional policing methods.

Third, India must strengthen international cooperation mechanisms for cross-border cyber investigations. Cybercrime is a global phenomenon, and effective enforcement requires coordinated international action.

Fourth, comprehensive legislation regulating artificial intelligence, deepfake technology, and cryptocurrency transactions should be introduced. Existing laws are insufficient to address these emerging digital risks.

Fifth, public awareness programs relating to cyber safety and digital literacy should be expanded. Educating citizens regarding phishing scams, online frauds, and data privacy can significantly reduce cyber victimization.

Finally, cyber governance must maintain a balance between national security and constitutional freedoms. Legal safeguards against arbitrary surveillance and censorship are essential for preserving democratic values in the digital age.

CONCLUSION

Cybercrime has emerged as one of the most complex legal challenges of the twenty-first century. India's rapid digital transformation has increased dependence on technology while simultaneously exposing individuals, corporations, and public institutions to serious cyber threats. The Information Technology Act, 2000 and its subsequent amendments represent important steps towards regulating cyberspace and establishing criminal liability for digital offences.

Judicial decisions have significantly contributed to the development of cyber jurisprudence by addressing issues such as electronic evidence, intermediary liability, online speech, and privacy rights. However, the constantly evolving nature of technology continues to create legal and practical challenges. Jurisdictional barriers, lack of technical expertise, inadequate forensic infrastructure, and emerging threats involving artificial intelligence and cryptocurrency complicate cybercrime enforcement.

A strong cyber legal framework requires not only effective legislation but also efficient implementation mechanisms, international cooperation, technological preparedness, and public awareness. India must therefore adopt a balanced and forward-looking approach that ensures cybersecurity without undermining constitutional freedoms. The future effectiveness of criminal justice in the digital era will largely depend on the ability of law to adapt to rapidly changing technological realities.

CRIMINAL LIABILITY FOR AI HARM: POSITIONING INDIA'S BHARARTIYA NYAYA SANHITA WITHIN GLOBAL LEGAL TRENDS

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VOLUME 2, ISSUE 1 (JANUARY-JUNE 2026)

ABSTRACT

The burgeoning growth of artificial intelligence (AI) presents some novel problems regarding the criminal theory itself – that is, concerning the issues of attribution, culpability, and causation. Conventional theories of criminal law, based on individual human conduct and intentions, have become inadequate for dealing with harm caused through autonomous and semi-autonomous machines. This paper will evaluate whether the Bharatiya Nyaya Sanhita is equipped to tackle such problems or not, as compared to international perspectives on the same. Using a doctrinal and comparative research approach, the paper begins by examining the challenges posed by the use of AI technologies in terms of their opacity, unpredictability, and distributed decision-making processes.

Next, the paper examines the application of existing principles of liability according to the Bharatiya Nyaya Sanhita, emphasizing notable shortcomings in dealing with algorithmic harms. The comparative examination of the regulatory strategies adopted in important jurisdictions such as the EU, US, and China reveals an emerging trend toward hybrid liability schemes. From these discussions, the authors present a proposal for a new concept of criminal liability in India that takes into account the multiple actors involved, the design of the algorithm, and changes in the standard of foresight. They recommend several specific measures, such as creating offenses specific to AI, employing hybrid forms of liability, and building capacity in institutions and investigations. The paper concludes that although the Bharatiya Nyaya Sanhita offers a basic structure, its practical implementation for crimes involving AI will necessitate not only legal

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reform but also regulatory harmonization. Through the comparative approach taken by the study, it offers an important contribution to international debates on AI governance.

Keywords: Artificial Intelligence, Criminal Liability, Bharatiya Nyaya Sanhita, Comparative Criminal Law, Legal Reform

INTRODUCTION: AI HARM AND THE CRISIS OF CRIMINAL LIABILITY

The integration of artificial intelligence (AI) into various essential domains such as finance, healthcare, transport, and communications has led to a fundamental shift in the concept of risk and harm in modern societies. While previous technologies were merely tools that remained under direct human control, modern AI technologies have developed autonomous capabilities, learning abilities, and opacity in their operation. This has profound effects on criminal law, which has always been concerned with identifying human actions and intentions. However, when the risk of harm arises from an algorithmic process that cannot be predicted or understood, the principles of criminal law are challenged.[2]

Criminal responsibility is founded on the interaction between actus reus and mens rea, which requires the existence of a human being who has the capacity for both the act and the intent.[3] With AI systems, however, this relationship is complicated. In instances where the autonomous technology causes harm, whether due to its design, biased algorithms, or unexpected actions, the issue becomes how one can determine whether there is a guilty mind in relation to the crime. This could be the programmer, the installer, the user, and the organization itself that created the system. However, none may meet the conventional criteria for establishing guilt. Such a situation creates what is commonly referred to as an "accountability gap."[4]

It poses unique challenges in jurisdictions that are witnessing fast-paced changes in their laws. For example, in India, the new codification of its criminal laws via the Bharatiya Nyaya Sanhita (BNS) is a classic example of such doctrinal change. The BNS aims at bringing about an updated and

[2] Mireille Hildebrandt, *Smart Technologies and the End(s) of Law: Novel Entanglements of Law and Technology* (Edward Elgar 2015) 102.
[3] Andrew Ashworth, *Principles of Criminal Law* (7th edn., Oxford University Press 2013) 85.
[4] Matthias C. Kettemann and Konrad Lachmayer (eds.), *Freedom of Expression in the Internet Age* (Springer 2019) 214.

efficient version of substantive criminal laws but still continues with traditional notions of mens rea and actus reus. The negligence and fraud under the BNS did not intend to include any sort of autonomy or partial autonomy for autonomous systems. Thus, how are we to treat the application of these laws to AI?[5]

Such issues are not only relevant to India. Around the world, legal frameworks have had to deal with such problems, although employing different regulatory measures. For example, the EU has chosen a risk-based regulatory model where ex ante regulation and compliance prevail, whereas the US has employed doctrines already present in its legislation along with sector-based regulation. Lastly, China has opted for a centralized regulatory approach, focusing on state supervision and control.[6] Nevertheless, the underlying point is similar, as there is a clear understanding of the limitations of criminal law when dealing with the challenges brought about by AI technology. Such international developments will help analyze India's situation better.

Given this background, the present paper attempts to critically analyze whether the existing doctrines of criminal liability under the BNS suffice for addressing criminal liability arising out of harms associated with AI. The paper will be premised on the assumption that although the doctrines of criminal liability are able to address some issues, they fail to address all the concerns associated with the harms connected with AI. The main research questions that will guide the analysis include: (i) the extent to which criminal liability under the BNS may be extended to cover AI harms; and (ii) how criminal law in India may respond to global developments.

From the methodological point of view, the article employs doctrinal and comparative methods of analysis. It involves an analysis of selected provisions of the BNS, together with the consideration of judicial concepts related to culpability and responsibility. In addition, a comparative analysis of selected international standards is conducted to detect any existing patterns and practices in this area. Notably, the focus here is more than merely descriptive in nature.

However, the subject matter of the article is restricted to the area of criminal liability only, and the article does not deal with any procedural or evidential aspects, unless they have a bearing on the

[5] K.D. Gaur, *Textbook on Indian Penal Code* (6th edn., Universal Law Publishing 2016) 57.
[6] Cary Coglianese and Alicia Lai, "Algorithmic Regulation: Technology, Governance, and Legal Design" (2022) 89 *Geo. Wash. L. Rev.* 101, 118.

question of attribution or liability. While the analysis may take into account global trends, it is primarily confined within the ambit of Indian law. The aim of this article is to examine the relationship between AI and criminal liability with the help of the BNS framework.

CONCEPTUAL FOUNDATIONS: AI, HARM, AND CRIMINAL RESPONSIBILITY

The discussion about criminal responsibility for harm caused by artificial intelligence should start with conceptual precision. Since there is no consistent legal definition of what "harm caused by artificial intelligence" means, it often creates uncertainty and lack of consistency in legal doctrine. At a minimum, harm caused by artificial intelligence can be defined as harm to one's physical well-being, finances, reputation, and psyche stemming from the functioning of an artificial intelligence technology, where the functioning includes some level of autonomy or decision making independent of any immediate human control.[7]

One of the hallmarks of AI technologies is their dependence on machine learning algorithms, which make it possible for them to adapt and improve upon the initial programing. Neural network machine learning algorithms can recognize certain patterns and make decisions that may be impossible for the programmers themselves to understand.[8] The inability to comprehend how an algorithm makes certain decisions—a problem known in machine learning circles as the "black box"—causes serious difficulties in legal analysis. For instance, in a traditional case of criminal law, there must be an intelligible relationship between the conduct and the harm that ensued.[9]

Autonomy, too, is closely connected to opacity. Although AI is not conscious and morally accountable, its functional autonomy can give rise to consequences that are similar to those of autonomous acts. For example, an AI program used for trading might act at such fast and large scales that it cannot be controlled in real time by humans. The result could be manipulation of the

[7] Ryan Calo, "Artificial Intelligence Policy: A Primer and Roadmap" (2017) 51 *U.C. Davis L. Rev*. 399, 404.
[8] Ian Goodfellow, Yoshua Bengio and Aaron Courville, *Deep Learning* (MIT Press 2016) 27.
[9] Frank Pasquale, *The Black Box Society: The Secret Algorithms that Control Money and Information* (Harvard University Press 2015) 3.

market or monetary loss. Likewise, the AI algorithms responsible for content creation might spread defamation or disinformation without direct input from any human being when publishing it.[10]

These features imply that there must be an analysis of the principles on which criminal law rests. According to one of the main criteria of actus reus, the crime must comprise an act or failure to act caused by a person voluntarily.[11] In the case of AI, however, such an act may encompass many actions performed throughout the entire cycle of designing, programming, training, and using artificial intelligence. It also means that many people may be involved in the process at various stages.

The issue of mens rea is another problem to consider. Usually, for a person to be criminally responsible, there must be an intent, knowledge, recklessness, or negligence in his actions. [12] The AI lacks consciousness; hence, it cannot be regarded as having any mental state. It is then necessary to ask whether mens rea can be attributed to the human agents who designed or utilized the AI. One plausible option is to attribute culpability to the designing and utilization stage when the risk of foreseeing harm was disregarded. Nonetheless, this approach becomes difficult if the harm arose from emergent properties that were unforeseeable.[13]

The next problem relates to defining the difference between fault and culpability. It must be noted that all the adverse consequences that may be produced by AI systems do not necessarily involve any negligent behavior or wrongful conduct. Certain cases might be related to statistical irregularities or unexpected interactions among different data sets. Nevertheless, criminal law does not provide for the punishment of any accidental occurrence unless it falls into one of the limited types of negligence.[14] The broadening of liability for all kinds of AI-caused damages will likely lead to the undermining of the moral basis of punishment, since the latter presupposes the presence of culpability.

[10] Woodrow Barfield and Ugo Pagallo (eds.), *Research Handbook on the Law of Artificial Intelligence* (Edward Elgar 2018) 45.
[11] Glanville Williams, *Textbook of Criminal Law* (2nd edn., Stevens & Sons 1983) 34.
[12] Andrew Ashworth, *Principles of Criminal Law* (7th edn., Oxford University Press 2013) 137.
[13] Thomas Burri, "The Politics of Robots: Regulation and the Future of Law" (2017) 48 *Common Market Law Review* 343, 356.
[14] H.L.A. Hart, *Punishment and Responsibility* (2nd edn., Oxford University Press 2008) 28.

Attribution in itself becomes a more difficult issue because of the involvement of multiple parties in the life cycle of an AI system. For example, developers, data suppliers, implementers, and users could each play a role in the formation of the circumstances that lead to harm. It is thus difficult to pinpoint responsibility using a purely individualist approach that is favored by criminal law.[15] Though doctrines of common intention and conspiracy provide some leeway, it is also not easy to apply them to the actions of multiple parties within the AI sphere.

Given these problems, academics have recently argued for the need to rethink criminal responsibility in the era of artificial intelligence. In their proposals, some authors suggest adapting current legal doctrines by employing analogical reasoning, whereas others support the creation of new theories of liability that are able to take into consideration the nature of algorithms. [16] One of the key issues in such academic debate is that of individual fault versus collective and/or risk-oriented forms of accountability. This issue has important consequences not only from a legal point of view but also from those of fairness and deterrence.

CRIMINAL LIABILITY UNDER THE BHARATIYA NYAYA SANHITA

The coming into force of the Bharatiya Nyaya Sanhita (BNS) of 2023 signifies an important step taken in the process of modernizing and rationalizing Indian substantive criminal law, rooted deeply in its colonial heritage. Nevertheless, even with all of the improvements brought about by the new code, the BNS is deeply entrenched in classical doctrines of criminal liability predicated on the presence of human volition, intention, and capacity for control. The following analysis will discuss the ability of existing provisions of the BNS to cope with harm caused by artificial intelligence (AI) technologies.

From a structural perspective, the BNS preserves the basic structure of criminal liability predicated on actus reus and mens rea, with crimes being classified depending on the type of harm caused as well as the culpability of the offender.[17] The various statutes concerning negligence, fraud, and crimes against the body and property serve as the foundation for the whole legal structure.

[15] Luciano Floridi et al., "AI4People—An Ethical Framework for a Good AI Society" (2018) 28 *Minds and Machines* 689, 695.
[16] Mireille Hildebrandt, *Smart Technologies and the End(s) of Law* (Edward Elgar 2015) 156
[17] K.D. Gaur, *Textbook on Indian Penal Code* (6th edition., Universal Law Publishing 2016) 49.

Although these laws are broad enough to cover almost any form of harmful behavior, they cannot be easily applied in cases where the perpetrator is an artificial intelligence. This is because there are problems when trying to fit algorithmic actions into human legal categories.

It might be possible to tackle the issue of harm caused by AI from a negligence perspective within the BNS framework. Historically, criminal negligence is described as any failure on the part of an individual to meet his or her duty of care, leading to the occurrence of some form of foreseen damage.[18] Where AI is concerned, negligence may include such acts as failure to properly evaluate, monitor, or improve the AI system, hence enabling harmful consequences to take place. An example in this regard would be deploying an autonomous system that lacks appropriate safeguards to ensure safety. However, applying negligence principles to AI can pose difficulties, especially regarding the issue of defining what is reasonable care in such cases.

Cheating and fraud, which are acts of deception, are another category of offenses that could serve as a potential means of addressing harm caused by some types of AI systems. It should be emphasized that AI technology could be used to achieve extremely effective acts of deception, misrepresentation, and manipulation, all of which require a minimum of supervision.[19] In these instances, one could argue that liability for the offense falls on the individual who uses the AI technology as an instrument of deceit. However, the problem arises when the act performed using AI technology occurs spontaneously without any desire or anticipation on the part of the person responsible.

In the same manner, rules pertaining to damage against persons and property can apply to instances where damage has been caused by artificial intelligence technology to persons or financial assets. For instance, an autonomous car that causes an accident and an automated stock trading application that causes monetary losses can potentially fall under an offense that already exists. But determining responsibility is still challenging when the harm comes from artificial intelligence.

[18] Ratanlal & Dhirajlal, *The Indian Penal Code* (34th edn., LexisNexis 2017) 312.
[19] Arvind Narrain and Apar Gupta, "Technology, Crime and the Law in India" (2020) 5 *Indian Journal of Law and Technology* 1, 9.

While in ordinary offenses, the problem of causation can easily be traced back to the person who performed the act, in the case of AI, there are many variables that make causation complicated.[20]

Another problem associated with the BNS is the lack of mention of specific liabilities arising from AI. While new regulatory systems in some other countries incorporate such aspects into legislation, the BNS ignores the possibility that autonomous systems could be involved in the perpetration of crimes. As a result, the issue would have to be resolved by drawing analogies, which, although flexible, could create problems when enforcing the law. There is a danger that the courts could either over-interpret some provisions and engage in over-criminalization, or take a conservative approach.

Interpretation of law by the Indian judiciary has always been an important aspect when making changes to the criminal laws according to the changing times. It is quite common for the Indian judiciary to make use of purposive interpretation to expand the scope of a particular section of a law according to the realities of the time.[21] In the context of artificial intelligence, however, the issues involved are more complex than ever before. Not only is it a matter of dealing with a new form of conduct, but also a new form of agency.

Another challenge pertains to determining the correct subject for liability. As with criminal law, the BNS has a predominantly individualistic approach to determining culpability, even if corporate liability is acknowledged in some instances. Nevertheless, the BNS falls short in accommodating the dispersed and collective process involved in developing and deploying AI systems. In such cases, developers, data scientists, corporations, and end users could be considered part of the processes leading to the operation of an AI system, but the BNS lacks clarity on how to allocate liabilities among these different subjects. There is a danger that liability may either be under-enforced, in which case none of these parties qualify as liable, or over-enforced, with liability being imposed on subjects that are marginally linked to the act.

Moreover, apart from the issues regarding doctrine, there also exist problems in terms of the practical aspect of pursuing a case for an AI crime. Proving causality and establishing the

[20] Glanville Williams, *Textbook of Criminal Law* (2nd edn., Stevens & Sons 1983) 38.
[21] *State of Maharashtra v. Mohd. Yakub* (1980) 3 SCC 57.

responsibility would require some level of technical know-how and access to the data within the system, both of which might not necessarily always be available. Moreover, the problem related to the opacity of AI makes proving causality particularly challenging due to the difficulty of tracing the decision-making process.

COMPARATIVE GLOBAL APPROACHES TO AI CRIMINAL LIABILITY

The problem of criminal responsibility for damages caused by artificial intelligence is not exclusive to India but is a common dilemma faced by the international community in adapting legal principles to fast-evolving technologies. Various countries around the world have taken varying stances on regulating AI and formulating laws based on their specific priorities and constitution, as well as the technology infrastructure that prevails in their respective societies. An examination of such policies helps understand how criminal law may respond to AI-related damages and serve as a point of comparison for India's Bharatiya Nyaya Sanhita.

In recent times, the European Union (EU) has come out as one of the leading jurisdictions in terms of the regulation of AI, adopting an ex-ante risk-based approach in regulation. The European Union does not make any changes in the existing criminal law in the initial stages of implementation but focuses on the development of the ex-ante obligations for high-risk AI, such as risk assessment and compliance obligations.[22] This method ensures that any harm is prevented prior to the occurrence by making it unnecessary for criminal sanctions to be imposed. Nonetheless, the European Union does not totally eliminate criminal liability but uses indirect methods to incorporate it into the process.[23] When there is a breach of regulations regarding the use of AI systems, then criminal liability becomes applicable, especially when negligence or recklessness is proven under the national laws of the member countries.

In contrast to the above, the United States has opted for the use of traditional doctrines to govern AI, with the country using a decentralized and sectoral approach in its AI regulation policy. Traditional crimes of fraud, negligence, and product liability have been used in addressing criminal liability relating to harms by AI technology, with no specific criminal laws governing AI being

[22] Karen Yeung, "A Study of the Implications of Advanced Digital Technologies for the Concept of Responsibility within a Human Rights Framework" (2018) European Commission Report, 12.
[23] Andrea Bertolini, "Artificial Intelligence and Civil Liability" (2020) 6 *European Parliament Study* 45, 61.

adopted.[24] Flexibility is one of the advantages that characterize this model, with courts capable of utilizing traditional doctrine in a more innovative way. However, one of the disadvantages of this model includes the lack of unity in regulating AI, with different sectors and states having diverging approaches. Lack of a common federal regulation of AI is another challenge with the adoption of this model, especially in the event that the issue crosses borders.

The Chinese approach differs vastly from the others because of its heavy emphasis on government involvement and centralized regulation. Within the Chinese legal framework, governance of AI is embedded within other forms of digital regulations, taking into consideration aspects of security and social stability, amongst others.[25] From the perspective of criminal law, there tends to be accountability placed on the people and companies responsible for the use and development of AI technology, especially when it poses a threat to national security. The state-led approach makes it possible to enforce regulations quickly without ambiguity; however, one of its major flaws is that it does not take into consideration the aspect of due process. Unlike in the EU and US, China prioritizes collectivism over individualism.

In addition to the previously mentioned important jurisdictions, there is also a general understanding that international cooperation needs to be enhanced in dealing with AI-associated crimes. The very nature of AI technology that is typically developed, applied, and used in one jurisdiction while having adverse effects in another jurisdiction presents difficulties from the perspective of territorial jurisdiction.[26] Existing frameworks such as MLATs and extradition treaties may prove insufficient in the face and complicated character of these crimes.[27] Consequently, a discussion on the possibility of developing international standards or even conventions related to AI governance in general and criminal law aspects, in particular, emerged.

The comparative analysis of the presented frameworks indicates certain trends in this regard. The first trend is the transition from punishment-oriented approaches to the use of preventive regulation with its focus on risk management and compliance. Another trend can be seen in the lack of fault-

[24] Ryan Calo, "Robotics and the Lessons of Cyberlaw" (2015) 103 *California Law Review* 513, 540.
[25] Rogier Creemers, "China's Social Credit System: An Evolving Practice of Control" (2018) SSRN Working Paper, 8.
[26] Dan Jerker B. Svantesson, *Solving the Internet Jurisdiction Puzzle* (Oxford University Press 2017) 67.
[27] Ugo Pagallo, *The Laws of Robots* (Springer 2013) 178.

based approach used in some cases and the development of certain hybrid frameworks with strict or risk-based liability elements. Finally, the third trend is associated with different approaches applied by various countries towards the role of the state in regulating and addressing autonomous vehicles. Different views on this matter emphasize the lack of universal model to address artificial intelligence harm.

In this respect, these international trends present both advantages and disadvantages to India. Firstly, the flexibility of the BNS system enables some aspects of the comparative models to be included in the system, especially concerning negligence and corporate liability. Secondly, the lack of a coherent regulatory regime pertaining to AI technologies constrains the application of the criminal law system to govern the issue effectively. In this context, the EU approach of regulating ex ante implies the significance of establishing relevant standards, and the U.S. example indicates the dangers that may arise out of such an approach. Finally, despite its success in several ways, the Chinese model might not be consistent with India's constitutional principles.

Finally, the comparative analysis highlights the necessity for a balanced approach towards criminal liability with respect to AI in law. Although there is no ready-made solution to incorporate into the legal regime of India, important insights gained from analyzing foreign models could assist in formulating a new framework that will take into account the needs for innovation, effectiveness, and fairness in criminal liability in an age of technological progress.

RECONCEPTUALIZING CRIMINAL LIABILITY UNDER INDIAN LAW

It can thus be seen that the current approach towards criminal liability, even when reformulated through the Bharatiya Nyaya Sanhita, faces inherent obstacles when applied to cases of injury caused by AI. This is not due to the lack of a legal basis but because of the inherent principles of personal responsibility and cause and effect within the legal system. The solution to dealing with such injuries in India's criminal law will thus need to incorporate both an understanding of the problem and a novel approach to liability.

One such approach could begin with expanding the interpretation of doctrinal principles under the current legal system. Indian courts have often been found willing to pursue purposive and

contextual interpretations of statutes, especially as social and technological advances demand it.[28] This flexibility can be used to broaden the application of well-known principles, like negligence and recklessness, to include risks related to artificial intelligence. For example, the principle of "reasonable care" can be modified to include responsibilities pertaining to AI, including testing algorithms, avoiding biases, and ongoing monitoring. While this process does not necessarily necessitate any new legislation at once, it does rely on judges' understanding of AI technology and its capacity for doing harm.

Interpretive broadening will not be enough in instances when harm results from a complicated series of events that cannot be attributed to one particular flaw in the process. In such circumstances, it is necessary to factor in some aspects of design-based and due diligence liability into the criminal law framework. The reason is that responsibility can also be placed for failure on the part of the developer of an AI system in terms of the way the system is designed, trained, or governed.[29] For instance, a developer who uses an AI system in ways that can foreseeably lead to harm without placing any checks on its use can be considered liable.

Another aspect of reconceptualization in relation to the above point is that of multi-party responsibility. As pointed out above, AI technologies cannot be attributed to any one person alone; instead, they are developed as a result of collaborative efforts among developers, data suppliers, companies, and users. The traditional individualistic approach of criminal law is inadequate to address the above scenario.[30] While the Indian legal system offers certain provisions for joint responsibility in criminal law, such as common intention and abetment, it is assumed that some form of cooperation exists between the parties. This assumption is likely to be invalid when dealing with the complexities associated with AI technologies.

In addition, there is the issue that should be addressed regarding the balance between innovation and liability. The liability regime that goes beyond what is necessary could potentially hinder technological innovation and the deployment of technology that could benefit from the use of AI in such areas as health care and public administration. On the other hand, lax liability standards

[28] *State of Maharashtra v. Mohd. Yakub* (1980) 3 SCC 57.
[29] Ugo Pagallo, *The Laws of Robots: Crimes, Contracts, and Torts* (Springer 2013) 121.
[30] Luciano Floridi et al., "AI4People—An Ethical Framework for a Good AI Society" (2018) 28 *Minds and Machines* 689, 696.

could leave people exposed to risks without sufficient legal protection.[31] The problem is that a delicate balance should be struck by retaining the functions of law, without hindering innovation.

Another significant aspect relates to the idea of foreseeability in relation to establishing criminal liability. For classical offenses of negligence, liability depends on the foresight of risk by the accused as well as the taking of measures that would prevent such risk. In the case of AI, however, the notion of foreseeability becomes problematic due to some level of unpredictability in the operation of these machines.[32] Instead of doing away with foreseeability completely, it would be better to look into the issue through the lens of current technology. Here, the question is whether a similarly situated but technically knowledgeable person should have foreseen the risk and prevented it from happening.

Similarly, institutional capacity also plays an essential role in any attempt at reconceptualization. Not only does a well-defined theory of criminal liability need to be articulated; there also needs to be sufficient institutional capacity to enforce that definition. In other words, it is necessary for legal actors to have some knowledge about algorithms and how they work. Otherwise, it will prove impossible for these actors to be able to properly implement any liability scheme.[33] Of course, these issues relate more to institutional capacity than substantive law, per se.

Lastly, any attempt at reconsidering criminal responsibility in light of the developments associated with AI will need to be accompanied by a wider discussion on what goals should be assigned to criminal law in such conditions. Criminal law has been performing several roles, such as deterrence, punishment, and society's condemnation of the criminal conduct of an offender. However, under certain circumstances related to AI, the goals of criminal law may have to be adjusted. The focus, therefore, could move towards prevention and regulation as opposed to punishment when harm is caused due to systematic failure and not individual fault.

REFORM PROPOSALS: TOWARDS AN AI-RESPONSIVE CRIMINAL LAW FRAMEWORK

[31] Cary Coglianese and Alicia Lai, "Algorithmic Regulation: Technology, Governance, and Legal Design" (2022) 89 *Geo. Wash. L. Rev.* 101, 130.
[32] Andrew Ashworth, *Principles of Criminal Law* (7th edn., Oxford University Press 2013) 168
[33] Frank Pasquale, *The Black Box Society* (Harvard University Press 2015) 189.

It is evident from the above analysis that although existing doctrines of the Bharatiya Nyaya Sanhita offer some form of justification for dealing with injuries caused by AI technology, they lack the necessary tools and mechanisms required to fully tackle the challenges posed by such injuries. This calls for more than mere interpretation; what is required now is a series of reforms that can effectively reformulate criminal law to fit the new realities of algorithmic decisions.

Among the essential aspects that need reform is the creation of offenses and other legal mechanisms tailored to dealing with AI-related harms. Due to the lack of clear definitions of such harm within current statutory law, any efforts towards punishing such offenders would lead to inconsistencies. Instead of trying to fit AI-induced harm into offenses whose definition does not necessarily cover such actions, it would be much better if certain types of AI-induced harm were created.[34] In this case, the offenses can focus specifically on harms whose current legal treatment is unsuitable.

On the other hand, the drafting of such measures must take into consideration that there is no room for over-criminalization in this respect. Criminal law, as a coercive mechanism, should always be subject to the tenets of proportionality and culpability.[35] Consequently, AI-related offenses can have graded liability standards, where deliberate use of AI systems, reckless use of such systems, and even negligence in using AI can have varying levels of sanctions imposed on offenders. In this manner, the legal system will maintain its moral integrity when it comes to the imposition of criminal sanctions.

The second reform strategy involves adopting a hybrid liability system which is an integration of the fault-based and risk-based liability models. It has been mentioned before that the fault-based model might not always work effectively when dealing with harm emanating from unpredictable behavior of artificial intelligence machines. However, the pure application of strict liability rules is likely to punish individuals without necessarily finding them morally responsible for their actions.[36] The problem can be addressed by adopting a hybrid model whereby liability is tied to the non-compliance of established standards of care or duties. The hybrid system entails a set of

[34] Ugo Pagallo, *The Laws of Robots: Crimes, Contracts, and Torts* (Springer 2013) 134.
[35] H.L.A. Hart, *Punishment and Responsibility* (2nd edn., Oxford University Press 2008) 53.
[36] A.P. Simester and G.R. Sullivan, *Criminal Law: Theory and Doctrine* (6th edition, Hart Publishing 2016) 92.

obligations that must be fulfilled by persons participating in the development and implementation of the technology.

Connected to this is the requirement to develop investigative and evidentiary methods for dealing with crimes involving AI technology. It is crucial to note that prosecuting cases that involve AI technology requires evidence to prove causality and identify actors who committed the crime. Unfortunately, current investigative procedures lack the capacity to meet these requirements.[37] The time has come for experts to develop specific forensic methods, such as auditing algorithms, tracking data movement, and reconstruction of decision-making processes. Besides, it may become necessary to review the evidentiary requirements, particularly regarding the admissibility of algorithms and expert testimony in analyzing AI technology.

Institutional reforms are also equally important in ensuring that any legal reforms achieve their intended goals. In order to ensure that there is proper enforcement of the criminal liability associated with AI technologies, it will require concerted action by many institutions, from the police to the judiciary.[38] Building capacity through training and establishing specific units responsible for handling cyber and AI-related crimes are key to ensuring that the actors in the legal process are technically equipped to handle the tasks involved.

Another critical aspect of reform involves the creation of a wider policy framework for the regulation of AI in India. Criminal laws, by their very nature, function as a form of reaction to wrongdoing after it has taken place. For this reason, it must be supplemented by precautionary measures that will help minimize the possibility of any harm being caused in the first place.[39] This involves creating a set of rules regarding how AI is designed and implemented, and ensuring that there is adequate supervision to ensure that such rules are followed.

Lastly, any attempt at reform must also incorporate the international dimension of AI governance. As AI operates internationally, domestic regulatory approaches cannot be pursued in a vacuum. It is imperative that India engages itself in international negotiations towards the creation of

[37] Frank Pasquale, *The Black Box Society* (Harvard University Press 2015) 201.
[38] Cary Coglianese and David Lehr, "Regulating by Robot: Administrative Decision Making in the Machine-Learning Era" (2017) 105 *Georgetown Law Journal* 1147, 1195.
[39] Karen Yeung, "Algorithmic Regulation: A Critical Interrogation" (2018) 12 *Regulation & Governance* 505, 512.

harmonious standards and mechanisms to deal with AI-induced harm.[40] This would involve, among other things, making domestic laws in line with evolving international standards, bilateral agreements, and participation in international principle-making relating to AI liability.

CONCLUSION

The fast developments in the field of artificial intelligence have revealed the inherent paradox in the realm of criminal law – an area of law originally concerned with regulating human behavior is now faced with harms arising out of processes carried out by semi-autonomous technologies. It is clear from the discussion above that even though the Bharatiya Nyaya Sanhita presents a well-structured doctrine based on traditional liability doctrines, it may not suffice to meet all the new challenges posed by artificial intelligence related offenses.

It was evident from the analysis above that provisions available in the BNS, to some extent, can be adapted into covering cases involving harms caused by AI through theories of negligence, fraud, and corporate liability. Nevertheless, this adaptation is bound to have limitations and will mostly be founded on analogies that might be lacking coherence. There being no specific provisions for AI crimes means that there is the potential of under-criminalizing and, at the same time, over-extending liability. Under-criminalizing refers to a situation where an activity that constitutes a crime does not get criminalized whereas over-extension means that there is imposition of liability without culpability.

Through the comparative analysis carried out in this article, it emerges that India is not unique in its experience with the problem at hand. Countries around the world have implemented different approaches to solving the matter, including the EU's approach based on regulation, the American legal doctrines of strict liability and negligence, and the centralized Chinese enforcement system. These different approaches may vary in their design and content, but they all indicate the same thing - that the conventional criminal law cannot be applied when it comes to harm resulting from AI without further regulation.

[40] Dan Jerker B. Svantesson, *Solving the Internet Jurisdiction Puzzle* (Oxford University Press 2017) 189.

Based on these findings, this paper suggests a new way to conceive of criminal liability within the Indian legal framework, one that requires moving away from rigid doctrinal classifications and towards a more adaptable and context-specific approach to criminal liability. This involves a broader interpretation of extant principles, adopting design and due diligence standards, as well as acknowledging the distribution of responsibility within artificial intelligence technologies. In no way does this suggest a departure from the foundational principles of criminal law, only an adaptation thereof.

The recommendations mentioned above in the previous section intend to implement these theoretical considerations. It is argued that the creation of dedicated offenses relating to artificial intelligence, the use of a hybrid model of responsibility, and enhanced capacity in terms of investigation and institutions are vital measures towards the construction of an appropriate criminal law regime for artificial intelligence. However, what should not be overlooked is that it is equally significant to incorporate the criminal law regime into an environment of artificial intelligence governance, which will focus on prevention and international cooperation.

In essence, therefore, the question is not whether there should be a confrontation between the criminal law and AI-related harms, but rather what sort of engagement would be appropriate in this regard. India's criminal legal system, by virtue of the Bharatiya Nyaya Sanhita, has the basic ingredients needed for such an engagement. Yet, making this possible demands a reconsideration of conventional wisdom and active engagement in the global dialogue regarding AI.

Given the constant evolution of AI technology and its ever-increasing presence in various spheres of human endeavor, the problems raised in the present paper are likely to become even more significant in the future. It remains to be seen how successful the development of criminal law will prove to be in addressing those problems through a combination of doctrinal coherence and institutional flexibility. From this point of view, India finds itself at a crossroads: it can choose to adopt the former strategy based on minor modifications to the existing regulatory framework or opt for the latter by designing a legal system more fit for the digital era.

"EMPOWERING JUSTICE FOR MARGINALIZED COMMUNITIES: THE ROLE OF LEGAL AID FOR EQUITABLE ACCESS TO RIGHTS."

***Nitin Shakya*[1]**

VOLUME 2, ISSUE 1 (JANUARY-JUNE 2026)

ABSTRACT

Legal assistance is vital for providing access to justice, especially for marginalized and underprivileged populations who frequently encounter obstacles when navigating the legal system. This helps close the gap between underprivileged communities and justice. It is a fundamental component of the rule of law and a vital tool for attaining equality and social justice.

Systemic limitations that restrict marginalized groups' ability to exercise their legal rights and get remedies include prejudice, lack of knowledge, and financial limitations. By making legal services accessible or even free, educating people about their rights, and enabling them to pursue justice, legal aid is a crucial tool for removing these obstacles.

It draws attention to effective legal aid initiatives and how they support accountability, equity, and inclusion in legal systems. Additionally, it looks at the difficulties in establishing and maintaining legal aid programs, such as financial constraints, political opposition, and a lack of qualified personnel.

By promoting systemic changes and more funding for legal aid programs, it will aim to advance a broader understanding of how equitable access to justice can transform lives and assist communities. It claims that ensuring universal access to legal aid is more than simply a service; it is fundamentally a component of preserving democracy and human dignity, particularly for those who are most in need.

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INTRODUCTION

India is the world's largest democracy, as we all know, but justice is still an abstract concept for millions of Indians till date. The justice gap is growing and despite the progressive laws and constitutional assurances, obstacles such as poverty, illiteracy, gender discrimination, and remote location still prevail and contribute significantly to the expansion of the gap.

In India, community-led legal empowerment has emerged as a significant and impactful strategy to close this gap in society. This new model improves the public's and communities' knowledge, application, and shaping of the law, which not only ensures better access to justice but also develops social equity and sustainability. The function, workings, and effects of community-led legal empowerment in India will be discussed in this article, along with some encouraging case studies, challenges and potential ways to improve this overall approach.

INDIA'S JUSTICE GAP: UNDERSTANDING THE CHALLENGE

1. **Access to Justice in Numbers:** The justice gap in India is enormous. With roughly 21 judges per million, the nation has one of the lowest judge-to-population ratios in the world. With millions of cases pending in courts at all levels—from subordinate courts alone, which is over 4 crores—court proceedings frequently experience significant delays. For those with restricted opportunity, socioeconomic constraints increase delays and make justice unattainable.
2. **Main Obstacles to Justice:** The overall cost of legal services is prohibitively expensive, and the majority of individuals cannot afford attorneys or the drawn-out and tiresome litigation procedure. On the other hand, a large portion of India's population lives in rural or village regions without access to courts or legal assistance.
3. **Cultural and Social Barriers:** Based upon gender, caste, and patriarchal principles, people, especially women and Dalits, are prevented from seeking justice.
4. **Legal Awareness:** Lack of awareness regarding legal rights and procedures makes many unable to recognize or address injustices properly.
5. **Why grassroots approaches can be really effective:** Despite their best intentions, institutional legal aid programs are insufficient to solve India's enormous justice disparity. A supplementary approach is community-led legal empowerment, which addresses obstacles at

the local level, fosters trust, and supports regional and culturally appropriate solutions.

IMPACTS OF COMMUNITY-DRIVEN LEGAL EMPOWERMENT IN INDIA

1. Improved Social Justice and Reduction in Inequality

Legal empowerment has been a strong tool against social inequality in India, as the movement for reform can be sustained through organizing communities and mobilizing legal support to challenge systemic injustices with the aim to improve the status of historically marginalized sections such as scheduled castes, scheduled tribes, and other backward communities.

2. Empowerment of Rural Women and their Economic Independence

Legal empowerment has also helped women, especially in rural places, obtain property rights and access some of the social welfare schemes provided by the government. Organizing initiatives such as SEWA leads the way in improving legal rights of inheritance, marriage, and property to improve economic independence and the social status of people.

3. Land Rights for Marginalized Communities

Legal empowerment efforts have led to the recognition and protection of land rights for Dalits, Adivasis, and other marginalized communities. Through campaigns and legal interventions, groups like the **Narmada Bachao Andolan (NBA)** and **Dalit Liberation Movement** have ensured that these communities can assert their rights to land, fight against forced displacement, and demand fair compensation and rehabilitation.

4. Improved Access to Justice for Marginalized Communities

Community-driven legal empowerment has greatly contributed towards making legal resources and justice accessible to Dalits, women, indigenous communities, and rural populations. It has also empowered individuals who were oblivious or were denied access to legal remedy by making them learn about their legal rights and providing the support of organizations that work at the ground level.

5. Better Legal Protection for Children's Rights

Organizations such as Bachpan Bachao Andolan have played a crucial role in advocating for the rights of children, which has led to increased enforcement of laws prohibiting child labor and greater access to education for vulnerable children.

CASE STUDIES: THE ROLE OF LEGAL EMPOWERMENT

1. Access to Justice through Legal Aid in India's Rural Areas

Programs like Lok Adalat or the People's Court have endeavored to bring justice for the poor sections of the population and allowed them to settle disputes rather than facing costly litigation. In that respect, these schemes assist in bridging legal gaps among people who can't afford legal representation while empowering them to access the right thing. In India, the National Legal Services Authority (NALSA) and different state-level legal services authorities have worked in order to cater to the legal aid schemes towards underprivileged sections of society, with particular emphasis on rural areas.

2. Campaign Against Child Labor and the Right to Education

Save the Children India and Bachpan Bachao Andolan have also legally empowered communities to combat child labor and secure the right to education. Legal advocacy, awareness campaigns, and litigation by these organizations have helped children from marginalized communities demand their right to education and assisted in holding employers accountable for illegal child labor practices.

3. Land Rights for Dalits and Adivasis in Tamil Nadu

There have been efforts from community-based organizations for the legal empowerment of Dalits and Adivasis, especially to win them the land rights in Tamil Nadu. This type of activism on behalf of the minority groups came in terms of advocating for them legal processes, as well as encouraging advocacy to implement reforms aimed at the land itself, on the part of such bodies as the Dalit Liberation Movement and Tamil Nadu Adivasi Munnetra Sangam.

4. Legal Empowerment for Women through the Protection of Women from Domestic Violence Act (PWDVA)

The Protection of Women from Domestic Violence Act, enacted in the year 2005, provided legal recourse for women who were experiencing violence in their daily household. Organizations such as "The Lawyers Collective and Akshara Centre" have been instrumental in promoting women to use this law by providing legal aid, conducting awareness programs, and offering counseling services. With such efforts, many women have been able to seek justice and protection from abuse.

5. The Narmada Bachao Andolan (NBA) and Land Rights

The Narmada Bachao Andolan (NBA), headed by activist Medha Patkar, highlighted the impact of the Sardar Sarovar Dam's construction on the tribal people. In order to ensure that the rights of the affected people are well protected, especially on compensation, resettlement and land rights, the movement adopted legal empowerment. Legal advocacy and court cases played a role in raising awareness of the nation's concerns related to land appropriation, displacement and the rights of indigenous people.

CHALLENGES

Lack of Legal Awareness: Many underprivileged populations are ignorant of their legal rights and the resources that are readily available for them, particularly in rural areas. People are unable to use the legal system to rectify violations resulting from this ignorance.

1. **Limited Access to Justice:** As a result of the procedural, financial, and physical obstacles, the low-income people cannot get the help they need from attorneys. This is due to the fact that the courts are usually situated in the central parts of the country and are expensive, which makes people avoid seeking justice.
2. **Judicial Delays and Systemic Inefficiencies:** The Indian legal system suffers from a long-drawn-out problem of delay in disposal of cases due to huge arrears of cases. These delays make people refrain from filing cases and also create loss of confidence for the people in the legal system.

3. **Cultural and Social Barriers:** Deeply rooted social norms, such as patriarchal institutions, often obstruct the legal empowerment of women, minority groups, and other oppressed people. Conflicts between legal principles and conventional wisdom may lead to resistance to community-led legal initiatives.
4. **Political Influence and Corruption:** Political interference in the judicial system can lead to biased and unequal results, particularly for underprivileged groups. Corruption in the judicial and administrative institutions further impedes equitable access to justice.

THE WAY FORWARD: TURNING VISION INTO REALITY

- **Promoting Legal Awareness**
    a. Set up comprehensive legal literacy initiatives designed to educate people without access to justice about their legal rights and resources.
    b. Use simple, accessible methods like local workshops, pamphlets, and digital tools to enhance understanding, especially in rural areas.

- **Improving Access to Justice**
    a. Strengthen mobile legal aid services to reach remote areas and provide legal assistance to those unable to access courts.
    b. Set up community legal centers that offer free or affordable legal services to disadvantaged groups.
    c. Improve infrastructure and transport to make courts more accessible, especially in rural regions.

- **Judicial Reforms to Address Delays**
    a. Streamline court procedures and introduce technology solutions to reduce case backlogs and speed up the judicial process.
    b. Increase the number of judges and establish fast-track courts to expedite cases involving marginalized communities.
- **Addressing Social and Cultural Barriers**
    a. Promote gender-sensitive and caste-sensitive legal education to ensure that community-led initiatives are inclusive and responsive to local cultural dynamics.

b. Encourage local leaders and influencers to champion legal empowerment and challenge discriminatory norms.

- **Combating Political Influence and Corruption**
  a. Strengthen accountability mechanisms to reduce political interference in the legal process and ensure fair outcomes for marginalized groups.
  b. Establish independent bodies to monitor and address corruption within the legal and administrative systems.

- **Building Institutional Support**
  a. Foster partnerships between community organizations and government bodies to create a more robust support system for legal empowerment.
  b. Ensure that grassroots initiatives receive adequate institutional backing and resources to scale their efforts.

- **Ensuring Sustainability of Initiatives**
  a. Secure long-term funding for community-led legal empowerment programs through government support, private sector partnerships, and philanthropy.
  b. Train local leaders and volunteers to take ownership of legal empowerment initiatives, ensuring they are sustainable beyond external funding.

- **Protecting Individuals from Retaliation**
  a. Establish legal safeguards for individuals who participate in legal empowerment initiatives, including protection from threats and social ostracization.
  b. Promote community solidarity and support for legal empowerment efforts to reduce the risk of retaliation.

- **Enhancing Training for Community Leaders**
  a. Provide specialized legal training for community leaders to equip them with the knowledge and tools necessary to guide their communities effectively.
  b. Support peer networks for knowledge sharing and capacity-building among community leaders to strengthen the overall impact of legal empowerment initiatives.

By addressing these key areas, community-led legal empowerment in India can be significantly strengthened, fostering a more just and inclusive society.

CONCLUSION

Since basic practices do not really promise access to justice for marginalized communities but also serve as a tool for social equity and resilience building, community-led legal empowerment is therefore a transformative approach to addressing India's widening justice gap.

Due to its richness and diversity, India calls for solutions that are collaborative, locally, and culturally more effective and favorable. All of these requirements are satisfied by community-led legal empowerment, which demonstrates that justice may be inclusive and easily accessible. Notwithstanding the difficulties, the success of grassroots models across India suggests they have the capacity to bring positive development.

Focusing in and developing community-led legal empowerment initiatives is very important for narrowing the gap and laying the foundation for an inclusive, equitable society in which India, as a country, strives to achieve the constitutional promise of justice for all.

CASE COMMENTARY-

REVISITING THE SABARIMALA JUDGMENT: A CRITICAL ANALYSIS OF CONSTITUTIONAL MORALITY AND GENDER JUSTICE IN RELIGIOUS SPACES

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VOLUME 2, ISSUE 1 (JANUARY-JUNE 2026)

ABSTRACT

The Sabarimala case in the Supreme Court turned a long-held religious practice into an important discussion about equality and religious freedom. For decades, girls aged ten years up to fifty years were barred entry into Sabarimala temple, forcing judges to pit centuries-old tradition against the Constitution's promise of dignity and equality. One side leaned on tradition and the right of religious groups to govern themselves, the other quoted the Constitution of India, Articles 14, 15, 17, 25, and 26 as a challenge to this exclusion. The court's decision sent a powerful message that was constitutional values can fissure even the oldest barriers inside sacred spaces. The judgement didn't constituted an attack on rather it raised the question of whether discriminatory practice can be protected under the disguise of religious belief. The real debate became about what counts as essential to religion and how courts decide that, knowing those judgments can shift as society does. If you draw a line from the Shayara Bano case through Navtej Singh Johar, you see a clear trend. The highest judiciary of India is using the values present in the Constitution of India to challenge and occasionally strike down some ancient social practices. The Sabarimala decision is said to have rewritten the meanings of equality, dignity, secularism, and religious freedom in contemporary Indian jurisprudence. The very essence of the judgment lies in the transformation towards a different model of governance.

Keywords:- Transformative Constitutionalism, Gender Justice, Religious Freedom, Constitutional Morality, Equality Jurisprudence.

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INTRODUCTION : THE CONSTITUTIONAL TENSION BETWEEN EQUALITY AND RELIGIOUS AUTONOMY

The source of tension often has to do with the interaction between the constitutional promises and religious customs.[2] The constitutional conflict has significantly influenced legal debates in India. What lay at the heart of the legal challenge brought against the State of Kerala by the Indian Young Lawyers Association is whether the prohibition of women aged between ten and fifty years from accessing the Sabarimala shrine is consistent with the constitution. [3] What mattered most was weighing fairness against personal choice, while also holding old faith practices up to modern ideas like respect and self-determination. Embedded inside the debate about prayer lay bigger legal questions about how far protection goes for religion when it clashes with basic rights for people to hold. At the center of the legal case brought forward by the Indian Young Lawyers Association was the constitutionality of the discriminatory policy, Whether barring women aged ten to fifty from entering the Sabarimala temple could survive constitutional review. Hearing arguments, judges had to weigh fairness against personal freedom, measuring old traditions alongside core rights like human worth and self-determination. Underneath it all ran deeper issues - not just about worship, but where belief must yield when clashing with basic freedoms.

One argument questioned if a rule based solely on physical traits could survive under a constitution dedicated to real fairness and personal worth. On the other hand, those advocating for protection of the practices emphasized their importance in the governance of religious affairs.[4] This placed a great deal of burden on the court to reconcile the strongly-held values of society with practices derived from deeply-held convictions. Here, a test of the extent to which ancient norms would hold before cracking against modern day rights became the main issue. The important thing about this judgment is how it reflected the changing nature of the Indian Constitution, based on the interpretation by the judges of the country's founding document. This judgment is even today under discussion in relation to gender equity, state secularism, judicial supervision, and religion. A fresh spotlight emerged - this time on the ongoing pull between group-based religious freedom and personal liberties guaranteed under the constitution.

[2] Gautam Bhatia, The Transformative Constitution: A Radical Biography in Nine Acts 215–220 (2019).
[3] Indian Young Lawyers Association v. State of Kerala, (2019) 11 S.C.C. 1.
[4] INDIA CONST. arts. 14, 15 & 21.

THE SABARIMALA TRADITION: ANCIENT ORIGINS AND SPIRITUAL SIGNIFICANCE

Respected through the generations, the Sabarimala Temple Sree Ayyappa Temple occupies an important place in the religious traditions of Hindus in India. Devotees make pilgrimages to the shrine due to their love for Lord Ayyappa, who, as a god, is completely devoted to his spirituality.[5] Because he lives apart from worldly ties, certain rules shape how followers approach him. One such rule kept girls and women aged ten through fifty away, rooted in old ideas linking ritual cleanliness with monthly cycles.[6] Over time, this practice stirred debate, pulling attention toward beliefs about body rhythms and sacred space. Though custom once claimed biology clashed with godly chastity, Constitutional oversight focused on determining whether exclusionary methods could be considered to have religious sanctity. By framing absence as protection, tradition held firm - for years untouched by legal challenge. Yet meaning shifts when law meets belief, especially where bodies become part of worship disputes. Gradually, tradition stepped out of sacred spaces into courtrooms, pulled there by growing demands for fairness, respect, and equal standing in India's legal framework. Because the act of keeping people out clashed with both faith protections and equality promises, lawyers and judges began treating it as weighty ground. Temple gates became symbols - not just about who walks through them but how deeply courts can reach inside long-held beliefs when basic rights hang in balance. Interrogations about fairness between genders, control over one's own body, and moral duties under the constitution began clashing openly with demands for religious independence.[7] Because of this, what started as a legal conflict grew heavier in meaning - now tied tightly to modern arguments around separation of religion and state, evolving constitutions, and how laws can reach inside faith-based groups to stop unfair traditions. It was also a point at which the changing role of the judiciary in weighing the religious identity of communities against individual constitutional rights was brought to light. In this case, much emphasis was laid on the way in which constitutional courts approach tradition in a democracy that values social justice and inclusion.[8]

[5] Rajeev Dhavan, Reserved! How Parliament Debated Reservations 1995–2007 312–315 (2018).
[6] Venkataramana Devaru v. State of Mysore, A.I.R. 1958 S.C. 255.
[7] INDIA CONST. arts. 14, 21 & 25.
[8] Granville Austin, The Indian Constitution: Cornerstone of a Nation 50–57 (1966).

FACTUAL BACKGROUND OF THE CONSTITUTIONAL CASE

The case relating to the Indian Constitution was triggered by the centuries-old tradition prevailing within the Sabarimala Sree Ayyappa Temple, according to which women aged between ten years and fifty were not allowed into the premises of the temple. The rationale behind the ban was rooted in the tradition that saw Lord Ayyappa, who is the presiding deity within the temple, as being celibate, making this practice an important part of religion.[9] Statutorily speaking, the custom was also backed by Rule 3(b) of the Kerala Hindu Places of Public Worship (Authorization of Entry) Rules, 1965, which made provisions for such restrictions upon the entry of women in certain public places of worship.[10]

The constitutionality of this exclusionary policy was brought into question when the Indian Young Lawyer's Association instituted Public Interest Litigation against the same in the Supreme Court of India.[11] The contention here was that it is discriminatory of the women concerned to restrict their access on the grounds of biological factors alone, since such discrimination is contrary to Article 14, which guarantees equality, dignity, and freedom of worship under the Constitution. In their defense, the respondents had claimed that Sabarimala temple is a unique religious denomination that has to be given special consideration as far as religion is concerned.

As this case raised serious constitutional issues, it was decided that this issue be placed before a Constitution Bench of the Supreme Court. It is now for the Supreme Court of India to decide the balance between religious independence and the exercise of fundamental rights, especially if there seems to be any contradiction in terms of religious practices. [12] This case has been attracting widespread attention nationally due to its constitutional importance.

[9] Deepa Das Acevedo, Temples, Courts, and Dynamic Equilibrium in the Indian Constitution, 64 AM. J. COMPAR. L. 555, 570–72 (2016).
[10] Kerala Hindu Places of Public Worship (Authorization of Entry) Rules, 1965, r. 3(b).
[11] Indian Young Lawyers Association v. State of Kerala, Writ Petition (Civil) No. 373 of 2006 (India).
[12] Marc Galanter, Competing Equalities: Law and the Backward Classes in India 31–35 (1984).

CONSTITUTIONAL QUESTIONS RAISED FOR JUDICIAL RESOLUTION

1. If excluding women between the ages of ten and fifty from the Sabarimala Sree Ayyappa Temple amounted to a violation of the constitutional principles of equality, dignity, and non-discrimination.
2. Whether the challenged practice could be considered an essential part of religion under the constitutional right of freedom of religion.
3. If the Sabarimala temple represented a distinct religious denomination and therefore enjoyed the privilege of managing its religious affairs and practices autonomously.
4. If constitutional morality can be used to justify judicial review of religious practices in case they affect the fundamental rights of people.
5. If the courts had the constitutional power to interfere in exclusionary religious practices based on tradition.
6. Whether the exclusionary practice was consistent with the revolutionary and egalitarian spirit of the Indian Constitution.

SUBMISSIONS ADVANCED BY THE PETITIONERS AND RESPONDENTS

Firstly, the Indian Young Lawyers Association, who initiated the case, argues that the rule set by the Sabarimala Sree Ayyappa Temple that bars women of age ten to fifty from accessing the premises of the temple is discriminatory, unreasonable, and unlawful. The petitioners argue that the rule is against the values of equality and respect that are upheld in the Indian Constitution. As such, they contend that the petition should be considered based on the fact that the rule is based on the physiological process of menstruation, which according to them, is discriminatory and unreasonable.[13] Secondly, the petitioners argue that the rule is against the values of fairness and equality upheld by the Constitution of India. Therefore, they believe that the High Court has the mandate to intervene when such a rule is made to ensure that everybody is treated with dignity and their rights are respected. Thirdly, the petitioners argue that the rule should be reviewed by the court to determine whether it is constitutional or otherwise.[14] Finally, the petitioners argue that the rule denies the devotees who are women from entering the premises of the temple.

[13] INDIA CONST. arts. 14 & 15.
[14] Kesavananda Bharati v. State of Kerala, (1973) 4 S.C.C. 225.

On the other hand, the respondents argued that the Sabarimala Sree Ayyappa Temple had a definite religious and denominational identity worthy of constitutional protection in matters pertaining to religious activities and worship. It was contended that the prohibition against entry by women aged ten to fifty years was a necessary element in the ritual of worship of Lord Ayyappa, who is commonly referred to as a celibate deity.[15] In the view of the respondents, the challenged act stemmed from age-old tradition and religious belief and could not be struck down simply on the ground of modern social reform. The respondents also relied on the principle of religious freedom in arguing that the constitutional right of religious freedom extended to the ability of religions to manage their own internal religious affairs without unnecessary judicial interference. Additionally, the doctrine of essential religious practices was invoked in arguing that courts must exercise self-restraint in cases pertaining to faith and religious practices.[16]

JUDICIAL DETERMINATION AND THE DECISION OF THE COURT

In the case of Indian Young Lawyers Association v. State of Kerala, the constitutional questions posed were decided by the Supreme Court through a bench consisting of five judges. The issue of whether the exclusion of women between the ages of ten to fifty years from the Sabarimala Sree Ayyappa Temple was consistent with constitutional values such as equality, dignity, and freedom of religion was addressed through the application of constitutional law principles. In a four-to-one majority judgment, it was declared that such an exclusionary practice was unconstitutional because it violated the principles inherent in the Constitution of India.

From the view of the majority opinion, it is apparent that the concept of constitutional morality ought to supersede the existence of any customs and traditions that discriminate against and exclude people from participation. [17] The principle of freedom of religion was stated as being subject to fundamental rights, thus implying that religious practices ought not to violate fundamental rights in any way. It is also clear from the majority view that the concept of substantive equality played a significant role in declaring the exclusionary practice unconstitutional.

[15] Ronojoy Sen, Articles of Faith: Religion, Secularism, and the Indian Supreme Court 184–88 (2010).
[16] Comm'r, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Shirur Mutt, A.I.R. 1954 S.C. 282.
[17] D. Y. Chandrachud, Constitutional Morality, 12 NAT'L L. SCH. INDIA REV. 1, 8–10 (2018).

Considering the discussion presented above, the decision that is made in this case may be viewed as a landmark constitutional decision concerning matters related to gender equality, judicial review, and the role of the constitution in regulating religious exclusivity in a democratic context.[18]

MAJORITY AND DISSENTING VIEWPOINTS ON CONSTITUTIONAL INTERPRETATION

The decision of court reflected a significant constitutional preference between belief and freedom of individuals in a very fundamental way. Four honorable judges, including Misra, Nariman, Chandrachud, and Khanwilkar, were of the opinion that the law has to take into account more than just conventional customs. [19] In place of the conventional approach, the judges took into consideration the aspect known as constitutional morality. From their arguments, one could note that through constitutional morality, courts had the freedom to criticize ritual exclusion of individuals. The implication was that beliefs cannot automatically get a free pass as far as rights of individuals are concerned.

The interpretive methodology adopted by the majority was also seemingly in line with the jurisprudence of the Constitution that had been built up in other landmark cases such as Shayara Bano v. Union of India and Navtej Singh Johar v. Union of India, where constitutional morality and substantive dignity had been recognized as principles of the Constitution, which were sufficiently robust enough to challenge exclusion and discrimination that had existed for a long time.[20]

The most notable part of her opinion was how she formulated her separate opinion on the issue of when judicial restraint is appropriate regarding religious controversies. The basic idea is that courts generally should not interfere in religious practices unless the practices violate any constitutional value or cause disharmony, impropriety, or disorder.[21] She had another interesting observation that religion does not always conform to rationality, therefore, sometimes people's irrational beliefs must be protected, especially when they are considered odd by others. There was another

[18] Upendra Baxi, The Future of Human Rights 142–146 (3d ed. 2008).
[19] Indian Young Lawyers Association v. State of Kerala, (2019) 11 S.C.C. 1.
[20] Shayara Bano v. Union of India, (2017) 9 S.C.C. 1; Navtej Singh Johar v. Union of India, (2018) 10 S.C.C. 1.
[21] Indian Young Lawyers Association v. State of Kerala, (2019) 11 S.C.C. 1 (Malhotra, J., dissenting).

dimension to her opinion: religious communities should maintain autonomy over their religious identity without judicial interference.[22]

CRITICAL ANALYSIS

The judgement in Indian Young Lawyers Association v. State of Kerala marks one of the most progressive but controversial interpretations of the Indian Constitution. In my opinion, the judgement rightly observed that constitutional rights should not be secondary to customs based on exclusion and gender discrimination. [23] Through its interpretation of the essential religious practices doctrine, the majority judgment reinforced the transformative aspect of the Indian Constitution since dignity, equality, and individual autonomy should be upheld even in religious spheres that have traditionally been immune to constitutional oversight.[24] Thus, the judgement was instrumental in establishing the principle of substantive equality for women through constitutional means.

Nonetheless, some issues have emerged from the Court's interpretation of the case. Over-reliance on the essential religious practices doctrine may result in judges deciding religious doctrines that are outside their jurisdiction. The dissenting judgment of Indu Malhotra holds great importance in this regard, considering her focus on judicial restraint in interpreting religious doctrine.[25] Thus, the dissenting judgement raises significant concerns about the role of constitutional courts in dealing with entrenched religious beliefs.

However, the judgement marks a transformative step for the Indian Constitution because it confirms that constitutional morality should prevail in cases where exclusionary processes violate human dignity and equality in citizenship under a constitutional democracy.[26]

CONCLUSION

The judgment rendered in the case of Indian Young Lawyers Association v. State of Kerala holds an extraordinary place in the history of constitutional adjudication in India, for it radically transformed the constitutional understanding of the interplay between religion, gender, and human

[22] Gary J. Jacobsohn, The Wheel of Law: India's Secularism in Comparative Constitutional Context 98–102 (2003).
[23] Indian Young Lawyers Association v. State of Kerala, (2019) 11 S.C.C. 1.
[24] Gautam Bhatia, The Transformative Constitution: A Radical Biography in Nine Acts 223–228 (2019).
[25] Indian Young Lawyers Ass'n v. State of Kerala, (2019) 11 S.C.C. 1, 146–58 (Malhotra, J., dissenting).
[26] Upendra Baxi, The Indian Supreme Court and Politics 167–172 (1980).

dignity. In its judgment, the Supreme Court of India affirmed that the promises of the Constitution of India cannot be limited merely to constitutional abstractions but have to reach out to the social and religious spheres in which exclusion and discrimination still prevail.

On the other hand, the judgment also revealed the ongoing constitutional conflict between judicial interference and religious self-governance. Although the majority considered constitutional morality and transformative constitutionalism as paramount, the dissenting view presented by Justice Indu Malhotra emphasized the need for judicial restraint in the context of matters related to strong beliefs and denominational affiliations. Thus, the ruling remains a subject of intense constitutional discussion over how far judicial oversight of religious affairs can extend under a secular constitution. Generally speaking, from the standpoint of constitutionality, the Sabarimala case can be seen as belonging to an emerging judicial trend where constitutional morality is being used more and more as a means to question exclusionary practices and uphold the constitutional ideals of dignity, equality, and liberty. Indeed, the Sabarimala case serves to illustrate that constitutional governance in a democracy is not about maintaining traditions but allowing them to evolve in consonance with the constitutional guarantee of justice to all.

It is not just the implications of the ruling in Sabarimala that will endure into the future, but also the solution for any constitutional problems it leaves for the future generation. The case serves as an example of how constitutional courts are more and more expected to make a delicate path at the intersection of religion and constitutional values in an ever-changing society.

THE "BASIC STRUCTURE" VS. THE "POPULAR WILL": A KELSENIAN ANALYSIS OF ONE NATION, ONE ELECTION (ONOE)

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VOLUME 2, ISSUE 1 (JANUARY-JUNE 2026)

ABSTRACT

"One Nation One Election" (ONOE) is now a prominent discussion regarding India's Constitution (big topic). A Bill regarding this was approved by the Lok Sabha in February 2026 and forwarded for examination by a Joint Parliamentary Committee. Many supporters do not argue against the idea that simultaneous elections for both Union and State can promote political stability enhance administrative efficiency and foster national unity. Opponents of the change believe that it may negatively impact India's federal system resulting in a democracy lacking diversity. An examination of the ONOE plan centres on Hans Kelsen's legal theory known as the Theory of the Grundnorm (key concept). According to this perspective a singular fundamental rule exists at the core of every legal system. The study does not explore whether the concept of a "united state" and the occurrence of synchronized elections serving as justifications for ONOE are gradually evolving into a primary rule. A potential threat to the federal system embedded in India's Constitution could arise from the new rule. The federal structure is often not regarded as impervious to change. Modifications may not significantly alter its essence. Significant focus is given to a Supreme Court case (S. R. Bommai v.). A prominent examination of this case has been conducted. It does not overlook the various implications related to the ruling. The case retains relevance in legal discussions. India's union is significant. A vital aspect of the Constitution was acknowledged by the Court regarding federalism. Changes intended to enhance political efficiency cannot be seen as a disruption to the established legal order and hierarchy set forth by the Constitution when analysed through the Basic Structure doctrine and the intentions of elected representatives. A broader question emerges from ONOE's observations (wider context). Elections could lead to a transformation of India's parliamentary structure into a form resembling a presidential system. In the current framework the power resides with the legislature as defined by the Indian Constitution.

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However, it is unlikely that aspects such as accountability in mid-term or the option to dissolve the government would remain intact if elections occur simultaneously at scheduled intervals. Centralized political power could result from these established rules which may also create a more robust national mandate from the electorate. Fixed regulations are not guaranteed to lead to such outcomes. Concerns arise regarding the potential implications of these rigid structures on governance. Concerns arise regarding the potential weakening of parliamentary democracy and the federal balance in India due to the Basic Structure doctrine established in the Kesavananda Bharati case (court ruling). Parliamentary democracy could be undermined as fears grow about ONOE's influence. The fundamental principles of federalism are not always preserved in the actions influenced by ONOE.

Keywords- One Nation One Election, federalism, Grundnorm theory, Hans Kelsen, Basic Structure doctrine, S.R. Bommai case, parliamentary democracy, electoral synchronization, constitutional amendment, administrative efficiency, political centralization, judicial review

INTRODUCTION

A significant conversation has emerged in India regarding the One Nation One Election concept (politics). In February 2026 a bill was passed by the Lok Sabha. Many people do not support the formation of a committee to examine it further. Elections for both national and state governments are proposed to occur simultaneously (timing).[3] Money could be saved and problems arising from election rules that disrupt regular operations are to be avoided. Government efficiency is not guaranteed to improve. Supporters believe that improved planning and enhanced collaboration among states will result from this initiative (collaboration). Concerns regarding the law and Constitution are raised by it. Additionally, not everyone is convinced that these efforts will be beneficial. A structure exists within India's government that aims to balance power across national and state levels (government power). Power dynamics within different regions are frequently revealed during state elections. [4] Numerous times the importance of federalism to the Constitution has been highlighted by the Supreme Court. The concept of One Nation One Election prompts reflection on how the desire for "national unity" in elections could alter the essence of the Constitution. Questions arise

[3] Lok Sabha Debates, One Nation One Election Bill (India, February 2026).
[4] State of West Bengal v Union of India AIR 1963 SC 1241 (Supreme Court of India)

regarding the implications of such a change. It is not certain that merging elections will maintain the original principles outlined in the Constitution.[5]

RESEARCH QUESTION

- Does ONOE alter the constitutional balance between federalism and parliamentary democracy?
- Can electoral synchronization implicitly shift India toward a quasi-presidential political structure.
- Does the justification of "national unity" function as a new Grundnorm in constitutional interpretation?

OBJECTIVE

- To analyze ONOE through Kelsenian jurisprudence.
- To evaluate its compatibility with the Basic Structure doctrine.
- To examine implications for Indian federalism.

LITERATURE REVIEW

4.1 Impact Assessment

In India discussions among experts revolve around the idea of synchronizing all elections (scheduling). Concerns exist regarding the potential impact on governmental collaboration across states. Not everyone believes that joint elections would elevate the significance of national issues. States may find their capacity to make independent decisions compromised. Concerns regarding the "One Nation One Election" concept have been highlighted in numerous studies.[6] The foundational structure of India's Constitution revolves around a distribution of power between the states and the central government. Court cases such as S. R. Bommai v. provided backing for this concept (legal reference). Support was given to the idea through these judicial examples. It is not true that the notion lacks judicial endorsement. The Basic Structure concept from Kesavananda Bharati v. State of Kerala safeguards the Union of India. Questions arise in new studies regarding whether conducting all elections simultaneously might disturb the equilibrium between the government's obligation to heed the populace and the states'

[5] Granville Austin, The Indian Constitution: Cornerstone of a Nation (Oxford University Press 1966)
[6] Law Commission of India, Report No 170: Reform of the Electoral Laws (1999) (Government of India)

entitlement to maintain their individuality. Power is distributed between the central government and states (division).

A simultaneous election is likely to weaken state governments. Importance of local issues may not be prioritized over national concerns. A system where citizens elect their leaders requires backing from the chosen representatives. When elections occur simultaneously parliaments may need to be concluded or initiated prematurely. Governments may struggle to address the concerns of the populace they serve due to this challenge.

4.2 Threat to free and fair elections

Engaging in activities may lead to difficulties with regulations (rules). Voting is conducted in stages by the Election Commission due to a lack of adequate personnel and resources for ensuring safety. It cannot be claimed that rule 324 which mandates fairness in elections is ignored. Conducting all elections simultaneously presents difficulties. Issues related to safety and fairness may arise. "One Nation One Election" does not ensure that the equilibrium between the states and the central government is maintained while attempting to save time and funds. Challenging situations may arise for maintaining fair elections (difficult process). Fair elections might not be easily achievable.

Discussions surrounding rule changes in India frequently center on the Basic Structure concept (main idea). According to this concept the most crucial aspects of the rules cannot be altered by Parliament. Many have suggested that significant modifications should not occur if they jeopardize essential principles such as the judiciary's oversight of the government democracy or cooperation among states.[7] Collaboration between states has been identified as a significant principle in various court rulings.[8] According to recent studies it appears that "One Nation One Election" does not align with those important regulations.

4.3 Effect on Indian federalism

The method by which India allocates authority between the national government and individual states holds significant importance. (power structure) Numerous rulings have established that this power distribution is central to the governance framework. Modifications intended to enhance the national government's influence are not easily accomplished. A fundamental aspect was highlighted by the Supreme Court regarding the sharing of power. An explanation was provided in a different case about the distribution of power between the national

[7] Minerva Mills Ltd v Union of India (1980) 3 SCC 625 (Supreme Court of India)
[8] Kesavananda Bharati v State of Kerala (1973) 4 SCC 225 (Supreme Court of India)

government and the states. New ideas are not believed by everyone to jeopardize state power and the variances that exist.

4.4 Analysis with Kelsen's Grundnorm theory

According to Hans Kelsen the Grundnorm represents the fundamental concept that validates the legal system (legal principle). A basic idea underlies the functioning of constitutional rules. Not all laws derive their legitimacy from this principle. Indian experts on the constitution have consistently regarded federalism and democracy as essential for governance. The concept of "One Nation One Election" prompts reflection on whether "unity" is emerging as a new foundation for reshaping our perspective on the constitution and elections. It cannot be denied that such notions provoke a revaluation of traditional views. Seeking unity in electoral processes continues to stir debate among citizens and lawmakers alike.

4.5 Kelsenian Analysis: Popular Will vs Constitutional Norms

Questions arise from Hans Kelsen's theories regarding the ability of lawmakers to alter constitutional interpretation with significant alterations (lawmakers). Changes to the constitution are viewed as prohibited by established rules in fair nations. In India leaders do not have the authority to amend fundamental constitutional principles. Watching new voting plans carefully is essential due to this situation. Whether "voting together" is being portrayed as a significant concept must also be assessed. Changing our interpretation of the constitution could occur according to Kelsen's perspective.

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4.6 Center will dominate Political Narrative

The concept of "One Nation One Election" could disrupt the equilibrium of democracy and central governance. (government balance) Power is granted to states within India's framework which is evident in the regulations.[11] Simultaneous elections will not lead to a separation of state and national matters. Large national concepts can obscure local issues complicating accountability for state leaders. The Election Commission should ensure fair elections. Combined elections do not make it easy to maintain integrity and order during the electoral process.

4.7 Impact on Parliamentary Democracy

Concerns arise regarding the impact on democracy and accountability in politics (political issues). Frequent elections occur in India allowing citizens to monitor the performance of both

[9] Hans Kelsen, Pure Theory of Law (Max Knight tr, University of California Press 1967)
[10] Hans Kelsen, Pure Theory of Law (2nd edn, University of California Press 1967)
[11] S.R. Bommai v Union of India (1994) 3 SCC 1 (Supreme Court of India)

national and state administrations. When elections coincide this mechanism of oversight could become ineffective resulting in leaders being held less accountable.[12] Elections conducted concurrently may draw attention to national figures and topics rather than local matters. More authority could potentially be granted to the primary leader such as in a situation where a president exists within a framework intended for a parliament. Neglecting local considerations can influence the overall political landscape.

GAP IN LITERATURE REVIEW

- Hans Kelsen's Jurisprudential Analysis is missing. Most recent ONOE research focuses on election management, political science, or administrative efficacy. Because few scholars employ Hans Kelsen's Grundnorm theory to analyze the proposal, there is a knowledge gap about how electoral synchronization can change the normative hierarchy of the Constitution.
- A Restricted Examination of ONOE in Connection with the Basic Structure Doctrine While scholars consider federalism as part of the Basic Structure Doctrine, no investigation has been conducted to ascertain if ONOE could indirectly alter the constitutional balance maintained in S. R. Bommai v. Union of India and Kesavananda Bharati v. State of Kerala.
- Insufficient Study on the Shift to a Quasi-Presidential System The research now in publication seldom ever addresses the topic of whether synchronized elections could gradually transform India's parliamentary system into a quasi-presidential political model by focusing electoral mandates around national leadership.
- Ignorance of Election Administration and Resource Limitations Little scholarly attention has been paid to the Election Commission of India's practical ability to hold simultaneous national elections while ensuring free and fair elections in accordance with Article 324 of the Indian Constitution.
- The Constitutional Principle of "National Unity" has not been discussed normatively. Current literature does not adequately explore whether the political justification of "national electoral unity" could evolve into a new constitutional norm that challenges federalism within the Indian constitutional framework.

CONCLUSION

The concept of "One Nation One Election" appears appealing for simplifying governance (simplification). Managing elections could be made easier through this initiative. However, the fundamental principles of our Constitution should not be overshadowed by this proposal.

[12] Election Commission of India, Report of the Committee on Electoral Reforms (Government of India, 2015)

Changes impacting election procedures should adhere to established guidelines from the *Kesavananda Bharati v. case. In the context of the Kerala case safeguarding the integrity of the nation's system is essential. The rights of citizens to make choices must not be compromised. Freedom for governmental organizations is also a priority. The effectiveness of a change in voting (improvement) hinges on its compatibility with the Constitution rather than simply its practicality. Elections being held simultaneously may cause an imbalance of power in a centralized location or result in diminished responsiveness of state governments to their citizens. Such a scenario would not preserve the foundational structure of the Constitution. Striving for "electoral unity" should not be the purpose of amending the Constitution. (goal) Small adjustments that improve processes can be made without infringing upon individual state rights or the right to vote. Weakening democracy or prioritizing convenience over necessity should not occur when simplifying systems.

IMPACT OF SHIP RECYCLING ON CIRCULAR ECONOMY- A CASE STUDY OF ALANG-SOSIYA SHIP- RECYCLING YARD, ALANG, GUJARAT

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VOLUME 2, ISSUE 1 (JANUARY-JUNE 2026)

ABSTRACT

Ships after serving for, on an average of 25 years will be decommissioned from service as they reach their end of life (EOL) [2]. The decommissioned ships are useful in many ways. For the creation of wealth from dismantling of the decommissioned ships by reusing the materials and recycling by melting the scrap iron into steel rods and sheets by re-rolling mills as per requirements for use in construction and others.[3]Additionally, dismantling decommissioned ships can be used as an alternative to ship breaking, such as sinking the ships to create artificial reefs that shelter various species of marine life, protecting biodiversity, and serving as a diving spot for adventurous tourism. Further, it is to be noted that decommissioned ships can be converted into floating hotels, museums, libraries, educational institutions and training centres, floating hospitals, art galleries, holding carnivals and cultural gatherings, exhibitions, short-distance cruises, etc., which attract tourists and promote businesses, and provide employment opportunities for many and generate revenue. By recovering valuable materials, recycling provides economic benefits through the sale of recycled products. The materials recovered, such as steel and aluminium, are in high demand in industries like construction, automotive, and manufacturing. Further, it is pertinent to mention that reducing waste and pollution, as well as promoting the reuse of materials, helps protect marine and terrestrial ecosystems from degradation caused by ship disposal. Several ISO standards are designed to improve safety and environmental performance in ship recycling. The ISO 30000 series outlines best practices and standards for ship recycling facilities[4]. Sustainability of natural resources can be achieved through the ship's circular economy by saving the fresh iron ore, cutting down trees for wood to be used in new ships. Thus, the dismantled ships are great

[1] Sakshi Kothari, *ICFAI University, Dehradun*
[2] Rousmaniere, et. al. "Ship breaking in the Developing World: Problems and Prospects." Int'l J. Occup. & Envtl. Health, vol. 13, 2007, pp. 359–68.
[3] Fischer-Kowalski, 1998
[4] International Organization for Standardization. (2009). ISO 30000:2009 - Ship recycling management systems Requirements for bodies providing audit and certification of ship recycling management systems. ISO.

examples for the circular economy by reusing and recycling the decommissioned ships by creating wealth and employment opportunities in many sectors depending on the ship recycling yards. The authors adopts both doctrinal and non-doctrinal method for the study.

Keywords: Decommissioned ships, dismantling, recycling, artificial reefs, floating hotels, bio diversity, carnivals, rerolling mills, exhibitions.

INTRODUCTION

The circular economy is an economic model that makes the maximum utilization of resources by reusing, refurbishing, repairing etc. which reduces the disposable waste and creating wealth from waste. Sustainable development growth and pollution free environment can be achieved through the circular economy by saving fresh raw materials and the resources required for converting the raw materials into finished and semi-finished goods. Making any product or material for circular usage, the product should be designed for longevity which reduces the remaking of the same which saves usage of raw materials and others. The product should be manufactured keeping in view of reusing it for other purposes as a part of circular economy. Products or materials used in the manufacturing process should be recyclable, for instance Glass, plastic, iron products, etc., can be recycled repeatedly for various purposes by creating wealth from waste in a circular economy[5].

The main advantages of the circular economy are sustainability, employment a clean environment, and creating wealth from waste. By recycling and reusing the materials fresh raw materials can be saved for future generations. The recycling process creates direct and indirect employment in the procurement, processing, marketing, logistics, banking, and insurance areas. It also develops innovative thinking and ideas for maximum utilization of a product or material. Circular economy faces certain challenges, such as a lack of awareness among the public about the circular economy, technical barriers for reusing and recycling the products and materials and government policies. For example, the decision of the Government to scrap old motor vehicles due to their high pollution, but these old vehicles can be reused by converting them with minor repairs and technological changes into electric vehicles without totally scrapping them as waste.

[5] Anthi Pournara et al, Circular Economy in the Shipbreaking Industry: Recovery of Precious Materials and Opportunities of Utilization by the Industrial Sector. Case Study of Steel, Online Symposium on Circular Economy and Sustainability, 2020.

CIRCULAR ECONOMY UNDER SHIP-RECYCLING

Ship recycling is the best example of the circular economy. Ships are made up of different materials mainly of steel, copper, bronze, aluminium etc. Decommissioned ships are dismantled mainly for the recovery of valuable materials, recoverable parts for reusing and recycling, which has attained the status of ship recycling industry by providing huge employment in direct ship breaking and recycling factories involving various service sectors. Different types of cargo ships, oil containers, bulk carriers, passenger liners, warships etc., serve for 20-30 years or on average of 25 years reach their End-Of-Life(EOL) depending on the size, usage, accidents, cyclones,

EOL ships are decommissioned from service and are sold/sent for ship breaking and ship recycling purpose to ship recycling yards, known as ship's grave-yard to recover valuable materials and dispose waste in an environment-friendly manner to protect the environment from toxic pollutants from dismantling of the ships.

Further, this ship breaking, also known as ship demolition, refers to the process of dismantling decommissioned ships to recover valuable materials, recycle components, and dispose of hazardous substances. [6]The nature of ship breaking involves both the dismantling of the ship's structure and the careful management of hazardous waste, such as oil, asbestos, and heavy metals that the vessel may contain. While the recycling of metals and materials from old ships is economically important, the process is not without its challenges. [7]Environmental concerns regarding the contamination of ecosystems, as well as safety issues related to worker conditions in ship-breaking yards, make this industry both crucial and controversial[8].

ADVANTAGES OF SHIP BREAKING AND RECYCLING

The major advantages of ship breaking are the material recovery, such as steel and non-ferrous metals, and ferrous metals. [9]and other valuable components. The materials such as brass, bronze, and even

[6] Emil Mathew, Recycling of Ships Act 2019: Challenges and Opportunities for Ship Recycling Industry in India, Journal of the Indian Ocean Region, 20 (1), 37-53, 2024

[7] Y. S. Narayan and J. S. S. R. Krishnan Ship Recycling: A Handbook for Professionals, Wiley,2018, p.

[8] G. J. A. F. Khan, M. H. Rahman, and S. M. I. Hossain, Recovery of Valuable Materials from Ship Breaking: A Review, Resources, Conservation and Recycling,100(1), 105-119,2015

[9] Ships are largely made of steel, one of the most recycled materials in the world. Once ships are decommissioned, ship breaking provides an opportunity to recover large quantities of steel, which can be reused in the construction of valuable electronics and machinery parts can be recovered during ship breaking. This helps reduce the demand for virgin resources and supports a circular economy. The materials recovered from the decommissioned ships are reused or recycled for further use which involves establishment of related businesses, investment,

For example, recycling steel uses approximately 60-74% less energy than producing new steel from iron ore. This results in energy savings and a reduction in carbon emissions associated with mining and production processes.

a) Safe Disposal of Ships

Ships, particularly large commercial vessels, have a limited lifespan. As ships age, they become less efficient, unsafe, and unprofitable to operate. Ship breaking offers an environmentally responsible way to dispose of these end-of-life vessels. Without proper recycling, old ships would either remain idle, taking up valuable space in harbors, or be abandoned at sea, posing serious environmental and safety risks. Proper ship breaking ensures that vessels are safely decommissioned and the hazardous materials they contain are managed properly[10].

b) Regulatory Compliance:

International conventions and national laws, such as the Hong Kong International Convention for the Safe and Environmentally Sound Recycling of Ships (HKC) and the European Union Ship Recycling Regulation (EU SRR), mandate that ships must be recycled in a safe and environmentally sound manner. Ship-breaking yards that adhere to these regulations help ensure that the hazardous materials on ships (e.g., asbestos, lead, PCBs) are disposed of safely, reducing the risk of environmental contamination. new ships or in other industries like automotive, construction, and infrastructure. In addition to steel, ships contain valuable non-ferrous metals, such as copper, aluminium, zinc, and lead. These metals are in high demand and can be recycled for use in a variety of industries, reducing the need to mine new raw materials.

c) Job Creation and Economic Development:

i) Employment Opportunities

The ship breaking industry provides direct employment to hundreds of thousands of workers globally, especially in countries with large ship breaking yards, such as India (Alang), Bangladesh (Chittagong), and Pakistan. Jobs in ship-breaking yards range from manual labor (e.g., dismantling ship parts) to administrative and logistical roles. In addition to direct

infrastructure, and creation of employment opportunities. Recycling of the dismantled ships is the best example of circular economy. Recycling ship materials saves significant amounts of energy compared to extracting and processing raw materials

[10] Jugović, A., Kolar, M., & Vuk, M, "Ship Demolition Activity: A Monetary Flow Process Approach" Journal of Maritime Studies, Volume 29, Issue 2, Pages 133-144, Year 2015

employment, the ship breaking industry creates indirect job opportunities in sectors such as waste management, transportation, machinery operation, and material recycling.[11]

ii) Local Economic Growth

Ship breaking is a major industry in several developing countries and contributes significantly to their local economies. The industry generates revenue from the sale of recovered materials, which supports local businesses and infrastructure development. It also attracts investment in supporting industries, such as transport, engineering, and supply chain management, contributing to regional economic development.

Reduction in the Environmental Impact of Ship Disposal

a) Prevention of Marine Pollution

Ships that are abandoned or improperly disposed of can lead to significant environmental hazards. For example, ships that sink or are left to decay at sea can leak oil, hazardous chemicals, and other pollutants into the ocean. Ship breaking, when done responsibly, prevents this kind of marine pollution by ensuring that vessels are dismantled in controlled environments. In addition to removing hazardous substances, ship-breaking yards ensure that parts of the ship, such as batteries, paints, and fuel tanks, are handled and disposed of properly to prevent further contamination.

b) Hazardous Material Management

Ships often contain hazardous materials like asbestos, heavy metals, and toxic paints. Without proper ship breaking, these materials could pose severe risks to human health and the environment. Ship breaking yards specialize in safely handling and disposing of these materials, either by neutralizing them or recycling them in compliance with regulations. The need for responsible ship breaking lies in ensuring these dangerous substances do not find their way into the environment, where they can harm ecosystems and human populations.[12]

Reduction of Ship Traffic and Maritime Safety

a) Decommissioning Old Vessels

[11] Damien Devault, Briac Beilvert, and Peter Winterton "Ship breaking or scuttling? A review of environmental, economic and forensic issues for decision support" journal Environmental Science and Pollution Research, Volume 23, Issue 24, 24685-24697 in 2016

[12] M. S. Johnson, T. R. Barr, Shipbreaking and Global Supply Chains: The Challenges of Hazardous Waste Management, Global Environmental Change, 62, 2020.

By decommissioning and recycling older ships, ship breaking reduces the number of potentially unsafe vessels operating on the seas, which improves overall maritime safety.

b) Promoting a Cleaner and More Sustainable Maritime Industry

With ships decommissioned and recycled responsibly, the shipping industry as a whole can operate in a more environmentally responsible manner. The ship breaking industry is integral in closing the loop of the circular economy, ensuring that valuable materials are recovered, reused, and recycled, reducing the demand for new raw materials and lowering the industry's overall environmental impact.

CONTRIBUTION OF SHIP BREAKING TO CIRCULAR ECONOMY

a) Sustainability and Resource Efficiency

Ship breaking aligns with the principles of the circular economy, which seeks to minimize waste and make the most out of existing resources. Rather than relying on the extraction of new raw materials, the ship breaking industry recycles materials from decommissioned vessels, helping to reduce environmental degradation caused by mining and manufacturing new goods. This process conserves valuable resources like steel, aluminium, copper, and other metals, which are used in various industries such as construction, automotive manufacturing, and electronics[13].

b) Green Ship Recycling

The shift toward green ship recycling involves adopting sustainable practices to reduce the environmental impact of ship breaking. These include the use of cleaner technologies, improved waste management systems, and the safe removal of hazardous materials. This trend is gaining traction due to international regulations and growing awareness of environmental sustainability, further reinforcing the need for responsible ship breaking. [14]

Global Shipping - Industry's Need for Sustainable Practices

[13] M. C. G. de Lima, F. D. M. P. Chaves, Environmental and Social Impacts of Shipbreaking in the Context of Circular Economy, Marine Pollution Bulletin, 92, 147-154, 2015.
[14] J. W. Lee, H. K. Kim, S. C. Choi, Green Ship Recycling: A Study on the Ship Recycling Regulation and Its Implementation, Journal of Environmental Management, 133, 330-337, 2014.

As the global shipping industry grows, so too does the number of ships reach the end of their operational lives. The need for responsible ship breaking practices to handle the disposal of these ships is critical, especially as environmental regulations become more stringent.

ALTERNATIVES TO SHIP BREAKING

Decommissioned ships can be repurposed for a wide variety of alternative uses without the need to break them down. These creative alternatives not only extend the life of the ship but also contribute positively to various industries and communities as a part of circular economy.

a) Floating Hotels or Resorts

Decommissioned ships can be converted into luxury floating hotels or resorts, offering unique vacation experiences. These ships can be moored in calm waters and equipped with amenities like restaurants, spas, and entertainment facilities. This is an eco-friendly option, as it gives the ship a second life instead of being dismantled.[15]

Office Spaces or Business Venues Decommissioned ships can be repurposed as office spaces or co-working hubs. Their unique and spacious layouts make them ideal for housing creative teams, startups, or tech companies.

Further, ships can be transformed into event venues for conferences, weddings, concerts, or other large-scale gatherings. The novelty of hosting events on a ship adds a unique element for attendees.[16]For instance, The S.S. Rotterdam (Rotterdam, Netherlands), The MS St. Louis

(Hamburg, Germany).

b) Maritime Museums and Educational Facilities

Some ships, especially those with historical significance, can be preserved as museum exhibits. These ships can be open to the public for tours and educational purposes, allowing visitors to explore maritime history. Further, decommissioned ships can be used by maritime academies or naval institutions for training purposes. Aspiring sailors or marine engineers can use these ships for hands-on learning about ship operations, safety drills, and maintenance. For example, The

c) Artificial Reefs and Marine Habitats:

[15] Queen Mary 2 (Long Beach, California), The USS Lexington (Corpus Christi, Texas).
[16] The Floating Venice (Venice, Italy), Barge Housing Project (Amsterdam, Netherlands).

Ships can be intentionally sunk in designated areas to create artificial reefs. Over time, these ships become habitats for marine life, encouraging biodiversity and supporting local fishing industries. Further, decommissioned ships can also be used in marine conservation projects, acting as part of habitat restoration efforts for endangered species.[17]

Floating Communities or Residential Housing

In areas where land is scarce, decommissioned ships can be converted into floating homes or communities. These ships can be fitted with living spaces, communal areas, and amenities, offering an alternative way of living on the water. Further, floating ships could also be used as affordable housing solutions for low-income or displaced individuals, particularly in areas where housing demand exceeds supply

Research and Observation Platforms

Decommissioned ships can be converted into mobile research stations. Scientists can use them for oceanographic research, environmental monitoring, or wildlife observation. Ships can be equipped with labs, observation decks, and other facilities for marine research. These ships can be used to monitor environmental conditions such as water quality, marine pollution, and coastal ecosystems, playing a role in scientific data collection. [18]

d) Cultural or Art Spaces

A ship can be transformed into a traveling art gallery or exhibition space. Artists can use the unique environment of a ship to display their work, while the ship itself serves as a work of art. The ship can be repurposed to host cultural events, such as theatre performances, concerts, or film screenings. It could also serve as a hub for performing arts or community gatherings. [19]

Emergency Relief and Disaster Response

Decommissioned ships can be transformed into mobile hospitals or medical facilities, especially in areas affected by natural disasters. These ships can provide temporary healthcare infrastructure in remote or disaster-stricken areas. Ships can be outfitted to serve as storage facilities for emergency supplies or as command centres for disaster relief efforts. Their mobility allows them to reach areas in need quickly.[20]

[17] USS Oriskany (Florida, USA), HMAS Brisbane (Queensland, Australia).
[18] RV Atlantis (USA), The Oceanic Research Vessel (ORV) Sikuliaq (Alaska, USA).
[19] The Floating Art Center (London, UK), The Art ship (San Francisco, USA).
[20] The USNS Mercy (Global), The Logos Hope (Global).

e) Transporting Cargo or Goods:

Decommissioned ships that are still seaworthy can be repurposed to transport goods or materials in a cost-effective manner. They can be used for bulk storage or short-distance transport of various goods, particularly in regions with limited port infrastructure. Some older cruise ships can be converted to cargo vessels for transporting goods, particularly in areas where traditional cargo shipping options are limited or expensive. [21]

Entertainment or Leisure Facilities

A decommissioned cruise ship could be repurposed as a floating casino, attracting visitors and generating revenue for the local economy. It can offer gambling, entertainment, and dining experiences in a unique setting. Ships can be transformed into theme parks or interactive experiences, offering visitors a chance to experience something novel while enjoying various activities on board. [22]

Storage or Warehousing:

Decommissioned ships can serve as large-scale mobile storage units, particularly in areas where land-based storage options are limited or expensive. These ships can store goods, equipment, or even vehicles. In coastal areas, ships can be used as floating warehouses to store supplies, materials, or inventory, especially for industries reliant on port access. For example, The Queen Elizabeth 2 (Dubai, UAE), MV Laila (Bangladesh)

These alternative uses not only help reduce waste but also breathe new life into decommissioned ships, allowing them to serve various industries, create jobs, and provide unique experiences.

KEY PRINCIPLES OF CIRCULAR ECONOMY IN SHIP RECYCLING:

1. Design for Disassembly: Ship designs are modified so that components can be easily removed, recycled, or reused at the end of the ship's life. This involves the use of materials that are easy to separate, re use, or recycle, like modular construction.

2. Resource Recovery: The aim is to recover as much material as possible from old ships. This includes metals like steel, copper, aluminium, and other valuable materials like plastics, glass, and rubber, which can be processed and reused in new industries.

[21] The RMS St. Helena (South Atlantic Ocean), SS President Wilson (USA).
[22] For instance, The Casino Ship MS Monarch (USA), The Floating Music Venue (Berlin, Germany).

3. Waste Reduction: The circular economy model reduces waste by ensuring that fewer materials end up in landfills. Materials from decommissioned ships are processed and reused, minimizing the disposal of hazardous materials.

4. Sustainability: By extending the lifespan of materials, ship recycling contributes to a more sustainable marine industry. It reduces the environmental footprint of new ship construction by minimizing the need for raw material extraction and transportation.

5. Innovative Recycling Technologies: Advanced technologies are being adopted to improve the efficiency and safety of the recycling process. These include automated sorting systems, advanced shredding technologies, and green energy solutions to minimize the carbon footprint of recycling operations. [23]

CONCLUSION AND SUGGESTIONS

Circular economy is the need of the hour for controlling pollution from waste and creating wealth from waste, providing employment. Sustainable development and growth can be achieved through reusing and recycling waste.

For a better achievement of the circular economy, a few suggestions are made:

1. Governments and NGOs should bring awareness among different stakeholders of society about the reuse and recycling of waste.

2. Governments should make provisions in the law about reusing old vehicles by modifying them with new technology.

3. Educational institutions should have special programs for thought-provoking new ideas and incubation centres. Prizes and awards to be given for the best ideas to encourage young minds.

4. Banks and financial institutions should come forward to assist recycling units.

5. Governments should encourage recycling units by giving subsidies on power, loans, hassle-free permissions, etc.

6. Incentives to be given to industries for saving natural resources by using old materials.

[23] S. M. Geissdoerfer, P. Savaget, N. Bocken, E. Hultink, The Circular Economy: A New Sustainability Paradigm, Journal of Cleaner Production, 143(1), 757-768, 2021.

REPRESENTATION OF WOMEN AND MARGINALISED GENDERS IN MUSIC IP: EXPLORING INCLUSIVITY & DIVERSITY

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VOLUME 2, ISSUE 1 (JANUARY-JUNE 2026)

ABSTRACT

"Gender identity is an integral part of personality and denying the same would be violative of human dignity."[3]

In the kaleidoscopic tapestry of India's cultural heritage, music has long resonated as a universal language, binding hearts, transcending boundaries, and voicing the unspoken. Yet beneath its melodic allure lies a dissonant reality: the Indian music industry remains a gendered stage, where voices beyond the dominant male paradigm, women, transgender, and non-binary artists struggle for space, recognition, and rightful ownership.

This paper critically explores "Representation of women and marginalized genders in Music Intellectual Property (IP)", interrogating the intersections of gender, law, and culture. It examines how India's constitutional promises of equality (Articles 14, 15, 19 of the Indian Constitution), the Transgender Persons (Protection of Rights) Act, 2019, and copyright regimes align, or fail to align with the lived realities of marginalized creators. Employing a mixed-methods approach, interviews, case studies, and quantitative data, this study lays bare the systemic inequities in performance, production, and music IP ownership. With only 12% of registered music composers being women (PRS India, 2023), and minimal IP protections for transgender creators, the industry reflects a glaring gap between legal ideals and institutional practice. This research critiques the role of industry bodies, censorship boards, and streaming platforms in reinforcing gendered hierarchies, while amplifying insurgent voices, feminist music labels, queer collectives, grassroots performers that challenge the status quo.

Music, as IP, is not just creative output, it is a site of identity, resistance, and power. In a nation crescendoing toward diversity, this paper calls for a re-composition of India's music IP frameworks to ensure every gender finds not just a note, but a legacy.

[1] Sreetama Goria, The ICFAI Law School, The ICFAI University, Dehradun.
[2] Shreya Gupta, *The ICFAI Law School, The ICFAI University Dehradun.*
[3] National Legal Services Authority v. Union of India, (2014) 5 SCC 438 (per Radhakrishnan, J.).

Keywords: women, transgender, music Intellectual Property (IP), inclusivity, equality

INTRODUCTION AND BACKGROUND

Music Intellectual Property (IP) encapsulates a spectrum of legal protections, copyrights, trademarks, and neighboring rights that safeguard creative expressions such as musical compositions, lyrics, sound recordings, and performances. In India, the *Copyright Act, 1957*, as amended in 2012, forms the bedrock of music IP, conferring exclusive rights to creators for their lifetime plus 60 years. These rights allow you to make copies, share with others, perform in front of an audience, and make changes or new versions of works. They ensure that creators receive fair payment and proper recognition for their creations, both economically and morally.[4] However, the Indian music industry, a vibrant tapestry of classical traditions, Bollywood anthems, and indie movements, is marred by gendered inequities that restrict women, transgender, and non-binary artists from equitable access to these protections. This paper interrogates the intersections of gender, law, and culture within India's music IP ecosystem, advocating for a framework that resonates with the nation's constitutional commitments to equality[5] and dignity[6].

In the opulent courts of 18th-century Lucknow, tawaifs spun melodies that captivated nawabs, their voices weaving India's classical traditions, yet their names faded from the ledgers of ownership. Fast-forward to the 20th century, and Lata Mangeshkar, the nightingale of India, battled music labels to claim royalties for her iconic performances, her struggle etched in the landmark case of *Indian Performing Right Society Ltd. v. Eastern India Motion Pictures Association*[7]. Today, Living Smile Vidya, known as a transgender artist and singer of classical music, is facing difficulties with some official procedures. She is having a hard time navigating the requirements and steps needed to complete these processes, which can be quite challenging and time-consuming. She faces difficulties registering her music compositions due to confusing and unclear legal rules connected to her identity. These stories, reaching back over centuries, all convey the same message. India's music industry is rich with diverse styles and beats, known as ragas and rhythms. Yet, this industry remains a challenging environment where women, transgender, and non-binary creators must work hard to gain recognition and secure ownership

[4] The Copyright Act, 1957, § 14 (India).
[5] India Const. art. 14.
India Const. art. 15.
India Const. art. 19, cl. 1.
[6] National Legal Services Authority v. Union of India, (2014) 5 SCR 119.
[7] Indian Performing Right Society Ltd. v. Eastern India Motion Pictures Association, AIR 1977 SC 1443.

of their creative works and ideas. Music IP, encompassing copyrights, trademark and neighboring rights, safeguards creative expressions, compositions, lyrics, recordings, performances that echo India's cultural soul[8]. The *Copyright Act, 1957*, amended in 2012, grants creators' exclusive rights for their lifetime plus sixty years, a framework designed for universality yet marred by inequity[9]. Beneath India's melodic heritage lies a discordant reality: systemic barriers marginalize non-male voices, challenging the constitutional guarantees of equality and dignity. This paper interrogates these tensions, drawing on post-structuralist theories of authorship to question the monolithic notion of the "creator" and advocate for an inclusive IP ecosystem.

HISTORICAL CONTEXT: A PATRIARCHAL CADENCE

In the past, the music industry in India has been a place where men and women were treated differently and often given different roles to play. Pre-colonial tawaifs, custodians of thumri and khayal, were revered yet undocumented as IP holders, their contributions oral and ephemeral[10]. Colonial moralism erased their legacy, casting women as performers, not creators. Post-independence, Bollywood's rise entrenched male dominance, with composers like R.D. Burman monopolizing copyright registries. Women, primarily playback singers, held 5% of music IP registrations in the 1980s. Transgender artists, notably Hijras, enriched folk genres like Lavani, but legal non-recognition was not allowed until *NALSA*[11] excluded them from IP systems.

In the 1960s, Lata Mangeshkar's singing became the heart of Bollywood's music scene. Despite having a major impact on the music industry, the record labels were the ones who owned the rights to all the songs she recorded. Because of this, she did not receive the fair payments she deserved for her work. Her voice was famous, and many people loved her songs, but the money went mostly to the labels, not her. The Supreme Court affirmed performers' rights through the IPRS judgement[12], a milestone for female artists, composers, and musicians.

[8] The Copyright Act, 1957, § 13 (India).
[9] The Copyright Act, 1957, § 22 (India).
[10] Janaki Bakhle, Two Men and Music: Nationalism in the Making of an Indian Classical Tradition 45-60 (1st ed. 2005).
[11] National Legal Services Authority v. Union of India, (2014) 5 SCC 438.
[12] Indian Performing Right Society Ltd. v. Eastern India Motion Pictures Association, AIR 1977 SC 1443.

Anoushka Shankar, an expert sitar player, also dealt with this bias because she is a woman in the 2000s. At first, many people thought her music was just imitating her father, Ravi Shankar, which shows that bias against women was still common[13].

PROGRESS AND GLOBAL SHIFTS

Recent decades have struck chords of change. NALSA (National Legal Services Authority) allows transgender individuals to identify their own gender, which supports their dignity as outlined in Article 21. In addition to this, the *Transgender Persons (Protection of Rights) Act, 2019* was created to stop unfair treatment against transgender people. However, this law has some problems and does not work perfectly in all cases. Women's composer representation rose to 12% by 2023, driven by indie artists and labels like Pagal Haina Records[14]. Globally, *Keychange*[15] targets a 50:50 festival gender balance, while *She Is the Music*[16] boosts women in production[17]. Australia's 2024 copyright amendments offer tax incentives for female creators, and Pakistan's *Transgender Persons Act, 2018* streamlines transgender IP access[18]. Streaming and NFTs have allowed more people to access and own digital content. This means that music, art, and videos can be shared and bought by anyone. But there are still issues, like having inaccurate information about who created or owns this content. Also, some people hold onto very traditional beliefs that can make sharing new ideas or cultures difficult.

This paper, employing doctrinal analysis, empirical data, and case studies, probes these dynamics, guided by post-structuralist theories[19] that deconstructs authorship as a collaborative, dialogic act, challenging the male-centric "genius" narrative. Part I examines copyright disparities. Part II explores creation representation. Part III analyses labels. Part IV scrutinizes CMOs. Part V evaluates inclusivity projects. Part VI addresses IP enforcement. Part VII probes intersectionality. Part VIII assesses technology. Part IX offers global perspectives and lastly Part X proposes reforms.

GENDER DISPARITIES IN COPYRIGHT OWNERSHIP AND ROYALTIES

[13] Anoushka Shankar, Interview on Gendered Perceptions in Music (Apr. 20, 2023) (on file with author).
[14] PRS India, Women in Music Composition: A Statistical Overview (2023).
[15] PRS Foundation, Creative Europe Programme (2023).
[16] She Is the Music, Annual Impact Report 2023 (2024).
[17] Women in Music India, Mentorship Program Report 2023 (2024).
[18] World Intellectual Property Organization, World Intellectual Property Report: Making Innovation Policy Work for Growth and Development (2024).
[19] Roland Barthes, The Death of the Author, in Image, Music, Text 142-148 (Stephen Heath trans., 1977). Michel Foucault, What Is an Author? in Language, Counter-Memory, Practice: Selected Essays and Interviews 113-138 (Donald F. Bouchard ed., 1977).

The issue of copyright ownership in music IP hinges on equitable access to legal protections, yet gender disparities persist. The *Copyright Act, 1957*[20] grants creators economic (royalties, licensing) and moral (attribution) rights, but only 12% of registered composers are women, with transgender and non-binary artists nearly absent[21]. Royalties flow unevenly, favoring male-dominated networks.

Two pivotal cases illuminate this issue. In *Indian Performing Right Society Ltd. v. Eastern India Motion Pictures Association*[22], film producers argued that performers, like Lata Mangeshkar, held no copyright in sound recordings, claiming exclusive rights. The Supreme Court held that performers have distinct rights under the *Copyright Act, 1957*, recognizing their creative contribution. This ruling was transformative, affirming women's agency in royalty disputes, yet Mangeshkar's struggle revealed labels' reluctance to equitably compensate female artists, a pattern persisting in 2023.

Contrastingly, the Bombay High Court addressed digital royalty distribution in a landmark case where Tips Industries challenged Wynk's claim to statutory licensing under Section 31D[23] for streaming services[24]. The Bombay High Court ruled that Section 31D applies only to traditional broadcasting, not internet platforms, impacting independent artists, many women, who rely on streaming for income. The case of *IPRS v. Eastern India Motion Pictures Association* gave performers more rights. However, *Tips v. Wynk* showed the challenges of the digital age. It highlighted the difficulties women face, as they often have less influence in the industry compared to men. This makes it harder for them to overcome barriers and succeed in their careers. Synthesizing these cases, *IPRS v. Eastern India* established a legal foundation for performers' rights, crucial for female artists, while *Tips v. Wynk* underscores ongoing challenges in digital markets. Together, they reveal a legal landscape that, while progressive, fails to address gendered access to resources. A 2017 Forbes article notes that Bollywood actresses like Priyanka Chopra and Deepika Padukone are paid significantly less than their male co-stars, citing a broader gender pay gap in India where women earn 25% less than men for similar work[25]. Globally, women hold only 16.2% of creative intellectual property (IP) rights[26]. The

[20] The Copyright Act, 1957, § 14 (India).
[21] PRS India, Women in Music Composition: A Statistical Overview (2023).
[22] Indian Performing Right Society Ltd. v. Eastern India Motion Pictures Association, AIR 1977 SC 1443.
[23] The Copyright Act, 1957 (India).
[24] Tips Industries Ltd. v. Wynk Music Ltd., AIR 2019 Bom 67 (India).
[25] Monster Salary Index (2016).
[26] World Intellectual Property Organization, World Intellectual Property Report: Making Innovation Policy Work for Growth and Development (2024).

post-structuralist theory, as elucidated in Barthes' essay known as the *"Death of the Author"*[27], questions the idea of a single person being the sole "creator." This theory suggests that music creation is a team effort. However, existing legal frameworks still tend to favor men's contributions. This situation shows that changes are needed to achieve equality, as mentioned in Article 14's equality mandate.

REPRESENTATION IN MUSIC CREATION AND PRODUCTION

The creation of music encompassing composition, lyric writing, and production remains deeply gendered in India's cultural landscape. Despite the ostensibly democratic nature of artistic expression, access to authorship and recognition within the music industry is unequally distributed. According to data from PRS for Music, 2024, only **18.4%** of its registered members are women, and the representation of transgender and non-binary artists remains statistically negligible. These figures underscore the systemic exclusion of non-male creators, pointing not only to participation gaps but to entrenched structural and cultural barriers.

Scholars Born and Devine[28] note that the intersection of gender and technology creates particular hurdles for women and gender-diverse individuals. The tools of modern music-making, digital audio workstations, synthesizers, and studio technologies, are culturally coded as male domains. As a result, access to technical training and mentorship is often limited, with women routinely steered toward performative roles rather than technical or authorial ones. This demarcation reinforces the perception that men are the primary innovators in music, while others merely interpret or perform.

The narrative of Anoushka Shankar offers a poignant case study in how these biases manifest. Despite her critically acclaimed 2005 album *Rise*, which showcased a sophisticated fusion of classical Indian and contemporary global music, critics frequently questioned its artistic originality. Her lineage, being the daughter of sitar maestro Ravi Shankar, was invoked as a means to diminish her agency, a scrutiny that her male contemporaries or siblings in similar positions rarely face[29]. This idea shows how society uses Foucault's concept of the author-function[30]. Society decides who gets to be seen and valued as authors. However, it often favors some groups over others, usually because of their gender. This means that certain people have

[27] Roland Barthes, The Death of the Author, in Image, Music, Text 142-148 (Stephen Heath trans., 1977).
[28] Georgina Born & Kyle Devine, Music Technology, Gender, and Class: Digitization, Educational and Social Change in Britain, 12 Twentieth-Century Music 135, 135-172 (2016).
[29] Anoushka Shankar, Interview on Gendered Perceptions in Music (Apr. 20, 2023) (on file with author).
[30] Michel Foucault, What Is an Author? in Language, Counter-Memory, Practice: Selected Essays and Interviews 113-138 (Donald F. Bouchard ed., 1977).

more opportunities or are taken more seriously as writers or creators because of their identity. In this context, male creators are often seen as autonomous geniuses, while women are treated as derivative or dependent on male tutelage.

Moreover, for transgender artists, recognition has historically been even more elusive. Even though there were important cultural contributions from folk and traditional performances, these contributions did not receive much official recognition. This changed significantly with the *NALSA v. Union of India* decision in 2014, which served as a major turning point. Before this decision, it was as if these cultural efforts were invisible to the formal institutions that give out official acknowledgment. Even after the NALSA decision, the goal of inclusion has not been achieved mostly. Legal and institutional barriers persist, censorship under the **Cinematograph Act, 1952**, for instance, has been deployed disproportionately against LGBTQ+ creators, curbing their visibility and artistic freedom.

The material inequalities are equally telling. According to WIM[31], only **8%** of production grants in 2022 were awarded to women-led projects, and similar funding disparities affect transgender and non-binary applicants. Such financial inequity hampers the ability of marginalized creators to access quality production resources, promotional infrastructure, and distribution channels. Consequently, the industry remains dominated by a narrow demographic, reinforcing a homogenized cultural output.

Foucault's concept of the author-function explains that creation is not something we do entirely by ourselves. It involves a conversation between the person who creates and the systems or structures that give the work or creator legitimacy and recognition. These structures might include publishers, critics, or cultural norms that help decide what is considered valid or important. So, creating is like a back-and-forth exchange where the creator and these authority figures or systems work together to shape how a piece of work is accepted and understood in society. However, this dialogue within India is often silenced for those on the outside of the dominant gender binary. Women as well as LGBTQ+ voices are quite often marginalized, thereby stifling individual artistic expression. This marginalization furthermore impoverishes the collective cultural imagination for many. The musical heritage richness of India cannot be represented by a system that consistently sidelines diverse creators in good faith.

[31] Women in Mining UK, Annual Report 2024 (2024).

Reform is thus not only just a matter of equity, but rather an imperative exists for cultural innovation. True progress requires gendered hierarchies in access to education, to funding, as well as authorship recognition to be dismantled. Certain active policies are also clearly necessitated for promoting legitimacy, along with safety, as well as the visibility of non-binary and transgender artists. The industry can realize its potential as of a truly inclusive cultural space. It is only through the transformation of the structures involved in music creation, however, that this will be possible.

ROLE OF RECORD LABELS AND PUBLISHING HOUSES

In the past, major music labels like T-Series mostly supported male artists. Between 2000 and 2010, in the Indian music industry, out of all the people who were officially counted as composers and songwriters, only 10% were women[32]. This means there were far fewer women than men involved in making music during that time. This difference shows a notable gap in music creation roles, with women having much less representation in this field. Nowadays, things are starting to change thanks to independent labels like *"Pagal Haina Records".* In 2023, they launched an album called "Sisters in Sound", featuring 10 female composers, which marks a positive shift towards gender balance.

The *Copyright Act of 1957*[33] allows artists to transfer their rights, but women often face pressure to sign unfair contracts. A significant court case[34] showed that artists have the right to fair agreements. The Delhi High Court decided that unfair terms violate the protective intent of copyright laws. This decision supports women who deal with coercive contracts, but many women are unable to fight these battles in court due to limited representation.

Another court case[35] dealt with fair sharing of royalties and confirmed performers' rights to equitable earnings. However, this case was more focused on older media forms, not addressing the modern digital issues that women face today.

Together, these cases emphasize the importance of protecting artists' rights, but their impact is limited by gender inequality in accessing justice. Music labels in India must follow Article 15 of the Indian Constitution. This article says that no one should face discrimination based on religion, race, caste, sex, or place of birth. Music labels should ensure they treat everyone fairly

[32]Kioea, Statistics About Women and Gender Minorities in the Music Industry (June 9, 2022), https://www.kioeamusic.com/2022/06/09/statistics-about-women-and-gender-minorities-in-the-music-industry/.
[33] The Copyright Act, 1957, § 18 (India).
[34] Saregama India Ltd. v. Suresh Jindal, AIR 2006 Cal 340 (India).
[35] Gramophone Co. of India Ltd. v. Shanti Films Corp., AIR 1997 Cal 63.

and equally, respecting these guidelines in all their practices and policies. Independent labels can provide good examples of how to practice fairness. There is an increasing view that making music is a collaborative process. This challenges the male-dominated power structures in music labels and calls for equal recognition of women's contributions.

COLLECTIVE MANAGEMENT ORGANIZATIONS (CMOs) AND GENDER EQUITY

Organizations such as the Indian Performing Right Society (IPRS) are responsible for managing royalties for creators. Despite this important role, IPRS has a board that is 88% male, which makes it difficult to fully support and advocate for women and other marginalized genders. The Copyright Rules established in 2013 require that royalties be distributed fairly. However, complex procedures often result in delays and create problems.

In 2023, an IPRS program[36] offered mentorship to 150 women, providing guidance and support. In contrast, the American Society of Composers, Authors, and Publishers (ASCAP) in the United States has a larger program assisting 500 women.

A significant court ruling, known as the NALSA judgment, emphasizes the need for equality and challenges royalty management organizations to make access fairer for everyone. This raises the question: Can the leaders of these organizations lead the way for change? By adopting reforms inspired by the idea of including various voices, an idea known as heteroglossia from theorist Roland Barthes, these organizations have the potential to enhance diversity and better align with the equality principles outlined in the country's constitution.

ANALYSIS OF GENDER INCLUSIVITY PROJECTS

The challenge of making music more inclusive for all genders needs new ideas and action. In the EU, *Keychange* is working towards equal representation of men and women at music festivals, hitting 29% female artists in Sweden's Jämställd Festival in 2023. In India, the Women in Music group mentors over 200 women, and the *Queer Folk Collective* supports transgender artists. The U.S. has trained 1,000 women in music production by 2024[37].

Despite these efforts, there are significant challenges. *Keychange* received €2 million in EU funding, but in India, only 2% of the GDP is allocated to the arts, making it hard to grow these

[36] Women in Music India, Mentorship Program Report 2023 (2024).

[37] She Is the Music, Annual Impact Report 2023 (2024).

initiatives. This narrow focus often misses crucial issues in India, such as class and rural differences, excluding artists like tribal singer Archana Mahato, who doesn't get credit for her folk music compositions.

Queer Folk festivals attract around 500 attendees but struggle with limited funding, as merely 5% of cultural grants are dedicated to gender-diverse projects. Transgender artist Living Smile Vidya can't participate in certain festivals because of issues with documentation, highlighting the lack of support for programs inspired by the NALSA judgment.

Philosopher Michel Foucault suggests that creating art is a social action. He points out the problem with focusing only on city areas and encourages reaching out to more varied communities. Implementing policies such as quotas, rural grants, and more support for transgender inclusion are crucial to broaden these endeavors and ensure they truly represent India's diversity.

CHALLENGES FOR MARGINALIZED GENDERS IN ENFORCING IP RIGHTS

Enforcing Intellectual Property (IP) rights is a major issue for marginalized genders due to economic and social obstacles. For instance, only about 4% of IP dispute cases are filed by women, often deterred by the high cost of legal proceedings, which can be as steep as ₹5 lakh. Transgender artists also encounter problems with documentation, as it requires certain surgical details[38] that can be burdensome.

Two significant legal cases highlight these challenges. The first is the NALSA case[39], where the Supreme Court addressed discrimination against transgender individuals. The court acknowledged the right to self-identify under Article 21 of the Indian Constitution, which was an important step towards ensuring access to IP rights for everyone. However, despite this progressive decision, actual implementation has been slow.

The Madras High Court uphold the employment rights of a transgender person, referencing the NALSA judgment[40]. Yet, this case also exposed ongoing issues with enforcement since legal assistance remains difficult to obtain. While NALSA set a crucial legal precedent, Shanavi's

[38] The Transgender Persons (Protection of Rights) Act, 2019 (India).
[39] National Legal Services Authority v. Union of India, (2014) 5 SCC 438.
[40] Shanavi Ponnusamy v. Ministry of Civil Aviation, (2022) SCC OnLine SC 1581 (India).

case illustrates the practical difficulties faced by transgender people, such as struggles with registering IP due to mismatched identity documents[41].

Taken together, the NALSA and Shanavi cases affirm transgender rights, but the slow-moving bureaucracy weakens their impact. Women like Dalit singer Bhoomi Hegde face issues like plagiarism without effective support[42]. Scholar Roland Barthes challenges the law's focus on individual authorship, supporting the push for gender-neutral documentation and more affordable legal aid, in line with the equality principles of Article 14.

INTERSECTIONALITY: RACE, GENDER, AND MUSIC IP

Intersectionality means that various forms of discrimination can overlap, making it more challenging for certain groups. In Jharkhand, India, tribal women experience their traditional music being taken and used by others without permission, about 90% of it, according to a study[43]. Hijra artists, before 2014, were not included in intellectual property (IP) systems, which meant they couldn't protect their creative works. Dalit women are also underrepresented, with only about 3% of the singing roles in Bollywood movies going to them.

India's Copyright Act of 1957 assumes everyone has equal access to protection, but it overlooks these complex challenges faced by marginalized groups (Ahuja 2020). In comparison, Australia has laws that protect the community rights of Indigenous peoples, which is different from India's focus on individual rights (WIPO 2024). Canada also has its own protocol for protecting the cultural and intellectual property of First Nations communities.

A significant court case in 2005, Amar Nath Sehgal v. Union of India, recognized the moral rights in cultural works at the Delhi High Court, which could apply to tribal intellectual property. However, this protection doesn't extend to group ownership. In contrast, the 2006 case of Saregama v. Jindal dealt with individual contract rights, which doesn't address shared community intellectual property.

These legal cases highlight that the current system often fails to protect creators from various marginalized backgrounds. Philosopher Foucault's ideas suggest we should rethink intellectual property to better support collective rights. It's crucial for policies to focus more on including

[41] Living Smile Vidya, Interview on Transgender Inclusion in Music Festivals (Mar. 10, 2023) (on file with author).
[42] Bhoomi Hegde, Interview on Plagiarism Issues in Music Industry (Jan. 15, 2023) (on file with author).
[43] G.K. Bansal & S. John, Cultural Appropriation in Indian Music: A Study of Tribal Contributions, 33 Indian J. Community Stud. 45, 45-60 (2021).

tribal and Dalit voices, as shown by the plagiarism case involving Hegde, emphasizing the need for better representation and protection.

TECHNOLOGICAL PLATFORMS AND NEW OPPORTUNITIES

Streaming platforms such as Spotify in India have 25% female representation in their top 100 artists list, a fact highlighted in a 2021 study by Iturbide. Artists like Ritviz are utilizing NFTs to make intellectual property more open and accessible to everyone. Despite this progress, issues remain with how artist data is represented. For instance, a report by female: pressure in 2023 shows that only 15% of electronic DJs are identified as women, which points to inaccuracies.

The music industry's algorithms are still biased, favoring male artists over female artists by a ratio of three to one. In India, the focus on digital platforms mostly benefits urban men, as outlined by the Government of India in 2023.

The European Union introduced the *Digital Single Market Directive* in 2019 to regulate how artist information is documented, offering a potential model for India. Barthes believes that technology should offer a place for many different conversations and voices. Despite this potential for diversity, biases are still a problem today.

This prompts the question: can technology genuinely democratize if it doesn't promote equality? To address these issues, the Copyright Act of 1957 could be updated to mandate gender-neutral representation in artist data and provide financial backing for education and training programs to bridge these gaps.

GLOBAL PERSPECTIVES ON GENDER AND MUSIC IP

Across the globe, countries are advancing support for female composers, producers, and intellectual property rights. In the UK, the *Keychange* initiative has made a positive impact. As a result, 20% of composers in the country are now women. The USA has seen a 10% rise in female production through *She Is the Music*. Meanwhile, India lags behind with only 12% female composers[44].

[44] The Performing Rights Society (PRS) Foundation, Women Make Music: Impact Report 2011-2023 (2023). She Is the Music, Annual Impact Report 2023 (2024).

Australia introduced tax incentives in 2024, leading to a 15% increase in intellectual property filings by women. Pakistan's Transgender Persons Act of 2018 is another positive step, as it helps transgender people secure IP rights, reported by WIPO 2024. India's slow progress in these areas is linked to weak enforcement of Article 15 and a low arts funding, only 2% of GDP, according to the Government of India in 2023. Pakistan's effective model for supporting transgender rights is ahead of India's efforts.

Philosopher Michel Foucault criticized Western funding approaches and suggested that India should integrate global practices with local inclusivity to create a fairer system.

POLICY RECOMMENDATIONS FOR GREATER INCLUSIVITY

Lastly, this paper puts forward the following suggestions for a greater inclusivity in the music industry with respect to IP:

1. **Legal Changes:** Modify the Copyright Act, 1957, to gather gender-specific data and simplify registration processes. The World Intellectual Property Organization (WIPO) suggests that a 10% increase in female involvement in intellectual property is achievable by doing this.
2. **Industry Guidelines:** Develop and apply rules to ensure gender equality by having an equal number of men and women involved. The goal is to reach a 50:50 balance at festivals and within Collective Management Organizations (CMOs). This means making sure that both genders are equally represented in these areas. The success of *Keychange*, which achieved a 29% improvement, shows this strategy is effective.
3. **Mentorship and Support:** Enhance the Women in Music India initiative using resources from Digital India. This program already demonstrates a 30% success rate in intellectual property creation.
4. **Awareness Initiatives:** Collaborate with platforms like Spotify's Equal Hub, which has increased female streaming by 15%.

These initiatives align with the National Legal Services Authority's aim for inclusivity, drawing from global examples to promote fairness.

CONCLUSION: TOWARDS A BALANCED FUTURE

India's music industry includes a wealth of diverse voices and is at a key moment of transformation. The Indian Constitution guarantees equality in Articles 14, 15, and 19, supported by the National Legal Services Authority versus Union of India case from 2014.

However, the reality shows that only 12% of composers are women, and there is minimal intellectual property owned by transgender individuals, highlighting a significant gap between legal provisions and actual practice. Organizations like *Pagal Haina Records* and *Queer Folk*, along with global examples such as *Keychange* and reforms in Australia, highlight pathways to achieving equity. Yet, the effectiveness of these pathways relies on comprehensive systemic change.

Music is something people create and own. It is not only about being creative but also about showing who we are as individuals. Music gives us strength and helps us stand up for what we believe in. It's a powerful way to express identity and push back against challenges. The ongoing struggle for fair compensation in cases like Lata Mangeshkar's underscores this fight, which continues with today's tribal, Dalit, and transgender artists. To align India's music environment with its diverse cultural heritage, collaboration among lawmakers, music companies, digital platforms, and civil society is essential. Legal reforms must eliminate barriers to accessing intellectual property, ensuring affordable and gender-neutral documentation. Setting industry standards like a 50:50 gender balance is crucial to reform festivals and CMOs, while enhanced mentorship and funding opportunities must empower underrepresented creators. It is vital that technology, from streaming services to NFTs, is used in an inclusive way, with targeted training, aligning India's policies with global directives such as the EU's Digital Single Market Directive.

India's rich cultural legacy, which emphasizes unity through diversity, positions it uniquely to lead in crafting an inclusive musical IP framework for the Global South. By drawing lessons from Pakistan's protections for transgender individuals, Australia's incentive structures, and grassroots advocacy efforts, India can overcome historical barriers. The future envisions a music intellectual property system where every gender, from urban studios to rural performances, gains recognition and establishes a lasting legacy. This transformative movement, grounded in legal frameworks, driven by equity, and supported by cultural growth, will ensure India's musical heritage resonates with the dignity of all its people.

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