LAW JURIST LEGAL JOURNAL

A Quarterly, Online, Open-Access Journal Fostering Multidisciplinary Legal Research

Volume I Issue II | June 2025

Editor-in-Chief: Ms. Anusree S.

Publisher: Mr. Ayush Gaurav

ljlj.in

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False Promises, Real Consequences: A Legal Examination of Misleading Advertisements

Dola Gokul Sai Reddy[1]

Naina Singh[2]

ABSTRACT

Misleading advertisements refers to a product which is marketed as too good to be true but often turns out to be exactly that is untrue. Advertisements which aim to mislead consumers by showcasing advertisements with false hopes which turn significantly influencing purchasing decisions and shaping consumers trust and often leads to consumer deceptions. Such advertisements influence the buyers decisions and the buyers often fall in the trap of such advertisements and regret later. This paper aims to evaluate the impact of misleading advertisements on consumers and how they influence them to change their buyer - decision making behavior. It will further explore the role of the influencers and social media marketing in propagating misleading claims, often blurring the line between the promotional content and factual information. Additionally, the paper will examine the regulations of the consumer laws designed to safeguard buyers from misleading advertisements , with a focus on judicial precedents that highlights the need for greater consumer awareness.This paper adopts the doctrinal research method to critically examine the role and responsibility of regulatory authorities in curbing such practices of advertisements. It will assess whether the current legal frameworks which include the Consumer protection Act,2019 and guidelines issued by the advertising standards Council of India (ASCI), are adequate in deterring deceptive advertising practices. By analysing the statutory provisions , this study aims to provide recommendations through which the consumers are protected from getting manipulated by the misleading advertisements . By identifying the regulatory loopholes the paper aims to propose stricter enforcement measures.

Keywords: Misleading advertisements, Consumer Protection Act , Deceptive Marketing , Regulatory Framework, Buyer- Decisions Making.

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INTRODUCTION

Misleading advertisements have become a pervasive issue in modern consumer markets, influencing buyer decisions and shaping perceptions of products and services. Business often uses deceptive strategies to mislead the consumers by making false claims or about the exaggerated claims which leads to emotional and financial losses of the consumers. The Consumer Protection Act,2019 defines misleading advertisements as promotions that present false, incomplete or deceptive information to influence consumer choices. The impact of such advertisements extends beyond financial losses, often creating unrealistic expectations, emotional manipulation, and event health risks[3]. This research paper critically examines the effects of misleading advertisements on consumer behavior, the role of social media marketing and the legal framework governing deceptive advertising. By analyzing judicial pronouncement , regulatory measures and technological interventions, this paper aims to propose recommendations to enhance consumer protection and ensure transparency in advertising practices[4].

IMPACT OF CONSUMERS DECISION

Advertisement plays a key role when it comes to the consumer to make a decision to buy any sort of products which is known as the Buyer-decisions concept. Promotion plays a vital role in attracting a customer to buy any product[5]. The business tends to play with consumers' feelings by manipulating them by showcasing and promoting inappropriate information which is incorrect and that tends the customers to buy the product. The information which is passed to the customer without any sort of correctness is considered as deceptive information . Business tends to pass down deceptive information to promote their business so that the customers are attracted by the products and thereby , they come and buy the products wherein, later on the buyer faces loss as the information which is passed through the business is incorrect they usually use this technique so that their business gets profit. In this paper , it will lay down various factors which influences a consumer to fall into the trap of misleading advertisements[6]:

[3] R. Chakravarty, *The Role of Emotional Appeal in Deceptive Advertising: An Analysis of Consumer Vulnerability*, 20 J. CONSUMER BEHAV. 233 (2021).
[4] PHILIP KOTLER & KEVIN L. KELLER, MARKETING MANAGEMENT (15th ed. Pearson Educ. 2016).
[5] V. Kumar, *Consumer Deception and Regulatory Challenges: The Case of Digital Advertisements*, 8 INT'L J. CONSUMER L. & PRAC. 105 (2020).
[6] S.A. Narayana & S. Venkat, *Impact of Misleading Advertisements on Consumer Trust and Purchase Decisions*, INDIAN J. MKTG. (2021).

(a) ***Creation of unrealistic expectation*:** The Section 2 (28) of the Consumer Protection Act,2019 defines Misleading advertisement which in simple terms basically mean any sort of promotion which is made by giving false or incomplete information to influence the consumers choice[7]. Misleading advertisements often leads to creation of false and inflated expectations about a product's usage, benefits or its quality which often leads the consumers to buy the products as the aggregated claims are beneficial for the customers but later on regrets the buying decisions. One of the leading Indian perspective cases was of Emami Fair and Handsome vs Hindustan Unilever Limited,2024 when it comes to the Indian judiciary in this case The Fair and Handsome cream claimed in their advertisement that if the consumers used this product it would bring glow to their skin. One of the consumers brought the product as the company claimed that it would bring fairness but when the consumer started to use the products there was no improvement in his skin tone. So, the consumer sued the company and claimed that the advertisement was made by sharukh khan who promised that if the customers used it the person would look fair and which would mean that the person looks handsome. As the consumer skin tone was not improved so in this case the District consumer commission found that the emami claims were deceptive and unsupported by evidence which led the emami to withdraw the misleading advertisement and pay a fine of Rs. 15 Lakh [8].

***(b) Emotional Manipulation*:** It is one of the most powerful tools when it comes to influence of consumer behaviors. Advertisers usually manipulate emotions such as creating fear, happiness and urgency which impact customers' psychological impact that derives purchasing decisions. Advertisers usually uses tactics such as discounted products by claiming that the discount is only available for a particular period and later on the customers if they don't buy it then they would lose on the products but as the consumers you must have found that certain times the discount is expanded for certain days so this are manipulative tactics named as fear-based advertising which causes fear in the consumer mindset which led them to buy the products. These tactics are usually

[7] Consumer Protection Act, 2019, § 2(28), No. 35, Acts of Parliament, 2019 (India).
[8] Emami Ltd. v. Hindustan Unilever Ltd., 2024 SCC OnLine Cal 3579 (India).

considered as the fear of missing out (FOMO) tactics which pressurise a customer to buy the product[9].

(c) ***Social media proof and Media Impact:*** The social media marketing has been defined as a means of communication received, stored, transmitted, edited or processed by a digital media platform[10]. Brands usually create or buy fake reviews which a customer assumes that it is a natural claim and then the customer tends to buy the products as the reviews which are shown on the website tend to be defective ones which lead to misleading advertisements in social media. Some of the examples are Fitness influencers promoting fat-loss supplements without any sort of sponsorship or scientific backing. This usually encourages the followers to buy the product as their favourite influencer influences them and later the customer tends to regret as the influencer only promoted the products for getting paid for the promotions. During the pandemic Patanjali claimed its *coronil* medicine which could cure COVID-19, This misleading advertisement was spread rapidly and which created false hope in the customers. Later the Supreme Court of India held Patanjali liable for misleading advertisement[11].

ROLE OF INFLUENCERS AND SOCIAL MEDIA MARKETING

Influencer marketing is a form of marketing which is done digitally where the brands collaborate with influencers or individuals with a significant online number of followers to promote products or services. These influencers leverage their personal brand,credibility and audience trust to shape consumer opinions and drive purchase decisions. There are various factors how influencers are contributing to misleading advertisements. One of the major concerns is of Promotions without disclosure that is, when a brand approaches an influencer and gives money for promotion for those influencers who have a high profile account on various sites, the brands usually approach the influencers to promote their products. In various ways when the influencers promote the products , usually the one who promotes fails to give proper testimony but still the followers of the influencers tend to buy it as they get influenced

[9] P. Verma & M. Sharma, *Misleading Advertisements in the Digital Age: A Study on Indian Consumers*, 61 INT'L J. L. & MGMT. 275 (2019).
[10] ADVERTISING STANDARDS COUNCIL OF INDIA, GUIDELINES FOR INFLUENCER ADVERTISING IN DIGITAL MEDIA (Aug. 2023)
[11] In re Patanjali Ayurved Ltd. Through Its Managing Director, Acharya Balkrishna & Baba Ramdev, Suo Motu Contempt Pet. (Civ.) No. 4 of 2024 in Writ Pet. (Civ.) No. 645 of 2022 (India).

by such influencers. On 27th July 2021, there was a tweet which the well-known cricketer had posted on twitter stating that the 10% contingent of Indian Olympics are from Lovely Professional University and hence he also mentioned that LPU sends students to the Indian Cricket team also. And hence the controversy arose when the followers knew that it was a promotional post but virat failed to mention the tag of promotional one, however there was no disclosure label as was required by the ASCI influencer guidelines[12]. In my perspective whenever an influencer is getting paid for the promotion of a product that influencer must always mention the tag as whether it is a promotional advertisement or not so that it can help the consumer be aware whether it is a promotional or a genuine advertisement[13] . Another factor is Exaggerated or False claims which deals mainly with Influencers overhype the products' benefits to increase the sales often without real evidence. There have been various instances where the influencers usually promote the products in their social media or websites where they have never used it but often promote it so that people can buy it[14]. For example certain beauty influencers will be promoting various products as a part of promotion but tends to prove with the real testimony but in some instances a followers tends to buy it just because the person who is promoting is their favourite ones. In the case of Horlicks Limited and Anr. vs Zydus wellness for a TVC that compared one cup of complan to two cups of horlicks contending that that is more beneficial for a consumer for consumption. The Delhi high court ruled that the advertisement was misleading the consumer and the court also ruled that the advertisement was intentionally misleading because it didn't give viewers enough time to read the disclaimers. The court restrained the advertisement from being broadcasted as it was misleading the consumers[15].

LEGISLATIVE FRAMEWORK

The issue of misleading advertising is addressed through various legislation frameworks which are designed to protect the consumer rights and ensure fair practices in the market. In India,the primary legislation which governs the area of consumers rights are mainly the consumer protect act,2019 under this legislation the few factors which have been laid down in this legislation are

[12] ADVERTISING STANDARDS COUNCIL OF INDIA, THE ASCI CODE & GUIDELINES.
[13] ADVERTISING STANDARDS COUNCIL OF INDIA, GUIDELINES FOR INFLUENCER ADVERTISING IN DIGITAL MEDIA, https://www.ascionline.in/wp-content/uploads/2023/08/GUIDELINES-FOR-INFLUENCER-ADVERTISING-IN-DIGITAL-MEDIA.pdf.
[14] E. Djafarova & O. Trofimenko, *"Instafamous"–Credibility and Self-Presentation of Micro-Celebrities on Social Media*, 22 INFO., COMM. & SOC'Y 1432 (2019).
[15] Horlicks Limited and Anr. v. Zydus Wellness Products Ltd., CS (Comm) 464 of 2019.

the definition which the authors have already discussed in the paper, later on the main component are the Penalties which are mentioned under the act is that the Section 89[16] , This section states that if there's any sort of misleading advertisement the punishment must extend to two years with a fine which may extend to 10 lakhs. The rules which are in lieu with the misleading advertisement put forth by the Ministry of consumer affairs which has enacted the consumer protection Rule,2020 set out various guidelines which are for prevention of false or misleading advertisement and endorsement. The CCPA has issued guidelines in relation to prevent "non- misleading and a valid advertisement", "false claims advertisement. Advertisements making "free" claims must clearly and prominently disclose all associated conditions[17]There is an establishment of the Consumer Protection Authority which can help the people to approach the court of law if there's any sort of infringement in their rights due to misleading advertisements.

JUDICIAL PRONOUNCEMENT

The legal understanding of misleading advertisement has evolved over a time as reflected in a series of key case laws.The mentioned case laws have not only clarified the scope of existing regulations but also addressed emerging challenges in the field of advertising. The landmark case of Hamdard Dawakhana V. Union Of India,1959 this case laid down the important principles which needs to be followed when it comes to advertising a product. In this case the company made false claims that if they use this particular medicine the person will be cured from the disease. Later a person raised a concern regarding that when he did the usage the disease wasn't cured so in this case the court held while a company promotes their products they must keep in mind about the reasonable restriction for promotion of their event[18] . In the case of Colgate Palmolive (India) Ltd. and Hindustan Unilever ltd,2010 it centered on competing claims in their toothpaste advertisement which primarily concerns their efficacy and ingredients of their products. The court mainly put forth that the need for advertisers to mislead the consumers must be avoided and their must be evidence given if the company is promoting any sort of claims[19]. Another case which was very significant in the legal scope is the Patanjali case this case mainly involved unsubstantiated claims and the disparagement of modern medicine which underscores the importance of truthful advertising and the need for rigorous

[16] Consumer Protection Act, 2019, § 89, No. 35, Acts of Parliament, 2019 (India).
[17] CENTRAL CONSUMER PROTECTION AUTHORITY, GUIDELINES FOR PREVENTION OF MISLEADING ADVERTISEMENTS AND ENDORSEMENTS FOR MISLEADING ADVERTISEMENTS (2022).
[18] Hamdard Dawakhana (Wakf) Lal Kuan, Delhi v. Union of India, AIR 1960 SC 554.
[19] Colgate Palmolive (India) Ltd. v. Hindustan Unilever Ltd., AIR 2010 Bom. 123.

enforcement of regulatory guidelines, thereby reinforcing the central argument of this paper regarding the ongoing challenges posed by deceptive marketing practices. [20]

RECOMMENDATION TO PROTECT CONSUMERS FROM DECEPTIVE ADVERTISEMENTS

The following factors are crucial for the proposed recommendations . Here are the following recommendations:-

(a) ***Clear Labelling of sponsored claims*****:** When a person who is a well-known personality tends to promote the content on their social media profile they must be careful and be very precise by inserting the labels about whether the person is promoting the products or not. This will help to distinguish between the products which are really being used by the well known personality or they are promoting the products just because they are getting paid for the products. Lets understand through an illustration for say Person A is following an influencer from a long time and the personality posts about a product so that his followers buy it. The personality was being paid for the products but he didn't mention it. So if Person A faces any sort of problems he will directly point out that the personality was promoted due to which the consumer was influenced and bought the products[21]. So if the person faces any infringement he/she will directly point it out on the personality so if there's any sort of promotion that is being done by any influencer he/she must always mention that it is a promotional advertisement so that the consumers or the persons who follow them are aware of the products and then they should make the Buyers-decision.

(b) ***Enhanced Consumer Education*****:** There must be consumer awareness campaigns in the form of TV advertisements , radio spots,social media campaigns, community outreach programs initiated by the government so that the consumers are aware about such misleading advertisements and the consumers don't fall under the scam of such things[22].

[20] In re Patanjali Ayurved Ltd. Through Its Managing Director, Acharya Balkrishna & Baba Ramdev, Suo Motu Contempt Pet. (Civ.) No. 4 of 2024 in Writ Pet. (Civ.) No. 645 of 2022 (India).
[21] N.J. Evans, J. Phua, J. Lim & H. Jun, *Disclosing Instagram Influencer Advertising: The Effects of Disclosure Language on Advertising Recognition, Attitudes, and Behavioral Intent*, 17 J. INTERACTIVE ADVERT. 138 (2017).
[22] A. Bhatnagar, *Consumer Protection and Deceptive Advertising in India: Legal Framework and Challenges*, 63 INT'L J. L. & MGMT. 56 (2021).

There must be basic awareness present in the people of the society so that they can identify the advertisement which is being claimed falsely and if there's any sort of false claimant they must take steps to avoid getting into the trap of such advertisement . Some of the tactics which the business use for promotion includes ambiguous language, deceptive imagery, exaggerated claims or hidden costs. Through the consumer awareness the consumers will be able to get aware about the misleading advertisement and that will help them to not get into the trap of such claims which are falsely presented[23].

(c) ***Transparency and Accountability*****:** When it comes to transparency and accountability it plays a huge role in preventing the consumers from falling into the trap of misleading advertisements. One of the key elements to ensure transparency is by mandating the clear disclosure of the potential details of the products by inserting the subject to "terms and conditions"[24]. Often advisers use fine print or vague language to obstruct critical information. Which leads the consumer to make uninformed purchasing decisions. By enforcing such strict disclosure requirements, regulatory authorities can ensure that the companies provide complete and accurate information about their products and services[25]. Additionally, the social media influencers have been issued with the guidelines that whenever they promote any brand in terms of paid promotion they must always mention the label of the paid promotion. Furthermore, whenever it comes to any sort of advertisement which are related to any financial services and health products such advertisements must be seen in a very stricter manner as the consequences would be huge when it comes to the misleading advertisement[26]. Such as if there is any deceptive advertisement that are made related to health related in that case it might lead to even losing of someone's life so such field should always have transparency and accountability to ensure that the advertisement is true and not a misleading one.

[23] R. Chatterjee, *Reading Between the Lines: Fine Print and Consumer Deception in Indian Advertising*, 8 J. CONSUMER POL'Y STUD. 145 (2020).
[24] N.J. Evans, J. Phua, J. Lim & H. Jun, *Disclosing Instagram Influencer Advertising: The Effects of Disclosure Language on Advertising Recognition, Attitudes, and Behavioral Intent*, 17 J. INTERACTIVE ADVERT. 138 (2017).
[25] NATIONAL COUNCIL OF APPLIED ECONOMIC RESEARCH, CONSUMER TRUST AND REGULATORY IMPACT IN DIGITAL INDIA (2021), https://www.ncaer.org/news/consumer-trust-and-fake-ads-2021-report
[26] H. Thomas & A.T. Thomas, *The Power of Celebrity Endorsements in the Indian Marketing Landscape: Impact, Regulations, and Ethical Considerations*, INT'L J. MOD. ENGINEERING RES. (2023).

***(d) Use of Technology for better Monitoring*:** With the increase of digital marketing , misleading advertisements have become increasingly sophisticated which is leading to a mandated use of technology to track and monitor the regulation[27]. One of the most effective tools to analyse misleading advertisements can be through the Artificial Intelligence (AI), which can be used to track and identify deceptive advertisements across various digital platforms. AI-powered systems can help to analyze ad content, detect false claims, and flag potentially misleading advertisements in real time. Usage of machine learning algorithms , these tools can also recognise patterns of deceptive advertising and help the regulatory bodies to take measures against the violators[28].

CONCLUSION

Misleading advertisements pose a significant challenge to consumer rights, ethical business practices, and fair competition. The rapid expansion of digital marketing and influencer-driven promotions has made deceptive advertising more sophisticated and widespread. While regulatory frameworks such as the Consumer Protection Act, 2019, and guidelines issued by the Advertising Standards Council of India (ASCI) aim to curb misleading practices, enforcement remains a challenge. Judicial pronouncements have played a crucial role in holding brands accountable, yet deceptive marketing continues to evolve, necessitating stronger oversight[29].

To mitigate the effects of misleading advertisements, a multi-pronged approach is required. This includes stricter regulations on influencer marketing, enhanced transparency in advertising claims, and greater accountability for businesses. Consumer education initiatives must be strengthened to enable individuals to recognize deceptive marketing tactics. Additionally, the integration of technology, such as AI-powered ad monitoring and blockchain-based verification systems, can play a crucial role in identifying and preventing false claims.
Ultimately, protecting consumers from misleading advertisements requires collective efforts from regulatory authorities, businesses, influencers, and consumers themselves. By fostering a

[27] M. Garg, M. Sindhu & P. Mathurkar, *Detecting Fraudulent Marketing in Online Social Networks and Mitigating Cyber Threats with Advanced Security Approaches*, 2024 IEEE 4TH INT'L CONF., https://ieeexplore.ieee.org/document/10911458.
[28] N. MANSOUR & L.M.B. VADELL, ARTIFICIAL INTELLIGENCE, DIGITALIZATION AND REGULATION (Springer 2024).
[29] H. Sayyed, J. Kasture & K.D.V. Prasad, *Exploring the Interplay Between Advertisements, Media Law, and Society in India*, 15 LEX HUMANA J. (2023).

culture of transparency, ethical advertising, and informed consumer decision-making, it is possible to minimize the harmful impact of deceptive marketing and create a more trustworthy marketplace[30].

[30] T. Sultana, M.R. Farooqi & M.A. Akhtar, *Ethical Dimensions of Indian Advertising – A Comprehensive Study*, THIRD CONCEPT J. (2024).

Protection of Human Rights of Prisoners under the Indian Constitution

Ravi Ranjan Sharma[31]
Harsh Anand[32]

ABSTRACT

The Indian Prison System still lags in protecting the prisoners 'rights in the wake of repeated human rights violation cases. This paper examines systemic deficiencies that lead to violations of prisoners' rights, specifically focusing on the cases under the constitutional safeguards provided in the Articles 14, 19, and 21 of the Indian Constitution. These articles guarantee fundamental rights related to equality, freedom of speech, and the right to life and personal liberty. A critical analysis of some of the vital judicial pronouncements in the case, such as *D.K. Basu v. State of West Bengal,* [33]*; Maneka Gandhi v. Union of India*[34] It is about the judiciary's progressive interpretation of constitutional rights and how the courts have taken proactive steps to redress custodial violence cases while upholding principles of procedural fairness.

Further, the paper carries out a comparative study of international instruments, of which the Basic Principles for the Treatment of Prisoners of 1990 and the International Covenant on Civil and Political Rights are notable. It is essential while proposing legislative reforms in relation to India to incorporate prison practices that meet universally recognized human rights standards. The study concludes by presenting a set of legal reforms aimed at rectifying the systemic issues within the Indian prison system, thereby ensuring greater adherence to constitutional protections and enhancing the humane treatment of prisoners.

Keywords: Prisoners' Rights, constitutional Safeguards, Judicial Pronouncements, Systemic Issues, International Human Rights Standard

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[33] D.K. Basu v. State of West Bengal, (1997) 1 SCC 416.
[34] Maneka Gandhi v. Union of India, AIR 1978 SC 597.

INTRODUCTION

The protection of Human Rights of the Incarcerated prisoners is one of the most fundamental questions of any fair, equal, and dignified society. Imprisonment is a form of punishment that takes away the liberty of an individual and deprives him of nothing to his basic human rights. Even in India, the Constitution promises these rights, including for a man in jail. However, despite this legal base, systemic problems still beleaguer the Indian prison system, as there is gross violation of prisoners' rights. Violation of prisoners' rights not only is a betrayal of the core principles of justice but also reveals the growing demand for complete legal reforms.

The prisoners, as a group, are the most deprivitized sections of the economy or one can say, in society often forgotten or neglected. Their position as offenders makes their situation ambiguous, as they have indeed offended but are yet supposed to be protected by the same law. The current scenario in Indian prisons, however, is one of a dark picture in which prisoners experience overcrowding, custodial violence, inadequate healthcare facilities, and absence of rehabilitative measures. Such systemic issues exacerbate conditions that are both dehumanizing and unconstitutional.

The Indian prison system, largely an inheritance from colonial times, still treads along the line of punitive actions rather than bringing a sense of rehabilitation within the walls. A view of a penal system that actually emerged in colonial times is into a reform process instead of punishing- prison reform, which shall be necessary for changing the structural as well as operational inefficiencies. Some efforts at reform were made recently, which were largely piecemeal and ineffective in tackling the root cause of the problems in the system.

Even prisoners do come within the sweep of Articles 14, 19, and 21 of the Constitution that further provide fundamental rights. It is due to Article 14 that gives guarantee for the equality before law, Article 19 under which freedom of speech and expression stands guaranteed by reasonable restrictions, and Article 21 that ensures the right to life and personal liberty. One other actor that has been very active in moving these rights forward in an expansive way, such as the right to live with dignity, the right to health, and the right against cruel or degrading treatment, is the judiciary. But when it comes to the ground realities of Indian prisons, hardly any of this constitutional ideal seems to be in sync.

Overcrowding is the single most pressing issue in the Indian prison system. Occupancy rates far and above the capacity, prisoners are made to live in somewhat inhuman conditions, hardly

able to access proper sanitation and healthcare for themselves. Indian prisons operated with an occupancy rate of 118% as reported by the NCRB as of 2020. Overcrowding is much worsened in the context of numbers in terms of undertrial prisoners who at large contribute to the prison population. Overcrowding in jails not only violates the rights of the prisoners but also provides a fertile ground for rampant diseases, which was witnessed during the COVID-19 epidemic.
Custodial violence is another grievous issue that compromises the human rights of the prisoners. This situation continued despite guidelines enunciated by the Hon'ble Court in the D.K. Basu case to curb custodial violence. Torture, abuse, and deaths continue to happen in custody cases. The problem of a culture of impunity among the prison authorities that exists together with weak oversight mechanisms perpetuates the cycle of violence and violations of human rights.

Healthcare for prisoners in Indian prisons is also an issue of concern. Most of the prisoners are patients of long-term illnesses or mental conditions, and the healthcare structures within the prisons do not exist. Delays in medical aid, a lack of proper psychiatric services, and bad sanitation all play a role to the deteriorating health of prisoners. The right to health, when interpreted under Article 21 as falling in with the right to life, has been upheld by the courts; as illustrated by case *Parmanand Katara v. Union of India, (1989);* [35]however, much remains to be done practically to truly infuse the right to health into being and it remains another prime feature that is at the risk of ending the lives of prisoners.

With these systemic failures, the Indian prison system has failed to focus on rehabilitation and reintegration. Mainly, the rationale of imprisonment should be for rehabilitation and eventual reintegration of prisoners into society. On the other hand, vocational training, educational programs, or counseling services are out of the Indian prison system. The more this is not done, the higher the chances of recidivism and the prevalence of the crime-and-punishment cycle.
The jurisprudence governing Indian prisons is archaic, more in the realms of the Prisons Act of 1894 which adequately lacks proper protection for prisoners' rights. Several committees have made recommendations for a reform towards making the prison laws more modern, thereby improving the conditions, and the most recent of these were the Justice Mulla

[35] Parmanand Katara v. Union of India, (1989) 4 SCC 286.

Committee way back in 1983 and the Justice Krishna Iyer Committee in 1987. This really has not been done.

Given these challenges, the research paper aims to explore the key question: How do systemic issues within the Indian prison system contribute to ongoing violations of prisoners' rights, and what legal reforms are necessary to ensure compliance with constitutional protections? By analyzing the gap between constitutional guarantees and the lived experiences of prisoners, this paper will offer insights into the urgent need for reform. Addressing issues like overcrowding, custodial violence, inadequate healthcare, and the absence of rehabilitative measures is essential for aligning the Indian prison system with both constitutional and global human rights norms.

The Indian Constitution lays down a solid legal foundation for the protection of prisoners' rights, but systemic problems continue to break down the former. In trying to bridge this chasm between law and practice, possible practical solutions to India's prison reform problems are advanced. The paper will thus be contributing to the ongoing dialogue regarding human rights and the need for India to undertake prison reform.

LITERATURE REVIEW

"Protection of Human Rights of Prisoners under Indian Constitution: An Overview" by Dr. Rahul Tripathi[36]-some aspects of literary review

In "Protection of Human Rights of Prisoners under Indian Constitution: An Overview," Dr. Rahul Tripathi presents a comprehensive review of the rights bestowed upon prisoners regarding the Indian Constitution. The paper is keen to point out that the right to life and personal liberty is not only a physical existence but it extends beyond physical survival, essentially including the right to live with dignity. This perspective is very useful in understanding the broader implications of human rights within the context of imprisonment.

The author starts by describing what basic human rights are, maintaining that they are crucial for keeping the state democratic. He continues to voice that the right to life entails many needs like diet, clothing, shelter, and self-expression opportunities. The author uses this basic

[36] Dr. Rahul Tripathi, *Protection of Human Rights of Prisoners under Indian Constitution: An Overview*, 7 INT'L J. MGMT. & SOC. SCIS. RSCH (2017).

assumption to discuss how these rights are violated within a prison system-the very institution, which is suffering from overcrowding, poor facilities, and denying proper access to legal instruments.

Tripathi looks in detail at specific constitutional provisions that protect prisoners' rights. Article 14 lays the principle of equality before law and equal protection, which can be described as fundamental to ensure the fair treatment of prisoners. The author draws attention to how courts have interpreted this article to classify prisoners into different categories on reasonable classifications to ensure similar cases are treated alike. This legal framework is significant for establishing a baseline for prisoners' rights and addressing discrimination within the prison system.

Article 19 guarantees several freedoms, such as freedom of movement throughout the territory, which is inherently restricted for prisoners. Tripathi discusses how these restrictions have to be balanced against the need for security and order within prisons. He argues that while some freedoms may be curtailed, it is essential that there be retention of the fundamental rights of prisoners to the fullest extent possible.

Article 21 provides the heart of the paper and is a litmus test for the prisoners' rights. To buttress this, Tripathi holds that Article 21 is more than mere existence; it ensures humane conditions which are vital for the rehabilitation of an individual. He also alludes to cases like *M.H. Hoskot v. State of Maharashtra (1978)*[37] *and Prem Shankar v. Delhi Administration (1980),* [38]which have given a shape to judicial interpretations regarding prisoners' rights and have reinforced the necessity for humane treatment.

The author also explores prison and police manuals in ensuring prisoners' rights, where he reveals the significance of these documents as they guide toward developing an order which evinces knowledge of lawfulness. The author claims that manuals create obligations upon the administration of prisons to act according to the rules and safeguards established to protect inmates.

[37] M.H. Hoskot v. State of Maharashtra, AIR 1978 SC 1548.
[38] Prem Shankar v. Delhi Administration, AIR 1980 SC 1535.

In sum, the paper by Dr. Tripathi forms an invaluable resource for analyzing the complexities surrounding prisoner rights in India. It balances very effectively the constitutional provisions with judicial interpretation and practical implications as involving the prison system. It highlights the challenges that prisoners continue to face in asserting their rights and simultaneously expresses the need for continuous reform in legal frameworks and prison administration practices.

Overall, this summary not only strengthens our comprehension of the rights afforded to prisoners but also encourages further attention and efforts toward making sure that these rights are respected uniformly across India's prisons. The paper is a significant contribution to the conversation regarding human rights in India, especially concerning one of society's most fragile groups: prisoners.

"An Analysis Of Prisoner's Rights In India" by Vijeta Kumari[39]

Vijeta Kumari's paper, "An Analysis Of Prisoner's Rights In India," illuminates the legal landscape of prisoners' rights under the Indian system. She begins by outlining the constitutional provisions that serve as the bedrock for individual rights. These provisions, anchored on Articles 14, 19, and 21, provide a robust foundation for asserting prisoners' rights in India, instilling a sense of reassurance in the legal framework.

The paper, therefore, critically examines how these constitutional rights are often abrogated in practice. Kumari underscores the several kinds of discrimination that inmates, especially those from the marginalized sections of society, have to contend with. She reflects that though legal apparatus to safeguard the rights of prisoners exists, systemic problems such as overcrowding and lack of access to legal representation, besides deficient healthcare services, provide a ground on which these rights are often infringed.

Kumari also highlights judgments of the Apex Court of India that have defined and shaped the image of prisoners' rights in India. The cases, such as *Maneka Gandhi v. Union of India* [40]*and D.K. Basu v. State of West Bengal* [41]serve as beacons of hope, reaffirming the principle that even in prison, fundamental rights cannot be suspended. These are classic examples of how

[39] Vijeta Kumari, *An Analysis of Prisoner's Rights in India*, 10 J. RES. HUMAN. & SOC. SCI. 386, 386–90 (2022).
[40] Maneka Gandhi v. Union of India, AIR 1978 SC 597.
[41] D.K. Basu v. State of West Bengal, (1997) 1 SCC 416.

judicial intervention has played a significant role in extending protections to prisoners, instilling a sense of hope in the legal system's ability to protect prisoners' rights.

Moreover, Kumari addresses international norms of human rights and their implementation in Indian law. Her comparisons are further fortified by drawing analogies between domestic laws and global instruments such as United Nations Standard Minimum Rules for the Treatment of Prisoners-the Mandela Rules. She uses comparative analysis to strengthen her argument by showing how obligations under international law may inform change in domestic systems.
More importantly, Kumari underlines some specific problems with Indian prisons, particularly about women prisoners, children in custody, and mentally ill inmates. She presses the case for adequately targeted responses to these exceptional situations with their rights respected at all cost.

In her conclusion, Kumari proposes wide reforms in terms of the prison scenario with an increase in accountability among the prison authorities. "Legislative reforms alone will not do. There is a need for a cultural shift in the penal system toward the recognition of prisoners as human beings with dignity and rights," she suggests.

In general, "An Analysis Of Prisoner's Rights In India" by Vijeta Kumari is an authority looking to apprehend the legal protections of a prisoner and systemic impediments that are coming in the way of those rights. The detailed study not only throws light upon the issues currently experienced but also provides direction for future policy changes toward improved protection of human rights in Indian prisons.

"Incarceration and Human Rights Violation" by Dipali Singh[42]

This paper by Dipali Singh, "Incarceration and Human Rights Violation," looks into the human rights situation prevailing within Indian prisons. Beginning with the principle that the human rights must be held for every individual irrespective of their legal status as a prisoner, the paper aims at deeper analysis into how these rights get violated in prison but for the fact that prisoners have dignity behind the bars.

[42] Dipali Singh, *Incarceration and Human Rights Violation* (Feb. 15, 2021), PROBONO INDIA, https://www.probono-india.in/research-paper-detail.php?id=767.

The paper has stressed torture and inhumane treatment inside prisons as a phenomenon, which is often ignored in criminal justice debates. Singh has constructed a minute detailing of all abuses done on the prisoners within physical aggression, psychological torture, and neglect of major requirements, such as food, water, medical treatments, etc. Such abuse does not only take place on an individual basis but also reflects systemic issues in the penal system with punishment rather than rehabilitation as a means.

This discussion is further contextualized within both national and international frameworks. Thus, the author refers to international human rights instruments that include the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, where rights of all persons, even those deprived of liberty, are confirmed. Such juxtaposition of international standards against Indian realities has led to the massive disparity between legal protections and actual practices.

One of the most critical themes of Singh's analysis is her focus on the judiciary's role in the issues of prison human rights violations. She refers to the cases in which the Apex Court of India has intervened to be able to establish prisoners' rights, quoting judgments where humane treatment and dignity have often been underlined. For instance, she points to developments wherein the Court ordered jail conditions to be upgraded and granted the right to legal assistance to be considered fundamental for all inmates to acquire justice.

Yet on another plane, Singh eloquently relates to the principle of non-discrimination by arguing that grossly vulnerable groups within the prison population-socially and criminally-are women, Dalits, and minorities. The intersectional approach enriches her analysis by illuminating how systemic inequalities extend into prison environments and exacerbate the challenges faced by already disadvantageous groups.

The paper concludes with the appeal for comprehensive reforms in the Indian prison system. Singh argues for policy change that puts emphasis on rehabilitation rather than punishment and primes the training of prison staff in human rights. She states that, legally as well as morally, it is required for the attainment of the purposes for a just society.

Incarceration and Human Rights Violation by Dipali Singh: Incarceration and Human Rights Violation is an important contribution toward unraveling the complex interplay between

incarceration and human rights in India. Her stateside widespread systemic abuse analysis at the same time advocates for the reforms necessary to accord dignity and respect to prisoners.

EXPANDED CASE ANALYSIS:

Maneka Gandhi v. Union of India, 1978: A Case Analysis Introduction

Maneka Gandhi case is a significant judgment by the Supreme Court of India ("Hon'ble Court") that significantly enlarged the interpretation of personal liberty under Article 21 of the Indian Constitution. A cause for this judgment came forth when Maneka Gandhi's passport was confiscated without any reason. She pleaded that her rights were infringed.

Facts of the Case

Maneka Gandhi is a citizen of India. She received her passport on June 1, 1976. Her Regional Passport Office ordered her to surrender the passport with the phrase-"public interest" on July 2, 1977, without saying anything more. She filed a case under Articles 21 and 226 in the Hon'ble Court of India, arguing that there was a direct infringement of her right to personal liberty under Article 21.

Issues

The principal issues for consideration were whether the impounding of Maneka Gandhi's passport infringed her right to liberty under Article 21, including the intersection between Articles 14, 19, and 21, and the validity of provisions under the Passport Act which permitted arbitrary acts on the part of the state.

Judgment

On January 25, 1978, the judgment was pronounced by a seven-judge bench unanimously. It was held by the Court that the Article 21 can never be read in isolation but must be read concomitantly with Articles 14 and 19, which form the golden triangle of basic rights. This interlinking meant that any law or executive action impacting personal liberty needed to be compliant with all three of the articles mentioned above.

Thus, it upheld that the right to travel abroad is a part of the right to personal liberty under Article 21. Moreover, it was held that a law-established procedure must be just, fair, and reasonable. Further, the government must provide reasons for activities that affect individual

rights, thus vindicating principles of natural justice. This judgment effectively overruled previous interpretations from cases like *A.K. Gopalan v. State of Madras*[43], which had considered these articles as mutually exclusive.

Impact and Significance

The *Maneka Gandhi v. Union of India* ruling has a lot of implications for Indian law and society. It first generously expanded the Article 21 encompassing various other rights essential for living with dignity such as the right to privacy, education, and health.

This also brought about the "golden triangle," where violations of one fundamental right could have repercussions on others and, therefore, increase the scrutiny that judicial functions have over the actions of the legislature and the executive. This was one of the landmark cases where the judiciary activism in the country began to shift towards a more active role in India in protecting the rights of the individual against arbitrary actions of State.

After this judgment, there was much emphasis placed on lawmakers that laws relating to individual rights must be fair and transparent. This judgment was cited in several judgments subsequent to it, which also related to personal liberties and human rights in India.

Conclusion

Maneka Gandhi case shines like a beacon in the constitutional law, reiterating the justification behind protecting individual liberties from arbitrary actions by the state. It did not just reverse the tide in interpreting fundamental rights but also served as an iconic example of the bench as a forerunner to future judicial battlefields in India on human rights. The judgment stands the test of time in proving the essence of the importance of the judiciary for the sustenance of democracy and consolidation of individual liberties within the constitutional framework.

CASE ANALYSIS OF PARMANAND KATARA V. UNION OF INDIA (1989)

Introduction

The judgment of *Parmanand Katara v. Union of India (1989)* [44]had a tremendous impact on the jurisprudence relating to the construction of the right to life and health under Article 21 of the Indian Constitution. A human rights activist Pandit Parmanand Katara filed a PIL which

[43] A.K. Gopalan v. Government of India, 1965 SCC OnLine SC 115.
[44] Parmanand Katara v. Union of India, (1989) 4 SCC 286.

brought to the forefront the immediate need for medical help to accident victims and the legal bottlenecks that were preventing such help.

Facts of the Case

This case was based on a sad incidence aired on the media, where a scooterist was seriously injured in a road accident but could not be treated at any hospital immediately due to procedural formalities concerning medico-legal cases. He was referred to a hospital which dealt with cases like this, and therefore, it took some more time, where he died. This led to Katara filing a PIL, seeking guidance from the Hon'ble Court for the treatment of injured persons without any legal technicality at the initial stage.

Legal Issues

While the questions of law primarily before the Hon'ble Court were whether it was the obligation of the state to deliver medical care to those left injured by accidents upon the same, what such obligation entailed on Article 21, mainly in relation to the rights to life and liberty; the case also issues involved the role of the medical profession and of institutions during an emergency concerning patients whose treatment, the attendant circumstances under which they were to receive that treatment, could not be delayed.

Judgment

On April 5, 1989 the Hon'ble Court pronounced its judgment making it amply clear that Article 21 also means not just a right to life but a right to live with dignity wherein comes the scope of accessing health care. The Court said that it was primarily the state's obligation to preserve life and doctors at both the public and private hospitals were to extend urgent treatment to injured persons without awaiting legal formalities or any investigation.

It decreed that when an accident victim arrives at the hospital for treatment, doctors should not consider rules and procedures before trying to save lives. Essentially, the judgment eliminated jurisdictional issues arising sometimes to deny or delay accident victims' timely medical care and declared that no hospital should ever decline to treat a casualty on the grounds of jurisdiction or due to complicated legal aspects.

Impact and Significance

The *Parmanand Katara v. Union of India* [45]ruling had set profound implications for healthcare delivery in India. It established clear precedents that reinforce the duty of medical professionals to act swiftly during emergencies, so that medical ethics is brought into alignment with constitutional mandates. It has been instrumental in producing relevant policies in respect of emergency medical care and encouraging hospitals throughout India to put patient care above administrative hurdles.

It has greatly enriched the debate on the right to health as part of the right to life, particularly under Article 21. A judgment like this will serve as precedent when the court upholds the principle that every person has a right to receive medical treatment, irrespective of his or her legal or other situations, whenever the need arises.

This decision brought forth discussions regarding the reform of prevailing laws and practices in healthcare institutions, responding and holding accountable in emergencies. It brought to the fore the need for legislative changes that favor human life over procedural formalities.

Conclusion

Parmanand Katara case is an important case in Indian jurisprudence on healthcare rights and responsibilities. The judgment drove home that there's a dire need for immediate and urgent medical care and it assumes an integral place within the wellspring of keeping life and dignity intact. The judgment not only reinforced constitutional protections but also gave a booster to further discussions about health rights in India, saying access to timely medical care is absolutely essential to upholding human dignity under constitutional law.

CASE ANALYSIS OF D.K. BASU V. STATE OF WEST BENGAL (1997)

D.K. Basu v. State of West Bengal (1997) [46]was another landmark case in Indian legal history, concerning human rights related to police custody. D.K. Basu filed a public interest litigation based on alarming reports of custodial violence and deaths in West Bengal. The judgment of the Hon'ble Court redressed not only the present grievances of Basu but also provided more complete guidelines on protection of a man's rights at the moment of arrest and detention.

[45] *Ibid*.
[46] D.K. Basu v. State of West Bengal, (1997) 1 SCC 416.

The judgment highlighted that custodial violence is a serious violation of fundamental rights under Article 21 of the Constitution that guarantees the right to life and liberty. The court acknowledged the fact that the dignity of human beings must be maintained irrespective of their legal status as detainees. This view resonates well with the larger framework of justice and human dignity, thereby reiterating that no one should be allowed to face inhuman treatment within the confines of custody.

In effect, one of the major takeaways from this case was the institution of explicit detailed protocols on how the police should observe themselves when making arrests. The Court required that the police officer must be able to show his identity clearly; he must write an arrest memo and notify a next-of-kin or friend on the arrest. These standards would give accountability and even transparency to the activities of law enforcement agencies, areas previously unfilled critical gaps that had enabled abuse to thrive unchallenged.

To this end, judgment served to stress the necessity of judicial redress for victims of custodial violence, to be able to seek claims against the state for violation of fundamental rights. This proved to be a decisive twist in legal attitudes towards custodial abuses, as it represented an argument serving the proposition that the state could not invoke sovereign immunity in the matters where agents of the state committed tortious acts to cause human rights violations.

The case also highlighted the inadequacies in the existing legal framework governing police conduct and custodial practices. It was only after this judgment that specific provisions or guidelines existed to handle custodial violence comprehensively. The Hon'ble Court judgment provided effective momentum for legislative reforms, which indeed have taken the form of amendments to the Criminal Procedure Code in 2008 including most of the guidelines set by this judgment.

Despite all this, however, problems continue to persist as instructions are not uniformly implemented in the given jurisdictions. Human rights organizations continue to report deaths by custodial violence, which only registers the trend that though laws may be present in bookish realms, their implementation is always ineffective. The case reminds us that reforms in law needs systemic changes within the machinery of law enforcers for the inculcation of feelings of responsibility and a sense of respect for the rights of individuals.

In short, D.K. Basu case is not a leading judgment in law only but also a much-needed commentary on responsibility by the state toward its people and the susceptible it holds within its custody. The case is the repetition of an urgent call for continued vigilance and reform that brings the ideas into action for rights instead of mere exercise of theory and remains the only point of reference for police reform and advocacy of human rights across India.

Constitutional Provisions

The Indian Constitution does provide a strong structure for the protection of individual rights, as well as prisoners' rights. Where the machinery of court has curtailed the exercise of freedom, it cannot take away their basic rights from them. For this purpose, the following articles are very important:

Article 14: Right to Equality[47]

Article 14 ensures equality before the law and equal protection of the laws. The principle ensures that prisoners do not suffer unfounded discrimination while in jail. The Hon'ble Court has stated that prison regulations should apply to all inmates with no distinction as far as background is concerned. This article is therefore vital in preventing laws or practice that disproportionately affect certain groups of prisoners, thus upholding the dignity and equality of each person that streams into the justice system12.

Article 19: Freedom of Speech[48]

Article 19 guards various freedoms, among which is freedom of speech and expression. This right extends to prisoners too. Of course, these rights can be restricted to maintain order in correctional facilities; however, absolute deprivation is constitutionally not tenable. All courts have held that prisoners do retain some rights to express themselves, which is very important for their rehabilitation and reintegration into society13.

Article 21: Right to Life and Dignity[49]

One of the most important protections for prisoners, to say nothing of other things, is perhaps the right to life and personal liberty under Article 21. The Hon'ble Court has interpreted the right very expansively and postulated that it means the right to live with dignity i.e. the prisoners are entitled to humane treatment, adequate medical care, and protection against custodial violence. The Court has recently reiterated that stripping dignity from prisoners

[47] INDIA CONST. art. 14.
[48] INDIA CONST. art. 19.
[49] INDIA CONST. art. 21.

remains one of the legacies of colonialism that were meant to strip of humanly features of those in control of the state.

Conclusion

The Constitution has protected prisoners in India with an avowed testament to dignity and equality in the delivery of justice. Articles 14, 19, and 21 held together guarantee that even prisoners are not completely deprived of rights that keep their humanity alive. These judicial interpretations, while in turn evolving, find the grounds to place prisons not only as decamps for punishment but also as places of rehabilitation and respect towards basic human rights. This publicly-drawn dialogue over issues such as these finds the need to maintain a fair system that respects the inalienable dignity of each individual, irrespective of circumstances.

SYSTEMIC FAILURES IN INDIA'S PRISON SYSTEM.

The Indian system of prisons is confronted with several systemic failures leading to the continued assault on prisoner rights. These ills signify failure, not inefficiency, but rather structural defects that could better guarantee the humane handling and rehabilitation of prisoners. After several reports, committees, and recommendations in the last several decades, it has not improved much. Some key issues include overcrowding, insufficient health care, custodial violence, and lack of rehabilitative programs.

1. Overcrowding

It is the most acute problem in Indian prisons and causes deplorable conditions of living. Indian prisons are reported to be operating at 118% capacity, with some states functioning at 150% capacity. Overcrowding alone poses a problem regarding a host of issues, beginning with the impossibility of providing minimum living conditions for the prisoners. The overcrowding environment where inmates outnumber the facilities is characterized by a failure on the part of prison authorities to offer basic food, water, and sanitation services required for human dignity.

Direct and overt effects of prison overcrowding revolve around the physical health of prisoners. Little space breeds poor ventilation, hygiene, and sanitation with high possibilities of infectious diseases setting in quickly. Such is the place where tuberculosis and skin infections make great thrive with almost no health care at the disposal of the prisoners. Sometimes, even clean water for drinking can be hard to come by, and preventable diseases abound in overcrowded facilities.

Overcrowding also has horrific effects on the mental health of inmates. With such closed spaces combined with stress created due to the imprisonment, an environment ready to germinate anxiety, depression, and other mental health problems emerges. Lack of privacy and personal space increases feelings of isolation and hopelessness and studies proved that the prisoners under overcrowded conditions tend to show violent behavior towards oneself and others more. It degrades the general prison environment leading to incidences of prison violence and unrest.

Although a number of committees and experts have suggested possible alternatives to overcrowded prisons, such as community service for small offenses, speedy trial and expedited disposal of undertrial prisoners, and bail laws, nothing much has been done with these proposals. The ground situation was that the government lacked both political will and resources that might have brought about some real changes in favor of reducing overcrowding.

2. Poor Health Care

The healthcare system in Indian prisons is woefully inadequate. There is a severe shortage of medical professionals and resources, a shortcoming that would directly contravene prisoners' basic right to health, an integral component of the right to life. For instance, most prisons lack essential medical infrastructure, and inmates suffering from chronic illnesses or injuries often face long delays before receiving treatment. More depressing are the conditions in prisons for mentally ill inmates, in view of the fact that medical services provided in many prisons are next to nothing.

Rationing of doctors and nurses is the biggest issues in providing health care in prison setups. The ratio of doctors and nurses to inmates is exorbitantly low; thus, treatment is delayed and health needs are neglected in general. Even most prisons do not offer full-time medical physicians, but instead, use the services of outsiders who attend there periodically. As such, conditions go untreated, and they progressively deteriorate over a long time, such outcomes being disastrous at times, even to the extent of causing death.

The infamous COVID-19 pandemic exposed various vulnerabilities in the prison healthcare system. Overcrowded and dirty conditions of imprisonment made prisons zones of viral proliferation, and the insufficient availability of healthcare facilities led to a number of

avoidable deaths. The prison administration had still remained laughably unprepared in the face of the pandemic, with minimal access to medical supplies, testing kits, or personal protective equipment (PPE). Judicial interventions aimed at decongesting the prisons notwithstanding, such healthcare systems in prisons are still fundamentally underfunded and under-prepared to face health emergencies.

It should be imperative to expand discussion on mental health care in prison. Many prisoners have untreated mental health disorders that make situations worse because there are few mental health professionals within the systems. Many prisoners face high levels of stress, isolation, and anxiety later manifested as depression or violence, but the prison administration rarely addresses this due to a lack of awareness, resources, and trained professionals. This can be fundamentally traced to systemic negligence and a non-functional legal framework that is ineffective in establishing the necessity of psychological care for inmates.

3. Custodial Violence

The most shocking human rights violation within India's prison system perhaps comes from custodial violence. Constitutional safeguards and mandates against such abuse exist, yet incidents of physical violence, torture, and custodial deaths keep happening. Most prisons resort to excessive use of force to establish dominance, which means that ultimately much physical and psychic abuse occurs among inmates. This cannot occur if accountability measures are in place and magistrates do not provide cover to prison authorities.

The psychological effects of custodial violence are extremely deep. Physical violence in prisons, in addition to accompanying emotional and psychological suffering, often leads to post-traumatic stress disorder, depression, and anxiety among the victims. Rather than teaching a lesson to change one's conduct, abusive treatment of prisoners usually drives resentment towards the system in general, thereby exacerbating the problem of recidivism. In addition, custodial violence cases also undermine the public trust in the criminal justice system because fear, violence, and trauma become interlocking and self-perpetuating circles.

Custodial violence is rarely reported either because the prisoners fear retribution by the authorities or because they do not have court redress. Weak oversight mechanisms within the prison system fail to deter such excesses. Often, the officers are not held accountable for such

behavior, and it digs even deeper into impunity cultures. Lack of independent oversight bodies and inadequately trained prison personnel add to the problem.

4. Lack of Rehabilitation Programs

One of the basic objectives of serving a prison sentence is rehabilitation of criminals so that they are included in society when their term is served. Indian prisons adheres to a punitive policy instead of one that focuses on rehabilitation and reintegrate. This punitive approach neglects the long-term welfare of prisoners and aids not in correcting the system that points them to criminal activity. Therefore, the cycle of crime persists since most of the inmates get rearrested after some time of release simply because they get little or no rehabilitation or opportunity once they leave behind the prisons.

Vocational training, education, or psychological counseling will equip and prepare prisoners in such a way that will assist them when released into society once again. Sad to say, such programmes do not exist in most Indian prisons or are very poorly implemented. Prisoners, especially long-term prisoners, stay behind bars for a number of years with no, or very limited, opportunities to engage in activities that may equate to enabling them to live better lives outside when freed. Most prisoners return to society with a high rate of recidivism because they leave prison without the proper tools or support for avoiding recidivism.

Additionally, the prison system is not left to progressive policies that may aim at rehabilitation in view of the administration's control and security obsession. Prisoners are generally treated as a source of security risk rather than an individual who may need reforming. This view, coupled with the strained resources within the prison system, leads to almost total neglect of rehabilitative measures.

The social implications of such a failure are immense. That is, if prisoners are not given the chance to reform and rehabilitate them, there will likely be a return to a life of crime, thereby continuing the cycle of incarceration. Many prisoners are let out to the same surroundings that forced them into criminal action in the absence of legislation set to change their ways. There is a lack of rehabilitation of a person against himself that harms the individual as well as poses a broader risk to society.

INTERNATIONAL STANDARDS AND COMPARATIVE ANALYSIS

Compared to many international standards, the prison system in India is a far cry from them. Global standards set a framework of humane treatment and help protect the rights of prisoners-even while that person may be deprived of his or her liberty. International frameworks such as the United Nations Basic Principles for the Treatment of Prisoners, the International Covenant on Civil and Political Rights (ICCPR), and the European Prison Rules set the standards to totally respect dignity, well-being, and the rights of prisoners. The set standards also move to advance the rehabilitative purpose of imprisonment, looking toward the process of reintegrating the prisoners into society. The reality, however, is that the Indian prison system has yet to fall in line with these international norms-most notably in the spheres of rehabilitation, medical care, and safeguards against torture and mistreatment. The next section will outline these international frameworks and give comparative analysis of how the extant situation fares in India against international standards.

United Nations Basic Principles for the Treatment of Prisoners

The Basic Principles for the Treatment of Prisoners, adopted by the UN General Assembly in 1990, provide a sort of beacon guiding prison systems worldwide. These principles take the view that, even after incarceration, prisoners retain most of their basic human rights, such as being treated with respect and dignity. The first principle states explicitly, "All prisoners shall be treated with the respect due to their inherent dignity and value as human beings." In tandem with this, Article 21 of the Indian Constitution ensures that the right to life and personal liberty cannot be taken away except according to procedures established by law.

Despite all this, where the essence of these principles coincides with the Constitution of India, the problem lies in the harsh realities of Indian jails that indicate that this ideology is a long way away. Overcrowding Custodial violence Poor healthcare that affronts the inherent dignity of the prisoners on a day to day basis. Here lays a problem; due to the focus of Indian prisons primarily on punishment, this core UN principle about showing humane and rehabilitative approach towards the prisoners gets quite undermined.

The United Nations Principles lay emphasis also on reforms of prisoners and reintegration into society. Rehabilitation is sadly lacking in India. Vocational and education programmes being there at all are, therefore grossly underfunded and poorly administered. Thus, prisoner

preparation for life outside bars suffers sadly and allows a disastrous cycle of recidivism directly opposite to international standards whereby rehabilitation precedes punishment over any other consideration.

In addition, the United Nations underscores non-discrimination by noting that all prisoners should be treated alike, regardless of color, creed, sex, or social status. In India, however, the entrenchment of discriminate practices within the prison system continues unabated, where marginalized communities, especially Dalits, Muslims, and other disadvantaged groups, are made to suffer. Prisoners from marginal sections of the society are at best viewed as an addendum to the evils of a larger society. The inability to arrest these inequalities is a violation not only of constitutional principles in India but also of international commitments.

International Covenant on Civil and Political Rights (ICCPR)

The International Covenant on Civil and Political Rights (ICCPR) is a treaty to which India is a signatory, ensuring the observance of many civil and political rights to prisoners. Article 10 of the ICCPR directs that, "All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person." While India's signing of the ICCPR theoretically reflects a commitment to international human rights norms, the conditions in Indian prisons tell a very different story.

The most significant inconsistency between the obligations of India toward the ICCPR and its real prison system lies in custodial violence. Despite protections from the Constitution under Article 21 and Article 22(1) that shield individual liberty and protect against arbitrary detention, custodial violence remains widespread. Cases of torture and inhuman treatment, even death in custody, happen with tragic regularity. In such cases, India fails not only to meet its constitutional obligations but also breaches its international commitment under the ICCPR.

Another very important factor of the ICCPR is on offering of adequate conditions of confinement. Article 10 points out that prisoners should be treated with dignity, including access to health care, adequate nutrition, and decent living conditions. In India, overcrowding in jails, lack of proper medical facilities, and improper toilets abhor the very spirit of these rights. Most Indian jails are grossly overcrowded, with populations exceeding their capacity by more than 100%, creating conditions so inhuman that inmates deteriorate both physically

and mentally. Tuberculosis and a host of other diseases thrive so easily under such conditions that proper medical care is rarely available for all the afflicted.

The ICCPR also demands the segregation of different categories of prisoners depending upon the nature of offenses and the respective dangers they posed to the society. This too remains a rare practice in India, wherein many of the undertrial prisoners often remain with hardened criminals by their side, thus exposing them to violence and exploitation. This inability to classify prisoners on a differential scale exacerbates the already problematic issues related to prison management and further erodes the rights of prisoners to safety and dignity. In this regard, India transgresses both its international obligations and its legal structure domestically.

The ICCPR is purposefully rehabilitative rather than punitive; it projects reintegrating prisoners into society upon release. However, Indian imprisonment is more of punishment without rehabilitation. It is less tuned for imparting skills and resources to prisoners during imprisonment so that they may revert to society once the imprisonment term has expired. Thus, the probability of recidivism is quite increased because released prisoners usually revert to circumstances that led them to imprisonment initially, without any tools or resources to change those ways of behavior.

European Prison Rules

Though strictly applicable to European countries, the European Prison Rules apply widely throughout the world concerning prison condition assessment. The rules set forth standards that are high for prison administration in terms of human rights, health care, rehabilitation, and transparency. The rules are particularly instructive when considering prison reform in places like India, where most conditions fail to measure up to international criteria.

Most importantly, one of the greatest differences that stand out between the European Prison Rules and the Indian prison system is rehabilitation. The European model is set on providing education training and rehabilitation, aware that the process of imprisonment is intended to prepare prisoners to return to society. The Indian model contrasts mainly with the European model. While some of the Indian prisons do have vocational training and educational classes, such efforts are limited and not well provided.

Most inmates spend years incarcerated without acquiring any new skills or educational qualifications. With this, their chances of reintegration into society after serving their sentences remain low.

One of the main points that the European Prison Rules highlight as far as transparency and accountability are concerned in the prison system. There are oversight bodies that have been entrusted with the inspection of prisons for ensuring that the rights of prisoners are properly looked into and that every issue that may arise to interfere with such rights is resolved. India does not have a holistic oversight machinery. The custodial violence and infringement of other rights were mandated to be investigated by the National Human Rights Commission, which has often offered intervention that is essentially reactive rather than preventive in nature. Additionally, the prison authorities do not always follow the NHRC suggestions, and many violations remain unaddressed.

Health care is another dimension where the European Prison Rules are very strict. The European Prison Rules insist that prisons should provide the same standard of health care as there is in the community, with special attention to prisoners' mental health. While Indian prisons have increasingly recognized the psychological impact of imprisonment, there has been hardly any mental health care provided within prisons. Most prisoners with mental health problems are not treated at all, and stigma surrounding a disorder serves to worsen that condition. There lacks professionalism in mental health professionals and infrastructure, which results in mainly submitting the prisoners to their conditions without being given support. This does not only flag a grave violation of prisoners' rights but also leads to a further deterioration in prison conditions.

The European Prison Rules further outline the necessity of protection for sensitive groups within the prison system, such as women, juveniles, and disability. In India, these vulnerable groups are ignored instead. The problems with women inmates are extraordinary, with bad health care, poor sanitation facilities, and no support structure for pregnant women or even nursing mothers. Many juveniles are also in adult prisons, though laws are already there that prohibit it, where young adults are exposed to dangers and exploitation. When it comes to prisoners with disabilities, they often lack proper facilities and support to make their prison term even more grueling.

Need for Reform

The glaring disparities between India's prison system and international standards, as approved by the United Nations, ICCPR, and European Prison Rules, lay bare the need for comprehensive reform within prisons urgently. The endemic conditions of overcrowding, the absence of healthcare facilities, custodial violence, and failure in rehabilitation need to be dealt with immediately to bring Indian prisons within the fold of global human rights norms. These reforms do not have to be done merely to meet international obligations but also to satisfy all the principles of the Indian Constitution.

India needs to invest in independent oversight mechanisms to see that the rights of prisoners are protected. Accountability is an antidote to abuses of power, and enabling good governance within a transparent and well-regulated prison system is the key to maintaining the rule of law. Reforming prisons requires giving paramount importance to the dignity, health, and well-being of prisoners-to acknowledge that despite incarceration, they continue to be entitled to their basic human rights.

In conclusion, India has a long way to go in terms of bringing its prison system into international standards. From clear guidelines for improving prison conditions and rehabilitation, healthcare, and protection from abuse, these stand to be offered by the United Nations Basic Principles, the ICCPR, and the European Prison Rules. Adopting them through meaningful reforms will serve as a basis for a prison system that respects human dignity and upholds the tenets of justice, fairness, and equality.

Recommendations of Legal Reforms

Legal reforms are an urgent need to ensure that the prison system of India is both in terms of constitutional requirements and that of international human rights. Though laws and rules are present, the current status of Indian prisons remains worrisome because of systemic failure, which hampers prisoners' basic rights and dignity. Hence, reforms regarding such specific points are in demand. The following recommendations are: decongesting prisons, improvement in health care, strengthening accountability for custodial violence, rehabilitation programmes, and compliance with international standards.

1. Decongesting Prisons

Overcrowding is one of the most serious issues in Indian prisons, where the prison population overshoots capacities at most of the facilities. Reforms in legislation should reduce the population inside the prison by promoting alternatives to custodial imprisonment, most distinctly for non-cognizable and minor offenses. In its recommendations, the Justice Amitava Roy Committee, set up to suggest prison reforms, insisted that it is high time India be looked into, for minor offenses, instead of landing behind bars, community service could be used or house arrest or monetary penalties.

Among the several reasons for overcrowding is the undue increase in the number of undertrial prisoners who form more than two-thirds of the total prison population. Many of these prisoners are involved in judicial processing for a unacceptably long period. Instead of staying back for months or even years, they are sped up in judicial processing and special courts are established for minor offenses so as to reduce the pressure on prisons. Secondly, reforms in the form of putting in place easier bail processes will ensure that many people, especially disadvantaged and vulnerable persons in society, are released to continue their trials.

In addition to all these measures, parole and pre-release initiatives for non-violent criminals-those near their release-would be more of a rational step in reducing the population of prisoners. Availability of appropriate monitoring with the programs should ensure that released prisoners are accessed to rehabilitation and reintegration services to facilitate minimal chances of recidivism.

2. Enhanced Prison Healthcare

Indian jails are grossly underfunded and suffer from a severe lack of funding, which makes important violations of the right to health of prisoners in their custody-a concept that is integral to the right to life under Article 21 of the Constitution. Many prisoners are denied treatment when they are medically urgent in need of it, and mental health care is virtually nonexistent in most jails. A holistic policy for care at a physical as well as mental level for inmates within the prisons would rectify this problem.

Mirroring important provisions of the Mental Healthcare Act of 2017, one would have hoped for the Prisoners' Healthcare Act to provide medical treatment, timely and appropriate to be given to prisoners. This should include check-ups on health, medicines, and managing chronic diseases. Lastly, mental health facilities should be offered by this Act as well. These mental

health experts should be appointed in all the prisons as well, so that any inmate possessed by such mental health problems, depression, anxiety, or post-traumatic stress disorder, can be provided with counselling, therapy, or medication accordingly.

It has been pretty evident during the COVID-19 pandemic period that prisoners are very vulnerable to infectious diseases and proper sanitation and hygiene facilities in any prison institution are a need. Proper health care infrastructures must be evolved for any future crisis management, as it includes isolation wards, qualified medical personnel, and emergency care services. Every citizen is meant to be treated with dignity, and adequate health care forms an integral part of that.

3. Custodial Violence Accountability Mechanism

Improvement of custodial violence, including torture and deaths in custody, remains the most shocking feature of Indian prisons. constitutional protection and numerous Hon'ble Court judgments dealing with torture do not seem to be enough, as the practice continues unabated, mainly because no accountability is established. Strengthened oversight and accountability mechanism has long been awaited to make the prison officials answerable to violence-driven events.

First must be the setting up of independent independent review bodies, Prison Ombudsmen, to hold an inquiry on allegations of custodial violence and abuse. They must have a mandate both to investigate and to prosecute prison officials who commit torture or other abuses, thereby being free from any interference by the prison administration and report directly to the NHRC or similar bodies.

Apart from this, CCTV camera should be fixed in all areas of the prison and holding cells and interrogation rooms to prevent cases of torture or ill-treatment. The Hon'ble Court of India has already suggested the installation of CCTVs within the prisons to establish it as more transparent and to curb custodial violence of which the work has been very slow. To ensure these cameras are in good operating condition, frequently monitored, and thus, deter prison officials from misusing their authority.

Units for prisoners' rights should be formed in all states within the federal fold of the federation to regularly inspect prison conditions and investigate any cases of violence and maltreatment.

These units must have powers to allow disciplinary measures or even criminal charges to be lodged against the prison personnel who infringe on the rights of the inmates.

4. Rehabilitation Programmes

Prisons should serve as institutions both to punish and to rehabilitate the offender. The Indian prisons, however, are mainly adopted to punish the offender. Rehabilitation and reformation are rather subsidiary goals. The recidivism rate in Indian jails is very high because prisoners who do not have adequate education and skills at the time of being released into society go back to committing crimes. It is because there is no built-in structured rehabilitation program. It can be changed only by providing vocational training and educational programs within prisons. Such programs should aim at giving skills to prisoners so that they do not return to crime upon release. Courses on literacy, carpentry, plumbing, electrical work, and other such trades would really open up improved prospects for gainful employment for a prisoner. Yet another area of improvement is in the provision of online course administration and educational institution collaboration for inmates' higher education pursuits behind bars.

Besides vocational and educational training, psychological counselling services are essential in dealing with emotional and mental traumas prisoners face. Counselling services should be provided easily to assist inmates process the experiences they are having and develop healthy coping mechanisms. Inmates' mental health needs can be handled not only to change the positive well-being of inmates but also solve the problem of violence and unrest that prisons may have.

Furthermore, the post-release support programs must ensure that the ex-offenders return into society smoothly and continue living productive lives. These programs could be held in the form of job placement services, mentorship opportunities, and social support networks to restore former prisoners into society efficiently. Diminishing the stigma associated with imprisonment is fundamental in making sure former prisoners find employment and housing, minimizing the opportunities for recidivism.

5. In accordance with International Principles

India is a signatory to many international human rights conventions, including the International Covenant on Civil and Political Rights and United Nations Basic Principles for the Treatment of Prisoners, providing tremendous emphasis on humane treatment of prisoners and

rehabilitation rather than punishment. India even holds these commitments and upholds them in the present prison system.

The urgency that such changes must occur in Indian domestic laws to be in harmony with the international human rights needs be dealt with most critically. This demands legislative amendment toward accommodation of principles established within the cases of ICCPR and other international conventions into the domestic law. Specifically, these amendments relate to humane treatment for prisoners and to improve their living conditions, healthcare, and rehabilitation programs.

Regular independent international and domestic inspections of prisons, involving United Nations Human Rights Council representatives among others, should become mandatory and give inspectors the facility to inform prison authorities regarding areas that require reform in conformity with minimum human rights standards.

In addition, India should ratify the Optional Protocol to the Convention Against Torture (OPCAT), establishing a mechanism of regular visits by international and national bodies to places of detention. The ratification of OPCAT would reflect India's intent to foreclose custodial violence and ensure that its prisons function within human rights standards.

Now, India stands at that crossroads for reform of its prison system, lifting prisoner rights and dignity or allowing current inhumane conditions to persist. The recommendations made at the conference-decongesting prisons, improving healthcare, strengthening accountability for custodial violence, enhancing rehabilitation programs, and aligning domestic laws to international standards-reflect a holistic approach toward system overhaul. These reforms require positive political will and public awareness as prisons have otherwise flown under the radar on discussions about justice and human rights.

India, being an optimal reform of prison systems, has the unique opportunity of fulfilling its constitutional obligations to human rights and setting standards for human rights leaders globally in the reformation of criminal justice systems. The future is clear: respect for human dignity must lie at the core of how the nation approaches incarceration. Through concerted legal reform, India can transform its prisons from institutions of punishment into places of rehabilitation and hope.

CONCLUSION

The Indian Constitution guarantees fundamental rights to all individuals, including prisoners, but systemic issues within the prison system continue to result in widespread violations of these rights. Overcrowding, inadequate healthcare, custodial violence, and a lack of rehabilitation programs all contribute to the failure of the state to protect prisoners' dignity and human rights. While the judiciary has played a remarkable role in expanding the scope of prisoners' rights through landmark rulings, the implementation of these rulings remains inconsistent.

To address these systemic failures, comprehensive legal reforms are necessary. These reforms should focus on reducing overcrowding, improving healthcare, strengthening accountability mechanisms for custodial violence, and prioritizing rehabilitation. By aligning its prison system with international human rights norms, India can better ensure that prisoners' constitutional protections are upheld, reflecting the nation's commitment to justice and human dignity.

Socio-Legal Tolerance of Rape Trials in India

Navyashree M[50]

ABSTRACT

In many regions of India, rape is seen as a question of family honour rather than a criminal conduct against an individual. This frequently results in underreporting of crimes and social pressure on victims to keep silent. Many rape cases are dismissed or weakened as a result of cultural beliefs that blame the victim, particularly when the victim's behaviour, dress, or lifestyle are examined. Deeply rooted patriarchal standards influence how rape cases are seen. Women, especially those from marginalized groups, frequently endure institutional discrimination. Long trials, procedural delays, and an overworked judicial system might discourage victims from seeking justice. Frequently, the courts and law enforcement are unprepared to address sensitive problems surrounding rape prosecutions. Insensitive probing, character assassination against the victim, and inappropriate management of evidence. Despite legislative measures such as the Criminal Law (Amendment) Act of 2013, which strengthened rape legislation, defence attorneys can still use loopholes to postpone or reject cases. In some circumstances, media attention contributes to quick justice, while in others, it causes more agony for the sufferer. It is crucial to investigate discrepancies in how rape trials are handled in urban and rural India, as well as geographical variances in police effectiveness and legal literacy.

Keywords: Victim blaming, Institutional discrimination, Long trials, police effectiveness.

INTRODUCTION

Rape remains one of the most horrific crimes, not only because of the physical and psychological devastation inflicted on the victim, but also because of the structural barriers victims confront in obtaining justice. Rape cases in India are complicated, reflecting the judicial system's socio-cultural prejudices. Despite progressive legislation such as the Criminal Law (Amendment) Act of 2013, which expanded the definition of sexual assault and imposed harsher penalties, rape cases continue to be plagued by large procedural delays, societal shame, and variable court results. Victims, particularly women, face two trials: one in the courts and

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one in the court of public opinion, where patriarchal standards frequently shift responsibility onto them. The interaction of social hierarchy, gender prejudices, and legal shortcomings adds to a culture of impunity in which many criminals avoid prosecution. This study aims to critically investigate the varied character of rape cases in India, with an emphasis on the structural impediments, cultural stigmas, and legal shortcomings that continue to obstruct justice for survivors. This study attempts to provide insight into the structural reforms necessary to build a more responsive and victim-centric legal framework by investigating landmark cases, judge attitudes, and reform impact.

STATEMENT OF THE PROBLEM

According to the NCRB, a crime of rape is one of the most underreported yet the most common ones in India. Although legislations have been reformed, and awareness brought about among the general public, cases of rapes are on the rise steadily, with more than 32,000 cases being registered annually recently. However, this forms only the tip of the iceberg because many incidents go unreported owing to social stigma, family pressures, and also for fear of acts against them.

From 2012, the Delhi gang rape case brought unprecedented national and international attention to the notice of every citizen in the country, followed by widespread protests as well as reform in the legal structure. Yet, cases where such systemic tolerance continues exist. Very often, rape victims experience secondary victimisation in the courts when they are made to endure a test of their character, conduct, and private lives. Re-traumatization compels most of them to step out of the judicial process or surrender to settlements. Rather than preserving the sanctity of justice, the legal machinery nurtures a culture of tolerance by allowing victim-blaming narratives and a lack of support mechanisms.

It further marginalizes and exposes the survivors to threats, intimidation, and prolonged psychic trauma in the entire process of trial, mainly due to the lack of legal aid, counseling services, and victim protection programs. Legal tolerance is usually more pronounced during cases involving powerful or influential individuals. Rape cases involving politicians, celebrities, or rich people are highly indicative of an almost disturbing pattern where the power play and corruption dictate the course of legal processes. Such cases are often interfered with

by political or social forces, in which either justice is stalled, or the case is dismissed due to pressure or bribery.
Such an atmosphere leads to impunity among perpetrators and feeling helpless among victims, thereby brewing the culture of tolerance toward rape in the Indian legal system.

Crimes like rape have become disturbingly common, with the incidents being frequently reported in daily newspapers. The patriarchal structure and controlled setup of the Indian society, with the "dominating nature" of men in the society have worsened the plight of rape survivors. One of the biggest hurdles in securing justice in the Indian judicial system itself. The principle of the accused being innocent until proven guilty often results in a lower conviction rate, adding to the survivor's trauma. Furthermore, the rape survivors not only endure the ordeal of legal proceedings but also face a public trial but also face a public trial of people, with society attaching stigma and shame to them. They are often accused of filing false cases, even though the mere failure of the prosecution to conclusively prove the crime does not itself prove that rape has been committed. In many cases, the victims are children under the age of 16, with girls as young as 13 or 14 years sometimes found pregnant, and the FIR being filed only when a medical examination reveals the pregnancy. Cases of family abuse are just as prevalent as stranger abuse, and these cases are often reported after months or even years of ongoing abuse. The procedural safeguards meant to protect the accused often end up feeling like procedural persecution for survivors., thereby, making the justice process even more harrowing. Rape remains one of the most controversial issues and underreported crimes, posing a challenge to the contemporary legal and social systems.

LAWS GOVERNING RAPE IN INDIA

Following the Nirbhaya case-after the brutal gang-rape and murder of a young woman in Delhi-following the tragic aftermath of that occurrence; rape laws in India were amended in 2013 for more stringent punishment of offenders and greater protection and security for women.

Definition of Rape: The Indian Penal Code ("IPC") defines rape as non-consensual sexual intercourse. A woman's consent is deemed to be involuntary if it has been obtained by force, threat, intimidation, deception, or at a time when she was incapable of giving consent.
Penalty: The punishment imposed for rape is imprisonment seven years to life imprisonment. In such cases when the victim is a minor or in case the offense leads to the death of the victim

or causes her to be in a vegetative state, then the punishment can be a minimum of 20 years of imprisonment or life imprisonment.

Marital Rape: In India, marital rape is not explicitly recognized as a criminal offence. Most importantly, the Supreme Court articulated that a wife has the right to refuse sexual intercourse by her husband without her consent. The issue of marital rape is still being considered by the government and the judiciary.

Protection of Victim: Criminal Law (Amendment) Act, 2013 provides special provision for the protection of victim rape. An unreserved right is prohibited through print media, electronic media, and social media not to disclose any identity of a victim. Fast Track Courts: There are fast track courts devised by the government to ensure speedy delivery of justice in rape cases. They are expected to decide such cases within six months of filing the charge sheet.

Consent: Consent is a very relevant issue in the case of rape. The law requires that sexual intercourse must be by consent and the non-consent would make the act rape. The non-consent by the victim can be inferred through the age, the mental condition, among others, that will impair her ability to give such consent.

Child Sexual Abuse: The Protection of Children from Sexual Offences Act, 2012 ("POCSO") deals with crimes committed against children in the aspect of sexual offenses. It defines a child as a person below the age of 18 years and provides for stringent punishment for sexual offences against children, which includes rape.

Provisions regarding rape laws in India have, over the years been strengthened to make the country a safer place for women. There are different strategies that the government has adopted to provide fast justice to rape victims as well as severe punishment to offenders. However, there is a long way to go to eradicate this very heinous crime and to make it a safe country for women in India. [51]

[51] Geetanjali Gangoli, *Controlling Women's Sexuality: Rape Law in India*, in International Approaches to Rape, 101, 101-120 (2011), https://www.researchgate.net/publication/370522880_Controlling_women's_sexuality_rape_law_in_India.

PUNISHMENTS FOR RAPE (SECTION 64 OF BNS)

Imprisonment for a term not less than 10 years, which can extend to life imprisonment, imprisonment for the remainder of the offender's natural life. A fine may also be imposed, which can be directed towards compensating the victim.

Punishment for Aggravated Rape: Aggravated rape involves circumstances that increase the severity of the crime, similar to those mentioned under Section 376(2) of the IPC. Rape committed by a public servant or someone in a position of authority, such as a police officer, doctor, or teacher. Rape of a woman under the age of 16 years. Gang rape, when the crime is committed by more than one person acting together. Rape committed on a pregnant woman or causing grievous injury to the victim. Rape during communal or sectarian violence. Punishment: Rigorous imprisonment for not less than 20 years, which may extend to life imprisonment or death penalty in extreme cases (for example, in cases involving the rape of minors or gang rape).

OBJECTIVES OF THE STUDY

The specific objectives of the evaluation study include the assessments / examination of the meaning, affects, role of government and associations for rape victims in India.

Research questions

1. What are the major factors that delay justice in rape cases, thereby delaying the delivery of justice to survivors of rape in India?
2. How does victim-blaming by law enforcement and judiciary affect legal outcomes in rape cases in India?
3. Does the power and influence of the perpetrators impact legal processes and, therefore, justice delivery in India?

METHODOLOGY

Claims in this article are supported by aspects that are both described and analytically treated. From a large number of secondary sources, mainly articles from newspapers and magazines, reports based on investigations, and other studies somehow similar to those, will be used endlessly in this work.

RESULT

Rape: Socio- Legal Challenge on India

Over the past decades, India has witnessed significant changes in the social structure of the society, driven by the clash between traditional values and the progressive mindset of the newer generation This shift has influenced the nature and pattern of crimes committed in the country. In response, there is an urgent need for judicial reform along with a broader change in the societal mentality. Educating people to view women as individuals with equal dignity rather than as commodities is essential to promoting and enforcing women's rights.

The responsibility for protecting women should rest solely with the police authorities but also with the general public. Legal reforms alone are insufficient, transformation in mindset is equally crucial to prevent the vicitimization of rape survivors. Although laws have been strengthened aftermath of horrific incidents, their enforcement at the ground level remains inadequate, as evidenced by the increasing number of cases every year.

One of the major issues with the current framework is that it is not watertight. Lawmakers have consistently failed to eliminate loopholes in the laws they enact. For instance, the lack of gender neutrality in definition of offences such as disrobing, voyeurism and rape, the absence of martial rape laws, inadequate compensation for victims of rape, and inconsistencies regarding the age of consent are glaring shortcomings. Recognizing these flaws, political leaders like Sushma Swaraj asked for stricter and more effective laws. Similarly, Shailendra Kumar and Sharad Yadav warned against the potential misuse of such laws against men. In contrast, SP chief Mulayam Singh Yadav vehemently opposed the anti-rape bill too, citing concerns over its misuse.

Unfortunately, it often takes gruesome incidents for the legislature to realize the need for reforms. The Mathura Rape Case and the tragic death of Damini (Nirbhaya) are stark reminders of this pattern. Such instances shows the failure of the legislature to proactively strengthen the legal system, which has, over the years, eroded the common man's faith in it. To address this, the legislature must undertake a comprehensive review of the law-making process, ensuring that the legal framework is both effective and free of loopholes. Much has been already said on the present laws, it's high time that the legislature realizes its responsibility.

Social perspective on rape: Attitudes of society towards rape can be broadly divided into three subgroups. The first approach attributes the blame to the perpetrator and identifies three primary causes of rape: male sexuality, male pathology, and male hostility. The male sexuality theory suggests that men are unable to control their sexual urges, while male pathology view perceives rapists as individuals suffering from mental disorders. The male hostility perspective, on the other hand, links rape to a deep-seated hatred or resentment towards women, Interestingly, although the first two causes hold men accountable for the crime, they also shift the responsibility of prevention onto the victims. The belief that men cannot suppress their sex desires indirectly blames women for creating situations that could arouse men –implying they should take measures to avoid such scenarios. Similarly, the male pathology argument suggests that rapists can be identified, hence, making it the women's responsibility to remain vigilant. However, mere identification may be of little help, as the victim may not be in a position to defend herself. Male hostility is often viewed as the driving factor in cases of stranger-perpetrated rape. The second approach places the blame on the victim herself, "female precipitation". This perspective is deeply rooted in male chauvinism, which holds women responsible for creating an environment that is conducive to rape. Actions such as dressing provocatively, socializing with male friends and consuming alcohol are seen as inviting sexual violence. The theories of male sexuality, male pathology and female precipitating that put the responsibility for prevention on the victim and exonerate the perpetrator are quite aptly called 'rape myths'. All three rape myths are present in our society and contribute to the high incidence of rape in India. The third approach holds society itself accountable for rape, attributing the crime to gender inequality and male supremacy. This viewpoint showcases how rape is still used as tool to punish and subjugate women, often sanctioned by the community. A stark example this is the recent gang rape of a 20-year-old woman in West Bengal, which was ordered by a village panchayat, it remind us of the fact that rape is acceptable as punishment by and even the verdict of society.

Social and economic factors: Several social and economic factors contribute to the high incidence of rape in India. One of the primary causes is the low literacy rate, which is often associated with higher crime rates. Additionally, the lack of basic sanitation facilities, such as toilets within homes is one of the contributing factors. Women are frequently forced to use open fields for defecation, often during early morning or late evening hours, making them vulnerable to sexual assaults. Perpetrators, often from the same village, exploit this vulnerability by targeting them when they are alone and defenseless. Moreover, social

hierarchy exacerbates the issue, particularly for Dalit and tribal women. Due to their lower social status, they are treated as personal property, denied basic human rights, and subjecting to sexual violence with impunity.[52] Another contributing factor is underreporting of date rapes or rape by intimate partners. In India, such instances are often not recognized as rape, skewing the statistics and further contributing to the underreporting of cases. In the Indian context, social and economic factors play a far more crucial role in the prevalence of rape than commonly believed rape myths. Additionally, these factors indirectly fuel victim -blaming narratives, where victims are either directly or indirectly held for crime, further discouraging them from seeking justice.[53]

Difficult path to justice: There are far too many laws and far too few people enforcing them in India. Rather than passing more time framing new laws - the 2012 Verma committee, which submitted recommendations following the mass rape case in Delhi, asked the Indian government to enact new legislation - time should be spent on execution and sensitivity.[54] They "ran away with her boyfriend," the Hyderabad police concluded, so they never took out a report or tracked her phone. When police refuse to file reports or imply that victims' families "settle," many victims and their families surrender too soon. But neither the police nor medical professionals in India have been professionally trained on how best to support sexual assault survivors. The Unnao rape case unfolds flaws in our system and how easily powerful people can create discrepancies in it. Government and police have a responsibility to provide protection (along with witnesses) and counseling to women who come forward about violence. Other areas that have to be put on a war footing include: delayed trials, insufficient investigation, a low conviction rate, and impunity.

Effects of rape: Survivors of sexual assault or rape may experience a full gamut of emotions and impacts that are uniquely difficult and distressing. Any catastrophic experience does so in his or her own unique way. The traumatic effects of the experience can be transitory, or they can persist for a significant length of time following the sexual assault or rape. This paper does outline several of the effects survivors often suffer, though it's certainly not a comprehensive

[52] Vrushali Patil & Bandana Purkayastha, *The Transnational Assemblage of Indian Rape Culture*, 41 ETHNIC & RACIAL STUD. 1, 1-19 (2017).
[53] Alissa Terese Nolan, *A Literature Review of Intimate Partner Violence Against Women in India*, BOSTON UNIV. THESES & DISSERTATIONS 1, 1-50 (2021).
[54] DR. J.N. PANDEY, THE CONSTITUTIONAL LAW OF INDIA (2012).

list. It doesn't imply sexual abuse, or assault didn't happen because a survivor's reactions aren't typical responses, like there isn't any evident physical damage. No one heals in isolation. Over the journey of restoration and healing, help is usually available at most turns. The most common physical. Other effects are

1. Deprivation of right to life and personal liberty.
2. Being compelled to undergo discomforting procedures and questions both inside the court as well as from the people outside.
3. Not treated in accordance with the society norms and sometimes, the right to education is also being disallowed to her.
4. Exploitation by the media and the people concerned who had made her a public figure.
5. Influences and interference by several political parties in the matter or making it a political issue.
6. Victim deprivation of some rehab and after-care treatment.
7. Delayed proceeding of the trail that delays the delivery of justice.
8. Delayed by the investigating agency in detecting the real offenders.

Why is the Death Penalty not the Solution?

Whether or not death penalty is a proper retribution for rapists in India remains a very contentious and debatable question. At first blush, the sentence may seem so right and harsh so that it goes well with what the law of the land has stipulated against rape. However, there are many more reasons why the death penalty cannot be considered a solution for rapists in India. For one, the death penalty is inefficient in crime deterrence, including rape. Studies have shown that this extent of punishment does not have a deterrent effect on the propensity for crimes; rather, it is a probability of getting caught and the surety of punishment. The rape conviction rate in India is also very low and the duration that it takes to come to a trial can also be very long. Thus, capital punishment may not bring much in terms of reducing the rate of rape in society. For this reason, there is always a possibility of wrongful conviction in rape cases with resultant wrongful execution of innocent people. The Indian judiciary has been much criticized for being slow-moving. There have been instances where wrong persons were falsely accused and convicted of rape. The death penalty would also increase the chances of false confessions, which is a grave cause for alarm and keeps to the due process requirement

as well as affords the accused a fair trial.[55] Thirdly, the anxiety area is the abuse of the death sentence order in rape convictions. There has been a long history of misuse of capital punishment in India, for example against the Dalit and Muslim communities. Such sections of society are more vulnerable to wrongful accusation and conviction. Moreover, there is the risk of misuse by law enforcing agencies to elicit confessions and intimidate people.

Thus, the contention may lose its attention to the need for full social and systemic changes that could modify the whole situation concerning rape in India. Rape is a problem entrenched within the social and cultural scene and gender inequality, as well as insufficient law enforcement. Being able to address these elements would be critical to preventing rape and, therefore, offering justice to the victims. Rather than emphasis on punishment efforts, they need to be made to create awareness, to change attitudes concerning women, and to improve the effectiveness and efficiency of the criminal justice system. While death is considered a fit for a rapist in India, this is surely not a solution for the problem of rape. Instead of this, more serious actions that concern the root cause of the problems should be taken to improve the administration of justice while ensuring the safety and dignity of women in that country.

At the same time, it is also important for Indian society as a whole to reflect on its attitudes towards women and gender equality. This means challenging patriarchal norms and promoting respect for women's rights, as well as encouraging men and boys to take an active role in preventing violence against women. Education is also key to changing attitudes and promoting gender equality. This means providing comprehensive sexuality education in schools, which includes information on healthy relationships, consent, and the prevention of sexual violence. It also means engaging with communities and religious leaders to promote positive messages about gender equality and the importance of respecting women's rights. Finally, it is important to acknowledge that the problem of rape is not unique to India. It is a global issue that affects women and girls in every country and culture. Therefore, it is important for the international community to work together to address this issue, share best practices, and support efforts to promote gender equality and prevent violence against women. In conclusion, the worrying growth of a culture of rape in India is a complex and multi-faceted problem that requires urgent and sustained action from all levels of society. While progress has been made in recent years, much more needs to be done to ensure that women and girls in India can live free from the fear

[55] Sinisa Malesevic, *The Dark Side of Democracy: Explaining Ethnic Cleansing*, 11 NATIONS & NAT'LISM 1, 1-10 (2005).

of sexual violence. By working together to promote gender equality, challenge patriarchal attitudes, and provide support and services for victims, we can create a safer and more just world for all.

CONCLUSION

conclusion, the worrying growth of a culture of rape in India is a complex and multi- faceted problem that requires urgent and sustained action from all levels of society. The problem is rooted in deep-seated patriarchal attitudes towards women, which perpetuate gender inequality and normalize violence against women. This is compounded by a lack of effective law enforcement, a dysfunctional criminal justice system, and a culture of victim-blaming and shaming. There is no doubt that rape is a serious crime that has devastating physical, psychological, and emotional consequences for its victims. It is therefore imperative that the Indian government takes immediate action to address this issue. This includes strengthening laws to ensure that perpetrators are brought to justice, providing better support and services for victims This can only be achieved by introducing broad prevention strategies that focus on the root cause of the problem. At the same time, it is important for the entire Indian society to reanalyze their attitude towards the position of women and gender equality. This, in turn, postulates the need to question the patriarchal norms and promote respect for women's rights, and encourage the men and boys to take an active role in preventing violence against women. Education also plays an important role in shifting attitudes and promoting the equality of genders. It is a comprehensive sexuality education among students in school, considering healthy relationship education, consent, and prevention of sexual violence. It also refers to how it works with the community and religious leaders in which messages for gender equality and respect for women's rights are to be provided. It is further noteworthy that the problem of rape is not peculiar to India. It has proven to be a global issue, transcending borders and cultures, and affecting women and girls worldwide. In this regard, the international community must come together to tackle the problem, share best practice experiences, and support efforts to promote gender equality and prevent violence against women. In conclusion, it is a very complex and multilayered concern toward the worrying growth of a culture of rape in India, which needs urgent and sustained action from all levels of society. Therefore, much has been achieved through recent years, but more needs to be done to ensure that women and girls in India are able to live free from fear of sexual violence. It will further promote gender equality,

challenge patriarchal attitudes, and offer support and services for victims in a safer and more just world.

Expectation: A Judicially Evolved Principle in Indian Administrative Law

Tisya Chhabra[56]

ABSTRACT

The Doctrine of Legitimate Expectation is a significant development in Indian administrative law, aimed at ensuring fairness, transparency, and non-arbitrariness in public decision-making. Though it does not confer a legal right, the doctrine protects individuals from abrupt changes in established policies or practices, especially when reliance has been placed on consistent administrative conduct. Rooted in Article 14 of the Constitution of India, it serves as a judicial check on discretionary power and promotes good governance. This paper traces its evolution from English law, examines key Indian judgments, distinguishes it from related concepts like promissory estoppel, and explores its procedural and substantive aspects. A comparative analysis with jurisdictions such as the United Kingdom (UK), Canada, and Australia further highlights its global relevance and adaptability. Ultimately, the doctrine strengthens rule of law and trust in public administration, while providing a framework to challenge administrative arbitrariness and uphold citizen-centric governance principles in modern democratic states.

Keywords: Legitimate Expectation**,** Administrative Law**,** Article 14**,** Natural Justice**,** Judicial Review**,** Comparative Law.

INTRODUCTION

In Indian Administrative Law, judicial review of administrative action[57] is part of the basic structure of the Indian Constitution. By the 1990s, the Indian courts incorporated the doctrine of legitimate expectation in the context of procedural fairness and non-arbitrariness under Article 14[58] of the Constitution.[59] Therefore, the doctrine of legitimate expectation is assimilated into the doctrine of the Rule of Law. A person may have a legitimate expectation of being treated in a certain way by an administrative authority even though he/she has no legal

[56] Law Student at Vivekananda Institute of Professional Studies, New Delhi.
[57] Legal Maxims, REST THE CASE (last visited July 27, 2025), https://restthecase.com/hi/knowledge-bank/legal-maxims.
[58] INDIA CONST. art. 14.
[59] Sivanandan C.T. v. High Court of Kerala, (2024) 3 SCC 799.

right in private law to receive such treatment.[60] The expression "legitimate expectation" does not convey a tangible right. Instead, it is a mere expectation of fair and reasonable treatment, and the legitimacy of that expectation would strictly depend upon the facts and circumstances of a case, particularly on whether or not the absence of a procedural step had led to failure of fairness.[61] The term legitimate expectation was given by Lord Denning in 1969 in *Schmidt v. Secretary of State for Home Affairs* [62]. Since then, it has gained a remarkable position in public law in every jurisdiction. In the leading case of *Attorney General of Hong Kong v. Ng Yuen Shiu*[63], Lord Fraser stated: When a public authority has promised to follow a certain procedure, it is in the interest of good administration that it should act fairly and should implement its promise, so long as the implementation does not interfere with its statutory duty.

The conditions to invoke the doctrine of legitimate expectations are as follows:

- The expectation must be *reasonable* and *legitimate*.
- It should stem from a clear, consistent, and unequivocal representation by a public authority.[64]
- The individual should have relied on the promise or practice to their detriment or in shaping their actions.
- There must be no overriding public interest that justifies the departure from the expectation.

The doctrine has both procedural as well as substantive aspects. The doctrine's procedural aspect refers to the procedure that has been followed by the authorities, and it remains consistent for everyone whereas substantive legitimate expectation refers to the situation in which the applicant seeks a particular benefit or commodity.[65] The claim to such a benefit is based on the governmental action that justifies the existence of a relevant expectation.[66]

Administrative action is subject to control by judicial review under three heads:

[60] JUSTICE C.K. THAKKER (TAKWANI) AND MRS. M.C. THAKKER, LECTURES ON ADMINISTRATIVE LAW 337 (Eastern Book Company, Lucknow, 5th ed., 2012).
[61] Rajeev Suri v. DDA, (2022) 11 SCC 1.
[62] Schmidt v Secretary of State for Home Affairs, (1969) 1 ALL ER 904 (CA).
[63] A-G of Hong Kong v. Ng Yuen Shiu, [1983] 2 AC 629.
[64] M/s K.B. Tea Product Pvt. Ltd. & Anr. v. Commercial Tax Officer, Siliguri & Ors., Civil Appeal No. 2297 of 2011 (Supreme Court of India, May 12, 2023).
[65] Foram R. Patel & Rishin Patel, *The Doctrine of Legitimate Expectation: From Development in England to Indian Scenario*, ILI LAW REV., Winter Issue 2021, 138 (2021).
[66] CRAIG, ADMINISTRATIVE LAW 647 (Sweet & Maxwell, London, 4th ed., 2008)

i. illegality, where the decision-making authority has been guilty of an error of law e.g. by purporting to exercise a power which it does not possess.

ii. irrationality, where the decision-making authority has acted so unreasonably that no reasonable authority would have made the decision;

iii. procedural impropriety, where the decision-making authority has failed in its duty to act fairly[67]

EVOLUTION OF ADMINISTRATIVE LAW IN INDIA

The doctrine of legitimate expectation has steadily emerged as a significant principle in Indian administrative law, closely following the developments in English common law.[68] Initially recognized by English courts as a means to ensure fairness in administrative action, the doctrine was soon adopted by Indian courts, particularly through judicial creativity and constitutional interpretation. It serves as an important tool to curb arbitrary administrative decisions, especially when public authorities deviate from consistent practices or policies without valid justification. In India, this doctrine was first applied in the case of *State of Kerala v. K.G. Madhavan Pillai* [69] wherein the Hon'ble Supreme Court held that a plaintiff has a right to sue for breach of contract. In this case, the respondents were given permission to open a new aided school and improve the current ones, but that permission was put on hold 15 days later by an order. The Respondents filed an appeal against this order on the grounds that it violated their rights to due process of law. The Supreme Court concluded that the Respondents had a legitimate expectation of protection under the sanction, and that the second order was contrary to natural justice.[70] In *Navjyoti Coop. Group Housing Society v. Union of India*[71], as per the policy of the government, allotment of land to the housing society was to be given on the basis of "first come, first served". It was held that the societies that had applied earlier could invoke the doctrine of "legitimate expectation". In *J.P. Bansal v. State of Rajasthan,* B was appointed as Chairman of the Taxation Tribunal temporarily till the regular Chairman was appointed.

[67] CCSD v. Minister for the Civil Service, (1984) 3 AII.ER 935.
[68] Nikita Bhasin, *Understanding the Doctrine of Legitimate Expectations: Legal Principles and Practical Implications*, LEGAL SERVICE INDIA (2024), https://www.legalserviceindia.com/legal/article/article-13833-understanding-the-doctrine-of-legitimate-expectations-legal-principles-and-practical-implications.html.
[69] State of Kerala v. K.G. Madhavan Pillai, [1988] 4 SCC 669.
[70] Manoj Nahata, *DOCTRINE OF LEGIMATE EXPECTATION – MEANING, CONCEPT & ITS APPLICATION*, CAMNA (May 12, 2021), https://camna.in/2021/05/12/doctrine-of-legitimate-expectation-meaning-concept-its-application/.
[71] Navjyoti Coo-Group Housing Society vs Union Of India And Others, (1992) 4 SCC 477.

Meanwhile, however, the State abolished the Tribunal. B claimed rupees 5,00,000 with 15 per cent interest as compensation. He pleaded the doctrine of legitimate expectation. Dismissing the petition, the court held that the appointment of B was purely contractual and the doctrine of legitimate expectation had no application. Hence, he was not liable for compensation.

DOCTRINE OF LEGITIMATE EXPECTATION VIS-À-VIS PROMISSORY ESTOPPEL

Promissory estoppel is a legal doctrine that prevents a party from going back on a promise, even without a formal contract, if the other party reasonably relied on that promise to their detriment. Under English Law, the doctrine of promissory estoppel has developed in parallel to the doctrine of legitimate expectations. The doctrine of legitimate expectation was initially developed in the context of public law as an analogy to the doctrine of promissory estoppel found in private law. However, since then, English Law has distinguished between the doctrines of promissory estoppel and legitimate expectation as distinct remedies under private law and public law, respectively. The doctrine of legitimate expectations is founded on the principles of fairness in government dealings. It comes into play if a public body leads an individual to believe that they will be a recipient of a substantive benefit. Another difference between the doctrines of promissory estoppel and legitimate expectation under English Law is that the latter can constitute a cause of action. The scope of the doctrine of legitimate expectation is wider than promissory estoppel because it not only takes into consideration a promise made by a public body but also official practice, as well. Under the doctrine of promissory estoppel, there may be a requirement to show a detriment suffered by a party due to the reliance placed on the promise. Although, typically it is sufficient to show that the promisee has altered its position by placing reliance on the promise, the fact that no prejudice has been caused to the promisee may be relevant to hold that it would not be "inequitable" for the promisor to go back on their promise. However, no such requirement is present under the doctrine of legitimate expectation. Further, while the basis of the doctrine of promissory estoppel in private law is a promise made between two parties, the basis of the doctrine of legitimate expectation in public law is premised on the principles of fairness and non-arbitrariness surrounding the conduct of public authorities. In *Monnet Ispat and Energy Ltd. vs Union of India*[72], Justice H L Gokhale highlighted the different considerations that underline

[72] Monnet Ispat & Energy Ltd. v. Union of India, (2012) 11 SCC 1.

the doctrines of promissory estoppel and legitimate expectation.[73] He said: "for the application of the doctrine of promissory estoppel, there has to be a promise, based on which the promise has acted to its prejudice. In contrast, while applying the doctrine of legitimate expectation, the primary considerations are reasonableness and fairness of the State action."

DOCTRINE OF LEGITIMATE EXPECTATION AND ARTICLE 14

The intersection between Article 14 of the Indian Constitution and the Doctrine of Legitimate Expectation[74] lies in their shared objective of ensuring fairness, non-arbitrariness, and equality in administrative action. Article 14 guarantees equality before the law and equal protection of laws, acting as a safeguard against arbitrary or discriminatory state action. It mandates that any administrative decision must be based on reason and not be capricious or unjust. The Doctrine of Legitimate Expectation,[75] on the other hand, is a principle of administrative law that protects the expectation an individual may reasonably have from a public authority, based on consistent past practice, official promises, or established procedures. While it does not confer a legal right, it serves as a judicial tool to ensure that the administration does not act unfairly or change its policies abruptly without justification. The link between the two lies in the fact that courts often use Article 14 as the constitutional foundation to give enforceability to legitimate expectations. If an administrative authority defeats a legitimate expectation arbitrarily, without following due process or providing valid reasons, such action may be struck down as violative of Article 14. In this way, legitimate expectation acts as a test to determine whether state action conforms to the principles of equality and non-arbitrariness.In *Food Corporation of India v. Kamdhenu Cattle Feed Industries,*[76] (1993), Verma J. (as he then was) pointed out that non-arbitrariness in State action is a significant facet of Article 14. Failure to consider the legitimate expectations of persons likely to be affected by any decision taken by a public authority may be exposed to challenge on the grounds of arbitrariness. The rule of law does not eliminate the discretion in the exercise of power but provides for its control through judicial review. At the same time, a mere claim of legitimate expectation cannot by itself give rise to distinct enforceable rights, but the failure to give due weightage to it under the facts of a case may render it arbitrary. Thus,

[73] Editor5, SC allows electricity Rebate declared by State but not notified, TAXGURU (Dec. 5, 2020), https://taxguru.in/corporate-law/sc-allows-electricity-rebate-declared-state-not-notified.html?amp/.
[74] Aayushi Mittra, *Doctrine Of Legitimate Expectation In India*, LAW CORNER (last visited July 27, 2025), https://lawcorner.in/doctrine-of-legitimate-expectation-in-india/.
[75] Colin M. Brown & Fay Faraday, *Legitimate Expectations in the Common Law World* (Hart Publishing 2017), https://ebin.pub/legitimate-expectations-in-the-common-law-world-9781849467780-9781509909513-9781509909490.html (last visited July 27, 2025).
[76] Food Corporation of India v. Kamdhenu Cattle Feed Industries, (1993) 1 SCC 71.

the requirement of due consideration of legitimate expectation forms part of the principle of non-arbitrariness which is a necessary concomitant of the rule of law. The link between legitimate expectation, non-arbitrariness and Article 14 was once again emphasized in *NOIDA Entrepreneurs Association v. NOIDA*[77]. It was held that an authority that had a legal obligation to exercise powers reasonably and in good faith would contradict the principles of legitimate expectation if decisions were taken arbitrarily.[78] The expression 'good faith' must mean having legitimate reasons.

DOCTRINE OF LEGITIMATE EXPECTATION AND NATURAL JUSTICE

Fairness, procedural integrity, and equitable treatment form the very foundation of our democratic legal order. These principles are not mere abstract ideals but are essential components of the rule of law, ensuring that public power is exercised in a reasonable, transparent, and accountable manner.[79] The Doctrine of Legitimate Expectation emerges from these very principles, acting as a safeguard against arbitrariness and unpredictability in administrative actions.

The doctrine comes into play when the State or a public authority, through a consistent past practice, an express promise, public notification, or policy declaration, induces a reasonable belief in the minds of individuals that a certain course of action will be followed.[80] Based on this belief, individuals may make personal, financial, or legal decisions, organize their affairs, or alter their conduct. The law, through this doctrine, seeks to protect such expectations from being defeated unjustly.

What anchors the doctrine firmly within Indian administrative law is its intrinsic connection to the principles of natural justice, particularly the rule that no person should be condemned unheard following the latin phrase *audi alteram partem*. When a legitimate expectation arises,

[77] NOIDA Entrepreneurs Assn. v. NOIDA, (2011) 6 SCC 508.
[78] Arvind P. Datar, *Legitimate Expectation and Article 14*, BAR & BENCH (Oct. 5, 2024), https://www.barandbench.comcolumns/legitimate-expectation-and-article-14 (last visited July 24, 2025).
[79] Clive Plasket, *Judicial Review of Administrative Action in the Democratic South Africa* (PhD thesis, Rhodes University, June 2002), https://commons.ru.ac.za/vital/access/services/Download/vital:3693/SOURCEPDF (last visited July 27, 2025).
[80] *Doctrine of Legitimate Expectation: An Analysis*, RESEARCHGATE (last visited July 26, 2025), https://www.researchgate.net/publication/350525237_Doctrine_of_Legitimate_Expectation_An_Analysis.

it does not automatically confer a legal right in the strict sense.[81] However, it imposes an obligation on the public authority to act fairly. If the authority wishes to deviate from the expected course, it must justify such a departure with compelling public interest reasons and, importantly, afford the affected party an opportunity to be heard.

This was rightly observed by H.W.R. Wade, who emphasized that the doctrine is rooted in reasonableness, fairness, and natural justice; the pillars upon which administrative discretion must rest. Indian courts have echoed this sentiment, holding that abrupt changes in policies or denial of expected treatment, without notice or hearing, amounts to a violation of Article 14 of the Constitution, which guarantees equality and prohibits arbitrary state action.

For instance, if a government authority has been consistently renewing a contract, license, or benefit for several years, and a citizen has relied on this practice, a sudden refusal without explanation or hearing would offend the individual's legitimate expectation. The courts have repeatedly held that such abrupt reversals, unless backed by overriding public interest are unjustified and may be struck down for violating procedural fairness.

Thus, the doctrine of legitimate expectation operates as a constitutional buffer against discretionary misuse of power. It does not demand rigid adherence to past practices but ensures that when changes are made, they are made transparently, with reason, and only after giving a fair opportunity of hearing to the affected person. It is an important tool in the hands of the judiciary to balance state interest with individual trust, and to ensure that governance remains accountable, participatory, and just.

LIMITATIONS OF THE DOCTRINE OF LEGITIMATE EXPECTATION

The doctrine of "legitimate expectation" has its limitations. The concept of legitimate expectation is only procedural and has no substantive impact. In *Attorney General for New South Wales v. Quinn*[82], one O was a stipendiary Magistrate in charge of the Court of Petty Sessions. By an Act of the legislature, that court was replaced by the Local Court. Though applied, O was not appointed under the new system. That action was challenged. The court

[81] Anjali Roy, *Law of Contract: Doctrine of Legitimate Expectation*, LEXLIFE (May 12, 2020), https://lexlife68840978.wordpress.com/2020/05/12/law-of-contract-doctrine-of-legitimate-expectation/ (last visited July 27, 2025).
[82] Attorney General for New South Wales v. Quin, (1990) 64 Aust LJR 327.

dismissed the claim, observing that if substantive protection is to be accorded to legitimate expectations, it would interfere with administrative decisions on merits that are not permissible. Moreover, the doctrine does not apply to legislative activities. Thus, in *R. v. Ministry of Agriculture, Fisheries and Food, ex p Jaderow Ltd*.[83], conditions were imposed on fishing licences. The said action was challenged, contending that the new policy was against "legitimate expectations". Rejecting the argument and dismissing the action, the court held that the doctrine of "legitimate expectations" cannot preclude Legislation. Likewise, in *Srinivasa Theatre v. Govt. of T.N.*[84], by amending the provisions of the Tamil Nadu Entertainments Tax Act, 1939, the method of taxation was changed. The validity of the amendment was challenged inter alia on the ground that it was against a legitimate expectation of the law in force before the amendment. Rejecting the argument and following the *Council of Civil Service Unions*[85], the Supreme Court held that legislation cannot be invalidated on the basis that it offends the legitimate expectations of the persons affected thereby. Again, the doctrine of "legitimate expectations" does not apply if it is contrary to public policy or against the security of the State.

Thus, in the *Council of Civil Service Unions*, the staff of Government Communications Headquarters (GCHQ) had the right to unionisation. By an order of the government, the employees of GCHQ were deprived of this right. The union challenged the said action, contending that the employees of GCHQ had legitimate expectations of being consulted before the Minister took action. Though in theory, the House of Lords agreed with the argument of the Union about legitimate expectations, it held that "the Security considerations put forward by the government, override the right of the Union to prior consultation." Similarly, in *State of H.P. v. Kailash Chand Mahajan*[86], an Act was amended by providing age of superannuation. It was contended that when an appointment was made by fixing a tenure, there was a right to continue, and the doctrine of legitimate expectation would apply. The claim was, however, negatived, observing that "legitimate expectation cannot preclude legislation." In *Union of India v. Hindustan Development Corpn*.[87], in a government contract, a dual pricing policy was fixed by the State Authorities (lower price for big suppliers and higher price for small suppliers). That action was taken in the larger public interest and to break the "cartel"; it was

[83] Agriculture, Fisheries and Food, Ex parte Jaderow Ltd, [1990] 2 Q.B. 193 (UK).
[84] Sri Srinivasa Theatre v. Govt. of T.N., (1992) 2 SCC 643.
[85] Council of Civil Service Unions v Minister for the Civil Service, [1985] A.C. 374 (UK).
[86] State of H.P. v. Kailash Chand Mahajan, 1992 Supp (2) SCC 351.
[87] Union of India v. Hindustan Development Corpn., (1993) 3 SCC 499.

held that the adoption of a dual pricing policy by the government did not amount to a denial of legitimate expectation.[88]

JUDICIAL TREND AND PRONOUNCEMENTS

The doctrine of legitimate expectation continues to safeguard against arbitrary administrative action. In the recent case of *Tej Prakash Pathak vs Rajasthan High Court*[89] on September 17, 2009, the Rajasthan High Court issued a notification for the recruitment of 13 vacant translator posts under the Rajasthan High Court Staff Service Rules, 2002. Candidates underwent a written examination and a personal interview. However, after these stages, the then Chief Justice Jagadish Bhalla imposed a new requirement that the candidates must score 75% or above in the examination to be selected. As a result, only 3 out of the 21 candidates were selected. The unsuccessful candidates challenged this decision in the Rajasthan High Court, which dismissed their petition in March 2010.[90] The candidates then filed an appeal in the Supreme Court in 2011.[91] The court held that the Supreme Court of India, in a majority decision delivered by a bench comprising Chief Justice Dr. Dhananjaya Y. Chandrachud and other justices, upheld the principle that recruitment procedures, once initiated, cannot be altered to the detriment of the applicants' legitimate expectations.[92] The Court reinforced the doctrine that changing the "rules of the game" post the commencement of the recruitment process is impermissible, ensuring that candidates are evaluated based on the criteria established at the outset.

In another case of *Salam Samarjeet v.The High Court of Manipur, Imphal* [93], the dispute centers on the recruitment process for Manipur Judicial Service (MJS) Grade-I initiated in 2013 under the unamended MJS Rules, 2005. The petitioner, a Scheduled Caste (SC) candidate, claimed his legitimate expectations were frustrated when the full Court of the Manipur High Court introduced a 40% qualifying threshold for viva-voce through a resolution dated 12 January

[88] State of Jharkhand & Ors. v. Brahmaputra Metallics Ltd., Civil Appeal Nos. 3860–3862 of 2020 (Arising of SLP (C) Nos. 14156–14158 of 2020), Supreme Court of India (Dec. 1, 2020).
[89] Tej Prakash Pathak v. High Court of Rajasthan, (2025) 2 SCC 1.
[90] *Altering Rules on Appointment to Public Posts | Day 3: Bench Reserves Case for Judgement*, SUPREME COURT OBSERVER, https://wwwobserver.in/reports/altering-rules-on-appointment-to-public-posts-day-2-bench-reserves-case-for-judgement/ (last visited July 24, 2025).
[91] Najma v. Govt. of NCT of Delhi, W.P.(C) 8956/2020.
[92] Dr Manohar Lal & Ors. v. State of U.P. & Ors., WRIT - A No. 14185 of 2020.
[93] Salam Samarjeet Singh v. High Court of Manipur at Imphal, 2024 SCC OnLine SC 2316.

2015.[94] The unamended rules prescribed final selection based on cumulative marks in the written and viva-voce examinations. The Court evaluated procedural fairness, the doctrine of legitimate expectation, and the legality of executive instructions vis-à-vis statutory rules.[95] It was held that legitimate expectations were violated. Candidates were entitled to evaluation based on aggregate marks as per the rules in effect during recruitment initiation. The case of *M/S Rewa Tollway P. Ltd v. The State of Madhya Pradesh*[96] examines the imposition of stamp duty on a Concession Agreement under the Build, Operate, and Transfer (BOT) Scheme in Madhya Pradesh. The appellants claimed legitimate expectation based on earlier executive decisions that exempted such agreements from stamp duty beyond ₹100. However, subsequent legislative changes imposed stamp duty at 2% of the amount likely to be spent by the lessee under the agreement.[97] The Supreme Court addressed whether this Concession Agreement constituted a lease, bond, or license, and whether the principles of legitimate expectation or promissory estoppel could protect the appellants from the revised obligations. The Court upheld the agreement's classification as a lease and deemed the legislative amendments valid. It clarified that promissory estoppel does not apply to legislative actions and recalibrated the stamp duty to reflect only the lessee's financial outlay.

ROLE OF LEGITIMATE EXPECTATION IN GOOD GOVERNANCE

The Doctrine of Legitimate Expectation serves as a powerful instrument in promoting good governance within the framework of Indian administrative law. Good governance, as understood in modern democratic societies, is premised on the principles of transparency, accountability, consistency, rule of law, responsiveness, and participatory decision-making.[98] The doctrine complements these values by acting as a constitutional safeguard against arbitrary and unpredictable administrative behaviour, thus reinforcing the foundational ethos of a welfare state as envisioned by the Indian Constitution.

1. Ensuring Administrative Consistency and Predictability

[94] Writ Petition Nos. 26084, 26133, 27571, 27807, 282, 32081, 32218, 32698 & 35350 of 2023, Mad. HC (R. Mahadevan, A.C.J. & M. Shaffiq, J.) (July 10, 2024).
[95] Sivanandan C T & Ors. v. High Court of & Ors., Writ Petition (Civil) No. 229 of 2017.
[96] Rewa Tollway (P) Ltd. v. State of M.P., (2024) 9 SCC 680.
[97] Vikas Kanaujia v. Sarita, (Civil Appeal No. 7380 of 2024), Supreme Court of India (July 10, 2024).
[98] International Human Rights Law in Africa, Volume Two (Brill Nijhoff 2023), https://doi.org/10.1163/9789004532007 (last visited July 27, 2025).

One of the critical elements of good governance is the predictability of state action, which allows citizens and institutions to plan their conduct based on established policies and consistent practices. The doctrine of legitimate expectation ensures that when a public authority has consistently followed a practice or made a representation, individuals who have reasonably relied on such conduct must not be deprived of their expectation arbitrarily. In *Navjyoti Co-op. Group Housing Society v. Union of India*[99], the Supreme Court held that a change in the criteria for allotment of land, which adversely affected societies that had a legitimate expectation based on an earlier consistent policy, was unjustified. The Court ruled that administrative authorities must respect such expectations unless there is a compelling public interest justifying a departure.

2. Promoting Fairness and Procedural Justice

The doctrine also enhances procedural fairness, which is central to good governance. It mandates that when an individual has a legitimate expectation of being heard before a decision affecting their rights or interests is taken, such a procedural safeguard must be observed. This was recognized in *Food Corporation of India v. Kamdhenu Cattle Feed Industries*[100], where the Supreme Court held that an individual who has a legitimate expectation of a hearing,[101] especially where previous conduct of the authority implied a participatory approach, must be allowed to present their case. Similarly, in *Union of India v. Hindustan Development Corporation*[102], the Supreme Court elaborated on the doctrine, stating that legitimate expectation arises not only from a promise or practice but also from a policy that has been consistently applied. The Court emphasized that the state must not act unfairly or arbitrarily in defeating such expectations unless an overriding public interest demands otherwise.

3. Enhancing Transparency and Accountability

Transparency is a fundamental component of good governance. The doctrine of legitimate expectation[103] contributes to this by requiring that changes in policy or administrative behaviour be supported by reasons. When authorities deviate from past practices or policies,

[99] Navjyoti Coop. Group Housing Society v. Union of India, (1992) 4 SCC 477.
[100] Food Corporation of India v. Kamdhenu Cattle Feed Industries, (1993) 1 SCC 71.
[101] LISA WEBLEY & HARRIET SAMUELS, COMPLETE PUBLIC LAW: TEXT, CASES, AND MATERIALS 5TH ED. (Oxford University Press 2021).
[102] Union of India v. Hindustan Development Corpn., (1993) 3 SCC 499.
[103] RAJENDRA RAMLOGAN, JUDICIAL REVIEW IN THE COMMONWEALTH CARIBBEAN (Routledge-Cavendish 2016).

they must explain their rationale, making the decision-making process more open and accountable. In *Ram Pravesh Singh v. State of Bihar*[104], the Patna High Court underscored that when the government makes certain representations regarding promotions and transfers, and public servants rely on them, there arises a legitimate expectation which the state cannot casually override.[105] Arbitrary denial of such expectations, without clear and transparent justification, erodes the public trust in administrative functioning.

4. Encouraging Participatory Governance

Legitimate expectation also encourages citizen participation in governance by validating the individual's reliance on government conduct. When the administration commits to a course of action or consultative process, the public develops a participatory stake in governance, expecting the state to honour those commitments. In *State of Kerala v. K.G. Madhavan Pillai* [106], the Court recognized that even non-statutory guidelines and informal assurances could give rise to legitimate expectations if they are clear, unambiguous, and relied upon by affected parties. This judicial stance enhances participatory democracy and aligns administrative conduct with citizens' aspirations and rights.

5. Balancing Public Interest and Individual Rights

Good governance requires a careful balance between the need for administrative flexibility and the protection of individual expectations. While public authorities must retain the freedom to alter policies in response to changing circumstances, such changes must not trample legitimate expectations without adequate justification. In *Union of India v. International Trading Co.*[107], the Supreme Court clarified that legitimate expectation cannot override public interest, but emphasized that any administrative change defeating an expectation must be non-arbitrary and justifiable in a court of law. This balance prevents misuse of discretionary power and aligns policy shifts with the principles of constitutional governance.[108]

[104] Shahabuddin v. State of Bihar, 2005 SCC OnLine Pat 908.
[105] Anoop Kumar, *Definition of Subsidy under the WTO Agreement*, 7(1) DEHRADUN L. REV. 57 (2015).
[106] State of Kerala v. K.G. Madhavan Pillai, (1988) 4 SCC 669.
[107] Union of India v. International Trading Co., (2003) 5 SCC 437.
[108] Adv. Arshiyah Zargar, *The Indian Constitution at 75: A Testament to Resilience and Progress*, REFLECTIONS.LIVE (Dec. 13, 2024), https://reflections.live/articles/8381/the-indian-constitution-at-75-a-testament-to-resilience-and-progress-article-by-adv-arshiyah-zargar-19321-m4mev4us.html (last visited July 24, 2025).

6. Reinforcing the Rule of Law and Trust in Governance

Ultimately, the doctrine of legitimate expectation upholds the rule of law, which is the bedrock of good governance. It reassures citizens that the state will not act unpredictably, and that governmental promises, policies, and consistent behaviour carry normative value. It creates a sense of legal certainty and stability, which is essential for both individual dignity and efficient public administration. The Supreme Court in *Punjab Communications Ltd. v. Union of India*[109] described legitimate expectation as an extension of Article 14 and a principle that reinforces non-arbitrariness and fairness in governance. The Court emphasized that such expectations can be enforceable where public authorities have failed to act following established policies without a sufficient public interest justification.

COMPARATIVE JURISPRUDENCE ON THE DOCTRINE OF LEGITIMATE EXPECTATION

The Doctrine of Legitimate Expectation[110] is not unique to Indian administrative law; it has evolved significantly in comparative constitutional and administrative jurisprudence, particularly in England, and has been adapted, interpreted, and developed in various common law countries such as Canada, Australia, South Africa, and New Zealand.[111] The doctrine has served as a valuable tool in all these jurisdictions to uphold the principles of natural justice, fairness, and protection against arbitrariness in public decision-making.

1. United Kingdom – The Origin and Development

The roots of the Doctrine of Legitimate Expectation[112] lie in English administrative law, where it has evolved from the broader principle of procedural fairness. A landmark case in this regard is *Schmidt v. Secretary of State for Home Affairs*[113], where the Court held that foreign students who had been given leave to remain in the UK for a certain period had a legitimate expectation of a hearing before being expelled. The doctrine was further refined in *Council of Civil Service Unions v. Minister for the Civil Service (GCHQ case)*[114], where Lord Diplock classified

[109] Punjab Communications Ltd. v. Union of India, (1999) 4 SCC 727.
[110] DAVID HERLING, BRIEFCASE ON CONSTITUTIONAL & ADMINISTRATIVE LAW (4th ed. 2004)
[111] YUWEN LI, ED., ADMINISTRATIVE LITIGATION SYSTEMS IN GREATER CHINA AND EUROPE (Routledge 2016).
[112] *Doctrine of Legitimate Expectation: An Analysis*, RESEARCHGATE (last visited July 26, 2025), https://www.researchgate.net/publication/350525237_Doctrine_of_Legitimate_Expectation_An_Analysis.
[113] Schmidt v. Secretary of State for Home Affairs, [1969] 2 Ch 149 (CA).
[114] CCSU v Minister for the Civil Service [1985] AC 374.

legitimate expectations into two broad categories: procedural (expectation of a hearing or consultation) and substantive (expectation of a particular benefit or policy being continued).[115]

The House of Lords emphasized that a public authority cannot frustrate such expectations arbitrarily unless overriding public interest justifies it. In *R v. North and East Devon Health Authority, ex parte Coughlan* [116], the Court recognized a substantive legitimate expectation when a disabled woman was promised permanent residence in a healthcare facility. The Court held that frustration of such a promise, in the absence of a compelling justification, amounted to an abuse of power. This approach has deeply influenced Indian courts, especially in recognizing both procedural and substantive dimensions of the doctrine.

2. Canada – Doctrine Linked to Fairness and Judicial Review

In Canada, the doctrine is closely associated with the principles of procedural fairness and legitimate reliance. In *Old St. Boniface Residents Assn. Inc. v. Winnipeg (City)*[117], the Canadian courts held that legitimate expectations may arise when a public authority's past conduct or representations create an expectation of procedural rights, such as a public hearing.[118] However, Canadian courts remain cautious in recognizing substantive legitimate expectations, often holding that such expectations cannot override statutory duties or discretion. The focus remains on whether procedural fairness has been denied, reflecting a more restrained approach compared to the UK.

3. Australia – Procedural Fairness Is Key

Australian courts have also acknowledged the doctrine, though they generally confine it to procedural expectations. In *Attorney-General for New South Wales v. Quin*[119], the High Court of Australia held that legitimate expectations[120] may justify the application of procedural fairness, but they cannot limit the exercise of statutory power or policy changes in the public

[115] Jessica Lauren Bell, *The Legal Structure of UK Biobank: Private Law for Public Goods?* (PhD thesis, University of Sheffield, 2016), http://etheses.whiterose.ac.uk/13594/1/Jessica%20Bell%20PhD.pdf (last visited July 26, 2025).
[116] R v North and East Devon Health Authority, [2001] QB 213 (CA).
[117] Old St. Boniface Residents Assn. Inc. v. Winnipeg (City), [1990] 3 SCR 1170 (SCC).
[118] Casebook on Procedural Fairness (Faculty of Law, University of Manitoba 2005), http://www.umanitoba.ca/law/newsite/coursemat/casebook%20procedural%20fairness%202005.pdf (last visited July 27, 2025).
[119] Attorney-General for New South Wales v. Quin, (1990) 170 CLR 1 (HCA).
[120] CHRIS MONAGHAN, *PUBLIC LAW* (1st edn, Routledge 2021).

interest. The Australian jurisprudence aligns with the Indian position to some extent, particularly in recognizing the need for reasoned decisions and fair process, while avoiding granting enforceable substantive rights.

4. South Africa – Tied to Constitutional Principles

South Africa has adopted the doctrine within the framework of its transformative constitutionalism. Under Section 33 of the South African Constitution, which guarantees the right to just administrative action, legitimate expectations are recognized as part of the right to lawful, reasonable, and procedurally fair administrative action. In *President of the Republic of South Africa v. South African Rugby Football Union*[121], the Constitutional Court referred to the importance of expectations raised by consistent conduct and emphasized procedural fairness as a component of constitutional due process. South African jurisprudence places the doctrine in a rights-based framework, similar to India's linkage to Article 14.

5. New Zealand – Towards Substantive Protection

New Zealand courts have moved closer to the UK model in offering substantive protection to legitimate expectations. In *Attorney-General v. Ngati Apa Ki Te Waipounamu Trust*[122], the Court recognized that when a public body makes representations or follows a consistent policy, individuals may develop expectations that can only be overridden with justifiable reasons and adherence to procedural fairness. Indian courts have drawn heavily from English jurisprudence, especially the GCHQ case, in formulating the scope and limitations of legitimate expectation.

CONCLUDING REMARKS AND WAY FORWARD

The Doctrine of Legitimate Expectation has emerged as a powerful judicial principle to ensure fairness, consistency, and accountability in administrative action. Rooted in the ideals of non-arbitrariness under Article 14 of the Indian Constitution,[123] the doctrine fills a crucial gap between strict legal rights and equitable administrative conduct. It enables courts to protect individuals who have reasonably relied on established practices, express assurances, or consistent policies of public authorities. Over time, Indian courts have shown a progressive

[121] President of the Republic of South Africa v. South African Rugby Football Union, 2000 (1) SA 1 (CC).
[122] Attorney-General v. Ngati Apa Ki Te Waipounamu Trust, [2003] NZAR 209 (NZCA).
[123] Sarica AR, *Doctrine Of Legitimate Expectation*, ACADEMIKE (Lawctopus) (last visited July 27, 2025), https://www.lawctopus.com/academike/doctrine-legitimate-expectations/.

inclination toward adopting and refining this doctrine, particularly by acknowledging both procedural and, in limited circumstances, substantive legitimate expectations. Through various landmark decisions, the judiciary has balanced individual expectations with the needs of public interest, showing a nuanced understanding of administrative discretion and democratic governance.

However, the doctrine is not absolute. Its application is limited by statutory duties, legislative functions, and overriding public interest. Courts have also reiterated that a mere expectation, however legitimate, does not automatically translate into an enforceable right. The doctrine, therefore, operates within a delicate space where fairness meets flexibility. A comparative look at jurisdictions like the UK, Canada, Australia, South Africa, and New Zealand demonstrates that while the core values of the doctrine remain universal, its scope and enforceability vary. In India, its integration with constitutional principles, especially the rule of law and good governance, has given it a distinctive character and enhanced its relevance in administrative jurisprudence.

In conclusion, the Doctrine of Legitimate Expectation serves not just as a legal tool but as a symbol of ethical governance and citizen-centric administration. Its continued evolution through judicial interpretation will play a pivotal role in strengthening the relationship between the State and its citizens, ensuring that administrative power is exercised with responsibility, fairness, and respect for democratic values.

From Chains To Change: India's Journey From IPC 124(A) To BNS 152

Tanvi Aggarwal[124]
Anuj Garg[125]

ABSTRACT

This study presents a critical examination of India's sedition legislation, which is one of the most debatable topics in the Indian framework since its inception in 1870. The research investigates Section 124A[126] of the Indian Penal Code, 1860 ("IPC") and its successor, Section 152[127] of the Bhartiya Nyaya Sanhita, 2023 ("BNS"), through multiple analytical lenses. It is seen that initially, the Sedition Law was crafted by British authorities to suppress the voices of our great freedom[128] fighters, including Mahatma Gandhi, Bal Gangadhar Tilak, Bhagat Singh, etc, who faced charges of Sedition several times during their period. Even post-independence, the Sedition Law continues to prevail, and even today, it is misused numerous times, due to which the topic of Sedition never fades from the limelight of news headlines.

This comparative legal assessment demonstrates that though BNS has removed some of the problematic terms present in the IPC Section, such as disaffection but, it has also raised further concerns relating to increased punishment to 7 years to life imprisonment along with some conceptual challenges associated with some undefined parameters such as separatist activities and national unity.

This article also evaluates some of the landmark case laws, particularly the Supreme Court's (SC) 2022 moratorium on sedition prosecution, which highlighted the misuse of unlimited powers given to the government, which infringes the right to freedom of speech and expression of various journalists, activists, and political opponents.

[124] BCom LLB Student at University Institute of legal Studies, Panjab University, Chandigarh.
[125] BBA LLB Student at HPNLU, Shimla.
[126] Indian Penal Code, 1860, § 124A, No. 45, Acts of Parliament, 1860 (India).
[127] Indian Penal Code, 1860, § 152, No. 45, Acts of Parliament, 1860 (India).
[128] Vaibhav Yadav, *The Sedition Conundrum in India: A Critical Examination of its Historical Evolution, Current Application and Constitutional Validity*, 61 INT'L ANNALS CRIMINOLOGY 188 (2023).

Ultimately, this article questions whether India's change in sedition law represents meaningful progress towards reconciling state unity and Sovereignty along with protecting individuals' fundamental rights or merely acts as a symbolic modification to the outdated colonial legislature.

ORIGIN

The origin of this law can be traced back to a British historian and politician, Thomas Babington Macaulay, who first drafted the provision in 1837 as part of the IPC[129], which was an effort to codify and organize laws. It was in Section 113[130] of IPC 1837, that this concept was first introduced. However, this provision was excluded when the IPC was formally enacted in 1860. It was just in 1870 after the 1st amendment[131] by Sir James Stephen[132] (then law member of the Governor-General's Council) that the concept of Sedition was inserted under Section 124 sub-clause A of IPC 1860, criminalizing disaffection towards the government established by law.[133]

APPLICATION OF LAW PRE-INDEPENDENCE

The British authorities used this law as a powerful weapon to suppress the voices of those who tried to speak against their colonial rule. Twenty years after the inception of this law, 1st hearing of the Sedition law came into existence in 1891 in the Calcutta High Court in the case of *Queen Empress v. Jogendra Chunder Bose*[134]. Bangobasi magazine's owner, printer, manager, etc., all were charged and punished under sedition law for printing an article that criticized the British government's decision to increase the legal age for obtaining consent in sexual activities.[135] Bal Gangadhar Tilak was charged with Sedition twice in 1897[136] and 1908[137]. In

[129] S Krishnan & Ekta Sehra, *The position of sedition laws and the freedom of speech and expression in India: A critical analysis*, 8 INT'L J. LEGAL STUD. & RES. 163 (2022).
[130] Draft Penal Code Prepared by the Indian Law Commission, 1837, § 113, in 7 THE WORKS OF LORD MACAULAY: SPEECHES AND ESSAYS 107 (Longmans, Green & Co. 1898).
[131] Indian Penal Code Amendment Act, 1870, No. 27, Acts of Parliament, 1870 (India).
[132] Police–Executive Relationship in Pakistan (2003–2007), SCRIBD (n.d.), http://www.scribd.com/doc/38750711/Police-Executive-Relationship-in-Pakistan-20032007 (last visited Aug. 10, 2025).
[133] *Section 124-A IPC: Where to Draw the Line?*, SCC ONLINE BLOG (Oct. 3, 2017), https://blog.scconline.com/post/2017/10/03/section-124-a-ipc-where-to-draw-the-line/ (last visited Aug. 10, 2025).
[134] Queen-Empress v. Jogendra Chunder Bose, (1892) ILR 19 Cal 35.
[135] Rachana Singh, *A Study of Sedition Law under IPC*, 1(14) J. CONTEMP. VIRT. PROCS. & JURIS. (2023), https://jcvpj.iledu.in/wp-content/uploads/2023/07/V1I14.pdf (last visited Aug. 10, 2025).
[136] Queen-Empress v. Bal Gangadhar Tilak & Keshav Mahadev Bal., 1897 SCC OnLine Bom 3.
[137] Emperor v. Bal Gangadhar Tilak, 1908 SCC OnLine Bom 48.

his 1897 case, the Bombay High Court broadened the concept of Sedition and included 'Disloyalty' too as a part of Sedition. Hence, in 1897, he was charged with Sedition for publishing an article that called for the British Raj to be overthrown. In 1908, too, he was charged with a similar case. Even our great freedom fighter M.K. Gandhi ji was charged with Sedition[138] in a famous case also referred to as the *"Great Trial of 1922"*[139] for his comments expressed in the journal 'Young India' in which he, suppressing the nature of this law, has emphasized the fact that affection [towards the government] cannot be manufactured. Not only this, many more Indian freedom fighters and great authors, such as Annie Besant, Jawaharlal Nehru, Bhagat Singh, etc, were charged under the Sedition law before Independence. It was used as a tool to muffle the voices[140] of freedom fighters and nationalists. But in 1942, in a landmark judgment of *N.D. Majumdar v. The King Emperor case*[141], the Federal Court of India[142] tried to redefine the definition of Sedition. In its judicial interpretation, the court stated that only acts of resistance or lawlessness that result in either public disorder or a reasonable anticipation or likelihood of causing public disorder would be categorized and punishable under the sedition law. Hence, mere criticism of government authorities is not sufficient to lie under the offense of Sedition until and unless it is coupled with the acts that led to or are likely to lead to tangible disruptions and public tranquility. However, this relatively narrow interpretation was subsequently overturned by the Privy Council in 1947,[143] just before India gained Independence. The Privy Council's reversal reverted to a broader understanding of Sedition law, which placed greater emphasis on securing government authority regardless of actual public disorder. This judicial decision reflects the ongoing tension between maintaining absolute authority and emerging democratic principles, which would later form the basis of India's constitutional framework. This decision has ultimately restored the broad and subjective viewpoint of sedition law, which was earlier used by British authorities to suppress the voices of Indian nationalists and freedom fighters.

POST-INDEPENDENCE SCENARIO

[138] Thressiakunju Francis, The Extraordinary Law and Civil Liberties in India, 4 Indian J. L. & Legal Rsch. 1, 8 (2025), https://3fdef50c-add3-4615-a675-a91741bcb5c0.usrfiles.com (last visited Aug. 10, 2025).
[139] Queen-Empress v. Bal Gangadhar Tilak, Cr. Case No. 45 of 1922 (Sessions Ct. Bombay, Mar. 18, 1922).
[140] RIJUL SINGH UPPAL, *SEDITION* 45 (Routledge 2024).
[141] Niharendu Datta Majumdar v. Emperor, 1939 SCC OnLine Cal 153.
[142] Agnibh A. & Kritika Kabra, *Free Speech, Hate Speech, and Sedition Law: Dilemmas in India's New Penal Code*, 58(2) INDIAN JOURNAL OF PUBLIC ADMINISTRATION 261 (2023).
[143] King-Emperor v. Sadashiv Narayan Bhalerao, AIR 1947 P.C. 82.

As soon as India gained Independence in 1947[144], debate on Sedition and its compatibility with Article 19 (1)[145] started to arise. Sardar Vallabhai Patel, who was tasked with heading the Fundamental Rights subcommittee, has inserted Sedition as an exception, which led to a rigorous debate[146] in the constituent assembly. However, because of its colonial roots and high potential for misuse, Sardar Vallabhai Patel also faced refusal by the constituent assembly. But the judicial judgment in the case *Romesh Thappar v. State of Madras*[147], also emphasized the exclusion of Sedition as an exception to freedom of speech and expression was specific. Here, it was established that sedition law does not put a restriction on freedom of speech and expression. The SC, in this case, clearly stated that any restriction will not come under the purview of sedition law until and unless any speech and expression clearly threatens the security or tends to overthrow the State.

JUDICIAL INTERPRETATION OF IPC SECTION 124(A)

In the year 1950, during India's transition to a republic, the Punjab and Haryana court issued a significant judgment in the case of *Tara Singh Gopi Chand v. The State*[148], in which Section 124(A) of IPC was declared unconstitutional. According to Justices Weston and Khosla, a state where political ideologies and ruling parties change over time, a law like Sedition is no longer needed, and they stated that this law clearly violates freedom of speech and expression.

In 1958, a question arose in the case *Sabir Raza v. The State*[149] Before the Allahabad High Court,[150] whether criticizing the government, members of parliament, or government policies falls within the safeguard of freedom of speech and expression, even if it disrupts public order. The court in the present case asserted that disturbing public order does not equate to overthrowing the government, and hence, it cannot be subject to penalties under Sedition law. A year later, Allahabad High Court categorically declared Section 124(A) of IPC as unconstitutional and concluded that this section imposed restrictions on freedom of speech that

[144] Indian Independence Act, 1947, 10 & 11 Geo. 6, c. 30 (U.K.).
[145] INDIA CONST. art. 19, cl. 1(a).
[146] LOK SABHA SECRETARIAT, CONSTITUTIONAL ASSEMBLY DEBATES: OFFICIAL REPORT, vol. VII, 1–2 Dec. 1948; vol. X, 16–17 Oct. 1949.
[147] Romesh Thappar v. State of Madras, AIR 1950 SC 124.
[148] Tara Singh Gopi Chand v. The State, AIR 1951 Punj. 27.
[149] Sabir Raza v. The State, Cri. App. No. 1434 of 1955 (Dated Feb. 11, 1958).
[150] Shrestha Chaurasia, *CONSTITUTIONALITY OF SEDITION LAW UNDER IPC AND IMPORTANCE OF AMENDMENT UNDER BNS*, LAWFOYER (Aug. 10, 2025), https://lawfoyer.in/constitutionality-of-sedition-law-under-ipc-and-importance-of-amendment-under-bns/ (last visited Aug. 10, 2025).

did not align with the public interest. This case[151] evolved around Ram Nandan, an agricultural labor activist who was charged with Sedition for criticizing the Congress government's failure to address extreme poverty and urging farmers to form an army, if necessary, to overthrow the government. The court, in this case, stated that mere potential public disorder does not justify curtailing the fundamental right of freedom of speech and expression.

After this case, the questions related to the constitutional validity of Sedition law came into limeline and increased. So, in 1962, SC had an opportunity to ascertain the validity of Section 124(A) of IPC in the Kedarnath case[152]. In this case, the constitutional bench of SC overturned the previous judgments of all HCs and ascertained that Sedition is the legitimate exception under freedom of speech as long as it does not incite any violence. In the present case, Kedar Nath was a member of the Forward Communist Party of Bihar who faced Sedition charges for his speech criticizing the Congress government and its handling of Vinobha Bhave's land redistribution efforts. Justice Sinha delineated the extent of applying Sedition, asserting that disloyal expressions towards the government, conveyed forcefully, do not amount to Sedition until and unless they amount to public disorder by acts of violence. The judgment held that "*Government established by law' is the visible symbol of the State. The very existence of the State will be in jeopardy if the government established by law is subverted. Hence, the continued existence of the government established by law is an essential condition of the stability of the State. That is why 'sedition,' as the offense in Section 124-A has been characterized, comes under Chapter VI, relating to offenses against the State. Hence, any acts within the meaning of Section 124-A that have the effect of subverting the government by bringing that government into contempt or hatred or creating disaffection against it would be within the penal statute because the feeling of disloyalty to the government established by law or enmity to it imports the idea of a tendency to public disorder by the use of actual violence or incitement of violence*."[153]

The court, in this judgment, differentiated between the government established by law and the individuals currently responsible for managing the administration. Additionally, the court also highlighted the balance between freedom of speech and expression and the power of legislation to restrict these rights where needed. Hence, with this judgment, it was made very clear that

[151] Ram Nandan v. State of U.P., AIR 1959 All. 101.
[152] Kedar Nath Singh v. State of Bihar, 1962 Supp. (2) S.C.R. 769.
[153] Brij Bhushan Sharan Singh v. Unni Krishnan, 1970 AIR 810.

the government symbolizes the State and its stability is vital for national security, and so Section 124(A) of IPC penalizes acts inciting hatred and disaffection against the government, i.e., the State. This was the reason that this section was placed under "CHAPTER VI of IPC, OFFENCES AGAINST THE STATE."

In 1955, a two-judge bench of the Supreme Court in Balwant Singh v. State of Punjab[154] upheld the judgment[155] given in *Kedar Nath v. State of Bihar Case.*[156] In 2016, Common Cause, an NGO engaged in addressing public issues, lodged a writ petition[157] challenging the constitutional validity of Section 124(A). The petition accused that this law is misused by government authorities to quell dissent and is used against various journalists, activists, and critics. It argued that Kedar Nath's judgment had been disregarded. However, the SC, under the division bench led by Justice Dipak Misra, argued that guidelines outlined under the Kedar Nath case are adequate and there is no need to reexamine.

However, in the subsequent years, it was seen that many cases filed were dismissed, but only after prolonged inconvenience and legal harassment of individuals. It was noticed that a major junk of these cases that were filed were against journalists, activists, and critics. However, despite many judgments emphasizing the same, attempts by the government to misuse the same continued. It was only in 2022 that SC noticed its rampant misuse as a 'tool for harassment,' chilling free speech. This led to the Supreme Court in *SG Vombatkere v. Union of India*[158] to suspend all pending sedition trials and directing that no new FIR be filed under Section 124(A) of IPC until the government re-examines this law. The court stressed the requirement of actual incitement to conduct violence and not merely criticism of the government, which will fall under Sedition charges. This interim order also reflected the growing judicial skepticism about law misuse to suppress dissent.

Following the SC's pause on Sedition cases, Law Commission of India published its 279th report[159] which recommended Indian Government to retain existing Sedition laws under

[154] Balwant Singh & Anr. v. State of Punjab, AIR 1995 SC 1785.
[155] *Anuradha Bhasin v. Union of India,* Writ Petition (Criminal) No. 298 of 2019 (India), (Jan. 10, 2020).
[156] Kedar Nath Singh v. State of Bihar, 1962 Supp. (2) S.C.R. 769.
[157] Common Cause & Anr. v. Union of India, (2018) 5 SCC 1.
[158] S.G. Vombatkere v. Union of India, (2022) 7 SCC 433.
[159] LAW COMMISSION OF INDIA, REPORT NO. 279: USAGE OF THE LAW OF SEDITION (May 2023).

Section 124(A) of IPC, 1860 with certain amendments[160]. The report heavily emphasised the judgement of *Kedar Nath case*[161] and upheld its validity. After some time, on December 12, 2024, Union Home Minister Amit Shah announced the introduction of 3 new criminal laws replacing old British-era criminal July, which will be effective from July 1, 2025[162].

TEXTUAL COMPARISON: IPC SECTION 124(A) V. BNS SECTION 152

Section 124(A) of IPC criminalizes Sedition with the objective of protecting the Sovereignty of the nation. It deals with the attempt to bring hatred, contempt, or excitement of disaffection through communication, symbol, or observable depiction towards the government, which is legally constituted in the country. It is categorized as a non-bailable, cognizable offense that is punishable with imprisonment of 3 years to a lifetime. Under this section, disloyalty and feeling of enmity are also covered under disaffection. Furthermore, explanations 1 and 2 of this section clarify that any actions done with the intention not to cause hatred, disaffection, or content but to bring out altercation to government policies and done via lawful means do not amount to a violation of this section.

The BNS, which replaced the IPC of 1860, introduced Section 152 as a replacement to Section 124(A) of the IPC. The major overhaul in this new section is that the word Sedition is not mentioned; instead, it is covered under the umbrella heading of 'Acts endangering sovereignty, unity and integrity of India.[163]' It includes two additional modern means by which Sedition can be done, namely the use of electronic communication and financial means. According to this section, whosoever either by words, written, spoken or by signs or by visible representation, or by electronic communication or by use of financial means, or otherwise, excites or attempts to excite, secession or armed rebellion or subversive activities, or encourages feelings of separatist activities or endangers Sovereignty or unity and integrity of India; or indulges in or commits any such act shall be punished with imprisonment for life or with imprisonment which may extend from seven years to life imprisonment, and shall also be liable to fine.[164] This section has also raised the minimum punishment from 3 to 7 years. The significant difference

[160] Ishan Ranjan, *Sedition Laws of India: An Analysis of the 279th Law Commission Report*, 6 INT'L J. L. MGMT. & HUMAN. 2920, 2921 (2023).
[161] Kedar Nath Singh v. State of Bihar, 1962 Supp. (2) S.C.R. 769.
[162] Press Information Bureau, Launch of Three New Criminal Laws, Press Release No. 153202 (July 1, 2024).
[163] *Explained: What Is Section 150, Which Will Replace Sedition Law,* NDTV (Aug. 10, 2025), https://www.ndtv.com/india-news/new-laws-new-criminal-laws-ipc-explained-what-is-section-150-which-will-replace-sedition-law-4289349 (last visited Aug. 10, 2025).
[164] MyInd Staff, *Amit Shah Introduces Three New Bills in Lok Sabha to Overhaul Colonial-Era Criminal Laws*, MYIND MAKERS (July 19, 2024, 3:03 PM), https://myind.net.

is that the old section talks about contemplation or hatred against the government, whereas this section talks about contemplation and hatred against the Sovereignty and integrity of India. The new law not only covers new threats, such as electronic communication and financial threats to anti-national activities, but on the other hand it also covers specific crimes, such as secession, armed rebellion, separatist activities, and threats to the Sovereignty of India, replacing vague terms such as disaffection present in old criminal law. This makes the section up to date with the current challenges that were not present in the previous law. It also states the explicit requirement of intent by introducing 'purposefully or knowingly' as a threshold aiming to prevent arbitrary arrests for casual criticism.

SEDITION LAW IN OTHER COUNTRIES

Most of the countries, especially developed countries, have either repealed or have significantly limited the scope of Sedition law due to concerns regarding misuse and violation of freedom of speech and expression[165]. Even the country from whom India inherited the Sedition law, the UK has itself repealed it in 2009 through the Coroners and Justice Act, 2009[166] under Gordon Brown's Labour government, but sadly, it still exists in India and is used many times as a weapon by the government against journalists or activists. Other countries like Australia [through the Crimes (Repeal of Seditious Offences) Amendment Act[167], 2007], Singapore [through the Seditious (repeal) Act 2021[168]], New Zealand (in 2008[169]), Scotland in 2011[170], and many more have also repealed their sedition laws because of increasing concerns of its misuse. There are also some countries, such as Germany and Spain, who never had any Sedition laws.

On the other hand, there are still countries with prevailing sedition laws, but in the subsequent years, it has been noted that most underdeveloped countries or countries funding terrorist activities rampantly use Sedition laws against individuals as a weapon. Some of such countries include Pakistan[171], Malaysia[172] and African nation which includes Kenya[173], Ghana, Nigeria,

[165] Ram Nandan v. State, AIR 1959 All. 101.
[166] Coroners and Justice Act 2009, c. 25, § 73 (Eng.).
[167] Crimes (Repeal of Seditious Offences) Amendment Act 2010 (Cth) (Austl.).
[168] Sedition (Repeal) Act 2021, No. 30, Acts of Parliament, 2021 (Sing.).
[169] Crimes (Repeal of Seditious Offences) Amendment Act 2007, No. 39, § 4 (N.Z.).
[170] Criminal Justice and Licensing (Scotland) Act 2010, asp 13, § 51 (Scot.).
[171] Haroon Farooq v. Federation, (Lahore High Court Mar. 30, 2023) (Pak.).
[172] Sedition Act 1948, Act 15 (1948) (Malay.).
[173] Penal Code, Cap. 63, § 77 (Kenya).

Uganda[174], Malawi[175], and Swaziland[176]. There are also countries that have stringent sedition laws because of a lack of democracy, which includes countries such as China[177] and Hong Kong[178].

Some democratic countries, such as US[179], Australia[180] and even India[181] , also had sedition law which still prevails, but the scope of the same has been limited so as not to infringe on people's right to freedom of speech and expression.[182]

FUTURE PROSPECTS

The transition from Section 124(A) of IPC to Section 152 of BNS has been a great evolutionary step towards democracy out of colonial, oppressive and highly debated law. Section 152 will evolve and shape with time and hence several factors will determine its evolution such as judicial interpretations and political climate. The discretionary application, which was a huge problem under Section 124(A), could still prevail despite its narrowed scope if judicial restraint prevails, allowing authorities to perpetuate the same patterns of exploitation and misuse, especially towards the legitimate critics and political activists raising voices for marginal communities. Other factors, including the political climate surrounding the national security discourse of the Nation, will also determine the extent of this law. This section can be rarely used for serious and threatening acts threatening the security and integrity of India, or be a very often-used act used to suppress dissent and ideological propaganda. Hence, the actual fate of this act will come forward only after its implications and judicial interpretations.

[174] Uganda Law Revision (Miscellaneous Amendments) Act 2023, §§ 39–40, 50 (Uganda).
[175] Penal Code (Amendment) Bill 2022 (Malawi).
[176] Adv. v. King, (Queen's High Court of Swaziland, Sept. 16, 2016) (Swaz.).
[177] Criminal Law of the People's Republic of China (promulgated by the Standing Comm. Nat'l People's Cong., July 1, 1979, rev. Mar. 14, 1997), arts. 102–103 (China).
[178] Crimes Ordinance, (Cap. 200) §§ 9–10 (H.K.); Law of the People's Republic of China on Safeguarding National Security in the Hong Kong S.A.R., arts. 20–23, June 30, 2020, Standing Comm. Nat'l People's Cong. (P.R.C.).
[179] 18 U.S.C. §§ 2384–2385 (2018) (criminalizing seditious conspiracy and advocating the overthrow of the U.S. Government).
[180] Criminal Code Act 1995 (Cth) § 80.2, repealed by Crimes Legislation Amendment (National Security) Act 2010 (Cth) sch. 1.
[181] Bharatiya Nyaya Sanhita, No. 45 of 2023, § 152, Acts of Parliament (India) (replacing Indian Penal Code, 1860, § 124A, effective July 1, 2025).
[182] Tanvitha Reddy K., *Evolution of Sedition Law in India and Implications of Section 150 of the New Bharatiya Nyaya Sanhita*, THE AMIKUS QRIAE, https://theamikusqriae.com/evolution-of-sedition-law-in-india-and-implications-of-section-150-of-the-new-bharatiya-nyaya-sanhita/ (last visited Aug. 10, 2025).

Reconstructing the Right to Die: Legal and Ethical Perspectives on Euthanasia in India

Prisha Verma[183]

ABSTRACT

The discourse surrounding the right to die and euthanasia presents one of the most nuanced and ethically charged challenges in contemporary constitutional and medical jurisprudence. At the heart of this debate lies Article 21 of the Indian Constitution[184], which guarantees the right to life and personal liberty a provision whose judicial interpretation has expanded over time to encompass the right to live with dignity. This article examines whether that dignified existence inherently includes the right to die, particularly in the context of terminal illness, unbearable suffering, and irreversible medical conditions. Drawing upon key judicial decisions such as Gian Kaur v. State of Punjab 1996[185], Aruna Shanbaug v. Union of India 2011[186], and Common Cause v. Union of India 2018[187], the study traces the Indian judiciary's gradual evolution from rejecting the right to die to recognizing passive euthanasia and living wills as constitutionally valid. It also engages with comparative jurisprudence from jurisdictions like the Netherlands, Canada, and the United States to contextualize India's position within a global rights framework. The article critically evaluates the philosophical, religious, and ethical foundations of euthanasia in Indian society, while also highlighting legislative lacunae such as the absence of a dedicated euthanasia statute and the practical challenges surrounding implementation of living wills. It argues for a comprehensive regularity regime that balances individual autonomy with institutional safeguards, thereby ensuring that the right to die with dignity is not merely symbolic but meaningfully actionable. The article concludes that a rights-based, ethically regulated approach to euthanasia is not only constitutionally viable but morally imperative in a modern democratic society.

Keywords: Right to Life, Right to Die, Passive Euthanasia

[183] Final year LL.B Student at New Law College, Pune.
[184] INDIA CONST. art. 21.
[185] Gian Kaur v. State of Punjab, (1996) 2 SCC 648.
[186] Aruna Ramachandra Shanbaug v. Union of India, (2011) 4 SCC 454.
[187] Common Cause v. Union of India, (2018) 5 SCC 1.

INTRODUCTION

Life in all its awe, vulnerability, and complexity has captivated philosophical thought, inspired spiritual reverence, and driven scientific exploration throughout human civilization. It is not merely a biological occurrence, but a juridical and ethical construct imbued with meaning, agency, and dignity. Yet, within the reverence for life lies its inescapable duality: death. The inevitability of death is the one certainty that shadows all human existence, and yet it remains the most unspoken, most resisted phenomenon in modern consciousness. The dramatic advancements in medical science have radically transformed our engagement with death. Where once individuals passed away amidst kin, governed by the natural course of illness and time, today they often perish in sterile clinical settings, tethered to machines that prolong physiological functions long after dignity has departed. Medicine, in its quest to preserve life, has inadvertently engineered the potential for a protracted dying process one that often suspends not just death, but also human autonomy. This transformation has triggered an urgent jurisprudential and ethical inquiry: when does the right to life become the right to refuse its artificial prolongation? Can the law, in its fidelity to liberty, recognize the individual's choice to die with dignity, free from unnecessary suffering and invasive intervention? These questions form the crux of the contemporary euthanasia debate.

Article 21 of the Indian Constitution has been broadly construed to encompass not just the right to life, but also the right to live with dignity. Whether this interpretive arc extends to encompass the right to die particularly through the legal recognition of passive euthanasia remains a matter of evolving jurisprudence. With judicial pronouncements like *Aruna Shanbaug and Common Cause,* Indian constitutional law has cautiously begun to acknowledge that in certain cases, preserving dignity may mean allowing a person to die, rather than forcing them to live. This article interrogates that constitutional journey from valuing the sanctity of life to recognising the autonomy of death.

CONCEPTUAL FOUNDATIONS OF EUTHANASIA

Euthanasia, etymologically derived from the Greek words *"eu"* (good) and *"thanatos"* (death), literally connotes a "good death." In modern legal and ethical discourse, euthanasia denotes the deliberate termination of a person's life to alleviate unbearable suffering, especially in instances of terminal illness or irreversible medical conditions. However, the term is neither

unidimensional nor universally understood; it encompasses a spectrum of practices, each raising distinct jurisprudential and moral questions. At its core, euthanasia challenges two dominant legal doctrines: the sanctity of life and the principle of individual autonomy. The former upholds life as inviolable, often rooted in religious or natural law philosophies. The latter contends that self-determination is the cornerstone of liberty, including the right to refuse or withdraw from life-sustaining treatment when such treatment serves only to prolong suffering without therapeutic benefit. The typology of euthanasia is crucial for any legal analysis. It is broadly categorized as follows:

- **Active Euthanasia**: Involves a direct action (e.g., administering a lethal substance) with the intention to end life. This form is typically illegal in most jurisdictions due to its proximity to homicide.
- **Passive Euthanasia**: Entails withholding or withdrawing medical interventions such as ventilators, feeding tubes, or resuscitation thereby allowing natural death to occur. Passive euthanasia has been judicially recognized in India under specific conditions post-*Aruna Shanbaug and Common Cause.*
- **Voluntary Euthanasia**: Performed with the patient's informed consent, it represents the individual's autonomous decision to end their life in situations of intolerable suffering.
- **Non-Voluntary Euthanasia**: Administered when the patient is incapable of consent (e.g., in a persistent vegetative state) and decisions are made by surrogates or medical boards.
- **Involuntary Euthanasia**: Performed against the patient's will; morally and legally impermissible, equated with murder.

Often conflated with euthanasia are the concepts of suicide, assisted suicide, and physician-assisted dying. While suicide involves self-inflicted death, assisted suicide denotes the act of providing the means or knowledge for someone to end their own life. Physician-assisted suicide ("PAS"), a subset thereof, typically involves a doctor prescribing but not administering a lethal dose at the patient's request. Unlike euthanasia, where the act is performed by a third party, PAS places the final act in the patient's hands. This distinction bears significant legal implications. India's legal system, until recently, criminalised both suicide and its abetment under Section 226 and 108 of BNS[188], (Sections 309 and 306 of the IPC)[189] respectively. While

[188] Bharatiya Nyaya Sanhita, 2023, § 226, 108, No. 45, Acts of Parliament, 2023 (India).
[189] Indian Penal Code, 1860, § 306, 309, No. 45, Acts of Parliament, 1860 (India).

judicial opinion on the constitutionality of Section 309 has oscillated, the state's response to suicide remains punitive rather than compassionate a position increasingly at odds with global human rights discourse.

Thus, the conceptual foundation of euthanasia rests at the crossroads of law, medicine, and morality. It demands a legal framework that can distinguish between preserving life and prolonging suffering, between protecting dignity and denying autonomy. Any engagement with the legality of euthanasia must begin by recognising these definitional nuances and the profound ethical terrain they implicate.

HISTORICAL AND PHILOSOPHICAL ROOTS OF EUTHANASIA

The contemporary debate on euthanasia, often portrayed as a modern dilemma born of medical advancement, in truth has ancient philosophical, cultural, and religious antecedents. The ethical permissibility of voluntary death particularly in the face of incurable suffering has long been contemplated across civilizations. The idea that death, when embraced consciously and peacefully, may constitute a moral or even spiritual choice is embedded deeply in the world's intellectual traditions.

In ancient Indian society, terminally ill individuals were often allowed to die naturally without aggressive medical intervention, based on the belief that extending suffering artificially disrupted the natural rhythm of life and death. The Indic religious philosophies of Hinduism, Buddhism, and Jainism articulate nuanced approaches to voluntary death. Practices like *prayopavesha* in Hinduism and *sallekhana* in Jainism reflect a long-standing cultural and spiritual accommodation of death as a conscious, dignified act. *Prayopavesha* is a slow, non-violent process wherein a person voluntarily fasts unto death after fulfilling all social, familial, and spiritual duties. It is not equated with suicide, as it is undertaken without despair, motivated by detachment and spiritual resolution. In Hindu thought, views on euthanasia are not uniform while some traditions regard it as a compassionate act aligned with *ahimsa* (non-violence), others oppose it for disturbing the karmic cycle and interfering with divine will. Mythological references such as Lord Rama's Jal samadhi and the voluntary passing of Lord Buddha and Mahavira through spiritual discipline, reinforce the notion that seeking death at the appropriate time can be a path to liberation. Buddhism, while emphasizing compassion and non-harm, generally discourages euthanasia, especially voluntary or active forms, due to concerns about

karmic consequences. However, certain *Mahāyāna* interpretations suggest that in exceptional cases, euthanasia may be permissible if driven by altruistic compassion rather than personal suffering.

Conversely, the Abrahamic faiths Judaism, Christianity, and Islam embrace a more absolutist position. Life is considered sacred and inviolable, gifted solely by God. Human beings are regarded as custodians, not owners, of their lives. Both suicide and euthanasia are seen as sinful transgressions against divine sovereignty. The Roman Catholic Church, in particular, has taken a consistent and categorical position against euthanasia, invoking the sanctity of life and the moral imperative of the commandment "Thou shalt not kill." Suffering, within this framework, is often construed as spiritually redemptive and must be endured, not escaped.

Western secular philosophy also offers a robust lineage of thought on death and autonomy. In ancient Greece, philosophers such as Socrates and Plato explored death not as defeat, but as a transition potentially welcome when life ceased to offer virtue or reason. The Stoics, especially Seneca, defended suicide in situations where life lost its ethical meaning due to unbearable suffering or loss of autonomy. In certain cases in ancient Rome, assisting someone in ending their life was considered an act of mercy rather than a crime.

The Enlightenment brought a further shift toward rationalism and personal liberty. David Hume, in his controversial essay, "On Suicide"[190], challenged theological arguments against voluntary death and posited that if life becomes a burden rather than a benefit, the individual should have the moral agency to end it. John Stuart Mill's principle of individual liberty, particularly the
notion that sovereignty over one's body and mind must remain with the individual unless harm is caused to others, provides a strong liberal foundation for modern arguments in favour of euthanasia. Together, these diverse perspectives reveal that the impulse to die with dignity is not a novel aberration, but an ancient aspiration refined through centuries of philosophical, spiritual, and cultural engagement. Whether regarded as an act of moral failure or moral courage, euthanasia occupies a persistent place in humanity's long-standing struggle to reconcile suffering, dignity, and autonomy at the threshold of death.

[190] David Hume*, Two Essays: I. On Suicide. II. On the Immortality* (John Smith ed. Liberty fund 1980) (1777).

METHODS OF EUTHANASIA

The classification of euthanasia is not merely a semantic exercise it holds profound legal, ethical, and procedural implications. The methods of euthanasia vary depending on the manner, means, and agency involved in causing or permitting death. These distinctions serve as the cornerstone for any meaningful discourse on regulation and morality surrounding end-of-life decisions.

- **Active Euthanasia –** It involves the deliberate act of ending a patient's life through direct intervention, typically by administering a lethal substance. The intention is explicit: to hasten death in order to relieve unbearable suffering. This method is often considered the most ethically and legally contentious, as it blurs the line between mercy and homicide. In jurisdictions where active euthanasia is legalized such as the Netherlands, Belgium, and Canada it is governed by stringent safeguards, including repeated voluntary consent, terminal illness, and approval by independent medical boards. In India, active euthanasia remains illegal, and any medical professional administering such intervention would fall within the ambit of Section 103 and 105 of Bharatiya Nyaya Sanhita[191]("BNS") (Section 302 or 304 of the Indian Penal Code)[192]("IPC"), amounting to murder or culpable homicide. Even if performed with consent, such an act does not receive statutory immunity under the current legal regime.

- **Passive Euthanasia** – It refers to the cessation or non-initiation of life-sustaining measures, thereby, permitting the patient to die a natural death. It includes actions such as turning off ventilators, discontinuing feeding tubes, or halting medication. Crucially, the intention is not to kill, but to cease artificial prolongation of life where recovery is medically impossible and continued intervention violates the patient's dignity. The Supreme Court of India in *Aruna Shanbaug v. Union of India* and reaffirmed in *Common Cause v. Union of India*, formally recognized passive euthanasia as constitutionally permissible under Article 21, provided specific legal and procedural safeguards are met. This recognition included the right of patients through "living wills" or advance directives to refuse treatment under certain conditions. Passive euthanasia thus occupies a legally sanctioned space in India's

[191] Bharatiya Nyaya Sanhita 2023, § 103, 105, No. 45, Acts of Parliament, 2023 (India).
[192] Indian Penal Code 1860, § 304, 304, No. 45, Acts of Parliament, 1860 (India).

end-of-life framework, premised on the principle that allowing death, when life can no longer be lived with dignity, does not equate to causing death.

- **Physician-Assisted Suicide ("PAS")** – Closely related to active euthanasia is the concept of PAS, wherein a medical professional provides the means such as prescribing lethal medication but the final act of administering it is carried out by the patient. Unlike active euthanasia, where the physician directly causes death, PAS shifts the agency to the individual, who takes the final act themselves. This model is legal in countries like the United States (in states such as Oregon and Washington) and Switzerland under regulated circumstances. In India, PAS remains unlawful and would attract liability under Section 108 of BNS (Section 306 IPC), abetment of suicide, irrespective of the suffering endured by the individual. The method employed in euthanasia is not just a clinical decision it determines the legality, moral defensibility, and societal acceptance of the act. While passive euthanasia has been judicially embraced within the Indian constitutional framework, active euthanasia and PAS remain criminal offences. This asymmetry underscores the need for a more holistic statutory framework that can reconcile the method with intention, consent, and dignity. The method of dying, in this context, is not a mere technicality it is a statement of how the law interprets suffering, autonomy, and human agency at the edge of life.

CONSENT IN EUTHANASIA

Consent lies at the heart of any ethically defensible and legally permissible act of euthanasia. It distinguishes compassionate medical care from criminal culpability, and patient autonomy from involuntary termination. The classification of euthanasia based on consent is thus foundational in assessing both its moral legitimacy and legal status.

- **Voluntary Euthanasia** – It takes place when a competent individual knowingly and expressely requests the termination of life, typically due to terminal illness or unrelievable suffering. The patient's consent is central not only as an ethical safeguard, but also as a legal shield for the physician involved. Jurisdictions that have legalized euthanasia or physician-assisted dying, such as the Netherlands, Belgium, and Canada, place great emphasis on repeated, informed, and unequivocal voluntary consent. In the Indian context, while active voluntary euthanasia remains prohibited, the recognition of "living wills"

under *Common Cause v. Union of India* effectively grants individuals the right to predetermine their refusal of life-sustaining treatment. This judicial innovation reinforces autonomy, allowing individuals to shape their dying process even in a future state of incapacity.

- **Non-Voluntary Euthanasia** – It is undertaken when the individual is unable to provide consent due to coma, persistent vegetative state, infancy, or cognitive disability and the decision is made by surrogates, guardians, or courts, ostensibly in the patient's best interests. This form is fraught with ethical complexity and legal ambiguity, given the impossibility of verifying the patient's will. The Supreme Court in Aruna Shanbaug laid down procedural safeguards involving medical boards and judicial oversight precisely to regulate such scenarios. India permits non-voluntary passive euthanasia, subject to strict scrutiny by multidisciplinary medical panels and approval from relevant High Courts, thereby aiming to protect the patient from exploitation and ensure that the decision truly reflects therapeutic futility and not familial convenience.

- **Involuntary Euthanasia** – Involuntary euthanasia is carried out against the explicit wishes of the patient and is unequivocally condemned as illegal. Regardless of intent or context, it constitutes homicide under the law. No jurisdiction that recognizes euthanasia condones its involuntary form. Such acts are not only illegal but ethically indefensible, violating the core tenet of human dignity and consent.

ARGUMENTS AGAINST LEGALIZING EUTHANASIA

Despite judicial and philosophical support for the right to die with dignity, the legalization of euthanasia continues to evoke strong resistance in India. The objections span ethical, social, legal, and cultural dimensions, reflecting both principled concerns and pragmatic anxieties.

India's socio-religious fabric is deeply rooted in doctrines that sanctify life. Hinduism, Islam, Christianity, and other major faiths largely view life as sacred and divinely ordained. The deliberate termination of life, even in the name of mercy, is often equated with spiritual transgression. Legalizing euthanasia could thus face significant societal resistance in a country where morality is often guided more by scripture than statute.

In a system fraught with familial disputes and property conflicts, legal euthanasia could become a tool for coercion or manipulation. Vulnerable patients particularly the elderly, disabled, or terminally ill may be pressured to consent to euthanasia for ulterior motives, such as securing inheritance or avoiding the burden of caregiving.

Opponents argue that euthanasia, especially in its active form, contradicts the very essence of Article 21, which guarantees the right to life. They contend that allowing state-sanctioned termination of life even with consent undermines the constitutional sanctity attached to life and risks eroding the principle of non-derogability inherent in fundamental rights.

In a country where millions still lack access to basic healthcare, legalizing euthanasia may disproportionately affect the poor and marginalized. There is a legitimate fear that euthanasia could be used as a cost-cutting substitute for palliative care, further marginalizing those already deprived of adequate medical support.

Critics argue that the need for euthanasia arises not from the inevitability of death, but from the failure of the healthcare system to manage suffering. With increased investment in palliative care, psychological support, and hospice services, much of the pain and despair that drives euthanasia requests can be alleviated without resorting to life-ending measures.

The legalization of euthanasia opens the door to its commodification. In the absence of strong regulatory mechanisms, there is a risk of a profit-driven "death industry" emerging, where decisions are influenced by economic calculus rather than ethical deliberation.

There is also a socio-cultural concern that euthanasia could serve as a convenient escape for families unwilling to bear the burden emotional, financial, or physical of long-term care. In societies that idealize familial duty, this shift may corrode the moral bonds between generations.

ARGUMENTS IN FAVOUR OF LEGALIZING EUTHANASIA

Advocates of euthanasia invoke a competing set of values autonomy, dignity, and compassion to argue that a humane legal system must allow individuals to exercise control over the manner and timing of their death, particularly when life becomes synonymous with prolonged agony.

The most compelling argument is anchored in compassion; euthanasia provides a dignified exit from unrelenting physical or psychological torment. To compel an individual to endure unbearable suffering when death is inevitable is not an act of protection, but of cruelty masquerading as care.

The principle of bodily autonomy is a cornerstone of constitutional jurisprudence. Just as patients have the right to consent to or refuse treatment, they should also possess the right to decline artificial prolongation of life. Forcing unwanted treatment upon a competent individual is ethically indefensible and, arguably, legally actionable as assault.

The prolonged suffering of a terminally ill patient often imposes immense physical, emotional, and financial strain on family members. Legalizing euthanasia can offer closure and prevent undue hardship, while also allowing a dignified farewell on the patient's own terms.

From a public health perspective, legal euthanasia could enable better allocation of scarce medical resources. Maintaining individuals in irreversible vegetative states or terminal decline consumes hospital infrastructure that could otherwise serve patients with curative prospects.

If the right to life under Article 21 includes the right to live with dignity, it must logically include the right to die with dignity. It must embrace both its positive and negative aspects, for a right to hold true significance, just as the right to speak inherently includes the right to stay silent, the right to life must equally entail the right to reject a life stripped of dignity.

The euthanasia debate is not merely a clash of values it is a constitutional conversation between liberty and restraint, between moral duty and individual choice. Both sides present valid concerns, and any legal framework must reflect a balanced synthesis of ethical clarity, procedural safeguards, and societal compassion.

SUICIDE, ASSISTED SUICIDE, AND EUTHANASIA: DISTINCTIONS IN LAW AND ETHICS

The right to die discourse is often clouded by conceptual overlap between suicide, assisted suicide, and euthanasia. However, these acts are fundamentally distinct in their motivation,

agency, intent, and legal treatment. Conflating them dilutes the complexity of end-of-life ethics and undermines the precision required for constitutional and legislative evaluation.

1. **Suicide** – Suicide is the intentional and voluntary act of ending one's own life, typically due to psychological distress, despair, mental illness, terminal disease, or social stigma. It is inherently self-inflicted and autonomous, though often a consequence of impaired mental health or acute emotional turmoil. Historically viewed as a moral transgression and criminal offence, contemporary approaches increasingly emphasize the need for mental health intervention rather than penalisation. Under Section 226 of BNS (Section 309 of the IPC), attempting suicide remains a criminal offence, although the Mental Healthcare Act, 2017[193] now decriminalizes the act for individuals suffering from mental illness, mandating care and rehabilitation rather than punishment. While suicide is often linked to existential dissatisfaction, it does not require medical justification or third-party involvement, distinguishing it sharply from euthanasia.

2. **Assisted Suicide and Physician-Assisted Suicide** – Assisted suicide occurs when another person facilitates or provides the means for someone to end their own life often by supplying medication, tools, or guidance with the clear intent that the person will use them to commit suicide. It is a specific form wherein a medical professional provides the means (e.g., prescribing lethal medication) but does not administer it. This model retains patient autonomy the final act is performed by the patient but introduces a third-party contributor, raising both ethical and legal implications. In India Section 108 of BNS (306 IPC) criminalize the abetment of suicide, making both general and PAS expressly punishable under law, regardless of motive or medical context. Internationally, PAS is legal in several jurisdictions (e.g., Oregon, Switzerland, parts of Canada) under strict regulatory frameworks emphasizing consent, terminal illness, and mental competence.

3. **Euthanasia** – Euthanasia, colloquially known as "mercy killing," involves the intentional termination of a patient's life by a third party, typically a medical professional, to relieve intractable suffering or terminal illness. Unlike suicide and PAS, the act of causing death in euthanasia is carried out by someone other than the patient, with or without the patient's explicit consent. It is further divided into: Active euthanasia and Passive euthanasia. In

[193] Mental Healthcare Act, 2017, No. 10, Acts of Parliament, 2017 (India).

India, only passive euthanasia has been legalized, and even then under a narrow judicially regulated framework following the landmark decisions in *Aruna Shanbaug* and *Common Cause.* Active euthanasia and PAS remain outside the legal pale, considered equivalent to culpable homicide or abetment of suicide.

While suicide, assisted suicide, and euthanasia may converge in their outcome the intentional ending of life their moral, legal, and procedural landscapes differ sharply. The intent behind the act, the agency involved in carrying it out, and the legal responsibility of third parties define their respective ethical boundaries. A nuanced understanding of these distinctions is essential to frame coherent end-of-life laws that are both compassionate and constitutionally sound.

THE RIGHT TO LIFE VIS-À-VIS THE RIGHT TO DIE UNDER ARTICLE 21 OF THE INDIAN CONSTITUTION

India's constitutional discourse on euthanasia and the right to die is grounded in the profound philosophical and legal interpretations of Article 21, which guarantees the right to life and personal liberty. This provision, originally a protective clause against arbitrary state action, has evolved into a rich fountain of substantive rights including the right to live with dignity, the right to privacy, and, most recently, the right to die with dignity.

Constitutional framework

Article 21 of the Constitution of India, derived from the Government of India Act, 1935, states – *"No person shall be deprived of his life or personal liberty except according to procedure established by law."* The judiciary has interpreted this provision expansively, ensuring that life under Article 21encompasses more than mere animal existence, it guarantees a life imbued with dignity and autonomy. The recognition of this right until life's natural end implies that the right to life necessarily extends to the right to die with dignity. However, it is important to distinguish this from a mere "right to die," which could be interpreted as legitimising suicide. The law and courts have sought to draw a nuanced line between a dignified end to suffering and an unnatural curtailment of life.

Judicial evolution

The Indian judiciary's treatment of euthanasia has undergone considerable evolution through landmark cases –

1. *Maneka Gandhi v. Union of India 1978*- Expanded the scope of Article 21 to include substantive due process, integrating Articles 14 and 19 with Article 21. This decision laid the interpretive foundation for future right-based expansions, including the right to die with dignity.
2. *Maruti Sripati Dubal v. State of Maharashtra 1987*[194] - The Bombay High Court held that Section 309 IPC, which criminalizes attempted suicide, "unconstitutional", reasoning that the right to die is intrinsically embedded in the right to life.
3. *P. Rathinam v. Union of India 1994*[195] - Affirmed that Article 21 includes the right to die, striking down Section 309 IPC as violative of fundamental rights.
4. *Gian Kaur v. State of Punjab 1996* - A Constitution Bench overruled *Rathinam*, holding that the right to life does not include the right to die, but crucially, introduced the concept of the "right to die with dignity", especially in the context of terminal illness.
5. *Aruna Ramachandra Shanbaug v. Union of India 2011* - In this harrowing case of a nurse in a permanent vegetative state for over three decades, the Supreme Court allowed passive euthanasia under strict judicial oversight. The judgment laid down conditions for withdrawal of life support in exceptional cases.
6. *Common Cause v. Union of India 2018* - A Constitution Bench delivered a landmark ruling that legalized passive euthanasia and affirmed that the right to die with dignity is part of Article 21. The Court further acknowledged the validity of advance directives or living wills, which empowers individuals to decline life-prolonging treatment in cases of terminal illness.

Justice D.Y. Chandrachud eloquently articulated this in his concurring opinion – *"Life and death are inseparable... From a philosophical perspective, there is no antithesis between life and death. Both constitute essential elements in the inexorable cycle of existence."*[196]

[194] Maruti Shripati Dubal v. State of Maharashtra, 1987 Cri LJ 743 (Bom).
[195] P. Rathinam v. Union of India, AIR 1994 SC 1844.
[196] Common Cause v. Union of India, (2018) 5 SCC 1.

The Indian constitutional jurisprudence on euthanasia reflects a careful balancing act affirming human dignity without trivialising human life. While the right to die with dignity has been judicially acknowledged, its practical realization demands legislative clarity, institutional safeguards, and a robust ethical framework. As India moves toward codifying end-of-life rights, the challenge lies in ensuring that the law honours both autonomy and protection, compassion and caution, life and the liberty to let it go.

COMPARATIVE JURISPRUDENCE

The legal treatment of euthanasia around the world reflects diverse cultural, ethical, and constitutional values. A comparative overview reveals a spectrum from complete prohibition to full legalisation often shaped by societal attitudes toward autonomy, suffering, and the sanctity of life.

Country	Legal Status	Remarks
Netherlands	Legal	Active and passive euthanasia permitted since 2001
Belgium	Legal	Legalised active and passive euthanasia since 2002
Canada	Legal	Medical assistance in dying legal under federal law
USA	Partially Legal	Physician-assisted suicide legal in select states (e.g., Oregon, Washington)
UK	Illegal (Active), Legal (Passive)	Euthanasia prohibited; withdrawal of futile treatment allowed
Germany	Illegal (Active), Legal (Passive)	Assisted suicide permitted with limitations
Japan	Legal (Passive only)	Allowed in limited cases; lacks comprehensive legislation

Switzerland	Legal (Assisted Suicide)	Permits assisted suicide if not for selfish motives

This comparative lens reveals that while jurisdictions differ in their thresholds and terminology, many liberal democracies are increasingly accommodating euthanasia within a rights-based human dignity framework, albeit with procedural safeguards and moral checks.

LEGISLATIVE INITIATIVES IN INDIA

Despite significant judicial progress, the lack of comprehensive legislation remains a major concern in India's end-of-life jurisprudence. One notable development in this regard is –

The Medical Treatment of Terminally Ill Patients (Protection of Patients and Medical Practitioners) Bill, 2016[197]

It recognises living wills and the right to refuse treatment. Applies to terminally ill patients aged 16 and above. It requires medical board review and High Court approval and protects both patients and medical practitioners from legal liability. It draws from Law Commission's 196th and 241st Reports. It also seeks to legalise passive euthanasia within a clear statutory framework. Though the Bill remains unpassed, it reflects growing legal consciousness and aligns closely with the principles laid down in *Common Cause*. Its enactment would mark a decisive shift from judicial improvisation to statutory codification, embedding the right to die with dignity within India's formal legal architecture.

CRITICAL APPRAISAL

While the legal recognition of euthanasia in India particularly passive euthanasia, marks a historic affirmation of individual autonomy, its practical implementation raises several ethical and systemic concerns that demand close scrutiny –

- Risk of Coercion – Terminally ill or elderly patients, especially those dependent on others, may be vulnerable to subtle or overt coercion. Legal safeguards must ensure that consent is truly voluntary and not driven by familial pressure, neglect, or economic compulsion.

[197] The Medical Treatment of Terminally Ill Patients (Protection of Patients and Medical Practitioners) Bill, 2016 (Union Health Ministry, India).

- Lack of Procedural Uniformity – The absence of uniform national guidelines for medical boards, review procedures, and documentation standards increases the risk of arbitrariness in life-ending decisions.

- Disparity in Access to Palliative Care – A significant segment of India's population lacks access to quality end-of-life care. In such contexts, choosing death may be less a matter of autonomy and more a reflection of inadequate medical support.

- Cultural and Religious Resistance – Deeply ingrained beliefs in the sanctity of life pose social barriers to acceptance. Religious objections continue to influence both public discourse and policymaking.

- Potential for Commercial Exploitation – In a healthcare system not immune to corruption, euthanasia could be misused for pecuniary gain under the guise of consent, especially in cases involving inheritance or medical malpractice liability.

Despite these challenges, a blanket denial of euthanasia, particularly in cases involving irreversible suffering can amount to a denial of dignity. The real task ahead lies in designing a legal framework that operationalises compassion without compromising accountability.

RECOMMENDATIONS

The right to die with dignity is not antithetical to the right to life. Rather, it is its most humane expression in circumstances where suffering strips life of meaning and dignity. Legal and ethical recognition of this right must now translate into actionable policy. India must –

- Enact clear legislation defining the scope, process, and safeguards for passive euthanasia.
- Establish uniform medical review boards across states to ensure consistency and transparency.
- Promote public awareness and accessibility of advance directives, ensuring individuals can make informed choices about end-of-life care.
- Integrate palliative and hospice care into the public health system, so that the right to die is not a substitute for the right to comprehensive care.

A harmonized legal framework, grounded in constitutional morality and human dignity, is essential to balance autonomy, compassion, and protection in India's end-of-life jurisprudence.

CONCLUSION: RECONCILING DIGNITY WITH DEATH

Indian constitutional jurisprudence on euthanasia reflects a delicate yet resolute balancing act affirming the inviolability of human dignity without undermining the sanctity of life. Judicial recognition of the right to die with dignity under Article 21 has marked a progressive evolution in the interpretation of personal liberty. However, translating this recognition into enforceable rights demands clear legislative articulation, institutional safeguards, and a robust ethical framework that navigates the complex intersection of autonomy, medical ethics, and public interest. In this regard, the 2016 Draft Bill on passive euthanasia, emerging from the Law Commission's 241st Report 2012[198], offers a vital starting point. However, its practical viability must be tested through rigorous scrutiny to identify and address its legislative gaps. A law dealing with such profound human questions must be not only legally sound but ethically sensitive, administratively feasible, and socially responsive. This research underscores the paradox that while the Right to Life itself remains a partially fulfilled promise for many in India, a parallel movement advocating for the Right to Die often seen as antithetical to the former has gained momentum, influenced in part by global discourse. Yet, the Indian context demands an indigenous legal response, grounded not in borrowed ideologies but in constitutional morality and the lived realities of its people. Ultimately, recognizing the right to die with dignity as part of the constitutional fabric affirms the individual's right to choose not just how to live, but how to exit life with grace. As India stands on the threshold of codifying end-of-life rights, the true challenge lies in crafting a legal regime that harmonizes compassion with caution, freedom with protection, and above all, life with dignity even in death.

[198] LAW COMMISSION OF INDIA, 241ST REPORT ON PASSIVE EUTHANASIA – A RELOOK (August 2012), https://cdnbbsr.s3waas.gov.in/s3ca0daec69b5adc880fb464895726dbdf/uploads/2022/08/2022081061-1.pdf.

Case Commentary on M K Ranjitsinh & Ors. V. Union of India & Ors. (2024)

Rudrajeet Thakur[199]

ABSTRACT

The Right to Life and Personal Liberty, enshrined under Article 21 of our Constitution, serves as an umbrella term that incorporates several other rights, including the right to privacy, the right to live with dignity, the right to water, and more. In the present case of *M K Ranjitsinh & Ors. V. Union of India & Ors.,* the Hon'ble Supreme Court ("Hon'ble Court") acknowledged the right against the adverse effects of climate change as falling within the scope of Article 21 and also Article 14 of the Constitution. In 2019, a writ petition regarding the endangerment and possible extinction of the Great Indian Bustard("GIB") based on a report by the International Union for Conservation of Nature ("IUCN") was filed before the Hon'ble Court. The petitioners claimed for undergrounding high and low voltage electric lines and installing bird diverters, which were claimed to be the main reasons for the rapid and steady decline of the species since the 1960s. The defendants contended against the feasibility of the directions provided by the Hon'ble Court in a separate petition in 2021. Against the backdrop of this petition, a subsequent writ petition was filed before the Hon'ble Court, which led to the landmark judgement. The evolution of this case, stemming from the issue of the extinction of the GIB, soon turned into a matter of India's commitment to International environmental conventions and treaties and proper usage of renewable sources of energy for better conservation of nature. This landmark judgement, being seminal for both the future of the commercial energy industry and the conservation of critically endangered species like the GIB, upholds the right to life and personal liberty.

Keywords: Climate Change, Article 21, Renewable Energy, the GIB, IUCN

BASIC INFORMATION

Petitioner: M K Ranjitsinh & Ors.

Respondent: Union of India & Ors.

Court: Supreme Court of India

Case Number: W.P. (C) No. 838/2019

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Quorum: Dr D.Y. Chandrachud, C.J., and J.B. Pardiwala and Manoj Misra, JJ.
Decided on: 21.03.2024

FACTS OF THE CASE

IUCN in its 2018 report, classified the GIB (scientific name *Ardeotis nigriceps)* as 'critically endangered'.[200] For context, the report published by IUCN in 1988 classified the GIB as 'threatened', in 1994-2008 it acquired the status of 'endangered'. IUCN framed many reasons for this decline, which include loss of habitat, hunting, and direct disturbance.[201]

This statistical data provided by IUCN goes on to show the 'rapid and steady decline' in the population of the GIB.[202] On the basis of this report, a Writ Petition (Civil) No 838 of 2019 ("Writ Petition") was filed in the Supreme Court of India under Article 32 of the Indian Constitution. In that petition the petitioner demanded for directions to be issued against the defendants directing them to install bird diverters, putting halt to new projects and extending leases for existing ones, removal of power lines, wind turbines, and solar panels from vital habitats, installing predator-proof enclosures in breeding habitats, and enforcing a dog population control program as a part of the emergency response plan that will be put into place in order to protect and recover the GIB.[203]Upon hearing, the Hon'ble Court directed the competent authorities to turn the overhead powerlines surrounding the vital habitat of the GIBs into underground powerlines. The Hon'ble Court also issued directions to set up bird diverters once the underground powerlines are in place.[204] India's Ministry of Environment, Forests, and Climate Change, the Ministry of Power, and the Ministry of New and Renewable Energy, being the respondent 1,3 & 4 respectively, filed I.A. No 149293 of 2021 to modify the 2019 judgement, claiming India has committed to reduce emissions and transition from fossil fuels,

[200] IUCN RED LIST, 'Great Indian Bustard',https://www.iucnredlist.org/species/22691932/134188105#population, cited in M K Ranjitsinh & Ors. v. Union of India & Ors., 2024 SCC OnLine SC 570.

[201] *Ibid*.

[202] M K Ranjitsinh & Ors. v. Union of India & Ors., 2024 SCC OnLine SC 570 ¶ 2.

[203] *Ibid*. at 4 ¶ 3.

[204] *Ibid*. at 6 ¶ 5.

including the adoption of solar and wind energy, however, undergrounding of high voltage power lines is not feasible, and replacing untapped renewable energy with coal-fired power will generate pollution.[205]

ISSUES INVOLVED

- Whether it is possible to incorporate the use of renewable sources of energy with the plan of conservation of the critically endangered species known as the GIB?
- Whether the Right against adverse effects of Climate Change is recognized by India's Global obligations?
- Whether the Supreme Court of India's 2020 blanket directions on conserving the GIB necessary and appropriate?

CONTENTIONS MADE BY THE PETITIONER

The Petitioners, M K Ranjitsinh & Ors., contended on the following matters in the Writ Petition filed before the Supreme Court of India[206]:

- An urgent plan is needed for the preservation of the critically endangered species, the GIB and Lesser Florican.
- Petitioners requested the Hon'ble Court to issue directions against the Respondent to install Bird Diverters, putting ongoing projects in that area to a halt, and renewing the lease on such areas, substitution of overhead powerlines with underground powerlines, etc.
- Petitioners also requested the Hon'ble Court to set up an expert committee to oversee the feasibility of the plans taken up for the conservation of the GIB.

[205] *Ibid*. at 7-8 ¶ 7.

[206] Nikita Susan Eapen, *M.K. Ranjitsinh v. Union of India*, THE AMIKUS QRIAE (last visited May 24, 2025), https://theamikusqriae.com/m-k-ranjitsinh-v-union-of-india/.

CONTENTIONS MADE BY THE RESPONDENT

The Respondents, especially respondent no. 1, 3 & 4 proposed modifications on the order past by the Hon'ble Court in 2020 and filed I.A. No 149293 of 2021 on 17 November 2021.It was contended that[207]:

- The Judgement of 2020 has a disadvantageous effect on the power sector of India.
- India has pledged to adhere to international agreements like the 2015 Paris Agreement, aiming to reduce emissions and transition away from fossil fuels. However, the actual area of the GIBs is smaller than the directive that was issued, therefore, highlighting the country's solar and wind energy potential.
- The process of relocating existing high and low voltage electric lines underground is not impossible.
- If coal power is used in energy production in the vital habitat area of the GIB, it would lead to greater harm as it would cause pollution.

KEY LEGAL PROVISIONS DISCUSSED

The key legal provisions discussed throughout this case are as follows:

- **Article 21:** The Constitution of India, under Article 21, enshrines the Right to Life and Personal Liberty among all its citizens. Article 21 also extends to non-citizens and foreigners also. Article 21 is an umbrella provision that incorporates within itself various different rights related to an individual's smooth and healthy enjoyment of life.

  The right to Privacy, the right to live life with dignity, the right to a healthy environment, and several other derivative rights together form the substantive core of Article 21. In this landmark judgment, the Hon'ble Court expanded the scope of Article 21, it declared that the right against the adverse effects of climate change should be embodied under the broad scope of Article 21.
- **Article 14:** Ths Hon'ble Court invoked Article 14 of the Constitution, which deals with the right to equality to all citizens of India, regardless of their caste, class, gender, place of birth, etc. The detrimental effects of climate change can affect a particular group of people than others, due to the unevenness of the geographical territory of India.

[207] M K Ranjitsinh & Ors. v. Union of India & Ors., 2024 SCC OnLine SC 570 ¶ 7.

Therefore, policy framers must ensure that every citizen of India receives equal protection from the effects of climate change.

- **Article 48A:** Article 48A, though a Directive Principle of State Policy, imposes a duty upon the State to maintain a healthy environment for the citizens. Further ,the Hon'ble Court in this case emphasized that the role of the State in ensuring a healthy environment is not optional, that is, where Article 48A of the Constitution comes into play.

- **Article 51A(g):** Article 51A(g) of the Indian Constitution imposes a duty on the civilians of the country themselves, where the Constitution emphasizes the role of citizens to ensure the improvement of the natural environment such as forests, lakes, rivers, and wildlife.

LEGAL REASONING / RATIONALE APPLIED BY THE HON'BLE COURT

Ratio decidendi

The Ratio Decidendi of the M K Ranjitsinh case can be summarized as follows:

- The Hon'ble Court while recognizing and incorporating the right to a clean environment under the ambit of Article 21, stated that there is a need for a specific right in this case, that right being the 'right against the adverse effects of climate change'.

- Furthermore, the Hon'ble Court declared that the preservation of the GIB was of paramount importance.

- Additionally, the Hon'ble Court acknowledged that the blanket direction issued by it in its previous 2020 judgement is impractical and can cause more harm than improvement by barring the development of renewable sources of energy production, which is one of the International Commitments of India post the 2015 Paris Agreement, thus revoking the blanket direction.

- The Hon'ble Court constituted an Expert Committee for better evaluating the vulnerable sites and taking a site-specific approach towards preservation of the natural environment, including the preservation of the GIB.

JUDGEMENT

The Hon'ble Court, in the M K Ranjitsinh case, upheld Article 21 of the Constitution while incorporating the right against the adverse effects of climate change under the broad ambit of Article 21. Moreover, it also invoked Article 14 of the Constitution, emphasizing the role of policymakers to ensure equality in environmental matters, regardless of an individual's place of birth. It also placed an obligation on the State under Article 48A and on the citizens under Article 51A(g) to ensure a clean, safe, and healthy environment throughout the country. For this case, the Hon'ble Court adopted a constitutional and rights-based approach towards environmental protection matters. Upon hearing the respondents' contention, the Hon'ble Court revoked its blanket direction, directing the State to turn the overhead powerlines into underground powerlines, which is an impossible task in itself. This direction also undermines India's International Commitment, made in the 2015 Paris agreement, the commitment which strived towards using renewable sources of energy. The Hon'ble Court also set up an expert committee to better suit the requirements of the site-specific evaluation that is needed throughout India to preserve the natural environment. At the end, the Hon'ble Court's judgement provided a paradigm shift from Directive-based Judicial Activism to an Expert committee-based scientific approach.

CONCLUSION

The landmark Supreme Court Judgement in the aforementioned case of M K Ranjitsinh paved the path for future environmental litigation not only for India, but for the entire Global South, facing similar environmental or climate issues. The Hon'ble Court humbly curtailed the extent of Judicial expertise in the techno-environmental sphere and acknowledged the importance of the workings of an expert committee set up for specific issues regarding the environment. At the end, the Hon'ble Court, through this judgement, pays respects to International Conventions and India's commitment to them, which is also a Constitutional proposal under Article 51 of the Constitution.

Consent Within Marriage: Reclaiming Bodily Autonomy and Gender Equality in India

K. Jhansi Lakshmi[208]

ABSTRACT

This article offers a critical evaluation of the marital rape exception in Indian law, currently codified under Section 63 of the Bharatiya Nyaya Sanhita (BNS), 2023 (previously Section 375 of the Indian Penal Code i.e. IPC). It also explores the progression of judicial interpretations, public debate, and emerging legal consciousness around spousal consent. Drawing from recent developments, including deliberations before the Supreme Court, governmental submissions, and various High Court verdicts, the article analyses India's gradual shift toward a consent-based legal framework. Finally, it proposes a structured roadmap for reform aimed at harmonizing the country's criminal justice system with the principles of gender equality and individual autonomy.

Keywords: Marital rape, Consent, Gender Equality, Constitutional rights, Bharatiya Nyaya Sanhita, Spousal Autonomy.

INTRODUCTION

Marriage in India is traditionally conceived as a solemn pact of mutual love, respect, and shared life. Yet, the law paradoxically excludes non-consensual intercourse within marriage from criminal liability. Under Exception 2 to Section 63 of the BNS, 2023 (previously Section 375 of the IPC), husbands enjoy immunity from prosecution for rape if their wife is 18 or above[209]. This special exemption breaches core constitutional values of equality (Article 14),[210] non-discrimination (Article 15),[211] and the right to life and personal liberty (Article 21)[212] by undermining women's bodily autonomy and dignity.

This legal fiction contradicts timeless legal principles of *"Volenti non fit injuria"* (to a willing person, no injury is done) and *"Nemo judex in causa sua"* (no one should be a judge in their

[208] Law Student at Ramaiah Institute of Legal Studies, Bangalore.
[209] Bharatiya Nyaya Sanhita, 2023, § 63, Exception 2, No. 45, Acts of Parliament, 2023 (India).
[210] INDIA CONST. art. 14.
[211] INDIA CONST. art. 15.
[212] INDIA CONST. art. 21.

own cause) since the law here presumes consent despite coercion. Equally, *"Salus populi est suprema lex"* (the welfare of the people shall be the supreme law) supports the notion that protecting individual dignity must outweigh the preservation of outdated marital privacy doctrines[213].

By presuming consent within marriage, the exception institutionalizes gendered inequality and perpetuates the archaic notion that a husband holds inalienable sexual rights over his wife. This inconsistency of granting immunity in marriage while criminalizing similar conduct outside, fails the test of reasonable classification under Article 14[214]. As India moves towards a rights based constitutional morality and strengthened protections against gender-based violence, this marital rape exception remains a regressive anomaly. Its urgent reconsideration and repeal are necessary to uphold the ideals of justice, autonomy, and gender equality[7].

HISTORICAL AND LEGAL BACKGROUND

The marital rape exception embedded in Indian criminal law[215] is a colonial remnant derived from 17th-century English jurisprudence. Sir Matthew Hale's infamous proposition that a husband could not be guilty of raping his wife because the marriage contract implied irrevocable consent, formed the ideological foundation for this legal immunity. This patriarchal doctrine was absorbed into Indian law through the IPC, 1860, where Exception 2 to Section 375 stated that sexual intercourse by a man with his wife,[216] provided she was not under fifteen years of age, would not be considered rape.[217]

Even as the country progressed socially and constitutionally after independence, this archaic immunity remained intact. During the massive criminal law overhaul following the 2012 Nirbhaya case, public pressure for reform intensified. The Justice Verma Committee, established to recommend amendments, categorically denounced the marital rape exception, calling it a product of outdated notions that denied a woman's agency and right to consent.[218] The Committee argued that a husband's immunity from rape prosecution within marriage

[213] JUSTICE J.S. VERMA COMMITTEE, REPORT OF THE COMMITTEE ON AMENDMENTS TO CRIMINAL LAW 113 (2013).
[214] State of West Bengal v. Anwar Ali Sarkar, AIR 1952 SC 75; Joseph Shine v. Union of India, (2019) 3 SCC 39.
[215] Manish Kumar Sahu & Abhishek Mishra, *Criminalization of Marital Rape: A Study of Legislative Silence and Judicial Activism*, 5 INDIAN J. LEGAL REV. 367 (2025).
[216] Chitrash Narula & Shubhankar Gupta, *Need of the Hour: Reforming the Indian Criminal Justice System*, 3 INT'L J. SOCIO-LEGAL ANALYSIS & CONTEMP. AFF. 19 (2021).
[217] Indian Penal Code, 1860, § 375 Exception 2 (prior to repeal), No. 45, Acts of Parliament, 1860 (India).
[218] GOVERNMENT OF INDIA, COMMITTEE ON AMENDMENTS TO CRIMINAL LAW (JUSTICE J.S. VERMA COMMITTEE), REPORT 113 (2013).

violated fundamental constitutional guarantees. Despite these recommendations, the Criminal Law (Amendment) Act, 2013 left the exception untouched, citing concerns over marital harmony and potential misuse.[219]

In 2023, the parliament introduced the BNS aimed at decolonizing the criminal justice system. However, the re-codification did not address marital rape. Section 63 of the BNS retains the same exemption, now worded to state that a man's sexual act with his wife, if she is above eighteen years, does not amount to rape.[220]

CONSTITUTIONAL CRITIQUE

The marital rape exception under Section 63 of the BNS, 2023 raises serious constitutional concerns. By shielding husbands from rape charges, it denies married women the same legal protection as others, directly affecting their rights under Articles 14, 15, and 21 of the Constitution.[221]

A. Unequal Treatment – Article 14

Article 14 ensures equal protection under the law. Exempting husbands from prosecution based solely on marital status is arbitrary and lacks any reasonable basis. In *E.P. Royappa*, the Supreme Court[222] held that equality is violated when a law is arbitrary.[223]

B. Violation of Personal Autonomy – Article 21

The right to life and liberty under Article 21 includes dignity and bodily autonomy.[224] The Supreme Court in *K.S. Puttaswamy v. Union of India*[225] recognized privacy as central to

[219] Press Information Bureau, "Statement of the Government on Justice Verma Committee Recommendations," Press Information Bureau (Jan. 23, 2013), http://pib.nic.in/newsite/PrintRelease.aspx?relid=## (last visited Aug. 10, 2025).
[220] Sai Ankita Senapati, *To What Extent the Legalisation of Marital Rape is Valid*, THE AMIKUS QRIAE, https://theamikusqriae.com/to-what-extent-the-legalisation-of-marital-rape-is-valid/ (last visited Aug. 10, 2025).
[221] Aparna Chandra & Mrinal Satish, *Securing Reproductive Justice in India: A Casebook* (Centre for Constitutional Law, Policy & Governance, National Law University Delhi & Center for Reproductive Rights 2019), https://reproductiverights.org/sites/default/files/2020-02/SecuringReproductiveJusticeIndia-Full.pdf (last visited Aug. 10, 2025).
[222] Sonsie Khatri & Tasneem Fatma, *Editorial: Second Chances and Digital Erasure: Do Former Convicts Have the Right to Be "Forgotten" in India?*, 8 COMP. CONST. L. & ADMIN. L.J. (2024).
[223] E.P. Royappa v. State of Tamil Nadu, (1974) 4 SCC 3.
[224] Francis Coralie Mullin v. Administrator, (1981) 1 SCC 608.
[225] *K.S. Puttaswamy v. Union of India,* (2017) 10 SCC 1.

individual freedom. Forcing sexual activity in marriage without consent disregards this principle and violates a woman's right to choose.

C. Discrimination Based on Sex – Article 15

Article 15 prohibits discrimination[226] on grounds of sex. Granting legal immunity to husbands perpetuates gender bias. In *Anuj Garg*,[227] the Court warned against laws based on outdated gender roles. The marital rape exception reflects such stereotypes.

D. Evolving Legal Perspective

The Delhi High Court, in *RIT Foundation v. Union of India*,[228] issued a split decision[229] on this issue, sending it to the Supreme Court for final resolution.[230] Earlier, the Justice Verma Committee strongly opposed the exception, calling it unconstitutional.

JUDICIAL TRENDS

A turning point came with the Supreme Court's judgment in *Independent Thought v. Union of India*, where the Court invalidated a legal provision that permitted sexual relations with a wife aged 15 to 18.[231] The verdict held that such an exception clashed with both the Protection of Children from Sexual Offences (POCSO) Act, 2012 and constitutional guarantees under Articles 14, 15, and 21.[232] While focused on child marriage, the ruling implicitly affirmed that marital status cannot override the necessity of consent.

This trajectory continued in the RIT Foundation case, where the Delhi High Court heard challenges to the constitutionality of the marital rape exception.[233] The judges disagreed where Justice Rajiv Shakdher found the exception discriminatory and unconstitutional, emphasizing

[226] *How the Vishaka Case Changed the Game for Women's Rights at Work in India,* LEGAL SERVICE INDIA, https://mail.legalserviceindia.com/legal/article-16810-how-the-vishaka-case-changed-the-game-for-women-s-rights-at-work-in-india.html (last visited Aug. 10, 2025).
[227] Anuj Garg v. Hotel Association of India, (2008) 3 SCC 1.
[228] RIT Foundation v. Union of India, 2022 SCC OnLine Del 1404.
[229] *"Will Destroy The Institution Of Marriage & Put Entire Family System Under Great Stress": Centre Defends Marital Rape Exception Through Its Counter-Affidavit In Apex Court,* VERDICTUM (Sept. 20, 2021), https://www.verdictum.in/court-updates/supreme-court/marital-rape-exception-central-government-affidavit-1553646 (last visited Aug. 10, 2025).
[230] RIT Foundation v. Union of India, 2022 SCC OnLine Del 1728.
[231] Independent Thought v. Union of India, (2017) 10 SCC 800.
[232] Manisha, *Study on the Rights of Transgender Persons in India with Special Emphasis on Inheritance Rights* (Ph.D. thesis, Bennett University 2025), https://lrcdrs.bennett.edu.in/bitstream/123456789/5235/1/31-01-25%20Manisha.pdf (last visited Aug. 10, 2025).
[233] RIT Foundation v. Union of India, W.P. (C) No. 284 of 2015 (Delhi High Court).

that marriage does not grant unlimited sexual rights.[234] Justice C. Hari Shankar, however, upheld the current law, stating that reform in this area should come from Parliament and warning against potential misuse of legal provisions.[235]

With no consensus between the judges, the matter has now been placed before the Supreme Court. A Constitution Bench is expected to evaluate whether Exception 2 to Section 63 of the BNS, 2023, violates fundamental rights. While the final decision remains pending, the growing judicial engagement signals a shift away from ignoring sexual violence within marriage.

JUSTICE VERMA PANEL: REFORM DEFERRED, NOT DENIED

When a horrific act of violence in Delhi shook the conscience of the nation in 2012, it prompted not only public protests but also institutional action. A special committee, led by former Chief Justice J.S. Verma, was appointed to propose immediate reforms to India's laws on sexual violence. Among its many forward-thinking observations, one recommendation stood out that rape within marriage should no longer be shielded by law.

The committee viewed this exemption as a deep contradiction of constitutional promises, particularly those relating to bodily autonomy and gender justice. Instead of framing marriage as a license for control, the report promoted a view of marriage grounded in respect and individual freedom.

Yet, when the criminal law was amended in 2013, this specific suggestion was left out.[236] Activists and legal scholars have since pointed out that the issue wasn't legal complexity rather it was political hesitation.[237] While the rest of the reform package was welcomed, this one demand remained buried under social taboo and legislative inaction.

Over the years, organizations such as the United Nations and legal thinkers like Flavia Agnes have continued to highlight the cost of ignoring this recommendation both in terms of legal

[234] Ibid., Judgment of Justice Rajiv Shakdher.
[235] Ibid., Judgment of Justice C. Hari Shankar.
[236] Criminal Law (Amendment) Act, 2013, No. 13, Acts of Parliament, 2013 (India).
[237] Flavia Agnes, *Marital Rape and the Need for Legal Reform in India*, 48 ECON. & POL. WKLY. 35 (2013).

consistency and human rights compliance.[238] What remains today is not just a gap in law, but a denial of dignity to countless women bound by a law that treats forced sex in marriage as permissible.

WHEN CONSENT ENDS WHERE MARRIAGE BEGINS: INDIA'S LEGAL DILEMMA IN A CHANGING WORLD

Many nations have steadily moved away from the belief that marital ties grant automatic sexual rights. Instead, there is growing agreement that autonomy over one's body is not suspended at the altar. The United Kingdom made this shift more than three decades ago, when its highest court ruled in *R v. R,*[239] that a husband could be prosecuted for rape. This decision dismantled a centuries-old presumption and inspired similar reforms in countries such as Canada, South Africa, and Nepal, each affirming that non-consensual sex within marriage is as unacceptable as outside it.[240]

These legislative and judicial changes are not isolated domestic events; they are anchored in shared global values. International instruments like the Universal Declaration of Human Rights (UDHR),[241] International Covenant on Civil and Political Rights (ICCPR),[242] and Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)[243] promote respect for dignity, gender equality, and protection from violence regardless of a person's marital status. These frameworks serve as moral and legal compasses, guiding countries toward more humane laws.

Yet India continues to protect marital rape from criminal scrutiny, preserving a colonial-era exemption that contradicts its international commitments. In 2002, Nepal set a different

[238] COMM. ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN, GENERAL RECOMMENDATION NO. 35 ON GENDER-BASED VIOLENCE AGAINST WOMEN, UPDATING GENERAL RECOMMENDATION NO. 19, U.N. Doc. CEDAW/C/GC/35 (2017).
[239] R v. R, [1991] UKHL 12.
[240] Criminal Code, R.S.C. 1985, c. C-46 (Can.); Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007, Act No. 32 of 2007 (S. Afr.); Penal Code Amendment Act, 2002, No. 12 of 2002 (Nepal).
[241] UN General Assembly, Resolution 217A (III), Universal Declaration of Human Rights, A/RES/217(III) (Dec. 10, 1948), https://www.un.org/en/about-us/universal-declaration-of-human-rights (last visited Aug. 10, 2025).
[242] International Covenant on Civil and Political Rights, G.A. Res. 2200A (XXI), U.N. Doc. A/6316, 999 U.N.T.S. 171 (Dec. 16, 1966) (entered into force Mar. 23, 1976), https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights (last visited Aug. 10, 2025).
[243] UN General Assembly, Convention on the Elimination of All Forms of Discrimination Against Women, 1249 U.N.T.S. 13, U.N. Doc. A/RES/34/180 (Dec. 18, 1979), https://www.un.org/womenwatch/daw/cedaw/cedaw.htm (last visited Aug. 10, 2025).

example by eliminating this immunity and recognizing marital rape as a crime.[244] India's reluctance to do the same stands in contrast to the wave of global reform, making its laws appear outdated and inconsistent with modern notions of justice.[245]

SUGGESTIONS FOR REFORMING MARITAL RAPE LAWS IN INDIA

1. Legal Reforms

The first and most urgent step is to remove the marital rape exception in Section 63 of the BNS.[246] This clause contradicts constitutional values such as equality, dignity, and personal liberty. There should be a clear statutory definition of "consent," affirming that non-consensual sex constitutes rape, regardless of marital status. In addition, personal laws across religions must be reviewed and amended to reflect the principle that marriage does not grant permanent sexual consent.

2. Judicial Measures

The Supreme Court should examine the constitutional validity of the marital rape exception under Articles 14, 15, and 21. A judicial declaration can set a precedent affirming that bodily autonomy continues within marriage. Courts should adopt a progressive interpretation of marriage, similar to rulings like *Joseph Shine v. Union of India*,[247] where outdated patriarchal notions were rejected.

3. Institutional Reforms

Institutional mechanisms must be strengthened. Police, judiciary, and healthcare professionals should receive proper training to handle spousal rape cases sensitively and without bias. Confidential reporting systems are essential to protect victims from retaliation. Standardized medical and forensic protocols should be adopted to handle cases of intimate partner sexual violence effectively.

[244] WORLD REPORT 2023: NEPAL, HUMAN RIGHTS WATCH, https://www.hrw.org/world-report/2023/country-chapters/nepal.
[245] HUMAN RIGHTS COUNCIL, REP. ON DISCRIMINATORY LAWS AND PRACTICES AND ACTS OF VIOLENCE AGAINST WOMEN, U.N. Doc. A/HRC/20/5 (Apr. 2, 2012).
[246] Aryan Bhushan, *Lacunae in Indian Law: Ambiguity of Marital Rape and Gaps in the Bharatiya Nyaya Sanhita (BNS) and Domestic Violence Act*, 7 INT'L J. MULTIDISCIPLINARY RES. 367 (2025).
[247] *Joseph Shine v. Union of India*, (2019) 3 SCC 39.

4. Victim Support

Support systems must be expanded**.** One-Stop Centres, helplines, shelter homes, and access to legal aid and counseling service**s** must be made more accessible. Fast-track courts should be set up to ensure swift justice in such sensitive matters.

5. Public Awareness

Finally, sustained public education campaigns should focus on gender equality, consent, and the idea that sexual relations within marriage must be based on mutual agreement. Schools, media, and community leaders should be actively involved in challenging harmful cultural norms and promoting respectful marital relationships.

CONCLUSION

The marital rape exception embedded in Indian law reflects a deep-rooted neglect of married women's fundamental rights. It contradicts the values enshrined in the the Constitution; disregards evolving judicial interpretations, violates international human rights obligations, and goes against the recommendations of several legal experts. Eliminating this exception does not undermine the sanctity of marriage; rather, it reinforces the principle that consent must be central to all intimate relationships, including marriage. Legal reforms must affirm that every individual irrespective of their marital status has an equal entitlement to bodily autonomy, personal dignity, and access to justice. Only by dismantling this legal shield can India move closer to realizing its commitment to gender equality and the protection of human rights.