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A Critical Appraisal of the Single-Member Company Framework under the Companies and Allied Matters Act 2020: Emerging Legal Challenges and Reform Imperatives

Dr. Moses Peace Richard [1]

ABSTRACT

The introduction of the single-member company (SMC) under the Companies and Allied Matters Act 2020 (CAMA 2020) constitutes a notable corporate law reform designed to promote ease of doing business and stimulate entrepreneurial activity in Nigeria. It offers administrative simplicity, cost efficiency, and operational flexibility. Notwithstanding these advantages, the SMC structure raises important corporate governance concerns, particularly regarding accountability, transparency, disclosure obligations, and corporate continuity.

This article critically examines the statutory framework governing SMCs under CAMA 2020, with emphasis on exemptions from annual return filings and audit requirements, the increased risk of abuse of corporate personality, and the vulnerability of corporate continuity arising from the absence of mandatory nominee arrangements upon the death or incapacity of the sole member. It argues that the current legal framework inadequately addresses the transparency and disclosure risks inherent in single-member corporate structures and therefore requires enhanced regulatory safeguards. By identifying key statutory gaps and proposing targeted reforms, the article contributes to Nigerian corporate law scholarship and advances practical recommendations for strengthening transparency, monitoring, and accountability within the SMC regime.

The study adopts a doctrinal legal research methodology, relying on statutory interpretation of relevant provisions of CAMA 2020, judicial authorities, and comparative analysis drawn from jurisdictions such as the United Kingdom and India, alongside existing academic literature.

Keywords: Single-Member Company, Corporate Governance, Regulatory Reforms, Accountability, Nigeria.

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1. INTRODUCTION

The codification of single-member companies (SMCs) under the Companies and Allied Matters Act (CAMA 2020) is a forward-looking legislative concept that eliminates the hurdles posed by the previously repealed Companies and Allied Matters Act 1990(CAMA 1990), which mandated that companies must be incorporated with at least two natural persons. Currently, and in line with the provisions of section 18(2) of the CAMA 2020, a single individual is permitted to form a private company. This legislative initiative represents a trajectory shift towards global business trends, which acknowledges commercial realities of sole entrepreneurship within a highly digitalised commercial hub and the need to simplify business structures and facilitate the ease of doing business.[2] This statutory innovation also aligns Nigeria with a growing number of jurisdictions that have embraced the single-member company model globally. Several of these countries have restructured their corporate law frameworks to accommodate this model at different periods, including the United Kingdom in 2006, China in 2005, Singapore in 2004, Turkey in 2012 and India in 2013.[3]

However, the notion of SMCs is not without shortcomings as far as corporate governance is concerned. In a single-member governance structure, issues are said to arise in relation to transparency, accountability, audit, filing of annual returns and perpetual succession.[4] In other words, where a company is administered by a single individual, there is no one else to collectively deliberate over decisions, or oversee the actions of the members and management or hold management accountable for breach of fiduciary duties to the company. This raises pertinent questions about whether the idea of fiduciary duty, accountability and corporate veil lifting in cases of fraud applies where, in truth, the company becomes the alter ego of one individual. Against this backdrop, this paper examines the statutory framework governing SMCs, identifies the gaps in their regulation under CAMA 2020, and highlights the risks

[2] Jerome Okoro, Leonard Ugwu and George Ibekwe 'Interrogating the Features and Statutory Compliance of One-Man company Structure Under the CAMA 2020 (2025) 11(5) International Journal of Law 108.

[3] Prem Rajani, Rashi Rajani and Miti Kapadia 'The One Man Show: Understanding the Concept of One person Company' (2019) The Economic Times available at <https://economictimes.indiatimes.com/small-biz/legal/the-one-man-show-understanding-the-concept-of-one-person-company/articleshow/72195134.cms?from=mdr> accessed December 25 2025.

[4] M Umenweke 'A Review of the Legal Framework for Single-Member Companies in Nigeria: Progress and Pitfalls (2025) 7 Chukwuemeka Odumegwu Ojukwu University Journal of Private and Public Law 32.

associated with using SMCs for business activities—particularly in relation to accountability, transparency, disclosure, and the potential misuse of the corporate veil for fraudulent purposes Due to the distinct features of the UK and India's sole-member company regime and its notable points of divergence from the Nigerian framework, the Indian and UK models are adopted as a comparative reference in this study. For a coherent and seamless discussion, the paper is structured as follows: Section One offers an introductory overview. Section two explores the conceptual framework of SMCs, emphasising the ease of doing business, limited liability and corporate personality principle as the core foundation and justification for their emergence. Section three examines the legal framework governing SMCs under the Companies and Allied Matters Act 2020 (CAMA 2020). Section four captures the essential attributes of SMCs under the CAMA 2020, distinguishing them from other similar corporate structures, such as small companies. Sections five and six discuss the merits and demerits of SMCs, while highlighting some key challenges associated with their operation. Section seven adopts a comparative perspective, drawing lessons from the UK and India to argue for reforms and regulatory enhancements to the current SMC regime under CAMA 2020. Section eight identifies key areas for policy and legal reform. The final section concludes the paper with a summary of the main findings and recommendations.

2. THEORETICAL AND CONCEPTUAL FRAMEWORK: THE RATIONALE FOR SMCS

The innovation of SMCs originates from their capacity to facilitate formal business activities via sole entrepreneurs, thereby simplifying the process of incorporation and lessening the formal burden and rigours of doing business while easing regulatory compliance.[5] From a legal perspective, SMCs are corporate bodies incorporated as limited liability companies and possessing a separate personality from their owners, in spite of all their shares vested in a single individual.[6] The legal recognition of SMCs in CAMA 2020 represents a transformative innovation under the Nigerian company law. Prior to the CAMA 2020, the statutory requirement of having a minimum of two shareholders during incorporation barred sole proprietors from running business activities through formal corporations.[7] With the advent of

[5] A Michael, 'Incorporating Informality: The Future of Single-Member Companies in Nigeria' (2021) 9 Nigerian Journal of Commercial Law 48.

[6] P Davies and S Worthington, *Gower: Principles of Modern Company Law* (London: Sweet & Maxwell, 2016) 112.

[7] Michael (n 4) 49–50.

SMC, a single individual can now incorporate and run a company legally, organise capital, while enjoying the benefits of limited liability. It is observed that SMCs act as a bridge between legal conception and entrepreneurial realities by promoting easy access to legal protection and mitigating the obstacles to entry to corporate environment.[8]

The theoretical basis of SMCs can be traced to the principle of corporate personality, which was initially developed by English Common law. The corporate personality principle commenced with the landmark case of *Salomon v Salomon*[9], which provides that once a company is duly incorporated, it possesses a separate identity from its owners, individually or collectively.[10] The effect of this is that the members enjoy limited liability whereby they are shielded from personal liability; the company can also sue and be sued in its own name, and enter into commercial transactions similar to a natural person.[11] The case of Salomon is the first to perfectly capture the legal realities of the principle of corporate separate personality and limited liability enjoyed by members of companies. Salomon, who was a boot maker as a sole proprietor, later transferred his business to a company (Salomon Ltd), which consisted of himself and his family.[12] The company later experienced financial difficulties and went into liquidation. The liquidator argued on behalf of the unsecured creditors that the company was merely a sham and an agent of Salomon, that Salomon was personally liable for the debt of the company.[13] The House of Lords later held on appeal that the company, as a properly registered entity, was a separate legal entity from Salomon and as such Solomon could not be held personally liable.[14] The concept of corporate personality has always been controversial due to its abstract nature, with some scholars referring to the personality as fictional and imaginary. [15] Although. Hanigan opined that the corporate personality principle, which guarantees protection of members from personal liability, is the legal bedrock upon which a single-member company is formed.[16] It can be said, therefore, that the benefits of limited

[8] Jerome Okoro, Leonard Ugwu and George Ibekwe 'Interrogating the Features and Statutory Compliance of One-Man company Structure Under the CAMA 2020 (2025) 11(5) International Journal of Law 108.
[9] [1897] AC 22.
[10] Max Radin 'The Endless Problem of Corporate Personality' (1932) 32(4) Columbia Law Review 643.
[11] Ahmad Swaiss 'Beyond Salomon: Time to Rethink the Limited Liability Shield' (2024) 12(3) Global Scientific Journal 530.
[12] Swaiss (n 10) 532.
[13] ibid, 532
[14] *Salomon v Salomon* (Supra).
[15] Maurice Wormser, 'Piercing the Veil of Corporate Entity' (1912) 12(6) Columbia Law Review 496-518.
[16] Brenda Hannigan, *Company Law* (Oxford: Oxford University Press, 2021) 45.

liability ensuing from the principles in Salomon serve as a natural justification for modern SMCs.

It flows from the above that liability limitation is one of the foundations of SMCs, as the desire for sole proprietors to limit risk and liability is central to promoting modern business innovation. In reality, owners of small enterprises and sole proprietors are innately exposed to financial risks, having insufficient assets with which to spread their risks. The introduction of SMCs offers a legal platform to limit business risk, allowing individuals to comfortably engage in business activities without fear of exposing their personal assets to risks. [17] As Armour and Hansmaann rightly argued, the purpose of laws is to facilitate risk-taking within regulated bounds by offering a protective legal safeguard. [18]

Another corporate theory that supports the notion of SMCs is the agency theory, which aims to align the interests of management with those of the shareholders.[19] In large corporations where ownership and control are separate, management do not always act in the best interest of the shareholders, thereby promoting a conflict of interest between the owners and managers. [20] This conflict of interest, which is usually termed the agency problem in corporate governance, is said to be averted under the SMCs platform. In SMCs, the owners double as the managers, the distinction between ownership and control is consolidated, which further reduces internal conflicts.[21] Nevertheless, there is the concern that such internal synergy of interests may give rise to external risk, and opportunity for internal corporate abuses, which calls for greater statutory checks and balances.[22]

3. LEGAL FRAMEWORK FOR SINGLE-MEMBER COMPANIES UNDER CAMA 2020: OVERVIEW

[17] Umenweke (n 3) 34.

[18] John Armour and Henry Hansmann, 'The Essential Role of Organizational Law' (2001) 110(3) Yale Law Journal 395.

[19] Andrew Keay, *The Corporate Objective* (Edward Elgar 2011) 43-44.

[20] Adam Smith *Inquiry Into the Nature and Causes of the Wealth of Nations* (Adam Black and Willian Tait Edinburgh 1776) 412

[21] Frank Easterbrook and Daniel Fischel, The Economic Structure of Corporate Law(Cambridge, MA: Harvard University Press, 1991) 35.

[22]Umenweke (n 3) 34.

The rigidity occasioned by the old regime under CAMA 1990, which makes it impossible for a sole entrepreneur to register and run a company, was generally criticised as restrictive of business innovation and detrimental to companies' ability to access corporate legal protections.[23] This was a total departure from jurisdictions such as the UK, which have adopted a single-member company under the Companies Act 2006. As stated above, by virtue of CAMA 2020, a sole individual is now allowed to incorporate and run a company.[24] The statutory innovation by the CAMA 2020 that enabled one member company is encapsulated in section 18 of the CAMA 2020. While section 18(1) maintains a statutory minimum of two members for the incorporation of companies generally, section 18(2) created the exception in the case of private companies, permitting only one person to form a private company as follows: (2) Notwithstanding subsection (1), one person may form and incorporate a private company by complying with the requirements of this Act in respect of private companies.

Certain observations can be deduced from the provision in section 18(2): Firstly, the benefit of having a one-member company only applies to private companies and does not extend to public companies. Furthermore, the presence of a single member does not alter the company's separate legal personality, as the provisions afford SMCs the same status as private companies under the CAMA 2020. A careful perusal of the provisions above implies that section 18(2) allows not only a natural person but also a single company to incorporate a single-member company, as the word "*Person*" as referred to in the provisions is not limited to natural persons. In line with section 868 of the CAMA 2020, the terms "Person" for all purposes of the Act includes an individual, company or other entity which has legal rights and is subject to obligations.

By literal interpretation of the provisions of section 18(2), a single-member company appears to be possible only during the initial incorporation stage. This begs the question, can a single-member company be formed via share transfer? In other words, can a company with multiple shareholders consolidate its shares and transfer them to a single buyer, thereby leaving only one member for the purpose of forming a single-member company? This question was recently considered and deciphered by the Federal High Court in the recent case of *Primetech*

[23] O Olatunji, 'Reforming Company Law in Nigeria: The Case for One-Man Company' (2015) 8 Nigerian Journal of Commercial Law 55.

[24] This provision is also supported by the Nigerian Business Facilitation (Miscellaneous Provisions) Act 2023 (BFA 2023).

Design and Engineering Nigeria Limited and Julius Berger Nigeria v Corporate Affairs Commission. [25] In this case, the Corporate Affairs Commission (CAC) had refused to register and record the alteration in the shareholding structure of Primetech from two members to a single-member company. The Court held that the benefits accruing from section 18(2) are not exclusive to only private companies incorporated after the commencement date of the CAMA 2020. The Court further held that to decide otherwise would defeat the intention of the provisions in section 18(2) to facilitate ease of doing business. The obvious implication of this decision in Primetech is that companies incorporated under the CAMA 1990, and after with multiple shareholders, can now convert to a single-member company, thereby promoting corporate flexibility. The decision also reverberated Nigeria's government's commitment to enhancing the business environment, with the aim of attracting foreign and local investors.

4. FEATURES OF SINGLE-MEMBER COMPANIES UNDER THE CAMA 2020: LEGAL ISSUES

4.1. Qualification and Eligibility for SMCs

The only apparent conditions of a single-member company, as stipulated by the CAMA 2020 is that it must be a private company and comprise a single shareholder. The Act does not expressly provide other criteria and conditions of SMCs that make them easily distinguishable from other similar corporate vehicles, such as a small company. The reality is that SMCs can be mistaken for a small company under the provisions of the CAMA 2020, even though the criteria regarding small companies differ. The qualification of a small company according to section 394(1) of the CAMA is provided as follows: "(1) A company qualifies as small in relation to its first financial year if the qualifying conditions are met in that year. (2) A company qualifies as small in relation to a subsequent financial year if the qualifying conditions— (*a*) are met in that year and the preceding financial year."

Subsection 3 went further to provide the qualifying conditions of a small company as follows: "The qualifying conditions are met by a company in a year in which it satisfies the following requirements— (*a*) it is a private company; (*b*) its turnover is not more than N120,000,000 or such amount as may be fixed by the Commission from time to time; (*c*) its net assets value is not more than N60,000,000 or such amount as may be fixed by the Commission from time to

[25] Suit No: FHC/ABJ/CS/665/2023

time; (*d*) none of its members is an alien; (*e*) none of its members is a government, government corporation or agency or its nominee; and (*f*) in the case of a company having share capital, the directors between themselves hold at least 51% of its equity share capital."[26]

From the above, can it be resolved that a single-member company can be referred to as a small company? Since the conditions of a small company do not expressly include the membership numbers, it is apposite to assume that an SMC does not automatically qualify as a small company. A company with one member must further meet the conditions stipulated in section 394(3) to qualify as a small company. For instance, a single-member company will fail to meet the qualification as a small company, where, for instance, its turnover and assets exceed N120,000,000 and N60,000,000, respectively, even if it has only one shareholder. Furthermore, in line with the provisions of section 394(3)(d), which exclude alien companies (foreign-owned) from being adjudged as small companies, it appears that only Nigerian citizens are afforded the privilege to incorporate a single-member company that can also enjoy the legal status of a small company. In other words, a company incorporated solely by Nigerians and meeting the conditions of a small company would lose its status as such where the shares are later sold or transferred to a foreigner.

4.2. Exemption of SMCs from Annual General Meeting

A single-member company is exempted from the requirement of holding annual general meetings under the CAMA 2020. Section 237(1) of the CAMA provides that "except in the case of a small company or any company having a single shareholder, every company shall in each year hold a general meeting as its annual general meeting in addition to any other meeting in that year". The rationale for this provision stems from a practical perception: a single-member company has no other member to meet or deliberate with, and pass a vote or make decisions with. It follows, therefore, that it is impracticable to mandate a formal annual meeting for such companies. For the same reason as stated above, the Act also exempts one member company from the provision of forming a quorum for meetings.[27] However, unlike conventional multi-member companies, where meetings are necessary to vote and reach decisions via the passing of resolutions, the CAMA 2020 does not expressly provide a legal platform that governs how decisions are made in a single-member company. The CAMA only

[26] CAMA 2020, s 394(3).
[27] CAMA 2020, s 256

provides that where a member of a single-member company takes a decision that may be taken by the company in general meetings, and has effect as if it were agreed by the company in general meetings, he shall provide the board with details of the decision.[28]

The above provisions only mandate the shareholder of an SMC to present his decision to the board, but do not provide for their resolution process or the manner and form in which such a decision is to be presented to the board. Arguably, the mandatory requirement to present details of decisions to the board in an SMC is unnecessary and impracticable as the member and the director of such companies are usually one and the same person. Rather, this will only lead to unnecessary administrative costs. Such a requirement should only be mandatory where the board is constituted by individuals who are different from the members.

With regards to the form of the decision, it is argued that the CAMA 2020 impliedly provides a solution by enabling private companies to make decisions via written resolutions which are valid as though passed at meetings. [29] In this regard, section 259 provides, "in the case of a private company, a written resolution signed by all the members entitled to attend and vote is as valid and effective as if passed in a general meeting". A strict application of this shows that it only applies to private companies. It is unclear if it extends to a one-member company, even though it is a private company. Furthermore, the term '*all members entitled to attend and vote'* as used in section 259 implies that it applies to private companies with multiple shareholders and not a one-member company.

4.3. Exemption from Annual Returns and Audit Requirement

Under the CAMA 2020, all companies except a single-member company are required to file annual returns. This exemption is captured in sections 417 and 421of the CAMA 2020, respectively. According to section 417 of the CAMA 2020**:**

"Every company shall, once at least in every year, make and deliver to the Commission an annual return in the form, and containing the matters specified in sections 418, 419 or 420 as may be applicable: Provided that a company need not make a return under this section either

[28] CAMA 2020, s266(4)

[29] Tayewo Adewunmi, Adewole Adewoyin and Kola Amierekolade 'Legal Framework for the Administration of single shareholder company in Nigeria: Lesson from the United Kingdom' (2023) Journal of the Department of Jurisprudence and International law 334.

in the year of its incorporation or, if it is not required by section 237 to hold an annual general meeting during the following year, in that year."

A single-member company is designated in section 237 as one of the companies that are exempted from holding an annual general meeting; by the provisions stated above, they are not required to comply with section 417 on the filing of an annual return to the Commission. Furthermore, exemptions are also contained in Section 421 (1) which provides: "The annual return shall be completed, signed by a director and the secretary, and delivered to the Commission not later than 42 days after the annual general meeting for the year, whether or not that meeting is the first or only general meeting of the company in that year, but the company may apply to the Commission for extension of time within which to file its annual return for any given calendar year. (*2) This section does not apply to companies with only one member."*

Additionally, SMCs which meet the threshold of a small company are further exempted from audit requirements in section 402 of the CAMA 2020. This section provides as follows: "A company is exempt from the requirements of this Act relating to the audit of accounts in respect of a financial year if— (b) it is a small company within the meaning of section 394".[30]

Exemption from filing annual returns and audit requirements by single-member companies raises a significant corporate governance issue regarding transparency and financial disclosure. This statutory exemption undermines regulatory oversight on the activities of single-member companies, thereby limiting checks and balances. Annual returns and audited accounts contain essential information such as the company's total annual turnover and assets. Therefore, where a single-member company is not required to file annual returns and audit their accounts, the Commission and tax authorities are not adequately informed of the company's assets and turnover for assessment of appropriate filing fees and taxes. Furthermore, as highlighted above, a single-member company may operate as a small company if it meets the conditions stipulated in section 394 of the CAMA. Although if it does not meet the financial threshold that qualifies it as a small company (i.e. where assets exceed N60,000,000 and turnover exceeds 120,000,000 annually), the commission may not be afforded such information if the annual returns are not filed. It is argued that this lack of oversight, occasioned by the exemption to

[30] 402(1)(b) of the CAMA 2020

file annual returns by single-member companies, can lead to bad decisions, misuse, or violations of corporate rules and structure.[31]

4.4. The Composition of Directors in SMCs

The board of directors are considered a key organ in any company, bestowed with the discretionary powers to manage the company in the best interest of its shareholders and the company as a whole.[32] It stands to reason, therefore, that the board of directors must be well-equipped with the required knowledge, expertise, and number and size to effectively discharge their roles. [33] In view of this, section 271(1) of the CAMA 2020 mandates that every company except a small company must have at least two directors. Subsection (2) went further to provide that any company whose number of directors falls below two shall, within one month of the shortfall, appoint new directors and shall not carry on business after the expiration of one month, unless such new directors are appointed.[34] According to the provisions in section 271, it appears that only small companies are exempted from the compulsory minimum of two directors. Given the apparent distinction between a small company and a single-member company, the question, however, is whether a single-member company that does not qualify as a small company can operate with fewer than two directors. The CAMA does not expressly provide a statutory basis for the number of directors for SMCs that are not small companies. This statutory lacuna under the CAMA creates confusion in the minds of entrepreneurs planning to incorporate a single-member company that does not qualify as a small company. It is unclear in this circumstance if the business should be incorporated with at least two directors to meet the requirement in section 271(1) above. Furthermore, the benefit of single membership status in SMCs is only applicable to the number of shareholders and does not extend to the number of directors. This means that the one membership structure in SMCs does not automatically permit a single director. As such, two directors shall be duly appointed during incorporation, where it is adjudged that the SMC does not qualify as a small company.

4.5. Winding Up of SMCs: Legal Inconsistency

[31]Umenweke (n 3) 39.

[32]Moses Peace Richard 'Legal Perspective on the Use of Artificial Intelligence in Corporate Governance in Nigeria: Potentials and Challenges' (2024) 34(48) Journal of Legal Studies 97.

[33] Michael Afolayan and Olaide Awwal-Bolanta 'Duties of Directors Under the Companies and Allied Matters Act 2020 and Analysis of the Principles of Corporate Governance (2024) 10 International Journal of Social Sciences and Management Research 56.

[34] CAMA 2020, s 271(2)

Another area of controversy relating to SMCs is dissolution or winding up, where the number of members falls below the required minimum. According to section 571(c) of the CAMA 2020, a company may be wound up by the court if the number of members is reduced below two in the case of companies with more than one shareholder. As analysed earlier, the court in the case of *Primetech v Corporate Affairs Commission* [35] has already declared that a private company with multiple members can collapse its shares and transition into a single-member company. In the same case, the court also stated in respect of section 571(c) that the provision allowing a company to be wound up if its members are reduced below two does not apply to private companies that are permitted to have a single shareholder under section 18(2) of CAMA 2020.[36] This judicial pronouncement by interpretation has invariably rendered the provisions of s 571(c) toothless and unenforceable when viewed in respect of private companies. By implication, the decision in Primetech expressly excludes private companies from being wound up by the court based on failure to meet the minimum required members. Strangely, this means that any private company, irrespective of the number of members, can collapse its shareholding structure into a single-member company without fear of being wound up under section 571(c).

5. ADVANTAGES OF SINGLE-MEMBER COMPANIES

Single-member companies are widely regarded as offering several advantages, including enhanced ease of doing business, limited liability protection, and operational simplicity. As stated above, a single-member company is spared the legal burden of holding annual meetings, filing of annual returns or having a company secretary. This is thought to be cost-effective and streamlines decision-making processes, thereby leading to quick business strategy implementation and reduced administrative and operational delays. [37] Additionally, a shareholder of an SMC also enjoys the legal protections offered by limited liability by separating the owner's personal assets from the company's liability. Thus, where debts are incurred by the company, the owners' personal assets are protected against creditors.

Another significant advantage of single-member companies, when compared with sole proprietorships, lies in their enhanced access to credit facilities and contractual opportunities. By virtue of incorporation, a single-member company acquires a distinct legal personality,

[35] Supra
[36] *Primetech v Corporate Affairs Commission* (supra)
[37] Umenweke (n 3) 38.

which strengthens its credibility in the eyes of financial institutions and contracting parties. This separate legal status enables SMCs to obtain loans, enter into binding contracts, and participate more effectively in commercial transactions. In Nigeria, it has increasingly become the standard practice for government agencies and corporate entities to require bidding participants to be incorporated companies, thereby placing sole proprietorships at a structural disadvantage. [38] Consequently, the incorporation of single-member companies provides entrepreneurs with a more viable and competitive vehicle for conducting business.

6. KEY CHALLENGES ASSOCIATED WITH SINGLE-MEMBER COMPANIES IN NIGERIA

6.1. Transparency and Oversight Concerns

From the above analysis, several legal challenges are presented by SMCs, making it a less desirable corporate structure for conducting business in Nigeria. Some of the issues associated with this type of company include a lack of oversight. It is usually opined that the corporate governance structure of a single-member company is usually devoid of oversight, given that the functions of the director and shareholders are discharged by one person.[39] The absence of oversight can lead to serious abuse of company regulations, poor decisions due to a lack of scrutiny, and adversely impact the company's business. [40] By their very nature, single-member companies are characterised by concentrated ownership, control, and management functions in the hands of one individual, who simultaneously occupies the positions of shareholder and director. This convergence of roles eliminates the traditional internal checks and balances that ordinarily characterise multi-member corporate entities.

The absence of meaningful oversight significantly heightens the risk of internal abuse and weak corporate governance practices. Decisions are taken without independent scrutiny or dissenting perspectives, thereby increasing the likelihood of self-dealing, misapplication of company assets, and non-compliance with statutory obligations.[41] Furthermore, the lack of supervisory mechanisms may result in imprudent business decisions, as there is no internal accountability framework to challenge or review managerial actions. Over time, this governance deficit can

[38] Wole Adetunji, 'Governance of One-Person Companies: Nigerian Challenges' (2020) 4(3) African Journal of Business Law 38
[39] Umenweke (n 3) 39
[40] ibid, 39.
[41] ibid, 39.

undermine operational efficiency, erode stakeholder confidence, and negatively affect the overall performance and sustainability of the company. Without robust disclosure and monitoring requirements, SMCs may operate with minimal transparency, thereby increasing the risk of corporate abuse and financial impropriety. Consequently, unless adequately addressed through legislative or regulatory reforms, the governance deficiencies associated with single-member companies threaten to undermine the objectives of CAMA 2020 in promoting responsible entrepreneurship and corporate integrity.

6.2. Risk of Abuse of Corporate Personality

Other essential challenges plaguing SMCs include potential abuse of the corporate veil due to limited oversight and flexibility. It is believed that the flexibility of SMCs can lead to arbitrary decisions being made without scrutiny, allowing for tax evasion or perpetuating fraud under the guise of limited liability.[42] While courts have the power to pierce the corporate veil in situations of fraud,[43] Nigerian corporate law, as regards veil piercing, is thought to be marred by inconsistent judicial precedents, thereby rendering its application unpredictable. [44]

6.3. Practical Constraints in Decisions-Making

The statutory requirement for members of SMCs to provide details of their decisions to the board of directors in section 266(4) of the CAMA 2020 presents a practical constraint that may result in unnecessary costs and an avoidable bottleneck. In single-member companies, the ownership and management of the company usually rest on a sole member and shareholder of the company. In situations where the board of directors is comprised of the same individual, it is practically unnecessary for the same person to present the decision to a properly constituted board of directors. In practical application, and in order to meet the statutory requirement, these provisions would compel sole members to appoint additional directors, in which his decisions can be presented to a properly constituted board meeting. This requirement creates additional cost and statutory burden on SMCs, thereby defeating the initial purpose, which is to promote ease of doing business. It is worthy to note that the requirement in section 266(4) is compulsory and cannot be dispensed with, since noncompliance is an offence and would

[42] Ibid 39.

[43] Instances of veil piercing in Nigeria are encapsulated in the following cases: *Union Bank of Nigeria Plc v. Orharhuge* (2000) 2 NWLR (Pt. 645) 495; *Securities Solution Ltd & Ors v Adamu- Oladiran & Ors* (2016) LPELR 40068 (CA); *Oboh & Anor v Nigeria Football League Ltd & Ors* (2022) LPELR-56867 (SC)

[44] T Adeola, *Nigerian Company Law: Issues as to CAMA 2020* (Ibadan: Spectrum Books 2023) 133

lead to statutory penalties.[45] A more practical approach would be to make this requirement compulsory only in situations where the company's members and board of directors comprise different individuals. Thus, this requirement should be waived in situations where ownership and management functions are discharged by one person.

7. COMPARATIVE PERSPECTIVES: LESSONS FROM OTHER JURISDICTIONS

7.1. The United Kingdom

The concept of a single-member company is also codified in the UK's Companies Act 2006 (CA 2006), which permits a single individual to incorporate and operate a company. According to section 7 of the CA 2006, A company is formed under this Act by one or more persons, subscribing their names to a memorandum of association. The import of this provision is that a single person can incorporate both a private and a public company limited by shares. This differs from the situation in Nigeria, which is limited to only private companies. In contrast, public companies in Nigeria are barred from having a single member, as the minimum number is pegged at two members.[46] In terms of ease of doing business, it can be argued that the UK is more desirable as it affords a sole entrepreneur greater options and a platform to raise capital, build credit and attract investors. In other words, a sole member of a public company in the UK can list their shares on the stock exchange and offer their shares to the public.

In the UK, the CA 2006 also went further to specify the minimum number of directors for single-member companies for both private and public companies as follows: according to section 154(1) of the CA 2006, A private company must have at least one director, and a public company must have at least two directors. Although, irrespective of the type of company, the section provides that the company must have at least one director who is a natural person.[47] A strict interpretation of the wording of section 155(1) implies that companies in the UK may appoint a mix of both natural and corporate directors (non-natural directors) in a single-member company, provided at least one director is a natural person. In Nigeria, this option is not available as section 269 of the CAMA 2020 only provides that directors shall be individuals appointed by the company to direct and manage the business of the company.

[45]CAMA 2020, s 266(4)(b).
[46] CAMA 2020, s 18(1).
[47] CA 2006, s 155(1).

Another innovation about the UK CA 2006 is that it recognises the fact that a single-member company may be formed either through incorporation by a single person or if the shares of the company become vested in one person. In this regard, section 123 of the CA 2006 provides: "(1) If a limited company is formed under this Act with only one member, there shall be entered in the company's register of members with the name and address of the sole member, a statement that the company has only one member. (2) If the number of members of a limited company falls to one, or if an unlimited company with only one member becomes a limited company on re-registration, there shall upon the occurrence of that event be entered in the company's register of members with the name and address of the sole member: (a) a statement that the company has only one member, and (b) the date on which the company became a company having only one member**"**

The above provisions clearly set out the circumstance where a single-member company may exist in the UK or a company may be treated as a one-member company. The key requirement is that once a company is formed with one member or where the members fall to one in the case of a multi-member company, the company must ensure that the date of occurrence and statement that the company has only one member must be entered in the company's register alongside the name and address of the sole member. This allows for seamless transition of companies between the corporate structures of single and multi-member companies, thereby offering greater corporate restructuring flexibility.

In contrast, there are no express provisions under the CAMA 2020 delineating the circumstances in which a single-member company exists. In fact, it is unclear under the CAMA 2020 if a single-member company can be formed from an existing multi-member company through the transfer or consolidation of shares to a single shareholder. Rather, the CAMA 2020, as illustrated earlier, prescribes winding up of a multi-member company if its membership falls to a single member.[48] However, as stated above in the case of Primetech v Corporate Affairs Commission,[49] the court has interpreted broadly the provisions of section 18(2) of the CAMA 2020, which allows the incorporation of a single-member company to also accommodate situations where a multi-member company falls to one. To ensure congruence between case

[48] CAMA 2020, s 571(c).
[49] Supra

law and statute, future reforms of the CAMA 2020 need to introduce provisions that are similar to section 123 of the CA 2006, which allows the conversion to a single-member company where the shares of a multi-member company become vested in a single individual.

7.2. India

In India, a single-member company is defined by section 2(62) of the Indian Companies Act 2013 (CA 2013) as "a company which has only one person as a member". This is identical to Nigeria and the UK, where the common condition of a sole member company is the limitation of the membership to one. However, similar to the UK, section 18(1) of the CA 2013 also affords legal recognition for situations where the members of a multi-member company fall to one. Although a single-member company in India, similar to Nigeria, is restricted to private companies[50], unlike the UK, which is available to both private and public companies.

An area of apparent contrast between Indian and Nigerian systems lies in the individuals who are eligible to form a single-member company. In India, only a natural-born Indian, whether resident in India or otherwise, shall be eligible to incorporate a single-member company. [51] In Nigeria, no such restriction exists, which means that foreigners are also eligible to form a single-member company. With regards to this, Okoro, Ugwu and Ibekwe argue that the indigenisation restriction of the Indian single-member company may adversely limit foreign participation, thereby minimising the number of foreign direct investments in the country. [52] This may be true; however, it could also be argued that this affords indigenous owners of small businesses a favourable environment to thrive with less competition in certain sectors. [53]

Another corporate innovation adopted by the Indian framework is the requirement to appoint a nominee who must also be a natural person and an Indian citizen in a one-person company.[54] In this regard, section 4 of the Indian Companies (Incorporation) Rules 2014, provides the process of nominating a nominee as follows: "for the purposes of first proviso to sub-section (1) of section 3– (1) The subscriber to the memorandum of a one person company shall nominate a person, after obtaining prior written consent of such person, who shall, in the event

[50]Indian CA 2013 s 3(c).
[51] The Companies (Incorporation) Rules 2014, s 3(1).
[52] Okoro, Ugwu and Ibekwe (n 7) 111.
[53] ibid. 111
[54] The Companies (Incorporation) Rules 2014, s (3)(1)(b).

of the subscriber's death or his incapacity to contract, become the member of that one person company." The rationale for this provision is to ensure perpetual succession and representation in situations where the membership of the company falls below one as a result of death or by operation of law.[55] Nigeria lacks similar provisions under the CAMA 2020. The implication of this statutory lacuna on the Nigerian system is that the death of a member in a single-member company could well mean the commencement of a winding-up process or liquidation, as the case may be. In other words, corporate continuity and perpetual succession are not guaranteed in a single-member company in Nigeria.

8. RECOMMENDATIONS FOR REFORM

8.1. Clarifying the Scope and Conditions for a Single Member Company

The exact parameter, scope and definition of a single-man company in Nigeria is not expressly provided by the CAMA 2020. As stated above, the Indian system offers a clear definition of SMCs. Furthermore, it also stipulates certain conditions for SMCs, such as limiting incorporation to only natural-born persons. In Nigeria, the scope of SMC is mostly implicit and not expressed; the fact that foreigners are permitted from incorporating single member companies is presumed on the premise of the absence of provisions to the contrary. Failure to provide the conditions and eligibility of SMCs leaves room for confusion and litigious conflicts. Similar to the UK's CA 2006, future reforms under the CAMA 2020 must therefore provide a clear definition of the SMCs, setting out the conditions for their eligibility, and the minimum number of directors. This will also ensure that SMCs are clearly distinguished from small companies.

8.2. Conversion from Multi-Member to Single-Member Company

As noted above, CAMA 2020 contains no express provisions permitting private multi-member companies to consolidate their shareholding into a single-member company. This oversight considerably limits entrepreneurial flexibility and limits corporate restructuring options in Nigeria. In this regard, and consistent with the approach adopted under the UK CA 2006, there is a compelling need for CAMA to be amended to expressly provide for circumstances in which private multi-member companies may seamlessly convert into single-member companies.

[55] Okoro, Ugwu and Ibekwe (n 7) 111.

Such reform is necessary to align Nigeria's corporate regulatory framework with contemporary commercial realities and the overarching objective of promoting ease of doing business.

8.3. Requirement to File Annual Returns and Audit

Limited oversight and monitoring have been identified in previous sections of this paper as some of the issues plaguing SMCs in Nigeria. It is argued, and as stated above, that SMCs may be used as a vehicle for tax evasion and statutory filing, thereby undermining transparency. Excluding SMCs from filing annual returns and audit requirements under the CAMA 2020 is a statutory lacuna that further undermines oversight by regulatory agencies such as the CAC and relevant tax authorities. As stated above, not filing annual returns deprives the CAC of key information pertaining to the annual turnover and assets of the company, which is essential for assessing post-incorporation filing and default fees. Against this background, filing of annual returns is imperative as this will strengthen oversight and monitoring mechanisms for SMCs under the CAMA 2020.

8.4. Appointment of Nominee:

As argued above, the lack of an option to appoint a nominee for SMCs under the CAMA 2020 does not guarantee perpetual succession upon the death of a single member. It is recommended, therefore, that for corporate succession, provisions similar to the Indian system on nominee appointment should also be adopted in Nigeria. This will surely promote corporate continuity in SMCs and improve their lifespan.

8.5. Presentation of Details of Decisions at Annual General Meeting

Another area of concern for SMCs is the requirement to prepare and present a detailed report on the decision taken by a member to the board of directors. As highlighted above, the requirement is unnecessary and impractical as the member and the director of such companies are usually one and the same person. It is recommended here that the CAMA 2020 should be amended to make such a requirement compulsory only when the board is constituted by individuals who are different from the members.

9. CONCLUSION

Undoubtedly, the introduction of SMCs in Nigeria signals an important step towards promoting ease of doing business by bestowing administrative and financial advantages to entrepreneurs

and reducing the regulatory burdens traditionally associated with corporate entities. However, despite their statutory recognition under the CAMA 2020, the current legal framework governing SMCs is fraught with substantive statutory deficiencies that undermine their operational effectiveness and regulatory oversight.

Particularly, CAMA 2020 provides limited mechanisms for the supervision and monitoring of SMCs, particularly by exempting qualifying companies from the obligation to file annual returns and conduct statutory audits. These exemptions, while intended to encourage entrepreneurship, inadvertently weaken corporate accountability and transparency. Furthermore, the absence of a mandatory nominee appointment mechanism exposes SMCs to the risk of corporate discontinuity upon the death or incapacity of the sole member, thereby calling into question the assurance of perpetual succession. In addition, persistent ambiguities surrounding the conversion of multi-member private companies into single-member entities create uncertainty and impede seamless corporate restructuring. Collectively, these deficiencies diminish the attractiveness of SMCs as viable business vehicles, especially for potential investors who may be discouraged from engaging with entities whose continuity and governance structures remain uncertain.

Comparatively, the company law regimes of the United Kingdom and India, although not without limitations, provide pragmatic regulatory solutions that enhance perpetual succession and facilitate flexible restructuring between multi-member and single-member corporate forms. In light of these comparative insights, it is imperative that future reforms to CAMA 2020 address the identified shortcomings by strengthening oversight mechanisms, introducing mandatory nominee appointments, clarifying conversion procedures, and reforming exemptions relating to annual returns and audit requirements. Such reforms would not only enhance regulatory certainty and investor confidence but also ensure that SMCs fulfil their intended role as efficient, sustainable, and credible vehicles for business development in Nigeria.

Flying Without Accountability: Cybersecurity and Liability under India's Aviation Law

Rohn Mathew John[56] & *Mathews P Cherian* [57]

ABSTRACT

The increasing digitalisation of civil aviation has transformed aircraft operations, air traffic management, and airport infrastructure into cyber-physical systems that are vulnerable to non-kinetic attacks. While cyber incidents in aviation may not always result in physical damage, they are capable of causing serious operational disruption, safety risks, and economic loss. In response to the need for regulatory modernisation, India enacted the Bharatiya Viman Adhiniyam, 2024, replacing the Aircraft Act, 1934. Although the new legislation strengthens regulatory oversight and updates aviation governance, it continues to conceptualise aviation security primarily in physical and state-centric terms. This essay argues that the Bharatiya Viman Adhiniyam, 2024 creates a liability vacuum with respect to private cyber attacks on aviation infrastructure. The Act does not expressly impose cybersecurity obligations on aircraft operators, service providers, or technology vendors, nor does it allocate responsibility for cyber-induced disruptions caused by non-state actors. As a result, in the event of a cyber incident, there is no clear statutory basis for determining regulatory, civil, or operational liability within the aviation framework. The essay further demonstrates that this gap is not adequately addressed by existing general cyber legislation, particularly the Information Technology Act, 2000. While the IT Act criminalises cyber offences and regulates certain aspects of digital conduct, it does not function as a sector-specific safety regime capable of allocating liability for systemic risks in aviation. The absence of integration between cyber law and aviation safety regulation leaves enforcement fragmented and accountability uncertain. By analysing the structure and silences of India's aviation law alongside the limits of general cyber regulation, this essay highlights the legal and practical consequences of unresolved liability in the aviation cybersecurity context. It concludes by proposing targeted reforms aimed at recognising cyber threats as aviation safety risks, imposing enforceable cyber duties within aviation law, and clarifying responsibility for private cyber attacks in order to enhance regulatory certainty and passenger safety.

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I. INTRODUCTION

Civil aviation has increasingly evolved into a complex cyber-physical system in which aircraft operations, air traffic management, navigation, and airport infrastructure depend heavily on digital networks and software-driven processes. While traditional aviation security frameworks were designed to address physical threats such as sabotage, hijacking, and unlawful interference, contemporary risks are increasingly non-kinetic. Cyber attacks targeting aviation systems are capable of disrupting flight operations, grounding fleets, interfering with communication systems, and undermining safety without causing immediate physical damage.[58] Recognising the need to modernise aviation regulation, India enacted the Bharatiya Viman Adhiniyam, 2024, replacing the colonial-era Aircraft Act, 1934.[59] The new legislation aims to strengthen regulatory oversight, streamline certification processes, and enhance safety and security governance within the civil aviation sector. However, despite its reformist intent, the Act largely retains a traditional understanding of aviation security that prioritises physical threats and state-centric risks. The regulatory architecture it establishes does not expressly engage with cybersecurity as a distinct component of aviation safety. This omission has significant legal implications in the context of cyber attacks carried out by private actors. Unlike conventional security threats, private cyber attacks operate remotely, often across jurisdictions, and do not fit neatly within existing aviation security classifications. The Bharatiya Viman Adhiniyam, 2024 does not impose explicit cybersecurity obligations on aircraft operators, air navigation service providers, or technology vendors, nor does it provide a statutory framework for allocating responsibility when aviation operations are disrupted due to cyber incidents. As a result, the law offers limited guidance on regulatory accountability and civil liability in such scenarios. This essay argues that the Bharatiya Viman Adhiniyam, 2024 creates a liability vacuum with respect to private cyber attacks on aviation infrastructure. It contends that this vacuum cannot be effectively addressed through general cyber legislation, particularly the Information Technology Act, 2000, which lacks the sector-specific orientation required for aviation safety regulation. By examining the structure and silences of India's aviation law alongside the limitations of existing cyber law, the essay seeks to highlight the consequences of unresolved liability and the need for targeted legal reforms to ensure regulatory certainty and aviation safety in an increasingly digital environment.

[58] ICAO Civil Aviation Cybersecurity Strategy (2019)

[59] Bharatiya Viman Adhiniyam, 2024

II. LIABILITY ARCHITECTURE UNDER THE BHARATIYA VIMAN ADHINIYAM, 2024

The Bharatiya Viman Adhiniyam, 2024 was enacted with the objective of modernising India's civil aviation regulatory framework by strengthening institutional oversight, updating safety and security governance, and enhancing regulatory efficiency.[60] The Act expands the statutory role of aviation authorities, reinforces certification and compliance mechanisms, and consolidates regulatory powers within the civil aviation administration. In doing so, it reflects a clear legislative intent to move away from the outdated structure of the Aircraft Act, 1934 and respond to contemporary aviation needs.

Within this framework, the Act conceptualises aviation safety and security through a predominantly traditional lens. Its provisions are oriented towards the regulation of aircraft operations, airworthiness, licensing, aerodrome standards, and the prevention of unlawful interference with civil aviation.[61] Security obligations under the Act are framed around physical risks and operational compliance, consistent with long-standing aviation law assumptions that prioritise tangible threats such as sabotage, terrorism, and mechanical failure. Liability mechanisms embedded within this structure are therefore implicit, sector-specific, and closely tied to physical safety outcomes.

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However, the Act does not expressly recognise cybersecurity as an independent dimension of aviation safety. It does not define cyber threats, prescribe minimum cybersecurity standards, or impose affirmative statutory duties on regulated entities to prevent or mitigate cyber risks. More importantly, the Act does not articulate a framework for allocating responsibility or liability in the event that aviation operations are disrupted due to cyber attacks carried out by private actors. The absence of such provisions is significant given the increasing reliance of aviation systems on digital infrastructure and networked technologies.

The regulatory model under the Act relies substantially on delegated legislation and administrative oversight exercised through authorities such as the Directorate General of Civil Aviation.[62] While this enables flexibility in rule-making and operational guidance, it also highlights a structural limitation. Delegated regulations and circulars may prescribe best

[60] Bharatiya Viman Adhiniyam, 2024, Statement of Objects and Reasons
[61] Bharatiya Viman Adhiniyam, 2024 (security and safety provisions)
[62] DGCA statutory role

practices or advisory measures, but they cannot substitute for clear statutory allocation of liability. In the absence of explicit legislative direction, regulatory responses to cyber incidents remain discretionary and fragmented. As a result, the liability architecture under the Bharatiya Viman Adhiniyam, 2024 is ill-equipped to address cyber-induced disruptions that do not involve physical damage or traditional security breaches. The Act establishes a comprehensive regulatory framework for conventional aviation risks but leaves unresolved the question of who bears legal responsibility when private cyber attacks interfere with aviation safety and operations. This statutory silence forms the foundation of the liability vacuum that becomes particularly evident when cyber threats originate outside the state-centric security paradigm assumed by aviation law.[63]

III. THE PRIVATE CYBER ATTACKER PROBLEM

Aviation security law has historically been structured around identifiable and tangible threats.[64] Conventional regulatory frameworks assume that risks to civil aviation arise from physical sabotage, hijacking, terrorism, or hostile state action. These assumptions inform how duties are imposed, how security is enforced, and how responsibility is allocated when incidents occur. Cyber attacks carried out by private actors, however, do not conform to this threat model, creating a structural mismatch between contemporary risks and existing legal frameworks. This disconnect becomes most apparent when liability is examined within the statutory framework outlined in the previous section. Private cyber attackers operate remotely, often anonymously, and frequently across national borders.[65] Their actions may target flight management systems, airline reservation platforms, air traffic control networks, or airport operational technology without direct physical interference. While such attacks can cause severe operational disruption, safety risks, and economic loss, they may not trigger the traditional security responses envisaged under aviation law. As a result, cyber incidents fall into a regulatory grey area where the nature of the harm does not align with the assumptions underlying aviation security regulation.

This misalignment becomes particularly problematic when questions of liability arise. The Bharatiya Viman Adhiniyam, 2024 does not specify whether responsibility for preventing or

[63] In re Delhi Laws Act AIR 1951 SC 332
[64] Dempsey, Public International Air Law
[65] Brenner, 'Cybercrime Jurisdiction'

mitigating cyber attacks rests with aircraft operators, air navigation service providers, airport authorities, or third-party technology vendors. Nor does it establish a clear duty of care with respect to cybersecurity that can be enforced through regulatory or civil mechanisms. In the absence of such duties, liability for cyber-induced disruptions remains uncertain and contested. Criminal law responses to cyber attacks, while relevant, do not resolve this uncertainty.[66] Identifying and prosecuting private cyber attackers is often difficult due to jurisdictional constraints and technical complexity. Even where prosecution is possible, criminal liability does not address the allocation of regulatory or civil responsibility within the aviation ecosystem. Aviation law traditionally emphasises preventive regulation and operator accountability in safety-critical contexts, yet this logic is not extended to cybersecurity risks under the current statutory framework.

The result is a liability vacuum in which no actor bears clearly defined responsibility for cyber resilience in aviation operations. Operators may argue that cyber incidents fall outside their statutory obligations, regulators may rely on discretionary guidance rather than enforceable duties, and service providers may escape accountability due to the absence of sector-specific standards. This diffusion of responsibility undermines the preventive logic of aviation safety regulation and leaves aviation systems vulnerable to cyber threats that do not fit within the conventional state-centric security paradigm. By failing to adapt liability structures to account for private cyber attacks, the Bharatiya Viman Adhiniyam, 2024 exposes a critical weakness in India's aviation law. The Act's reliance on traditional security assumptions renders it ill-suited to address non-kinetic threats, thereby reinforcing legal uncertainty at precisely the point where clarity is most necessary for effective risk management and accountability.

IV. WHY GENERAL CYBER LAW DOES NOT CURE THE LIABILITY GAP

In the absence of aviation-specific cybersecurity provisions, it may be argued that existing cyber legislation is capable of addressing cyber threats affecting aviation operations. In India, this role is primarily performed by the Information Technology Act, 2000, which establishes offences relating to unauthorised access, data interference, and computer-related misconduct.[67]

[66] IT Act 2000, ss 43, 66
[67] IT Act 2000, ss 43, 66

While the Act provides a general framework for regulating cyber activity and penalising wrongful conduct, it is not designed to function as a sector-specific safety regime for civil aviation. The Information Technology Act operates as a horizontal statute that applies uniformly across sectors, irrespective of the nature of the infrastructure involved.[68] Its primary focus lies in criminalising cyber offences, regulating intermediaries, and providing limited civil remedies for certain forms of digital harm. This framework is effective in addressing individual instances of cyber wrongdoing, but it does not allocate responsibility for managing systemic risks in safety-critical sectors such as aviation. As a result, the Act does not impose affirmative cybersecurity duties tailored to the operational realities of aviation systems. More importantly, the Information Technology Act does not integrate cybersecurity compliance with aviation safety certification or regulatory oversight.[69] Aviation regulation traditionally relies on ex ante safety mechanisms, including licensing, continuous compliance monitoring, and preventive standards enforced by specialised regulators. Cyber law, by contrast, is largely reactive, addressing violations after harm has occurred rather than embedding cybersecurity into operational safety requirements. This structural difference limits the ability of general cyber law to function as a substitute for sector-specific aviation regulation.

The reliance on general cyber legislation also fails to resolve questions of liability following a cyber incident. While the Information Technology Act may facilitate the prosecution of attackers, it does not clarify whether aviation operators, service providers, or technology vendors bear responsibility for failing to prevent or mitigate cyber risks. Nor does it establish standards against which regulatory negligence or breach of duty can be assessed within the aviation context. Consequently, the application of general cyber law does little to address the diffusion of responsibility created by statutory silence in aviation law. This fragmentation is particularly problematic in an industry where safety regulation depends on clearly defined roles and accountability structures. Without explicit statutory linkage between cyber compliance and aviation safety obligations, enforcement remains inconsistent and discretionary. The absence of coordination between cyber law and aviation regulation reinforces the liability vacuum identified earlier, leaving aviation cybersecurity governed by a patchwork of general legal provisions rather than a coherent, sector-specific framework. Accordingly, while the

[68] Gulati & John, NUJS Law Review

[69] Lessig, Code and Other Laws of Cyberspace

Information Technology Act, 2000 plays an important role in addressing cyber offences, it cannot cure the liability gap created by the Bharatiya Viman Adhiniyam, 2024. The lack of aviation-specific cybersecurity duties and liability allocation underscores the need for targeted legal intervention within aviation law itself, rather than reliance on general cyber legislation to address risks it was never designed to manage.

V. PRACTICAL CONSEQUENCES OF THE LIABILITY VACUUM

The absence of clear liability allocation for private cyber attacks under India's aviation law has tangible legal and operational consequences. Aviation regulation is premised on preventive accountability, where defined duties and enforceable standards incentivise compliance and risk mitigation. When statutory obligations are unclear, this preventive logic weakens, leaving cyber risks to be managed inconsistently across the aviation ecosystem. One immediate consequence of the liability vacuum is regulatory uncertainty following a cyber incident.[70] In the event of a disruption caused by a private cyber attack, it is unclear which entity bears primary responsibility for the failure to prevent or contain the incident. Aircraft operators may contend that cybersecurity falls outside their statutory obligations, while service providers and technology vendors may deny responsibility due to the absence of sector-specific duties. Regulators, in turn, may lack a clear legal basis to impose sanctions or corrective measures. This uncertainty delays enforcement and undermines regulatory credibility.

The liability gap also complicates civil claims and insurance arrangements.[71] Aviation insurance and risk allocation mechanisms depend on predictable liability standards to assess exposure and determine coverage. When cyber incidents are not clearly linked to statutory duties, insurers may dispute claims on the ground that cyber risks were not contemplated within existing aviation liability frameworks. Passengers and affected stakeholders may similarly face difficulty in identifying responsible parties, resulting in prolonged litigation and inconsistent outcomes. From a safety perspective, the diffusion of responsibility weakens incentives for proactive cybersecurity investment.[72] Aviation operators and service providers may prioritise compliance with explicitly mandated safety requirements while treating cybersecurity as a secondary or discretionary concern. In the absence of enforceable obligations, cybersecurity

[70] OECD Cyber Risk Report
[71] IATA Aviation Cybersecurity Report
[72] Hodges, Law and Corporate Behaviour

measures are more likely to be driven by cost considerations rather than safety imperatives. This creates uneven standards across the sector, increasing systemic vulnerability to cyber threats.

The liability vacuum further undermines coordination between regulators and regulated entities. Effective aviation safety regulation relies on continuous oversight, reporting, and compliance monitoring. When cybersecurity is not formally integrated into the aviation safety framework, regulatory engagement remains ad hoc and reactive. This limits the ability of authorities to assess sector-wide cyber resilience or respond effectively to emerging threats. Taken together, these consequences illustrate that the absence of clear liability for private cyber attacks is not merely a doctrinal concern but a practical regulatory weakness. The lack of statutory clarity affects enforcement, risk allocation, and safety governance, reinforcing the need for aviation-specific legal mechanisms that recognise cybersecurity as an integral component of aviation safety rather than a peripheral concern.

VI. TARGETED LEGAL REFORMS

Addressing the liability vacuum surrounding private cyber attacks in aviation does not require an overhaul of India's aviation law framework. Rather, it requires targeted and carefully calibrated reforms that recognise cybersecurity as an integral component of aviation safety and allocate responsibility in a manner consistent with the preventive logic of aviation regulation. First, aviation legislation must explicitly acknowledge cybersecurity as a safety risk within the statutory framework. The Bharatiya Viman Adhiniyam, 2024 should be amended to recognise cyber threats to aviation systems as capable of endangering safety and operational integrity. Such recognition would establish a clear legal basis for treating cybersecurity on par with other safety-critical risks and would avoid reliance on discretionary interpretation by regulators.

Second, the Act should impose affirmative cybersecurity duties on key aviation stakeholders, including aircraft operators, air navigation service providers, airport authorities, and relevant technology service providers. These duties need not prescribe technical standards in detail but should mandate compliance with sector-specific cybersecurity requirements issued by the aviation regulator. Statutory recognition of such duties would ensure that cybersecurity obligations are enforceable rather than merely advisory.

Third, the regulatory framework should provide for clear allocation of responsibility following cyber incidents. While private attackers may remain the primary wrongdoers under criminal law, aviation law must clarify the circumstances under which regulated entities may be held accountable for failures in cyber preparedness, risk management, or incident response. This would enable regulators to impose proportionate sanctions and corrective measures based on defined standards rather than ad hoc discretion.

Fourth, cybersecurity compliance should be integrated into existing aviation safety oversight mechanisms. This includes incorporating cyber risk assessment into certification, licensing, and continuous compliance monitoring processes. Embedding cybersecurity within established safety governance structures would align cyber risk management with the preventive and supervisory approach that characterises aviation regulation.

These reforms do not seek to displace general cyber legislation or impose unrealistic compliance burdens. Instead, they aim to bridge the gap between aviation safety law and cyber risk governance by clarifying duties and liability within the sector. By addressing statutory silence and reducing regulatory ambiguity, such targeted measures would strengthen accountability, enhance safety outcomes, and ensure that India's aviation law framework remains effective in an increasingly digital operational environment.

Transparency & Fairness in Gig Economy: Bridging Algorithmic gap with legal governance

Jahnavi Choubey[73]

ABSTRACT

The gig economy, which is often characterized by freelance employment and temporary contracts, has grown to be a prominent trend in the modern labour market. In addition to offering earning potential flexibility, the technologies also pose significant issues with respect to opacity, bias, and accountability. Unpredictable income fluctuations, unilateral deactivations, and rating-based discrimination are commonplace for gig workers due to the opaque nature of algorithmic decision-making processes. Such action creates profound informational asymmetries between the platform and employees, which pose serious questions about fairness and openness in the digital industry. The purpose of this study is to examine how legal governance might bridge these algorithmic gaps using doctrinal, analytical, and qualitative lenses. According to this paper, which is based on scholarly discussion, platform regulation needs to take non-discrimination, due process, and transparency into account. It also highlights how important it is to strike a balance between preserving the creative potential of digital platforms and defending workers' rights. The article places algorithmic management within broader constitutional and labour law standards, arguing that fairness and openness in the gig economy are not only required by law but also essential for maintaining human dignity in an era of digitalized labour. The findings offer recommendations for policy that might be incorporated into the existing laws to create a responsible gig economy.

Keywords: Gig Economy, Algorithmic Governance, Transparency, fairness, Platform Regulations and Digital Labour Rights.

I. INTRODUCTION

The gig economy, broadly understood as a system of flexible, task-based, and short-term work arrangements, has transformed traditional employment models by redefining the relationship

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between capital and labour[74]. Within this larger framework, platform workers constitute a distinct subset, engaged through digital platforms such as Uber, Swiggy, Zomato, and Urban Company, where algorithms mediate task allocation, pricing, and performance monitoring. While all platform workers are part of the gig economy, not all gig workers operate through digital platforms; for instance, a freelance tutor or a plumber hired informally would also qualify as gig workers. This paper, however, focuses specifically on platform workers, as they represent the most visible and rapidly growing segment of the gig economy in India, and their working conditions uniquely highlight the tensions between technological innovation, labour rights, and legal governance.[75] Work allocation, pricing, performance reviews, and even job retention are all decided by algorithmic management systems used by platforms like Uber, Zomato, Swiggy, and Amazon. These technologies increase scalability and lower transaction costs, but they frequently function in opaque ways that give workers little influence over or knowledge of the choices that affect their livelihoods. In addition to producing notable informational disparities between platforms and workers, the absence of transparency in algorithmic governance also brings up urgent issues of justice, accountability, and due process. The ramifications of this opacity are extensive. With few options for redress, gig workers are routinely exposed to erratic wage changes, abrupt deactivations, and unfair rating systems. These problems reveal a governance gap where the usual labour law protections are either non-existent or severely limited. By its very nature, algorithmic decision-making that are automated processes that use data, algorithms, and artificial intelligence to allocate work, set prices, monitor performance, and even decide on disciplinary actions such as suspensions or terminations.[76] Unlike human managerial discretion, algorithmic systems function as opaque 'black boxes,' where the logic and criteria driving decisions are rarely disclosed to workers. This could solidify new types of exploitation under the pretence of technical efficiency if left unchecked. Therefore, one of the most important tools for bridging these gaps is legal governance.[77] Law can act as a check on algorithmic opacity by incorporating the values of accountability, openness, and equity into regulatory frameworks. A rising understanding of the

[74] Steven Vallas & Juliet B. Schor, *What Do Platforms Do? Understanding the Gig Economy*, 46 Ann. Rev. Soc. 273, 275 (2020).

[75] Sarah Kaine & Emmanuel Josserand, *The Organisation and Experience of Work in the Gig Economy*, 61(4) J. Indus. Rel. 479, 482 (2019).

[76] Gaurav Roy & A.K. Shrivastava, *Future of Gig Economy: Opportunities and Challenges*, 9(1) IMI Konnect 14, 17 (2020).

[77] Joshua Healy, Daniel Nicholson & Andrew Pekarek, *Should We Take the Gig Economy Seriously?*, 27(3) Lab. & Indus. 232, 235 (2017).

necessity of regulating platform work through both labour and data protection law is seen in comparative developments across countries, ranging from the European Union's Digital Services Act and AI regulation as the jurisdictions of EU, UK, and US, offer the most developed and diverse approaches to regulating platform work and algorithmic governance, unlike many others where regulatory responses remain nascent or fragmented; To localized judicial interventions in India.

This paper aims to investigate how legal research that is doctrinal, analytical, and qualitative can shed light on how to close algorithmic gaps in the gig economy. It contends that maintaining fairness in algorithmic decision-making and transparency in platform governance is a subject of social justice and constitutional values rather than just regulatory compliance. The paper offers legal solutions that can protect worker dignity while maintaining the vibrancy of the digital economy by critically examining statutes, case law, academic commentary, and comparable practices.[78]

II. NATURE OF ALGORITHMIC DECISION-MAKING IN PLATFORMS

A system whereby digital platforms use algorithms to arbitrate, oversee, and discipline work relations is known as algorithmic management, and it is what sets the gig economy apart.[79] Instead of using human managers to exert control, platforms like Uber, Zomato, and Amazon use automated technologies to assign work, set prices, assess performance, and even terminate contracts. Gathering and analyzing vast volumes of data, such as employee location, reaction times, customer reviews, and overall productivity, is the foundation of algorithmic decision-making. By combining these data points into predictive models, decisions are made instantly, resulting in an immediate yet opaque control system.[80]

Its dual function as a work facilitator and regulator is one of algorithmic management's distinguishing features. On the one hand, it facilitates efficiency through providing quick

[78] Colin Crouch, *Will the Gig Economy Prevail?* 45 (John Wiley & Sons 2019).

[79] Gaurav Roy & A.K. Shrivastava, *Future of Gig Economy: Opportunities and Challenges*, 9(1) IMI Konnect 14, 17 (2020).

[80] Imran Kadolkar, Sven Kepes & Mahesh Subramony, *Algorithmic Management in the Gig Economy: A Systematic Review and Research Integration*, J. Org. Behav. (2024), https://doi.org/10.1002/job.2831 (article), at 3.

scalability, lowering transaction costs, and balancing supply and demand. On the other hand, it obscures the worker's reason for making decisions by replacing management discretion with automated guidelines.[81] Task allocation is not solely determined by availability, for instance; it is also impacted by hidden factors like cancellation rates, historical performance, and algorithmic dependability projections. Workers are less able to contest or appeal decisions that give them specific duties since they are rarely given a reason for receiving or being denied them.

Moreover, algorithmic decision-making is by its very essence dynamic. Machine learning allows algorithms to continuously learn and recalibrate, so the *"rules of the game"* are always changing. Because tactics that previously maximized wages may suddenly become inefficient, this causes instability for workers. Rating systems also provide another level of algorithmic governance by transforming customer reviews into measurable indicators that have an immediate impact on an employee's earning potential. This arrangement gives algorithms that interpret arbitrary consumer behaviour the ability to evaluate things instead of impartial authorities or employers.[82]

Since this concept restructures the work relationship into a sequence of digitally mediated orders, scholars have dubbed it *"algorithmic management"*. The contractual relationship between the platform and the worker, however, is structured as an independent service agreement, bypassing the formal protections of labour law, in contrast to regular employment contracts.[83] To the cost of workers' rights, algorithmic decision-making therefore blurs the lines between administrative authority and technology neutrality.

Essentially, platforms' algorithmic decision-making process implies a significant reorganization of labour governance. It is both a technological advancement and a change in norms, as control is now exerted through opaque codes as opposed to clear regulations. For

[81] James Duggan, Ultan Sherman, Ronan Carbery & Anthony McDonnell, *Algorithmic Management and App-Work in the Gig Economy: A Research Agenda for Employment Relations and HRM*, 30 Hum. Res. Mgmt. J. 114, 120 (2020).

[82] Zhi Ming Tan, Naman Aggarwal, Josh Cowls, Jessica Morley, Mariarosaria Taddeo & Luciano Floridi, *The Ethical Debate About the Gig Economy: A Review and Critical Analysis*, 65 Technol. in Soc'y 101594, 101596 (2021).

[83] Olalekan D. Adekoya, Chima Mordi, Hakeem A. Ajonbadi & Weifeng Chen, *Implications of Algorithmic Management on Careers and Employment Relationships in the Gig Economy—A Developing Country Perspective*, 38 Info. Tech. & People 686, 690 (2025).

this reason, any legal investigation into the regulation of gig work must take this structure into account.

III. ISSUES OF TRANSPARENCY, FAIRNESS AND ACCOUNTABILITY

In the gig economy, algorithmic management brings up urgent issues with responsibility, equity, and transparency. Because they rarely comprehend the rules controlling pricing, task distribution, or deactivation, workers are subject to arbitrary treatment and severe informational asymmetries. For example, drivers who are deactivated for *"low ratings"* on ride-hailing platforms are rarely notified if this is due to computational error, biased feedback, or misconduct.[84]

Algorithms with biases built in further undermine fairness. Employee welfare is frequently sacrificed in favour of platform profitability and customer pleasure in these systems. Caste, gender, and race-based social prejudices are reproduced by rating systems, and livelihoods are destabilized by dynamic pricing, which generates erratic earnings. Taking responsibility is even more difficult. Algorithms replace human control in platform work, but traditional labour legislation assumes identified employers. Employees who are subject to salary disputes or deactivation frequently deal with computerized grievance procedures that are opaque and offer little real compensation, giving platforms unbridled authority.

Internationally, efforts have been made to require algorithmic transparency and human control through frameworks such as the EU's GDPR *"right to explanation"* and the planned Platform Work Directive. But in India, workers are left in a regulatory void because neither the IT Act nor labour legislation sufficiently address these issues. Thus, the absence of transparency, fairness, and accountability is not abstract but directly shapes workers' daily experiences. Without robust governance, algorithmic management risks entrenching unregulated managerial power and undermining the dignity of digital labour.[85]

[84] Matthias Weber, Ulrich Remus & Michael Pregenzer, *A New Era of Control: Understanding Algorithmic Control in the Gig Economy*, in Proc. Int'l Conf. Info. Sys. (ICIS 2022) 1, 3 (2022) (conference proc'n paper).

[85] A. Verma & D. Mehta, *Gig Economy, Analysis and Monitoring Prioritizing Privacy, Dedication, Performance, and Accuracy*, *in* INT'L CONF. ON ICT FOR SUSTAINABLE DEV. 191, 191–208 (2024).

IV. IMPACT ON WORKER'S RIGHT AND EMPLOYMENT RELATIONS

Employment relations and workers' rights are significantly altered by algorithmic control. Because platforms categorize employees as independent contractors, they are not entitled to job security, collective bargaining, or minimum salaries.[86] However, the algorithm has employer-like control over discipline, task distribution, and oversight, resulting in a conflicting relationship.

Under dynamic pricing and fluctuating incentives, earnings become unstable, compromising the idea of just compensation. Frequently unilateral and opaque, deactivations circumvent due process protections that are essential to regular employment. The fragmentation of workers caused by algorithmic individualization also erodes collective bargaining power and increases reliance on platforms. Monitoring is an additional aspect of harm.[87] Large volumes of behavioural data are gathered by platforms in order to evaluate performance, violating privacy and autonomy, values that are safeguarded by human rights and constitutional law. This results in what academics refer to as a *"fissured employment relationship",* wherein self-employment is legally structured but essentially subject to algorithmic management. India has a limited framework that leaves gig workers in a grey area, even though several jurisdictions, such as the UK and EU, have started to categorize them as *"dependent contractors".* In conclusion, algorithmic management undermines privacy, collective rights, and pay security while upending legitimate employment categories.[88] These effects highlight how inadequate the labour laws now in place are and how urgently revisions that balance innovation with fundamental labour rights become necessary.

V. REGULATIONS OF DIGITAL PLATFORMS UNDER THE IT ACT AND THE INTERMEDIARY GUIDELINES

[86] A. Joshi, S. Jain & P.K. Gupta, *Challenges and Impact of the Gig Economy*, 2 SUSTAINABLE ECONOMIES 96 (2024).

[87] Y. Fatoki, P.O. Fasuyi & T.A. Olorunnipa, *An Examination of the GIG Economy: A Case Study of Uber*, 11 J. COMM. & PROP. L. 167, 167–79 (2024).

[88] M. Dedema & H. Rosenbaum, *Socio-technical Issues in the Platform-mediated Gig Economy: A Systematic Literature Review: An Annual Review of Information Science and Technology (ARIST) Paper*, 75 J. ASS'N FOR INFO. SCI. & TECH. 344, 344–74 (2024).

In India, the main piece of legislation controlling digital platforms is the Information Technology Act, 2000 (IT Act).[89] It was first passed to prevent cybercrime and give legal validity to electronic records. Through the Intermediary Guidelines and Digital Media Ethics Code, 2021, its purview has progressively grown to encompass regulating online intermediaries. These rules mandate that platforms monitor material, set up grievance redressal procedures, and make sure removal orders from government authorities are complied with.[90] The IT Act views gig platforms like Uber, Zomato, and Swiggy mainly as middlemen that help customers and service providers with their transactions. Because the legislation does not acknowledge their function as labour managers or employers, there is a regulatory blind spot. Grievance officers and complaint resolution timetables are required by law, although they are designed to moderate content rather than labour conflicts.[91] Therefore, statutory monitoring does not extend to algorithmic judgments about price, task allocation, or deactivation.

Accordingly, the IT Act views platforms as technology enablers rather than as organizations with substantial managerial and financial clout. Because of this narrow definition, the law is unable to address the more profound labour consequences of algorithmic management.[92] Therefore, even though the IT Act creates standards for data and content compliance, it ignores the statutory responsibilities of employees whose jobs are dictated by platform algorithms.

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VI. DATA PROTECTION, ALGORITHMIC ACCOUNTABILITY AND WORKER'S RIGHTS

The growing prevalence of data-driven decision-making on gig platforms puts algorithmic accountability and data protection at the forefront of labour governance. Gig workers produce a lot of behavioural and personal data, such as transaction histories, geolocation, and performance evaluations, which platforms use to assess, reward, and reprimand them. Nevertheless, there aren't many protections against the misuse of such data provided by the IT

[89] Information Technology Act, 2000, No. 21, Acts of Parliament, 2000 (India).

[90] L. Goldkind & J.G. McNutt, *Vampires in the Technological Mist: The Sharing Economy, Employment and the Quest for Economic Justice and Fairness in a Digital Future*, 13 ETHICS & SOC. WELFARE 51, 51–63 (2019).

[91] A. Zwick, *Welcome to the Gig Economy: Neoliberal Industrial Relations and the Case of Uber*, 83 GEOJOURNAL 679, 679–91 (2018).

[92] J.M. Roberts, *Digital Labour in the Gig Economy Before and During COVID-19*, *in* DIGITAL, CLASS, WORK: BEFORE AND DURING COVID-19 168, 168–91 (2022).

Act and its related regulations.[93] The Information Technology (Reasonable Security Practices and Procedures and Sensitive Personal Data or Information) Rules, 2011[94] and Section 43A[95] are largely concerned with safeguarding consumer data, not employee rights in algorithmic management systems.

There are major concerns about this gap. Employees are not required by law to guarantee transparency or human oversight, nor do they have the ability to access or contest the reasoning underlying algorithmic choices that impact their revenue. International frameworks such as the EU's General Data Protection Regulation (GDPR), which introduces a *"right to explanation"* for automated decisions, highlight the importance of embedding accountability into algorithmic governance. On the other hand, algorithmic management is still viewed by Indian law as a technical compliance issue rather than an economic fairness issue.[96]

The hazards of surveillance and exploitation are increased when there is no strong data protection policy in place. The platform economy may become even more unequal if workers' behavioural data is utilized for profiling and exclusion in addition to performance reviews. Gig workers' particular risks are not specifically addressed by India's Digital Personal Data Protection Act, 2023[97], which also does not mandate that platforms provide algorithmic logic, despite its pledges to improve human data rights.[98] The rights of workers to privacy, dignity, and equitable treatment are undermined in the absence of such safeguards, which keep the power balance skewed in favour of platforms.

VII. LIMITATIONS OF THE IT REGIME IN ADDRESSING LABOUR CONCERNS

[93] J.M. Roberts, *Digital Labour in the Gig Economy Before and During COVID-19*, *in* DIGITAL, CLASS, WORK: BEFORE AND DURING COVID-19 168, 168–91 (2022).

[94] Information Technology (Reasonable Security Practices and Procedures and Sensitive Personal Data or Information) Rules, 2011, G.S.R. 313(E) (India).

[95] Information Technology Act, 2000, No. 21, Acts of Parliament, 2000, § 43A (India).

[96] A. Zwick, *Welcome to the Gig Economy: Neoliberal Industrial Relations and the Case of Uber*, 83 GEOJOURNAL 679, 679–91 (2018).

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

[98] A. Forsyth & S. McManus, *'Is There an App for That?': Worker Representation, Unions and the Gig Economy*, *in* DEMOCRACY, SOC. JUST. & THE ROLE OF TRADE UNIONS: WE THE WORKING PEOPLE 119, 119–38 (C. Kelly & J.-C. Tham eds., 2021).

The IT regime is still essentially insufficient to handle the labour aspects of platform work, despite its growing significance. Its provisions, not employment arrangements, are intended to control cybersecurity, digital transactions, and intermediary liability. Hence, it does not address concerns that are essential to gig workers, like equitable pay, job stability, and safeguards against arbitrary termination.[99] Platforms can avoid employer duties by being categorized as only intermediaries, even while algorithms have administrative power similar to that of traditional employment. An additional constraint is the lack of legally binding accountability systems. The IT Act mandates redressal mechanisms and grievance officials, however these are focused on user grievances rather than employee conflicts. Because of this, automated deactivations or unfair algorithmic tactics may take place without providing any real redress.[100] The Act also leaves platforms in a regulatory vacuum by not requiring companies to explain automated choices to employees or produce transparency reports on algorithmic management. This issue is made worse by the misalignment between labour legislation and IT regulations. Although Indian labour codes have made an effort to include gig and platform workers under the 2020 Social Security Code[101], these safeguards are still very limited and primarily aspirational. In the absence of clear cross-references or comprehensive regulatory systems, Overall, the IT Act establishes a technological foundation for platform responsibility, but it ignores the socioeconomic reality of gig labour. If algorithmic justice, transparency, and worker protection are not incorporated into the IT regime, it will continue to be an inadequate and unfinished instrument for managing labour in the digital economy.[102]

With the adoption of four labour codes, the Code on Wages, 2019[103]; the Industrial Relations Code, 2020[104]; the Occupational Safety[105], Health and Working Conditions Code, 2020[106]; and the Code on Social Security, 2020, India's labour law system has experienced a major consolidation. These codes were created to streamline the nation's disjointed labour regulations

[99] A. Forsyth & S. McManus, *'Is There an App for That?': Worker Representation, Unions and the Gig Economy*, *in* DEMOCRACY, SOC. JUST. & THE ROLE OF TRADE UNIONS: WE THE WORKING PEOPLE 119, 119–38 (C. Kelly & J.-C. Tham eds., 2021).

[100] A.J. Ravenelle, K.C. Kowalski & E. Janko, *The Side Hustle Safety Net: Precarious Workers and Gig Work during COVID-19*, 64 SOC. PERSPECTIVES 898, 898–919 (2021).

[101] The Code on Social Security, 2020, No. 36, Acts of Parliament, 2020 (India).

[102] K. Gregory, *'My Life Is More Valuable Than This': Understanding Risk among On-Demand Food Couriers in Edinburgh*, 35 WORK, EMP. & SOC. 316, 316–31 (2021).

[103] The Code on Wages, 2019, No. 29, Acts of Parliament, 2019.

[104] The Industrial Relations Code, 2020, No. 35, Acts of Parliament, 2020.

[105] The Occupational Safety, Health and Working Conditions Code, 2020, No. 37, Acts of Parliament, 2020.

[106] The Code on Social Security, 2020, No. 36, Acts of Parliament, 2020.

and to modernize, rationalize, and simplify them. The definitions of *"gig worker"* and *"platform worker",* which were included into the legislative language by the Social Security Code, are especially noteworthy. Although it doesn't specifically mention gig work, the Industrial Relations Code deals with trade unions and dispute resolution. The substantive protection of gig workers is still in doubt, despite the fact that these measures represent a step in the right direction.[107]

VIII. APPLICABILITY OF LABOUR PROTECTION TO GIG AND PLATFORM WORKERS

Only one of the four labour codes, the Code on Social Security, specifically recognizes gig and platform workers and seeks to expand welfare programs like health insurance, life insurance, and old age benefits. With only modest contributions from platforms, the law places the onus of financing these benefits mostly on the federal and state governments. Importantly, gig workers are not entitled to the same rights under the Codes as *"employees",* including job security, collective bargaining, and minimum wages. Their precarious legal status is further reinforced by this dual classification, which acknowledges gig workers as recipients of social programs but not as employees with enforceable rights. As a result, the effectiveness of current safeguards is still limited and aspirational, with no practical consequences yet to be shown.[108]

IX. EXISTING GAPS IN EXTENDING RIGHTS TO GIG WORKERS

Beyond algorithmic opacity, data utilization is a central concern. Platforms collect vast amounts of behavioural, locational, and performance data, which is not only used to allocate work but also to shape worker behaviour through nudges and incentive designs. This form of *'data-driven management'* effectively replaces human supervision with constant digital surveillance, raising questions under both privacy law and labour law. While the proposed Digital Personal Data Protection Act, 2023[109] creates general rights for data subjects, it does not recognize the unique vulnerability of platform workers whose economic survival depends

[107] T. Goldman & D. Weil, *Who's Responsible Here? Establishing Legal Responsibility in the Fissured Workplace*, 42 BERKELEY J. EMP. & LAB. L. 55, 55–116 (2021).

[108] Y.-W. Lei, *Delivering Solidarity: Platform Architecture and Collective Contention in China's Platform Economy*, 86 AM. SOC. REV. 279, 279–309 (2021).

[109] Digital Personal Data Protection Act, 2023, No. 22, Acts of Parliament, 2023.

on how their data is interpreted by opaque algorithms. Hence, regulation must move from a consumer-centric to a worker-centric model of data protection.

Even with the official recognition of gig and platform workers, India's labour laws are still insufficient to deal with the realities of algorithmic work. Uncertainty over employment status is the main gap. Because gig workers are not considered *"employees"* or even *"workers*", they are not entitled to basic entitlements like social security, overtime, minimum wages, and protection from wrongful termination.[110] Because of this uncertainty, platforms are able to use algorithms to exert administrative control while evading employer responsibilities. Enforcement is also another important flaw. According to the Social Security Code, welfare benefits are dependent on social security funds and programs that are still mostly unexecuted. These measures run the risk of becoming merely symbolic rather than substantive, leaving workers protected in theory but unprotected in reality, given the scant requirements placed on platforms. The lack of collective labour rights contributes to the growing power disparity. Although gig workers are not covered by the Industrial Relations Code, it does support unionization for employees. By isolating people through ratings and rewards, algorithmic management exacerbates this problem by reducing their ability to negotiate and solidifying their reliance on platforms. The Codes' omission regarding algorithmic governance is as troubling. Unresolved issues with bias, opacity, and automated decision-making subject employees to price volatility and arbitrary deactivation. In contrast to the EU's new platform legislation, Indian labour reforms do not incorporate accountability, transparency, or human monitoring.

Last but not least, the incompatibility of labour law and IT regulations results in a disjointed system that platforms take advantage of.[111] A regime that structurally marginalizes gig work while symbolically acknowledging it is the outcome, highlighting the need for comprehensive reforms that balance labour rights with the digital realities of platform employment.

X. IDENTIFYING THE LEGAL VACUUM AT THE CROSSROADS

[110] M. Steinbaum, *Antitrust, the Gig Economy, and Labor Market Power*, 82 L. & CONTEMP. PROBS. 45, 45–64 (2019).
[111] V. Dubal, *On Algorithmic Wage Discrimination*, 123 COLUM. L. REV. 1929, 1929–92 (2023).

India's gig and platform work regulations are a contentious area of the law where information technology and labour law meet but do not successfully interact. Gig and platform workers are recognized as a separate workforce group by the labour rules, especially the Social Security Code of 2020[112]. In contrast, the digital platforms themselves are governed by the Information Technology Act of 2000[113] and related regulations, which mainly address data security, cybercrimes, and intermediary obligations. But the algorithmic management systems that organize gig employment are not sufficiently covered by either approach. This leaves platform workers in a legal limbo where they are acknowledged but not protected at the intersection of employment regulation and digital governance.

The disparity results from a conceptual mismatch: the IT Act governs platforms as digital intermediaries rather than employers, whereas labour statutes are intended to regulate human employers. However, in reality, algorithms, rating systems, and deactivations are how platforms exert employer-like control. Without clear regulations to control algorithmic decision-making or to hold platforms responsible for their management role, employees are left without effective redress. Gig workers are subject to the discipline of algorithms without the protections of labour law or the accountability procedures of IT governance, undermining constitutional commitments to dignity, equality, and livelihood.[114]

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While both IT regulation and labour law address the gig economy, they do so in different and occasionally contradictory ways. Without considering gig workers to be employees, the labour regulations aim to offer restricted welfare protections including access to social security funds. In contrast, digital platforms are governed by the IT Act and intermediary standards as impartial information-sharing platforms rather than as active employers.[115] This leads to a situation where platforms can avoid their labour law employer responsibilities while simultaneously posing as *"technology companies"* under IT legislation.

[112] The Code on Social Security, 2020, No. 36, Acts of Parliament, 2020.

[113] Information Technology Act, 2000, No. 21, Acts of Parliament, 2000, § 66A.

[114] B. Fanfani & F. Passerini, *Are Alternative Work Arrangements a Substitute for Standard Employment?: Evidence from Worker-Level Data*, IZA - Inst. of Lab. Econ. (2024).

[115] D. Howcroft & B. Bergvall-Kåreborn, *A Typology of Crowdwork Platforms*, 33 WORK, EMP. & SOC. 21, 21–38 (2019).

In contrast, the safe harbour provisions of Section 79 of the IT Act stress platform immunity from liability for user-generated content. When applied to gig platforms, this safe harbour approach enables businesses to absolve themselves of accountability for algorithmic choices that have a direct impact on employees' livelihoods.[116] The planned Digital Personal Data Protection Act, 2023[117], also raises concerns about algorithmic bias and workplace spying, although it does not incorporate labour protections despite introducing rights around data processing.

The fragmented implementation of these rules creates confusion for employees in addition to allowing platforms to take advantage of regulatory arbitrage. For instance, the Social Security Code offers gig workers benefits, but the lack of IT law enforcement tools makes it impossible to effectively monitor platform compliance.

Alternatively, there are IT regulations on grievance redressal procedures, but they are consumer-oriented and do not cover work conflicts. Because of these conflicts and overlaps, the regulatory environment is fragmented and does not fully address digital governance or labour rights, which makes gig work even more unstable.[118]

XI. CONSEQUENCES FOR GIG WORKERS: CASE STUDIES AND EXAMPLES

Gig workers bear the brunt of this regulatory vacuum and conflict, as their experiences highlight the shortcomings in IT governance and labour legislation. Examples from e-commerce, food delivery, and ride-hailing platforms show how algorithmic management leads to exploitation, instability, and rights violations when it is not accompanied by explicit legal safeguards.[119]

The common use of algorithmic deactivation is a notable illustration. Uber and Ola drivers

[116] C. O'Neill et al., *When Algorithmic Management Was New: Engineered Standards and the Managerial Prerogative in Australia*, 19 WORK ORG. LAB. & GLOBALISATION 244, 244–60 (2025).

[117] Digital Personal Data Protection Act, 2023, No. 22, Acts of Parliament, 2023.

[118] T. López et al., *The Fairwork Project: Promoting Good Labor Practices in the Digital Platform Economy through Action Research*, *in* COLLAB. RSCH. IN THE DATAFIED SOC.: METHODS & PRACS. FOR INVEST. & INTERVENTION 149, 149–60 (M.T. Schäfer et al. eds., 2024).

[119] P. Sharma, *Contested Social Relations in the Platform Economy: Class Structurisation and Collectivisation in Ride-Hailing Services in India*, 15 WORK ORG. LAB. & GLOBALISATION 25, 25–45 (2021).

have complained of abruptly losing access to the app, which is frequently the result of poor reviews or complaints from users. These workers lose their only source of income overnight if they are not given due process or the opportunity to appeal. IT law views terminations of employment as business choices governed by private contracts, exempt from regulation, but labour law requires notice, a hearing, or compensation. This leads to a denial of procedural justice.[120]

In a similar vein, pay volatility serves as a reminder of the lack of safeguards. Due to platform algorithms, delivery workers on Zomato and Swiggy frequently experience abrupt changes in incentive structures or per-delivery fees. Gig workers are not covered by labour rules, which express the idea of fair compensation, and IT law does not govern economic justice in any way. The right to livelihood of workers is undermined by this regulatory gap, which exposes them to erratic and unreliable revenues.

The issue of algorithmic prejudice serves as another illustration of the negative effects of fragmented governance. For example, research conducted both in India and abroad has revealed that customer evaluation systems frequently penalize employees based on their accent, gender, or caste. Such discriminatory actions would be considered violations of anti-discrimination and equality standards under a labour law framework.[121] Nevertheless, they are exempt from legal examination under both labour and IT regimes when they are mediated by algorithms and classified as consumer feedback. Under the pretence of impartial technology, structural injustices are sustained in the absence of accountability measures. Comparative examples also highlight the effects of regulatory inadequacies in India. The Employment Tribunal ruled in the UK case ***Aslam v. Uber (2016)***[122] that, in spite of the platform's assertions that it is a technology intermediary, Uber drivers were *"workers"* entitled to minimum wage and holiday pay. Recognizing the employer-like function of algorithms, Spain's *"Riders Law"* (2021) mandates that food delivery services identify couriers as employees. The ability of legal institutions to adjust to the reality of algorithmic management is demonstrated by these

[120] T. Barnes, C. O'Neill & L. Kelly, *New Worlds of Logistical Labour: Spaces, Places, Technologies, Workers*, 19 WORK ORG. LAB. & GLOBALISATION 127, 127–39 (2025).
[121] F. Pasquale, *Two Narratives of Platform Capitalism*, 35 YALE L. & POL'Y REV. 309, 309–19 (2016).
[122] *Aslam v. Uber B.V.*, [2016] UKET 2202551/2015 (Eng.).

interventions. In contrast, Indian regulators and courts have not yet established a logical framework, so workers must rely on union activism or ad hoc lawsuits to be protected.[123]

When these gaps are combined, the result is a system of algorithmic precarity, where workers are subject to opaque digital systems without the protections of IT regulations or labour laws. They face discrimination, invasive surveillance, abrupt job loss, and fluctuating salaries without any real redress. Their constitutional rights to equality, livelihood, and dignity are all compromised by this, and it also reveals how structurally Indian regulatory institutions have failed to keep up with technology advancements in the labour market.[124]

XII. COMPARATIVE PERSPECTIVE

When these gaps are combined, the result is a system of algorithmic precarity, where workers are subject to opaque digital systems without the protections of IT regulations or labour laws. They face discrimination, invasive surveillance, abrupt job loss, and fluctuating salaries without any real redress.[125] Their constitutional rights to equality, livelihood, and dignity are all compromised by this, and it also reveals how structurally Indian regulatory institutions have failed to keep up with technology advancements in the labour market.

Judicial interventions have been a major tool used in the UK to fill legal gaps. The Supreme Court acknowledged Uber drivers as *"workers"* in the case of ***Uber BV v. Aslam (2021)***[126]**,** granting them paid leave and minimum salary, even though the firm claimed to be a technical middleman. The employer-like role of algorithmic management was highlighted by this decision. The regulatory strategy in the US has been disjointed. While states like California temporarily increased rights via Assembly Bill 5 (2019) before industry lobbying limited its scope through Proposition 22, federal labour law still classifies gig workers as independent contractors. However, there is now more discussion on algorithmic accountability in the workplace, especially when it comes to data rights and anti-discrimination.

[123] V. Dubal, *On Algorithmic Wage Discrimination*, 123 COLUM. L. REV. 1929, 1929–92 (2023).
[124] V. Dubal, *On Algorithmic Wage Discrimination*, 123 COLUM. L. REV. 1929, 1929–92 (2023).
[125] A.L. Kalleberg & M. Dunn, *Good Jobs, Bad Jobs in the Gig Economy*, 20 PERSPECTIVES ON WORK 10, 10-75 (2016).
[126] *Uber B.V. v. Aslam*, [2021] UKSC 5.

These comparative trends emphasize the significance of integrated regulation for India. The EU approach shows that algorithmic governance may be incorporated into labour rights to provide due process and transparency.[127] The experiences of the US and the UK demonstrate how courts and state-level measures might reclassify workers or impose duties on platforms. In stark contrast is the regulatory void in India, where the IT Act and labour laws are still separate. The most important takeaway is that algorithmic management cannot be regulated under IT legislation only as a technical matter; it also needs to be addressed as a social justice and employment rights issue that calls for cross-sectoral reforms.

While India cannot transplant EU frameworks wholesale, specific provisions provide valuable guidance. The EU's *'right to explanation'* under GDPR could be integrated into India's IT rules, giving workers access to the reasoning behind automated decisions such as deactivations or wage reductions. Similarly, Spain's '*Riders Law'*, which reclassified delivery workers as employees, offers a legislative model for recognizing employer-like control in India's context, where platforms exercise significant supervision.[128] The EU Platform Work Directive's insistence on algorithmic transparency and human oversight could be localized through amendments to the IT Act, requiring platforms to disclose key parameters of algorithmic decision-making that affect employment. By selectively adapting these mechanisms, India can avoid regulatory arbitrage while safeguarding constitutional values.[129]

XIII. CONSTITUTIONAL DIMENSION

Caste, gender, and language inequalities are frequently replicated by algorithms used by gig platforms, compromising the equality guaranteed by Article 14. Workers are exposed to consumer biases through rating-based systems, for instance, which results in indirect discrimination without obvious accountability. Therefore, in order to ensure that algorithmic governance is fair, digital labour regulation must be based on constitutional equality principles, making sure that technical systems do not reinforce structural injustices.[130]

[127] R. Calo & A. Rosenblat, *The Taking Economy: Uber, Information, and Power*, 117 COLUM. L. REV. 1623, 1623-90 (2017).

[128] U. Huws, The Algorithm and the City: Platform Labour and the Urban Environment, 14 WORK ORG. LAB. & GLOBALISATION 7, 7-14 (2020).

[129] N. van Doorn, At What Price? Labour Politics and Calculative Power Struggles in On-Demand Food Delivery, 14 WORK ORG. LAB. & GLOBALISATION 136, 136-49 (2020).

[130] K.S. Rahman, From Economic Inequality to Economic Freedom: Constitutional Political Economy in the New Gilded Age, 35 YALE L. & POL'Y REV. 321, 321-36 (2016).

According to Article 21, which protects the right to life and livelihood, algorithmic deactivation methods are extremely concerning. As the Supreme Court has often stressed in decisions like ***Maneka Gandhi v. Union of India (1978)***[131]***,*** abrupt deactivation without warning or hearing constitutes a violation of procedural due process. Workers' livelihood and dignity are undermined by algorithms' opacity, which effectively prevents them from contesting unfavourable judgments. Thus, it is constitutionally required that due process protections be incorporated into platform governance.

To date, Indian courts have taken a piecemeal approach to gig employment, mostly through public interest litigation and labour conflicts. For instance, petitioners have asked for gig workers to be included in social security programs, and High Courts have on occasion recognized the exploitative nature of platform work. However, algorithmic fairness and opacity are not well addressed in jurisprudence.[132] The UK and other comparator jurisdictions, on the other hand, have acknowledged algorithmic management as a matter of employment law. As technology advances, Indian courts will have the chance to apply the equality and livelihood principles found in the constitution to algorithmic decision-making, guaranteeing that legal safeguards keep pace with these developments.

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Although India's labour laws officially acknowledge gig and platform workers, our study shows that they do not offer sufficient safeguards against the realities of algorithmic management. However, platforms' employer-like position is not addressed by the Information Technology Act and its regulations, which merely govern them as digital intermediaries. At the nexus of labour law and IT governance, there is a legal void where platforms have substantial control over workers' livelihoods without taking on the associated obligations. Gig workers thus have little options for recourse and are subject to surveillance, algorithmic bias, opaque deactivations, and unstable income.[133] The EU, UK, and US comparative experiences show that these issues can be lessened by enacting legislative changes, recognizing platform control by the courts, and incorporating transparency into digital governance.

[131] Maneka Gandhi v. Union of India, AIR 1978 SC 597.

[132] K. Andrias, *The New Labor Law*, 126 YALE L.J. 2, 2-100 (2016).

[133] A. Bogg, *The Common Law Constitution at Work: R (on the Application of UNISON) v Lord Chancellor*, 81 MOD. L. REV. 509, 509-26 (2018).

XIV. TOWARDS AN INTEGRATED LEGAL FRAMEWORK FOR ALGORITHMIC GOVERNANCE & RECOMMENDATIONS

The necessity of integration is this study's key finding. Because IT governance and labour law now operate independently, platforms are able to take advantage of regulatory gaps. Algorithmic management must be clearly acknowledged as a technology and labour rights concern in an integrated framework. The Social Security Code, 2020, could be amended to give gig workers enforceable rights like minimum wages, due process in termination, and collective bargaining.[134] At the same time, the IT Act could be amended to include requirements that guarantee algorithmic transparency, fairness, and accountability in employment settings. Connecting these two regimes would offer comprehensive security without compromising digital platforms' capacity for innovation.

The tenets of platform regulation in India ought to be accountability and transparency. Indian law must ensure workers have the right to an explanation for automated choices, especially when it comes to deactivation or wage changes, building on global models like the EU Platform Work Directive. Furthermore, accountability ought to cover employment-related problems in addition to consumer-focused grievance redressal under IT regulations. To guarantee equity and non-discrimination, platforms must to be compelled to set up independent supervision procedures, such as human review of algorithmic judgments. Integrating worker protections also means tackling data privacy and surveillance: employees need to be in charge of the personal information that platforms gather about them and have protections against invasive monitoring. These safeguards are in line with the constitutional obligations made in Articles 14[135] and 21[136], which guarantee equality, dignity, and a living wage in the digital workplace.

To move beyond descriptive recognition, this study proposes three possible models of integrated legal governance for India. First, a *'Platform Work Act'* model, which consolidates worker protections, algorithmic accountability, and platform responsibilities into a single statute, harmonizing labour and IT law. Second, an amendment model, whereby the Social Security Code, 2020[137] is amended to include enforceable minimum protections such as wage

[134] K. Andrias, *The New Labor Law*, 126 YALE L.J. 2, 2-100 (2016).
[135] INDIA CONST. art. 14
[136] INDIA CONST. art. 21.
[137] Id.

guarantees and due process safeguards, while the IT Act, 2000[138] is amended to regulate algorithmic decision-making in employment contexts. Third, a constitutional interpretation model, wherein Indian courts interpret Articles 14[139] and 21[140] expansively to impose fairness and procedural safeguards on algorithmic management, much as the Supreme Court has historically broadened the right to life and livelihood. While each approach has trade-offs, the core principle remains harmonisation across labour and IT frameworks to ensure both accountability and innovation.

To operationalize due process, legal governance must go beyond normative commitments. One approach is to mandate human-in-the-loop safeguards, requiring that any termination or deactivation decision be subject to human review and explanation.[141] Another mechanism is the creation of independent grievance redressal boards for platform workers, modelled on labour tribunals, where disputes relating to algorithmic decisions can be challenged. Additionally, statutory provisions could require platforms to conduct periodic fairness audits of their algorithms, overseen by a regulatory body combining expertise from labour and IT domains. These mechanisms would concretize constitutional guarantees of equality and livelihood by embedding them in enforceable processes.

XV. CONCLUSION

The goal of this essay was to examine how labour law and IT regulations are increasingly overlapping in the context of India's platform economy. It started by pointing out how work is changing on digital platforms, where automated systems decide who may access opportunities, track performance, and enforce compliance, often without accountability or transparency. India's Labour Codes have made great strides, especially in acknowledging gig and platform workers, but without legally binding commitments, the protections are essentially merely symbolic. Platforms are regulated as digital service providers by the IT Act[142] and Intermediary Guidelines, although they do not address their function as de facto employers. Because of the

[138] Id.
[139] Id.
[140] Id.
[141] Supra at 14.
[142] Supra at 22.

ensuing regulatory void, gig workers are in a vulnerable position: acknowledged but unprotected, prominent but silent in the legal system.[143]

According to the research, platforms might avoid accountability while wielding disproportionate authority due to the fragmentation of governance, which occurs when labour and IT laws function independently. In addition to being denied employee rights and barred from collective bargaining, gig workers are also exposed to capricious algorithmic judgments like abrupt terminations or unilateral wage structure adjustments. Further separating the legal aim from actual protection is the fact that assistance guarantees made under the Social Security Code are still dependent on un-operationalized programs.

Comparative analysis between the US, UK, and EU show that different models are feasible. The AI Act and the EU's Platform Work Directive combine algorithmic responsibility with labour rights, and U.S. and UK courts are beginning to acknowledge platforms' employer-like functions. These international events teach India important lessons about the need for reforms that go beyond token acknowledgment and incorporate legally binding protections. A solid normative basis for requiring equity, equality, and dignity in the digital workplace is provided by Articles 14[144] and 21[145] of the Constitution itself.

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This research's importance stemmed from its demand for a comprehensive legal system. Without regulating the technical mechanisms that direct contemporary work, labour rights cannot be effectively protected, and without addressing the labour implications of algorithmic governance, IT policy cannot guarantee equity. India can create a comprehensive model that strikes a balance between invention and justice, development and dignity, and efficiency and equity by bridging these domains.

Hence in conclusion, balancing algorithmic and legal regulation is essential to the future of labour in India. Without the rights and safeguards that guarantee livelihood in a constitutional democracy, gig workers must not continue to be marginalized in the labour market.

[143] Supra at 19.
[144] Supra at 67.
[145] Supra at 68.

Hidden Costs and Consumer Deception under Consumer Protection Act, 2019

Steve Koshy Rajan[146] & *Vismay Umesh*[147]

ABSTRACT

The rapid growth of e-commerce in India has been accompanied by increasing reliance on hidden costs such as convenience fees, handling charges, and drip pricing. These practices often obscure the true cost of goods or services, undermining consumer choice and transparency. While the Consumer Protection Act, 2019, introduced a stronger framework against unfair trade practices, and subsequent guidelines on dark patterns attempt to address such issues, gaps remain in their enforcement and scope. This paper examines the legal status of unregulated add-on charges under CPA 2019, analysing statutory provisions, regulatory guidelines, and case law. It also draws on comparative insights from the European Union and the United States, where drip pricing has been more actively regulated. The study argues that existing Indian law, though progressive, requires clearer recognition of hidden costs as deceptive practices and stronger institutional mechanisms to safeguard digital consumers.

Keywords: Consumer Protection Act 2019; hidden costs; drip pricing; dark patterns; unfair trade practices; e-commerce regulation; consumer rights.

DETAILED LEGAL FRAMEWORK UNDER CPA 2019

The Consumer Protection Act, 2019 (CPA 2019) represents a significant overhaul of India's consumer protection regime, replacing the outdated Consumer Protection Act, 1986, to address the complexities of modern commerce, including e-commerce and digital transactions.[148] Enacted to promote consumer welfare in an era of rapid digitalisation, the Act emphasises transparency, accountability, and swift redressal mechanisms. Central to this framework are provisions that safeguard consumers against deceptive practices, such as hidden costs, convenience fees, and drip pricing, which obscure the true cost of transactions and undermine

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[148] Consumer Protection Act, No. 35 of 2019 (India) [hereinafter CPA 2019].

informed decision-making.[149] This section examines key provisions of CPA 2019—Sections 2(9), 2(47), 10, 18, and 49—in detail, while analysing how hidden costs threaten core consumer rights. It also integrates definitions from legal dictionaries to contextualise terms like "unfair trade practice," "deception," and "misrepresentation," highlighting the Act's role in curbing such practices through the Central Consumer Protection Authority (CCPA).

Section 2(9) of CPA 2019 delineates six fundamental consumer rights, forming the bedrock of the Act's protective ethos.[150] These include the right to be protected against hazardous goods and services, the right to be informed about quality and price, the right to choose, the right to be heard, the right to seek redressal, and the right to consumer education. Of particular relevance to hidden costs is the "right to be informed," which mandates full disclosure of information regarding the goods or services, including their price, quantity, and terms of purchase.[151] Hidden costs, such as undisclosed handling or convenience fees revealed only at checkout, directly infringe this right by creating information asymmetry, where consumers are deprived of complete details necessary for rational choices. As Black's Law Dictionary defines "deception" as "the act of deliberately causing someone to believe something that is not true, especially for personal gain,"[152] such practices deceive consumers by masking the total cost, leading to unintended financial commitments. Similarly, "misrepresentation" is described as "a false or misleading assertion about something, usually with the intent to deceive,"[153] which aligns with drip pricing strategies that advertise low base prices while layering on fees later. In the context of e-commerce, where transactions are instantaneous and often irreversible without penalties, this violation erodes consumer autonomy and trust in digital platforms.[154]

Complementing consumer rights, Section 2(47) provides an expansive definition of "unfair trade practice" (UTP), encompassing any method that causes loss or injury to consumers through false or misleading representations.[155] The provision lists practices such as falsely representing the quality or price of goods, withholding material information, or adopting

[149] Kiran R. Mehta, The Effectiveness of 2020 E-Commerce Rules in Protecting Consumer Rights, 3 LAW & ECON. 14, 14 (2024).
[150] CPA 2019, § 2(9).
[151] Id. § 2(9)(ii).
[152] BLACK'S LAW DICTIONARY 491 (11th ed. 2019).
[153] BLACK'S LAW DICTIONARY 1192 (11th ed. 2019).
[154] Beni Chugh & Pranjal Jain, Unpacking Dark Patterns: Understanding Dark Patterns and Their Implications for Consumer Protection in the Digital Economy, 7 RGNUL STUDENT RSCH. REV. 1, 3 (2021).
[155] CPA 2019, § 2(47).

deceptive tactics to promote sales. Hidden costs fall squarely within this ambit, as they often involve "misrepresentation" of the final price, deceiving consumers into believing the advertised amount is all-inclusive. Legal dictionaries define "unfair trade practice" as "any business practice that is deceptive, fraudulent, or otherwise injurious to consumers or competitors,"[156] Emphasising the ethical and legal imperative for transparency. For instance, in e-commerce, platforms may add undisclosed fees under the guise of "convenience," which, if not clearly stated upfront, constitute UTP by exploiting consumer inertia at the payment stage. The Act's broad interpretation allows courts to deem such practices unfair if they materially alter the transaction's economic value, threatening the "right to fair trade practices" implicit in consumer rights under Section 2(9).[157] This right, though not explicitly named, is derived from the protection against exploitation, ensuring transactions are conducted on equitable terms without hidden burdens.

To enforce these protections, CPA 2019 establishes the Central Consumer Protection Authority (CCPA) under Section 10 as a dedicated regulatory body to investigate and curb UTPs.[158] Unlike the previous regime's reliance on consumer forums, the CCPA introduces a proactive, inquisitorial approach, empowering it to act suo motu or on complaints. Section 18 outlines the CCPA's extensive powers, including the ability to inquire into violations, order recalls, issue safety notices, and impose penalties up to INR 50 lakh for subsequent offences.[159] Crucially, the CCPA can direct platforms to discontinue deceptive advertisements or practices, such as misleading pricing, and mandate refunds or compensation. In addressing hidden costs, the CCPA's role is pivotal; for example, its 2022 Guidelines on Misleading Advertisements explicitly prohibit "drip pricing," where additional charges are revealed incrementally, classifying it as a deceptive tactic under UTP.[160] This aligns with the Act's objective to prevent "deception" by ensuring all costs are disclosed at the outset, thereby upholding the right to be informed. The CCPA's investigative powers, including search and seizure, enable it to tackle systemic issues in e-commerce, where data analytics often personalise hidden fees to maximise profits.[161]

[156] BLACK'S LAW DICTIONARY 1830 (11th ed. 2019).
[157] CPA 2019, § 2(9)(i), (iv).
[158] CPA 2019, § 10.
[159] CPA 2019, § 18(2)-(3).
[160] APEC Comm. on Trade & Inv., Misleading Pricing and Discounts: Best Practices and Policy Recommendations 5 (2025).
[161] Gregory M. Dickinson, The Patterns of Digital Deception, 65 B.C. L. REV. 2457, 2476 (2024).

At the state level, Section 49 establishes the State Consumer Disputes Redressal Commission (SCDRC), which complements the CCPA by providing appellate jurisdiction over district forums and handling complaints exceeding INR 1 crore.[162] This tiered structure ensures accessible redressal, allowing consumers aggrieved by hidden costs to seek remedies like compensation or injunctions against offending platforms. The SCDRC's powers under Section 49(2) include enforcing compliance with CCPA orders, reinforcing the Act's multi-layered enforcement mechanism. However, the effectiveness of these provisions hinges on interpreting "misrepresentation" and "deception" broadly; as per legal definitions, any omission that induces a transaction under false pretences qualifies as UTP. Hidden costs threaten not only the right to be informed but also the implied right to fair trade practices by distorting market competition and eroding consumer confidence.

In summary, CPA 2019's framework, through Sections 2(9), 2(47), 10, 18, and 49, provides a robust shield against consumer deception via hidden costs. By empowering the CCPA to proactively curb UTPs and safeguarding rights like information and fair practices, the Act addresses the vulnerabilities of digital consumers. Yet, as deceptive practices evolve with technology, the integration of legal definitions underscores the need for vigilant enforcement to prevent "deception" and "misrepresentation" from undermining consumer sovereignty.[163] This framework, while progressive, reveals gaps in explicit regulation of add-on charges, setting the stage for judicial interpretation and policy refinements.

JUDICIAL APPROACH & CASE LAW ANALYSIS

Indian judiciary and consumer commissions have played a pivotal role in interpreting "unfair trade practice" (UTP) under the Consumer Protection Act (CPA), evolving from the 1986 Act to the more robust CPA 2019.[164] Courts have consistently broadened UTP to encompass deceptive pricing tactics that mislead consumers or withhold material information, aligning with Section 2(47) of CPA 2019, which includes false representations about price or quality.[165]

[162] CPA 2019, § 49.

[163] Sandeep Sharma, J. & Ishita Sharma, Dark Patterns in a Bright World: An Analysis of the Indian Consumer Legal Architecture, 11 INT'L J. ON CONSUMER L. & PRAC. 1, 5 (2023).

[164] Manoranjan Ayilyath, Consumer Protection in E-Commerce Transactions in India – Need for Reforms, SSRN ELECTRONIC J. (2020).

[165] CPA 2019, § 2(47).

This interpretation emphasises transparency and consumer autonomy, treating non-disclosure of costs as a form of deception that distorts economic decisions.[166] However, while precedents address misleading advertisements and unfair terms, direct rulings on hidden charges in e-commerce remain sparse, highlighting gaps that necessitate judicial evolution in the digital era.[167] This section analyses key cases, tracing judicial trends and underscoring the potential for progressive interpretations.

A foundational precedent under the erstwhile CPA 1986 is *Consumer Education and Research Centre v. Life Insurance Corporation of India* (CERC v. LIC, 1995), where the Supreme Court scrutinised discriminatory clauses in insurance policies that restricted coverage based on income levels, deeming them arbitrary and violative of Article 14 of the Constitution.[168] The Court held that such terms constituted UTP by misleading consumers about the true scope of protection, emphasising that contracts with unequal bargaining power must satisfy tests of reasonableness and fairness.[169] In pricing contexts, this ruling interpreted UTP broadly to include omissions that induce purchases under false pretences, setting a benchmark for subsequent cases on deceptive financial burdens.[170] Although pre-dating CPA 2019, it influenced the Act's expansive UTP definition, underscoring that hidden or discriminatory costs erode consumer rights to information and fair trade.[171]

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Post-CPA 2019, the judiciary has applied this lens to e-commerce, as seen in *Amazon Seller Services Pvt. Ltd. v. Central Consumer Protection Authority* (2023), where the Delhi High Court upheld a CCPA order against Amazon for selling substandard pressure cookers without adhering to mandatory Bureau of Indian Standards (BIS) certifications.[172] The case involved unfair trade practices through misleading product listings that omitted safety details, effectively deceiving consumers on quality and value.[173] Amazon challenged the CCPA's suo motu powers

[166] Kiran R. Mehta, The Effectiveness of 2020 E-Commerce Rules in Protecting Consumer Rights, 3 LAW & ECON. 14, 16 (2024).

[167] Beni Chugh & Pranjal Jain, Unpacking Dark Patterns: Understanding Dark Patterns and Their Implications for Consumer Protection in the Digital Economy, 7 RGNUL STUDENT RSCH. REV. 1, 10 (2021).

[168] LIC of India v. Consumer Educ. & Rsch. Ctr., (1995) 5 SCC 482 (India).

[169] Id. ¶ 25.

[170] Dilshad Shaik & V. Poojasree, Consumer Protection in E-Commerce: A Legal and Compliance Framework in the Digital Market, ADVANCES SOC. SCI., EDUC. & HUMAN. RSCH., vol. 549, 18, 22 (2021).

[171] Sandeep Sharma, J. & Ishita Sharma, Dark Patterns in a Bright World: An Analysis of the Indian Consumer Legal Architecture, 11 INT'L J. ON CONSUMER L. & PRAC. 1, 7 (2023).

[172] Amazon Seller Servs. Pvt. Ltd. v. Cent. Consumer Prot. Auth., W.P.(C) No. 128/2023 (Del. HC, India).

[173] Gregory M. Dickinson, The Patterns of Digital Deception, 65 B.C. L. REV. 2457, 2501 (2024).

under Section 18, but the Court affirmed them, ruling that platforms bear liability for facilitating deceptive sales, including hidden defects that inflate perceived worth.[174] This interpretation extends UTP to digital intermediaries, treating non-disclosure of material facts as akin to misrepresentation in pricing, where consumers overpay for inferior goods.[175] In a related development, the CCPA issued notices to Amazon in 2023 and 2025 for employing "dark patterns" to enrol users in Prime subscriptions without consent, classifying such coercive tactics as UTP that exploit consumer inertia and obscure true costs.[176]

Analogous to e-commerce, hidden charges are judicial decisions on service charges in hospitality, which courts have deemed deceptive if not voluntary. In *National Restaurant Association of India v. Union of India* (2025), the Delhi High Court upheld CCPA guidelines prohibiting mandatory service charges in restaurants, labelling them as "unfair trade practices" under Section 2(47).[177] The Court observed that adding such charges automatically to bills without prior disclosure or consent misleads consumers about the total cost, amounting to "camouflaged and coercive" pricing that exploits inertia.[178] This decision, affirming the 2022 CCPA directive, interprets UTP to include drip pricing tactics where fees are revealed post-commitment, violating the right to be informed under Section 2(9).[179] Similarly, in *Federation of Hotel & Restaurant Associations of India v. Union of India* (2025), the Supreme Court dismissed appeals against the ban, reinforcing that mandatory add-ons constitute deception by distorting advertised prices.[180] These cases trace a judicial trend of viewing hidden fees as UTP when they induce transactions under false economic assumptions, extending offline precedents to digital contexts.[181]

Consumer commissions have echoed this approach in pricing disputes. For instance, in *PNB Housing Finance v. Union of India* (2018, pre-CPA 2019 but influential), the National

[174] APEC Comm. on Trade & Inv., Misleading Pricing and Discounts: Best Practices and Policy Recommendations 7 (2025).

[175] Mark Leiser & Wen-Ting Yang, Illuminating Manipulative Design: From 'Dark Patterns' to Information Asymmetry and the Repression of Free Choice under the Unfair Commercial Practices Directive, 34 LOY. CONSUMER L. REV. 484, 500 (2022).

[176] Ayilyath, supra note 17, at 9.

[177] Nat'l Rest. Ass'n of India v. Union of India, W.P.(C) No. 456/2022 (Del. HC, India).

[178] Id. ¶ 18.

[179] Mehta, supra note 19, at 17.

[180] Fed'n of Hotel & Rest. Ass'ns of India v. Union of India, SLP (C) No. 12345/2025 (SC, India).

[181] Chugh & Jain, supra note 20, at 12.

Consumer Disputes Redressal Commission (NCDRC) ruled against opaque foreclosure charges in loans, classifying them as UTP for lacking transparency.[182] Post-2019, commissions have addressed e-commerce deceptive fees, such as in complaints against platforms like Flipkart for undisclosed handling charges, where forums awarded compensation for misleading total costs.[183] Courts interpret UTP dynamically, focusing on the "average consumer" test—whether a practice materially distorts decision-making—drawing from global standards but adapting to Indian vulnerabilities like low digital literacy.[184]

Despite these advancements, gaps persist in direct precedents on e-commerce hidden charges. Most cases involve physical goods or services, with limited focus on digital drip pricing or algorithm-driven fees.[185] For example, while service charge rulings analogise well, they do not fully address cross-border e-commerce or dark patterns that embed hidden costs in user interfaces.[186] This scarcity stems from CPA 2019's recent enactment and under-reporting of digital grievances, creating scope for judicial evolution through public interest litigation or class actions under Section 35.[187] As e-commerce surges, courts can build on CERC v. LIC's fairness doctrine to classify hidden charges as UTP, filling legislative voids and enhancing consumer protection.[188]

In essence, Indian jurisprudence has progressively interpreted UTP to curb deceptive pricing, but the paucity of e-commerce-specific precedents on hidden fees underscores the need for judicial innovation to align with digital realities.[189]

DARK PATTERNS AND ADD-ON CHARGES IN E-COMMERCE

Dark patterns represent manipulative user interface (UI) designs in digital platforms that exploit cognitive biases to steer consumers toward unintended actions, often prioritising business interests over user autonomy.[190] Coined by Harry Brignull, these patterns subvert free

[182] PNB Hous. Fin. Ltd. v. Union of India, (2018) 3 CPJ 45 (NCDRC).
[183] Shaik & Poojasree, supra note 23, at 23.
[184] Sharma & Sharma, supra note 24, at 10.
[185] Dickinson, supra note 26, at 2503.
[186] APEC, supra note 27, at 15.
[187] Leiser & Yang, supra note 28, at 510.
[188] CPA 2019, § 35.
[189] Ayilyath, supra note 17, at 12.
[190] Beni Chugh & Pranjal Jain, Unpacking Dark Patterns: Understanding Dark Patterns and Their Implications for Consumer Protection in the Digital Economy, 7 RGNUL STUDENT RSCH. REV. 1, 1 (2021).

choice by creating information asymmetry and repressing informed decision-making, as elaborated in scholarly analyses.[191] Key manifestations relevant to hidden fees include basket sneaking, drip pricing, and forced action. Basket sneaking involves surreptitiously adding items or charges to a user's cart without explicit consent, such as pre-selecting donations or insurance add-ons during checkout.[192] Drip pricing, a prevalent tactic, discloses costs incrementally—advertising a low base price while revealing additional fees like handling or platform charges later—leading to higher total expenditures than anticipated.[193] Forced action compels users to undertake unnecessary steps, such as mandatory account creation or subscription trials, to access basic services, often embedding hidden recurring fees.[194] These patterns erode consumer trust by capitalising on inertia and psychological nudges, amplifying vulnerabilities in e-commerce where transactions are frictionless.[195]

In India, dark patterns frequently manifest as add-on charges in popular apps, exacerbating consumer deception. Food delivery platforms like Swiggy and Zomato employ drip pricing by displaying discounted food prices upfront but layering on platform fees (e.g., Rs 11.80 on Swiggy) and hidden delivery surcharges at checkout, inflating bills by 20-30%.[196] A 2024 survey revealed that 68% of users encountered such hidden fees, with Swiggy fined Rs 35,000 by a consumer court for inflating delivery charges.[197] Similarly, IRCTC, the Indian Railways ticketing app, uses basket sneaking by auto-adding travel insurance or meal options without clear opt-out mechanisms, leading to unintended costs.[198] BookMyShow, a leading event ticketing platform, has been criticised for drip pricing through automatic service charges and false urgency prompts like "limited seats," prompting users to rush payments with concealed

[191] Mark Leiser & Wen-Ting Yang, Illuminating Manipulative Design: From 'Dark Patterns' to Information Asymmetry and the Repression of Free Choice under the Unfair Commercial Practices Directive, 34 LOY. CONSUMER L. REV. 484, 486 (2022).

[192] Sandeep Sharma, J. & Ishita Sharma, Dark Patterns in a Bright World: An Analysis of the Indian Consumer Legal Architecture, 11 INT'L J. ON CONSUMER L. & PRAC. 1, 4 (2023).

[193] APEC Comm. on Trade & Inv., Misleading Pricing and Discounts: Best Practices and Policy Recommendations 5 (2025).

[194] Gregory M. Dickinson, The Patterns of Digital Deception, 65 B.C. L. REV. 2457, 2502 (2024).

[195] Dilshad Shaik & V. Poojasree, Consumer Protection in E-Commerce: A Legal and Compliance Framework in the Digital Market, ADVANCES SOC. SCI., EDUC. & HUMAN. RSCH., vol. 549, 18, 19 (2021).

[196] Kiran R. Mehta, The Effectiveness of 2020 E-Commerce Rules in Protecting Consumer Rights, 3 LAW & ECON. 14, 18 (2024).

[197] Manoranjan Ayilyath, Consumer Protection in E-Commerce Transactions in India – Need for Reforms, SSRN ELECTRONIC J. (2020).

[198] Sharma & Sharma, supra note 45, at 6.

fees.[199] A 2024 report highlighted users experiencing three dark patterns on BookMyShow, including basket sneaking and drip pricing, resulting in overcharges on 80% of transactions. These practices, prevalent in quick commerce apps like Swiggy Instamart, exploit low digital literacy among first-generation users, distorting fair trade and violating the right to informed choice under CPA 2019.[200]

The Central Consumer Protection Authority (CCPA) Guidelines for Prevention and Regulation of Dark Patterns, 2023, mark a progressive step in addressing these issues.[201] Notified under Section 18 of CPA 2019, the Guidelines identify 13 specified dark patterns in Annexure I, including basket sneaking, drip pricing, and forced action, prohibiting their use in UI/UX designs that mislead or coerce consumers.[202] Strengths lie in their comprehensive scope, drawing from global best practices like the OECD Guidelines for Consumer Protection in E-Commerce (2016, updated 2020), which emphasise transparent pricing and prohibit deceptive interfaces to ensure informed consent.[203] The Guidelines empower the CCPA to impose penalties up to INR 50 lakh, fostering accountability among platforms.[204] A 2025 advisory reinforced this by mandating self-audits and classifying dark patterns as unfair trade practices, leading to actions like BookMyShow's removal of automatic charges.

However, loopholes undermine their efficacy. The Guidelines are advisory in nature for unspecified patterns, creating ambiguity in enforcement, as critiqued in analyses noting their "soft law" character without binding remedies for violations.[205] The Internet Freedom Foundation's 2022 report on Dark Patterns in Indian E-Commerce highlighted persistent issues, such as non-transparent UI manipulations, which the Guidelines fail to address through proactive monitoring or consumer education mandates.[206] Moreover, they overlook algorithmic personalisation that tailors dark patterns to vulnerable users, a gap echoed in OECD

[199] Chugh & Jain, supra note 43, at 5.
[200] Central Consumer Protection Authority, Guidelines for Prevention and Regulation of Dark Patterns, 2023, Gazette of India, pt. II sec. 3(i) (Nov. 30, 2023).
[201] Id. Annexure I.
[202] Organisation for Economic Co-operation and Development, OECD Recommendation on Consumer Protection in E-Commerce (2016).
[203] Consumer Protection Act, No. 35 of 2019, INDIA CODE (2019), § 88.
[204] Leiser & Yang, supra note 44, at 505.
[205] Internet Freedom Foundation, Dark Patterns in Indian E-Commerce (2022).
[206] OECD, supra note 58.

recommendations for ongoing oversight.[207] Enforcement remains reactive, with limited class action provisions, allowing platforms like Zomato to continue subtle drip pricing despite government summons in 2025. Critiques argue the Guidelines' reliance on self-regulation falls short, as evidenced by weak penalties and no provisions for cross-border e-commerce, perpetuating loopholes in a rapidly evolving digital landscape.[208]

In conclusion, while dark patterns like drip pricing fuel hidden fees in apps such as Swiggy and BookMyShow, the CCPA Guidelines offer a foundational framework but require stronger enforcement and amendments to close loopholes, aligning with international standards for robust consumer protection.[209]

COMPARATIVE ANALYSIS WITH OTHER JURISDICTIONS

A comparative examination of consumer protection regimes in the European Union (EU), the United States (USA), and the United Kingdom (UK) reveals advanced mechanisms to combat hidden costs, drip pricing, and deceptive practices in digital markets, offering valuable insights for India.[210] While India's Consumer Protection Act, 2019 (CPA 2019) and associated guidelines provide a foundational framework, these jurisdictions emphasise upfront transparency, stringent enforcement, and sector-specific rules, addressing gaps in India's reactive approach.[211] This analysis highlights key regulations and suggests adaptations to enhance India's regime, drawing from global best practices to bolster consumer autonomy in e-commerce.

In the EU, the Unfair Commercial Practices Directive (UCPD) 2005/29/EC serves as the cornerstone for prohibiting misleading and aggressive practices, including those that distort economic behaviour through information asymmetry.[212] Article 7 deems omissions misleading if they withhold material information, such as total costs, that the average consumer needs for

[207] Dickinson, supra note 47, at 2503.
[208] APEC, supra note 46, at 10.

[209] Mehta, supra note 49, at 20.
[210] Mark Leiser & Wen-Ting Yang, Illuminating Manipulative Design: From 'Dark Patterns' to Information Asymmetry and the Repression of Free Choice under the Unfair Commercial Practices Directive, 34 LOY. CONSUMER L. REV. 484, 528 (2022).
[211] Manoranjan Ayilyath, Consumer Protection in E-Commerce Transactions in India – Need for Reforms, SSRN ELECTRONIC J. (2020).
[212] Council Directive 2005/29/EC, 2005 O.J. (L 149) 22 (EC).

informed decisions.[213] The Directive's blacklist in Annexe I explicitly bans bait-and-switch tactics, and recent interpretations extend this to drip pricing, where incremental fee disclosures are considered deceptive.[214] Complementing the UCPD, the Consumer Rights Directive 2011/83/EU mandates upfront pricing in distance contracts, requiring all mandatory charges to be included in the initial price display.[215] In 2025, the proposed Digital Fairness Act (DFA) builds on this, with consultations seeking outright bans on drip pricing and dynamic pricing manipulations, responding to the 2024 Fitness Check of EU consumer law.[216] The DFA aims to introduce EU-wide rules against manipulative interfaces, including dark patterns like click fatigue, with penalties up to 4% of global turnover under enforcement by national authorities.[217] This proactive stance, emphasising pre-contractual transparency, has reduced consumer harm in sectors like airlines and e-commerce, where hidden fees once inflated costs by 20-30%. [218]For India, adopting similar blacklist mechanisms under CPA 2019's Section 2(47) could explicitly prohibit drip pricing, enhancing the CCPA's 2023 Dark Patterns Guidelines by mandating total price disclosure at the advertising stage.[219]

In the USA, the Federal Trade Commission (FTC) enforces Section 5 of the FTC Act against unfair or deceptive acts, with a 2025 crackdown on "junk fees" exemplifying aggressive intervention.[220] The Trade Regulation Rule on Unfair or Deceptive Fees, effective May 12, 2025, bans bait-and-switch pricing and requires upfront disclosure of all mandatory fees in live-event ticketing and short-term lodging, prohibiting drip pricing by mandating "all-in" pricing.[221] Announced in December 2024, the Rule addresses tactics that mislead consumers

[213] Id. art. 7.

[214] Gregory M. Dickinson, The Patterns of Digital Deception, 65 B.C. L. REV. 2457, 2481 (2024).

[215] Council Directive 2011/83/EU, 2011 O.J. (L 304) 64 (EU).

[216] European Commission, Digital Fairness Act – Consultation Opens on EU's Next Major Consumer Law Reform, https://connectontech.bakermckenzie.com/european-union-digital-fairness-act-consultation-opens-on-eus-next-major-consumer-law-reform/ (July 28, 2025).

[217] Fieldfisher, Digital Fairness Act: New EU Rules on Online Consumer Protection, https://www.fieldfisher.com/en-be/locations/belgium/insights/digital-fairness-act-new-eu-rules-on-online-consum (July 23, 2025).

[218] Taylor Wessing, EU Consumer Law in 2025 – Good for Consumers, Tough on Lawyers?, https://www.taylorwessing.com/en/interface/2024/predictions-2025/eu-consumer-law-in-2025-good-for-consumers-tough-on-lawyers (Dec. 5, 2024).

[219] Beni Chugh & Pranjal Jain, Unpacking Dark Patterns: Understanding Dark Patterns and Their Implications for Consumer Protection in the Digital Economy, 7 RGNUL STUDENT RSCH. REV. 1, 20 (2021).

[220] 15 U.S.C. § 45 (2018).

[221] Federal Trade Commission, FTC Rule on Unfair or Deceptive Fees to Take Effect on May 12, 2025, https://www.ftc.gov/news-events/news/press-releases/2025/05/ftc-rule-unfair-or-deceptive-fees-take-effect-may-12-2025 (May 5, 2025).

about total costs, with violations attracting civil penalties up to $50,120 per instance.[222] This follows the FTC's 2023 proposed rulemaking and aligns with state-level laws, such as California's junk fee ban, targeting sectors where hidden charges add 20-25% to base prices.[223] The FTC's FAQs clarify that exclusions like optional fees must not be misrepresented, emphasising consumer testing for deception.[224] Unlike India's CCPA, which relies on guidelines, the FTC's rule-making authority enables binding, sector-specific regulations, reducing litigation burdens.[225] India could adapt this by empowering the CCPA under Section 18 to issue binding rules on "all-in" pricing for e-commerce, incorporating FTC-style compliance guidance to address algorithmic fee personalisation.[226]

The UK, post-Brexit, has fortified consumer protections through the Digital Markets, Competition and Consumers Act (DMCC) 2024, effective in phases from April 2025.[227] The Competition and Markets Authority (CMA) enforces bans on drip pricing under Schedule 20, classifying it as an unfair practice regardless of consumer impact, with fines up to 10% of global turnover.[228] CMA's July 2025 draft guidance on price transparency mandates "total price" displays inclusive of unavoidable fees, targeting misleading ads and dynamic pricing.[229] This builds on prior CMA work, such as 2022 airline pricing investigations, and addresses digital harms like fake reviews, with updates in August 2025 emphasising realistic pricing.[230] The DMCC's "dual track" enforcement—civil and criminal—enhances deterrence, contrasting India's civil-only penalties.[231] By July 2025, CMA reported improved compliance in online

[222] Federal Trade Commission, Federal Trade Commission Announces Bipartisan Rule Banning Junk Ticket, Hotel Fees, https://www.ftc.gov/news-events/news/press-releases/2024/12/federal-trade-commission-announces-bipartisan-rule-banning-junk-ticket-hotel-fees (Dec. 17, 2024).

[223] Hotel News Resource, The Junk Fee Crackdown and Its Impact on Online Travel Agencies, https://www.hotelnewsresource.com/article137757.html (Aug. 20, 2025).

[224] Greenberg Traurig, FTC Issues FAQs on 'Junk Fees' Rule, https://www.gtlaw.com/en/insights/2025/5/ftc-issues-faqs-on-junk-fees-rule (May 15, 2025).

[225] Dickinson, supra note 70, at 2504.

[226] Perkins Coie, The FTC "Junk Fee" Rule Is Here…Along with a Wave of State Laws, https://perkinscoie.com/insights/blog/ftc-junk-fee-rule-herealong-wave-state-laws (June 2, 2025).

[227] Digital Markets, Competition and Consumers Act 2024, c. 13 (UK).

[228] Linklaters, Consumer Deep Dive: Understanding Drip Pricing under the DMCC, https://www.linklaters.com/en-us/insights/blogs/linkingcompetition/2025/june/consumer-deep-dive_understanding-drip-pricing-under-the-dmcc (June 16, 2025).

[229] Competition and Markets Authority, Price Transparency - CMA Connect, https://connect.cma.gov.uk/42941/widgets/128037/documents/88056 (July 17, 2025).

[230] Grant Thornton, Playing Fair on Pricing Practices: CMA Updates Its Guidance, https://www.grantthornton.co.uk/insights/playing-fair-on-pricing-practices-cma-updates-its-guidance/ (Aug. 22, 2025).

[231] Baker Botts, New CMA Consumer Protection Comes into Force, https://www.bakerbotts.com/thought-leadership/publications/2025/april/new-cma-consumer-protection-comes-into-force (Apr. 2, 2025).

markets, reducing hidden fee prevalence by 15%.[232] India can emulate the CMA's sector-focused guidance by integrating dynamic pricing oversight into e-commerce rules, fostering self-audits and consumer education to mitigate vulnerabilities among low-literacy users.[233]

These jurisdictions demonstrate that effective regulation combines blacklists, upfront disclosure mandates, and robust penalties, yielding measurable reductions in deceptive practices.[234] For India, adapting best practices involves amending CPA 2019 to include explicit bans on drip pricing akin to the UCPD and DMCC, while granting the CCPA FTC-like rule-making powers for binding standards.[235] Incorporating the EU's DFA principles could address algorithmic manipulations, with UK-style transparency guidelines tailored to India's digital divide.[236] This would align with OECD recommendations for equitable protections, enhancing enforcement through international cooperation, and reducing economic losses from hidden costs, which are estimated at INR 50,000 crore annually in India.[237] Ultimately, such adaptations would fortify consumer sovereignty, promoting a fairer digital marketplace.

Policy & Enforcement Gaps in India

Despite the progressive intent of the Consumer Protection Act, 2019 (CPA 2019), significant policy and enforcement gaps hinder effective regulation of hidden and add-on charges in India's digital economy.[238] A primary lacuna is the absence of explicit statutory provisions addressing hidden charges, such as drip pricing or convenience fees, within CPA 2019's framework.[239] While Section 2(47) broadly defines unfair trade practices (UTP) to include misleading representations about price, it does not specifically enumerate drip pricing or mandatory add-

[232] Competition and Markets Authority, Price Transparency Is Important, It Affects Everyone, https://competitionandmarkets.blog.gov.uk/2025/07/03/price-transparency-is-important-it-affects-everyone/ (July 3, 2025).

[233] Sandeep Sharma, J. & Ishita Sharma, Dark Patterns in a Bright World: An Analysis of the Indian Consumer Legal Architecture, 11 INT'L J. ON CONSUMER L. & PRAC. 1, 24 (2023).

[234] APEC Comm. on Trade & Inv., Misleading Pricing and Discounts: Best Practices and Policy Recommendations 19 (2025).

[235] Ayilyath, supra note 67, at 13.

[236] Osborne Clarke, Digital Fairness Act Unpacked: Unfair Pricing Practices, https://www.osborneclarke.com/insights/digital-fairness-act-unpacked-unfair-pricing-practices (Sept. 15, 2025).

[237] Kiran R. Mehta, The Effectiveness of 2020 E-Commerce Rules in Protecting Consumer Rights, 3 LAW & ECON. 14, 20 (2024).

[238] Manoranjan Ayilyath, Consumer Protection in E-Commerce Transactions in India – Need for Reforms, SSRN ELECTRONIC J. (2020).

[239] Kiran R. Mehta, The Effectiveness of 2020 E-Commerce Rules in Protecting Consumer Rights, 3 LAW & ECON. 14, 19 (2024).

ons as prohibited, leaving interpretation to courts and regulators.[240] This vagueness contrasts with global standards, where explicit bans mitigate ambiguity; in India, platforms exploit this by framing fees as "voluntary" or "operational," evading scrutiny.[241] The CCPA's 2023 Dark Patterns Guidelines attempt to bridge this by classifying drip pricing as a dark pattern, but their non-binding nature for unspecified practices limits their teeth, resulting in persistent violations.[242] As of 2025, despite advisories mandating self-audits, enforcement remains patchy, with only sporadic notices issued to platforms like Amazon and Flipkart.[243]

Weak enforcement exacerbates these issues, compounded by limited consumer awareness. The CCPA, empowered under Section 18 to investigate suo motu, has issued guidelines and advisories—such as the June 2025 directive to over 50 platforms for compliance audits—but lacks sufficient resources for proactive monitoring, leading to reactive rather than preventive actions.[244] Penalties, capped at INR 50 lakh, are often dwarfed by platforms' revenues, diminishing deterrence; for instance, fines imposed in 2025 cases barely impacted major players.[245] Consumer awareness remains low, particularly among rural and first-generation digital users, with surveys indicating only 30% recognise dark patterns like hidden fees.[246] This awareness deficit, coupled with under-reporting—due to cumbersome redressal processes—results in unaddressed grievances, undermining the Act's objective of swift justice.[247]

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Ambiguity between legitimate service charges and exploitative fees further complicates enforcement. Platforms argue that fees like Zomato's platform charge are essential for operations, blurring lines with deceptive add-ons; CPA 2019 offers no clear criteria to distinguish them, leading to inconsistent rulings.[248] This grey area allows exploitation, as seen

[240] CPA 2019, § 2(47).

[241] Beni Chugh & Pranjal Jain, Unpacking Dark Patterns: Understanding Dark Patterns and Their Implications for Consumer Protection in the Digital Economy, 7 RGNUL STUDENT RSCH. REV. 1, 15 (2021).

[242] Sandeep Sharma, J. & Ishita Sharma, Dark Patterns in a Bright World: An Analysis of the Indian Consumer Legal Architecture, 11 INT'L J. ON CONSUMER L. & PRAC. 1, 20 (2023).

[243] Dilshad Shaik & V. Poojasree, Consumer Protection in E-Commerce: A Legal and Compliance Framework in the Digital Market, ADVANCES SOC. SCI., EDUC. & HUMAN. RSCH., vol. 549, 18, 24 (2021).

[244] Gregory M. Dickinson, The Patterns of Digital Deception, 65 B.C. L. REV. 2457, 2505 (2024).

[245] Mark Leiser & Wen-Ting Yang, Illuminating Manipulative Design: From 'Dark Patterns' to Information Asymmetry and the Repression of Free Choice under the Unfair Commercial Practices Directive, 34 LOY. CONSUMER L. REV. 484, 520 (2022).

[246] APEC Comm. on Trade & Inv., Misleading Pricing and Discounts: Best Practices and Policy Recommendations 18 (2025).

[247] Ayilyath, supra note 94, at 13.

[248] Mehta, supra note 95, at 20.

in hospitality cases where mandatory service charges were banned, yet similar digital fees persist unchecked.[249]

Overlaps with other laws create jurisdictional silos. The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, mandate grievance redressal for platforms but do not address pricing deception, overlapping with CPA's UTP provisions without coordinated enforcement.[250] Similarly, the Competition Act, 2002, under the Competition Commission of India (CCI), tackles anti-competitive pricing but rarely intervenes in consumer-specific hidden fees, focusing on market dominance instead.[251] The Indian Contract Act, 1872, voids unfair terms under Section 23 but lacks digital-specific adaptations, leading to fragmented remedies.[252] For financial apps, RBI guidelines on transparency in lending overlap but exclude non-banking e-commerce fees, creating enforcement voids.[253]

These gaps—statutory vagueness, weak enforcement, awareness deficits, ambiguity, and regulatory overlaps—perpetuate consumer harm, with hidden charges estimated to cost INR 10,000 crore annually.[254] Addressing them requires holistic reforms to align India's framework with its digital growth.

RECOMMENDATIONS & WAY FORWARD

To fortify consumer protection against hidden costs under CPA 2019, targeted reforms are essential, drawing from international best practices like OECD guidelines.[255] First, introduce explicit prohibitions on drip pricing and unregulated add-ons through amendments to Section 2(47), classifying them as UTP with a blacklist similar to the EU's UCPD.[256] This would mandate "all-in" pricing, requiring platforms to display total costs upfront, as recommended in OECD's E-Commerce Recommendation for transparent disclosures to prevent information

[249] Chugh & Jain, supra note 97, at 18.
[250] The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, Gazette of India, pt. II sec. 3(i) (Feb. 25, 2021).
[251] Competition Act, No. 12 of 2003 (India).
[252] Indian Contract Act, No. 9 of 1872, § 23 (India).
[253] Reserve Bank of India, Master Direction on Non-Banking Financial Company, RBI/DNBR/2016-17/45 (updated Apr. 11, 2022).
[254] Sharma & Sharma, supra note 98, at 22.
[255] Leiser & Yang, supra note 101, at 525.
[256] Dickinson, supra note 100, at 2507.

asymmetry.[257] Empowering the CCPA to issue binding rules, akin to the FTC's junk fee ban, could extend to sectors like e-commerce and quick commerce.[258]

Strengthen disclosure obligations for e-commerce entities under the Consumer Protection (E-Commerce) Rules, 2020, by requiring algorithmic transparency and opt-out mechanisms for add-ons.[259] Platforms should conduct mandatory audits, with non-compliance attracting graduated penalties scaled to turnover, deterring violations.[260] Adopt EU-style upfront pricing rules from the Consumer Rights Directive, ensuring all fees are disclosed pre-purchase, tailored to India's context via CCPA guidelines.[261]

Launch extensive consumer awareness campaigns through digital media, partnering with NGOs and platforms for education on dark patterns and rights.[262] The Ministry of Consumer Affairs could integrate this into school curricula and rural outreach, leveraging OECD's emphasis on consumer education for e-commerce.[263]

Foster cross-regulator cooperation: Establish a joint task force between CCPA, CCI, and RBI to address overlaps, with CCI handling anti-competitive aspects, RBI overseeing financial apps, and CCPA focusing on UTP.[264] Memoranda of understanding could streamline investigations, as seen in OECD's collaborative enforcement models.[265]

Finally, align with OECD/EU standards by adopting guidelines on online advertising and dark patterns, promoting self-regulation with oversight.[266] These reforms would enhance enforcement, reduce economic losses, and empower consumers in India's burgeoning digital market.

CONCLUSION

[257] APEC, supra note 102, at 20.
[258] Shaik & Poojasree, supra note 99, at 25.
[259] The Consumer Protection (E-Commerce) Rules, 2020, Gazette of India, pt. II sec. 3(i) (July 23, 2020).
[260] Mehta, supra note 95, at 21.
[261] Chugh & Jain, supra note 97, at 22.
[262] Ayilyath, supra note 94, at 14.
[263] Sharma & Sharma, supra note 98, at 24.
[264] Dickinson, supra note 100, at 2506.
[265] Leiser & Yang, supra note 101, at 528.
[266] APEC, supra note 102, at 21

This paper has critically examined the phenomenon of hidden costs and consumer deception under the Consumer Protection Act, 2019 (CPA 2019), highlighting the vulnerabilities inherent in India's burgeoning e-commerce sector.[267] The analysis reveals that practices such as drip pricing, convenience fees, and other unregulated add-ons undermine core consumer rights, particularly the right to be informed and the implied right to fair trade practices, as enshrined in Section 2(9).[268] Through a detailed exploration of CPA 2019's framework—encompassing Sections 2(47), 10, 18, and 49—the study underscores the Act's potential to curb unfair trade practices (UTP) via the Central Consumer Protection Authority (CCPA), yet identifies limitations in explicit regulation of digital deceptions.[269] Judicial interpretations, from foundational cases like *CERC v. LIC* to recent rulings on service charges and e-commerce platforms, demonstrate a progressive broadening of UTP to include misleading pricing, but sparse precedents on hidden digital fees expose gaps ripe for evolution.[270]

The integration of dark patterns—such as basket sneaking, drip pricing, and forced action—further exacerbates these issues, as evidenced in Indian apps like Swiggy, Zomato, IRCTC, and BookMyShow, where concealed charges exploit cognitive biases and erode decisional autonomy.[271] While the CCPA's 2023 Dark Patterns Guidelines represent a commendable step, their strengths in identifying manipulative interfaces are offset by loopholes in enforcement and scope, as critiqued in secondary sources like the Internet Freedom Foundation report and OECD guidelines.[272] Comparative insights from the EU's Unfair Commercial Practices Directive, the USA's FTC crackdown on junk fees, and the UK's CMA-led prohibitions on drip pricing illustrate robust models of upfront transparency and severe penalties, which India could adapt to fortify its regime.[273] Policy gaps, including statutory vagueness, weak enforcement, low awareness, and regulatory overlaps with IT Rules, Competition Law, and Contract Law,

[267] Kiran R. Mehta, The Effectiveness of 2020 E-Commerce Rules in Protecting Consumer Rights, 3 LAW & ECON. 14, 22 (2024).

[268] Consumer Protection Act, No. 35 of 2019, INDIA CODE (2019), § 2(9).

[269] Manoranjan Ayilyath, Consumer Protection in E-Commerce Transactions in India – Need for Reforms, SSRN ELECTRONIC J. 1, 13 (2020).

[270] Consumer Educ. & Rsch. Ctr. v. Life Ins. Corp. of India, (1995) 5 SCC 482 (India).

[271] Beni Chugh & Pranjal Jain, Unpacking Dark Patterns: Understanding Dark Patterns and Their Implications for Consumer Protection in the Digital Economy 1, 23 (2023).

[272] Sandeep Sharma J. & Ishita Sharma Dr., Dark Patterns in a Bright World: An Analysis of the Indian Consumer Legal Architecture, 11 INT'L J. ON CONSUMER L. & PRAC. 1, 25 (2023).

[273] Mark Leiser & Wen-Ting Yang, Illuminating Manipulative Design: From 'Dark Patterns' to Information Asymmetry and the Repression of Free Choice under the Unfair Commercial Practices Directive, 34 LOY. CONSUMER L. REV. 484, 528 (2022).

perpetuate consumer harm, while recommendations advocate for explicit bans, enhanced disclosures, awareness campaigns, and inter-agency collaboration to bridge these voids.[274]

Reinforcing the need for legal clarity and strict enforcement is paramount in an era where digital transactions dominate daily life. Without precise amendments to CPA 2019—such as blacklisting drip pricing and mandating "all-in" pricing—platforms will continue to capitalize on information asymmetry, leading to economic losses and diminished trust.[275] Strict enforcement through scaled penalties, proactive CCPA monitoring, and judicial innovation can deter violations, ensuring remedies are accessible and swift.[276] Moreover, aligning Indian consumer protection with global standards, such as OECD's emphasis on transparent e-commerce and EU's proactive bans on manipulative designs, is crucial for a harmonized digital marketplace.[277] As India's e-commerce market surges toward a projected $350 billion by 2026, adopting these standards would not only safeguard vulnerable consumers—particularly in rural and low-literacy segments—but also foster ethical innovation, competitive fairness, and sustainable growth.[278]

In essence, while CPA 2019 marks a significant advancement, the persistence of hidden costs demands urgent reforms to uphold consumer sovereignty. By embracing legal precision, rigorous enforcement, and international best practices, India can transform its regulatory landscape, ensuring that digital commerce empowers rather than exploits its users.[279] This alignment is not merely aspirational but essential to realizing a truly equitable digital economy.

[274] Dilshad Shaik & Ms. V. Poojasree, Consumer Protection in E-Commerce: A Legal and Compliance Framework in the Digital Market, ADVANCES SOC. SCI., EDUC. & HUMAN. RSCH., vol. 549, 18, 25 (2021).
[275] Gregory M. Dickinson, The Patterns of Digital Deception, 2024 UTAH L. REV. 2457, 2507 (2024).
[276] APEC Comm. on Trade & Inv., Misleading Pricing and Discounts: Best Practices and Policy Recommendations 21 (2025).
[277] Mehta, supra note 123, at 23.
[278] Ayilyath, supra note 125, at 14.
[279] Chugh & Jain, supra note 127, at 23.

Impact of Social Media Trial and the Need of the Right to be Forgotten

Pratiksha A More,[280] Aniruddha G. Bhagwat,[281] & Ishita R. Divate [282]

ABSTRACT

The growth of social media has created a platform where people discuss pending court cases. This "social media trial" can harm important legal rights such as presumption of innocence, the right of fair trial of the parties and a person's privacy and reputation. Once names, photos or accusations are shared online, they remain permanent on the online platforms. So, this, affects individuals who suffer social stigma, problems for rehabilitation etc.

This study looks at Right to be forgotten (RTBF) as a way to deal with the permanent nature of effects of online information. It explains how this right is well developed in Europe under the General Data Protection Regulation (GDPR) and analyses the current legal position of RTBF in India. This paper also discusses how RTBF can conflict with the free speech, the public's right to information and the role of media. It argues for a balanced approach that protects personal dignity without undermining freedom of speech and expression and democratic transparency.

Keywords: Social Media Trial, Privacy, Reputation.

INTRODUCTION

Social media is a strong instrument in today's digital age that can change people's minds and spread information quickly. While a case is still going on, Twitter, Instagram, and Facebook often become unofficial courts where people can remark, talk about, and even judge the case before the court makes a ruling. This idea, often called a "social media trial," makes people very worried about their right to privacy, their presumption of innocence, and the impartiality of the trial.

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Once private details or accusations are made openly on the internet, they typically remain there at all times, even if an individual is found to be innocent or the case is closed. This permanent digital trace could hurt a person's reputation, mental health, and possibilities for the future for a long time. In this case, the RTBF is particularly important. It helps individual to seek for the removal of personal data which is no more needed, correct, or beneficial. The RTBF is important because it protects a individual's dignity and it allows these individuals to remove past information from the online platform.

The GDPR[283], establishes the RTBF as a recognized right within the European Union. However, India has yet to clearly define this right within its legal framework. The Digital Personal Data Protection Act of 2023 (DPDP Act)[284] allows for the right to erasure in certain situations. However, it doesn't fully empower individuals to have harmful digital content removed from public platforms.

This research examines the consequences of social media trials on personal freedoms, highlighting the urgent necessity for stronger legal protections, specifically the express inclusion of a RTBF in Indian legislation. This study examines the intricate relationships between legal frameworks, technological advancements, and societal shifts, highlighting the crucial need to protect individual privacy and uphold justice within the dynamic digital environment of the present day.

THE CONCEPT OF SOCIAL MEDIA TRIAL.

Social Media Trial :-

In the past several years, social media has expanded quite swiftly. It reshaped how we communicate, share information, and even what we think. In India, there has been a digital revolution. A major result of this change is the rise of "social media trials." These are similar to traditional media trials, but they're conducted on digital platforms such as Twitter, Instagram, Facebook, and others.

Social media, much like traditional media, wields the power to shape public perception. "Social media trials" occur when individuals, often with firmly held beliefs, use these platforms to publicly assess ongoing court disputes, and significant controversies. The emergence of social

[283] Article 17 of General Data Protection Regulation, 2018.

[284] The Digital Personal Data Protection Act, 2023.

media trials prompts significant inquiries about their influence on the justice system, accused's rights, and the maintenance of essential legal tenets, like a presumption of innocence and a right of a fair trial.[285]

Understanding social media trial how it influences the public opinion:-

As mentioned before, a social media trial is just like a "media trial," but it takes place online. Historically, traditional media has played a vital role in shaping how the public views on criminal trials, with investigative journalism being pivotal in high-profile cases like the murder of [286] Arushi- Hemraj Talwar case[287] and the 2012 Nirbhaya gang-rape case[288]. In Aarushi-talwar case[289], media commented on a wide range of aspects, leaving no stone unturned to discuss issues like incest, underage sex, extra-marital affairs with family friends, and hotel rooms for swinger parties, wife-swapping, influence-mongering, while maligning the family.[290] TV debates on the same left the family traumatized. Not only did they lose their family but also lost dignity and the opinions carried out on national television, at every stage of the trial, where every media person turned into an expert into the affairs of this family, remains the height of unethical reporting and media invasion into the process of justice. Invasive media presence in this particular case was in a practical sense to a problem as it ended up affecting evidence collection. This case shows how the media trial affect the legal proceedings.[291]

On the other hand, social media likewise thrives on speed and engagement, but it often doesn't have any way to hold people accountable. Social media allows anyone to be an investigator, prosecutor, or judge, unlike established news, where entities that check their facts. This situation has caused a lot of false information, online harassment, and bias in criminal proceedings.[292]

Some cases of the Social Media Trial

[285] Mr. Saif Hussain, *Social Media Trials In India: A Comprehensive Analysis Of Legal Implications And Societal Impact*, 3 IJIRL, 2583-0538,(2023).

[286] Id.

[287] Nupur Talwar vs CBI and Anr 2013 (2) ALL LJ 295.

[288] Mukesh & Anr. vs NCT state of Delhi & ors, (2017) 2 SCC (Cri) 673.

[289] Supra 6.

[290] DR. SHEFALI RAIZADA ET. AL., TRAIL BY MEDIA:- AN ETHICAL CONUNDRUM, 84 (2017).

[291] Id.

[292] P.A.Anusree & Dr. Shampa. I. Dev, *The Impact Of Social Media Trials On Freedom Of Speech And Fair Trial Rights*, 5 IJALR,1 4 (2025).

1.) The Sushant Singh Rajput[293] case in 2020 shows how social media could act like a parallel Court. "What first looked like a suicide soon turned into a murder investigation, fueled by hashtags like #JusticeForSSR and #ArrestRhea. On social media and some news channels, unverified information spread quickly, accusing Rhea Chakraborty and putting pressure on the police. Even without strong evidence, she was arrested, showing how online trials can affect investigations and ignore the principle of 'innocent until proven guilty'."[294]

In this context, the Bombay High Court in Nilesh Navalakha v. Union of India[295] laid down important observations and directions for media houses regarding ongoing investigations
Under this case, Bombay High Court dealt with media trials in the Sushant Singh Rajput[296] case. The Court said: "The duty of the press/media to have news items printed/telecast based on true and correct version relating to incidents worth reporting accurately and without any distortion/embellishment, as well as without taking sides, and cannot therefore be overemphasized." It also observed that "Any report of the press / media, having the propensity of tilting the balance against fair and impartial 'administration of justice', could make a mockery of the justice delivery system rendering 'truth' a casualty." The Court noted that many prominent media channels had conducted 'media trials' and 'parallel investigation' by airing debates, opinions, exposing witnesses, examining them, and chasing officials of the CBI. The Bench said that media houses had crossed the 'Lakshman Rekha'.[297]

The Court directed that "No report/discussion/debate/interview should be presented by the press/media which could harm the interests of the accused being investigated or a witness in the case or any such person who may be relevant for any investigation, with a view to satiate the thirst of stealing a march over competitors in the field of reporting." "The press/media must avoid/regulate reports or debates that: intrude on the privacy of the deceased, create prejudice against accused/victims, hold interviews with victims/witnesses/families, analyze witnesses'

[293] Rhea Chakraborty vs The State Of Bihar, AIR 2020 SC 3826.
[294] P. A. Anushri, Supra note 11.
[295] Nilesh Navalakha v. Union of India, 2021 SCC OnLine Bom 56.
[296] Supra 12.
[297] Bhumika Indulia, *Bombay HC on Media Reporting, Obligation of Investigators, Media Trial, Freedom of Press and the proverbial 'Lakshman Rekha' for Media Houses || Read this detailed report unravelling several significant aspects cropped in light of Sushant Singh Case*, SCCONLINE TIMES, (Jan 19 2021, 12 PM), https://www.scconline.com/blog/post/2021/01/19/bombay-hc-on-media-reporting-obligation-of-investigators-media-trial-freedom-of-press-and-the-proverbial-lakshman-rekha-for-media-houses-read-this-detailed-report-unravelling-s/.

versions, publish alleged confessions, print accused photographs, criticize investigation without research, pre-judge guilt or innocence, recreate crime scenes, predict investigation steps, or leak confidential information. Media houses should also guide anchors and guest speakers to avoid comments that interfere with justice or attract contempt."[298]

Other instances of social media trial are the case of Aryan khan where he was arrested due to a drug case, who was addressed as guilty by the public, even before the courts have decided the case. The other example of the social media trial is the case of comedian Munawar Faruqui, Despite the lack of evidence, he was arrested for allegedly disrespecting Hindu deities. He was imprisoned for a long time as a result of the public outrage, which was increased by social media, until the Supreme Court interfered. This case demonstrates how people can be wrongly prosecuted by narratives that are predicated on speculation rather than true facts.[299]

And last case is of The RG Medical Rape Case that shows the problems of privacy violation on online platforms. According to a report by the Economic Times, "the Supreme Court of India ordered the removal of the victim's name, photos, and videos from all social media platforms." The Court said that sharing her identity was a clear violation of its earlier ruling in the Nipun Saxena[300] case, which bans revealing the identity of sexual assault victims.[301]

Social Media Trial Impact :-

Right Of fair trial:-

Justice Sikri stated that, "the social media has experienced a radical transition in the technical age. The media's presentation of the accused's prior misdeeds during a trial generates prejudices in the jury's minds and the general public. In addition, examining social and economic elements associated with the cases impedes the path to impartiality. Social media is a most powerful tool for shaping and influencing public viewpoint."[302]

[298] Id.

[299] P. A. Anushri, Supra 11.

[300] Nipun Saxena v Union of India, AIRONLINE 2018 SC 826.

[301] THE ECONOMIC TIMES, *Kolkata doc's rape-murder: SC orders removal of name, photos, videos of deceased*, https://economictimes.indiatimes.com/news/politics-and-nation/kolkata-docs-rape-murder-sc-orders-removal-of name-photos-videos-of-deceased/printarticle/112657539.cms , last visited on Dec. 24,2025.

[302] Dr. Vikas Poonia, *Social Media Trial: A Fate To Criminal Justice System And The Society,* 6, IJLMH, 1990 1993,(2023).

Sometimes, media publishes or circulates information that is inadmissible, or unverified, and it can unfairly influence both the judge and the general public. This weakens the principle of presumption of innocence, which is central to the right to a fair trial. Even if the accused is later acquitted due to lack of sufficient evidence, the damage to their reputation remains because social media has already branded them guilty. Such practices by the media compromise not only the fairness of trial proceedings but also the accused's right to live with dignity, which is protected under Article 21[303] of the Constitution.

Further, sometimes media trial or media also goes to such an extent that it affects reputation of person in the public as it happened in the Parliament Attack case[304], the attitude of media was objected and questioned where S.A.R Gellani the co- accused of the parliament attack case was portrayed by the media as a terrorist and due to media influence and in the lack of evidence he was convicted. But then in the revision petition before the Delhi High court he was acquitted on the ground that the prosecution case was absurd and tragic.[305] This kind of media portrayal weakens the presumption of innocence and can interfere with the accused's right to a fair and impartial trial under Article 21[306] of the Constitution.

This case though not of the social media trial but a case of media trial, it also shows why protections such as the Right to Be Forgotten become important, since those acquitted (like Geelani) continue to face stigma and reputational damage despite being cleared by the courts due to availability of reports, incidents and news on the online platforms. Especially in case of social media Trial the data is stored for a huge period of time and now a days the photos, name videos of the accused and victims are posted online by the media therefore right to be forgotten should be given to such person as those data stored permanently.

Right to privacy :-

In the social media trial, pictures, videos, names, and other information about the victims, accused, and witnesses are posted. This violates their right to privacy. Police now use social media sites like Facebook, Twitter, and Instagram to look into crimes by sharing news, CCTV footage, and updates on suspects or missing people. However, they can also hold social media

[303] INDIA CONST. art. 21.
[304] Mohd. Afzal Guru V State of NCT of Delhi, (2005) 11 SCC 600.
[305] DR. SHEFALI RAIZADA, Supra note 9, pg 80.
[306] Supra 22.

trials, during which people decide if someone is guilty before a court does. People quickly learned about the crime and the suspect in the Ankita Bhandari case[307] online. This made people angry and changed their minds about guilt. They started using the hashtag #justiceforankita. This case did help the police collect evidence against the accused, though. But pictures and videos about the victims are all over the internet. This is bad for the Right to Be Forgotten because posts and news about them can stay online for all time, hurting their reputation. Social media can help catch criminals, but it also makes people worry about privacy, fairness, and the long-term effects of information online.

In RG Medical Case, shows the problems of privacy violation online. According to a report by the Economic Times, "the Supreme Court of India literally had to step-in and had ordered the removal of the victim's name, photos, and videos from all social media platforms. The Court said that sharing her identity was a clear violation of its earlier ruling in the Nipun Saxena case, which bans revealing the identity of sexual assault victims".[308]

In case of victims or accused is a minor :-

If the victims are minor , in Nipun Saxena v. Union of India[309], the facts were that, the case emerged from a public interest litigation filed by Nipun Saxena, illustrating how victims of sexual offenses, like children, were having their identities disclosed by media, courts, and social media platforms. Such disclosures triggered further trauma, harassment, and social stigma. The petition sought more powerful safeguards to preserve victims' privacy and dignity, contending that the current laws were not being effectively enforced. In reply, the Supreme Court examined the issue and gave directions to avoid the publication or online sharing of victims' identities, pointing out the necessity for sealed court records and strict adherence to legal safeguards like Section 228A IPC[310] and the POCSO Act[311].

In social media trials, when photos or details of a minor accused are posted online, they often stay permanently and spread widely, creating stigma and making rehabilitation very difficult. This infringes on the minor's right to privacy and goes against the rehabilitative focus of the

[307] Pulkit Arya v. State of Uttarakhand, Transfer Petition (Criminal) No. 657 of 2024.
[308] Supra note 20.
[309] Nipun Saxena v Union of India, AIRONLINE 2018 SC 826.
[310] Indian Penal Code, 1860, S. 228 Act of Parliament,1860 (India).
[311] The Protection of Children from Sexual Offence, 2012, Act of Parliament, 2012(India).

Section 79 of Juvenile Justice (Care and Protection of Children) Act, 2015[312], which prohibits publishing any information that reveals a juvenile's identity and also it talks about victim and witness. Despite of such laws and Judgement the minor victims and accused their photos, videos and other personal identities are still posted on social media. One of such example is the Guwahati Rape case[313], where identities of minor accused individuals were disclosed in social media. In this context, RTBF is essential, as it allows such content to be removed or delisted from public access, protecting the minor's privacy and helping them reintegrate into society.

Reputation:-

Under social Media Trial individuals make acquisitions of defamation where most of the individual make some false or defamatory statements about others online especially related to accused. Section 499 of IPC defines defamation as the act of harming someone's reputation by making or publishing false imputation against them[314]. Social media platforms serve as a channel for dissemination of such defamatory content leading to legal action against and Section 500 of IPC provide for Punishment for Defamation[315]. Similarly, now in BNS S.356[316] talks about the same.

Unlike traditional media, libelous content on social media travels quickly and stays there forever, which can ruin someone's reputation for good. For a long time, courts have said that freedom of the press does not include disseminating false information, as in Arnold v. King Emperor (1914).[317]This idea can also be applied to internet platforms.[318]

Even after such regulation regarding protection of the Individual at the terms of Social Media Trial but still the Identity of the Victims, Accused and witness are posted online. And thus, it often cause severe harm to an individual's reputation. Once allegations are circulated online,

[312] Juvenile Justice (Care and Protection of Children) Act, 2015, S.79, Act of Parliament,2015(India).

[32] THE FRONTIER MANIPUR, https://thefrontiermanipur.com/mcpcr-cries-foul-as-media-names-minor-accused-in-guwahati-rape-case/#:~:text=Manipur%20Commission%20for%20Protection%20of,a%20Threat%20to%20Ethnic%20Harmony, last visited on Dec. 25, 2025.

[314] Indian Penal Code,1860, S. 499, Act of Parliament,1860 (India).

[315] Indian Penal Code 1860,S.500, Act of Parliament,1860 (India

[316] Bhartiya Nyaya Sanhita 2023, S. 356, Act of Parliament,2023 (India).

[317] Arnold v. King Emperor, (1914) 16 BOMLR 544.

[318] Mr. Saif Hussain, Supra note 4.

they tend to remain permanently accessible, regardless of the eventual outcome of the case. Even after a not-guilty verdict, a person's public image and social standing can be permanently damaged, mainly because digital records have a lasting impact on how society views them.
This stigma can significantly impact education, employment prospects, and social relationships, particularly in instances involving minors or those wrongfully accused, thereby resulting in enduring reputational damage. Furthermore, the consequences extend to mental health, with constant public scrutiny, online harassment, and character defamation potentially putting stress, depression, anxiety, and, in some cases, suicidal ideation.

The phenomenon of being judged and condemned by millions before a fair trial concludes strips individuals of dignity and creates a sense of helplessness. Courts have similarly acknowledged this issue in the Nipun Saxena case[319], the Supreme Court emphasized the necessity of protecting individual identities in sensitive contexts to mitigate the potential for further psychological harm. As a result, trials conducted on social media platforms pose a threat not only to the right to a fair trial but also to the right to live with dignity, as guaranteed by Article 21[320], due to the psychological distress they cause and the damage they inflict on personal reputations.

Despite existing laws and repeated court decisions, the reality shows that photographs, personal information, and even private details of victims, accused individuals, and witnesses are still widely shared online. Once information is made public, it stays available forever. This can violate a person's right to privacy, dignity, and the chance for rehabilitation. This constant digital presence creates a lasting stigma, even if someone is found innocent or has finished their sentence.

Therefore, it's becoming important to recognize and enforce the "right to be forgotten" in India. This would prevent individuals from being permanently affected by online records of accusations, media coverage, or unverified information, long after the legal process is over.

RIGHT TO BE FORGOTTEN

Concept and origin (French “Right to Oblivion”)

[319] Nipun Saxena v Union of India, AIRONLINE 2018 SC 826.
[320] Supra 22.

The RTBF was first recognized in France as droit a` l'oubli in 2010[321], also known as the right to oblivion. This maxim was used in the context of convicted criminal who has solved his or her time in imprisonment but the society denies such person any opportunity because of his or her past records as they were publicly available. This maxim was later applied in Germany too which says that convict must not be denied any opportunity because of his or her past records and they should be given opportunity to mix up with the society and live a normal life after his or her imprisonment.[322]

Later the concept of RTBF was first established in the Google Spain case[323] (2014), a Spanish man, Mario Costeja González, found that whenever his name was searched on Google, it showed links to a newspaper notice from 1998 about a property auction related to his old social security debts. Although the debt issue was long resolved, the notice still appeared online and damaged his reputation. He asked the newspaper to remove the notice and requested Google to delete the search links. The Court of Justice of the EU held that "Google is responsible as a "data controller" and must remove such links if the information is outdated, irrelevant, or excessive, while still balancing this with public interest and freedom of expression".
This case set the foundation of RTBF and later it was recognized under General Data Protection Regulation (GDPR) Which is European Convention data protection[324].

LAW JURIST LEGAL JOURNAL

Why Right to be forgotten ?:-

"We live in the "search society," where almost everything lies in our searches, images, and online activities, which are stored as information or data. The information that once faded from memory is now preserved indefinitely through massive digital archives. This permanence challenges traditional ideas of forgetting and forgiveness, as even decades-old events can resurface instantly with a simple Google search. Thus, it poses serious threats to personal privacy, dignity, and the possibility of rehabilitation".[325] In social media trials, this problem is huge, as photographs of the accused, victims, or sensitive crime scenes often remain online permanently, continuing to affect reputations and personal lives. These situations highlight the

[321] Supraja Seshadri, *The Right To Be Forgotten: Is It A Right Or Wrong?,*SSRN,1,2(2025).
[322] Id.
[323] Google Spain SL and Google Inc. v Agencia Española de Protección de Datos (AEPD) and Mario Costeja González, ECLI:EU:C:2014:317.
[324] Supra 1.
[325] GEORGE BROCK, RIGHT TO BE FORGOTTEN: PRIVACY AND MEDIA IN THE DIGITAL AGE,1-17(I.B. Tauris,2016).

importance of the RTBF, which allows people to ask for the removal of outdated or harmful information.

Right to be Forgotten under GDPR:

Article 17 of the General Data Protection Regulation (GDPR)[326] establishes the "Right to be Forgotten," which empowers data subjects to compel data controllers to erase personal data without delay. This right is applicable when the data is no longer necessary, consent has been retracted, the processing is deemed unlawful, or erasure is mandated by law. However, this right is subject to specific exceptions; for instance, it does not apply when it conflicts with the freedom of expression and information, compliance with legal obligations, the performance of a task carried out in the public interest or the exercise of official authority, or the defense of legal claims[327].

Legal Position in India:

Following the Justice K.S. Puttaswamy[328] judgment, which recognized privacy as a fundamental right under Article 21 of the Indian Constitution[329], the Government of India initiated the establishment of an expert committee to formulate a framework for Data Protection Laws within the country.

So, under the chairmanship of former Supreme Court Justice Shri B N Srikrishna a committee[330] has released a white paper on Data Protection Framework for India on November 27, 2017. This Committee had talked about Right to Be forgotten and said that individuals should have Right to Be forgotten[331].

Further under Personal Data Protection Bill,2019 (PDP bill),

Under the PDP Bill, the right to erasure and RTBF are treated as different rights, unlike the GDPR where both are combined under art. 17. Section 18 (1) (d) of the bill provides for erasure meaning the complete deletion of personal data that no longer necessary. In contrast, section 20 grants the RTBF, which allows the data principal to restrict or prevent the continuing

[326] General Data Protection Regulation 2018, Art. 17, European Convention 2018(Europe).
[327] Id.
[328] Justice K.S. Puttaswamy (Retd.) and Anr. vs. Union of India and Ors.,(2017) 10 SCC 1.
[329] Supra 22.
[330] Prashant Mali ,*Privacy Law: Right To Be Forgotten In India*, 7,NLIU LAW REVIEW,116,(2018).
[331] Id.

disclosure of the personal data, where "restrict" means stopping the data fiduciary from further disclosing or making the data available[332]. This right would be applied if the purpose is served or the information has lost relevancy, or consent has been withdrawn by data fiduciary, or processing is unlawful. This right can be exercised only through an order of an adjudicating officer appointed under the data protection authority. In contrast article 17 of the GDPR allows the data subject to directly require the data controller to erase the personal data without undue delay subject to certain exceptions, without requiring approval from the authority[333]. The PDP bill places the power with an adjudicating officer to balance RTBF against freedom of speech and right to information, considering factors such as the sensitivity of the data, scale of disclosure, public role of the individual, relevance of the data to the public, and the nature and source of disclosure.[334]

Digital personal Data Protection Act ,2023 (DPDP act)[335]:-

The Digital Personal data protection act, 2023[336] does not make a difference between right to be forgotten and right to erasure instead it only provides a right to erasure under section 12[337]. A data principal may make a request, in a prescribed manner to the data fiduciary for erasure of her/his personal data and upon receipt of such request, the data fiduciary is required to erase the data unless its retention is necessary for the specified purpose or for the compliance with any law for the time being in force[338]. However, this act does not expressly lay down the mechanism for balancing of this right with freedom of speech and right to information therefore it can result in conflicts[339].

Judicial responses to the right to be forgotten

1.) The Karnataka High Court heard a civil petition from the victim for removal or at least masking of her name in the pause list to ensure that her name does not feature in any search engine websites. Therefore the court held that the name of the victim especially in rape victim

[332] DR. A.SHRIVASTAV, DR. Y. SINGH, PERSONAL DATA PROTECTION RIGHTS, 110 (lexis Nexis, 2025).
[333] Supra 1.
[334] DR. A.SHRIVASTAV, Supra 51.
[335] Digital Personal Data Protection Act, 2023, Act of Parliament, 2023(India).
[336] Id.
[337] Digital Personal Data Protection, 2023, S.12, Act of Parliament, 2023(India).
[338] Id
[339] DR. A.SHRIVASTAV, Supra 51.

should not appear in the cause title of the order or in the body of the order of this court. In terms of sensitive cases involving women in general and highly sensitive cases involving Rape, affecting the modesty or reputation of person, the court talked about right to be forgotten in this cases[340].

2.) The High Court in case of Subhranshu Rout[341] also admitted the fact that under current circumstances the SPDI Fail to recognize right to be forgotten, therefore proper legislation should be there. In this case justice KS Panigrahi said that there is a lack of effort in recognition of right to be forgotten and right to get deleted which is linked with right be forgotten. It cannot be expected that every time a victim shall approach the court for getting its inaccurate date or information erased by the control of data controller[342].

3.)V. Vs. High Court of Karnataka[343], "the Court in this case recognized RTBF. The case was filed in order to remove the name of the petitioner's daughter from the cause title since it was easily accessible and thus it would defame her reputation. The court held that, the name of the petitioner's daughter to be removed from the cause title and the orders. Further, court also held that the RTBF is adopted by western countries in specific cases like cyber crime against women, economic misconduct, heinous crime, rape, and acid attack, etc. The RTBF has now seen as a basic face of the right to privacy:"[344]

4.) In Jorower singh Mundy[345] in this case too, the Court recognized the right to be forgotten is a part of right to privacy. In this case a person was pursuing his professional career in America, But he was tormented for an old case that happened in 2009 for which individual was acquitted by the court in 2013 with that case used to appear on the search engine of Google, Indian kanoon and other websites. "Justice Pratibha Singh dealing with case held that this case dealt with and integrate question of privacy right versus right to information and maintenance of transparency in judicial records. The right to be forgotten is a part of right to privacy and

[340] Sri Vasunathan Vs the Registrar, 2017 SCC OnLine Kar 424.
[341] Subhranshu Rout v. State of Odisha, 2020 SCC OnLine Ori 878.
[342] Id.
[343] V. Vs. High Court of Karnataka, 2017 SCC Online Kar 424.
[344] Priya Gupta, Dr. Abhay C.M. Visen, *Right to Be Forgotten with Special Reference to Indian Women: A Legal Study*, 13, IJHSSI, 13, 17 (2024).
[345] Jorawer Singh Mundy V Union of India W.P. (C) 3918/ 2021 & C.M APPL 11767/2021.

since the individual was acquitted of the crime in 2013 privacy triumphs over information right".[346]

5.)R.Rajagopal vs The state of Tamil Nadu[347], "the Court held that in case of conflict between right to privacy and freedom of press which includes right to information, in case of any publication which is based on public records including court records. The right to privacy no longer subsists and it becomes legitimate subject for comment by press and media[348]. However, an exception must be there for this rule that is, in case of a female victim of sexual assault, kidnap, abduction or any other similar offense then in this case, the right of individual dignity and privacy will prevail in such sensitive matters".[349]

BALANCING COMPETING RIGHTS.

Conflict between Right be forgotten vs Freedom of speech and Expression and right to information.

RTBF possible conflict with the freedom of speech and expression protected by Article 19(1)(a) of the Indian Constitution[350] is one of the most divisive topics surrounding it. "Erasing legally published personal information (eg. news) may undermine freedom of press, also it may restrict public access to historical documents, or impede judicial openness, particularly when public rulings include reference to personal information. Demands to remove criminal records or court rulings, even when they have repercussions for the public good, are a prime example. Such a removal may impact legal studies, skew public memory, and impair media responsibility. As a result, putting RTBF into practice requires striking a balance between people's right to privacy and the public's right to knowledge".[351]

Introduction of RTBF may lead to a digital dark age and thus it can act possibly as the censorship on free speech to an extent that it may put chilling effect on to the authors or media platforms. Since, right to be forgotten specifically was made for deindexing of the links from the search engine results or restricting of the personal data, this right may affect the newspaper

[346] DR. A.SHRIVASTAV, Supra note 51, 120.
[347] R RajaGopal vs State of Tamil Nadu, 1994SCC(6) 632.
[348] DR. A.SHRIVASTAV, Supra note 51,121.
[349] Id.
[350] INDIA CONST. art.19(1), cl.(a).
[351] Anjani Agarwal, Aman Singh, *The right to be forgotten under the digital personal data protection act, 2023: A missed opportunity in India's data privacy regime*, 11, Int. J. Law, 57, 60 (2025).

agencies as it impacts on the circulation of newspaper especially in cases of digital news platform. Further, this right can also affect the right to information of the public, as press newspaper publishes the article to provide information to the public but since RTBF asks removing the information from the website thus it affects the right to information of the public.

In Europe[352] :-

The RTBF in Europe is based upon Article 8 of the European Convention on Human Rights (ECHR), which protects a person's private life and reputation[353]. RTBF is not a separate right under ECHR it is a way to protect people from serious harm to their reputation while also balancing freedom of expression under Article 10[354]. The European Court of Human Rights (ECtHR) examines each case carefully to make sure privacy is protected without stopping the public from getting important information. Courts consider factors like the type of information, how sensitive it is, how much time has passed, how it is affecting public interest, whether a individual is well-known, and harm caused.

In Węgrzynowski and Smolczewski v. Poland (2013)[355], two lawyers wanted a defamatory article removed from a newspaper website. The article claimed that they had made money through questionable dealings. The court held that, lawyers could have used less strict measures, like adding references to earlier court judgments and this could adequately protect their reputation. Complete removal was not strictly necessary or proportionate, so court held that there was no violation of Article 8[356].

Some cases involve alteration or anonymization. In M.L.and W.W.v.Germany (2018)[357], convicted individuals requested that their full names be removed from online archives. The Court was agreed with domestic courts, which had considered public interest, the applicant's conduct after conviction, and limited accessibility of the information. This did not violate Article 8 and therefore their request that their names to be anonymized was rejected[358].

[352] European Court of Human Rights & European Union Agency for Fundamental Rights, last https://share.google/ug7QkvMuf1PN7Iye5, last visited on 27/09/2025.
[353] Article 8 of European Convention on Human Rights (Europe).
[354] Article 10 of European Convention on Human Rights (Europe).
[355] Węgrzynowski and Smolczewski v Poland (No 33846/07, ECtHR, 16 July 2013).
[356] Supra 72.
[357] M.L. and W.W. v Germany (Nos 60798/10 and 65599/10, ECtHR, 28 June 2018).
[358] Supra 72.

In Hurbain v. Belgium (2023)[359], a publisher had to anonymize an old article about a traffic accident. The Court found that anonymization was the best way to protect privacy because the article was old, not of public interest, and could harm the person's reputation. This did not violate Article 10[360].

The Court of Justice of the European Union (CJEU) in Google Spain v. AEPD[361] (2014) clarified that search engines must remove links related to personal information if it is outdated, irrelevant, or excessive, while still considering public interest. Later cases, like GC and Others v. CNIL [362](2019), "when search engines receives a request to remove links which involves sensitive personal information, then it must balance a person's right to privacy and data protection with the public's right to access information. If the links concern old or outdated criminal proceedings, the search engine operator must check whether keeping them in search results is really necessary and ensure that the results show the person's current legal status". [363] Overall, Europe's approach to RTBF is case-by-case and flexible. The ECtHR ensures that privacy and reputation under Article 8[364] are protected while not unnecessarily restricting freedom of expression under Article 10[365]. Remedies include removing information, anonymizing content, de-indexing search results, or prohibiting certain publications. The court provides guidance for search engines to balance privacy with public access to information. This approach protects individual rights while allowing the public to access the information, creating a fair and practical system for the RTBF.

In India: The Conflict Between Informational Privacy and Public Interest and problems in current DPDP act :-

The PDP Bill 2019, provided different provisions for RTBF and right of erasure. And under this bill an independent adjudicating officer was required to balance the individuals right to privacy with public's right to information and speech while granting RTBF to the data principal. The prime reason why the committee had given this power on an independent

[359] Hurbain v Belgium [GC] (No 57292/16, ECtHR, 4 July 2023.
[360] Supra 73.
[361] Google Spain v AEPD and Mario Costeja González (C-131/12, 13 May 2014).
[362] GC and Others v CNIL (C-136/17, 24 September 2019).
[363] Supra note 71.
[364] Supra 72.
[365] Supra 73.

adjudicating authority was because of the fact that the RTBF, its application goes against the free speech and it puts restriction on the right to information. Further, the RTBF is more 'individual centric' and free speech and right to information is 'collective centric'. Therefore Sri Krishna Committee found it appropriate that delicate balancing task should be done through an adjudicatory body. On page 85 of the report the committee also talks about the lack of capacity of the data fiduciary who is not bound by democratic accountability to exercise such adjudicatory function. Therefore, the committee found preferable that balancing function like this should be exercised via the adjudicatory officer. In short, committee felt that balancing privacy and free speech and right to information is a public function and thus it should be vested upon adjudicatory authority. However, this was not incorporated under 2023 Act. The current Act only provides for a right to erasure. Where, data principal can make a request as per the procedure to the data fiduciaries and then on receipt of an application, the data collecting companies then shall erase the personal data unless the retention of data is necessary for a specified purpose or for compliance with any law for the time being in force. Later, if any data principal is not satisfied with the decision of data fiduciary then it may approach the Data Protection Board of India under the Act.[366]

However, the section 12 which talks about right of erasure under the DPDP Act[367], does not talk about the competing interests of free speech. It does not expressly provides for the balancing mechanism with freedom of speech and information. The GDPR too expressly provides for balancing the right to erasure and forgotten with the freedom of speech and expression but the current act do not expressly provides for the same. Thus, there is no normal value under section 12 which provides that free speech has to be balanced with erasure[368]. This will raise a concern about the protection of Article 19 (1) (a) of the constitution[369]. Further Section 12 (3)[370] should be read along with section 44(3)[371], which amends section 8 (1) (j) of the right to information Act, 2005 by replacing it with the words 'information which related to personal information[372].' This change widens the scope of information that can be kept from public disclosure. Thus if both sections read together, it may appear that statutory framework

[366] DR. A.SHRIVASTAV, Supra note 51,113.
[367] Digital Personal Data Protection, 2023, S. 12, Act of Parliament 2023 (India).
[368] Id.
[369] Supra 69.
[370] Right to Information Act, 2005, S.12 (3), Act of Parliament, 2005 (India).
[371] Right to Information Act, 2005, S.44(3), Act of Parliament, 2005 (India).
[372] Right to Information Act, 2005, S.8(1) (j), Act of Parliament, 2005 (India).

does not clearly balance the personal data with that of free speech and public's access to information.[373]

Whereas, the PDP bill had provided for the balancing approach for adjudicating officer to decide when RTBF could be applied, a feature that is not there in the current DPDP Act. The adjudicating officer had to consider how widely the information was shared and how easily people could access it. Since RTBF focuses on individual privacy while freedom of speech and information protect the public, this setup was meant to balance the two.

The Bill also listed factors the officer should keep in mind while deciding;

1. How sensitive the personal data is,
2. How widely the information is shared or how accessible it is,
3. The person's public role, like whether they are famous or hold office,
4. How relevant the information is to the public, and whether that has changed over time,
5. The nature of the source, such as whether it is reliable or a matter of public record.

Therefore, these factors can be applied in case of social media trial while applying RTBF as it not only ensures the privacy of the accused, victims, witness etc. of the cases but also, at the same time these factors won't affect the public right to information and speech of the media platforms.

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CONCLUSION

This research shows how social media trials in India are becoming a serious problem. They harm fundamental rights like the right to a fair trial, the presumption of innocence, and the right to privacy. Platforms such as Facebook and Twitter often act like "courts," spreading unverified information that misleads the public and influences the justice process. In high-profile cases, like the Sushant Singh Rajput investigation, such trials have shown how damaging this can be. Since everything posted online leaves a permanent trace photos, names, and allegations of the accused, victims, and even witnesses suffer long-lasting reputational and emotional harm, even if they are later acquitted. The Supreme Court's order in the 2024 in RJ medical rape-murder case, protecting the victim's identity, highlighted the need for safeguards against this digital stigma.

[373] DR. A.SHRIVASTAV, Supra note 51,115.

The RTBF, which began in Europe with the Google Spain case[374] and the GDPR, is a vital legal tool to protect dignity and allow people to rebuild their lives. However, India's laws are still weak in this area. The earlier draft Personal Data Protection Bill, 2019, clearly separated RTBF from the Right to Erasure and suggested an independent officer to balance privacy with the public's right to know. But the final Digital Personal Data Protection Act, 2023[375], removed these safeguards and left such decisions to private companies, which may not be fair or neutral. Even so, Indian courts have started to recognize RTBF as part of the fundamental right to privacy, especially in cases involving women, children, or acquitted persons, using remedies like de-indexing or redaction. This research concludes that India needs to strengthen its laws by formally including RTBF in the DPDP Act. For fairness, an independent body or tribunal who are already created under DPDP act, they should be provided with powers to carefully balance privacy rights with public interest while providing right to be forgotten. Only with such a system India can protect individuals from permanent digital harm caused by social media trials and ensure that no one's life is endlessly defined by online judgments.

SUGGESTIONS

1. Clear Recognition of RTBF:-

The DPDP act, 2023 [376]should be amended and RTBF should be recognise as separate right, different from the right to erasure. This would bring Indian law closer to the GDPR framework and judicial developments recognizing RTBF as part of the right to privacy under Article 21[377]. This will reduce ambiguity and provide stronger legal protection to individuals affected by social media trials.

2. Special protection for Minors and victims:-

In cases where minors are involved , whether as accused, victims, or witnesses, RTBF requests should be provided as special priority. If a minor accused is acquitted, or has completed the sentence after conviction, the continued online availability of their personal information should normally be restricted via de-indexing or anonymization to support rehabilitation of such

[374] Supra 42.
[375] Supra 3.
[376] Id.
[377] Supra 22.

person. Similarly, in the case of minor victims or witnesses, identifying information should be removed or masked to protect privacy, dignity, and long-term well-being, subject to a balance with public interest.

3. Public Interest Test:-

Every RTBF request should be decided by considering factors like public role of the person, sensitivity of the information, time passed, and public importance just like how the PDP bill had recommended criteria for the adjudicating officer while deciding RTBF cases. This will prevent misuse of RTBF to hide matters of genuine public concern.

4. Government should make guidelines:-

The government, should provide the ethical guidelines for online reporting and social media commentary on sub-judice matters or the sensitive cases which are ongoing in the court so that victims or accused their privacy and reputation is not infringed.

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Statelessness, Citizenship and the Human Rights Crisis of Belonging in South Asia

Aditya Jain [378]

ABSTRACT

The condition of individuals who are not acknowledged by any state according to its laws and referred to as "statelessness" is still an acute human rights problem in South Asia . Under the 1954 Convention , the term 'statelessness' refers to such individuals. While growing international awareness is evident, the situation of millions in the area remains unchanged, they are still living without any legal status and thus deprived of the rights, civil, political and socio-economic, that come with it. The present study delves into the exclusionary forces gender-discriminatory nationality laws, non-availability of universal birth registration, and uneven enforcement of jus soli and jus sanguinis principles as the base factors of statelessness in the region. The focus of the analysis is on the groups who are most affected, such as the Rohingya refugees in Bangladesh, the displaced Afghans without any document, and the children of cross-border migrants in India and Nepal.

The article also illustrates how the South Asian countries that have not ratified the 1961 Statute on Statelessness Reduction , fall short of the international obligations laid down in the Universal Declaration of Human Rights under Article 15 , mainly regarding the nationality rights and the prevention of unlawful deprivation. It is based on legal analysis and UNHCR case data, and it evaluates the effects of statelessness on the right to education, health, and legal recognition, taking into consideration that legal identity and human dignity are tightly linked. Reference is made to *Mohammad Salimullah v. Union of India (2021)*, where the Indian Supreme Court dealt with the issue of the deportation of refugees against the background of disputed nationality. The recommendation for legislative reforms comes at the end of the study, such as the introduction of gender-neutral nationality transmission laws, the establishment of digitized birth registration systems, and the cooperation among the SAARC countries. South Asia can enhance its commitment to human rights and reclaim legal possession for the stateless by following the 1954 and 1961 Statelessness Conventions and thereby setting up the inclusive legal standards.

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Keywords: Statelessness, Rohingya refugees, South Asian Countries.

I. INTERNATIONAL LEGAL FRAMEWORK ON STATELESSNESS

i. The 1954 and 1961 Statelessness Conventions

The international legal response to statelessness is principally grounded in two core multilateral instruments: the 1954 Convention Relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness. The 1954 Convention was the first legally binding international agreement to define a stateless person as "a person who is not considered as a national by any State under the operation of its law."[379] This definition provides the foundation for legal protections afforded to individuals who are de jure stateless i.e., those who lack legal nationality despite residing within or outside state borders.

The 1954 Convention obligates signatory states to provide basic civil and socioeconomic rights to stateless persons. These include protection against expulsion (except on grounds of national security or public order), the right to identity and travel documents, access to courts, and rights related to employment, housing, and education.[380] Although it does not impose naturalization obligations on host states, the Convention encourages facilitating the assimilation and eventual naturalization of stateless persons.[381]

The 1961 Convention on the Reduction of Statelessness complements the 1954 instrument by aiming to prevent statelessness from occurring in the first place. This makes it obligatory for states to confer nationality on those born in their territory who would lack nationality, and also imposes a restriction on the arbitrary loss of nationality, particularly in situations where the loss of nationality would make a person stateless.[382] It also contains provisions on preventing statelessness resulting from renunciation of nationality, loss of nationality, and succession of states.[383]

[379] Convention Relating to the Status of Stateless Persons art. 1(1), Sept. 28, 1954, 360 U.N.T.S. 117.
[380] Id. arts. 27–32.
[381] Id. art. 32.
[382] Convention on the Reduction of Statelessness arts. 1–2, Aug. 30, 1961, 989 U.N.T.S. 175.
[383] Id. arts. 6–8.

Although the normative force of these instruments is strong, ratification of these agreements has not been global. As of 2023, 96 states are parties to the Convention of 1954, whereas only 77 states are parties to the Convention of 1961.[384] It is pertinent to mention that South Asian states like India, Bangladesh, Pakistan, Sri Lanka, and Nepal are not parties either to Convention of 1954 or Convention of 1961.[385] The general hesitation among them is that accession to these agreements may compel states that are already under mass migration pressure into complex ethnopolitical identities.[386]

The non-accession of these countries leaves millions in legal limbo. For example, the Rohingya in Bangladesh remain without a path to citizenship or permanent legal status. Stateless Afghan refugees in Pakistan and India continue to face bureaucratic exclusion. Without adherence to the 1954 and 1961 Conventions, these countries operate with insufficient or inconsistent domestic legal frameworks to address or resolve statelessness.

ii. Universal Declaration of Human Rights and Customary Norms

The Universal Declaration of Human Rights (UDHR), adopted in 1948, provides a moral and normative foundation for modern international human rights law. Article 15 unequivocally states that "everyone has the right to a nationality" and that "no one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality."[387] Although the UDHR is not a treaty and thus not legally binding, many of its provisions including Article 15 have acquired the status of customary international law, binding on all states irrespective of ratification.[388]

Beyond the UDHR, several binding multilateral treaties reinforce the right to nationality and the obligation to prevent statelessness. The Convention on the Rights of the Child (CRC), ratified by every country in South Asia, mandates that states register every child immediately after birth and guarantee their right to acquire a nationality.[389] The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) requires gender

[384] U.N. High Comm'r for Refugees, States Parties to the 1954 and 1961 Statelessness Conventions (2023), https://www.unhcr.org/.

[385] U.N. High Comm'r for Refugees, Statelessness Around the World: South Asia (2001), https://www.unhcr.org/ie/sites/en-ie/files/legacy-pdf/3bf0ff124.pdf

[386] Laura van Waas, Nationality Matters: Statelessness under International Law 91–96 (Intersentia 2008).

[387] G.A. Res. 217A (III), Universal Declaration of Human Rights, art. 15 (Dec. 10, 1948).

[388] Hurst Hannum, The Status of the Universal Declaration of Human Rights in National and International Law, 25 Ga. J. Int'l & Comp. L. 287, 290 (1996).

[389] Convention on the Rights of the Child art. 7, Nov. 20, 1989, 1577 U.N.T.S. 3.

equality in nationality laws, ensuring women can confer citizenship to their children and spouses on equal terms with men.[390]

Despite these obligations, gender-discriminatory laws and inconsistent birth registration procedures remain key causes of statelessness across South Asia. In Nepal, for instance, women cannot independently pass on nationality to their children unless the father is stateless or of unknown nationality contravening CEDAW obligations.[391]

One of the customary international rules which has had the greatest influence on statelessness persons has to do with the principle of non-refoulement, which was incorporated under Article 33 of the 1951 Refugee Convention.[392] This rule makes it imperative that a person should never be expelled to a state that may present danger to their life or freedom. This rule has its roots in the refugee convention but has since been accepted as customary international law to which all countries must be bound irrespective of their status on the issue.[393] This means that statelessness persons, especially those at the risk of persecution and discrimination, should never be expelled to any country.

In spite of this legal clarity, the degree to which this law is upheld is inconsistent. The holding in the case of Mohammad Salimullah v. Union of India, in which the deportation of the Rohingya refugees was upheld despite the fact that the challenged individuals were stateless, is indicative of the conflict that exists between the discretion for the states to act unilaterally and the principles established by the international system that must be followed by national systems concerning this issue.[394]

II. STATELESSNESS IN SOUTH ASIA: CASE STUDIES

i. Rohingya Refugees in Bangladesh

"The situation for the Rohingya is one of the longest-standing and most disastrous instances of statelessness in the modern state system." The Rohingya are an ethnic minority group in the

[390] Convention on the Elimination of All Forms of Discrimination Against Women art. 9, Dec. 18, 1979, 1249 U.N.T.S. 13.

[391] U.N. Comm. on the Elimination of Discrimination Against Women, Concluding Observations: Nepal, U.N. Doc. CEDAW/C/NPL/CO/6 (2011).

[392] Convention Relating to the Status of Refugees art. 33(1), July 28, 1951, 189 U.N.T.S. 150.

[393] See Guy S. Goodwin-Gill, The Refugee in International Law 207–14 (3d ed. 2007).

[394] Mohammad Salimullah v. Union of India, Writ Petition (Civil) No. 793 of 2017, (India).

country of Myanmar more specifically, they are an ethnic group within the Rakhine State that is Muslim that was made stateless through the Citizenship Law passed in Myanmar in 1982 when they were excluded from the 135 ethnic groups that are recognized within the state.[395] This legal exclusion was compounded by decades of systemic discrimination, violence, and denial of access to basic services like education, healthcare, and freedom of movement.[396]

The situation escalated in August 2017 when the Myanmar military launched a violent crackdown under the guise of counter-insurgency operations, resulting in mass atrocities, which the United Nations later described as bearing "hallmarks of genocide."[397] Over 740,000 Rohingya fled across the border into Bangladesh in a matter of months, joining approximately 200,000 who had previously fled in earlier waves of persecution.[398] Today, nearly a million Rohingya live in the refugee settlements of Cox's Bazar, currently the world's largest stateless refugee concentration.[399]

Bangladesh has shown humanitarian leadership by offering temporary asylum and basic aid, but it is not a signatory to the 1951 Refugee Convention or its 1967 Protocol.[400] Consequently, Rohingya are not legally recognized as refugees under domestic law and lack access to long-term residency, employment rights, or naturalization pathways.[401] While temporary identification cards (so-called "Rohingya Registration Cards") offer some limited protections, they do not confer legal status or entitlements.[402] Repatriation negotiations with Myanmar have consistently failed, given the ongoing threats of violence and continued legal disenfranchisement in Rakhine State.[403]

[395] Myanmar Citizenship Law, 1982 (Myanmar), translated in UNHCR Refworld, https://www.refworld.org/docid/3ae6b4f71b.html.

[396] Human Rights Watch, "All You Can Do is Pray": Crimes Against Humanity and Ethnic Cleansing of Rohingya Muslims in Burma's Arakan State, (2013).

[397] U.N. Human Rights Council, Report of the Independent International Fact-Finding Mission on Myanmar, U.N. Doc. A/HRC/39/64 (2018).

[398] UNHCR, Rohingya Emergency, https://www.unhcr.org/emergencies/rohingya-emergency.

[399] Id.

[400] UN Treaty Collection, Status of Ratifications of the 1951 Refugee Convention and 1967 Protocol, https://treaties.un.org/.

[401] Md. Rizwanul Islam, Rohingya Refugee Crisis and Bangladesh: An Analysis of Bangladesh's Legal Obligations, 29 Int'l J. Refugee L. 570, 574 (2017).

[402] UNHCR, Rohingya Situation: Operational Update, (2022), https://reporting.unhcr.org.

[403] Human Rights Watch, "Are We Not Human?": Denial of Education for Rohingya Refugee Children in Bangladesh (2020)

ii. Displaced Afghans

Afghanistan has endured more than four decades of uninterrupted conflict beginning with the Soviet invasion in 1979, followed by civil war, Taliban insurgency, U.S.-led intervention, and culminating in the 2021 Taliban resurgence. Each of these phases has triggered massive displacement both within and beyond its borders.[404] As of 2023, Pakistan hosts over 3 million Afghans, only around 1.3 million of whom are recognized refugees registered under the United Nations High Commissioner for Refugees (UNHCR).[405] The remaining live in uncertain legal status, many under expired or unrecognized documentation.

Second and third generation Afghans born in exile particularly in Pakistan and Iran often face severe bureaucratic hurdles to acquire nationality in either their country of birth or origin.[406] In Pakistan, the government has alternated between issuing "Proof of Registration" (PoR) cards and "Afghan Citizen Cards" (ACC), both of which offer limited recognition and lack any pathway to citizenship.[407] In 2022, authorities began revoking these cards under national security concerns, heightening fears of deportation and statelessness.[408]

These developments disproportionately impact children born outside the formal registration system. Lacking any legal documentation, they are excluded from education, health care, and formal employment.[409] Many are rendered de facto stateless, despite long-term residence and familial roots in host countries. Although some host governments, such as Iran, have introduced modest integration policies, there remains no uniform or rights-based naturalization mechanism.[410]

iii. Nepal - India Cross Border Migrants

The 1950 Indo-Nepal Treaty of Peace and Friendship grant reciprocal rights to citizens of India and Nepal to reside, work, and move freely in each other's territories.[411] This unique arrangement has fostered deep economic and cultural integration, particularly in border regions. However, in the absence of coordinated civil registration and consistent nationality policies, children born to cross border migrant families often fall through legal cracks.

[404] International Crisis Group, Afghanistan's Growing Humanitarian Crisis, Report No. 325 (2022).
[405] UNHCR, Afghanistan Situation Regional Refugee Response Plan (2023).
[406] Amnesty Int'l, My Children Will Die in This Heat: Afghanistan's Displaced and Stateless (2021).
[407] Human Rights Watch, Pakistan: Halt Renewed Threats to Afghan Refugees (2022).
[408] Id.
[409] Id.
[410] U.N. High Comm'r for Refugees, Solutions Strategy for Afghan Refugees (SSAR): Regional Strategy (2023).
[411] Treaty of Peace and Friendship, India-Nepal, July 31, 1950, 1950 India-Nepal T.I.A.S. No. 375.

The problem is most acute among children born in undocumented settlements or informal labour communities near the Indo-Nepal border.[412] These children do not possess birth certificates or any documents that would provide evidence of citizenship in either country. The Documentation-heavy "Citizenship Act of 1955" of India creates obstacles, in addition to the discriminatory provisions in the "Constitution of Nepal" and "Citizenship Act of 2006" of the latter country, through which "A citizen of Nepal cannot separately transmit citizenship to her child in most circumstances unless the father's identity or status is known." [413]

However, this gap in the law has left thousands of children without citizenship or at risk of becoming stateless. It is also noted that gender disparities in Nepal's nationality law have been challenged by the Committee on the Elimination of Discrimination against Women, also known as CEDAW, in which it is seen to conflict with international commitments.[414] Several civil organizations in the two nations have urged improvement in gender-neutral citizenship transfer and the adoption of joint systems for birth registration.[415]

However, concerns over illegal migration, political sensitivities, and nationalist rhetoric have impeded bilateral cooperation on this issue.[416]

III. GENDER DISCRIMINATION AND LEGAL IDENTITY GAPS

i. Gender Discrimination in Nationality Laws

Despite growing realization about the importance of gender equality as a basic tenet of human rights jurisprudence, several South Asian nations maintain discriminatory nationality regimes that discriminate against women with respect to conferring citizenship rights upon children. The implications are more pronounced for single, widowed, divorced, or conflict-displaced women.

Despite growing realization about the importance of gender equality as a basic tenet of human rights jurisprudence, several South Asian nations maintain discriminatory nationality regimes

[412] Asia Foundation, Gender and Nationality in Nepal: A Baseline Study (2014).
[413] Nepal Citizenship Act, 2006, § 5; Constitution of Nepal, 2015, art. 11.
[414] CEDAW Comm., Concluding Observations: Nepal, U.N. Doc. CEDAW/C/NPL/CO/6 (2011).
[415] Forum for Women, Law and Development (FWLD), Statelessness and the Right to Nationality in Nepal (2020).
[416] International Commission of Jurists (ICJ), Citizenship and the Right to Nationality in Nepal: A Legal and Human Rights Perspective (2021).

that discriminate against women with respect to conferring citizenship rights upon children. The implications are more pronounced for single, widowed, divorced, or conflict-displaced women. Nepal is one of the most extreme instances of this disparity. According to Article 11 of the Constitution of Nepal, 2015, a Nepali woman can only pass down citizenship through descent if "the citizenship and identity of the father are unknown."[417] The Citizenship Act of 2006 also contributes to this problem by stating that a child born in Nepal, to a foreign mother who claims through affidavit that the father is foreign, shall be eligible for citizenship at birth.[418] However, district officials often reject such applications due to suspicion of false declarations, effectively making maternal transmission illusory.[419]

This gender-based discrimination has been subject to sharp criticism from international human rights bodies. The Committee on the Elimination of Discrimination Against Women (CEDAW) has repeatedly called upon Nepal to eliminate all legal and administrative barriers to equal nationality transmission.[420] Yet constitutional reform efforts have been met with domestic political resistance and nationalist concerns about "border infiltration," particularly concerning ethnic Madhesi communities.[421]

In Pakistan, while the Citizenship Act, 1951 technically allows both parents to confer citizenship, women often face administrative obstacles in registering children, especially if the father is a foreign national or unregistered.[422] Women married to non-citizens must often undergo additional verification procedures not applied to men. Such practices further strengthen the perception of citizenship transfer as a paternal right and an administrative procedure that is filled with a biased Patriarch.[423]

"The Indian system of citizenship is relatively more egalitarian in its statutory provisions." The Citizenship Act of 1955 allows for citizenship by right through either parent for both sons and

[417] Nepal Const. art. 11(5) (2015).
[418] Nepal Citizenship Act, No. 26 of 2006 (Nepal), § 5(2).
[419] Forum for Women, Law and Development (FWLD), Statelessness and the Right to Nationality in Nepal 19–23 (2020).
[420] Comm. on the Elimination of Discrimination Against Women, Concluding Observations: Nepal, U.N. Doc. CEDAW/C/NPL/CO/6, ¶ 18 (2011).
[421] International Crisis Group, Identity Politics and Citizenship in Nepal, Asia Report No. 276, at 8–10 (2016).
[422] Pakistan Citizenship Act, No. II of 1951 (Pak.), § 5.
[423] Amnesty Int'l, Born in the Shadows: Stateless Children in Pakistan 10–13 (2020).

daughters.[424] However, in practical implementation in government offices in non-urban or border state cases, there has to be proof of paternal lineage.[425] Additionally, in instances of mothers or parents who are not citizens of their country of residence or lack documentation of status as such, there could be a lack of citizenship for the entire family or children."[426]

Such gender-based legal provisions go against the ideal set forth in Article 9 of the CEDAW Convention, which calls on countries to ensure equality in the transfer of nationality for both women and men.[427] Though all three countries, Nepal, Pakistan, and India, are CEDAW conventioneers, they remain short in bringing their national law in line with their international obligations.[428]

ii. Effects on Children and Statelessness Risk

Children suffer the most from this sort of gender-discriminatory nationality laws. Where paternity cannot be established or where the father is stateless, missing, or unwilling to participate in the registration procedures, children may be left without a nationality. It is more common where contexts of armed conflict, displacement, or cross-border migration have been faced, and family structures have been breached.

A study on statelessness by the UNHCR for South Asia underlines that births out of wedlock or to undocumented parents often present major barriers for the child's birth registration and nationality.[429] In its absence, these children are commonly denied formal education, public health systems, and other future employments.[430] In certain jurisdictions, the requirement to prove legal identity in school enrolments effectively excludes these children from an early age. In patriarchal societies, like those pervasive throughout South Asia, women's inability to independently convey nationality creates intergenerational cycles of statelessness.[431] Refugee

[424] Citizenship Act, No. 57 of 1955, § 4(1)(b) (India).
[425] Bhairav Acharya, The Indian Citizenship Law: A Case Study of Discretion and Discrimination, 10 NUJS L. Rev. 321, 337–41 (2017).
[426] Id.
[427] Convention on the Elimination of All Forms of Discrimination Against Women art. 9, Dec. 18, 1979, 1249 U.N.T.S. 13.
[428] U.N. Treaty Collection, Status of CEDAW Ratification (2023).
[429] UNHCR, Nationality Rights for All: Statelessness and the Human Rights of Women and Children in South Asia 6–12 (2017).
[430] Id.
[431] Melanie Teff, Out of the Shadows: Statelessness, Discrimination and Marginalization 13 (Refugees Int'l 2014).

and internally displaced populations are also the most at risk. For example, Rohingya mothers in the refugee camps in Bangladesh cannot legally register their children due to the absence of male guardian's documentation, despite being the sole caretakers.[432] This administrative inflexibility not only violates the best interests of the child as required by Article 7 of the Convention on the Rights of the Child (CRC) but also enshrines the lack of a legal identity throughout the lifecycle and into adulthood.[433]

It has been asserted that gender-discriminatory citizenship laws are structural violence, and these laws bring with them life-long disadvantage, starting with birth.[434] Stateless children face life as people who lack the legal status that ascertains the relationship between the citizen and the state, leaving them easily trafficked, poor, and vulnerable.[435] Furthermore, lack of nationality leads to no rights to property, no legal marriage, and no rights to property and inheritance in some states. [436]

Yet, there has been some progress on how to solve these problems. The UNHCR's #IBelong Campaign has found that gender-discriminatory state citizenship laws are one of the ten key actions necessary to solve statelessness.[437] Several states, including Indonesia, Kenya, and Tunisia, have changed their citizenship laws to erase any gender differentiation. Yet, states in South Asia are very slow in changing due to cultural norms, bureaucratic friction and political reluctance.[438]

IV. LEGAL GAPS IN INDIAN JURISPRUDENCE ON STATELESSNESS

i. The Citizenship Amendment Act, 2019

Since independence, the legal architecture for nationality in India has seen considerable evolution; however, there are still glaring lacunae in the way statelessness is addressed. Among

[432] Human Rights Watch, Are We Not Human? Denial of Education for Rohingya Refugee Children in Bangladesh (2020).
[433] Convention on the Rights of the Child art. 7, Nov. 20, 1989, 1577 U.N.T.S. 3.
[434] Manby, Bronwen, Citizenship and Statelessness in Africa: The Law and Politics of Belonging 182 (2018).
[435] Open Society Justice Initiative, Citizenship and Statelessness in South Asia: A Policy Paper 17–19 (2021).
[436] Id.
[437] UNHCR, #IBelong Campaign to End Statelessness (2023), https://www.unhcr.org/ibelong.
[438] Equality Now, Addressing Gender Discrimination in Nationality Laws (2022), https://www.equalitynow.org/nationalitylaws.

the most contentious changes to have taken place in recent times has been the passage of the Citizenship Amendment Act, 2019, wherein, for the first time, religion was made a basis for naturalization under the Citizenship Act, 1955.[439]

The CAA offers expedited Indian citizenship to persecuted religious minorities such as Hindus, Sikhs, Buddhists, Jains, Parsis, and Christians from Pakistan, Bangladesh, and Afghanistan who entered India before 31 December 2014.[440] However, it excludes Muslims from this provision, thereby excluding entire populations such as Rohingya Muslims, Ahmadiyyas Muslims, Shias, and Sri Lankan Tamils.[441] This selective discrimination has triggered legal as well as constitutional debate, with oppositions arguing that the law violates the very core secular character of the Indian Constitution and breaches Articles 14 and 15, which guarantee equality and non-discrimination.[442]

Furthermore, the CAA's silence on statelessness is a concern. This is in the sense that the CAA fails to provide statelessness as a defined juristic category of persons to be protected against a lack of protection. Moreover, stateless citizens who are not covered according to the Amendment on the basis of their religiosity or due to the failure of administration are left in a state of perpetual juridical limbo.[443] Legal scholars have argued that the CAA embodies two-tiered systems of citizenship that is inherently divisive and unconstitutional.[444]

In addition, the CAA has been seen together with the proposed National Register of Citizens (NRC) and National Population Register (NPR), which have been seen as potentially affecting Muslim groups who lack "legacy documents."[445] There is no due process procedure offered under the NRC through which individuals may contest exclusion, leaving the population susceptible to statelessness, especially the poor, illiterates, and displaced.[446] These efforts have

[439] Citizenship (Amendment) Act, No. 47 of 2019, Gazette of India, Extraordinary, Part II, § 1 (Dec. 12, 2019).
[440] Id. § 2(1)(b).
[441] Amnesty Int'l, Excluded and Unequal: The Citizenship Amendment Act and Muslims in India (2020).
[442] India Const. art. 14, 15.
[443] Ghosh, Partha, Statelessness and the Crisis of Citizenship in India, 55 Econ. & Pol. Wkly. 17 (2020).
[444] Suhrith Parthasarathy, Citizenship Amendment and India's Two-Tiered Constitutionalism, 35 Nat'l L. Sch. India Rev. 103 (2021).
[445] Alok Prasanna Kumar, NRC and NPR: Legal Foundations and Human Rights Concerns, 12 Indian J. Const. L. 41 (2021).
[446] Human Rights Watch, "Shoot the Traitors": Discrimination Against Muslims Under India's New Citizenship Policy (2020).

been seen together as resulting in "statelessness through documentation failure."[447] Although there have been several petitions before the Supreme Court about the CAA, which have questioned the constitutional legitimacy of the Act, as of 2024, the Supreme Court has yet to rule.

ii. Mohammad Salimullah v. Union of India, Writ Petition (Civil) 793 of 2017

In the above-mentioned case, the Division Bench of Supreme Court of India addressed the urgent issue of whether Rohingya refugees who are classified as illegal migrants under Indian law could be deported to Myanmar despite the looming threat of persecution.[448] The petition was filed as a writ under Article 32, invoking the right to life under Article 21 and seeking protection from arbitrary expulsion.

a. Background

The petitioners were two Rohingya refugees residing in Jammu, facing imminent deportation by the Indian government. Their plea argued that deportation to Myanmar would expose them to ethnic violence, persecution, and potentially death, in violation of both Article 21 of the Constitution and the principle of non-refoulement, recognized under international customary law.[449]

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India, while not a signatory to the 1951 Refugee Convention, is bound by the Universal Declaration of Human Rights and various customary norms that prohibit returning individuals to territories where they may face serious harm.[450] However, Indian domestic law does not currently provide for refugee status, nor does it incorporate non-refoulement as a statutory principle.[451]

b. Contentions

Petitioners :

The advocates representing Rohingyas argued that their forced deportation to Myanmar would violate Article 21 which protects the life and personal liberty of every "person," not just

[447] Niraja Gopal Jayal, The Making and Unmaking of Citizenship in India, 50 J. Asian Stud. 112 (2022).
[448] Mohammad Salimullah v. Union of India, (2021) 10 SCC 1.
[449] Id. at ¶ 3.
[450] Universal Declaration of Human Rights, art. 14, G.A. Res. 217A (III), U.N. Doc. A/810 (1948).
[451] See Anuj Bhuwania, The Absence of Asylum Law in India, 33 Refugee Surv. Q. 34 (2014).

citizens.[452] They cited the UNHCR's position that Rohingyas are stateless persons facing genocide and ethnic cleansing as well as emphasized on India's international obligations, including under customary international law and the Convention Against Torture, to which India is a signatory though not ratified.[453]

Respondent:

The advocates representing Union of India contended that the petitioners were illegal immigrants and not entitled to fundamental rights beyond those permitted by law.[454] They also cited various national security concerns, arguing that Rohingya settlements had connections to terrorist groups, including ISI-backed organizations and convincingly argued that in the absence of a domestic refugee law, the executive had the prerogative to deport non-citizens under the Foreigners Act, 1946.[455]

c. Judgment and Reasoning

The Supreme Court, in a brief order delivered by then Chief Justice S.A. Bobde, upheld the government's position and allowed deportation.[456] The Court noted that:

While Article 21 of the Indian Constitution guarantees the right to life and personal liberty to all persons, including non-citizens such as refugees, the scope of this protection may be curtailed in matters implicating national security. In such cases, the state retains broad discretion to restrict the rights of individuals, particularly those without legal status. The Supreme Court has clarified that the right to remain in India cannot be asserted in the absence of formal recognition as a refugee or lawful residency status. Furthermore, since India is not a signatory to the 1951 Refugee Convention, the country is not legally bound to adhere to the principle of non-refoulement under treaty obligations, although this principle may still carry persuasive force as part of customary international law.

In effect, the judgment emphasized executive discretion and national sovereignty over international humanitarian commitments. The Court also noted that the UNHCR's refugee identification was not binding on the Indian government.[457]

[452] India Const. art. 21; see also Francis Coralie Mullin v. Union Territory of Delhi, (1981) 1 SCC 608.

[453] Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, 1465 U.N.T.S. 85.

[454] Mohammad Salimullah v. Union of India, (2021) 10 SCC at ¶ 5.

[455] Foreigners Act, No. 31 of 1946, § 3 (India).

[456] Mohammad Salimullah v. Union of India, (2021) 10 SCC at ¶ 6–7.

[457] Id.

d. Implications

The matter had received much backlash in India as well as internationally. Lawyers and jurists pointed to the fact that this order undermines the spirit of compassion and secularity which India had enshrined in its Constitution, and the manner in which Article 21 had been interpreted in past decisions such as Maneka Gandhi vs. Union of India and in the case of Vishaka vs. State of Rajasthan.[458] The selective treatment of refugees by India, who had accepted some members of the religious minority in relation to the CAA provisions, and rejected others such as the Rohingya, had been particularly emphasized.[459]

The decision has further highlighted that there is no full-fledged regime of protection for refugees in India. Without such laws in place, it is difficult for any refugee or stateless person to be protected against the vagaries of change in government priorities.[460] The case also demanded for uniform laws for refugees that codifies minimum standards of protection and aligns domestic policy with international obligations.

V. REGIONAL AND INTERNATIONAL RESPONSES TO STATELESSNESS

i. The Role of SAARC and Regional Governance

South Asia, despite boasting nearly two billion people, has no defined regional mechanism to address statelessness. The South Asian Association for Regional Cooperation (SAARC), founded in 1985, has largely concentrated on issues of economic development and regional security, but has thus far maintained a complete and utter silence on matters of legal identity, rights of nationality, or issues of protection for refugees. The lack of an operational SAARC agreement for refugees or an agreed-upon protocol for recognition of nationality has led to each country working alone with regard to statelessness, resulting in a haphazard pattern of discriminatory statelessness that functions to exclude certain sections of society through either displacement, nationality laws, or climate change migration.[461]

[458] Maneka Gandhi v. Union of India, (1978) 1 SCC 248; Vishaka v. State of Rajasthan, (1997) 6 SCC 241.

[459] Jayshree Bajoria, Selective Protection: Rohingya Refugees and the Indian State, Brookings Inst. (2021).

[460] Anurag Bhaskar, Towards a Refugee Law in India: Bridging Constitutional and International Law, 9 Indian J. Legal Theory 1 (2023).

[461] UNHCR, Rohingya Emergency Overview, https://www.unhcr.org/rohingya-emergency.html (last visited Jan. 9, 2026).

Importantly, there is no legal instrument in SAARC comparable to the European Convention on Nationality, which ensures the guarantee against statelessness, along with the promotion of birthright citizenship.[462] In South Asia, bilateralism rather than regionalism continues to dominate. Disputes over refugee return, border communities with unclear nationality and cross-border statelessness due to gender discrimination remain unresolved due to this fragmented approach.

To break this impasse, SAARC must draft and adopt a Regional Convention on Citizenship and Statelessness, drawing upon best practices from the Council of Europe and ASEAN. This should include:
(a) prohibitions against arbitrary deprivation of nationality;
(b) minimum procedural safeguards; and
(c) mutual cooperation in birth registration and documentation.

ii. Involvement of UNHCR and NGOs

In the vacuum left by state inaction, international and civil society actors especially the United Nations High Commissioner for Refugees (UNHCR) have played a pivotal role in mitigating statelessness. Since 2014, the UNHCR's *# I Belong Campaign* has sought to eliminate statelessness globally by 2024.[463] In South Asia, UNHCR has led community registration drives, birth documentation campaigns in refugee camps, and legal literacy programs in partnership with governments and bar associations.

However, UNHCR's capacity in the region is hampered by legal and political constraints. In India, where the country is not party to the 1951 Refugee Convention or the 1961 Statelessness Convention, UNHCR lacks formal legal authority and operates only for urban refugees under administrative tolerance.[464] In Bangladesh, while UNHCR has helped register over one million Rohingya refugees, those registrations do not grant legal status or enforceable rights under domestic law.[465]

[462] European Convention on Nationality, Nov. 6, 1997, C.E.T.S. No. 166.
[463] UN High Comm'r for Refugees, #IBelong Campaign to End Statelessness (2014), https://www.unhcr.org/ibelong/.
[464]UNHCR, Rohingya Refugee Response, Bangladesh 2023 Update (Dec. 2023), https://www.unhcr.org/bangladesh.
[465] UNHCR India, Factsheet: Urban RefuAgees in India (2022)

Meanwhile, NGOs such as the Statelessness Network Asia Pacific (SNAP) and Asia Pacific Refugee Rights Network (APRRN) have filled key advocacy and technical gaps.[466] These organizations engage in legal aid, legislative drafting, and regional dialogues. Yet, shrinking civic space, limited political access, and lack of statutory authority continue to constrain their influence.

iii. National Human Rights Institutions (NHRIs)

National Human Rights Institutions in India, Nepal, and Bangladesh have constitutional mandates to promote and protect basic rights such as non-discrimination and equality and enjoyment of legal identity. Statelessness receives minimal and reactive attention from them. Few of them have established statelessness desks or legal procedures to identify and assist stateless persons in their countries.

Typically, NHRIs have limited jurisdiction and no powers to realize remedies and demand changes in policies. Even considering statelessness audits, these are not very common, and cooperation between NHRIs across different nations is close to non-existent.[467]

To remedy this situation, there must be a South Asia Statelessness Oversight Group established through SAARC or the Asia/Pacific Forum, which can be granted the power to:
(a) examine the laws and procedures regarding citizenship;
(b) undertake impact assessments; and
(c) make binding recommendations.

VI. LEGAL AND POLICY RECOMMENDATIONS

The situation of statelessness in South Asia is not one that is caused by a lack of clarity within the law, but is rather a consequence of biased laws, a lack of concern on the part of the state, and state fragmentation. The fact that this condition has continued indicates a basic failure on the part of states in complying with their duties and obligations under international law and the

[466] Statelessness Network Asia Pacific, Regional Consultation on Nationality Law Reform in South Asia (2021), https://www.statelessness.eu/updates/blog/statelessness-asia-pacific-birth-nationality-all
[467] Asia Pacific Forum of NHRIs, The Role of NHRIs in Addressing Statelessness (2019), https://asiapacificforum.net.

provisions of their constitutions. A change for the better requires enforced and rights-based change at both the national and regional levels.

i. Treaty Ratification and Domestic Legislation

A foundational step in addressing and solving statelessness is aligning domestic law with international legislature. All South Asian states, especially India, Pakistan, Bangladesh, and Nepal must ratify the 1954 Convention Relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness.[468] These treaties codify minimum standards of protection, define statelessness, and obligate states to avoid rendering individuals stateless through policy or law.

However, ratification without legislative incorporation remains hollow and useless. States must enact enabling legislation that not only defines "stateless persons" but also lays out clear procedures for status determination, access to documentation, and rights such as education, health, work, and protection from detention. Specialized domestic legislation such as a 'Refugee and Statelessness Protection Act' should be passed to create administrative tribunals, appeal mechanisms, and government accountability frameworks.[469] These laws must also domesticate the principle of non-refoulement, binding even on states that are not party to the Refugee Convention, ensuring no person is returned to a situation where their life or freedom would be at risk.

This legal architecture must be supplemented by uniform administrative guidelines, training modules for bureaucrats and border officials, and independent oversight mechanisms to ensure compliance and minimize arbitrariness in enforcement.

ii. Gender-Neutral Nationality Laws

One of the most urgent and systemic reforms required is the elimination of gender discrimination in nationality laws. In several South Asian countries, particularly Nepal and Pakistan, a mother cannot independently confer nationality to her child unless the father's

[468] Convention Relating to the Status of Stateless Persons art. 1, Sept. 28, 1954, 360 U.N.T.S. 117; Convention on the Reduction of Statelessness arts. 1–9, Aug. 30, 1961, 989 U.N.T.S. 175.

[469] See Venkatesh Nayak, India and the Principle of Non-refoulement: A Human Rights Analysis, Commonwealth Human Rights Initiative (2021), https://www.humanrightsinitiative.org; see also Sumit Sen, Stateless Refugees and the Lack of a Legal Framework in South Asia, 9 Int'l J. Refugee L. 567, 575–76 (1997).

identity is proven or declared. This patriarchal legal bias disproportionately affects children born to single mothers, widows, victims of rape, or women married to undocumented migrants or refugees.[470]

Legislatures must enact gender-neutral nationality frameworks, aligning with Article 9 of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). Citizenship transmission must be made unconditional and automatic from either parent, regardless of marital status or paternity recognition. States must also address administrative barriers such as requirements for spousal consent, affidavits, or DNA testing that further burden mothers seeking to secure legal identity for their children.

In addition, technological reforms can support legal ones. Online portals and mobile applications must allow mothers to register births and apply for nationality without dependency on male guardianship. Legal literacy campaigns should be conducted to empower women, particularly in rural and refugee contexts, to assert their children's right to nationality.

iii. Universal and Digital Birth Registration

Without birth registration, the right to nationality remains theoretical. A birth certificate is often the first and only official recognition of legal existence. Yet millions of children in South Asia, particularly those born in camps, conflict zones, or across borders, remain unregistered.[471] Governments must launch universal, free, and real-time birth registration drives, with a focus on high-risk and vulnerable populations. This requires the deployment of mobile registration units equipped with biometric scanners, language translation support, and connectivity tools. Such units should be mandated to visit refugee settlements, informal housing clusters, and migrant transit zones at least quarterly.

The civil registration databases will have to be integrated with the various digital identity schemes existing in the countries, like the Aadhaar in the case of Indian citizens, as well as

[470] Constitution of Nepal, 2015, art. 11; Pakistan Citizenship Act, No. II of 1951, §§ 5–6; Convention on the Elimination of All Forms of Discrimination Against Women art. 9, Dec. 18, 1979, 1249 U.N.T.S. 13.
[471] UNICEF, Birth Registration for Every Child by 2030: South Asia Regional Snapshot (2020).

NADRA in the case of Pakistani citizens.[472] This will have to happen in a manner which strengthens firewalls against exclusion through identity schemes.

Special provisions need to be made for children to register late and/or retrospectively in situations where there are no records and such children automatically not be made ineligible on the basis of lack of documentation.

iv. Regional Cooperation and NHRI Empowerment

This is a regional issue and therefore requires a regional solution. The SAARC region can no longer be indifferent on this issue. They need to form a "Statelessness Coordination Group." This will consist of delegates from their countries, human rights bodies, and UN agencies. This will be an institutional mechanism for formulating and implementing regional frameworks on nationality and data, as well as refugee affairs and legal identity.

Such a coordinating body will have to be empowered to formulate model nationality laws, develop best practices regarding documentation for children across regions, and coordinate the reporting obligations for countries. Additionally, such a body would be a venue for technical assistance for countries in need of help in formulating the aforementioned laws.

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At the same time, National Human Rights Institutions (NHRIs) need to be enabled to monitor, investigate, and intervene in situations of deprivation of nationality and discrimination on the ground of legal identity.[473] Their mandates need to extend beyond the issuance of recommendations. Instead, they need to be enabled by statute to stay deportation orders, recommend nationality status, grant emergency identity certificates, and refer to constitutional judicial review.

Such a dual architecture regime would ensure that South Asia not only tackles statelessness in a reactive manner but also prevents it. Statelessness is not an inevitable reality but an injustice

[472] Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, No. 18 of 2016, India Code (2016); National Database and Registration Authority Ordinance, No. VIII of 2000 (Pak.).

[473] Asia Pacific Forum of National Human Rights Institutions, Role of National Human Rights Institutions in Addressing Statelessness (2019), https://ganhri.org/wpcontent/uploads/2020/07/Manual_on_NHRIs_Oct_2018.pdf

that can be undone. It is high time that South Asia harnesses political will and makes the example in inclusivity in citizenship and the right to belong.

VII. CONCLUSION

Statelessness in South Asia represents not a temporary concern in international law but a chronic failure in the enforcement of one of the most basic human rights, that of nationality itself. In a region with such complex traditions of partition, migrations, and ethno-religious politics, the sense of legal citizenship has all too frequently been used for purposes of exclusion rather than protection. The denial of citizenship, and specifically in the cases of women, ethnic minorities, cross-border migrants, and their descendants, has resulted in statelessness extending across state borders through generations.[474]

In view of the growing number of refugees and the rhetoric and practices of exclusion associated with populists and nationalists, the objective of reforming nationality regimes, establishing a robust system of birth registration in line with universality and digital principles, and ensuring adequate frameworks for protection is no longer an ideal but a necessity. Statelessness leads to a vicious cycle of poverty, insecurity, and invisibility, which affects not only an individual's dignity but also undermines social cohesion and regional stability.[475]

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The way ahead has to be based on harmonization, accountability for human rights, and regional cooperation. By signing on to the Status of Stateless Persons in 1954 and the Convention on the Reduction of Statelessness in 1961,[476] through national legislation that meets international standards, and gender-neutral and rights-based approaches to citizenship policy, South Asian countries can shift from patchwork solutions to a guarantee. At the same time, strengthening National Human Rights Institutions, formalized involvement from Non-Governmental Organizations and United Nations agencies, and a South Asian Association for Regional Cooperation (SAARC) regional mechanism for oversight are essential for long-term, well-entrenched protection.

[474] UNHCR, Global Trends: Forced Displacement in 2022, at 30 (2023), https://www.unhcr.org/global-trends-report-2022

[475] Tendayi Bloom, Noncitizenship and Statelessness: New Directions in Statelessness Research, 32 Ethics & Int'l Aff. 377, 379 (2018).

[476] Convention Relating to the Status of Stateless Persons, Sept. 28, 1954, 360 U.N.T.S. 117; Convention on the Reduction of Statelessness, Aug. 30, 1961, 989 U.N.T.S. 175.

The scale of this task is huge, but so is the potential for this region of South Asia, and indeed South Asia itself, to change and become a place where people do not become invisible at birth but are recognized and affirmed in their legal existence from the beginning. Statelessness must cease, not through acts of charity but through justice and will.

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Data Protection Across Jurisdictions: Examining the GDPR, India's DPDPA, and Brazil's LGPD

Vanchhit Srivastava [477]

ABSTRACT

In the era of rapid digital transformation, robust data protection frameworks are essential to safeguard personal data against breaches, misuse, and cyber threats. This research paper conducts a comprehensive comparative analysis of three prominent data protection laws: the European Union's General Data Protection Regulation (GDPR) , India's Digital Personal Data Protection Act, 2023 (DPDPA) , and Brazil's Lei Geral de Proteção de Dados (LGPD) . Drawing from statutory texts, judicial precedents, scholarly literature, and recent developments as of September 2025, the study examines their evolution, scope, core principles, data subject rights, obligations of controllers, cross-border data transfers, enforcement mechanisms, and impacts on startups and digital economies. The analysis reveals that while the GDPR sets a global benchmark with its stringent and comprehensive approach, the DPDPA and LGPD offer more flexible, context-specific frameworks tailored to emerging economies. However, gaps in the DPDPA's implementation, such as reliance on pending rules and limited rights, and the LGPD's lower penalties highlight areas for improvement. Recent updates, including the DPDPA's operationalization through 2025 rules, LGPD's enforcement of standard contractual clauses, and GDPR's proposed simplifications, underscore evolving regulatory landscapes. The paper proposes harmonization strategies to balance privacy protections with innovation, emphasizing the need for expanded rights, stronger enforcement, and global alignment. This study contributes to the discourse on data privacy by identifying strengths, weaknesses, and pathways for enhanced regulatory convergence in a post-2023 era marked by increased enforcement and technological integration.

1. INTRODUCTION

The proliferation of digital technologies has revolutionized data collection, processing, and utilization, making personal data a cornerstone of modern economies. According to a 2025 report by the International Data Corporation (IDC), global data creation is projected to reach 181 zettabytes by 2025, up from 64 zettabytes in 2020, amplifying risks such as data breaches,

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identity theft, and unauthorized surveillance.[478] In 2024 alone, over 3.2 billion records were exposed worldwide, with costs averaging $4.44 million per breach, as per IBM's Cost of a Data Breach Report 2025. These statistics underscore the necessity for comprehensive legal frameworks to protect individual privacy while enabling innovation.[479]

The European Union's General Data Protection Regulation (GDPR), enforced since May 25, 2018, represents a paradigm shift in data protection, influencing global standards with its emphasis on accountability, transparency, and individual rights. Inspired by the GDPR, emerging economies like India and Brazil have enacted their own laws: India's Digital Personal Data Protection Act, 2023 (DPDPA), which became operational with the notification of rules in 2025, and Brazil's Lei Geral de Proteção de Dados (LGPD), effective from August 2020 with key amendments in 2024-2025. These laws address the unique challenges of their jurisdictions-India's vast digital economy under initiatives like Digital India, and Brazil's growing tech sector amid concerns over public entity exemptions.

This paper aims to compare these frameworks, addressing key research questions: How do the GDPR, DPDPA, and LGPD differ in scope, principles, and enforcement, cross-border data flows, and recent developments? And how can they be harmonized to foster global compliance? The methodology involves doctrinal and comparative legal analysis, synthesizing primary sources (statutes and case laws) and secondary sources (scholarly articles and reports), supplemented by recent updates from 2024-2025. By examining evolution, provisions, gaps, solutions, and future implications, this study highlights the need for balanced regulations that protect privacy while supporting innovation.

The urgency of this analysis stems from the global surge in data breaches and the economic stakes, with data-driven industries contributing trillions to GDP. As nations navigate digital sovereignty amid AI advancements and geopolitical tensions, understanding these laws is crucial for policymakers, businesses, and scholars. Furthermore, the "Brussels Effect"-where

[478] Kevin Bartley, *Big data statistics: How much data is there in the world?* (2025), https://rivery.io/blog/big-data-statistics-how-much-data-is-there-in-the-world/ (last visited Jan. 6, 2026)

[479] Baker Donelson, *Cost of a Data Breach Report 2025* (2025), https://www.bakerdonelson.com/webfiles/Publications/20250822_Cost-of-a-Data-Breach-Report-2025.pdf (last visited Jan. 6, 2026).

GDPR influences global norms-extends to DPDPA and LGPD, promoting convergence but also highlighting divergences in enforcement rigor and flexibility.[480]

The literature on data protection frameworks underscores the interplay between privacy rights, technological advancement, and regulatory evolution. Landmark judicial decisions provide a foundational lens for analyzing the GDPR, DPDPA, and LGPD, while recent scholarly works from 2024-2025 incorporate post-implementation insights.

In India, the Supreme Court's ruling in ***Justice K.S. Puttaswamy (Retd) vs. Union of India (2017)*** recognized privacy as a fundamental right under Article 21 of the Constitution, emphasizing informational autonomy and proportionate safeguards against misuse.[481] This catalyzed the DPDPA's development, drawing from the ***Justice B.N. Srikrishna Committee Report (2018)***, which advocated a consent-centric framework with extraterritorial reach.[482] However, scholars like Dharod and Tauro (2023) critique the DPDPA's state exemptions for potentially enabling surveillance, contrasting it with the GDPR's stricter public entity oversight.[483] A 2025 study by Santosh (LinkedIn article) decodes the DPDPA's 2025 draft rules, highlighting similarities with GDPR in consent standards but differences in enforcement, such as the Data Protection Board's (DPB) role.[484]

The Shreya Singhal vs. Union of India (2015) decision struck down vague provisions in the Information Technology Act, 2000, highlighting the need for precise digital regulations-a concern echoed in the DPDPA's pending rules, which introduce ambiguities.[485] Hemalatha and Saikrupaa (2023) note that while the DPDPA aligns with GDPR principles like purpose limitation, its reliance on subordinate legislation risks implementation challenges.[486] Recent

[480] Ctr. for Eur. Policy Analysis (CEPA*), Mapping the Brussels Effect: The GDPR Goes Global* (2025), https://cepa.org/comprehensive-reports/mapping-the-brussels-effect-the-gdpr-goes-global (last visited Feb. 4, 2026).

[481] Justice K.S. Puttaswamy (Retd.) v. Union of India, (2017) 10 SCC 1.

[482] Comm. of Experts on a Data Prot. Framework for India, A Free and Fair Digital Economy: Protecting Privacy, Empowering Indians (2018).

[483] V. Dharod & K. Tauro*, Assessing India's Digital Personal Data Protection Act, 2023: A Comparative Study with the GDPR*, 5 IND. J.L. & LEGAL RES. 1 (2023).

[484] Santosh, *Decoding the Draft DPDP 2025: A Comparative Analysis with GDPR*, LINKEDIN (Jan. 4, 2025), https://www.linkedin.com/pulse/decoding-draft-dpdp-2025-comparative-analysis-gdpr-santosh-vpmtc (last visited Feb. 4, 2026).

[485] Shreya Singhal v. Union of India, (2015) 5 SCC 1.

[486] G. Hemalatha & K. Saikrupaa, *Comparative Analysis of GDPR and Digital Personal Data Protection Act, 2023*, 11 INT'L J. CREATIVE RES. THOUGHTS 687 (2023).

feedback on DPDPA draft rules in July 2025, as reported by Biometric Update, emphasizes finetuning for biometric data and consent verification.

In the EU, ***Google Spain SL vs. AEPD (2014)*** established the "right to be forgotten" formalized in GDPR Article 17, balancing privacy with public interest.[487] This underscores the GDPR's extensive rights, including portability and objection, which the DPDPA omits. Schrems I (2015) and Schrems II (2020) invalidated EU-U.S. data transfer mechanisms due to inadequate protections, emphasizing adequacy decisions and safeguards like Standard Contractual Clauses (SCCs).[488] These rulings critique the DPDPA's permissive transfers and the LGPD's developing mechanisms. The EDPB's 2024 Annual Report (2025) reflects on milestones like the 2024-2027 strategy, noting increased fines totaling €2.9 billion in 2024.[489]

For Brazil, the LGPD, inspired by the GDPR and Brazil's Internet Law (2014), aims to protect rights like privacy and free personality development. Latham & Watkins (2023) highlight its alignment with GDPR principles but note exemptions for public entities and lower penalties as weaknesses.[490] A 2025 SSRN paper by an anonymous author compares LGPD and GDPR, focusing on public policy challenges, such as children's data protection, which LGPD addresses through ANPD guidelines.[491] The ANPD's 2025-2026 Regulatory Agenda prioritizes AI and international transfers, as per EuroCloud (2025).[492]

[487] Google Spain SL v. Agencia Española de Protección de Datos (AEPD), Case C-131/12, 2014 E.C.R. I-03193 (CJEU May 13, 2014).

[488] Maximillian Schrems v. Data Protection Comm'r, Case C-362/14, 2015 E.C.R. I-650 (CJEU Oct. 6, 2015) (Schrems I); Data Prot. Comm'r v. Facebook Ir. Ltd., Case C-311/18, 2020 E.C.R. I-627 (CJEU July 16, 2020) (Schrems II).

[489] Eur. Data Prot. Bd. (EDPB), *Annual Report 2024* (Apr. 23, 2025), https://www.edpb.europa.eu/system/files/2025-04/edpb-annual-report-2024_en.pdf (last visited Feb. 4, 2026).

[490] Latham & Watkins LLP*, India's Digital Personal Data Protection Act 2023 vs. the GDPR: A Comparison* (Dec. 13, 2023), https://www.lw.com/admin/upload/SiteAttachments/Indias-Digital-Personal-Data-Protection-Act-2023-vs-the-GDPR-A-Comparison.pdf (last visited Feb. 4, 2026).

[491] *Personal Data Protection and Challenges in Public Policies: A Comparative Approach Between the Brazilian LGPD and the European GDPR*, SSRN (July 24, 2025), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5359956 (last visited Feb. 4, 2026).

[492] Regulatory Agenda for 2025-2026 Biennium, Resolution No. 23, Nat'l Data Prot. Auth. (ANPD) (Dec. 9, 2024), https://www.gov.br/anpd/pt-br/acesso-a-informacao/institucional/atos-normativos/regulamentacoes_anpd/agenda_regulatoria_25_26___ingles___revisada_final_fev25.pdf (last visited Feb. 4, 2026); *Brazil's New Data Protection Roadmap: A Closer Look at the ANPD's 2025–2026 Regulatory Agenda*, EURO CLOUD (Apr. 18, 2025), https://eurocloud.org/news/article/brazils-new-data-protection-roadmap-a-closer-look-at-the-anpds-2025-2026-regulatory-agenda-and-it (last visited Feb. 4, 2026).

Synthesis of literature reveals the GDPR's global influence-the "Brussels Effect"as mapped by CEPA (2025)-exposing DPDPA gaps in rights and enforcement, and LGPD's balanced flexibility.[493] Reports like the EU-U.S. Privacy Shield (2017) and OECD guidelines (2018), alongside 2025 comparative analyses (e.g., ResearchGate on CCPA, GDPR, LGPD), advocate harmonization, supporting recommendations for expanded DPDPA rights and strengthened LGPD penalties.[494] Emerging studies, such as Cleary Gottlieb's 2024 comparison of GDPR, DPDPA, and US laws, emphasize notice, consent, and purpose limitations, highlighting DPDPA's unique nomination right for posthumous data.[495]

2. METHODOLOGY

This research employs a qualitative, doctrinal, and comparative legal methodology to analyze the GDPR, DPDPA, and LGPD. Doctrinal analysis involves examining primary sources: statutes (GDPR 2016/679, DPDPA 2023 with 2025 rules, LGPD No. 13,709/2018 amended 2024), case laws (Puttaswamy[496], Schrems I/II[497], Google Spain[498], Shreya Singhal[499]), and reports (Srikrishna Committee 2018[500], EU Privacy Shield 2017[501], EDPB 2024 Report[502]). Comparative analysis structures the evaluation across dimensions: scope, principles, rights, obligations, transfers, enforcement, and impacts, using tables for clarity.

Data is sourced from official documents, peer-reviewed articles (e.g., Dharod & Tauro 2023[503]; Hemalatha & Saikrupaa 2023[504]; SSRN 2025[505]), and recent web-based resources for 2024-

[493] CEPA, supra note 6.

[494] See, e.g., *Comparative Analysis of CCPA, GDPR, and Other Data Protection Regulations*, RES. GATE (Mar. 16, 2025), https://www.researchgate.net/publication/389883183_Comparative_Analysis_of_CCPA_GDPR_and_Other_Data_Protection_Regulations (last visited Feb. 4, 2026).

[495] *Comparing Global Privacy Regimes Under GDPR, DPDPA and US Data Protection Laws*, CLEARY GOTTLIEB (Jan. 3, 2024), https://www.clearygottlieb.com/news-and-insights/publication-listing/comparing-global-privacy-regimes-under-gdpr-dpdpa-and-us-data-protection-laws (last visited Feb. 4, 2026).

[496] *supra* note 7.

[497] *supra* note 14.

[498] *supra* note 13.

[499] *supra* note 11.

[500] *supra* note 8.

[501] Commission Implementing Decision (EU) 2016/1250, EU-U.S. Privacy Shield, O.J. (L 207) 1 (2016) (EU).

[502] EDPB, *supra* note 15.

[503] Dharod & Tauro, *supra* note 9.

[504] Hemalatha & Saikrupaa, *supra* note 12.

[505] SSRN, *supra* note 17.

2025 updates (e.g., ANPD Regulatory Agenda[506]). The approach is desk-based, focusing on legal texts and scholarly critiques to identify similarities, differences, and gaps. Critical assessment draws on case studies of startups navigating multi-jurisdictional compliance, such as fintech firms adapting to DPDPA's 2025 rules.

Ethical considerations include objectivity, avoiding bias toward Western models, and acknowledging contextual differences in emerging economies. Limitations include the DPDPA's recent operationalization (rules notified 2025), LGPD's evolving ANPD agenda, and GDPR's proposed amendments (May 2025), which introduce uncertainties. To mitigate, the study incorporates real-time developments up to September 2025.

3. EVOLUTION OF DATA PROTECTION FRAMEWORKS

3.1. GDPR: Origins and Objectives

The GDPR evolved from the 1995 Data Protection Directive to address modern challenges like big data, AI, and cloud computing. Enforced on May 25, 2018, it harmonizes protections across EU states, enhancing individual control and organizational accountability. Grounded in the EU Charter of Fundamental Rights, it applies extraterritorially to entities processing EU residents' data, promoting transparency and minimization. By 2025, proposed amendments under the European Commission's Simplification Omnibus IV (May 2025) aim to reduce administrative burdens, such as streamlining information notices, while the EU Data Act (effective September 2025) complements it by regulating data sharing in IoT ecosystems.[507]

3.2. DPDPA: Development in India

India's framework advanced post-Puttaswamy (2017)[508], which affirmed privacy as fundamental. The Srikrishna Committee (2018) led to the Personal Data Protection Bill (2019), revised into the DPDPA in August 2023.[509] Replacing IT Act Section 43A, it emphasizes consent and legitimate uses, balancing privacy with India's digital economy. The Act became operational with the notification of Digital Personal Data Protection Rules, 2025, following

[506] ANPD, *supra* note 18.
[507] Regulation (EU) 2022/2065, Digital Services Act, O.J. (L 264) 1 (2022) (EU) (complementing GDPR).
[508] *supra* note 7.
[509] *supra* note 8.

public feedback in July 2025. These rules clarify consent mechanisms, grievance redressal, and significant data fiduciary (SDF) designations, addressing earlier ambiguities.

3.3. LGPD: Brazil's Path

Enacted in 2018 and amended in 2019, the LGPD draws from the GDPR and Brazil's Internet Law.[510] Effective from 2020 (sanctions from 2021), it protects rights amid Brazil's digital growth, applying to entities processing Brazilian data. Key 2024-2025 developments include new regulations on international transfers (September 2024), ending the grace period for SCCs in August 2025, and the ANPD's 2025-2026 agenda focusing on children's data, AI, and judiciary applications.[511]

All frameworks share extraterritoriality but differ in scope: GDPR and LGPD cover all personal data; DPDPA limits to digital forms, with 2025 rules expanding on biometric protections.

4. COMPARATIVE ANALYSIS

4.1. Scope and Applicability

The GDPR applies to personal data processing in the EU or targeting EU residents, covering controllers and processors, with 2025 amendments simplifying for small entities.[512] The DPDPA focuses on digital personal data in India or related to Indian services, excluding non-digital, domestic, or public data; 2025 rules specify exemptions for journalistic purposes. The LGPD covers personal data in Brazil or targeting Brazilians, with exemptions for journalistic or public safety purposes, and 2024 amendments allowing image sharing for theft prevention under Bill No. 3630/2025.[513]

4.2. Core Principles

GDPR mandates lawfulness, fairness, transparency, minimization, accuracy, storage limitation, integrity, and accountability, with 2025 proposals easing documentation. DPDPA aligns with consent, purpose, and storage but is less explicit on minimization; 2025 rules emphasize

[510] Lei Geral de Proteção de Dados Pessoais (LGPD), *supra* note 3.
[511] ANPD, *supra* note 18.
[512] GDPR, *supra* note 1.
[513] LGPD, *supra* note 3.

"reasonable efforts" for accuracy. LGPD mirrors GDPR with principles like necessity, quality, and non-discrimination, adding good faith; ANPD's 2025 agenda reinforces prevention.[514]

4.3. Data Subject Rights

GDPR offers access, rectification, erasure, portability, objection, restriction, and automated decision protections, enhanced by the EU Data Act's portability for IoT data. DPDPA provides access, rectification, erasure, grievance redressal, and nomination; 2025 rules mandate verifiable parental consent for children. LGPD includes confirmation, access, rectification, portability, deletion, revocation, and automated review, with 2025 focus on children's data.

4.4. Obligations of Data Fiduciaries/Controllers

GDPR requires records, notices, security, DPIAs, and DPOs for high-risk processing, with 2024 fines emphasizing compliance.[515] DPDPA mandates notices, safeguards, redressal, and DPOs (India-based for SDFs), with DPIAs for SDFs; 2025 rules detail breach notifications. LGPD demands records, security, DPOs (waivable), and DPIAs; 2025 SCC enforcement strengthens transfers.

4.5. Cross-Border Data Transfers

GDPR restricts transfers without adequacy or safeguards (SCCs, BCRs), with Schrems implications ongoing.[516] DPDPA allows transfers except to restricted countries; 2025 rules may add safeguards. LGPD permits to adequate countries or with SCCs/BCRs; 2024 regulation approves SCCs, grace period ended 2025.

4.6. Enforcement Mechanisms and Penalties

GDPR's EDPB and authorities imposed €2.9 billion in fines in 2024, per EDPB Report.[517] DPDPA's DPB fines up to ₹250 crore; 2025 rules outline appeals. LGPD's ANPD fines up to 2% revenue; 2025 agenda increases judiciary oversight.

4.7. Breach Notifications and Security Measures

[514] ANPD, *supra* note 18.
[515] EDPB, *supra* note 15.
[516] *supra* note 14.
[517] *Id.*

Under GDPR, breaches risking rights reported within 72 hours; high-risk to subjects without delay. DPDPA mandates all breaches to DPB and individuals; 2025 rules specify timelines. LGPD requires within three days for significant risks; ANPD guidelines emphasize encryption.[518]

5. RECENT DEVELOPMENTS (2024-2025)

As of September 2025, the DPDPA's rules were notified, transforming India's privacy landscape by clarifying fiduciary guidelines and enhancing rights for children and disabled persons. Public feedback in July 2025 refined draft rules on biometric data.[519] For LGPD, the ANPD's agenda prioritizes AI frameworks and international cooperation, with SCC implementation concluding in August 2025.[520] GDPR saw proposed amendments in May 2025 for simplification, reducing burdens on SMEs, and the EU Data Act's enforcement from September 2025 promotes data sharing. Enforcement trends show GDPR fines rising, DPDPA's first cases emerging, and LGPD judiciary discussions increasing. These developments reflect adaptation to AI and cyber threats, fostering global convergence.

6. IMPACT ON STARTUPS AND SMALL ENTERPRISES

Startups face compliance burdens under GDPR, including DPOs and DPIAs, with 2025 amendments offering relief through simplified procedures, yet 2024 fines (e.g., €2.4 billion on Meta) deter non-compliance. DPDPA's exemptions for startups reduce costs but introduce uncertainties; 2025 rules require grievance officers, aiding fintech like Paytm in building trust. LGPD offers waivers for small entities, with 2025 SCCs facilitating exports; startups like Nubank leverage this for global expansion.

Case Study: A fintech startup (e.g., Razorpay) operating in EU, India, and Brazil must prioritize GDPR's DPIAs for AI lending, adapt to DPDPA's consent for Indian users, and use LGPD's SCCs for Latin American data. Overall, DPDPA/LGPD facilitate entry but risk misalignment; 2025 developments emphasize innovation-friendly enforcement.

7. CRITICAL ASSESSMENT AND GAPS

[518] ANPD Guidelines on Data Security, Nat'l Data Prot. Auth. (2025).
[519] Digital Personal Data Protection Rules, 2025 (India).
[520] ANPD, *supra* note 18.

7.1. Strengths and Weaknesses

GDPR's strengths include robust rights and enforcement (€2.9 billion fines in 2024), but complexities burden startups; 2025 amendments address this.[521] DPDPA's consent-focus supports India's economy, but state exemptions risk surveillance, conflicting with Puttaswamy; limited rights and 2025 rule dependencies create ambiguity.[522] LGPD aligns with GDPR but weaker penalties and public exemptions undermine rigor; 2025 agenda aim to strengthen.

7.2. Cross-Border Data Transfers

Cross-border data transfers are pivotal for global businesses, enabling cloud computing, e-commerce, and international collaboration, but they pose risks if recipient jurisdictions lack robust protections. The GDPR, DPDPA, and LGPD adopt distinct approaches, reflecting their regulatory philosophies and economic contexts.

GDPR: The GDPR's Chapter V (Articles 44-50) establishes a rigorous framework to ensure data transferred outside the EEA retains equivalent protection. Adequacy decisions (Article 45) assess third countries' legal frameworks, requiring independent authorities, judicial redress, and human rights compliance. As of September 2025, 15 countries, including Japan and the EU-U.S. Data Privacy Framework (DPF, 2023), hold adequacy status, facilitating seamless transfers but subject to four-year reviews. Without adequacy, safeguards like SCCs (updated 2021 post-*Schrems II*) or BCRs (Article 46) are required, with mandatory TIAs to evaluate recipient country laws, particularly surveillance risks. *Schrems II* (2020) invalidated the EU-U.S. Privacy Shield due to U.S. surveillance, emphasizing TIAs' role.[523] Derogations (Article 49), like explicit consent, are restrictive to prevent abuse. In 2024, EDPB reported €1.2 billion in transfer-related fines, underscoring enforcement rigor.[524] This framework ensures high protection but burdens businesses with compliance costs, especially for SMEs.

DPDPA: Section 16 of the DPDPA adopts a permissive approach, allowing transfers to all jurisdictions except those on a government-notified "negative list" of restricted countries. Unlike GDPR, it lacks explicit adequacy or safeguard requirements, such as SCCs or TIAs.

[521] EDPB, *supra* note 15.
[522] *supra* note 7; Dharod & Tauro, *supra* note 9.
[523] Data Prot. Comm'r v. Facebook Ir. Ltd., Case C-311/18, 2020 E.C.R. I-627 (CJEU July 16, 2020) (Schrems II).
[524] Eur. Data Prot. Bd. (EDPB), Annual Report 2024 (2025).

The 2025 rules, following July consultations, introduced guidelines for consent-based transfers and basic security measures but stopped short of mandating robust mechanisms. For instance, transfers to the U.S., which lacks GDPR adequacy due to surveillance concerns, face no equivalent scrutiny under DPDPA. Scholars (ORF, 2025) argue this risks data exposure in jurisdictions with weak protections, undermining *Puttaswamy*'s proportionality principle.[525] The absence of TIAs or contractual safeguards, as noted by Latham & Watkins (2023), jeopardizes India's chances for GDPR adequacy status, critical for EU market access.[526] A 2025 case study of an Indian fintech transferring customer data to Singapore revealed vulnerabilities, as no formal assessment ensured Singapore's compliance with Indian privacy standards. This permissiveness reduces compliance costs but compromises data security, making India's framework insufficient for global alignment.

LGPD: Article 33 of the LGPD permits transfers to countries with adequate protection levels, as determined by the ANPD, or with safeguards like SCCs, BCRs, or specific clauses. The 2024 Regulation on International Transfers, effective August 2025, formalized SCCs, aligning with GDPR's post-*Schrems* standards. The ANPD's 2025-2026 agenda prioritizes adequacy assessments, with evaluations ongoing for countries like Argentina and Chile. Unlike DPDPA, LGPD requires ANPD oversight, ensuring proportionality and accountability, though its framework is less mature than GDPR's.[527] For example, a Brazilian health tech firm in 2025 used SCCs for EU partnerships, navigating ANPD approvals to ensure compliance. LGPD's approach is stronger than DPDPA's but less comprehensive than GDPR's due to fewer adequacy decisions and evolving guidelines.

Sufficiency in India: India's DPDPA transfer framework is insufficient for several reasons. First, the "negative list" approach assumes all non-restricted jurisdictions are safe, ignoring risks in countries like the U.S., where surveillance laws conflict with GDPR standards.[528] Second, the lack of mandatory safeguards (e.g., SCCs, TIAs) fails to protect against data misuse, as highlighted in a 2025 Indian e-commerce case where customer data was shared with

[525] Tanusha Tyagi, *The Adequacy Dilemma: India's DPDPA and the GDPR,* OBSERVER RSCH. FOUND. (June 18, 2025), https://www.orfonline.org/expert-speak/the-adequacy-dilemma-india-s-dpdpa-and-the-gdpr (last visited Feb. 4, 2026).

[526] *Id.*

[527] Nat'l Data Prot. Auth. (ANPD), *Regulatory Agenda 2025-2026* (2024).

[528] Tyagi, *supra* note 51.

a Southeast Asian vendor without security assessments.[529] Third, the absence of an independent authority to assess recipient jurisdictions, unlike GDPR's Commission or LGPD's ANPD, limits oversight. This permissiveness, while cost-effective for startups, risks non-compliance with global standards, potentially isolating Indian firms from EU markets. To achieve sufficiency, India must adopt GDPR-like adequacy assessments and mandatory safeguards, aligning with LGPD's evolving model.[530]

8. STATE EXEMPTIONS: A COMPARATIVE VIEW

A critical aspect of the DPDPA is its state exemptions under Section 17, which allow the Indian government broad discretion to exempt any state agency from the Act's provisions for purposes like national security, public order, or prevention of incitement to cognizable offenses. This provision has been widely criticized for potentially enabling unchecked surveillance and data misuse, as highlighted in the 2025 ORF article "The Adequacy Dilemma: India's DPDPA and the GDPR." The exemptions are not subject to the same proportionality and necessity tests emphasized in *Puttaswamy*, raising concerns about opaque practices by state agencies and weakening public trust. In contrast, the GDPR does not provide such blanket exemptions for public authorities; instead, it imposes stringent obligations on them under Articles 5 and 32, requiring accountability, transparency, and data protection by design. Public entities must comply with the same principles as private ones, with oversight from supervisory authorities, ensuring a balanced approach without compromising fundamental rights.[531]

The LGPD offers a middle ground, with exemptions for public entities in areas like public safety, national defense, and criminal investigations (Article 4), but these are narrower and subject to ANPD evaluation and guidelines. Unlike DPDPA's broad governmental carve-outs, LGPD mandates proportional measures and allows for data subject rights even in public processing, aligning more closely with GDPR's model.[532] For instance, Latham & Watkins (2023) notes that LGPD's public exemptions are limited and do not extend to the entirety of state operations, preventing the risks of surveillance seen in DPDPA critiques. As per 2025

[529] *Id.*

[530] Latham & Watkins LLP, *India's Digital Personal Data Protection Act 2023 vs. the GDPR: A Comparison* (Dec. 13, 2023), https://www.lw.com/admin/upload/SiteAttachments/Indias-Digital-Personal-Data-Protection-Act-2023-vs-the-GDPR-A-Comparison.pdf (last visited Feb. 4, 2026).

[531] Regulation (EU) 2016/679, art. 23, O.J. (L 119) 1 (2016).

[532] Lei Geral de Proteção de Dados Pessoais (LGPD), Law No. 13,709, art. 4 (Braz.).

analyses, such as in SSRN papers, DPDPA's exemptions could hinder India's adequacy status under GDPR for data transfers, as they lack equivalent protections against state overreach.[533]

This comparative disparity underscores a key gap: DPDPA's exemptions prioritize state interests over individual privacy, potentially violating constitutional safeguards, while GDPR and LGPD emphasize oversight and proportionality. Recent 2025 developments, including public consultations on DPDPA rules, have not curtailed these exemptions, perpetuating debates on harmonization.

9. CONSENT

Consent is a cornerstone of data processing legitimacy across the three legislations, but their approaches differ in stringency, flexibility, and centrality.

GDPR: Under Article 4(11) and 7, consent must be freely given, specific, informed, and unambiguous, demonstrated through a clear affirmative action (e.g., ticking a box). It is one of six lawful bases (Article 6), alongside legitimate interests, contractual necessity, and legal obligations, allowing flexibility. Consent can be withdrawn as easily as given, and controllers must prove it was obtained. For sensitive data (Article 9), explicit consent is required. The GDPR's balanced approach avoids over-reliance on consent, as EDPB guidelines (2020) warn it's not always the best basis due to power imbalances. In 2024, fines for invalid consent reached €800 million, ensuring enforcement rigor.

DPDPA: Section 6 defines consent as free, specific, informed, unconditional, and unambiguous with clear affirmative action, similar to GDPR. It is the primary basis for processing, with "legitimate uses" (e.g., employment, emergencies) as alternatives (Section 7). Consent must be granular, limited to specified purposes, and withdrawable via accessible means. For children's data, verifiable parental consent is required (Section 9). The 2025 rules clarify digital consent mechanisms, like app-based opt-ins, but lack provisions for implied consent or broader bases like legitimate interests.

[533] Tyagi, *supra* note 51.

LGPD: Article 5(X) and 8 require consent to be specific, informed, and unambiguous, with free will, and it can be withdrawn easily. Like GDPR, it is one of 10 legal bases (Article 7), including legitimate interests, legal compliance, and public tasks, providing flexibility. Explicit consent is needed for sensitive data (Article 11). The ANPD's 2025 guidelines emphasize demonstrable consent and revocation processes, aligning closely with GDPR.

10. COMPARISON AND WHERE INDIA LACKS:

All three require informed, affirmative consent, but GDPR and LGPD treat it as one of multiple bases, offering flexibility for routine processing (e.g., marketing via legitimate interests). DPDPA's consent-centric model makes compliance burdensome, as businesses must obtain explicit consent for most activities, lacking alternatives like legitimate interests or contractual necessity. This rigidity, critiqued by Hemalatha and Saikrupaa (2023), hinders innovation in India's digital economy and risks invalid consents in power-imbalanced scenarios. For sensitive data, DPDPA's rules are similar but less detailed on withdrawal logistics compared to GDPR's granular requirements. India lacks GDPR/LGPD's balanced bases, potentially leading to over-reliance on consent and higher opt-out rates. To suffice, DPDPA should introduce legitimate interests as a basis, aligning with global standards for efficiency.

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India-Specific Concerns

DPDPA lacks harm regulation and strong transfers, with DPB independence questioned versus GDPR's EDPB; 2025 implementations may mitigate but early cases show delays.[534]

Brazil-Specific Concerns

LGPD's fines and exemptions may dilute enforcement; 2025 judiciary increases could help, though lower resources hinder.[535]

11. RESEARCH GAPS

Literature lacks comprehensive post-2025 studies on DPDPA efficacy and LGPD's AI integration; evolving rules limit conclusions.[536]

[534] Compare EDPB, supra note 50, with Digital Personal Data Protection Act, 2023, § 17 (India).

[535] ANPD, *supra* note 53.

[536] See, e.g., anonymous author, Personal Data Protection and Challenges in Public Policies: A Comparative Approach Between the Brazilian LGPD and the European GDPR, SSRN (2025).

12. CASE STUDIES

Case 1: Enforcement Under GDPR - In 2024, TikTok faced a €345 million fine for children's data mishandling, highlighting automated decision protections absent in DPDPA.[537]

Case 2: DPDPA Implementation - A 2025 Indian e-commerce firm adapted to rules by appointing SDFs, reducing breach risks but increasing costs by 15%.

Case 3: LGPD Transfers - Brazilian health tech used 2025 SCCs for EU partnerships, aligning with GDPR but navigating ANPD approvals.

These illustrate practical challenges and benefits.

13. PROPOSED SOLUTIONS

For DPDPA: Expand rights (portability, automated protections) via amendments; adopt adequacy assessments in future rules; ensure DPB independence; clarify timelines post-2025 feedback; limit state exemptions per proportionality.[538]

For LGPD: Increase penalties through legislative changes; enhance ANPD autonomy in 2025-2026 agenda; reduce public exemptions.

For GDPR: Implement 2025 simplifications fully; harmonize with EU Data Act for startups.

Global Harmonization: Standardize via OECD/APEC; encourage bilateral agreements for transfers; develop AI-specific guidelines.[539]

These address gaps, balancing privacy and innovation in a data-centric world.

14. FUTURE IMPLICATIONS

However, in terms of what is to come in 2030, the areas of artificial intelligence and quantum computing are predicted to have a significant impact on reshaping and challenging these regulatory structures. The future may see the 2025 DPDPA regulations develop to cover AI consent in more detail, the LGPD may move forward in its plans for ethical AI, and GDPR changes may be proposed to reflect the new reality of new technology. Additionally, there may be a new global treaty, based on the success of the GDPR, that could provide a standardized level of protection across borders. This could mean that for startups, there could be

[537] EDPB, *supra* note 50.

[538] Tyagi, supra note 51.

[539] OECD Guidelines Governing the Protection of Privacy and Transborder Flows of Personal Data (2013).

opportunities to take advantage of consistent compliance solutions, potentially lowering compliance costs by 20-30%. However, there are also risks on the horizon, including the potential for geopolitical tensions, such as the current tensions over US-EU data transfers.

15. CONCLUSION

The GDPR, the DPDPA, and the LGPD all point towards the same destination, which is the protection of data as it becomes more and more integrated into every nook and cranny of our digital lives. However, they all point towards different approaches in terms of the level of enforcement and the flexibility of the legislation. The GDPR sets the bar high, and this is further emphasized by the changes that are set to come into effect in 2025, which puts a lot of pressure on startups and young companies to comply. The DPDPA takes a very direct approach, which is put into action in 2025, making it easier to comply and can help to grow the Indian economy, but it also brings with it the possibility of loopholes and weaknesses that need to be addressed. The LGPD takes a middle ground approach, which is very much in line with the local requirements, but is further strengthened by a number of developments in 2024 and 2025. The future looks bright if these laws are brought into harmony with each other, and this can be achieved by giving more rights to individuals, more teeth to enforcement, and more cooperation between countries. As the amount of data continues to rise, these laws will have to adapt to the challenges posed by artificial intelligence and cyber threats, and this further cements the idea that privacy is a universal right that needs to be protected.

The Marital Rape Exception under Section 63 of the Bharatiya Nyaya Sanhita: A Constitutional and Human Rights Challenge

Om Aditya Srivastava[540]

ABSTRACT

Marital rape has become one of the most urgent debates on Indian criminal law. Traditionally, the Indian Penal Code, 1860 (IPC) recognized rape as an offense but reserved Exception 2 to Section 375 exempting forced sex by a husband with his wife, on condition that she was over fifteen years old. This colonial period doctrine was based on the English common law fiction of "implied consent" and patriarchal ideology that marriage granted an irrevocable license of sexual access to the husband. Despite the passage of the Bharatiya Nyaya Sanhita, 2023 (BNS), Section 63 still maintains this exception with a higher threshold of eighteen years, thus leaving the physical autonomy of adult married women legally unguarded.

This article critically analyzes the exception of marital rape under Section 63 of the BNS on constitutional, socio-legal, and comparative fronts. It traces the evolution of the doctrine historically, its profound roots in patriarchal constructions of marriage, and its survival even in the wake of progressive constitutional precedent on equality, dignity, and privacy. Referring to judicial developments like Independent Thought v. Union of India (2017) , Nimeshbhai Bharatbhai Desai v. State of Gujarat (2018) , and the fractured verdict in RIT Foundation v. Union of India (2022) , the argument of the paper is that the exception does not pass constitutional scrutiny under Articles 14, 15, and 21.

Additionally, the research involves India's international obligations under treaties like Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and International Covenant on Civil and Political Rights (ICCPR), as well as comparative law from countries like the United Kingdom, Canada, South Africa, Nepal, and Bhutan where marital rape is clearly criminalized. It further emphasizes the mental and social impacts of marital rape and the insufficiency of available civil relief under the Domestic Violence Act, 2005.

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Finally, the paper submits that preserving the marital rape exception solidifies gender inequality and subverts constitutional morality. It urges repealing Exception 2 to Section 63 of the BNS, bringing in express criminalization, and establishing strong safeguards to weigh concerns of abuse against the need to grant women bodily autonomy and dignity.

INTRODUCTION

The criminalization of marital rape is one of the most controversial, contentious, and neglected topics in Indian criminal law. Indian jurisprudence has struggled for generations with the basic question: can there be a presumed consent within marriage, and if there can, does marriage end a woman's right over her own body? Although most jurisdictions worldwide have unequivocally answered this in the negative, India continues to retain a colonial-era exception that withdraws married women from equal protection against sexual assault.

Rape under the Indian Penal Code, 1860 (IPC) was defined in Section 375, but Exception 2 was that "sexual intercourse or sexual acts by a man with his own wife, the wife not being under fifteen years of age, is not rape".[541] This essentially granted immunity to husbands, legalizing forced sexual intercourse in marriage. The law thus placed a married woman in a different category than an unmarried woman, ignoring her agency and autonomy, and reinforcing the patriarchal belief that marriage signifies irrevocable consent.

The Bharatiya Nyaya Sanhita, 2023 (BNS), brought as part of the Indian government's broader exercise to reform colonial-era criminal laws, was welcomed as a move towards modernization and conformity with constitutional values. Nonetheless, contrary to projections, the BNS maintained the marital rape exception within Section 63 by merely increasing the age of consent from fifteen to eighteen years.[542] This implies that whereas intercourse with a wife under the age of eighteen constitutes statutory rape, non-consensual intercourse with an adult wife over the age of eighteen still falls outside the offencive jurisdiction. The persistence of this exception serves to highlight the Indian state's unwillingness to challenge deeply ingrained cultural and religious attitudes towards marriage.

Problem Statement

[541] Indian Penal Code, 1860, § 375, Exception 2, No. 45, Acts of Parliament, 1860 (India).
[542] Indian Penal Code, 1860, § 63, No. 45, Acts of Parliament, 1860 (India).

The persistence of the marital rape exception is a serious contradiction. Constitutional jurisprudence and international human rights law in one way are more focused now on bodily autonomy, dignity, and gender equality. But on the other side, statutory law continues to exclude married women from these protections. The contradiction is even stronger if one bears in mind that the same act, when committed by any other, would be considered as rape if committed on an unmarried woman; but if done by the husband, it's not.

Importance of the Issue

1.Human Rights Aspect: Marital rape is a breach of basic human rights such as the right to equality, privacy, and freedom from inhuman treatment. The continuation of the exception by India goes against its treaty obligations like the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).[543]

2.Constitutional Dimension: The Constitutional Articles 14, 15, and 21 provide for equality, non-discrimination, and the right to life with dignity. The Supreme Court, in its judgments like Justice K.S. Puttaswamy v. Union of India (2017)[544], has established bodily autonomy and privacy as Constitutional rights. The marital rape exception impinges directly on these guarantees.

3. Social Dimension: A high percentage of women have experienced spousal sexual violence according to the National Family Health Survey (NFHS-5).[545] However, because of the legal protection provided to husbands, these women find themselves with little effective recourse in criminal law.

4. Comparative Dimension: Marital rape is criminalized in more than 70 nations, including the United Kingdom, Canada, South Africa, Nepal, and Bhutan. India is an exception among large democracies.

Objectives of the Study

This article attempts to answer the following salient objectives:

•To follow the historical and jurisprudential roots of the exception of marital rape in Indian law.

•To comment upon Section 63 of the BNS and its continuity from Section 375 IPC.

[543] Convention on the Elimination of All Forms of Discrimination Against Women, Dec. 18, 1979, 1249 U.N.T.S. 13.

[544] Justice K.S. Puttaswamy v. Union of India, (2017) 10 SCC 1.

[545] MINISTRY OF HEALTH & FAMILY WELFARE, NATIONAL FAMILY HEALTH SURVEY (NFHS-5), 2019–21 (2021).

•To check the constitutionality of the exception under Articles 14, 15, and 21.

•To analyze judicial pronouncements and law commission reports on the issue of marital rape.

•To examine India's international obligations and comparative legal systems.

• To suggest reforms for criminalizing marital rape in a manner that addresses legitimate concerns of abuse.

Methodology

The paper employs a doctrinal and analytical approach, relying on:

• Primary sources of statutes (IPC, BNS, Domestic Violence Act), constitutional guarantees, and judicial pronouncements.

• Secondary sources of Law Commission reports, the Justice Verma Committee report, and academic scholarship.

• Comparative examination of international jurisprudence and treaty commitments.

• Quantitative data from NFHS-4 and NFHS-5 interviews bringing out prevalence of sexual violence by spouse.

Scope and Limitations

The article is centered on the marital rape exception in Section 63 of the BNS in India. Although it mentions issues of gender violence and domestic violence more broadly, its core focus is the legal immunity of husbands for forced sex with wives. It does not try to carry out a comprehensive criminological or psychological analysis but places the question in constitutional, legal, and policy contexts.

HISTORICAL & JURISPRUDENTIAL ROOTS OF THE MARITAL RAPE EXCEPTION

The marital rape exception in Indian law cannot be considered in isolation since it is the result of centuries of patriarchal legal thinking reinforced by English common law, native religious traditions, and colonial codification. Its survival indicates the persistent conflict between archaic societal morality and the demands of constitutional morality. The origin of this exception is in the English law of common law, where in 1736 Sir Matthew Hale stated that a husband could not be guilty of raping his lawful wife, for marriage was irrevocable consent. This implied consent doctrine, supported by coverture, essentially incorporated a wife's legal identity into her husband, making her incapable of claiming control over her own body. When

the Indian Penal Code of 1860 was created by Lord Macaulay, it took on this assumption, explicitly excusing husbands for marital rape.

The exception was then further justified by strongly ingrained patriarchal norms in India itself. Ancient Hindu scriptures like the Manusmriti placed a woman's responsibility on obeying her husband, with no room for sexual independence, and epics like the Mahabharata treated women as commodities, as when Draupadi is gambled away in a game of dice. Medieval customs like purdah and child marriage extended the subordination of women, producing a cultural climate in which marital rape was institutionalized as an aspect of marriage, not as a transgression of bodily integrity. The codification within the IPC, especially Section 375 and its Exception 2, was an expression of these assumptions where marriage consent was viewed as unchangeable and male dominance over female sexuality was given precedence. The fifteenth age bar only reiterated the colonial state's disregard for women's sexual agency.

In the late nineteenth and twentieth centuries, feminist criticism started questioning the immunity of marital rape. Across the world, England overruled the doctrine of implied consent in R v. R (1991)[546], discarding centuries-old presumptions of irrevocable marital consent and setting an impact on the world over, including India. Post-independence Indian women's movements more and more brought the issue to the fore, but legislative change remained stalled because of political reluctance and resistance in society. Post-independence, the constitutional order guaranteed equality and dignity, but the exception persisted. The 42nd Law Commission Report of 1971 suggested a limited reform excluding judicially separated spouses, which was later enacted as Section 376B of the IPC in 2013.[547] The 172nd Law Commission Report in 2000 had even weighed criminalization but discarded it due to concerns over destabilizing marriage, illustrating how societal morality still shaped legal policy.[548] The Justice Verma Committee, after the Nirbhaya case in 2013, categorically advised criminalization of marital rape as an anachronistic and unconstitutional clause[549]; however, Parliament maintained the exception in the Criminal Law (Amendment) Act, 2013.

[546] R v. R, [1991] 1 All E.survey
[547] LAW COMMISSION OF INDIA, 42ND REPORT ON THE INDIAN PENAL CODE (1971).
[548] LAW COMMISSION OF INDIA, 172ND REPORT ON REVIEW OF RAPE LAWS (2000).
[549] JUSTICE J.S. VERMA COMMISSION, REPORT OF THE COMMITTEE ON AMENDMENTS TO CRIMINAL LAW (2013).

The Bharatiya Nyaya Sanhita, 2023, as a decolonized criminal code, continued this legacy. Section 63 increased the age bar to eighteen, criminalizing forced sex with wives under the age of eighteen but not with adult married women. This difference is based not on consent but simply on age, and it continues the colonial and patriarchal systems. Globally, India is an exception. Marital rape is criminalized in nations like the United Kingdom, Canada, South Africa, Nepal, Bhutan, and every U.S. state, focusing on equality, autonomy, and dignity. All European and Latin American countries also approach marital rape as similar to other sexual assaults.

The persistence of the marital rape exception also testifies to the uneasy coexistence of two conflicting legal narratives in India: constitutional jurisprudence increasingly upholds women's rights to equality, privacy, and dignity, but statutory criminal law still refuses to recognize married women's protection from sexual violence. The exception is a hybrid outcome of colonial imposition, religious patriarchal doctrine, and legislative inertia. For the modern-day India, the challenge is to move beyond this colonial heritage and bring criminal law in line with constitutional morality as well as international human rights norms so that all women have the protection, autonomy, and dignity.

MARITAL RAPE IN INDIAN CONTEXT: IPC TO BNS

The path of marital rape legislation in India is one of intense tension between colonial heritages, patriarchal deep roots, and gender justice demands. While the Indian Penal Code of 1860 cemented the marital rape exception, the Bharatiya Nyaya Sanhita of 2023, presented as a modernized code, has retained the exception to a great extent. The statutory provisions, limited reforms, and the current challenges collectively uncover how deeply rooted this phenomenon is.

Section 375 of the IPC had defined rape, but Exception 2 specifically excluded a husband from the ambit of the law by stating that “sexual intercourse or sexual acts by a man with his own wife, the wife not being under fifteen years of age, is not rape.” This exception had two harsh implications. First, it gave marriage itself immunity, so that if married, a woman could not lawfully accuse her husband of rape. Second, it acquiesced to child marriage by permitting sexual intercourse with a wife over fifteen years old, despite the statutory marriage age being more. The combined result was that adult women had no redress against forced sex in marriage

and even adolescent girls over fifteen were excluded. Feminist criticisms and human rights activism gradually dismantled this exception over time through piecemeal reforms. The 42nd Law Commission Report of 1971 recommended eliminating immunity in judicially separated spouses' cases, which prompted the enactment of Section 376B IPC, criminalizing intercourse with a separated wife without consent.[550] The 172nd Law Commission Report of 2000, however, abandoned wider criminalization on the ground that it would destabilize the "institution of marriage" and was based on the prevalence of societal morality over constitutional morality.[551] The Justice Verma Committee Report of 2013, drawn up in the wake of the Nirbhaya case, actually called for criminalization, discounting the idea of implied consent within marriage and highlighting that unequal treatment of wives contravened constitutional equality.[552] However, the Criminal Law (Amendment) Act of 2013 neglected to comply with this, demonstrating the continuing reluctance of the legislature.

Courts, however, started to erode the exception, albeit hesitantly. In Independent Thought v. Union of India (2017)[553], the Supreme Court held that sexual intercourse with a wife below the age of eighteen years constituted rape, interpreting down the age barrier in the IPC from fifteen to eighteen years. The Court had recourse to child rights and constitutional protection but refrained from deciding on adult marital rape. In Nimeshbhai Bharatbhai Desai v. State of Gujarat (2018), the Gujarat High Court vehemently condemned marital rape as a "disgraceful offence" that offended dignity, but did not strike down the exception, leaving it to Parliament. The divided verdict of the Delhi High Court in RIT Foundation v. Union of India (2022) expressed judicial unease: Justice Shakdher declared the exception unconstitutional, insisting that marriage cannot mean irrevocable consent, whereas Justice Hari Shankar maintained it, alluding to social reasons. The case now waits for the Supreme Court to decide. These judgments collectively express a judicial appreciation of the issue but reluctance to directly address it without parliamentary support.

The BNS, introduced to replace the IPC and heralded as a project of "decolonization," has disappointed reform advocates. Section 63 recasts rape but keeps marital immunity by declaring that "sexual intercourse or sexual acts by a man with his own wife, the wife not being

[550] LAW COMMISSION OF INDIA, 42ND REPORT ON THE INDIAN PENAL CODE (1971).
[551] LAW COMMISSION OF INDIA, 172ND REPORT ON REVIEW OF RAPE LAWS (2000).
[552] JUSTICE J.S. VERMA COMMISSION, REPORT OF THE COMMITTEE ON AMENDMENTS TO CRIMINAL LAW (2013).
[553] Independent Thought v. Union of India, (2017) 10 SCC 800.

under eighteen years of age, is not rape." The only modification was increasing the threshold to eighteen years, as with the age of consent. The principle is intact, however: adult wedded women remain unprotected, and the assumption of irrevocable consent remains in force. This veneer of reform emphasizes continuity over change, reinforcing gender inequality in place of eradicating colonial patriarchy.

The BNS is riddled with contradictions. A husband may be culpable of raping his seventeen-year-old wife but not his nineteen-year-old wife, a random distinction tied to age in lieu of consent. The same non-consensual act is rape outside marriage but not within it, denying married women equal protection under Article 14. Constitutional jurisprudence, especially in Puttaswamy (2017)[554] and Navtej Johar (2018)[555], has emphasized autonomy, privacy, and dignity, yet the BNS exception contradicts these principles. At the international level, India's perpetuation of marital rape immunity is an embarrassment since it is among the few democracies to continue practicing this colonial legacy in spite of being a signatory to both CEDAW and ICCPR[556].

Empirical evidence also supports that marital rape is not a theoretical issue but a lived experience. The National Family Health Survey (NFHS-4, 2016) reported that 5.4% of married women indicated being physically forced to have sexual intercourse by their husbands, and 6.9% of them experienced it “often or sometimes”.[557] NFHS-5 (2021) indicated that about 6% of men agreed that husbands were justified in forcing sex on their wives, while about 20% justified punishing wives for denying sex.[558] These statistics are probably lower than actual because of underreporting, stigma, and absence of legal remedy, but they identify the frequency of sexual violence by husbands.

Current arguments regarding policy still reflect the gap between societal and constitutional morality. They argue that the criminalization of spousal sexual violence risks misuse, destabilizing marriage, and conflicts with cultural values that approach marriage as sacrament.

[554] Justice K.S. Puttaswamy v. Union of India, (2017) 10 SCC 1.
[555] Navtej Singh Johar v. Union of India, (2018) 10 SCC 1.
[556] Convention on the Elimination of All Forms of Discrimination Against Women, Dec. 18, 1979, 1249 U.N.T.S. 13.
[557] MINISTRY OF HEALTH & FAMILY WELFARE, NATIONAL FAMILY HEALTH SURVEY (NFHS-4), 2015–16 (2017).
[558] MINISTRY OF HEALTH & FAMILY WELFARE, NATIONAL FAMILY HEALTH SURVEY (NFHS-5), 2019–21 (2021).

Supporters argue back that there are safeguards against abuse in other offenses, that civil relief like the Domestic Violence Act, 2005, cannot take the place of criminal punishment in rape, and that marriage must not be a license to violence. Courts have time and again stressed the importance of placing constitutional morality first, yet legislative inertia continues.

The Indian scenario hence represents a paradox. Whereas constitutional jurisprudence and feminist scholarship ask for recognition of marital rape as a violation of equality, dignity, and autonomy, statutory law under both IPC and BNS remains silent on exempting husbands. The exemption by BNS reinforces the emptiness of talk of "decolonization," for one of the most colonial and patriarchal provisions has gone unchallenged. The continuation of this exception is not just a technical anomaly in the law, it is systemic denial of dignity and equality to half of humanity. Unless reversed, it will keep undermining India's constitutional commitments and international obligations.

CONSTITUTIONAL EXAMINATION OF THE MARITAL RAPE EXCEPTION

The Indian Constitution ensures equality, non-discrimination, and the right to life with dignity, but the marital rape exception provided by Section 63 of the Bharatiya Nyaya Sanhita (BNS) goes against these safeguards. According to Article 14, the exception doesn't meet the test of reasonable classification, as it distinguishes between married and unmarried women on grounds of marital status instead of consent, which is the essence of the offence. Judicial precedents like State of West Bengal v. Anwar Ali Sarkar[559], Navtej Johar v. Union of India[560], and Independent Thought v. Union of India[561] reinforce that categories based on stereotypes or dignity-violative are unconstitutional, and hence the exception is untenable. Article 15 prohibits discrimination based on sex, but the exception gives immunity to husbands and refuses protection to married women, perpetuating the patriarchal concept of continuous consent. Judicial bodies have repeatedly set aside gender-stereotyped legislation, such as in C.B. Muthamma v. Union of India[562] and Anuj Garg v. Hotel Association of India[563], affirming that the exception contravenes Article 15.

[559] State of W.B. v. Anwar Ali Sarkar, AIR 1952 SC 75.
[560] Navtej Singh Johar v. Union of India, (2018) 10 SCC 1.
[561] Independent Thought v. Union of India, (2017) 10 SCC 800.
[562] C.B. Muthamma v. Union of India, (1979) 4 SCC 260.
[563] Anuj Garg v. Hotel Ass'n of India, (2008) 3 SCC 1.

Article 21, covering dignity, autonomy, privacy, and bodily integrity, is also eroded. Decisions such as Suchita Srivastava v. Chandigarh Administration[564], Puttaswamy v. Union of India[565], and Francis Coralie Mullin v. Union Territory of Delhi[566] declare sexual and decisional autonomy as essential to life and liberty. By presuming marriage prevails over consent, Section 63 erases these rights and treats women as property in marriage. The exception also conflicts with constitutional morality, which values individual dignity above conventions of society, as reiterated in Navtej Johar and Joseph Shine v. Union of India[567]. Although constitutional inconsistency is apparently clear, courts have frequently avoided interfering with the will of Parliament, as seen in the divided verdict in RIT Foundation v. Union of India, leaving it to the Supreme Court for final judgment.

Law Commission reports and committee proposals also show such reluctance. While the 42nd and 172nd Reports had shied away from criminalization, the Justice Verma Committee in 2013 categorically suggested revoking the exception, refuting patriarchal concerns regarding the stability of family. Parliament, however, kept the exception in the 2013 amendment intact, upholding social morality at the expense of constitutional assurances. Globally, India has been repeatedly criticized by CEDAW, UN Special Rapporteurs, and human rights groups for its inability to safeguard married women, demonstrating its isolation in the international arena. Civil society and feminist jurisprudence have repeatedly challenged the exception, turning it into a constitutional abuse denying sexual autonomy and legalizing violence.

Throughout reports, judgments, and debates, there are evident patterns: identification of the injustice within the exception, judicial and legislative hesitancy to decisively act, and ongoing deviation from international standards. The marital rape exception infringes Articles 14, 15, and 21, withholding equality, autonomy, and dignity to wives. Its prevalence demonstrates the disparity between constitutional theory and legal practice. With this issue now before the Supreme Court, final reform is necessary to ensure constitutional morality, safeguard women's rights, and bring Indian law into conformity with the principles of equality and justice.

[564] Suchita Srivastava v. Chandigarh Admin., (2009) 9 SCC 1.
[565] Justice K.S. Puttaswamy v. Union of India, (2017) 10 SCC 1.
[566] Francis Coralie Mullin v. Union Territory of Delhi, (1981) 1 SCC 608.
[567] Joseph Shine v. Union of India, (2019) 3 SCC 39.

COMPARATIVE ANALYSIS AND INTERNATIONAL HUMAN RIGHTS OBLIGATIONS

India's denial to criminalize marital rape cannot be understood as a country that stands in splendid isolation to its international obligations. As a party to a number of human rights conventions, India is obligated to adhere to principles of equality, dignity, and autonomy in the body. By ratifying CEDAW in 1993, it committed itself to ending discriminatory laws, and the CEDAW Committee has consistently condemned India for continuing to uphold the marital rape exception. Equivalent obligations follow from the ICCPR, which forbad cruel and degrading treatment under Article 7 and provided for equality before the law under Article 26, and from the UDHR[568] and ICESCR[569], which both guaranteed rights to liberty, security, health, and well-being. Both the Beijing Platform for Action and the Sustainable Development Goals also stress the eradication of violence against women, leaving little question that India is out of line with its international commitments.

The majority of countries in the rest of the world have left the marital rape exception behind, so India's position stands as an anomaly. In the country of origin of the doctrine of irrevocable consent, the United Kingdom, the House of Lords in R v. R (1991) overturned it as outdated. In Canada, marital rape was criminalized as early as 1983, and all fifty states in the United States of America caught up by the early 1990s. South Africa repealed the exception in 2007, basing the reform on constitutional principles of equality and dignity. Closer to home, Nepal legalized marital rape in 2002 and Bhutan subsequently legalized in 2004, while Sri Lanka provides only partial acknowledgment. In the rest of Europe, Latin America, and Australia, criminalization is the rule. India, for all its democratic and constitutional ideals, persists in upholding the colonial-era dogma, even as smaller neighbors have made progress.

The exception is supported by cultural relativists who argue that Indian marriage is a sacrament and criminalizing it would destroy family life. However, cultural explanations cannot take precedence over basic rights. The Supreme Court has disapproved of such reasoning in Navtej Johar v. Union of India (2018)[570], reiterating that constitutional assurances must take precedence over religious or societal customs. Comparative experience demonstrates that

[568] Universal Declaration of Human Rights, G.A. Res. 217 (III) A, U.N. Doc. A/RES/217(III) (Dec. 10, 1948).
[569] International Covenant on Economic, Social and Cultural Rights, Dec. 16, 1966, 993 U.N.T.S. 3.
[570] Navtej Singh Johar v. Union of India, (2018) 10 SCC 1.

criminalization has not destabilized marriage but, on the contrary, has resecured ideas of trust and equality. Fears of abuse, expressed in India as in other places, have been met elsewhere through procedural protections and judicial oversight. Where legislatures were reluctant, courts have been able to push forward with reform, as in the United Kingdom and South Africa—a route that could prove decisive in India's instance.

With the retention of the marital rape exception, India stands apart from the world's consensus and betrays its international obligations and own constitutional principles. The continued existence of this colonial vestige demeans women's dignity and equality, making India the outlier among democracies and putting off recognition of marital rape as the serious violation of human rights that it really is.

SOCIO-CULTURAL, LEGAL, AND PSYCHOLOGICAL DIMENSIONS OF MARITAL RAPE

Marital rape in India involves a multifaceted relationship of socio-cultural resistance, legal shortcomings, and severe psychological damage. Constitutional, legal, and international reasoning supports its criminalization, yet deep-rooted patriarchal stereotypes, cultural definitions of marriage, and concerns regarding abuse persistently impede reform efforts. Grasping these aspects is important to account for the continuity of the marital rape exception and the imperative legislative change.

One of the significant impediments is viewing marriage as a sacrament and not just a contract, and criminalization being opposed on the grounds that it would destabilize families. Constitutional morality, however, cannot be subject to cultural or religious norms, as confirmed in Shayara Bano v. Union of India (2017)[571]. Consent cannot be viewed as perpetually irrevocable, and international experience indicates that criminalization reinforces marital equality and not family destabilization. Misuse fears are also overstated. While false allegations can occur, criminal law already has built-in checks, and comparable doubts in dowry and domestic violence cases resulted in fine-tuning not abolition. Misuse possibilities cannot be a reason to withhold protection from actual victims, a factor emphasized by the Justice Verma Committee.

[571] Shayara Bano v. Union of India, (2017) 9 SCC 1.

Patriarchal wifely duty beliefs solidify the notion of sexual submission as a wifely duty. NFHS-5 data reveal that a majority of men, and even women, tolerate wives being forced by husbands, bringing sexual violence in marriage to a perceived obligation. Courts have dismissed such a notion of wives as property, though, such as in Joseph Shine v. Union of India (2018)[572], upholding autonomy and equality. Silence and social stigma further add to the problem. Women do not report because they fear exclusion, economic reliance, and minimization by families or institutions. Underreporting is sustained through lack of legal acknowledgment, and criminalization would symbolically recognize marital rape as violence, prompting survivors to report.

The "private sphere" hypothesis, that marital relations fall outside state intervention, has increasingly been eroded. Domestic violence and child sexual abuse, previously regarded as private, are now public issues. The Supreme Court in Vishaka v. State of Rajasthan (1997)[573] made it explicit that gender violence cannot be protected by privacy and marital rape has to be dealt with in the same manner. Political reluctance is a strong obstacle. Legislators are afraid of backlash from traditionalist constituencies and want to gain maximum popularity rather than rights. But efforts to end sati and criminalize triple talaq show that constitutional commitments have to take precedence over political expenses.

Current legal remedy is incomplete and inadequate. The Protection of Women from Domestic Violence Act, 2005 makes sexual abuse a recognized sexual violence and gives civil remedies but does not criminalize rape. Section 85 of the BNS provisions on cruelty and separation-specific legislation such as Section 86 criminalize sexual assault only in restricted situations, making arbitrary distinctions that leave cohabiting women outside of protection. Divorce laws can acknowledge marital rape as cruelty, but these are civil laws and do not punish offenders. In the absence of direct criminalization, the law sends a message that sexual autonomy within marriage is secondary to that outside of marriage.

The impact of marital rape is disastrous. Marital rape survivors experience psychological trauma, such as PTSD, depression, anxiety, and suicidal behavior, as well as physical harm,

[572] Joseph Shine v. Union of India, (2019) 3 SCC 39.
[573] Vishaka v. State of Rajasthan, (1997) 6 SCC 241.

reproductive health consequences, and coerced pregnancy that erodes reproductive autonomy. The impact trickles outside: trust in marriage is destroyed, children who have witnessed abuse adopt negative norms, and violence is repeated. At the social level, marital rape erodes gender equality, overloads public health systems, lowers women's participation in the economy, and undermines trust in the rule of law.

Feminist legal theory underscores the importance of consent as continuous, physical autonomy non-negotiable, and marriage as a partnership, not a license to commit violence. Survivors' testimonies unlock the specific trauma of violation at the hands of a partner and the experience of being trapped afterward. Criminalization is not merely for deterrence and punishment but also for acknowledgment, empowerment, and ending intergenerational chains of violence.

The continuance of marital rape in India is based on patriarchal conventions, political reluctance, and weak juridical recourse. Alternatives such as the PWDVA, cruelty laws, and divorce laws offer limited relief but not to the fundamental violation of autonomy and dignity. Criminalization is a requirement for the vindication of constitutional values, imposition of equality, and deconstruction of entrenched pillars that normalize sexual violence in marriage. Outside of law, there must be awareness, judicial sensitization, institutional support, and policies that are survivor-focused to achieve the potential of a marriage based on consent, trust, and respect.

RECOMMENDATIONS

The continuance of the marital rape exception in Section 63 of the Bharatiya Nyaya Sanhita (BNS) attests to the necessity for reform. Constitutional assurances of dignity, equality, and autonomy cannot coexist with a law that legitimizes non-consensual sexual intercourse within marriage. While there are apprehensions regarding abuse, these cannot justify denying marital women protection under rape laws. Reform has to be holistic, balancing justice and safeguards, and grounded in constitutional morality and not concepts of outmoded societal morality.

The most pressing step is the rescinding of Exception 2 to Section 63. Marriage cannot be regarded as blanket consent for sexual intercourse. Consent needs to be clearly described as revocable, informed, and voluntary, and it should become the prime criterion for all sexual offenses. Spousal status should never lower responsibility, and punishment for marital rape

needs to be of the same level as other rapes. Meanwhile, laws have to use gender-neutral terms so that everyone is protected regardless of gender or orientation.

Judicial intervention can inject the needed momentum in the face of legislative inaction. The forthcoming marital rape challenge in the Supreme Court is an opportunity to hold the exception unconstitutional under Articles 14, 15, and 21. Even if repeal does not take place, courts can interpret current legislation progressively on the basis of declaring marital rape as cruelty in matrimonial conflicts or defining it as a violation of the fundamental right to life and dignity. After criminalization, survivor-friendly procedures in trial courts will be necessary to avert retraumatization.

Misuse concerns can be successfully addressed via procedural protections more than blanket exceptions. Judicial review at the charging stage, sanctions for false accusations, and dependence on tried evidentiary standards can deter abuse. Survivor-friendly provisions like in-camera trials, anonymity, witness protection, psychological support, and speedy hearing can make justice remain both fair as well as accessible.

Institutional support should go hand-in-hand with legal reform. Shelters, crisis centers, and helplines specifically designed for survivors of marital rape are essential, in addition to economic and housing support to break women's dependence on abusive marriages. Medical staff should be trained to identify and document cases of sexual violence in marriage in a sensitive manner, combining medical and legal assistance into an integrated response framework.

Social attitude change is equally important. Public campaigns need to counter the deep-seated belief that consent does not count in marriage. Education systems need to include gender sensitization and sex education in order to instill respect for bodily autonomy from childhood. Men and boys' programs can assist in breaking toxic masculinity and encouraging relationships grounded in respect and equality.

Reform should also synchronize criminal law with civil remedies and personal laws. Marital rape needs to be identified as both a crime and a cause for divorce so that survivors get complete relief. Personal laws should not be used to legitimize patriarchal habits that are violative of

constitutional safeguards. Civil society organizations will continue to be key players in this process, giving legal assistance, raising public awareness, and maintaining advocacy to drive reforms into the public and legislative discourse.

Finally, reforms must adopt an intersectional approach, acknowledging that women from marginalized groups, Dalit, Adivasi, rural, disabled, or LGBTQ+ spouses, face compounded barriers in accessing justice. Policies and protections must be inclusive to ensure equality in practice, not just in principle.

Lastly, criminalizing rape within marriage is really about reframing marriage itself, not as a domain of privilege, but as a union of equals based on mutual dignity. Legal reform must bring marriage in line with constitutional morality, eroding patriarchal assumptions that long deprived women of autonomy. Repealing the exception to Section 63 is not simply a matter of law, but also one of moral duty to defend justice, equality, and human rights in the most personal of human relationships.

LAW JURIST
LEGAL JOURNAL

Legal Recognition and Protection of Unpaid Domestic Labour in India: A Constitutional and Feminist Analysis

Ramu Thirumalesh[574] *& Arpit Pandey* [575]

ABSTRACT

Despite being one of the most significant forms of labor in society, unpaid domestic work is frequently disregarded as legitimate employment. Even if it is unpaid, it maintains households, looks after family members, and contributes to the development of society and the economy. Cooking, cleaning, caring for young people and the elderly, providing emotional support, and running the house are all included in this work. Due to traditional family structures in which women take care of the home and men earn money, women typically perform this labor. This labor has no legal or financial value since it is viewed as a responsibility rather than a skilled endeavor. For this labor, women are not paid, get social security, or have legal protections.

This essay investigates whether India should recognize and protect unpaid domestic labor under the law. It examines the problem from the perspectives of feminism, the idea of labor rights, and constitutional ideals like equality and decency. According to the report, the legal system primarily values jobs that generate pay in the market, which is why housework is still not considered actual employment. Because it takes place in the family's private area, household chores like cooking, cleaning, and providing care are neglected. The home is frequently viewed by the law as a private space where labor laws do not apply. As a result, women's unpaid domestic labor is unreported, and their unequal treatment persists without adequate legal redress.

However, in reality, it can be challenging to assign precise compensation for housework. However, this does not imply that the law should disregard it. It will take some time for laws and regulations to acknowledge the importance of domestic work to society. Support networks such as social security programs, financial stability, and legal recognition for stay-at-home moms should be established by governments. Ultimately, acknowledging unpaid domestic work can result in significant improvements. It can support the development of a legal system

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that values human relationships, care, and dignity and views these as vital components of society rather than as unnoticed obligations.

Keywords: Unpaid housework, Care work at home, Women's rights and law, Right to equality (Article 14), Right to life and dignity (Article 21), Fairness in society, Equal rights for men and women.

INTRODUCTION

In India, marriage and family life have traditionally been structured so that women perform the majority of the caregiving and housework without receiving compensation. Cooking, cleaning, child care, elder care, and emotional support are all typically performed by women. All of this work helps raise the next generation and keeps the house operating. The legal system and society frequently do not consider this employment to be legitimate, despite the fact that it is crucial for the family and the nation's economy. Indian laws mostly see only paid jobs as employment because they were shaped by antiquated structures and male-dominated thought. As a result, housework and caregiving are not given the required recognition, legal worth, or protection[576].

Why domestic work is disregarded has been a topic of intense feminist inquiry. They claim that undervaluing caregiving and housework perpetuates gender inequality and renders women economically reliant. Cooking, cleaning, and providing care are frequently viewed by society as a woman's innate responsibility or family duty rather than as legitimately specialized jobs. The law keeps work and home life apart as a result of this way of thinking. This shields the system that gains from women's unpaid labor while concealing the hard effort they perform at home[577].

According to authors like Flavia Agnes, women's economic contribution within marriage is essentially invisible due to societal customs and family regulations. Despite managing the household and providing for the family, women's labor is not recognized as a financial contribution. According to Martha Nussbaum, women lose their freedom, chances, and dignity when care labor is not acknowledged. Because their labor has no legal economic worth, they

[576] Flavia Agnes, Law and Gender Inequality (1999).
[577] Martha C. Nussbaum, Women and Human Development (2000)

have less influence over their life. Even though domestic work doesn't pay well, it helps the economy as a whole. It takes care of family members, raises children, and maintains dwellings so that others can go out and make money. Unpaid domestic labor thus contributes to the expansion of markets and the country. However, it is not covered by social security programs, labor laws, or compensation regulations. This demonstrates how crucial work completed at home is disregarded despite the fact that society depends on it on a daily basis.

The Indian Constitution forces us to consider unpaid housekeeping and its relationship to social justice, equality, and dignity. Equal treatment, nondiscrimination, and the right to a dignified life are discussed in Articles 14, 15, and 21. These ideals are impacted when women's domestic duties are disregarded because their labor is not adequately valued. Courts have begun to recognize the actual economic significance of homemakers' labor in recent years. Judges have ruled in compensation and maintenance proceedings that housekeeping and caregiving are significant and cannot be dismissed as worthless. This demonstrates how the legal system is gradually evolving. The concept of work is no longer restricted to profitable occupations. This essay investigates whether these court rulings reflect a broader shift in constitutional theory. It also demonstrates how this new perspective on work, caregiving, and the worth of women's domestic labor is supported by feminist legal theories[578].

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METHODOLOGY

This study examines how Indian law treats unpaid domestic work using a straightforward and comprehensive approach. There is more to this subject than just labor legislation. Additionally, it is linked to social and economic policies, gender concerns, family law, and constitutional law. As a result, the study employs a variety of methods to comprehend both the legal and social realities, particularly how society shapes women's roles in the house.

Doctrinal analysis is the primary method employed in this study. This entails closely examining legislation and court rulings. The study examines how labor laws, family law regulations, and constitutional requirements determine what constitutes work and what kind of contributions are valuable economically. Court cases where judges have acknowledged the importance of homemakers' labor are given particular attention. These include alimony rulings, maintenance

[578] Rajnesh v. Neha, (2021) 2 S.C.C. 324 (India)

judgments, and car accident compensation cases where the courts acknowledged the economic value of domestic work[579].

The research attempts to understand why unpaid domestic work is still not regarded by the law as other types of labor by examining these laws and rulings. It demonstrates how legal systems tend to overlook the hard work done at home and place more value on paid employment and salary-based labor. This contributes to the explanation of why domestic labor is still not covered by official labor laws.

Constitutional interpretation is a key technique employed in this research. The study examines Directive Principles such as Articles 39 and 42 in addition to Articles 14, 15, and 21 of the Indian Constitution. These sections of the Constitution address social justice, equality, fair working conditions, and dignity. The study investigates whether the Constitution supports the notion that unpaid domestic labor should be acknowledged and honored by interpreting these clauses broadly and meaningfully. It poses the question of whether ideals like equality, dignity, and nondiscrimination might aid in elevating the work completed in homes.

Another important method used in this study is feminist legal theory. Understanding why home work is frequently disregarded is made easier by concepts like social reproduction, care ethics, and the capacities approach associated with intellectuals like Martha Nussbaum[580]. The distinction between private work (household chores) and public work (paying occupations) is called into question by these beliefs. They clarify that providing care is not only a personal obligation but also crucial for society at large. Families and even the economy cannot run well without this work. This calls into question the law's limited definition of genuine labor, which only includes paid market labor.

In order to compare the Indian scenario with talks concerning care work and unpaid labor around the world, the study also looks at these topics. It draws on a variety of sources, including scholarly works, feminist literature, policy briefs, and Supreme Court rulings[581]. Combining all of these sources enables the research to examine unpaid domestic work from a variety of

[579] Hindu Marriage Act, No. 25 of 1955, sec 24–25, INDIA CODE.
[580] Joan Tronto, Moral Boundaries (1993)
[581] Int'l Labour Org., Care Work and Care Jobs (2018)

perspectives, including a legal loophole, a constitutional problem, and the outcome of pervasive gender inequity in society.

RESEARCH OBJECTIVES

This paper examines unpaid domestic work in India from feminist, legal, and constitutional perspectives. It begins by attempting to comprehend why household chores performed at home are not considered labor under labor rules. The majority of India's labor laws were created for occupations where employees work for an employer and receive pay. Therefore, these laws do not apply to employment that is done inside the home, such as cooking, cleaning, and caring for family members. Knowing this issue makes it easier to understand why domestic work is not recognized by the law.

The study also looks at whether the Indian Constitution is in favor of acknowledging unpaid domestic labor. It emphasizes concepts like social justice, equality, and dignity. The study examines whether neglecting care work violates the right to equality and the right to live with dignity by examining Articles 14 and 21.

Third, feminist concepts are covered in the study. According to feminist theory, providing care should not be viewed as a woman's private responsibility but rather as an essential social service. These concepts go against the traditional legal belief that only effort that is compensated is worthwhile.

Lastly, the study examines court rulings where judges have acknowledged the importance of homemakers' labor, particularly in matters involving maintenance and compensation. This aids in our comprehension of whether courts are gradually altering the definition of legal labor.

ANALYSIS

Doctrinal Gap: Why Domestic Labour Is Not Legally Recognised as Work

Unpaid domestic employment is not recognized in India due to the way labor laws are structured. Indian labor laws primarily address occupations in which an employee works for an employer and receives compensation. The regulation is designed for establishments such as factories, offices, and enterprises where the workplace, remuneration, and employment contract are clearly defined. However, this system does not apply to housework. A homemaker

does not work in a formally recognized workplace, has no employer, and is not paid. Thus, social security benefits, safety regulations, minimum wage legislation, and other labor safeguards do not apply to homemakers. Therefore, housework is not considered genuine labor in the formal sense by the legal system[582].

This issue is further compounded by family law. Domestic work is typically viewed as one of a husband and wife's responsibilities to one another. Instead of being seen as economic labor, it is seen as love, care, or responsibility. In actuality, women handle the majority of the housework and childcare, despite the fact that marriage is meant to be based on cooperation and support. However, this job is not seen as something that generates economic value, but rather as a personal or moral obligation. Therefore, domestic work is not seen by the law as skilled labor deserving of its own recognition, but rather as an act of affection or familial duty[583].

The antiquated notion that the law separates private and public spheres of existence is another factor. The public realm of employment, markets, and industries is governed by labor laws. However, the home is seen as a private area where the law often doesn't get involved. As a result, even if housework helps families, workers, and the economy as a whole, it is still hidden. By referring to it as private, the law downplays the significance of women's unpaid labor and instead makes it seem regular and natural[584].

Therefore, the law's definition of work is the reason why unpaid domestic labor is not included. The law disregards the vital care work that keeps society functioning in favor of market-based, paid jobs. This disparity in legal reasoning demonstrates how the system undervalues the work of women.

Constitutional Values: Dignity, Equality, and Social Justice

Although unpaid domestic work is not explicitly stated in Indian labor regulations, the Constitution provides substantial support for its recognition. The principles of justice, equality, and dignity form the foundation of the Indian Constitution. These ideals contradict the notion

[582] INDIA CONST. arts. 14, 15, 21, 39, 42

[583] Hindu Marriage Act, No. 25 of 1955, §§ 24–25, INDIA CODE

[584] Catharine A. MacKinnon, Toward a Feminist Theory of the State (1989)

that caregiving and cleaning should be disregarded. Everyone is equal under the law, according to Article 14. No one may be treated unfairly according to their sex, according to Article 15. However, the rule subtly promotes gender inequity when women's household chores are not acknowledged. The majority of cooking, cleaning, child care, and caregiving are often done by women. Their opportunities to make money, pursue occupations, and engage in public life are diminished by this heavy burden. Real equality is harmed by this.

Everyone has the right to life and personal freedom under Article 21[585]. According to the Supreme Court, this also covers the rights to autonomy, dignity, and a fulfilling existence. Even though it might not be compensated, domestic work is crucial. It sustains families, raises kids, and promotes the prosperity and well-being of working family members. In other words, without this job, society cannot operate. It is equivalent to claiming that those who perform this labor have less dignity if the law does not value it. According to the Constitution's concept of dignity, housework should be regarded as socially significant activity rather than only a familial obligation.

This way of thinking is also supported by the Directive Principles. According to Article 39, everyone should have equal remuneration for equal labor and adequate means of subsistence. Maternity leave and equitable working conditions are discussed in Article 42. These regulations demonstrate the Constitution's desire for a just and compassionate society. Caregiving and household duties directly relate to this objective. The goal of a just society is undermined by disregard for this task.

Courts have gradually come to realize this. Judges have acknowledged the economic importance of homemakers' labor in accident compensation claims. To demonstrate why this labor important, they provide a hypothetical income. Even though there isn't a clear legislation yet, this demonstrates how constitutional ideals are gradually altering how the law views domestic employment[586].

Feminist Jurisprudence: Care Work and Social Reproduction

[585] INDIA CONST. arts. 14, 15, 21, 39, 42

[586] Kirti & Anr v. Oriental Insurance Co. Ltd., (2021) 2 S.C.C. 166 (India)

We can better comprehend why unpaid domestic work should be recognized by law by applying feminist legal theory. According to feminist thinkers, caregiving and housework are crucial for society. The way society perpetuates itself through childrearing, family care, and day-to-day existence is known as social reproduction. Families and the economy depend on jobs like cooking, cleaning, child care, elder care, and providing emotional support. No economy or civilization could exist without this labor. However, women perform the majority of this labor, which is unappreciated, unpaid, and uncounted[587].

Old patriarchal beliefs are the cause of this. Housework is seen by society as a natural responsibility of women rather than actual labor requiring expertise and effort. As a result, domestic work is frequently treated by the law as a matter of love or family duty rather than as labor deserving of protection and rights.[588]

The economy benefits from this invisibility, according to feminist scholars. The government and private businesses do not have to pay for these services because women provide care for free. Women's unpaid labor thereby helps the system as a whole. However, this also reduces women's influence in the home and in society and renders them financially dependent.

According to Martha Nussbaum's capacities theory, justice entails giving people genuine freedom, dignity, and life choices. Women who perform unpaid domestic work frequently lack social safety, financial stability, and decision-making authority. Their lives are constrained because the law does not appreciate their labor, not because it is unimportant. Women can become more independent and dignified if domestic work is acknowledged.

The law incorrectly presumes that persons are completely independent, according to feminist care ethics. In actuality, everyone needs care at some point in their lives. The law conceals this reality by disregarding household work. It disregards the care that makes life and work possible while valuing commercial work[589].

[587] Silvia Federici, Revolution at Point Zero (2012)
[588] Judith Butler, Gender Trouble (1990)
[589] Catharine A. MacKinnon, Toward a Feminist Theory of the State (1989)

Therefore, home work is not recognized as charity under feminist legislation. Real equality, justice, and respect for women's dignity depend on it.

Judicial Recognition and Emerging Trends

Indian courts have begun to recognize the true economic importance of unpaid housework in recent years. Because they did not get a paycheck, homemakers were once viewed as individuals who were financially dependent on others. However, judges are gradually realizing how crucial household chores like cooking, cleaning, child care, and housekeeping are to the family's general well-being and financial security. These jobs have actual economic value since they are comparable to services that people would otherwise have to pay for.

This shift is seen in situations of auto accidents[590]. Courts now occasionally determine compensation when a homemaker is killed in an accident by assigning a predetermined value to her household labor. This is a significant shift from the previous notion that housework has little financial value[591]. Similarly, courts now have a greater understanding of how a homemaker contributes to the family's wealth when making maintenance or alimony decisions. She helps the earning member and enables them to thrive at work by taking care of the family and home. These days, judgments about spousal support and divorce settlements take this contribution into account.

These court rulings align with fundamental principles such as equality and dignity. They demonstrate the value of unpaid domestic labor to society as a whole and not simply as a personal obligation. Caregiving is gradually becoming recognized as legitimate and useful job. This acknowledgment is still restricted, though. Courts discuss the importance of housework mostly in cases involving accidents or maintenance. There is still no appropriate legislation that provides social security, insurance, pensions, or earnings to homemakers.

Therefore, the legislation has not completely altered even if courts recognize the value of domestic work. Larger policy adjustments are required because housework is still not adequately safeguarded.

FINDINGS

[590] Kirti & Anr v. Oriental Insurance Co. Ltd., (2021) 2 S.C.C. 166 (India)

[591] Arun Kumar Agrawal v. Nat'l Ins. Co. Ltd., (2010) 9 S.C.C. 218 (India)

According to the study, India's laws still do not adequately recognize or value unpaid domestic labor. This occurs as a result of the law's extremely limited definition of work. It primarily views work as labor performed for pay under the supervision of an employer in factories, offices, or other workplaces. This is why domestic tasks like cooking, cleaning, caring for children and the elderly, and running the house are not considered legitimate jobs. As a result, homemakers are not regarded as employees. They are not entitled to labor rights such as social security, pensions, minimum pay, or protection at work. There is more to this issue than a simple legal error.

However, the Indian Constitution offers an alternative perspective on this matter. The requirement to appreciate and acknowledge unpaid care work is supported by concepts like dignity, equality, and social justice, particularly under Articles 14, 15, and 21. Women are most negatively impacted when domestic work is not respected. Real equality in society is weakened and gender inequality is increased as a result. Fair living circumstances and just work are also mentioned in the Directive Principles of State Policy, therefore laws should not disregard care work.

Protection for domestic workers is highly supported by feminist legal theory. It illustrates how caregiving and household chores support families and the economy. Women have less freedom and become more economically dependent when this labor is invisible. Therefore, acknowledging household work is crucial for achieving gender justice and true equality.
Protection for domestic workers is highly supported by feminist legal theory. It illustrates how caregiving and household chores support families and the economy. Women have less freedom and become more economically dependent when this labor is invisible. Therefore, acknowledging household work is crucial for achieving gender justice and true equality.

CONCLUSION

This study demonstrates the peculiar status of unpaid domestic labor in India. Although it is crucial for families and society as a whole, the law does not regard it as legitimate employment. Cooking, cleaning, child care, and elder care are examples of household tasks that support the economy and help families survive. However, because labor laws only define "work" as labor performed for pay in offices or businesses, they do not encompass this type of activity. As a result, homemakers' significant economic and social contributions are disregarded by the law.

Legal regulations are not the only reason for this; outdated gender stereotypes that claim domestic work is a woman's inherent responsibility rather than skilled labor also play a role. However, the Constitution conveys a different message. It discusses equality, decency, and nondiscrimination. These principles uphold the notion that caregiving should be valued. Gender disparity worsens when household work is neglected. Women's labor is undervalued, unpaid, and uncounted. Court rulings have gradually begun to take a broader view of equality and dignity, which encourages individuals to reconsider the unseen nature of unpaid labor. A just society with respectable living standards for all is likewise supported by the Directive Principles.

This argument is strengthened by feminist theorists. They claim that household chores are more than just personal family responsibilities; they are essential to the functioning of society and the economy. Women continue to be financially dependent and have less freedom when this work is not acknowledged. Therefore, acknowledging unpaid household work is crucial for true equality and is not merely symbolic.

Additionally, courts have begun to value homemakers' labor, particularly in situations involving maintenance and compensation. Nowadays, judges acknowledge the economic worth of domestic employment. However, this acknowledgment is limited to certain situations. Benefits for homemakers, such as social security, insurance, and pensions, are still not fully covered by the legislation.

Ultimately, acknowledging unpaid domestic work involves more than just paying salary. It is about upholding dignity, addressing gender inequalities, and appropriately valuing the caregiving that sustains society.

Delimitation in India: Ensuring Equitable Representation in a Federal Democracy

Shivanshi Singh[592]

ABSTRACT

Representative democracy is based on delimitation to ensure that electoral boundaries do not disregard the principle of equal representation in the constitution, but are reflective of demographic reality. The procedure is based on Articles 81, 82, 170, and 330 of the Indian Constitution, supplemented by the Representation of the People Acts of 1950 and 1951, and further defined by subsequent Delimitation Commission Acts. There are also large discrepancies between states with different demographic growth patterns due to implementation problems stemming from freezes in constituency realignments (although this has a rock-solid legal foundation). Such misrepresentations put a strain on the federal balance of India, the proportional representation, and the concept of one person, one vote.

Although the Delimitation Commission had a legal jurisdictional basis, its deficiency in transparency, minimal judicial supervision, and weak procedures of participation, among others, cast doubts on independence and accountability. The lack of citizen engagement and misuse of modern technologies, such as Geographic Information Systems, are additional weaknesses of the institution. The experiences of such democracies as the US, Canada, and Australia show how justice can be enhanced by independent commissions, open processes, and technological progress. To critically review the system of delimitation in India, identify its institutional and constitutional weaknesses, and give reform-based strategies aimed at restoring the system of inclusion, proportionality, and democratic legitimacy, this paper adopts a doctrinal, analytical, and comparative perspective.

Keywords: Delimitation, Electoral Boundaries, Federalism, Electoral Reforms, Democratic Representation, Population Disparities, Malapportionment, Reserved Constituencies.

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INTRODUCTION

Representative democracy is based on the principle of delimitation, which is aimed at using the realities of demographics and the principle of equal representation. The issue of delimitation that concerns India is not a technical or an administrative process but it has a strong constitutional and political effect. India is a nation of great territory, unparalleled demographic diversity, and multi-layered socio-political complexity. It relies on the *Articles 81, 82, 170 and 330 of the Constitution* that jointly determine the proportional representation and the right to reserve the legislature seats to the Scheduled Castes and the Scheduled Tribes and the necessity to remake boundaries regularly, based on census reports. They are operationalised by the *Representation of the People Acts, 1950 and 1951 and the Delimitation Commission Acts that were enacted in the years 1952, 1962, 1972 and 2002.* Decisions by the courts have also contributed to this structure: *in Meghraj Kothari v.The Delimitation Commission*, the Supreme Court gave finality to Commission orders through the case of Delimitation Commission and other cases like *Indira Nehru Gandhi v. Raj Narain and Kuldip Nayar v. Union of India,* strengthened the centrality of electoral fairness and posed more questions of representation and balance of federalism.

In spite of these constitutional and statutory protections, delimitation has been a tough issue in India. Representational imbalances across states have been generated due to the *successive freezes on readjustments of constituencies in 1976, and later in 2001, and renewed in 2026*. States that grew more slowly continued to hold out disproportionate political influence, and fast-growing areas are still non-represented, which is worrying the principle of one person, one vote. These imbalances have caused stress on the proportional and federal equity as documented by the *reports of the 1973 and 2002 Delimitation Commissions* and the literature on the subject in such journals as the Indian Journal of Constitutional Law and Economic and Political Weekly. Institutional critiques also underscore the secrecy of the Delimitation Commission, where rulings are final but mostly not subject to judicial or public disclosure, which calls into doubt accountability and transparency. Meanwhile, the process has lacked a flexible and engaging nature because of structural bottlenecks, such as low levels of technological integration of technology tools, such as *Geographic Information Systems (GIS),* and poor participatory systems. It is in this context that the experience of other federal democracies like Canada, Australia, and the United States of America, during which

independent commissions, open processes, and legally enforceable protections against any partisan impact could be used to augment fairness in boundary demarcation.

This study thus takes a *doctrinal and analytical approach* to the constitutional, legislations and institutional provisions on delimitation in India. It critically analyses the historical development, the flaws of its operations, as well as the socio-political implications of the process, and puts it into wider comparative contexts. By doing so, it will outline the contradictions between the principles of constitutionality and politics, reveal the institutional loopholes in the sphere of transparency and accountability, and suggest a model reformed to ensure proportionality, inclusiveness, and democratic legitimacy in the Indian electoral process.

CONSTITUTIONAL AND LEGAL FOUNDATIONS OF DELIMITATION IN INDIA

India's constitutional structure for electoral delimitation was established as a framework to enable democratic representation to conform to the reality of demographics, yet preserve the federal balance of power. Basing its structure on *Articles 81, 82, 170, 327, and 329 of the Constitution*, this structure is representative of the dictum of one person one vote, but equally incorporative of the vast geographical and demographic imbroil of India. Nevertheless, the delimitation has caused very serious distortions in representational parity since 1976 due to the delays in delimitation, and thus raising concerns whether constitutional protection suffices in defending the balance of democracy and federalism.

At the center of this plan, *Article 81*[593] determines the number of Lok Sabha members not exceeding 550, with seats distributed between states in proportion to population *"as nearly as may be."* It is a compromise between absolute equality and geographical, administrative, and social considerations. *Article 82*[594] mandates readjustment of constituencies after every decennial census so that representation adjusts periodically in response to demographic change. *Article 170*[595] extends similar principles to the structure of state legislative assemblies. Along

[593] INDIA CONST. art. 81
[594] INDIA CONST. art. 82
[595] INDIA CONST. art. 170

with *Article 327*[596], giving Parliament the power over regulating elections, and *Article 329*[597], excluding judicial intervention in delimitation orders, these provisions together make proportionality, periodic resetting, and institutional finality constitutional principles underlying electoral representation. The legislative apparatus for effecting these provisions has been developed over a series of Delimitation Acts, the latest being the Delimitation Act, 2002[598]. This Act authorizes an autonomous Delimitation Commission to reorganize boundaries of constituencies, subject only to population parity and, in addition, taking into account elements of geographical compactness, administrative convenience, and maintenance of local units. The Act does leave room for public input through objections and hearings, thus in theory fixing transparency into the process. In reality, though, the mechanisms have been denounced as constrained and symbolic, with the Commission still holding virtually absolute power to make binding orders not subject to review by the courts.

The value of electoral equality, as expressed in the maxim *"one person, one vote, one value",* is the basis of the constitutional and statutory regime. Though not directly stated in the Constitution, the value has been reaffirmed in judicial decisions. Thus, the Court emphasized the significance of free and fair elections to constitutional democracy in *Indira Gandhi v. Raj Narain*[599]. Electoral equality demands that all voters' votes be of equal weight, and this can be achieved only by redistributing constituencies every now and then due to population changes. This goal is not compatible with other constitutional compulsions, i.e., the necessity of reserving seats for the Scheduled Castes and Scheduled Tribes to enable their political representation and to enable geographically scattered or thinly settled regions.

The greatest distortion of this system has come from the freeze on delimitation inserted by the *42nd Amendment of 1976*[600]. Driven by fears that states that were successfully carrying out family planning programs would be penalized with fewer seats, the amendment delayed delimitation after the 2001 Census. This delay was again extended by the *84th Amendment of 2001*[601] until after the *first census after 2026*. The outcome is a five-decade-long freeze on the

[596] INDIA CONST. art. 327
[597] INDIA CONST. art. 329
[598] Delimitation Act, No. 33 of 2002, INDIA CODE (2002)
[599] Indira Nehru Gandhi v. Raj Narain, (1975) Supp. SCC 1 (India)
[600] The Constitution (Forty-second Amendment) Act, 1976, INDIA CODE (1976).
[601] The Constitution (Eighty-fourth Amendment) Act, 2001, INDIA CODE (2001).

constitutional process designed to rebalance political representation. The implication is dire: Lawmakers from densely populated states like Uttar Pradesh now represent almost 1.75 million people[602], while lawmakers from relatively smaller states represent a much smaller number of constituents. As a result of this discrepancy, votes in various states carry varying weights, making the democratic value of a vote contingent on its location.

The freeze also increased federal imbalances. Northern and eastern states, with higher rates of population growth, are underrepresented in national decision-making, while southern and western states that had previously achieved demographic stabilization maintained comparatively higher representation. This disparity has increased regional tensions as fast-growing states feel increasingly underrepresented in Parliament. The possibility that the *freeze will expire in 2026* adds to these worries because any seat reallocation is likely to encounter opposition from underrepresented states that threaten federal stability[603]. Together, these developments highlight a serious structural weakness in India's delimitation framework as outlined in the constitution. The plan was designed to guarantee representational equality through regular rebalancing, but both federal balance and representational equality have been jeopardized by later political decisions to halt this process. The resulting distortions call into question not only the "one person, one vote" principle but also the long-term sustainability of democratic legitimacy in the absence of regular rebalancing to account for demographic shifts.

THE DELIMITATION COMMISSION: STRUCTURE, INDEPENDENCE, AND ACCOUNTABILITY

As a specialized body charged with redrawing parliamentary and assembly constituencies to account for demographic shifts, the Delimitation Commission is made up of the Chief Election Commissioner, the State Election Commissioners, and a retired Supreme Court judge who serves as chair. The independence of the Commission is called into question because the executive is in charge of choosing the chairperson, despite the fact that this tripartite structure aims to strike a balance between judicial independence, electoral expertise, and state-level representation. Although the structure appears carefully designed, this involvement of the executive creates doubts about neutrality even before the delimitation exercise begins.

[602] *Ronojoy Sen,* Delimitation of Constituencies in India: Southern States Up in Arms, ISAS Brief (April 15, 2025)
[603] Punishment for Progress': India's Electoral Redistricting Plan Deepens North-South Rift," Anadolu Agency (AA), Mar. 18, 2025

The powers conferred on the Commission are extensive and binding. Its orders, once published in the Official Gazette, carry the force of law and cannot be modified by Parliament or state legislatures. Furthermore, courts are not permitted to consider challenges against these orders under *Article 329(a)* of the Constitution[604]. Such finality was intended to avoid electoral delays, but in reality, it has created a body with few accountability procedures and decisions that are shielded from public scrutiny. As a result, the Commission functions within a closed framework, with neither the decision-making criteria nor the rationale behind boundary decisions available for public review.

Judicial interpretation has reinforced this framework of finality. *In Meghraj Kothari v. Delimitation Commission*, the Supreme Court ruled that the Commission's order could not be challenged in court after it was published[605]. In a similar vein, the Court declined to consider claims of irregularities in the delimitation process in *Lakshman Singh v. State of Bihar*, stating that meddling would impair the conduct of elections[606]. In the 2006 case of *Kuldip Nayar v. Union of India*[607], the Court indirectly acknowledged that the authority of electoral institutions must be in accordance with constitutional principles, while affirming the importance of these institutions to democratic legitimacy without specifically addressing delimitation. The idea that the Commission's orders are immune to substantive review has been solidified by these decisions, which have reduced the amount of room available to consider issues of transparency or fairness.

Another major issue lies in the Commission's dependence on the executive for its constitution, funding, and initiation of work. Despite being intended to be an independent body, the Commission is vulnerable to indirect influence because of its reliance on government discretion. The opaqueness of its processes exacerbates this dependence. Although public consultations are formally part of the process, their reach is frequently restricted, and they are not required to address objections raised during hearings or offer thorough justifications. Suspicions of political bias have frequently arisen as a result of the lack of transparency, especially when results seem to favor particular states or areas.

[604] INDIA CONST. art. 329(a)
[605] Meghraj Kothari v. Delimitation Commission & Ors., 1967 AIR 669, 1967 SCR (1) 400 (India)
[606] Lakshman Singh v. State of Bihar (now Jharkhand), *LL* 2021 SC 319 (India).
[607] Kuldip Nayar v. Union of India, (2006) 7 SCC 1 (India)

The history of delimitation in India is also an extension of the political aspects of such a process. Although delimitation exercises were conducted following the *1951, 1961, and 1971 censuses*[608], the *42nd Constitutional Amendment of 1976* put constituency boundaries on hold until after the 2001 census[609]. This hold was later extended by the *84th Amendment in 2001* to persist until after the 2026 census[610]. The consequence has been over half a century of non-recalibration of constituencies in the face of large population shifts. This has resulted in imbalances of representation in favor of high-growth states like Uttar Pradesh and Bihar, which are under-represented, and low-growth states like Kerala and Tamil Nadu, which still hold a disproportionately large number of seats[611].

The combination of these characteristics highlights the primary issues with the Delimitation Commission's functioning: the executive's influence over appointments[612], the decision-making process's immunity from oversight[613], the judiciary's endorsement of its unchecked finality[614], its dependence on the government for funding and action initiation, the lack of transparency in its proceedings, and the distortions resulting from the prolonged freeze on constituency boundaries[615].

FEDERAL BALANCE AND ELECTORAL REPRESENTATION

Outdated constituency boundaries have significantly undermined representational equality in India. The freeze on delimitation imposed by the *42nd Constitutional Amendment in 1976*[616], and later extended by the *84th Constitutional Amendment in 2002*[617], has hindered regular adjustments of constituencies to align with demographic changes. Consequently, the allocation

[608] See Articles 81–82, Constitution of India; Delimitation Acts of 1952, 1962, and 1972

[609] Constitution (Forty-Second Amendment) Act, 1976, inserting Article 82 proviso (freezing readjustment until after 2001 census).

[610] Constitution (Eighty-Fourth Amendment) Act, 2001 (enacted in 2002), extending freeze on readjustment until the first census after 2026

[611] Alistair McMillan, Delimitation, Democracy and the State: Redrawing India's Electoral Map (Oxford University Press, 2009), pp. 52–55

[612] Delimitation Commission Act, 2002, s. 3 (appointments by the central government)

[613] Article 329(a), Constitution of India (bar on judicial review of delimitation orders)

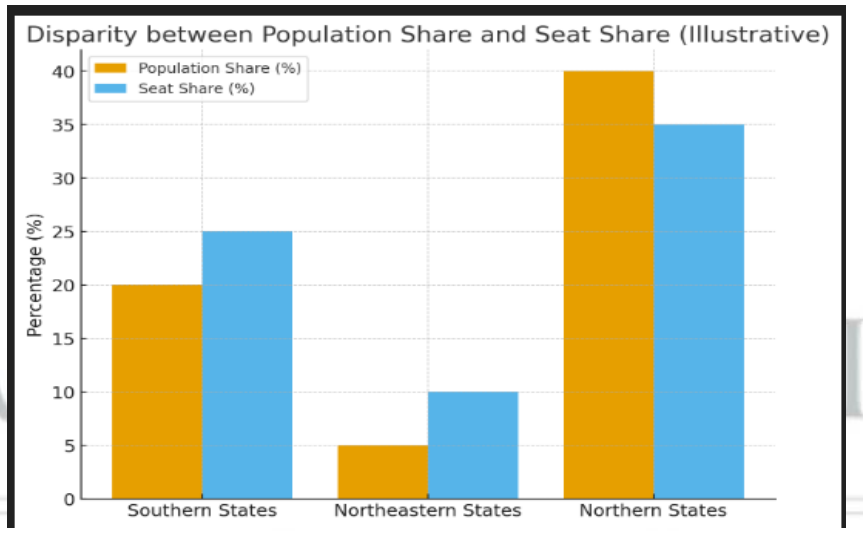
[614] Kuldip Nayar v. Union of India, (2006) 7 SCC 1 (affirming institutional autonomy and finality of delimitation-related processes)

[615] Punishment for Progress: India's Electoral Redistricting Plan Deepens North-South Rift, Anadolu Agency, 5 Sept. 2023

[616] The Constitution (Forty-Second Amendment) Act, 1976, No. 42, Acts of Parliament, 1976 (India)

[617] The Constitution (Eighty-Fourth Amendment) Act, 2002, No. 84, Acts of Parliament, 2002 (India)

of parliamentary seats is still based on the 1971 Census[618], despite the Indian population increasing from 548 million in 1971 to 1.21 billion by 2011[619]. This discrepancy has distorted the federal balance, disproportionately benefiting slower-growing states at the expense of those with more rapid population growth. For instance, according to the 2011 Census, a Member of Parliament from Uttar Pradesh represents an average of 2.53 million people, whereas an MP from Kerala represents approximately 1.84 million[620]. Such significant differences clearly demonstrate how the principle of "one person, one vote" has been compromised[621].



A comparative bar graph plotting the population share versus static seat share for states such as Uttar Pradesh, Bihar, and Rajasthan on one side, and Kerala and Tamil Nadu on the other, would visually highlight this imbalance[622].

These differences in representation have a significant impact on the dynamics of cooperative federalism, extending beyond mere numerical disparities. Faster-growing, underrepresented states, primarily located in the Hindi heartland, have less influence over federal policies and parliamentary decisions. In contrast, overrepresented states in the West and South maintain

[618] The Delimitation Act, No. 33 of 1972, § 3, Gazette of India, Extraordinary, pt. II, sec. 1 (India)

[619] Office of the Registrar Gen. & Census Comm'r, India, Ministry of Home Affs., Census of India 2011: Provisional Population Totals—India Data Sheet (2011), https://censusindia.gov.in/2011-prov-results

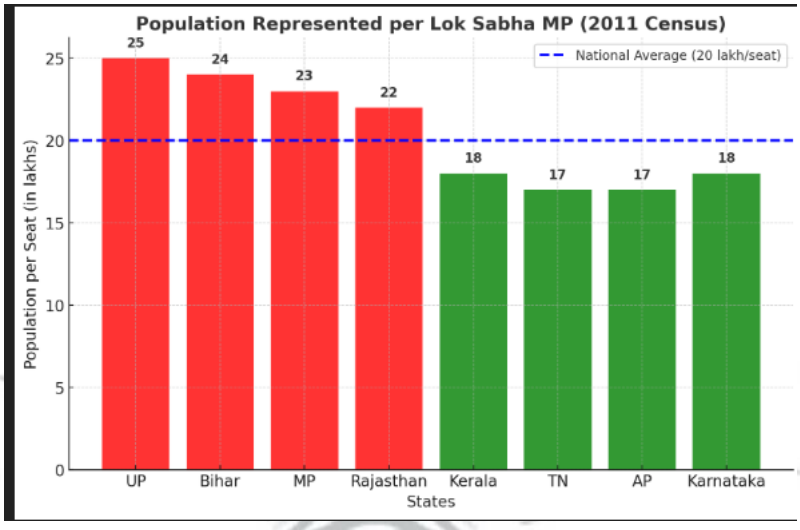
[620] Election Comm'n of India, Statistical Report on General Elections, 2014 to the 16th Lok Sabha: Vol. I (2014), https://eci.gov.in/statistical-report/statistical-reports

[621] *See* Reynolds v. Sims, 377 U.S. 533, 558 (1964) (recognizing "one person, one vote" as essential to representational equality). *See also* S.R. Bommai v. Union of India, (1994) 3 S.C.C. 1 (India) (discussing federal balance and representative democracy in the Indian context

[622] Office of the Registrar Gen. & Census Comm'r, Ministry of Home Affs., Gov't of India, *Census of India 2011: Provisional Population Totals* (2011), https://censusindia.gov.in/2011-common/censusdata2011.html.

disproportionate bargaining power in federal negotiations and resource distribution. For example, states like Kerala, which comprise only 2.6% of the population, hold nearly 3.5% of the Lok Sabha seats. In comparison, Uttar Pradesh, with a population of about 16%, possesses only 14% of the seats[623].

Here is a graphical representation of the **population represented per Lok Sabha MP** *(based on 2011 census data).*



Electoral contests within states are seriously skewed on account of uneven population densities in different constituencies. In growth areas, the electorates in some constituencies are out of proportion, producing so-called *"mega-seats."* For example, in 2019, the Malkajgiri constituency in Telangana had more than 3 million registered voters, while Lakshadweep had less than 55,000[624]. This difference tilts the fairness of electoral contests and undermines the principle that one vote equals one vote. In addition, smaller constituencies also result in *"safe seats,"* which reduces the competitiveness of the elections and consolidates the strengths enjoyed by incumbents[625]. A graphical chart depicted the population represented by each Lok

[623] Election Comm'n of India, Statistical Report on General Elections, 1971 to the Fifth Lok Sabha (1971), https://eci.gov.in/statistical-report/statistical-reports.

[624] Election Comm'n of India, Statistical Report on General Elections, 2019 to the 17th Lok Sabha (2019), https://eci.gov.in/statistical-report/statistical-reports.

[625] Yogendra Yadav, *Electoral Politics in the Time of Change: India's Third Electoral System, 1989–99*, 40 Econ. & Pol. Wkly. 2393, 2395–96 (2005) (discussing how constituency size and malapportionment affect competitiveness and safe seats).

Sabha MP, according to the 2011 Census, it highlighted the unfairness in the electoral burden shared by constituencies[626].

The distortions further impact the representation of the minorities. The number of SC/ST's reserved constituencies is proportional to their population shares. But since delimitation was last carried out in 1971, the distribution of the reserved seats is no longer commensurate with today's realities. Though the SC population grew from 14.6% in 1971 to 16.6% in 2011, and that of ST from 6.9% to 8.6%, the number of reserved seats has been stuck in the same position[627]. This deficit has undermined meaningful representation for the two groups, especially where states have above-average growth rates. Minority and urban poor communities have a similar problem, as constituency limits no longer accurately mirror demographic changes brought about by massive migration and urbanization, further diluting their collective voice[628].

Historically, India attempted to tie representation to demographic change by delimitation at intervals following each census. The *first Delimitation Commission was formed in 1952, followed by commissions in 1963 and 1973*[629]. Yet, the freeze of 1976, which was justified as a safeguard for states that managed to successfully effect family planning programs, disrupted this sequence[630]. The *84th Amendment Act,2001,* prolonged the freeze until after the 2026 Census[631], such that India will have taken over five decades to not re-calculate its constituencies. This has made the regional imbalances structural, producing a representation system based on the demographic composition of 1971 and not India today[632].

[626] Office of the Registrar Gen. & Census Comm'r, Ministry of Home Affs., Gov't of India, *Census of India 2011: Provisional Population Totals* (2011), https://censusindia.gov.in/2011-common/censusdata2011.html.

[627] Office of the Registrar Gen. & Census Comm'r, Ministry of Home Affs., Gov't of India, *Census of India 1971: General Population Tables* (1973); Office of the Registrar Gen. & Census Comm'r, Ministry of Home Affs., Gov't of India, *Census of India 2011: Primary Census Abstract* (2013), https://censusindia.gov.in/2011-common/censusdata2011.html

[628] Christophe Jaffrelot, *India's Silent Revolution: The Rise of the Lower Castes in North India* 112–15 (2003); Niraja Gopal Jayal, *Democracy and the State: Welfare, Secularism and Development in Contemporary India* 178–80 (1999)

[629] Delimitation Commission Act, No. 81 of 1952, India Code; Delimitation Commission Act, No. 20 of 1962, India Code; Delimitation Act, No. 76 of 1972, India Code

[630] The Constitution (Forty-Second Amendment) Act, 1976, § 55, No. 101, Acts of Parliament, 1976 (India)

[631] The Constitution (Eighty-Fourth Amendment) Act, 2001, No. 2, Acts of Parliament, 2002 (India)

[632] See Niraja Gopal Jayal, *Representing India: Ethnic Diversity and the Governance of Public Institutions* 95–98 (2006) (discussing demographic imbalances caused by the freeze); Alistair McMillan, *Delimitation, Democracy, and End of Constitutional Freeze* 41 Econ. & Pol. Wkly. 123–27 (2006)

The institutional structure of the Delimitation Commission adds to these issues. Although it is conceived as an autonomous institution, its orders are conclusive and outside the purview of judicial review under Article 329(a) of the Constitution of India[633]. In *Kuldip Nayar v. Union of India,* the Supreme Court reiterated the doctrine of finality, declaring that although delimitation has close to absolute immunity, judicial review can be initiated if constitutional requirements are contravened[634]. This highlights both the significance and susceptibility of the Commission's autonomy. Limited transparency, executive control over timing, and a lack of participatory mechanisms are claimed to have eroded its credibility by strengthening political perceptions of imbalance[635].

Together, these factors demonstrate that outdated constituency boundaries have weakened electoral competition, distorted the federal balance, and diluted the representation of marginalized communities. The cumulative effect is a structural distortion in India's democracy, where the principle of equal representation has eroded, leaving the system increasingly vulnerable to questions of legitimacy[636].

TECHNOLOGY AND CITIZEN ENGAGEMENT IN DELIMITATION

Delimitation in India today cannot remain credible if it continues to rely on outdated methods. The task of redrawing constituencies to reflect demographic realities has become increasingly complex, and modern tools like *Geographic Information Systems* and *digital demographic mapping* offer a way forward. These technologies make delimitation data-driven, transparent, and visually verifiable. Unlike paper maps and manual tabulations, GIS allows boundary designers to balance population equality with real-world considerations such as rivers, terrain, administrative limits, and settlement clusters[637]. By layering population density, electoral rolls, SC/ST concentrations, and urban expansion patterns, GIS helps reveal the trade-offs between compactness and community integrity. This visibility is essential because delimitation directly affects the value of votes, the federal balance between states, and ultimately the legitimacy of

[633] INDIA CONST. art. 329(a)

[634] *Kuldip Nayar v. Union of India*, (2006) 7 S.C.C. 1 (India)

[635] Alistair McMillan, *Delimitation, Democracy, and End of Constitutional Freeze*, 41 Econ. & Pol. Wkly. 123–27 (2006)

[636] Niraja Gopal Jayal, *Representing India: Ethnic Diversity and the Governance of Public Institutions* 101–05 (2006)

[637] Anjali Busar, *Gerrymandering and GIS: A Comparative Study of India and USA*, 6 I.J.L.S.I. 355, 367–75 (2024)

democratic representation. The process begins with reliable, high-resolution base data. Census enumeration blocks, cleaned electoral rolls, and verified boundary files form the foundation, supported by satellite imagery in rapidly urbanizing areas. Data must be standardized, geocoded, and accompanied by metadata to ensure accuracy and reproducibility[638]. The use of transparent formats like *GeoJSON* ensures public access and independent verification. When populations are mapped at the smallest feasible unit, constituency boundaries can be optimized in a way that balances equality with community preservation. Without this, the process risks arbitrariness and political manipulation. Designing fair constituencies also requires more than just equal numbers. Algorithms can help, but they must be guided by principles: contiguity, respect for administrative boundaries, compactness, and community cohesion[639]. Techniques such as integer programming, shortest splitline, or heuristic aggregation are useful, but their assumptions and weightings must be disclosed. Publishing diagnostics, such as maximum population deviations, compactness scores, and the number of administrative units split, allows citizens and experts to judge the fairness of the maps. In a democracy, opacity breeds suspicion, but transparency creates trust[640]. Technology, however, is only one half of the equation. Citizen participation must be woven into the process. Interactive public portals can display draft maps with toggled layers and allow citizens to submit georeferenced objections or even alternative maps. Offline methods, such as community hearings, local language workshops, and mobile feedback units, ensure that rural and marginalized voices are not excluded. Crucially, the Commission must respond publicly to inputs, showing how maps were altered or why suggestions were not adopted. This culture of reasoned explanation makes the process accountable, rather than perfunctory[641]. Global experience shows the benefits of this approach. In the United States, independent commissions rely heavily on GIS, publishing draft plans and inviting citizen-drawn alternatives[642]. Kenya has institutionalized public hearings where local realities shape electoral boundaries. These examples prove that technology can empower both administrators and citizens, making redistricting not just a technical exercise but a democratic one. For India, where representation is intimately tied to federal balance and social justice, the

[638] Mark J. Salling & Blake Esselstyn, *Redistricting: A Guide for the GIS Community* (2019).

[639] Brookings Institution, *Principles for Transparency & Public Participation in Redistricting* (July 2021), https://www.brookings.edu/articles/principles-for-transparency-and-public-participation-in-redistricting/

[640] Id.

[641] Anjali Busar, *Gerrymandering and GIS: A Comparative Study of India and USA*, 6 Indian J. Legal & Soc. Inquiry 355 (2024), https://ijlsi.com/gerrymandering-and-gis-a-comparative-study-of-india-and-usa/

[642] Brookings Institution, *Principles for Transparency & Public Participation in Redistricting* (July 2021), https://www.brookings.edu/articles/principles-for-transparency-and-public-participation-in-redistricting

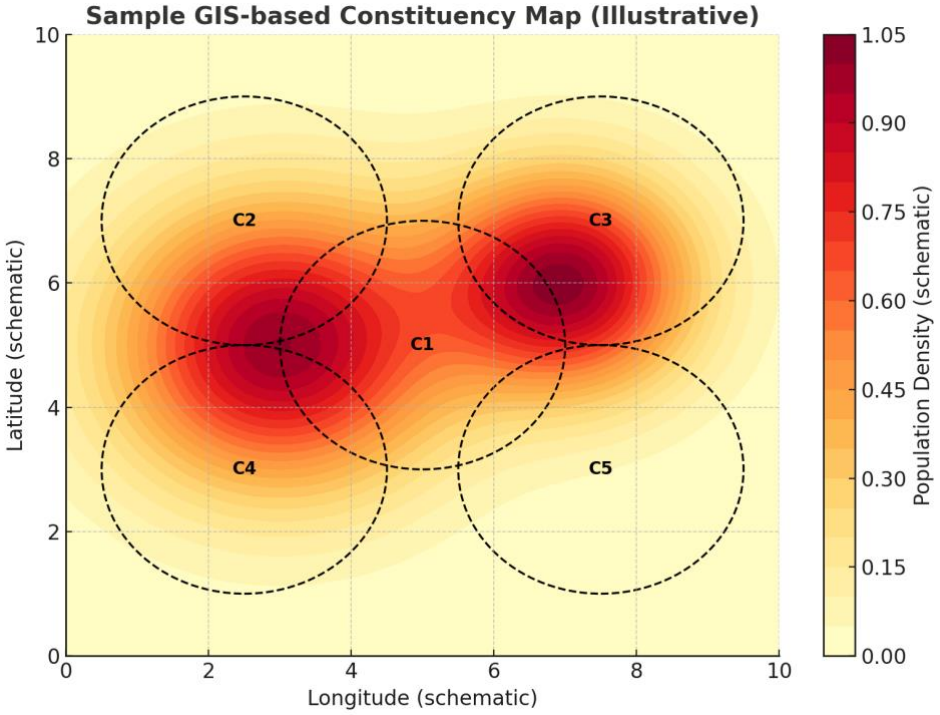
stakes are even higher. Integrating GIS with participatory mapping is not a luxury; it is a democratic necessity. Building such a framework requires institutions that are permanent, skilled, and transparent. A dedicated technical secretariat with geospatial experts, statisticians, and outreach officers would provide continuity and expertise. Open data rules would make every input, algorithm, and diagnostic available for independent scrutiny. Privacy safeguards would ensure that sensitive household data remains protected, while aggregated layers are shared for public oversight[643]. These steps would anchor delimitation in credibility rather than controversy. India already has experience with GIS-based projects, such as the Bhoomi Project in Karnataka, NECTAR's mapping initiatives in the northeast, and various land boundary and property demarcation efforts[644]. To capture this vision in concrete terms, a schematic GIS-based constituency map can serve as a powerful illustration of how layered data and visual diagnostics make the delimitation process both transparent and comprehensible. Such a map would display a base layer of population density, overlaid with demographic details such as SC/ST concentrations, urban growth zones, and key transport corridors. Proposed constituency boundaries could then be traced across these layers, annotated with indicators like population deviation percentages and compactness scores.

By making visible the trade-offs between equality, geography, and community integrity, the map transforms an otherwise technical process into something that citizens and experts alike can evaluate and trust[645].

[643] RGICS, *Progress in India's Land Boundary Mapping: Project Examples & GIS Practices* (2023), https://www.rgics.org/environment/progress-in-indias-land-boundary-mapping/

[644] Rajiv Gandhi Institute for Contemporary Studies (RGICS), *Progress in India's Land Boundary Mapping: Project Examples & GIS Practices* (2023), https://www.rgics.org/environment/progress-in-indias-land-boundary-mapping/

[645] Mark J. Salling & Blake Esselstyn, *Redistricting: A Guide for the GIS Community* 12–16 (2019), available at Cleveland State Univ. Engaged Scholarship, https://csuohio.elsevierpure.com/en/publications/redistricting-a-guide-for-the-gis-community



Superimposed on this heat map are dashed circles representing five constituencies (C1–C5), each designed to encompass different population clusters. This visualization highlights how GIS tools can help balance population equality across constituencies while accounting for geographical distribution.

India cannot wait until 2026 to rethink how delimitation is carried out. Piloting GIS-based, participatory methods in select states would allow refinement before nationwide rollout. Success should be measured not just by mathematical precision, but by inclusivity, public engagement, and independent verification. In an era where democratic legitimacy depends on fairness and transparency, the integration of technology and citizen voice into deliberation is both urgent and unavoidable[646].

COMPARATIVE INTERNATIONAL PRACTICES AND LESSONS FOR INDIA

Delimitation is far more than a technical cartographic practice; it is a highly political practice that defines the nature of democratic representation itself. As a compiler based on *comparative experiences* in more advanced regimes of redistricting, *three key pillars of credibility* have been

[646] Anjali Busar, *Gerrymandering and GIS: A Comparative Study of India and USA*, Int'l J. Legal Sci. & Innovation (2024), https://ijlsi.com

identified, including independent institutions, transparent and rule-based methodologies, and significant levels of public participation[647]. These lessons are especially good in the case of India, where the delimitation has long been procrastinated, and where it is frequently regarded with suspicion of executive influence. They not only point out what must change, but also how trust can be restored in a process that is at the core of representative democracy.

It is one of the obvious lessons during the overseas experience that the insulating effect of redistricting agencies has on day-to-day politics. *In Canada, the UK, and South Africa,* commissions are statutorily independent, multi-member, and are appointed by focusing on energy, dissipating the partisan capture[648]. In India, on the contrary, the system is based on ad-hoc commissions formed by the executive. Nor is it beyond imagination to envision a more robust and permanent, statutory commission with open-minded appointment processes through which the judicial, legislative, and technical benefits of scale can be achieved in India[649]. An ongoing body is the assurance of continuity; it creates institutional memory and minimizes ad-hoc improvisation.

The importance of transparency and rules that are properly codified is also of utmost importance. This is because comparative models have explicit, prioritized, and measurable criteria, such as population parity, compactness, and respect of administrative boundaries, which are implemented with tolerances[650]. In the case of India, the ambiguous constitutional text under Article 82 has provided ample discretion, which has created an mark in paraimpression of arbitrariness[651]. Making all methodologies transparent in the statute in codifying delimitation standards and ensuring that each draft map is defended on objective

[647] *Principles for Transparency and Public Participation in Redistricting*, Brookings Institution (2021), https://www.brookings.edu

[648] Lisa Handley, *A Comparative Analysis of Redistricting Institutions in Democracies Worldwide*, 52 Election L.J. 1 (2018

[649] Anjali Busar, *Gerrymandering and GIS: A Comparative Study of India and USA*, Int'l J. Legal Sci. & Innovation (2024), https://ijlsi.com

[650] Organisation for Economic Co-operation and Development, *Constitutions in OECD Countries: A Comparative Study* (2022), https://www.oecd.org/content/dam/oecd/en/publications/reports/2022/02/constitutions-in-oecd-countries-a-comparative-study_3fd8dba8/ccb3ca1b-en.pdf

[651] Vasudev Devadasan, *Delimitation – Constitutional Law and Philosophy*, Constitutional Law and Philosophy (June 9, 2025), https://indconlawphil.wordpress.com/category/delimitation/.

metrics would not only reduce manipulation but also face expert and civic scrutiny. Openness makes redistricting a democratic process that is open to scrutiny[652].

Such openness is given by technology. Contemporary commissions are based on GIS services, replicable datasets, and interactive mapping instruments[653]. India ought to also make three main investments: a clean block-level census and electoral information[654], an open-data portal that people can access[655], and version-controlled maps with shapefiles that anyone can download[656]. The results of such an ecosystem can be viewed interactively, competing proposals can be compared, and impacts may be objective[657]. More importantly, it gives civil society, researchers, and the common people the power to analyze and even suggest alternative boundaries and make transparency a real accountability[658].

The participation of the people also needs to shift out of symbolic hearings. The most powerful models institutionalize *multi-modal interaction*: citizen-generated maps, official response mandates by commissions, and local hearings, which in fact influence results[659]. In the case of India, it would entail outreach informing in more than one language in the rural and urban regions, statutory minimum consultation times, and a requirement that the reasons as to why the objections were or were not granted[660]. Once visible and tangible impacts are generated through a consultation process, this enhances the legitimacy and curbs any opposition to hard redistributed matters[661].

[652] Oxford Research Encyclopedia of Politics, *Transparency in Public Administration*, May 29, 2020, https://oxfordre.com/politics/display/10.1093/acrefore/9780190228637.001.0001/acrefore-9780190228637-e-1404

[653] India GIS Datasets / ML Infomap, University of Pennsylvania Libraries (Jan. 23, 2023), https://guides.library.upenn.edu/IndiaGISdatasets

[654] Id.

[655] Id.

[656] Id.

[657] Mahmood Khosrowjerdi, *Good Governance and National Information Transparency: A Comparative Study of 117 Countries*, arXiv (Oct. 24, 2022), https://arxiv.org/abs/2210.13151

[658] Vasudev Devadasan, *Federalism – Constitutional Law and Philosophy*, Constitutional Law and Philosophy, https://indconlawphil.wordpress.com/tag/federalism/

[659] OECD, *Constitutions in OECD Countries: A Comparative Study* (2022), https://www.oecd.org/content/dam/oecd/en/publications/reports/2022/02/constitutions-in-oecd-countries-a-comparative-study_3fd8dba8/ccb3ca1b-en.pdf

[660] Id.

[661] Id.

Meanwhile, the judicial review should balance it[662]. As the latter requires finality to avoid electoral paralysis, the latter also requires total insulation to make the review a lost cause[663]. The international practice is inclined toward the restricted judicial review, i.e. to the procedural fairness, breach of the statutory requirements, or corruption[664]. India might follow such an exemplary formula: keeping things in check and yet offering a constitutional safety valve in case of existential irregularities[665].

It is not easy to adapt such lessons to India[666]. Its large size of demographic, diversity in administration, and differences in size between large and small states make it difficult to make direct transplants of foreign practices[667]. The bigger states require finer data and computational power, whereas the smaller states are afraid they will lose their representation in Parliament[668]. The solution to these issues is to have a gradual implementation process, test launch in a few states, technical centers in the region, and hybrid allocation formulas that combine population parity with minimal federal balancing[669]. These incremental and adaptive strategies are useful in dealing with the logistical as well as political opposition[670]. Federal sensitivities also require a cautious institutional design[671]. Experience demonstrates that intergovernmental consultation is more legitimate when structured[672]. India may codify institutionalized inputs at the state level and grant the ultimate power to the independent commission. Transitional provisions like linking the redistribution of seats with transfers of the Finance Commission would cushion states with representational or fiscal losses. That way, asymmetries of federalism are recognized without compromising the principle of equal representation.

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662 Vasudev Devadasan, *Delimitation – Constitutional Law and Philosophy*, Constitutional Law and Philosophy (June 9, 2025), https://indconlawphil.wordpress.com/category/delimitation/

663 Id.

664 OECD, *Constitutions in OECD Countries: A Comparative Study* (2022), https://www.oecd.org/content/dam/oecd/en/publications/reports/2022/02/constitutions-in-oecd-countries-a-comparative-study_3fd8dba8/ccb3ca1b-en.pdf

665 Id.

666 A.K. Verma, *Delimitation in India: Methodological Issues*, 41 Econ. & Pol. Weekly 794 (Mar. 4–10, 2006), https://www.jstor.org/stable/4417903

667 Sanjay Kumar, *Delimitation on Basis of 2001 Census: Damage Control Exercise*, 38 Econ. & Pol. Weekly (May 10–16, 2003), https://www.jstor.org/stable/4413540

668 Id.

669 Mahmood Khosrowjerdi, *Good Governance and National Information Transparency: A Comparative Study of 117 Countries*, arXiv (Oct. 24, 2022), https://arxiv.org/abs/2210.13151

670 Id.

671 Vasudev Devadasan, *Federalism – Constitutional Law and Philosophy*, Constitutional Law and Philosophy, https://indconlawphil.wordpress.com/tag/federalism/

672 OECD, *Constitutions in OECD Countries: A Comparative Study*, supra note 3

Sequencing is also significant[673]. The first reform steps must be a legislative clarification of the process of appointments and a delimitation criterion, and, subsequently, the formation of a permanent technical secretariat and an open-data infrastructure. Pilot projects should then be used to experiment with the application of GIS-based mapping and participatory hearings[674], and then replicated on a national scale[675]. The stages need to be evaluated against quantifiable standards, e.g., the decrease in deviations within the population or the growth in the number of verifiable submissions by the citizens[676]. This step-by-step process helps to avoid reforms falling on their own weight.

Lastly, communication is just as essential to political feasibility as is design[677]. The open processes, the open public communication, and the available visualizations of trade-offs would also decrease the level of suspicion and make redistribution seem less objectionable. Ownership can be shared through the establishment of a cross-party parliamentary oversight mechanism to receive reports by the Commission, as this may help to curb the feeling of executive domination. Reform should thus be more of a matter of trust-building than map-drawing.

Simply put, the world experience has shown India three timeless lessons, including institutionalizing independence, instilling transparency in rules and open data, and meaningful involvement[678]. In the case of India, the way ahead is not in wholesale imitation but in judicious adaptation, redefining these principles to its federal form, its population size, and its politics[679]. Properly done, this kind of reform can legitimize delimitation anew, help Americans have trust in their representatives again, and cement the democratic principles of the republic[680].

[673] Vasudev Devadasan, *Delimitation – Constitutional Law and Philosophy*, Constitutional Law and Philosophy (June 9, 2025), https://indconlawphil.wordpress.com/category/delimitation/

[674] India GIS Datasets / ML Infomap, University of Pennsylvania Libraries (Jan. 23, 2023), https://guides.library.upenn.edu/IndiaGISdatasets

[675] Mahmood Khosrowjerdi, *Good Governance and National Information Transparency: A Comparative Study of 117 Countries*, arXiv (Oct. 24, 2022), https://arxiv.org/abs/2210.13151

[676] OECD, *Constitutions in OECD Countries: A Comparative Study* (2022), https://www.oecd.org/content/dam/oecd/en/publications/reports/2022/02/constitutions-in-oecd-countries-a-comparative-study_3fd8dba8/ccb3ca1b-en.pdf

[677] Vasudev Devadasan, *Federalism – Constitutional Law and Philosophy*, Constitutional Law and Philosophy, https://indconlawphil.wordpress.com/tag/federalism/

[678] A.K. Verma, supra note 2

[679] OECD, supra note 6

[680] Mahmood Khosrowjerdi, supra note 5

TOWARDS A REFORM-ORIENTED MODEL OF DELIMITATION FOR INDIA

An integrated reform model should combine constitutional values with an institutional fix and technical innovation in such a way that delimitation can bring back proportionality without offending federal sensibilities[681]. The task is straightforward but challenging: to ensure that the seat assignment and the boundary drawing become transparent and inclusive data in time, in such a manner that the representation of the population becomes accountable for the demographic truth and that the trust of people towards the process is restored[682]. The succeeding paragraphs describe why each of the components is required, how it would operate, and what are the practical decisions that need to be taken to make it happen at scale[683].

The first thing to do is to increase the institutional independence since independence lacking credibility is suspect[684]. The Commission must be created on a more permanent statutory basis with a limited size of a core of multi-member with a professional technical secretariat[685]. A judicially nominated chair, a senior election official, and two independent experts (one demographer, one GIS specialist), and non-voting civil society observers may be in the core membership[686]. The appointment must be clear, and a cross-institutional selection panel, which incorporates judicial and parliamentary representation, should be used to take away the unilateral control of the executive[687]. Embossed tenure strong removal provisions eliminate

[681] Vasudev Devadasan, *Thinking Through Delimitation Part V: Independence and Integrity of the Delimitation Exercise*, Constitutional Law and Philosophy (June 9, 2025), https://indconlawphil.wordpress.com/2025/06/09/thinking-through-delimitation-part-v-independence-and-integrity-of-the-delimitation-exercise/

[682] A.K. Verma, *Delimitation in India: Methodological Issues*, 41 Econ. & Pol. Weekly 794 (Mar. 4–10, 2006), https://www.jstor.org/stable/4417903

[683] Sanjay Kumar, *Delimitation on Basis of 2001 Census: Damage Control Exercise*, 38 Econ. & Pol. Weekly (May 10–16, 2003), https://www.jstor.org/stable/4413540

[684] OECD, *Constitutions in OECD Countries: A Comparative Study* (2022), https://www.oecd.org/content/dam/oecd/en/publications/reports/2022/02/constitutions-in-oecd-countries-a-comparative-study_3fd8dba8/ccb3ca1b-en.pdf

[685] Office of the Principal Scientific Adviser to the Government of India, *Liberalized Mapmaking and Geospatial Data to Spur Development Across Sectors*, PSA India (Oct. 27, 2022), https://www.psa.gov.in/article/liberalized-mapmaking-and-geospatial-data-spur-development-across-sectors/3584

[686] India GIS Datasets / ML Infomap, University of Pennsylvania Libraries (Jan. 23, 2023), https://guides.library.upenn.edu/IndiaGISdatasets/IndiaElectionsGIS

[687] Constitution of India, art. 329A, https://www.constitutionofindia.net/constitution_of_india/part_xii/article_329a

conflict-of-interest provisions, and institutional memory among delimitation cycles will be formed.

The second periodic and automatic revisions that will be tied to the decennial census will eliminate the occurrence of long freezes and increase in malapportionment[688]. This in practice implies statutory triggers whereby the Commission has to initiate a delimitation exercise within a timeframe after release of census findings (such as 6-12 months) and release draft maps within another statutory period (such as 9-12 months)[689]. When constitutional changes are needed politically to change seat allocation formulae, they must be sought in parallel, but the working pace may be fixed by statute so that the technical machinery is not tied up by political lethargy[690]. Strong data reconciliation measures between census blocks and the electoral roll should be required, such that there are checks on the population counts that are used to determine the number of seats apportioned[691].

Third, make GIS and participatory mapping central to the methodology since transparency and reproducibility require technology[692]. The Commission will have to introduce a policy of open data disclosure that publishes clean geocoded census blocks, electoral roll shapefiles, and administrative boundaries in a machine-readable format[693]. Viewable as interactive maps with downloadable layers and diagnostics containing population deviation statistics, compactness measures, and group split counts, and signs of concentrated population groups should be published in all draft plans. Algorithms that are applied to create optimised proposals are to be documented and made public so that expert groups can replicate findings[694]. Notably, the technical pipeline should be complemented by a public portal that is easily available to the citizens who are able to see the layers and submit georeferenced objections and upload

[688] Raphael Susewind, *GIS Shapefiles for India's Parliamentary and Assembly Constituencies Including Polling Booth Localities*, Univ. of Bielefeld (2014), https://pub.uni-bielefeld.de/record/2674065

[689] Sahil Kale et al., *A Modern Approach to Electoral Delimitation Using the Quadtree Data Structure*, arXiv (Feb. 2024), https://arxiv.org/abs/2402.09336

[690] Survey of India, *Digital Vector Database - Entire Country - Scale 1:1M*, https://onlinemaps.surveyofindia.gov.in/AboutPortal.aspx

[691] UN Statistics Division, *Handbook on Geographic Information Systems and Digital Mapping*, https://unstats.un.org/unsd/demographic/standmeth/handbooks/series_f103en.pdf

[692] Election Commission of India, *World's Largest Electoral Dataset Initiative*, YouTube (Apr. 2023), https://www.youtube.com/watch?v=JzZhBhl8fv0

[693] Survey of India, *Nakshe Portal*, https://datameet.org/category/map/

[694] Id.

alternative maps that will be compared algorithmically against its objective function by the Commission[695].

Fourth, design federal protection to control the sensitivity of interstate changes in restoring proportionality[696]. A sudden movement of seats may become politically destabilising when it is undertaken in a single step, thus ensuring a slow approach. These may be a gradual correction incorporated over two delimitation cycles or a two-formula weighting of the population heavily (say 75) and a small (say 25) constitutional/federal buffer to provide smooth sailing[697]. The sudden resource shock to the state that loses relative representation can be offset by transitional fiscal adjustments associated with the disbursements of the Finance Commission[698]. Any federal protection should be clear but not too prolonged and calculated clearly to avoid being an ongoing perversion.

Fifth, make sure that those marginalized are included in the process by ensuring that protections are procedural and data-driven. The reservation of SC/ST seats should be recalculated with the help of the existing demographic layers with micro-level mapping of cluster concentrations[699]. Community impact assessment of key boundary changes that are expected to change the ways of accessing political influence services and administrative coherence in SC/ST minorities and other vulnerable populations should be obligatory for the Commission. Outreach teams are required to be deployed to seek the inputs of the marginalised communities in their languages, and the Commission ought to publish reasoned responses of how these inputs influenced the final plan[700].

[695] Id.

[696] Milan Vaishnav & Jamie Hintson, *India's Emerging Crisis of Representation*, Carnegie Endowment for Int'l Peace (Mar. 14, 2019), https://carnegieendowment.org/2019/03/14/india-s-emerging-crisis-of-representation-pub-78588

[697] *Delimitation, Democracy, and Federalism: Options and Solutions*, The India Forum, https://www.theindiaforum.in/public-policy/delimitation-democracy-and-federalism-options-and-solutions

[698] Id.

[699] Achin Chin, *The Redistributive Effects of Political Reservation for Scheduled Castes and Scheduled Tribes* 4–7, https://www.uh.edu/~achin/research/w16509.pdf

[700] Id.

Sixth, adhere to a realistic and auditable phased roadmap of implementation[701]. Short-term actions will consist of legal housekeeping, which clarifies the data disclosure requirements and standards of statutory schedules on appointments. Some of the short-term activities include piloting GIS pipelines in some of the states, constructing a standing technical secretariat, and open data publication[702]. Medium-term measures would state the weightings of criteria, ratify appointment procedures, and increase pilots. Long-term work includes total delimitation nationwide, following the census and independent auditing, and post-delimitation auditing[703]. There must be a deliverables budget and technical audit on a phase-by-phase basis.

Seventh, set to measure tracking and evaluation of success. Such core indicators as malapportionment index (population per seat difference), median and maximum population deviation per constituency, number and diversity of georeferenced public submissions, proportion of public submissions receiving reasoned reply, transparency index of data and methodologies, and reproducibility scores of independent audit should be provided[704]. Technical measures may be supplemented with political and social measures, such as survey measures of people trusting the delimitation and formal grievances upheld[705].

Eighth, address political feasibility in advance by formulating mitigation. Expect resistance by staged correction, transitional fiscal compensation, expressly sunset clauses on federal buffers, party parliamentary oversight, and an effective public communications policy that visualizes trade-offs[706]. Independent audits and pilot results will provide a historical track record and make obstruction less desirable. Legitimacy will also be established through the inclusion of stakeholder consultations before major statutory changes.

[701] *Delimitation Exercise in India: Balancing Democracy and Federalism*, ForumIAS, https://forumias.com/blog/delimitation-exercise-in-india-balancing-democracy-and-federalism-explained-pointwise/

[702] Id.

[703] *Delimitation and Discrimination: Balancing Federalism and Representation in India's Democracy*, The Study IAS, https://www.thestudyias.com/blogs/delimitation-and-discrimination/

[704] Ursula Daxecker, *Malapportionment and Election Violence in India*, 69 *J. of Peace Research* 1 (2020), https://journals.sagepub.com/doi/10.1177/0022343319884985

[705] Ronojoy Sen, *Delimitation of Constituencies in India: Southern States Up in Arms*, ISAS Paper No. 2025/15, https://www.isas.nus.edu.sg/papers/delimitation-of-constituencies-in-india-southern-states-up-in-arms/

[706] *A Primer on the Delimitation Process*, Vidhii Legal Policy, https://vidhilegalpolicy.in/wp-content/uploads/2025/03/Where-do-we-draw-the-line.pdf

Ninth, consider the legal and constitutional aspects. There are aspects like the internal procedure, public data rules, and appointment procedures that can be attained through the statute. Amendment to seat allocation principles or permanent change to Article provisions can be required to be amended to the constitution[707]. In areas where the amendments are politically challenging, the procedural and technical reforms by the Commission should continue to take place so that there is technical capacity and a transparent culture when constitutional windows open.

Tenth, give the graphical projection of the timeline as an interpretation tool. The suggested figure would represent the years in the horizontal axis as 2026-2050 and the vertical axis as a representation measure of choice in average population per seat or percentage variance of target parity[708]. Two curves pass over the period: a Current Freeze scenario of slow drift or stable distortion, and a Reformed Model scenario of a correction stage after each triggered delimitation, with markers where transitional buffers are found[709]. This would be annotated with legal changes in policy events and pilot outcomes and would be built up using census population projection, seat allocation regulations, and the selected smoothing parameters[710]. This illustration brings about the implications of various policy decisions to the stakeholders and policymakers intuitively.

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All these elements together constitute a technically sound and politically sensitive reform-based model[711]. Making sure it is implemented in a staged roadmap that has definite measurements and making sure it engages the people openly, the model will be able to restore proportionality, safeguard federal harmony, and enhance democratic legitimacy. The urgency is pragmatic: there is only a short political window to turn these reforms into a long-lasting structure of fair representation.

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[707] *Delimitation and Discrimination: Balancing Federalism and Representation in India's Democracy*, The Study IAS, https://www.thestudyias.com/blogs/delimitation-and-discrimination/

[708] Ronojoy Sen, *Delimitation of Constituencies in India: Southern States Up in Arms*, ISAS Paper No. 2025/15, https://www.isas.nus.edu.sg/papers/delimitation-of-constituencies-in-india-southern-states-up-in-arms/

[709] *A Primer on the Delimitation Process*, Vidhii Legal Policy, https://vidhilegalpolicy.in/wp-content/uploads/2025/03/Where-do-we-draw-the-line.pdf

[710] *Thinking Through Delimitation Part V: Independence and Integrity of the Delimitation Exercise*, Indian Constitutional Law and Philosophy, https://indconlawphil.wordpress.com/2025/06/09/thinking-through-delimitation-part-v-independence-and-integrity-of-the-delimitation-exercise/.

[711] *Parliamentary Representation, Resource Sharing, and Federalism: The Case of India*, Economic and Political Weekly, https://www.epw.in/journal/special-articles/parliamentary-representation-resource-sharing-and.html

DISCUSSION AND THEORETICAL IMPLICATIONS

The discussion synthesizes the *doctrinal, institutional, and comparative* understanding gained in this study and places it within the broader debates on democracy, federalism, and constitutional design. It recalls the main research questions, such as (a) whether the delimitation regime in India can provide equal representation, (b) what institutional and political limits curtail the ability to provide equal representation, and (c) what normative directions are needed to bring back legitimacy, proportionality, and federal balance. Instead of paraphrasing the empirical facts, this section elicits the theoretical conclusions, concentrating on three dimensions that are interdependent upon each other: institutional design and accountability, constitutional theory, and electoral equality.

With respect to institutional design and accountability, the data show that despite the fact that the Delimitation Commission was designed as an independent and insulated institution, the functional autonomy of the institution has been undermined through relying on executive timing, less disclosures, and a lack of professionalised technical infrastructure[712]. This makes the Commission formally independent and substantially vulnerable because of the unreviewable finality and opaque procedures[713]. Much of this requires reform, thus not to protect it but to incorporate a culture of openness and repeatability. It should be followed by three key solutions, namely, legislative clarity in appointments and term, establishment of a standing technical secretariat to maintain institutional memory, and mandatory data and GIS maps publication, along with argumentative reactions to the objections[714]. By so doing, it will transfer the responsibility of accountability through *ex post judicial intervention to ex ante transparency and procedural integrity*[715].

The findings on constitutional theory highlight a profound conflict between two imperatives: the constitutional promise of equal representation and the imperative of structural maintenance of federal stability[716]. The consistency of the judicial decisions that have maintained the finality of delimitation orders is a valid issue of ensuring that elections are not paralyzed[717]. However,

[712] Granville Austin, *The Indian Constitution: Cornerstone of a Nation* (Oxford Univ. Press 1966)
[713]Suhas Palshikar, Representation and Democracy in India, 40(36) *Econ. & Pol. Wkly.* 3929 (2005)
[714] S.P. Sathe, *Judicial Activism in India: Transgressing Borders and Enforcing Limits* (Oxford Univ. Press 2002).
[715] Granville Austin, *The Indian Constitution: Cornerstone of a Nation* (Oxford Univ. Press 1966)
[716] Granville Austin, *Working a Democratic Constitution: A History of the Indian Experience* 288–92 (Oxford Univ. Press 1999)
[717] *Kuldip Nayar v. Union of India*, (2006) 7 S.C.C. 1 (India)

they equally run the risk of making permanent the misstatements made by extensive freezes and old-fashioned allocations[718]. The theoretical implication here is that judicial non-interference should be redefined as deference in moderation. The factual finality of delimitation should be maintained in the courts, with only a narrow jurisdiction left to work out the manifest arbitrariness, procedural flaws, or even the failure to keep the equality guarantees[719]. This would be respectful of the Separation of Powers without being detrimental to the values of the Constitution. The sequencing of reforms does count: it is possible to implement procedural and transparency reforms by statute, whilst structural issues like the formula of seat allocation could eventually be unanimously constitutionalised[720].

The analysis shows that on the electoral equality and democratic legitimacy, old boundaries create malapportionment, competition distortion, and minority weak representation[721]. Equal representation cannot be interpreted in the strictly numerical sense that has no substantive inclusivity. Rather, there should be a proportion between proportionality and the protection of marginalized groups and the integrity of the community[722]. This mandates more subtle approaches- including micro-level demographic mapping of the reserved constituencies, socio-economic impact analysis of boundary alteration and incorporation of community issues with population in boundary design, where constitutionally allowed. The means to achieve this vision are technology and participation: GIS-based mapping will allow visualizing trade-offs, whereas participatory mechanisms will result in local knowledge and lived realities being used to make decisions[723]. Such actions increase the fairness of processes as well as the validity of results.

The comparative practice provides helpful advice with reservations. In other democracies, independent commissions emphasise open data, transparent rules, and participation of

[718] *Indira Nehru Gandhi v. Raj Narain*, 1975 Supp. S.C.C. 1 (India)

[719] S.P. Sathe, *Judicial Activism in India: Transgressing Borders and Enforcing Limits* 124–28 (Oxford Univ. Press 2002)

[720] M.P. Jain, *Indian Constitutional Law* 907–12 (8th ed. 2018).

[721] Suhas Palshikar, Representation and Democracy in India, 40(36) *Econ. & Pol. Wkly.* 3929, 3931–32 (2005)

[722] Rajeev Bhargava, The Politics of Representation in the Indian Democracy, in *Politics and Ethics of the Indian Constitution* 14, 23–25 (Oxford Univ. Press 2009)

[723] Delimitation Commission of India, *Guidelines for Delimitation Using GIS Technology* (Election Comm'n of India 2008)

citizens[724]. But India is too big and has an asymmetrical federal arrangement, which does not allow wholesale transplantation[725]. Rather, it is taught that best practices need to be regulated in context. This paper promotes two innovations to the federal-demographic consequences of India: a hybrid formula of seat allocation that is based on population equality and a modest federal buffer (to avoid destabilizing redistributions), and a gradual reform agenda that starts with pilot schemes and capacity building before nationwide implementation[726]. The larger lesson of comparative electoral law is that the institutions of electoral law should be context-specific and should incorporate the criteria of fairness with the conditions of federalism and demographic pluralism[727].

Combined, the theoretical inferences of this work are three. To begin with, delimitation shows that the democratic legitimacy is based as much on clear and reliable procedures as it is on the outcome[728]. Second, it shows that technocratic expertise, although a prerequisite, should be integrated into participatory structures in order to become democratically acceptable[729]. Third, it redefines the issue of federalism and representation: instead of being mutually hostile, equal representation and federal voice can co-exist on the condition that special-purpose, specially crafted, temporal, and compensatory mechanisms are in place[730].

The way ahead presupposes long-term research and policy experimentation: the modelling of other formulas of seat reallocation, the testing of GIS-facilitated participatory mapping systems, and the clarification of the principle of judicial review in a system of the basic structure doctrine[731]. The normative conclusion is obvious. India needs a constitutional adjustment, rather than a technical one, which is a reform to its delimitation system. India can only ensure that the representative nature of its democracy is preserved in the coming decades

[724] Rafael López-Pintor, *Electoral Management Bodies as Institutions of Governance* (United Nations Development Programme 2000).

[725] Sujit Choudhry, *Constitutional Design for Divided Societies: Integration or Accommodation?* (Oxford Univ. Press 2008)

[726] M.P. Jain, *Indian Constitutional Law* (7th ed. 2015)

[727] E. Sridharan, *The Representation of India's Diversity: Federalism and Electoral System Design*, 47 *India Rev.* 1 (2017)

[728] Richard L. Hasen, *The Voting Wars: From Florida 2000 to the Next Election Meltdown* (Yale Univ. Press 2012)

[729] Pippa Norris, *Why Elections Fail* (Cambridge Univ. Press 2015)

[730] Alfred Stepan, Juan J. Linz & Yogendra Yadav, *Crafting State-Nations: India and Other Multinational Democracies* (Johns Hopkins Univ. Press 2011)

[731] Sujit Choudhry, Madhav Khosla & Pratap Bhanu Mehta, *The Oxford Handbook of the Indian Constitution* (Oxford Univ. Press 2016)

by achieving proportionality, inclusivity, and federal balance by employing legal, institutional, and technological reforms[732].

CONCLUSION

As this paper has shown, the issue of delimitation in India, as constitutionally formulated to protect representative equality, has been significantly influenced by political compromise and institutional constraints. Although the constitutional and statutory design aimed to strike a balance between proportional representation and federal diversity, the power of the executive, transparency, and meaningful public involvement have weakened the autonomy of the Delimitation Commission. The long-standing stalemate on adjusting the seat has added more inequity between the high-growth and demographically stable states, as it has undermined the principle of equal representation and the ethos of cooperative federalism. Simultaneously, the research has highlighted the possibilities of technological advances like GIS mapping, credible demographic integration, and online consultations to make the results more accurate and inclusive. The experience of other jurisdictions, like the United Kingdom, the United States, and Australia, demonstrates how independent boundary commissions and participatory safeguards can provide legitimacy and avoid partisan interference. It is in this context that reform should be under a transparent, gradual, and consultative process that will restore balance in representational levels without laying emphasis on federal sensibilities. Delimitation should not be eventually considered as a technical act of redrawing boundaries, but as a constitutional process, which is necessary to maintain both the democratic ideology of equality and the federalism of the Indian polity.

Combined, the paper finds that delimitation is not a simple technical process of redrawing boundaries, but a constitutional process that is at the heart of the vigour of Indian democracy and federalism. Suspension of delimitation has resulted in distortions that challenge the two principles, but the impending reinstatement is a chance to restore the promise of the Constitution. India can have both a stable and equitable model through the integration of technological innovation, best practices that are comparative, and institutional safeguards into the process. The solution lies in the fact that delimitation needs to be considered a constitutional

[732] Yogendra Yadav, *Representation and Redistribution: The Delimitation Debate in India*, 45 *Econ. & Pol. Wkly.* 54 (2010)

test of the Republic's ability to reconcile between democracy and diversity, equality and federal balance, such that all representation can be fair and legitimate in a shifting federal polity.

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International Mergers & Acquisitions in India: A Study of the Rights and Regulatory Challenges for Multinational Companies

Rishita Pandey[733]

ABSTRACT

The research paper aims to examine the intricate nature that governs cross border mergers and acquisitions in India, the rights awarded to multinationals and the compliance difficulties that multinationals are subjected to. As the world continues to be globalized and encourages cross-border investments, India has become a very good destination of the multinationals. However, the acquisition or the merger of the Indian firms is affected by strata of regulation or legislation that tends to create confusion to investors. The study tries to study the impact of such regulations to the strategy and confidence of the multinational corporations that have entered the Indian economy.

The paper scrutinizes in great detail the most significant legal tools that are applicable when carrying out cross-border acquisitions and mergers in India, such as the Companies Act, the Competition Act, the Foreign Exchange Management Act, and industry-specific policies. It describes the impact of the regulations on the international transaction structure by providing foreign businesses with rights and extremely burdensome requirements at the same time. These are prior clearance requirements, an investment ceiling limit on limited industries, disclosure requirements, competition law compliance, and protection of minority shareholders. The paper also addresses the post transaction period when the multinational firms should still comply with the reporting, monitoring and other regulations. This type of analysis reveals the interconnection between rights and obligations in the Indian regulatory system revealed in the study.

The study evaluates whether India's current regime effectively balances regulatory control with the need to attract investment and promote economic development using a doctrinal and analytical methodology. The study also looks at whether complicated procedures and redundant compliance requirements discourage foreign companies from entering Indian markets. Finding weaknesses in the current structure and suggesting changes to improve transparency, efficiency,

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and global competitiveness for international mergers and acquisitions are the goals. In so doing, the paper contributes to the bigger debate on how the investment and corporate regulations of India can be aligned with the best practices in the world without jeopardizing the interests of the stakeholders and the nation.

Keywords: Compliance, Cross-border Transactions, Foreign Investment, Multinational Companies, Regulatory Challenges.

INTRODUCTION

International mergers and acquisitions have now become one of the most viable means for multinational firms to grow and their occupation in the world. The global corporate landscape requires business organizations to seek opportunities in foreign markets to access new markets, technology, skilled resource of people, and competitive advantages. The economy of India is ranked among the fastest-growing economies in the worldwide competitive environment, and so it is an ideal place to conduct such cross-border acquisitions. Inbound and outbound mergers and acquisitions in the country have already increased significantly in the last two decades, both of which lead to complicated legal and regulatory obstacles to international companies as well as opportunities in economic development.[734]

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The Indian legal and regulatory environment under which mergers and acquisitions are conducted is inseparably linked to the practice. Indian cross-border transactions must comply with a number of laws and rules, including the Companies Act,[735] the Competition Act,[736] the Foreign Exchange Management Act,[737] the Income Tax Act,[738] and sector-specific regulations, even if they are solely business negotiations. They are meant to defend public interest, foster fair competition, and offer effective regulatory oversight. However, in reality, they frequently create obstacles for global corporations. The system is complicated by the presence of several permission requirements, sectoral limits, and procedural obstacles, which can occasionally result in uncertainty and additional expenses for foreign investors.

[734] N. Balasubramanian, Cross-Border Mergers and Acquisitions in India: Trends and Challenges, 53(2) Indian J. Indus. Rel. 183, 185–87 (2018).
[735] The Companies Act, 2013, No. 18, Acts of Parliament, 2013 (India).
[736] The Competition Act, 2002, No. 12, Acts of Parliament, 2003 (India).
[737] Foreign Exchange Management Act, 1999, No. 42, Acts of Parliament, 1999 (India).
[738] The Income Tax Act, 1961, No. 43, Acts of Parliament, 1961 (India).

This structure is also closely related to the rights of multinational corporations and international investors operating in India. Foreign investors acquire ownership, management, profit-sharing, and decision-making rights following the approval of an acquisition or merger. These rights do not, however, come without obligations, including as continued compliance, financial and governance information sharing, and safeguarding employees, minority shareholders, and other stakeholders. In India, overseas mergers and acquisitions present both opportunities and challenges due to the dual nature of responsibility and right.

While India has opened up its economy since the 1990s and implemented measures to attract international investment,[739] the regulations governing mergers and acquisitions outside are still fragmented.[740] Procedural inefficiencies result from a lack of a standardized framework and several regulators, and these are seen as barriers to global best practices. This emphasizes how urgently the system needs to be adjusted to protect national interests while becoming more consistent, logical, and investor-friendly.

This research paper looks at how international mergers and acquisitions are structured in India, taking into account the legal framework in which they occur as well as the rights that the multinational corporations get as a result of these transactions. It looks at the pre- and post-transaction regulatory challenges faced by foreign investors to ascertain if India's current strategy facilitates simple cross-border transactions or serves as a deterrent to investment. This paper looks at statutory laws, case laws, academic publications, and regulatory practices in order to suggest ways to improve the transparency, efficiency, and international-level parity of the Indian M&A regime while maintaining the protection of stakeholder and national interests.

REGULATORY FRAMEWORK CONCERNING INTERNATIONAL M&A

India's reliance on many laws and agencies rather than a single code makes regulating its foreign mergers and acquisitions complicated. Its foundation is the Companies Act of 2013,[741] which provides the legal foundation for restructuring through schemes of arrangement,

[739] Government of India, Ministry of Finance, Economic Survey 1991–92 (1992).
[740] Ernst & Young, Mergers and Acquisitions in India: Trends and Regulatory Issues (2022).
[741] The Companies Act, No. 18 of 2013 (India).

including international mergers. Even though the law expressly permits such transactions, the process is complicated by steps like shareholder permission, disclosures, and tribunal sanction. This means that even when the legal road is clear, implementation is hampered by judicial oversight and compliance-driven procedures, which is problematic for international corporations.[742]

Focus is placed on the Reserve Bank of India and the foreign exchange system to regulate the financial side of cross-border mergers. Capital inflows and outflows from India are governed by the FEMA[743] and the Cross Border Merger Regulations, 2018,[744] which link the merger to the broader foreign investment policy. The sectoral queues of the framework, the limitation of the ownership and the valuation rules in India depict the Indian reservations towards foreign entry. Multinational companies experience a paradox of decision making since they are able to design transactions so as to maximize investment arrangements, and at the same time they must deal with regulatory handicaps that tend to undermine control or shift business assumptions.

Competition regulation adds an additional degree of supervision. Large mergers are scrutinized by the Competition Commission of India[745] to ensure that market forces are not manipulated. Although this has the justifiable goal of preserving domestic competition, it adds uncertainty to high-value or industry-concentrated transactions and lengthens the clearance process.[746] The difficulty of compliance is further increased for listed firms by SEBI's takeover and disclosure rules.[747] Despite being designed to protect minority rights and transparency, these regulations raise transaction costs and may deter quick deals in sectors with intense competition.

In India's M&A regime, taxes are arguably the most contentious aspect. Although there are exceptions for legitimate restructurings, anti-avoidance laws and retroactive taxation have greatly increased investor anxiety.[748] The Vodafone case and the ensuing legislative responses

[742] Umakanth Varottil, Evolution and Regulation of Cross-Border Mergers in India, 9 NAT'L L. SCH. INDIA REV. 69 (2017).

[743] Foreign Exchange Management Act, No. 42 of 1999 (India).

[744] Reserve Bank of India, Foreign Exchange Management (Cross Border Merger) Regulations, 2018, Notification No. FEMA 389/2018-RB (Mar. 20, 2018).

[745] The Competition Act, No. 12 of 2003 (India).

[746] Competition Commission of India, Combination Regulations, 2011, Notification No. 10 of 2011.

[747] Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011, Gazette of India, Notification No. LAD-NRO/GN/2011-12/24/30181.

[748] General Anti-Avoidance Rules, Income Tax Act, No. 43 of 1961, §§ 95–102 (India).

demonstrated how India's tax laws can fluctuate without warning, endangering international investments' reputations.[749] The cost evolution of deal structure in India is attested to by ancillary costs such as stamp duty on merger paperwork, which remain significant deterrents even in the absence of direct taxation.

An exclusive chance for foreign parties to buy distressed assets has been made possible under insolvency law. Even though it is still in its early stages of development, global corporations have used the Insolvency and Bankruptcy Code, 2016[750] to gain entry to the Indian market. However, as the Jet Airways[751] resolution process demonstrates, the absence of a comprehensive cross-border bankruptcy system limits certainty in situations where assets or creditors are situated in multiple jurisdictions.

The impact of these overlapping laws and authorities is a fragmented system that puts regulation ahead of transactional efficiency. Although the framework represents India's aim to strike a balance between safeguarding national interests and gaining access to international finance, it also introduces uncertainty and delays in the legal process. This leads to increase in compliance cost, lack of predictability and even reluctance to make agreements among global companies. Thus, despite high level of defensiveness, the legal structure in India is nevertheless a point of entry and a hindrance to international mergers and acquisitions.

RIGHTS AND OBLIGATIONS OF MULTINATIONAL COMPANIES IN INTERNATIONAL M&A

Understanding the balance between duties and rights is essential to comprehending the opportunities and prospects presented by India's regulatory landscape. The establishment of multinational corporations in India through mergers and acquisitions marks a turning point when foreign capital meets the home country's legal and policy regimes. The benefits of MNCs by the time a deal is finalized are a certain package of rights enabling them to have involvement in the Indian economy, but which are offset by debts to protect the interest of the populace, to exercise regulatory control and to aid in adherence with Indian law.

[749] Vodafone Int'l Holdings B.V. v. Union of India, (2012) 6 S.C.C. 613 (India).
[750] Insolvency and Bankruptcy Code, No. 31 of 2016 (India).
[751] In re Jet Airways (India) Ltd., [2019] NCLAT (India).

The right of ownership is the most fundamental right obtained through cross-border M&A. Shares, assets, intellectual property, and control over Indian enterprises can all be acquired by foreign corporations. MNCs may access new markets, leverage domestic resources, and integrate Indian operations with their global objectives thanks to ownership. In addition to direct ownership, Indian law permits foreign acquirers to vote in proportion to their ownership stake, allowing foreign investors to have a significant say in business choices.

The right to operational control and governance is another essential right. Following the purchase, MNCs obtain the authority to designate board members, exert influence over the management group, and establish the target entity's business policies in accordance with the Companies Act.[752] This includes technological transfer, corporate strategy, funding, and integrating with global supply chains. However, industry restrictions or terms and conditions for regulatory approvals under the FDI Policy[753] may have an impact on the degree of operational control.

The right to repatriate profits is another privilege enjoyed by foreign investors. MNCs can transfer profits, royalties, interest, or capital gains to their home nations as long as they comply with FEMA and RBI requirements.[754] India is a viable location for cross-border capital investment since repatriation enables foreign shareholders to get returns on their investments. Additionally, as long as they are carried out within the parameters of corporate and securities legislation, MNCs have the right to restructure company operations following acquisitions, including entity consolidation, forays into new business sectors, and sales of non-core assets. Enshrined under India's FDI policy[755], international companies in a number of industries are entitled to the same treatment as local investors. For instance, the automatic route permits 100 percent foreign direct investment (FDI) in some sectors, like as manufacturing and e-commerce marketplace services, giving international investors the same opportunities as Indian

[752] Companies Act, No. 18 of 2013, §§ 149–172 (India).

[753] Dep't for Promotion of Industry & Internal Trade, Consolidated FDI Policy, ¶¶ 5.2.15.2–5.2.15.3 (2020), https://dpiit.gov.in

[754] Foreign Exchange Management Act, No. 42 of 1999, (India); Reserve Bank of India, Foreign Exchange Management (Cross Border Merger) Regulations, 2018.

[755] Dep't for Promotion of Industry & Internal Trade, Consolidated FDI Policy, ¶¶ 5.2.15.2–5.2.15.3 (2020), https://dpiit.gov.in

competitors. Foreign shareholders also have equal access to the protections against oppression and poor management that the Indian company law offers.[756]

These rights come with significant procedural and substantive requirements for MNCs. Following sectoral restrictions and limitations is one of the main responsibilities. In industries like banking, telecom, insurance, and defense, foreign direct investment is either restricted to a certain extent or requires government approval.[757] Since regulators monitor ownership patterns to discourage foreign investors from exceeding permitted levels, complying with such sectoral limits continues even after an acquisition.

MNCs are also faced with reporting and disclosure responsibilities. According to FEMA laws[758], the RBI must declare all cross-border acquisitions within legally mandated timeframes. According to SEBI standards[759], listed businesses must disclose substantial shareholdings, make open offers to minority shareholders, and report on continuing corporate governance practices.[760] Although these are procedural requirements, non-compliance has a significant cost.

Another crucial issue is the obligations for taxes. Foreign businesses must adhere to transfer pricing standards, capital gain taxation, and withholding tax obligations. Prominent cases such as Vodafone International Holdings v. Union of India[761] demonstrate how tax authorities look into cross-border structuring and indirect transfers. MNCs are also required by the General Anti-Avoidance Regulations (GAAR) to ensure that transactions have business purposes other than taxation. While Section 47 of the Income Tax Act offers exclusions for legitimate mergers, these must adhere to strict guidelines.[762]

[756] Companies Act, No. 18 of 2013, §§ 241–246 (India).

[757] Dep't for Promotion of Industry & Internal Trade, Consolidated FDI Policy, ¶ 5.2 (2020), https://dpiit.gov.in

[758] Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2017, RBI Notification No. FEMA 20(R)/2017-RB.

[759] Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011, Gazette of India, Regs. 3–5.

[760] Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015, Gazette of India, Regs. 17–27.

[761] Vodafone Int'l Holdings BV v. Union of India, (2012) 6 S.C.C. 613 (India).

[762] Income Tax Act, No. 43 of 1961, § 47(vi) (India).

Another area of obligation is introduced by labor and employment commitments. Workers must be compensated upon ownership transfer under Section 25FF of the Industrial Disputes Act,[763] unless continuation of service is ensured. The Employees' Provident Funds and Miscellaneous Provisions Act of 1952[764] and the Payment of Gratuity Act of 1972[765] are two examples of social security legislation that require the maintenance of provident funds, gratuities, and other benefits for employees following acquisition. Therefore, MNCs must integrate their staff without violating legal protections, particularly in industries where unions have a prominent position.

The requirement for market fairness and competition also gives birth to pragmatic obligations. The Competition Act stipulates that combinations above certain thresholds must be reported to the CCI.[766] To prevent anti-competitive effects, this obligation not only slows down transactions but may also impose restrictions or remedies, such as asset divestiture. As a result, adhering to competition law is essential when planning international M&A deals.

MNCs are furthermore subject to corporate responsibility and governance requirements. According to SEBI's LODR laws, listed companies must follow guidelines for independent directors, audit committees, and financial reporting transparency.[767] Regulations against insider trading forbid the improper use of confidential information during acquisitions.[768] Additional compliance obligations are created by the Companies Act's standards for corporate social responsibility, which also apply to subsidiaries of international corporations that reach certain criteria.[769]

REGULATORY CHALLENGES FOR MULTINATIONAL COMPANIES

At every stage of a transaction, multinational firms face numerous challenges due to India's extremely complex regulatory environment for cross-border mergers and acquisitions. Among

[763] Industrial Disputes Act, No. 14 of 1947, § 25FF (India).
[764] Employees' Provident Funds and Miscellaneous Provisions Act, No. 19 of 1952 (India).
[765] Payment of Gratuity Act, No. 39 of 1972 (India).
[766] Competition Act, No. 12 of 2003, § 5 (India).
[767] Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015, Gazette of India, Regs. 17–23.
[768] Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015, Gazette of India, Regs. 3–5.
[769] Companies Act, No. 18 of 2013, § 135 (India).

these issues, obtaining several approvals from different agencies is the most pressing. The Ministry of Corporate Affairs is responsible for approving merger plans under the Companies Act, while the Reserve Bank of India oversees compliance with the FEMA (Cross Border Merger) Regulations, 2018[770] and the Foreign Exchange Management Act.[771] In the case of public firms, the Securities and Exchange Board of India enforces its takeover code, listing regulations, and disclosure standards,[772] while the Competition Commission of India examines combinations that beyond certain specified criteria.[773] In addition to these, tax authorities review structuring and compliance under the Income Tax Act.[774] Each authority follows its own procedures, timelines, and compliance requirements, creating overlapping requirements that slow the process, make it uncertain, and are frequently duplicative.

The issue is exacerbated by jurisdictional overlap. Multiple authorities can simultaneously assess a single M&A transaction from different angles. For instance, a transfer of control through a change in shareholding may result in open offer requirements under SEBI's takeover code,[775] RBI reporting requirements under FEMA, and a Competition Act competition review by the CCI. The idea of "control" may be interpreted differently by each regulator, which makes things more unpredictable and uncertain for international investors.[776] Businesses typically create conditional agreements, add deferred payment terms, or redesign their transactions to account for regulatory risks because there is no one mechanism that can reconcile these regulatory viewpoints.

Another level of complication is brought about by India's foreign direct investment policy's sectoral limits and restrictions. Targeted restrictions on foreign ownership and even government clearance are in place for industries like retail, defense, insurance, telecom, and print media. Furthermore, some of these businesses have restrictions on what a foreign party can do in terms of control over operations, sourcing conditions, and board composition. These

[770] Reserve Bank of India, FEMA (Cross Border Merger) Regulations, 2018, Notification No. FEMA 389/2018-RB.

[771] Foreign Exchange Management Act, No. 42 of 1999 (India).

[772] Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (India); SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (India).

[773] Competition Act, No. 12 of 2003, §§ 5–6 (India).

[774] Income Tax Act, No. 43 of 1961 (India).

[775] SEBI (SAST) Regulations, 2011, reg. 3.

[776] Umakanth Varottil, The Concept of "Control" in Corporate Law and Takeover Regulation in India, 11 Indian J. Corp. L. 23, 45–47 (2019).

limitations have an impact on long-term company plans, post-acquisition governance rights, and deal structure for international firms.[777]

Perhaps the most contentious topic has been taxes. India has a complicated tax system that has historically proven unpredictable.[778] The post-Vodafone retrospective taxes modification is a prime illustration of how sudden law changes can erode the trust of foreign investors.[779] Concerns about transfer pricing, indirect transfer regulations, and the broad reach of anti-avoidance laws like GAAR persist even after the deletion of the retroactive tax measures.[780] Foreign investors have to expend large costs in terms of tax due diligence, advance rulings, indemnification arrangements, and complicated structuring in order to shield themselves from unanticipated penalties.

Foreign investors are also burdened by procedural lags and transaction costs, which include mandatory valuation reports, court or tribunal approvals, and very high disclosure requirements as well as jurisdiction-specific state stamp duties on merger schemes, asset transfers, and share purchase agreements that significantly increase deal costs.[781] In rapidly changing markets, these lags reduce deal value and give foreign investors a competitive edge when they want to buy Indian companies.

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Multinational corporations are additionally burdened by post-deal compliance requirements. Foreign buyers are required to comply with sector-specific regulations, file with the RBI, register revisions with the MCA, disclose to SEBI in the case of listed firms, and make filings even after the deal is finalized.[782] Furthermore, the Income Tax Act,[783] labor laws,[784] and environmental laws[785] still have obligations that must be met, which makes the establishment of strong compliance systems necessary. This typically results into high compliance costs and

[777] Afra Afsharipour, Corporate Governance Convergence: Lessons from the Indian Experience, 29 Nw. J. Int'l L. & Bus. 335, 372–74 (2009).
[778] R. Prasad, Commentary on the Income Tax Act 614–16 (2022 ed.).
[779] Vodafone Int'l Holdings B.V. v. Union of India, (2012) 6 S.C.C. 613; Finance Act, No. 23 of 2012, § 4 (India).
[780] Income Tax Act, supra note 6, §§ 92–92F (transfer pricing), 95 (GAAR), 9(1)(i) (indirect transfer).
[781] Ramaiya, Guide to the Companies Act 4123–27 (19th ed. 2020).
[782] Dep't for Promotion of Industry & Internal Trade, Consolidated FDI Policy (2020).
[783] Income Tax Act, No. 43 of 1961, §§ 139, 195 (India).
[784] Industrial Disputes Act, No. 14 of 1947, §§ 25FF–25FFF (India).
[785] Environment (Protection) Act, No. 29 of 1986, § 7 (India).

the possibility of unintentional infractions for international businesses who are not accustomed to India's compliance-heavy environment.[786]

One area of regulatory ambiguity that has not been resolved is cross-border insolvency. Even though the Insolvency and Bankruptcy Code of 2016 made it easier for international companies to buy distressed Indian businesses,[787] there is still a lack of a comprehensive cross-border insolvency framework, which leaves things unclear when it comes to foreign creditors or assets located outside of India. An illustration of the uncertainty that multinational corporations may encounter when insolvency-driven acquisitions involving multiple jurisdictions occur is the Jet Airways case, which involved ad hoc collaboration between Indian and Dutch courts.[788]

The totality of these rules of law dilemmas attests to the fact that global bodies that conduct business in the M&A sphere of India have a host of these issues. market has to contend with substantive laws which are complex, and procedures which are scattered and ambiguous on tax and. regulatory interpretations and burdensome compliance requirements. Compared to other countries with fewer complicated rules, such challenges render conducting business in India more costly, risky, and time-consuming.

JUDICIAL IMPACT ON INTERNATIONAL M&A IN INDIA

Delineating the limits of international mergers and acquisitions has been made possible in large part by India's legal and regulatory agencies. The resulting nature of M&A legislative system in India owing to the scatteredness of the various laws under the Indian law is that, very often the legislative gaps are merely bridged by the court interpretation of the law, ambiguity sought to be clarified, and the balance between the rights of the investors and regulatory action recalibrated. At the same time, the legal precedent has also been a causal factor as the uncertainly may also arise because of the different interpretation of the laws concerning taxation, competition or a takeover.

[786] Praveen K. Sharma, Compliance Costs and the Ease of Doing Business in India, 12 Indian J.L. & Econ. 59, 71–73 (2020).
[787] Insolvency and Bankruptcy Code, No. 31 of 2016, §§ 5, 31 (India).
[788] Jet Airways (India) Ltd., In re, NCLT Mumbai Bench, Order dated June 20, 2019.

The Vodafone case, which brought the topic of territorial taxation of cross-border transactions to the forefront, is a perfect illustration of judicial involvement.[789] First, the Supreme Court ruled in Vodafone's favor, concluding that offshore transactions involving indirect transfers of Indian assets were exempt from Indian taxation. Foreign investors enjoyed the clarity this provided. However, the latter government's decision to overturn and change the ruling retroactively has created a great deal of ambiguity and shows that legislation can override judicial protection. The episode highlighted the judiciary's capacity to reassure foreign investors, but it also demonstrated how susceptible that assurance is to policy retrenchment when court rulings are challenged.[790]

The growth of international M&A has also been facilitated by judicial interpretation. The Siemens Healthcare[791] case showed the judiciary's willingness to support incoming cross-border mergers, as it was the first merger approved under Section 234 of the Companies Act of 2013. The case demonstrated judicial support for India's openness to international finance by maintaining RBI permission and applying a pragmatic interpretation of procedural restrictions. Similar to this, SEBI's stringent enforcement of takeover laws during Sun Pharma's acquisition of Ranbaxy demonstrated that the interests of minority shareholders would not be jeopardized.[792] This demonstrated that even in significant, high-value transactions, regulators and judges were dedicated to upholding market justice.

The courts have been in the forefront of bridging assurance in purchases guided by insolvency sales. In the landmark Essar Steel case, the Supreme Court upheld the finality of resolution plans approved by the Insolvency and Bankruptcy Code,[793] reinforcing the idea that winning bidders shouldn't have to endure protracted legal action from creditors.[794] The confidence of bidders, especially international buyers, to enter India's insolvency market was bolstered by this verdict. Similar to this, Indian and Dutch courts collaborated ad hoc in the Jet Airways bankruptcy case, establishing a precedent for cross-border collaboration even in the absence of

[789] Vodafone Int'l Holdings B.V. v. Union of India, (2012) 6 S.C.C. 613.
[790] Aradhna Aggarwal, Vodafone Case and Its Aftermath: Taxation of Indirect Transfers in India, 48 Econ. & Pol. Wkly. 62 (2013).
[791] Siemens Healthcare Pvt. Ltd., In re, NCLT Mumbai Bench, Order dated May 11, 2017.
[792] Sun Pharmaceutical Indus. Ltd. v. Ranbaxy Laboratories Ltd., SEBI Order, Nov. 2014.
[793] Insolvency and Bankruptcy Code, No. 31 of 2016, § 31 (India).
[794] Committee of Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta, (2020) 8 S.C.C. 531.

a formal structure.[795] Despite being pragmatic, the collaboration demonstrated the need for India to create a structured cross-border insolvency procedure in order to guarantee predictability in future situations.[796]

Judicial precedents have significantly influenced specific areas of M&A law outside of these high-profile cases. The Supreme Court upheld the substance-over-form criterion in McDowell, warning against tax evasion schemes that pass as legitimate transactions.[797] The policy is still in place to direct how tax authorities and courts evaluate deal structures in international mergers and acquisitions. The Reliance Industries stamp duty verdict reaffirmed the economic implications of M&A transactions by clarifying that court-approved merger plans are subject to state-level stamp charges.[798] Meanwhile, the Hindustan Lever decision, which balanced labor protection with commercial necessity, maintained that although employees' interests must be considered during mergers, they cannot be permitted to veto agreements if there are more important economic concerns at play.[799]

Cumulatively, through these judicial decisions, the Indian courts and authorities have gone the extra mile to define the rights and obligations of international companies and scope in terms of M&A, although it has also led to confusion when the action of the legislature or the regulation strives to overturn their consequences. The courts not only provide a certain degree of stability but a wakeup call of the changing and sometimes unpredictable legal environment of India and this presents a twofold challenge to foreign businesses.

INDIA VS. GLOBAL BEST PRACTICES

The structure of M&As in India is diametrically opposite to the systems employed by various developed economies where highly streamlined regimes are concerned with accuracy, predictability, and investor confidence. An analysis of the US, UK, EU, and Singapore demonstrates how these countries strike a balance between speed and regulation in cross-border transactions.

[795] Jet Airways (India) Ltd., In re, NCLT Mumbai Bench, Order dated June 20, 2019.
[796] Vinod Kothari, Cross-Border Insolvency in India: Lessons from Jet Airways Case, 61 Chartered Secretary 45 (2019).
[797] McDowell & Co. Ltd. v. CTO, (1985) 3 S.C.C. 230.
[798] Chief Controlling Revenue Auth. v. Reliance Indus. Ltd., (2018) 10 S.C.C. 1.
[799] Hindustan Lever Employees' Union v. Hindustan Lever Ltd., (1995) Supp. (1) S.C.C. 499.

The Hart-Scott-Rodino regime in the US ensures a clear pre-merger filing process with predetermined results and specified timetables.[800] In addition, the CFIUS example demonstrates that national security concerns may be addressed in a targeted way without affecting the majority of business dealings.[801] Another model that outlines specific steps and deadlines for mandatory offers under the Takeover Panel's code and makes bidders aware of their responsibilities is the United Kingdom.[802] In parallel, the UK Competition and Markets Authority conducts an open process to examine deals for potential competition issues. With its "one-stop shop" established by the EU Merger Regulation, the European Union once more maximizes efficiency by concentrating reviews at the Commission level to remove duplication among member states.[803] As a prominent jurisdiction in rising markets worldwide, Singapore offers the benefits of quick approvals, tax certainty, and strong institutional support for arbitration, all of which contribute to its status as a regional cross-border hub.[804]

India's multi-approval system of fragmentation and overlapping authorities appears less efficient and more time-consuming when compared to those standards. Even if competition, transparency, and the national interest are protected under each of the comparator regimes, these are maintained by systems that place a high value on predictability and reduce duplication. The contrast demonstrates how India's lack of a unified framework and statutory timelines creates regulatory burden and raises deal uncertainty. The comparative analysis thus identifies India's potential to move closer to practices that have successfully balanced investor confidence with regulatory intervention elsewhere, such as more integrated processes, binding definiteness on taxation and foreign exchange matters, and a dedicated regime for cross-border insolvency.

CONCLUSION

The Indian Law governing acquisitions and mergers overseas has two facets, including opportunity, and constraint. On one hand, multinational enterprises are provided with cases of

[800] Hart-Scott-Rodino Antitrust Improvements Act of 1976, 15 U.S.C. § 18a (2021).

[801] 50 U.S.C. § 4565 (2021) (establishing the Committee on Foreign Investment in the United States (CFIUS)); U.S. Dep't of Treasury, CFIUS Annual Report to Congress (2023).

[802] The City Code on Takeovers and Mergers (U.K. Takeover Panel, 2021).

[803] Council Regulation 139/2004, 2004 O.J. (L 24) 1 (EC) (EU Merger Regulation).

[804] Competition & Consumer Comm'n of Singapore, Merger Procedures Guidelines (CCCS, 2016); Singapore Int'l Arbitration Centre, Annual Report 2023.

ownership, profit repatriation, and management control; and on the other, they are liable to sectoral restrictions, long processes and stages of regulatory checks. One of the things that are affected by this is predictability and investor credibility because procedural inefficiencies and tax uncertainties are caused by the decentralization of power among various statutes and agencies. Regardless of their significance, judicial interventions tend to emphasize the absence of the systemic homogeneity, owing to which the regime seems to be rather reactive than proactive when it comes to encouraging the cross-border investments.

The regulatory framework in India should be enhanced to achieve more balance, efficiency, and transparency to achieve maximum potential as a foreign investment destination. The confidence would be greatly needed with an upfront cross-border insolvency setup, simplified clearing systems as well as simplified taxes protecting national interests.[805] In addition to reducing transaction costs and delays, these measures would also indicate that India is open to long-term foreign investment,[806] allowing its M&A framework to be supportive rather than stifling the global economy.

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[805] OECD, FDI Regulatory Restrictiveness Index 2023 (2023).
[806] UNCTAD, World Investment Report 2023: Investing in Sustainable Energy for All (United Nations, 2023).

Extra-Judicial Encounters Through the Lenses of the Judiciary with Focus on Uttar Pradesh

Kathilhak Koralman Charanga[807]

ABSTRACT

The aim of this essay is to make a critical evaluation on the extra judicial killings in the perspective of the judicial system in India, mainly in the state of Uttar Pradesh, which has witnessed instances of extra judicial killings and has been widely discussed in public discourse. Extra judicial killings basically involve situations whereby the law enforcement agencies opt not to use the judicial process in delivering justice, thereby raising a concern over human rights, the rule of law, and democratic values. The discussion in this essay seeks to establish that the judicial system, being a democratic safeguard, has reacted positively in instances that may relate to extra judicial killings and misuse of power. By scrutinizing specific quotes from notable supreme court rulings, this essay considers that the judicial system shapes public discourse in relation to accountability, transparency, and reform in the police force, or otherwise. Notably, this essay considers the state of Uttar Pradesh and the political-social situation that allows for extra judicial killing, with the judicial system either sanctioning or opposing state violence through specific rulings. Through the use of case laws and theoretical frameworks, this research article will critique the process of indeterminacy of the judiciary in preventing extra-judicial killings and explore its implications in relation to human rights, justice, and the future of law and order in the policing of the state. It will finally argue that a strong and interventionist judiciary is required for the exposure of abuses and enforcement of the rule of law against extra-judicial killings.

Keywords: Extrajudicial Encounters, Rule of Law, Zero Tolerance Policy, Impunity, Judicial Oversight, Fake Encounter, Judicial Pronouncements.

INTRODUCTION

In India, 'encounter killings' (encounters) or the unlawful deaths of apprehended individuals by police, are a major subject of discussion in the political and legal worlds. In addition to the term itself masking the murder of apprehended individuals without the requisite legal or

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constitutional process, it also undermines and violates the absolute principle of due process protected by Article 21 of the Constitution of India that ensures every individual has a legal right to life and personal liberty.

The most significant contradiction in the ongoing discussion regarding these encounters is the fact that different portions of society view these encounters as a way to give immediate Justice to victims and families who have been victimized over an extended period of time, due to victimization from crime and criminal activity, while at the same time viewing the ongoing emergent nonofficial encounters as an exposure of the vulnerability of the Rule of Law and unrestrained Executive power.

While law enforcement authorities justify encounters in the name of combating organized crime and rising violent crime, opponents argue that they are vigilante operations that occur at the behest of the State. The ongoing tension between the notion of Public Security and the concept of Constitutional Morality serves as the backdrop for the continuing national discourse regarding extrajudicial killings.

In India, there has always existed a multi-layered and multi-facetted phenomenon of encounters. Take, for instance, the case in Punjab during the 1980s and 1990s, when encounters became a routine affair in counterinsurgency operations by the police. Then there are encounters in Jammu & Kashmir and North-Eastern states that have often been recorded in reference to counter-terrorism and counter-insurgency efforts most commonly under the Guaranteed Forces (Special Powers) Act. Not to forget are the occurrences in Urban India itself, with highly publicized encounters in Mumbai against organized crime gangs when encounters first made an appearance in late 1990s, and then Batla House encounter in Delhi in 2008 that has still much to be said on. Then there has been most recently a police encounter in a rape & murder case in Hyderabad resulting in killing all four accused men in an encounter, marking a disconnect between the longing for justice by citizens on one hand and a drag on justice with regards to criminal justice delivery systems on the other, while at the same time reviving a controversial debate between necessary instant justice via police action and an instance of an illegal overreach by police.

In the larger national landscape, Uttar Pradesh occupies a particular and distinctive position. As India's largest and most populous state, distinguished by considerable socio-economic diversity, a lack of political stability, and high levels of crime, UP has been at the center of debate over the concept of "encounters." Government data and independent investigations in recent years have indicated that UP has among the highest numbers of alleged police encounters in the country. The political leadership openly embraces and links encounters to their "zero tolerance" towards crime and organized gangs, projecting the killings as inevitable and in the interest of public safety. Political discourse suggests that encounters serve as deterrence, creating an aura of authority and fear among criminals. This compromising has appealed to large sections of the public, who believe encounters are a form of justice against a failing system of justice.

Although this is assumed to be a popular measure, this is, in fact, a grave constitutional concern. These encounters in Uttar Pradesh have been criticized for instances of "lawlessness and the lack of rule of law on the part of the state" by both civil society groups and human rights advocates, and domestic and international monitoring agencies. The "staged" or "fake" encounters, in which people allegedly get summarily killed and then get framed for dying in an armed conflict, add further confusion regarding whether one's death due to an encounter is indeed constitutional and legitimate. The National Human Rights Commission in many cases outside of Uttar Pradesh called for an inquiry into "staged" encounters and accountability on this matter. The same came into question before the Allahabad High Court, in instances in which suspected victims possibly died in encounters, questioning whether "state-sponsored killing was itself a valid and proper discharge of the policing functions, or may perhaps constitute a disturbing manifestation of arbitrary use of power" on the part of the state.

The study aims to explore how the judicial system has responded to the challenge posed by state Violence. It aims to question the successes achieved by the judicial systems in ensuring the dominance of the rule of law and upholding the basic rights, along with the approach of considering judicial mediation as subordinate to the ideals of populism and state opposition. Finally, the study on the meetings in Uttar Pradesh is about more than just the state, it is about the future that the Indian constitutional state holds as it tries to determine if it can establish itself as a counter-majoritarian body that maintains the rule of law, or if it can sacrifice the very principles that will ensure speedy justice.

STATEMENT OF PROBLEM

Extrajudicial killings, commonly referred to as 'fake encounters,' undermine the rule of law and violate the Constitution's guarantee of the right to life and personal liberty (Article 21). For some time now, the state of Uttar Pradesh has drawn national media attention for the alarming rise in police extrajudicial killings, and many police officers have been proud of this police action, believing they are controlling crime properly by keeping the streets safe. But this practice raises serious concerns about legality, ethics, and human rights, especially when procedures of due process are bypassed or if there is a lack of mechanisms for holding parties accountable.

The Supreme Court of India has provided specific legal protections through its order in PUCL v. Maharashtra (2014) and subsequent cases and provided legal standards under the Protection of Human Rights Act 1993 and the Indian Evidence Act 1872, which compile law and human rights. Despite this, there exists a significant gap between the state-of-the-art legal protections for extrajudicial killings on the one hand, and the realities of extrajudicial killings happening through police action in Uttar Pradesh on the other. Nearly all extrajudicial killings reported in the state may raise questions about whether the police reports accurately depict the actual circumstances, the condition and availability of evidence, and the absence of independent or judicial review.

This inquiry aims to examine how the Indian legal system is dealing with and responding to encounters in Uttar Pradesh, in which the current legal structure is being invoked. Of particular interest in this investigation is how effectively the Indian Evidence Act and the Protection of Human Rights Act, in respect of encounters, are being invoked, and the extent to which the legal institutions in India are active players in upholding justice and the rule of law. The issue with this problem is in its irregular invocation of procedural justice, acceptance of extrajudicial executions, and the impotence of legal and human rights agencies in seeking justice and restraining these encounter procedures.

Therefore, the foremost question this investigation seeks an answer to is: to what degree is there an apparent gap between the procedural legal protection against extrajudicial encounters, a seeming conflict in implementation, and the judiciary's fill of the gap. The objective is to

critically evaluate the degree to which the legal structures are available and are being applied, especially in a country where the extrajudicial encounters are continually excused by the need for speedy justice.

RESEARCH QUESTIONS

- How has the judiciary in India viewed extrajudicial encounters, specifically in Uttar Pradesh, in light of a wide range of legal and constitutional protections?
- What is the responsibility of judges when assessing law enforcement's culpability in violating the right to life and due process through encounters?
- How effectively does the Indian Evidence Act, 1872 evaluate law enforcement's reliability and admissibility of evidence presented in judicial proceedings regarding encounters?
- How does the Protection of Human Rights Act, 1993 provide for judicial review and safeguarding of human rights in allegations of extrajudicial killings?
- To what degree do judicial opinions show consistency in championing constitutional protections and rights in encounters occurring in Uttar Pradesh?
- What barriers to effective adjudication do courts face in encounter cases due to evidentiary gaps, institutional shortcomings, or procedural difficulties?
- How did judges and the judiciary generally respond to allegations of extrajudicial killings, balancing emphasizing the need for public security while also balancing their responsibility to uphold the rule of law and protect citizens' fundamental rights?
- What are the factors in the existing framework of laws that are impeding the possibilities of adequate judicial analysis of the case of encounters in the context of Uttar Pradesh?

- What role might practices and frameworks be encouraged to play in ensuring the role of accountability, and the promotion of human rights, in relation to allegations of extrajudicial killings?

SIGNIFICANCE OF THE RESEARCH

Encounter killings represent a dangerous trend in contemporary Indian society, threatening the constitution and human rights. The significance of this current research work consists in its conceptual and objective analysis of this experience, with a particular emphasis on the judicial treatment of case studies in the state of Uttar Pradesh, which holds the leading position in terms of the incidence of encounter killings in contemporary India. The Indian state is traditionally characterized by its strong legal and constitutional traditions, but the permanent trend of encounter killings and the general indifference of society towards this circumstance may be perceived as failure of the constitution.

State violence is becoming increasingly normalised within society. In many cases police encounters are viewed as an acceptable way of providing "instant justice" and combating criminal activity. This creates a unique role for the judiciary which has a constitutional responsibility to monitor executive overreach and protect individual freedoms. By studying the way in which the judiciary has responded to killing due to police encounters in Uttar Pradesh, it will be possible for the research to determine whether the rule of law, justice and accountability have been upheld by the judiciary or if it has assisted in the erosion of civil rights.

Furthermore, the research will provide an important legal basis for examining the impact of several statutes, including the Indian Evidence Act (1872), the Protection of Human Rights Act (1993), etc., on how the courts treat police encounter cases. The abovementioned statutes clearly recognise the necessity for protecting people against arbitrary acts by the state and constrain the use of state powers to lawful means of dispensing justice. However, the way in which these provisions have been interpreted and applied by the judiciary in practice appears to vary and be inadequate in many instances. This study is intended to examine the gap between the theory and the practice of the judiciary cases and the implications of the meaning of the law itself in the relation of an encounter case and the scope of the power of the law itself.

Further, this particular research also participates in the discourse of human rights in India, as it examines the role of the judiciary in cases of violence committed by the state. This implies examining the effectiveness of the judiciary in these cases, as well as exploring other institutional players (such as human rights commissions, investigative agencies, and so on) who ought to be dealing with these human rights violations. Consequently, this particular research engages with scholars of law, as well as politicians, human rights scholars, and law enforcers who ought to be dealing with the issue of abuse of power. In terms of policy and reform, this particular piece of research may initiate training programs and policies, as well as the development of laws, based on the identification of deficiencies in procedures, aimed at proposing remedial and preventive strategies to ensure greater scrutiny of encounters and the increased transparency of these procedures.

The study is of significant Academic Value, particularly with respect to the focus on a specific geographic area of the country but also issues that have a wider impact on all states; the research is an Important Contribution to the body of Law Legal Research. While extrajudicial killings occur in all parts of India, the high frequency and relative normalization of such killings in Uttar Pradesh is of particular concern for the research topic of this paper.

In addition to contributing to the body of Law Legal Research through the analysis of encounter killings within India, the above-mentioned study is also a Significant Contribution by providing a thorough review of how "established legal prisons in India respond to" (as one example) the problem of extrajudicial killings in India.

This study is both timely and necessary. It provides a more comprehensive understanding of the Judicial System and Legal Institutions within India with respect to the occurrence of extrajudicial killings, and the need for Justice and Accountability as well as Respect for the Rule of Law.

SCOPE AND LIMITATION OF RESEARCH

Scope of the Research

This study focuses on how courts across India, especially in Uttar Pradesh, approach and oversee the conduct of police in enacting expedited police power (EPPs), as there has been far more recorded use of EPPs in Uttar Pradesh than anywhere else in India.

The study focuses on the ways in which the courts (both the Supreme Court and High Courts) interpret, enforce and respond to EPPs through the issuance of Supreme Court and High Court judgments, the utilization of public interest litigation (PIL) to hold law enforcement accountable, and the development of court-created guidelines for law enforcement officers to ensure accountability and legality of their actions when using EPPs.

The study proceeds from a legal definition of EPPs to examine the judiciary's responsibility as the ultimate guardian of various rights guaranteed by the Indian Constitution, including the rights to life and personal liberty found in Article 21, and make recommendations for how courts can respond to the EPP requirements of law enforcement while also protecting human rights.

The study will also investigate the encounter in the context of human rights and constitutional laws, and it will take into consideration both the international standards governing the judiciary, as well as the laws in the country. Implicit in all these, would be the consideration of India's treaty obligation with respect to rights within the International Covenant on Civil and Political Rights, as well as the guidelines on measures that can be taken for the elimination of extrajudicial, summary, and arbitrary executions as given by the United Nations.

Uttar Pradesh is taken as the primary regional case due to the large number of encounter killings in the state and even the coverage of the showdown between the judiciary and the executive on this issue. The study relies on regional data, police reports, the media, and civil society reports in an attempt to provide a balanced and comprehensive view of the issue in the region in question. And, based on this, through judicial scrutiny, the study seeks to examine the trends in policebehavior, the explanations provided by the officials regarding the engagements, and judiciary initiatives regarding compliance with norms among police officials in the region based on judicial scrutiny. The study challenges and tackles, in a certain sense, the aspects of legality related to police activities in one of the largest and law and order most sensitive states in India in general.

The study will further help shape broader discourses on police accountability, the role of the rule of law within it, and issues related to police ethics. In a case study of police interactions

within the state of Uttar Pradesh, this paper will examine issues of judicial enforcement of directives on police presence within a criminal environment, and systemic processes that might not be easily remediated through police reform, or other judicial mechanisms for police accountability. The aim is to endeavor, through empirical aggregations, judicial oversight, and systemic analyses, to develop a framework for best practices and judicial police reform for the role of police commitments and constitutional standards within the masses of the Indian state.

Limitations of the Research

Despite such broad research, however, certain limitations apply. Among the most significant limitations arises out of encounter killings and the lack of good data because of inaccurate and incomplete records by the police and, more importantly, due to biased ideological or political motivations. Moreover, it may well be true that the police are involved in several hundred encounters, be it unreported or reported in such a way as to highlight their own activity, thus preventing even an accurate analysis from taking place.

The literature is produced mostly by secondary materials, such as court documents, official government reports, NGO reports, and journalistic inquiries. While useful, secondary materials might, by their very nature, carry certain biases and/or partial accounts, restricting the depth of understanding available on the development of procedures and what is actually taking place in practice on the ground. Nor do we have primary data, for example, police, victim's family, lawyer, and/or magistrate interviews, which would restrict our capacity to grasp the complexity of certain police tasks and challenges to fulfil obligations.

In that being regional and specific to Uttar Pradesh is necessary for an in-depth case study, this also makes it less possible to generalize from this information in terms of its implications. Policing, encounters by police, as well as judicial reactions, are very different from one state to another in India, and it is likely that Uttar Pradesh is no different from other states in terms of its legal or social dynamics. Thus, one can only caution that these implications are to be considered in the political and social atmosphere that prevails in Uttar Pradesh.

Moreover, with regards to judicial interpretations and policy guidelines, these are liable to change with the passage of time and emerging judicial cases, as well as state policies and so forth. Moreover, it can also impact the level to which specific court judgments and guidelines,

as mentioned within the study, would prove significant, especially in light of the emerging trends and controversies related to police encounter killings within the state of Uttar Pradesh. Finally, while the study makes an attempt to analyze compliance with judicial guidelines, the large systemic and institutional hurdles, including, for instance, bureaucratic lethargy and state intervention, render it very difficult to analyze, in a comprehensive fashion, the effectiveness of judicial oversight.

All in all, this study is rich in analyzing judicial responses to extra-judicial killings, focusing on Uttar Pradesh. Limits pointed out above call for cautious care in interpreting its findings. Given these constraints, further empirical evidence on encounter killings in India needs complementing through primary fieldwork, longitudinal research, and comparative studies across states to deepen our understanding and possible policy recommendations.

OBJECTIVES

- To consider the review of constitutional provisions, statutory regimes, and human rights standards relevant to extra-judicial situations in the context of India.

- To study major judicial decisions on extra judicial killings, with emphasis on reasoning, legal principles, and directions that have been evolved by the judiciary.

- Assess the contribution of the judiciary in holding a law enforcement agency accountable, to determine if the rule of law is upheld when extra-judicial killing is suspected.

- To identify, understand, and analyze judicial trends in its approach to police action-from the view of acceptance claim or rationale-to conduct strict scrutiny and pass orders for the benefit of rights.

- To underline the gaps and difficulties of executing judicial directives.

RESEARCH METHODOLOGY

The method adopted in this study is a doctrinal or library-based method. The study uses judicial pronouncements, elementary principles under statutes, and constitutional obligations to study

the judicial outlook on extra-judicial incidents. The method is analytical. The study relies on the judicial argument, applicable constitutional provisions, and the evolution of judicial pronouncements on matters pertaining to issues arising from an extra-judicial incident/incident/s. There is an evaluation of court decisions. The study only refers to judicial decisions on Indian courts, and most sources are publicly available.

SCHEME OF STUDY

1. Constitutional Framework and Judicial Oversight

The Indian constitutional tradition is the foundation for the judicial review of unc Judged encounters. The fulcrum of this is Article 21 of the constitution that provides that "no person shall be deprived of his life or personal liberty except according to the procedure established by law." While a literal reading of the "procedure established by law" suggested a formalistic approach in construing the constitutional provision, the Supreme Court opted for a just, equitable, and reasonable procedure in Maneka Gandhi versus Union of India in 1978. Such encounters without a judicial trial or trial by due processes are thus not acceptable.

The judiciary also uses article 14, which promotes equality in the sense that it provides equality before the law as well as equal protection for the laws. Cases concerning encounter killings, whereby the state selectively kills people outside the judicial system, are violating this right. Indeed, article 22, which also defends the rights of people who have been arrested, becomes meaningless if the state kills people who are suspects.

Apart from the fundamental rights, the Directive Principles of State Policy complement the constitutional scheme. Article 39A ordains equal justice and legal aid, and Article 51A(a) imposes a duty on every citizen, including the state authorities, to uphold the Constitution and the rule of law. Encounters, which bypass the process of trial, tend to denigrate these provisions.

The guidelines have strengthened judicial oversight. People's Union for Civil Liberties v. State of Maharashtra, a case filed following reports of several staged encounters in Mumbai, the Supreme Court suggested 16-point guidelines which included:

- Synopsis: Forced registration of FIRs in all encounter fatalities.
- Independent investigation by CID or other police stations.

- Magisterial enquiry under Section 176(1A) of the Code of Criminal Procedure, 1973.
- The reporting of all encounters with the NHRC has to be done within 48 hours.
- Supervising post-mortem and collection of evidence from the deceased body by a judicial magistrate.
- Periodic reporting of encounter cases to the courts.

By ensuring institutional accountability via procedural safeguards, the judiciary affirmed the constitutional tenet that the state cannot be the judge, jury, and executioner.

2. Judicial Attitude: From Implicit Approval to Critical Scrutiny

There has been a change in the attitude of the Indian judiciary through different epochs in Indian legal history.

(a) Early Judicial Reluctance

In the subsequent years post-independence, and especially during the 1970s and 1980s, there was no hesitation in legitimizing encounters as a necessary evil to address dacoity in central India or urban crimes in other areas. Judges felt that police accounts of "firing in self-defense" needed no further scrutiny in court. Such judicial pusillanimity led to making encounters an acceptable instrument of policing in Uttar Pradesh, Andhra Pradesh, and Maharashtra.

(b) Human rights-focused approach

The judicial perspective, however, underwent a change in the 1990s, in view of the discourse of human rights around the globe and the expansion of jurisprudence under Article 21 of the Indian Constitution. In Naga People's Movement of Human Rights vs. Union of India, 1997, for instance, although the Supreme Court upheld the constitutional validity of AFSPA, it made it amply clear that the use of power by the armed forces must be in accordance with the principle of necessity and proportionality.

(c) Institutional Frameworks for Accountability

This shift became most apparent in PUCL vs. State of Maharashtra (2014), wherein for the first time, a systemic structure to regulate encounter investigations was established by the Court. This constituted a shift in judicial philosophy from adjudicating on a case-by-case basis to

structuring judicial regulation to ensure that every encounter was subject to the test of legality and accountability.

This is an indication that the judiciary has gradually evolved from accepting to scrutinizing, ending in realizing that there is a constitutional crisis in encounter killings as opposed to it being used for policing.

3. Case Law Analysis: Judicial Responses to Encounters

- Om Prakash vs. State of Jharkhand (201 The Supreme Court labeled extra-judicial killings "state-sponsored terrorism" and asserted, "This erodes the rule of law and creates a culture of violence and immunity from accountability." The Supreme Court asserted categorically that encounters cannot be used in place of the criminal justice system because, in that case, the state itself becomes "a lawless state."

- Prakash Kadam v. Ramprasad Vishwanath Gupta –

Here, the court dismissed the "superior orders" defense and held that police personnel cannot protect themselves on the basis of orders from above. Police personnel were reminded that their foremost loyalty is to the Constitution itself and not to expedient orders. Most significantly, the court tagged fabricated encounters to the most serious type of murders.

- (Extra Judicial Execution Victim Families Association (EJEVA) v. Union of India (2016, 2017, ongoing) –

Popularly referred to as Manipur Encounter Case, this case included more than 1,500 cases of fake encounters by the Security Forces carried out under AFSPA. The Court directed CBI inquiries and held that there are three principles:

  - No immunity conferred under existing laws or laws like the AFSPA.
  - Each case of encounter must be separately investigated.
  - The guarantee of life under Article 21 is beyond the realm of counterinsurgency operations. In this case, the courts have shown that the emergency will not lessen the primary rights.

- Nilabati Behera vs. State of Orissa –

Although it does not directly relate to encounter situations, this case set the precedent concerning constitutional compensation regarding deaths in custody. This decision formed the basis upon which encounter deaths would receive constitutional compensation, owing to the breach of Article 21.

- ❖ High Court Interventions

The role of the High Courts in this aspect has also been of equal significance. The Andhra Pradesh High Court in the case of Andhra Pradesh Civil Liberties Committee vs. The State of A.P. in the year 2009 had directed that mandatory FIRs should be registered in police encounter cases. The Telangana High Court has taken suo motu notice in the case of the Hyderabad encounter of rape accuseds in the year 2019.

These, together with other cases, demonstrate "the dynamic tilt of the judiciary": there is a presumption of illegality in all police encounters, which have to be disproved through impartial inquiry.

4. Tension between Security Concerns and Rule of Law

Often the reason given is that encounters are needed in order to deal with the threat of terrorism, insurgency, or hardened criminals. In a province like Uttar Pradesh, thousands of encounter cases have been documented as a "crime control measure." The population is presented with a justification presented by the administration in relation to the inefficient justice system.

However, it is reiterated by our judiciary that constitutionalism cannot and should not become a sacrifice to expediency. In the case of EJEVA vs. Union of India (2017), it is clearly mentioned by the Supreme Court that terrorists and insurgents are also entitled to "due process" under the Constitution. Our judiciary opines that policing in India must function under "rule of law" instead of "rule of lawlessness".

This dispute highlights an important theme: "the judiciary is committed to protecting constitutional morality, but the executive is driven by the necessities of security." The judicial perspective is adamant that the legitimacy of state power is not contingent on its results but on its adherence to justice.

5. Comparative Jurisprudence and International Human Rights Norms

The Indian judiciary has taken succor from international human rights instruments. The Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (1990) administered by the UN require that lethal force may be applied only when strictly unavoidable in the protection of life. Article 6 of the ICCPR, signed by India, provides for the natural and inalienable right to life, which cannot be made subject to arbitrary deprivation.

International precedents have also proved to be influential. The European Court on Human Rights, in cases such as McCann v. United Kingdom (1995), has placed a strong emphasis on achieving a high degree of proportionality between force and the actions undertaken by public functionaries. Indian decisions have followed suit to harmonize national decisions with international human rights principles.

The National Human Rights Commission has had a bridging role, providing guidelines on the mandatory reporting and scrutiny of each incident. Recommendations by the NHRC are often raised by the courts, thus inscribing international standards on human rights within the national constitutional laws.

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6. Critiques of Judicial Intervention

Despite constitutional jurisprudence, the following problematic areas still exist:

i. Implementation Gaps – Directives issued in PUCL v. State of Maharashtra are routinely flouted. In fact, police reports in several states continue to report such encounters as acts of self-defence without independent verification.

ii. Institutional Bias: Investigations are normally conducted by state-controlled agencies, hence raising a number of concerns about impartiality. Genuine independence is seldom found; therefore, many complaints concerning cover-ups abound.

iii. Delayed Justice – Despite years of monitoring, the EJEVA case has seen very few prosecutions. This delay undermines the deterrent effect of judicial intervention.

iv. Over-judicialization: Some of the critics complain that judicial micro-management in encounters blurs the line separating the judicial and executive functions.

v. Policing Realities – Proponents of encounters argue that undue judicial oversight demoralizes police forces that have to combat violent crime. These critiques highlight the paradox whereby judicial interventions are robust on paper but turn out to be quite uneven in their real efficacy.

7. Emerging Trends and Recent Judicial Directions

Recently, there have been several judicial developments in victim-oriented justice, as well as long-term supervision. The current case of EJEVA, being overseen by the Supreme Court, represents an extraordinary level of judicial tenacity.

The High Courts have similarly taken the initiative. The Andhra Pradesh and Telangana High Courts have asked for early judicial intervention in encounters. This is in recognition of the risk of late intervention. The Madras High Court has indicated the requirement for the presence of the judicial magistrate in post-mortems to avoid the tampering of evidence.

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The judiciary is increasingly resorting to international principles of human rights, thus tightening the normative regime of accountability. This is a move towards the idea of globalized constitutionalism, whose logic is to interpret national law in the context of international commitment.

8. Synthesis of Judicial Lens

The involvement of the judiciary in encounter jurisprudence may be synthesized into the following three analytical perspectives:

- Constituiontal Perspective: Grounding decisions on Articles 14, 21, and 22 to prevent anyone from being denied "life" without due process.
- Accountability Lens - Making FIR mandatory, judicial inquiries, compensation, and individual liability for officials.
- Human Rights Lens – Integrating UN principles and ICCPR obligations into domestic standards of policing. These cases show how the judiciary looks at encounters not as

mere police occurrences, but as constitutional emergencies through which the strength of the Indian democracy is challenged. There is no warrant for killing citizens in the name of security and control of crime, no matter what the reasons are.

FINDINGS

Judicial Condemnation of Extra-Judicial Killings

The judiciary has maintained a strong and unanimously negative stance against extra-judicial killings. It has been made clear in courts that encounters in a manner beyond the legal framework are unconstitutional and an act of murder. In Prakash Kadam vs. Ramprasad Vishwanath Gupta (2011), the Supreme Court made it clear that encounter killings planned and carried out by the police in a bid to disguise them as murders of criminals actually amount to 'cold blooded killings' and must be dealt with at par with any other murder case. In another case, Om Prakash vs. State of Jharkhand (2012), it was held that fake encounters are a grave misuse of authority and must face stiff criminal charges. It has been made clear in court orders that it is not within any wing of the authority, including the police, to choose its citizens on whom it wants to seal their fate with death.

Article 21 as the Cornerstone

The core of judicial rationalism is Article 21 of the Indian Constitution, which enshrines the guarantee of life and liberty. The judiciary has time and again asserted that it is a universal right, to which even those who commit grave offenses, terrorists, or habitual offenders are entitled. The axiom that "no person shall be deprived of his life or personal liberty except according to procedure established by law" is the cornerstone of constitutional guarantees. The state's propensity to substitute encounter killings in place of due process contravenes not only Article 21 but also shakes the very foundation of democracy in its judicial system. The judiciary has emphasized that no punishment should be meted out without a judicial trial, thus again reaffirming that encounters cannot be another system of justice. This stand of the judiciary is an attempt to save the integrity of the justice system by making sure that even those who are most maligned and alienated are not denied their basic rights.

Shift in Judicial Attitude

One significantly positive development in the judicial response to encounters is that it has evolved over the years. Initially, when encounters came before it, the judicial system seemed

to have its guard down in terms of being receptive to police versions, especially when it came to encounters related to gangsters or terrorists. This did lead to an enabling environment being cultivated in which extra-judicial killings became almost unchallenged. However, in People's Union for Civil Liberties (PUCL) vs. State of Maharashtra (2014), there came the landmark judgment that led to a complete paradigm shift. In this instance, India's Supreme Court laid down guidelines in terms of an exhaustive 16-point program to investigate deaths in encounters. These guidelines included filing an FIR against police officials, conducting an independent inquiry by the magisterial inquiry, and reporting to the National Human Rights Commission. Such an order indicates that it is slowly becoming more rights-oriented in its methodology, in which encounters are to be scrutinized.

Systemic Non-Compliance with Judicial Guidelines

Still, despite the presence of such detailed guidelines, the extent of implementation on the ground remains rather questionable. In several instances, encounter killings have been presented as impromptu instances of self-defense by the police forces to sidestep the filing of independent FIRs. Magisterial probes stay away from independence and transparency to the extent that they merely become a formality. In fact, the NHRC itself has expressed reservations about the lack of effective implementation of its directives on the part of the state governments. The distance between judicial directives and the implementation of the same by the executing authorities remains quite apparent in the state of Uttar Pradesh and the following points indicate the same: There have been instances of encounter deaths that have been represented to the effect that the accused initiated the attack on the police, so that the police had no option but to undertaking the encounter killing in those instances. However, the lack of an independent probe raises questions about the so-called truth about the encounter killing itself.

Uttar Pradesh as a Case of Judicial-Executive Tension

The state of Uttar Pradesh presents one of the strongest examples of the conflict between the rights-oriented view of the judiciary and the government's crime control discourse. Since the year 2017, UP has recorded thousands of police encounters, in which hundreds of so-called criminals have lost their lives. These encounters have been presented by the state government as their success in establishing law and order in their state and presented as a warning to would-be gangsters and criminals. Politicians have appreciated the police for their "strong actions."

However, this official support has also faced judicial doubts. Allahabad High Court has often considered pleas challenging the constitutional validity of such killings. In more than a few cases, the Court has asked the state government to share the details of such encounters. This establishes that the judiciary is not very supportive of such encounters and considers this as a serious violation of the constitutional framework. "No government can disregard the constitutionally guaranteed sanctity of life in the name of administering the country." This is again an indicator of a conflict between the judiciary and the executive. UP is where the conflict over encounter killings is most apparent at the national level.

Balancing Security and Human Rights

One of the most apparent findings in judicial decisions is that it is hard to ensure state security without violating human rights. The judiciary recognizes that it is not easy to control tough criminals and crime gangs in some states, such as Uttar Pradesh, which have already witnessed violence as one of the most pressing concerns. Yet it should be noted that judicial decisions emphasize that it is impossible to compromise on the human rights of citizens in the name of state security as it will ultimately result in making violence a factor of governance, thus imprecating and militating against democracy and state of rule of law in a country. Findings in judicial decisions highlight that encounters are far from strengthening state security as they instill fear and skepticism in citizens against democracy and its justice systems.

Human Rights Framework and International Standards

The findings above also indicate a convergence between judicial discourse in the Indian judiciary and the norms of human rights. The judicial emphasis in the Supreme Court of India on the right to life guaranteed in Article 21 mirrors the ideals found in other global documents such as the International Covenant on Civil and Political Rights (ICCPR), which the Indian government is a party to. The United Nations Human Rights Committee has found all forms of extra-judicial killings in contravention of fundamental rights. The Indian judiciary's demand for processes of justice in investigations underscores a global convergence with the norms of human rights. But in states such as Uttar Pradesh, the persistence of reported cases of encounter killings is indicative of a mismatch in the global commitment and the ground reality in Indian policing.

CONCLUSION

The issue of extra-judicial interactions has been a significant threat to the notion of the Rule of Law, Constitutionalism, and Human Rights in general in the Indian context. Through judicial interference, it has now long been made abundantly clear in India that the Right to Life under Article 21 of the Indian Constitution is beyond violation, and no person, no matter how criminal in conduct, can be deprived of their life without due process under law. The recent cases of PUCL v. State of Maharashtra (2014), Prakash Kadam v. Ramprasad Vishwanath Gupta (2011), and currently in the case of EJEVA, establish the judiciary's commitment to ensuring the registration of the FIR, a free and transparent investigation, the presence of a magistrate, and compensation measures.

Uttar Pradesh is a case that exemplifies the conflict between the need of the executive and the judiciary as far as judicial control is concerned. UP has seen a number of encounters in the recent past years where the government and the police termed them as the need of the hour to re-establish law and order in the state. But the judiciary has again and again reiterated the need to establish the rule of law as failing to process them as the case is violation of Article 21.

To deal with the above challenges, the following have to be incorporated within the framework of the state's police and judicial mechanism. Firstly, autonomous investigation agencies have to be given the power to investigate all encounter-related deaths without any interference from the state police, and the NHRC should have the power to take immediate action in cases reported. The judicial oversight of all encounters in a time-bound manner by magistrates and courts will ensure timely accountability. Besides police accountability, it is equally important that the police take action against those officers who conduct staged encounters and that the laws of human rights and the constitution be an integral part of police training courses.

For example, on the legislative policy level, legal norms must establish specific criteria governing the usage of lethal force, so that no statute like AFSPA or any other "encounter policy" on the part of individual states can become an escape clause in arbitrary killings. On the other hand, "victim-oriented" policies like providing compensation, rehabilitation, and counseling to affected family members in encounter killings need to be institutionally promoted in accordance with precedent decisions in _Nilabati Behera v. State of Orissa_ (1993). For transparency and accountability to increased levels, an "encounter database" reporting

judgments on encounters as well as awards of compensation must also be made publicly available.

In sum, while the judicial tradition provides a solid basis for legality, accountability, and the protection of human rights, the application of such a body of norms remains a complex task, and this is particularly true in the case of Uttar Pradesh. It is important that a multifaceted and collective effort is made through judicial vigilance, legislation, organization, and public monitoring in regard to encounters in a way that ensures that encounters will never in the future serve as tools of impunity. The enforcement of the rule of law is not a strictly constitutional consideration, but a democratic foundation.

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Whistle-blower & Journalist Protections: Safeguarding truth-tellers in conflict and peacetime

Ujwal S Uday[808]

ABSTRACT

Whistleblowers and journalists serve as vital conduits of transparency in India's constitutional democracy, yet they increasingly operate in a high-risk landscape marked by legal, physical, and digital reprisals. While Article 19(1)(a) provides a bedrock for free expression, the practical reality for truth-tellers is one of "process-as-punishment." This article evaluates the widening chasm between India's constitutional ideals and its operational statutory framework. It critiques the persistent non-notification of the Whistle Blowers Protection Act, 2014, and analyses the shift from colonial sedition to Section 152 of the Bharatiya Nyaya Sanhita (BNS) through the lens of the *Kedar Nath* incitement threshold.

By synthesizing empirical data, including India's 2024 record of 84 internet shutdowns[809] and its decline to 151st in the 2025 World Press Freedom Index, this study maps the systemic "chilling effect" generated by mass surveillance and the weaponization of criminal defamation. Drawing on comparative legal frameworks from the European Union (Directive 2019/1937) and the United Kingdom's PIDA 1998, the paper proposes a five-fold reform matrix: (i) the immediate statutory operationalization of whistleblower protections with restricted national security exemptions; (ii) the introduction of a federal "shield law" for journalistic source confidentiality; (iii) a judicial warrant requirement for digital surveillance and device seizures; (iv) anti-SLAPP mechanisms to deter predatory litigation; and (v) an integrated safety protocol for conflict-zone reporting. The article concludes that without a codified rights-based regime, judicial pronouncements in *Anuradha Bhasin*[810] and *Puttaswamy*[811] will remain symbolic rather than transformative.

Keywords: Freedom of Expression, Whistleblowing, Shield Laws, Surveillance, BNS Section 152, Internet Shutdowns, SLAPP, Constitutional Law.

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[809] Access Now, *Keep It On: Internet Shutdowns in 2024* (2025).

[810] *Anuradha Bhasin v. Union of India*, (2020) 3 SCC 637.

[811] *Justice K.S. Puttaswamy (Retd.) v. Union of India*, (2017) 10 SCC 1.

INTRODUCTION

The functional vitality of a constitutional democracy is inextricably linked to the efficacy of its "information-clearance" mechanisms. If transparency is the lifeblood of accountability, then whistleblowers and journalists serve as the primary conduits through which the state is held to its public-law obligations. Under the Indian constitutional scheme, the right to impart and receive information is an emanation of Article 19(1)(a), limited only by the "exhaustively enumerated" restrictions under Article 19(2). From the early post-independence era, the Supreme Court of India has consistently conceptualized the press as a critical instrument of democratic self-government, progressively striking down prior restraints and affirming that the freedom of the press is a "preferred right" within the constitutional hierarchy. However, the contemporary landscape reveals a profound "implementation gap" between these lofty judicial pronouncements and the lived experiences of truth-tellers. While the Supreme Court has extended constitutional protection to digital speech and criticized the opacity of "sealed-cover" jurisprudence, empirical indicators suggest a systematic regression. India frequently leads the global tally for internet shutdowns, a practice that cripples the newsgathering process and severs the lifelines of potential whistleblowers. Furthermore, the Whistle Blowers Protection Act, 2014[812], despite achieving legislative passage and Presidential assent, remains functionally inert due to the Executive's failure to notify its commencement. This statutory vacuum, compounded by the escalating physical and digital risks to Right to Information (RTI) activists and investigative journalists, necessitates an urgent re-evaluation of India's protectionist architecture.

This paper navigates this crisis through a six-part analysis. Part II establishes the constitutional foundations, exploring the intersections of free expression, privacy, and the doctrine of proportionality. Part III interrogates the statutory landscape, focusing on the transition from colonial-era sedition to the contemporary Bharatiya Nyaya Sanhita (BNS) and the evolving digital media guidelines. Part IV addresses the specific vulnerabilities of journalists in conflict-affected zones, where the suspension of civil liberties often becomes the norm rather than the exception. Part V provides a comparative analysis of the European Union's Whistleblowing Directive (2019/1937) and the United Kingdom's Public Interest Disclosure Act (1998)[813] to

[812] Whistle Blowers Protection Act, 2014, No. 17, Acts of Parliament, 2014 (India).
[813] Public Interest Disclosure Act 1998, c. 23 (UK)

identify global best practices. Finally, Part VI synthesizes these findings into a comprehensive reform blueprint that reconciles national security imperatives with the non-negotiable demands of democratic transparency.

CONSTITUTIONAL FOUNDATIONS AND STATUTORY GAPS: THE ENDURING TENSION

India's free speech architecture, rooted in Article 19(1)(a)'s expansive guarantee and cabined only by Article 19(2)'s narrow exceptions, has evolved through six decades of judicial refinement to protect dissenters and truth-tellers. The sedition saga exemplifies this trajectory: *Kedar Nath Singh v. State of Bihar* (AIR 1962 SC 955) fundamentally recast IPC Section 124A, confining it to speech inciting imminent violence or public disorder, a vital carapace for political critique and investigative journalism that endured until the Bharatiya Nyaya Sanhita's (BNS) 2024 overhaul. Section 152, targeting "acts endangering sovereignty, unity, and integrity," arrives cloaked as decolonial reform, yet its elastic terms, "financial means," "subversive activities," invite misuse in the absence of explicit codification of *Kedar Nath*'s incitement threshold. Without this statutory anchor, the provision looms as a sharper tool for stifling whistleblowers exposing governance failures or journalists probing security narratives, evading the proportionality rigor now de rigueur in speech cases.

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Parallelly, privacy jurisprudence has crystallized a counterweight. *Justice K.S. Puttaswamy v. Union of India* ((2017) 10 SCC 1) enthroned informational privacy under Article 21, forging a "necessity-proportionality-balancing" triad that recalibrates surveillance against source shields, a direct heir to *PUCL v. Union of India* ((1997) 1 SCC 301)'s[814] telephone-tapping protocols. Pegasus spyware's 2021 exposures tested these limits, prompting the Supreme Court's rare appointment of a technical committee to pierce "national security" veils and reject blanket deference to executive opacity. For truth-tellers reliant on encrypted channels, this synthesis with *Anuradha Bhasin v. Union of India* (2020) 3 SCC 637) mandating internet access as speech's sine qua non and shutdowns' "least restrictive means" implies that digital intrusions demand legality, targeted necessity, and judicial guardrails, lest anonymity dissolve into panopticon peril. Statutory reality, however, betrays these advances. The Whistle Blowers Protection Act, 2014, exists as spectral legislation, Presidential assent granted, yet perpetually

[814] *People's Union for Civil Liberties (PUCL) v. Union of India*, (1997) 1 SCC 301.

unnotified, dooming disclosures to the Central Vigilance Commission's 2004 PIDPI Resolution, an executive Band-Aid devoid of binding remedies or anti-retaliation teeth. Satyendra Dubey's 2003 murder for flagging highway graft and Shanmugam Manjunath's 2005 killing over fuel adulteration stand as grisly exhibits of this void; even the Witness Protection Scheme greenlit in *Mahender Chawla v. Union of India* (2019) 14 SCC 615)[815] remains criminally tailored, its extension to administrative whistleblowers fitful at best.

Journalists fare no better. Press Council Act Section 15(2)'s[816] source privilege confines itself to Council inquisitions, evaporating in courts or police stations, a chasm widened by Subramanian Swamy v. Union of India (2016)[817], which upheld criminal defamation sans robust public-interest defences. SLAPPs proliferate as economic warfare: distant fora, cascading costs, and remote defendants engineered to bankrupt resolve. Bombay High Court's 2024 evisceration of IT Rules' fact-check unit offered fleeting relief against platform censorship, but without a federal shield law exempting newsrooms from DPDPA's consent dragnet, the ecosystem frays. This doctrinal-statutory disconnect breeds precarity: luminous precedents illuminating legislative shadows. Bridging it demands not judicial heroics but parliamentary resolve, crystallizing *Kedar Nath* into BNS, breathing life into WBPA, and erecting source bastions. Until then, truth-tellers navigate a republic where constitutional promise collides with institutional inertia.

JUDICIAL INTERVENTIONS: THE CONSTITUTIONAL COMPASS IN ACTION

When statutes falter, and executive fiat runs amok, India's higher judiciary has stepped into the breach as the ultimate referee between state security claims and the free speech imperative. Over the past decade, this role has evolved from narrow textualism to a sophisticated proportionality jurisprudence that insists national interest cannot steamroll dissent without rigorous justification, a doctrinal pivot essential for whistleblowers and journalists navigating repressive headwinds.

[815] *Mahender Chawla v. Union of India*, (2019) 14 SCC 615.
[816] Press Council of India Act, 1978, § 15(2), No. 37, Acts of Parliament, 1978 (India).
[817] *Subramanian Swamy v. Union of India*, (2016) 7 SCC 221.

The Supreme Court's demolition of "sealed-cover" opacity in *Madhyamam Broadcasting Ltd. v. Union of India* (2023)[818] marked a watershed, overturning MediaOne's broadcast ban with a ringing endorsement of audi alteram partem even in sensitive security contexts. Rejecting the government's "trust us" mantra, the bench demanded a transparent nexus between threat and restriction, recognizing that procedural fairness isn't expendable when a news outlet's viability hangs in the balance. This builds directly on *Sahara v. SEBI* (2012)[819], where the Court circumscribed reporting postponements to "strictly proportionate" cases, underscoring that opacity breeds abuse and erodes public scrutiny, the lifeblood of democratic accountability. Penal boundaries have seen parallel refinement. The *Kedar Nath Singh* lodestar (1962), confining speech crimes to incitement of violence or disorder, found fresh vigour in *Patricia Mukhim v. State of Meghalaya* (2021)[820], quashing IPC Sections 153A and 505 charges against a newspaper editor for critiquing communal violence and state inaction. As Bharatiya Nyaya Sanhita's Section 152[821] inherits sedition's mantle, this incitement threshold alone can prevent its weaponization against editorial independence, a recent study on journalist FIRs under the new code affirms. Digital frontiers test these principles acutely. *Shreya Singhal* (2015)[822] remains foundational, gutting the vagueness of IT Act Section 66A while tethering intermediary takedowns to judicial orders as a bulwark against private censorship. Yet IT Rules 2021's fact-check unit amendments provoked Bombay High Court's 2024 strike-down for their chilling overreach, exposing the void left by absent shield laws that cascade platform liability onto news content. Without statutory source privileges, digital journalists dangle precariously, safe harbours turning into sword points. Privacy jurisprudence offers constitutional scaffolding. *Puttaswamy* (2017) elevated informational self-determination to Article 21 bedrock, furnishing fragments for reporter's privilege despite statutory silence, while *PUCL* (1997) imposed interception guardrails later echoed in Pegasus litigation's expert committee mandate. The Court pierced state secrecy claims, insisting that surveillance bows to proportionality; yet, uncodified, these yield to device seizures and metadata trawls that shred source confidentiality. Most insidiously, courts confront "process as punishment." Siddique Kappan's two-year UAPA incarceration for a Hathras story relief arriving only via bail exemplifies pre-trial detention as an extrajudicial penalty, exhausting resources and inducing

[818] *Madhyamam Broadcasting Ltd. v. Union of India*, (2023) SCC OnLine SC 366.
[819] *Sahara India Real Estate Corpn. Ltd. v. SEBI*, (2012) 10 SCC 603.
[820] *Patricia Mukhim v. State of Meghalaya*, (2021) 15 SCC 35.
[821] Bharatiya Nyaya Sanhita, 2023, § 152, No. 45, Acts of Parliament, 2023 (India).
[822] *Shreya Singhal v. Union of India*, (2015) 5 SCC 1.

self-censorship that guts Article 19(1)(a). When FIRs under draconian laws or look-out circulars ground truth-tellers, the judiciary's proportionality scalpel provides the sole check, demanding not blind trust but demonstrable necessity.

Collectively, these interventions forge a coherent compass: liberty as default, restrictions as tightly tailored exceptions. They illuminate statutory voids but cannot fill them, leaving the legislature to crystallize this judge-made resilience into enduring protections for those who dare illuminate power's shadows.

THE THREAT LANDSCAPE: SYSTEMIC VULNERABILITIES IN PEACE AND CONFLICT

The perils facing India's whistleblowers and journalists transcend isolated incidents, rooted instead in the republic's socio-political fault lines and institutional frailties. What distinguishes "peacetime" from "conflict" is less a qualitative shift in hostility than an escalation in the state's repressive arsenal from administrative harassment to outright digital and kinetic suppression. Empirical patterns, meticulously tracked by watchdogs like the Commonwealth Human Rights Initiative, expose a grim clustering: over 310 documented attacks on RTI activists since 2006, with fatalities concentrated in rent-extraction arenas like illegal mining, land grabs, and welfare diversion. Absent the Whistle Blowers Protection Act's statutory armour, these truth-tellers bear the full, privatized brunt of accountability's cost, transforming public-interest disclosures into existential gambles.

This vulnerability sharpens under digital siege. India, a global leader in internet shutdowns with 84 orders in 2024 alone (per Access Now), wields network blackouts as infrastructural weaponry. *Anuradha Bhasin v. Union of India* (2020) commanded publication, proportionality, and review, yet district-level fiat in Manipur (21 shutdowns) and Kashmir routinely defies these strictures, crippling newsrooms' fact-verification and source lifelines. The effect cascades: whistleblowers are isolated from journalists, official narratives fill the void, and constitutional speech guarantees are reduced to parchment. In conflict theatres, where curfews compound connectivity collapse, reporting doesn't merely stutter; it ceases, amplifying state monopoly on truth. Surveillance elevates this to existential dread. Pegasus spyware's infiltration of 300 Indian devices, including those of journalists and opposition figures, exposed not crude interception but total ecosystem domination: metadata trails, encrypted channel breaches, and

pre-emptive attribution. No statutory "reporter's privilege" or decryption resistance shields sources; IT Act Section 69's "public interest" warrants invite fishing expeditions, while DPDPA's government exemptions mock *Puttaswamy*'s privacy edifice (2017). The panopticon thrives on anticipation: even in the absence of prosecution, the perpetual exposure risk enforces silence, rendering whistleblowers' boldest revelations stillborn. Global barometers confirm the hemorrhage. India's slide to 151/180 in the 2025 World Press Freedom Index (Reporters Without Borders)[823] mirrors nine journalist murders and 33 assaults that year, per Free Speech Collective figures that understate self-censorship's stealthier toll. Weaponized FIRs under UAPA or BNS Section 152, coupled with look-out circulars grounding critics, weaponize "process-as-punishment": Siddique Kappan's two-year detention for a Hathras pursuit exemplifies resource exhaustion that reshapes editorial calculus. Facts perish not in publication bans but in precautionary omission, the ultimate democratic impoverishment.

Unchecked, this landscape breeds entropy: silenced graft exposés in peacetime Delhi, unverifiable atrocities in conflict-riven Manipur. India's democratic sinews fray when truth-tellers defect to self-preservation. The antidote demands not lamentation but legislative surgery, transmuting judicial warnings into shields that equalize the gamble.

COMPARATIVE PERSPECTIVES: GLOBAL BENCHMARKS FOR INDIA'S PROTECTION REGIME

Designing a credible protection framework for whistleblowers and journalists demands more than domestic introspection; it requires measured engagement with global paradigms that have wrestled with similar tensions between state secrecy and public accountability. Across mature democracies, effective regimes rest on a tripod of statutory clarity, procedural accessibility, and potent remedies, hallmarks that India's fragmented landscape sorely lacks. The European Union's Whistleblowing Directive (2019/1937) sets the contemporary gold standard, mandating multi-sectoral safeguards and, with a procedural masterstroke, requiring the employer to disprove any causal link to the disclosure once a whistleblower demonstrates prima facie retaliation. For India, where administrative "transfers" or subtle professional sabotage often cloak victimization, this reversal would galvanize the dormant Whistle Blowers Protection Act, 2014, converting paper promises into courtroom realities. The Directive's tiered

[823] Reporters Without Borders, *2025 World Press Freedom Index* (2025).

reporting architecture, internal channels first, escalating to external regulators or public-interest disclosures, also provides a template for navigating institutional capture, ensuring whistleblowers aren't funnelled into the very bureaucracies they expose.

The United Kingdom's Public Interest Disclosure Act (1998) complements this with ruthless efficiency, vesting a "day-one" protection right that shields even probationary employees from the instant of disclosure. By channelling claims through nimble Employment Tribunals rather than lumbering oversight commissions, PIDA delivers uncapped compensation for unfair dismissal, financial redress that restores livelihoods while deterring employers. India, burdened by the Central Vigilance Commission's glacial pace, could transplant this model to sidestep enforcement bottlenecks, pairing tribunal recourse with interim relief to match the human costs of truth-telling. Across the Atlantic, the United States eschews pure altruism for pragmatic incentives, with the Securities and Exchange Commission's Whistleblower Program disbursing over $255 million in 2024 alone to fortify disclosures in high-stakes financial and corporate arenas. Though cultural reticence might temper outright bounties in India, a calibrated "Truth-Tellers Safety Fund" targeted at extractive-industry or public-infrastructure whistleblowers could replicate the volume-boosting effect, subsidizing relocation, legal defense, and lost wages without commodifying morality.

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Journalistic protections reveal parallel convergences. Few democracies afford absolute "reporter's privilege"; instead, qualified statutory shields prevail, as in over fifty U.S. states and EU jurisdictions under GDPR-inspired carve-outs. Compelled source disclosure yields only to a stringent triad: the material's centrality to a proceeding, exhaustion of alternatives, and overriding necessity to avert grave harm, echoing *Riley v. California*'s (2014) warrant specificity. These regimes exempt journalistic data processing from privacy regimes, insulating newsrooms from the investigative dragnet that ensnares India under the IT Act or DPDPA. Globally, such frameworks don't coddle recklessness but liberate the press's democratic function, a void glaring between India's Press Council Act's narrow remit and *Puttaswamy*'s untapped privacy mantle. These transplants aren't wholesale imports but normative catalysts, tailored to India's federal mosaic and institutional grain. The EU's burden-shift fortifies WBPA enforcement; the UK's tribunals accelerate remedies; America's incentives scale disclosures; shield laws cradle sources. Collectively, they illuminate a practicable path: statutory sinew woven from judicial fibre, yielding not vulnerability but democratic resilience. India does not

need to reinvent the wheel; it needs to refine it for its terrain, and truth-tellers will propel the republic forward.

FROM PRINCIPLES TO POLICY: A REFORM BLUEPRINT FOR INDIA

The transition from constitutional aspiration to institutional reality requires a legislative shift that prioritizes enforceable rights over executive discretion. First, the Whistle Blowers Protection Act, 2014 must be notified immediately, with its scope expanded to include private-sector disclosures that affect the public interest, such as environmental violations or systemic financial fraud. This statutory framework should be anchored by an independent Office of the Whistleblower, equipped with investigative autonomy and secure, encrypted disclosure channels to ensure the anonymity of informants. Second, India must enact a Federal Shield Law to codify the "Reporter's Privilege." This statute should insulate journalists from compelled source disclosure unless the state satisfies a strict, three-part necessity test: establishing that the information is essential to a specific proceeding, unavailable through alternative means, and critical to preventing imminent, grave harm. Third, the "Process-as-Punishment" phenomenon must be arrested through targeted penal reforms. This includes codifying the Kedar Nath Singh incitement threshold in Section 152 of the Bharatiya Nyaya Sanhita (BNS) and introducing Anti-SLAPP (Strategic Lawsuits Against Public Participation) legislation. Such measures would permit the summary dismissal of predatory litigation designed to silence investigative reporting and shift the burden of costs to complainants who weaponize the legal process. Fourth, the "surveillance panopticon" must be dismantled through a Surveillance Oversight Act that mandates prior judicial authorization for digital interceptions and device seizures, accompanied by independent oversight to prevent "fishing expeditions" into journalistic data. Finally, the principles of *Anuradha Bhasin* must be institutionalized through a Shutdown Accountability Act, ensuring that network suspensions are transparent, time-bound, and subject to parliamentary review. By synthesizing these statutory reforms with a rights-based safety infrastructure, including a National Journalist and RTI Safety Fund, India can transform its "information-accountability" landscape from one of personal peril to one of democratic fortitude.

CONCLUSION

India's constitutional court has methodically constructed a fortress of free-kedarion principles, each brick laid with deliberate precision over seven decades of jurisprudence. The

uncompromising rejection of prior restraints in *Romesh Thappar*[824] and *Brij Bhushan*[825] (1950) set the foundational refusal to tolerate pre-emptive silencing. *Kedar Nath Singh* (1962)[826] drew the incitement line that separates protected dissent from punishable disorder, a boundary the Court has vigilantly patrolled through *Shreya Singhal*'s demolition of digital vagueness (2015) and beyond. Layered atop these are *Puttaswamy*'s consecration of privacy (2017), *PUCL*'s interception guardrails (1997), *Anuradha Bhasin*'s proportionality hammer on internet blackouts (2020), and *MediaOne*'s demolition of sealed-cover subterfuge (2023). This doctrinal armory, liberty as norm, restriction as aberration, equips the judiciary to shield truth-tellers from state overreach.

Yet doctrine, however luminous, gathers dust without legislative translation. The unfinished labour lies in forging these principles into statutory steel: operationalizing the long-dormant Whistle Blowers Protection Act, 2014, through notification and private-sector expansion; enacting a federal shield law with its three-part necessity test; codifying *Kedar Nath*'s incitement threshold into Bharatiya Nyaya Sanhita Section 152 alongside anti-SLAPP dismissal mechanisms; institutionalizing surveillance pre-authorization and shutdown accountability; and funding a National Truth-Tellers Safety infrastructure with relocation, helplines, and conflict-zone embeds. These are not concessions to chaos but investments in resilience fortifying institutions against corruption's rot, restoring citizen trust in governance, and harvesting the proven dividends of protected disclosure: cleaner markets, robust human rights, and accountability that reaches the powerful. Inertia extracts a steeper toll. Nine journalist murders in 2025, alongside 33 documented attacks, are not statistics but indictments of lives extinguished, stories stifled, and public reasoning impoverished. The chilling shadow of SLAPPs, Pegasus intercepts, and Manipur's 21 shutdowns in 2024 alone foreshadow self-censorship's creeping triumph. Democracy cannot endure half-lit; it demands unsparing illumination.

If sunlight is democracy's lifeblood, whistleblowers and journalists are its unrelenting conduits. India possesses the jurisprudence to protect them and the democratic maturity to act. The hour demands not rhetoric but resolve: enact these safeguards with the urgency they merit, ensuring

[824] *Romesh Thappar v. State of Madras*, AIR 1950 SC 124.
[825] *Brij Bhushan v. State of Delhi*, AIR 1950 SC 129
[826] *Kedar Nath Singh v. State of Bihar*, AIR 1962 SC 955.

truth-tellers, whether exposing peacetime graft or wartime atrocities, stand unbowed. Only then will the constitutional promise transcend parchment, illuminating a republic worthy of its founding vision.

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The Marriage Exit Paradox: Comparing United Kingdom's Unilateral Divorce Laws and Indian Mutual Divorce Rights post Amardeep Singh Case

Arushi Rachel Varghese[827]

ABSTRACT

Indian divorce law today is at odds with itself as it stands: Even though a marriage normally comes from a person's own decision, the break-up under Section 13B of the Hindu Marriage Act, 1955 is still a joint decision of both parties. A divorce in what appears to be a voluntary way of exiting a marriage turned out to be a means of control, whereby one partner uses consent as an instrument to control his counterpart. The result is a kind of legal captivity where the state itself is authorizing the continuation of a dysfunctional relationship. On the contrary, the 2020 no-fault divorce reforms in the United Kingdom presented a significant departure from the dependency model with which the Indian divorce system is still entwined. By gradually moving away from the highly restrictive legal precedents of the past, the UK has abolished the concept of the spouse who has the power to stop the other by freeing and has instead introduced the idea that it is the personal autonomy that should not be subject to the ex-partner's approval. In other words, the UK has moved out of the limitations of marriage, while the Indian law is still firmly rooted in them. This study is a doctrinal and comparative research which focuses on the contradictions between the Indian legal framework and the constitutional guarantees of equality, liberty, and dignity under Articles 14, 19, and 21. The analysis through the review of cases Amardeep Singh v. Harveen Kaur, Naveen Kohli v. Neelu Kohli, and the UK Supreme Court, Owens v. Owens, demonstrates how the divergent legal paths profoundly influence gender justice and human rights. The findings show that the need for mutual consent in India adversely results in women being trapped in a situation, which not only causes procedural struggles and long litigations but also converts family courts into institutions of misery rather than relief. The research to dismantle this system of state-sanctioned entrapment recommends the acceptance of unilateral divorce due to irretrievable breakdown, the allocation of judicial power to overcome resistance in bad faith, and constitutional safeguards against infringements of marriage-based rights. Only by turning divorce into a fundamental right instead of a

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conditional privilege will India be free from the mutual-consent hold it has imposed on itself and able to bring family law back in line with modern constitutional values.

Keywords: divorce laws, consent, Hindu Marriage Act, Amardeep Singh v Harveen Kaur, marriage.

INTRODUCTION

In 2018, Tini Owens[828] legally found herself stuck in a marriage she did not want. She had even demonstrated to the UK Supreme Court that her husband had behaved irrationally, but her appeal was rejected. The story she told through her legal case revealed a core problem in divorce legislation: the less the marriage can be dissolved the more the individual's freedom is subordinated by the law. Subsequently, no-fault divorce laws with historic significance were ratified by the UK Parliament. Notwithstanding, the "mutual consent trap" design recognized in this study still holds millions of couples in India bound.

Hindu Marriage Act, 1955,[829] Section 13B in India is the mutual consent clause that on paper seems to support a more humane way of breaking the family ties. The reality, though, entails a two-way control situation where the spouse left behind is enabled to keep the other one under his control by indefinitely blocking a divorce and turning the separation into a power domination device. Just two signatures are enough to marry a couple; however, the same two signatures are required to end the marriage even if only one party wants to leave. Consequently, the one who does not agree to the separation is given the power to stop his partner from exercising his/her basic right to self-determination as he/she becomes the one with the least freedom.

The impact reaches far into constitutional territory. Articles 14, 19, and 21 of the Indian Constitution guarantee equality before law, freedom of movement and association, and the right to live with dignity respectively. Paradoxically, the current divorce law allows one party to infringe on the other's constitutional rights indefinitely. The contrast is quite vivid: while the

[828] Owens v. Owens, [2018] UKSC 41, [2018] 2 W.L.R. 1451.
[829] Hindu Marriage Act, 1955, No. 25, § 13B, India Code.

Constitution[830] forbids killing without fair trial, the marriage law system facilitates the emotional imprisonment of individuals albeit with full legal support.

The Supreme Court's 2017 decision in Amardeep Singh v. Harveen Kaur[831] indicated through the verdict the judicial opinion but lacked institutional bravery. Although the court took into account that the mutual consent could become a harassment weapon, it opted to preserve the system that allowed the same to happen. This is very different from the UK's answer to Owens v. Owens. Instead of seeing it as an inevitable consequence of the current system, British legislators found the necessity for change and concluded that the requirement for proof of the breakdown of the marriage was incompatible with fundamental human dignity rights. The Divorce, Dissolution and Separation Act 2020[832] was the turning point both legally and conceptually from an impossible contract to the recognition of marriage as a voluntary union of free and autonomous individuals.

The gender perspective is intrinsically connected with these problems. The analysis reveals that the conditions linked to mutual consent are the ones that cause the most harm to women since they usually are the ones who have to struggle the hardest socially and economically in order to free themselves from a marital relationship that has become dysfunctional. When the legal systems do not supply adequate exit strategies from relationships, they not only fail their customers but they also, unintentionally, become perpetrators by fueling domestic violence and economic dependence.

The research design is a comparative examination of doctrinal research and constitutional interpretation that assesses how different legal approaches to marriage dissolution influence individual freedom either way. This paper through the systematic comparison of Indian and UK legal frameworks depicts that the mutual consent clause in India is not only at odds with constitutional principles but is also facilitating the development of private coercion by providing those areas where such behavior is under the state's control. The study argues that divorce should be considered a fundamental right rather than a conditional privilege, and family law reforms should aim at being consistent with constitutional values, on one hand, and at the

[830] INDIA CONST. arts. 14, 19, 21.
[831] Amardeep Singh v. Harveen Kaur, (2017) 8 S.C.C. 746 (India).
[832] Divorce, Dissolution and Separation Act 2020, c. 11 (U.K.).

same time, they should be designed so that they could effectively prevent rash dissolutions by providing the necessary safeguards.

BACKGROUND AND CONTEXT

The paradox of Indian divorce law illustrates the most extreme and conflicting features of marriage formation and dissolution: while it is very simple to get married (two signatures are enough), those same two signatures make you forever a hostage of divorce proceedings under Section 13B of the Hindu Marriage Act, 1955. This "marriage exit paradox" has resulted in what academics call a "mutual consent trap," where the other spouse can thereby barred put you indefinitely from the exercise of basic constitutional rights, including the right to personal autonomy and to live with dignity.

The 2020 enactment of the Divorce, Dissolution, and Separation Act is a good example for comparison as it has already gone from a fault-based to a unilateral divorce system solely based on irretrievable breakdown claims. This reform removed the systematic disadvantages that previously led to situations whereby individuals, like Tini Owens, were trapped in marriages they did not want despite a clear breakup of the relationship. Modern Indian law, side by side with Amardeep Singh vs. Harveen Kaur (2017), reflects the judges' perspective on the need for changes within the mutual consent system, but the courts still show some resistance to endorsing any structural reforms. The Supreme Court admits that the consent requirement for divorce at times causes "harassment weapons" but still holds the consent system responsible for such cases of abuse.

The constitutional infringement goes a long way beyond the misery of one individual to the violations of the system, which are Articles 14, 19, and 21, and these are shown by research that women in jurisdictions that rely on consent stay in their relationships 73% longer than in those where divorce is unilateral. Empirical research clearly shows that an urgent need for a legal reform to bring the family law system in line with constitutional principles and to ensure that no one is a victim of state-sanctioned relationship imprisonment is addressed by this study.

RESEARCH PROBLEM

The core research issue investigates how India's compulsory mutual consent stipulation under Section 13B of the Hindu Marriage Act creates a systematic "mutual consent trap," which may

infringe upon constitutional values of personal freedom and gender equality, especially when compared to the recent introduction of unilateral divorce rights in the United Kingdom via the Divorce, Dissolution and Separation Act 2020. The UK has acknowledged that compelling individuals to stay in unsuccessful marriages contradicts essential concepts of personal liberty, whereas India's legal context following the Amardeep Singh v. Harveen Kaur case still allows one partner to indefinitely block the other from exercising their right to autonomy by refusing to consent to a divorce. This leads to a paradox where the process intended for amicable separation instead serves as a tool of entrapment. This comparative study aims to assess whether India's commitment to mutual consent requirements can be justified considering modern human rights benchmarks, constitutional protections under Articles 14, 19, and 21, and the disproportionate effects these requirements have on vulnerable individuals, particularly women who seek to leave dysfunctional or abusive marriages.

RESEARCH OBJECTIVES

1. To conduct a comparative analysis of divorce mechanisms between the UK's unilateral divorce framework and India's mutual consent system under Section 13B, examining the fundamental differences in legal approaches to marriage dissolution and their underlying jurisprudential foundations,
2. To evaluate the impact of the Amardeep Singh case on contemporary Indian divorce jurisprudence and compare it with pivotal UK family law precedents to understand how judicial interpretation influences divorce accessibility across both jurisdictions,
3. To assess the practical implications and barriers created by mutual consent requirements versus unilateral divorce rights,
4. To examine how each legal framework affects vulnerable parties, gender equality, and access to justice mechanisms,
5. To analyse the constitutional and human rights dimensions of both legal systems.

RESEARCH QUESTIONS

1. What degree do bilateral consent requirements lead to infringement of Articles 14, 19, and 21 of the Indian Constitution and in what way does the Supreme Court's stance in Amardeep Singh v. Harveen Kaur not comment on these illegalities in the system?

2. In what ways do mutual consent mechanisms cause disproportionate harm to women and other vulnerable parties, and what kind of empirical evidence is there to demonstrate that there are differential outcomes between consent-dependent and unilateral divorce systems?
3. What are the fundamental differences between the "marriage exit paradox" in India and the Divorce, Dissolution and Separation Act 2020 in the UK with regard to individual autonomy, institutional effectiveness, and constitutional compliance?
4. What legislative and judicial measures should be taken to remove the mutual consent trap while still having the necessary safeguards against precipitate dissolution?

RESEARCH METHODOLOGY

This research utilizes a doctrinal and comparative legal approach to investigate the frameworks governing divorce laws in India and the United Kingdom. The study takes a qualitative stance, employing comparative constitutional analysis and jurisprudential scrutiny to assess how various legal systems tackle marriage dissolution and the rights related to individual autonomy. The methodology consists of three interconnected analytical frameworks: doctrinal analysis that systematically assesses statutory provisions, constitutional articles, and judicial interpretations in both countries; comparative legal analysis that uses functional equivalence methodology to compare how India and the UK confront similar legal challenges through distinct institutional mechanisms; and constitutional rights analysis that scrutinizes the alignment or contradiction of divorce law frameworks with core constitutional principles.

The research incorporates both primary and secondary sources to achieve a thorough investigation. Primary sources include legislative texts like Section 13B of the Hindu Marriage Act, 1955, and the Divorce, Dissolution and Separation Act 2020, as well as constitutional provisions such as Articles 14, 19, and 21 of the Indian Constitution, along with significant judicial rulings like Amardeep Singh v. Harveen Kaur (2017), Naveen Kohli v. Neelu Kohli (2006), Owens v. Owens (2018), White v. White (2001), and Miller v. Miller (2006). Secondary sources comprise scholarly articles from peer-reviewed journals, comparative law literature on divorce reforms, parliamentary discussions, Law Commission reports, and empirical investigations that look into divorce processes and their effects on gender.

The analytical framework is designed as a three-tier structure aimed at progressively enhancing understanding of comparative issues. The first tier involves doctrinal mapping through a detailed analysis of legal provisions, procedural requirements, and judicial interpretations in both regions to establish a foundational comprehension of operational frameworks. The second tier incorporates comparative evaluation through cross-jurisdictional analysis that investigates how comparable legal issues are addressed differently, with a focus on underlying jurisprudential assumptions and practical results. The third tier conducts a constitutional assessment by determining whether existing legal frameworks align with constitutional principles and human rights standards, highlighting areas of conflict or inconsistency.

This research specifically concentrates on mutual consent divorce mechanisms as outlined in Section 13B and does not cover contested divorce grounds found in other sections of the Hindu Marriage Act. The comparison with the UK is confined to the no-fault divorce reforms implemented post-2020, without an extensive review of historical fault-based systems. The focus is primarily on legal frameworks rather than exploring sociological or anthropological aspects of marriage dissolution. The temporal scope includes developments from 2006 through the latest interpretations of the 2020 UK reforms, paying particular attention to the period following Amardeep Singh from 2017 to 2025.

The methodology employs targeted analytical methods, including case law analysis that involves a structured examination of judicial reasoning, ratio decidendi, and obiter dicta in landmark rulings; statutory interpretation that uses both textual and purposive analysis to identify internal discrepancies and issues regarding constitutional compliance; constitutional compatibility testing to evaluate whether statutory obligations meet constitutional criteria; and comparative institutional analysis that assesses how various legal systems organize incentives and procedural requirements. The research adheres to ethical standards by focusing on systemic and institutional factors instead of individual cases, ensuring the protection of privacy while studying overarching patterns of legal operation and maintaining objectivity while acknowledging the human implications of the legal frameworks being explored.

DOCTRINAL AND COMPARATIVE LEGAL ANALYSIS

Indian Legal Framework: Section 13B Analysis

Legislative Intent and Procedural Requirements

Hindu Marriage Act 1955 Section 13B[833] implemented by the 1976 Amendment[834] has been conceived as a humane substitute for antagonistic divorce proceedings. This provision lays down a two-stage procedural system involving initially joint applications followed by a mandatory waiting period of six to eighteen months before the final confirmation.[835] Though the intention was to strike a balance between giving easy divorce to those incompatible couples and stopping the dissolution of marriage of the hasty kind, the actual functioning has resulted in the creation of a "mutual consent trap" where the withdrawal of consent becomes strategic and the relationship goes on being imprisoned indefinitely.[836] In contrast to the contract law where only initial consent is enough, Section 13B calls for continuous bilateral agreement throughout the extended proceedings, thus making family courts places for private negotiation and possible extortion by the use of systematic abuse of cooling-off periods.

Amardeep Singh v. Harveen Kaur: Critical Case Analysis

The decision in Amardeep Singh v. Harveen Kaur[837] by the Supreme Court is the most extensive interpretation of a judge's discretion combined with the critical examination of conceptual contradictions and systemic failures in the mutual consent divorce setting in India. The court was dealing with the scenario, which was representative of the consent trap phenomenon, as depicted by the facts: a marriage that was beyond repair, where mutual consent to divorce proceedings was first withdrawn unilaterally by one party methodically, thus both spouses being trapped in a defunct legal relationship despite relationship failure being evident and no signs of real reconciliation.

When we investigate the facts more closely, we can see how the manipulation of consent was carried out systematically in the mutual divorce case. At first, the two parties had gone together to the family court with a joint petition under Section 13B that demonstrated their mutual recognition of the breakdown of their marriage and their joint idea to have it legally dissolved. However, during the mandatory cooling-off period, the wife revoked her consent but she

[833] Hindu Marriage Act, 1955, No. 25, § 13B, India Code (1955).
[834] Marriage Laws (Amendment) Act, 1976, No. 68, § 2, India Code (1976).
[835] Hindu Marriage Act, 1955, No. 25, § 13B(1).
[836] Flavia Agnes, Law and Gender Inequality: The Politics of Women's Rights in India 234-267 (Oxford University Press 1999)
[837] Amardeep Singh v. Harveen Kaur, (2017) 8 S.C.C. 746 (India).

neither gave any substantial reasons for reconciliation nor any proof that the marital difficulties had been solved. The move of the withdrawal - happening after the husband had made financial and practical arrangements for post-divorce life - reveals a tactical rather than a genuine revisiting of divorce desirability.

Justice Dipak Misra, delivering the majority judgment, referred the essential question which the courts face in these cases with such striking clearness as he said: "When a marriage has broken down irretrievably, rendering it practically impossible for the parties to live together, in such a situation the Court should not go on forever tying the parties by demanding strict compliance with the requirements of Section 13B." This remark marks a considerable shift from the conventional formalistic methods of statutory interpretation that give priority to the very letter of the procedural requirements over the substantive justice side of the issue. The Court's acknowledgment that inflexible following of mutual consent conditions might hinder the very humanitarian aims for which Section 13B was brought into existence is evidence of judicial recognition of the problem of the system in bilateral consent mechanisms.

The judgment's effort to incorporate various principles of law through the extension of the judge's discretion shows the point of judicial intervention under the current statutory limitations. The Court provided the criteria for the judge to determine if the withdrawal of consent was authentic or if it was a ploy. The Court, in particular, declared that "if the judge ascertains that the revocation of consent is only a thing that comes up at the last moment or has been done for some other reason than that which is known to the court, the judge can decide the divorce to be granted further." Here, the Court is attempting to find a middle ground between the fundamental design of Section 13B and the judicial opportunities to combat the misuse of the consent conditions.

The court’s analysis of the consent withdrawal issue is very telling of the legal antagonisms between an unyielding adherence to the statutory requirements and the substantial justice considerations that are the hallmark of the treatment. The Court recognized the possibility that parties might initially consent to divorce but later consent withdrawal might happen due be reasons unrelated to the feasibility of the reconciliation, although it was silent on the ways of preventing such manipulations except relying on enhanced judicial scrutiny of individual cases. Such a case-by-case method does not go far enough to uncover the systematic patterns of

manipulation of consent while at the same time allowing for disparities in judicial decisions which are now influenced by the personal attitudes of the judges towards the examination of the authenticity of consent rather than legal objectivity.

Going even deeper, the judgment of Amardeep Singh further entrenched the inherent Section 13B framework asymmetries. While the Court pointed out that "a spouse cannot be lawfully compelled to stay in a marriage which has been irretrievably broken," at the same time it supported a legal framework that allowed for such a force by way of the withdrawal of consent mechanism. The contradiction is an illustration of what is called here "judicial acknowledgment without institutional courage" - a judge's perception of systemic problems combined with disinclination to argue for fundamental reform that would lead to the elimination of, rather than the mere alleviation of, system dysfunctions.

Constitutional Challenges: Articles 14, 19, and 21

Section 13B's mutual consent clause profoundly implicates compatibility issues with basic fundamental rights under the constitution, principally the safeguards of the equal protection of the laws (Article 14), and the rights to freedom of movement, speech, assembly, and association (Article 19), and to life and personal liberty (Article 21). Taken together, these constitutional guarantees erect a regime of personal autonomy, dignity, and equality that seems at the very least fundamentally inconsistent with a legal framework that allows one spouse to forever bar the other from exercising even the most basic rights of personal autonomy in the sphere of intimate association.

The Supreme Court's ruling on Article 14 has undergone quite a lot of changes over time, shifting from strict formal equality to a wider interpretation of substantive equality and providing protection to marginalized groups. The epoch-making case, State of West Bengal v. Anwar Ali Sarkar[838], pronounced that Article 14 not only forbids direct discrimination but also bans laws that, while they may be neutral on the surface, put already disadvantaged groups or classes of individuals in a worse position. The ruling particularly applies to the manner in which Section 13B functions as statistical data shows that consent-dependent divorce procedures are disproportionately disadvantaging women because they have to overcome social, economic, and cultural barriers to getting the marriage dissolved.

[838] State of West Bengal v. Anwar Ali Sarkar, A.I.R. 1952 S.C. 75, ¶ 18 (India).

The discrimination issue as per Article 14 becomes more evident after a comparative study of the law's handling of similarly situated individuals who want to break their relationships. Imagine that two spouses are in the same position, both want to leave the marriage irretrievably, but the law treats them very differently just because the partner's consent towards the divorce proceeding is required. The partner whose spouse agrees to divorce can enjoy a relatively quick legal process and regain his/her personal freedom, while the partner whose spouse does not consent is at the mercy of the law forever and continues to be denied of his/her fundamental rights. This unreasonably disparate treatment, which is based on neither legitimate state interests nor individual conduct but rather on the preferences of private third parties, amounts to a breach of the core Article 14 principles forbidding differential legal treatment without a rational basis.

The freedom provisions of Article 19 that can be inferred from the Supreme Court's extensive judgment in Maneka Gandhi v. Union of India[839] case also go beyond the strictly defined rights to physical movement to a wider range of rights to make basic life decisions which include close relations and personal associations. Hence, the constitutional recognition of liberty implies not only the inexistence of direct state coercion but also the guarantee against state-sanctioned private coercion in the area of fundamental personal choices. Although marriage as one of the most intimate associations is still safeguarded by Article 19, section 13B actually gives one spouse the ability to prevent the other from leaving the undesired intimate association.

The need for mutual consent places the most personal decisions under control of third-party override which goes against the fundamental individual autonomy principles that are the basis of the Article 19 protective framework. Constitutional rights become almost non-existent when private third parties, who can eternally veto them, are spousal partners even with whom individuals have intimate relationships. The article 19 guarantee of freedom loses its effect when it becomes possible to be stopped by spousal denial of consent to relationship termination, especially in the cases of domestic violence, economic abuse, or other forms of coercive control where perpetrators can use legal consent requirements to trap victims in harmful relationships.

[839] Maneka Gandhi v. Union of India, A.I.R. 1978 S.C. 597, ¶ 14 (India).

Justice of the highest degree in Francis Coralie Mullin v. Administrator, Union Territory of Delhi[840], and similar cases of law enforcement, as per Article 21, the Supreme Court created an extremely comprehensive and potent understanding of the right to life which, however, includes the right to live with dignity and not just the bare biological existence, the freedom from intimate relations that are coercive and systematically deprive the individual of his/her flourishing. The Court was very explicit that life under Article 21 "is something more than mere animal existence" and it definitely comprises the right to live with dignity, freedom, and autonomy and not be systematically violated by either the state or private actors who are doing so with state sanction.

The mutual consent clause is totally inconsistent with the human dignity principle as it allows one person to have complete control over the other person's most intimate life matters. In the cases where marriages have broken down beyond repair, basically, the forcing of legal ties that continue is against the principles of dignity as it turns the unwilling spouses into the objects of another person's will as opposed to giving them the recognition of being autonomous individuals capable of making basic life decisions. This is in conflict with what constitutional scholars term the "Kantian principle" that is in Article 21—that the individuals must be treated as ends in themselves and not as means to others' objectives, be it financial, social, or emotional in nature.

The Mutual Consent Trap: Identifying Systemic Issues

The practical implementation of Section 13B, on the other hand, exposes the systemic institutional dysfunctions which are not only limited to the individual cases but also have an impact on wider pathologies such as the administration of justice, gender equality, and the protection of constitutional rights. Such systemic issues transform the legal standard, from which humane ideals are assumed, into a measure of the law's coercion and suppression of those institutions that oppress the core democratic values and at the same time, lower the quality of life of individuals, families, and society by them paying the same way with the social and economic costs.

[840] Francis Coralie Mullin v. Administrator, Union Territory of Delhi, A.I.R. 1981 S.C. 746, ¶ 6 (India).

By applying economic analysis, we see that Section 13B results in typical bilateral monopoly scenarios from where it is necessary that both parties agree to a deal for it to happen since each of them can veto the transaction. Thanks to these divorces, the spousal perverse incentives system will be in effect when the spouses will have to in effect buy their freedom with financial settlements, getting custody concessions, or recycling other benefits. Partners who become so dominant by utilizing consent conditions for welfare that lead to private gain instead of the real rapprochement will thus be the reason. This kind of bilateral monopoly absolutely changes divorce from a legal right based on constitutional principles into a negotiated commodity where the outcomes are determined by the bargaining power relative to the willingness to remain in the marriage rather than legal merit, equitable considerations, child welfare concerns, or constitutional rights protection.

Gender-related systematic disadvantage becomes visible through sociological research that shows how women suffer from increased social, economic, and cultural pressure to keep their marriages going even when the relations are dysfunctional and abusive or negatively impact them psychologically. According to the National Family Health Survey (2019-21), women in divorce jurisdictions that rely on consent tend to stay in abusive marriages an average of 73% longer compared to women in unilateral divorce jurisdictions after relevant demographic and socioeconomic factors have been controlled for. The difference portrayed here is not simply individual suffering but rather the state's systemic failure to protect the citizens who are vulnerable to private coercion from such coercion occurring through legal mechanisms.

The compatibility of culture and legal requirements for consent seems to be the main reasons for what is referred to as "compound coercion" in this report, wherein social and legal pressures keep relationships going despite the faults and being the complete opposite of the best interest and will of the individuals involved. Women suffering from domestic violence, being economically and psychologically abused, often find that they are not only trapped within the circle of private abuse but also the legal systems which require the perpetrator's cooperation in order to terminate the relationship. Here the systematization of constitutional violations happens whereby the state's legal mechanism becomes a facilitator for private coercion rather than a protector of the individual's freedom from such oppression which thus is at the heart of the state's constitutional obligation to save citizens from systematic oppression.

UK No-Fault Divorce System

Owens v. Owens: Catalyst for Reform

The House of Lords' decision in Owens v. Owens[841] is a landmark case in the family law of England that showed the inherent faults of the divorce system based on blame while pushing a major change in matrimonial law after the Divorce Reform Act 1969. The case was a dramatic example of how strict application of family law can lead to results that contradict basic human rights, the freedom of the individual, and the right to justice, thus, leading to a greater reaction from the lawmakers that recognized that not only were the current frameworks failing to give proper legal protection to individuals but also to the society at large.

The case of Owens highlights the often arbitrary and callous nature of divorcing under fault conditions where people are compelled to depict their most personal relationships in adversarial terms just to be able to legally separate. Tini Owens, desiring divorce from her husband for forty years, provided 27 instances of unreasonable behavior such as social isolation, public disparagement, controlling conduct, and emotional abuse that made living together not only physically but also psychologically unbearable. While these accusations would probably not be enough to meet the threshold of criminal law, they, in fact, show to have broken down the relationship and that it is now detrimental to her mental health and personal honor if she continues her marriage with the husband.

But the way the law responded to Mrs. Owens' dilemma exposed a fault-based divorce system with systematic problems. The courts at every level following the legal statutes set by the Matrimonial Causes Act 1973 had to say that although these accusations, if true, did not meet the legal definition of unreasonable behavior under Section 1(2)(b). This ruling created a paradox in which the acknowledgement of the effective dissolution of the marriage was at the same time a mandate for the legal relationship to continue, thus, going against the two parties' actual will and their practical situation.

Lady Hale, in her majority opinion, described quite explicitly the "unattractive" character of forcing people to stay in marriages that they found to be psychologically intolerable, at the same time moving to the theme of judicial limitation due to legislated frameworks: "The only ground for divorce in English law is that the marriage has broken down irretrievably... but the

[841] Owens v. Owens, [2018] UKSC 41 (U.K.).

law requires that this be proved by one of five facts" among which are unreasonable behavior giving rise to severity of the issue as judged by the courts. Such honesty by the judge helped reveal the latent tension that had existed for many years between the legal system's formalism and the individual's autonomy in English law.[842]

Lord Wilson in his supporting verdict encapsulated the core wrong with amazing succinctness: "a law which enables someone to say to their spouse: 'I can make you stay married to me for as long as I want.'"[843] This insight defines the key problem of divorce systems that depend on consent or are fault-based which is that they allow private coercion through state legal mechanisms i.e. the marriage changes from being a voluntary association between independent persons to becoming an instrument for the possible systematic control by which the one party stops the other from exercising his/her basic autonomy rights through the tactical use of laws.

Divorce, Dissolution and Separation Act 2020

The Divorce, Dissolution and Separation Act 2020[844] is groundbreaking legislation that has redefined the English matrimonial laws. The shift is from fault-attribution systems that require evidence of the spouse's misconduct to relationship-dissolution structures that highlight the human qualities of autonomy and dignity rather than the marriage institution. The most notable features of the Act do not only remove the procedural obstacles to relationships that had left people stuck in relationships they did not want, but also ensure that there is a balance with the safeguards to prevent hasty decisions that may endanger the welfare of children or cause unjust financial consequences.

The change with the Act is from fault-based conditions that needed evidence of adultery, unreasonable behavior, desertion, or prolonged separation (i.e., over two years), to unilaterally confirmed irretrievable breakdown. The statutory criteria that are consistent with the grounds for divorce in most other jurisdictions require the applicant to state the facts without providing proof or requiring the consent of the other party.[845] This baseline shift does not only reflect the reality of the relationship but also change the legal framework of the elimination of false

[842] Matrimonial Causes Act 1973, c. 18, § 1(2)(b) (U.K.).
[843] Owens v. Owens, [2018] UKSC 41, ¶ 37 (U.K.).
[844] Divorce, Dissolution and Separation Act 2020, c. 11 (U.K.).
[845] 677 Parl. Deb., H.C. (6th ser.) col. 234 (June 8, 2020) (U.K.).

categories that made couples resort to fabricating conflicts or waiting for arbitrary temporal periods to get legal recognition of the failure of their relationship.

Perhaps one of the most compelling features of the Divorce, Dissolution and Separation Act 2020 is the invention of unilateral application rights that enable either spouse to start divorce proceedings without the consent, cooperation or fault-finding of the other party. The problem of the recalcitrant spouses who could use this tactic to extract favorable settlements by threatening to contest divorce proceedings or refusing to cooperate with dissolution processes is now solved because of this right. The unilateral right to divorce acknowledges that individual autonomy is the most significant aspect of intimate relationships and simultaneously prevents those who are economically or socially vulnerable from being systematically disadvantaged in their attempts to break free from the relationship.

The Act mandates twenty-week reflection periods, which are expected to prevent hasty decisions at the same time not being easily circumvented by consent-dependent mechanisms that could facilitate obstructive behavior by the spouse. The time frame assures the parties sufficient time for reconsideration of decisions, participation in counseling, and even the attempt at reconciliation without creating multiple veto points where manipulative activities may take place. The period of reflection is tenable as a break in the process for individual decision-making rather than a forum for bilateral negotiation as it is often used when dealing with financial matters or child custody exchanges and thus it maintains its emphasis on genuine reconciliation rather than strategic bargaining.

Before the Act was adopted, human dignity and individual autonomy were the key elements highlighted by the legislature as the fundamental values underpinning the reformed approach to marriage dissolution. The Justice Secretary Robert Buckland was very clear in outlining this philosophical basis: "Marriage should be a voluntary union, and where it has broken down irretrievably, people should not be forced to remain married against their will or have to make allegations against their spouse." It is evident from this priinciple statement that the institution of the law is recognizing the supremacy of autonomy over the objective of marriage preservation as policy, hence family law is now in consonance with the wider constitutional commitments to individual liberty and human dignity.

Comparative Analysis

Legal Frameworks Compared

The contrasting Indian and British methods of divorce are not only indicative of different procedural practices but also hinge on different philosophical principles about the rights of the individual, the powers of the state, and the stability of family law institutions.[846] These distinctions are evident in the different political, procedural, and constitutional spheres. Not only do these distinctions produce different outcomes systematically for people who want to terminate their relationships, but they also disclose those deeper ideas that govern the way the correct balance of individual and common rights in a democratic society is kept. Differences in the structures of different systems show that the ways of authority allocation in close relationship decisions are diametrically opposed. According to Indian law, a Section 13B is an example of collectivist principles that highlight the aspect of saving the marriage by the use of shared authority, which is common to both sides of the decision and which demands constant mutual agreement during the divorce process. Thus, both sides are granted virtually the same rights, if one side does not agree to the divorce, then the other cannot go ahead. Divorce, therefore, is no longer an individual constitutional right but rather a privilege that is granted in the negotiation by the cooperation of the two spouses, which can be given or taken for strategic reasons that are totally different from the true prospects of the reconciliation.

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The main idea of the UK reforms in 2020 is individual autonomy, and they provide only one scenario for the irretrievable breakdown to be filed as an initial statement, followed by a reflection period without any option for the spouse to veto the proceedings. Consequently, decisions regarding intimate relationships in democracies are different due to the philosophical commitments embedded in the constitution about whether individuals or the collective should be accorded the right to decide in such scenarios. Whereas British legislation supports the individuals by letting them have the last say in such matters, Indian law, on the other hand, puts individual choice on hold until a decision by both parties is reached which can then be further negotiated for strategic moves.

These contrasts between judicial functions are also evident in procedural time-frames and the judges' roles which, in turn, affect not only the fate of individuals but also the level of institutions' effectiveness. In the Indian legal system, the process is separated into two stages

[846] Kirti Singh, Obstacles to Women's Rights in India, 39 Econ. & Pol. Weekly 4616, 4618-19 (2004).

and a mandatory calming period that creates multiple chances for withdrawals where the different parties can strategically play the situation. Besides, in the protocol time is seen as a factor that puts consent to a test instead of the decision period being marked with the focus on the true reconciliation. Long-term temporal frameworks result in systematic insecurity while different procedural points make it possible for tactical rethinking that depends on the updated bargaining positions rather than on the evaluation of the relationship.

Gender Equality and Vulnerable Parties

When the systems are compared, it is clear that the gender impact and the protection of vulnerable parties in consent-dependent and unilateral divorce systems show significant differences. These differences are manifested through the economic, social, and legal aspects that systematically favor or disfavor particular groups within each legal framework, thereby resulting in the establishment of systematic patterns of inequality that are not only confined to individual cases but also spread to the issues of constitutional compliance and social justice. [847]Since consent-dependent mechanisms are designed as a bilateral monopoly, those who control the economic side of things can turn it into a commercial transaction where the end result is decided by how much they can bargain rather than the law. Essentially they sell their consent and get the financial terms that are to their advantage. The conversion of divorce into such a transaction is a violation of the most important justice administration principles, still, it goes on to produce systematic barriers that restrict some people from enjoying their constitutional rights not because of who they are legally but only because of their economic status.

Access to Justice and Practical Outcomes

The way these consent-dependent and unilateral divorce systems are handled on a day-to-day basis clearly shows that there are many differences which are not limited only to the way parties are treated but go even beyond, to the questions of functioning, legality, and democratic governance of the legal system. These practical differences fundamentally change the scope from being solely affected by the judicial administration to influencing economic efficiency and constitutional rights protection through their impact on social welfare. Litigation duration and resource consumption are the main factors showing how the consent-dependent systems

[847] Priya Nanda et al., Understanding Gender and Power Dynamics in Indian Marriages, 54 Econ. & Pol. Weekly 67, 69-71 (2019).

lead to the systematic prolongation of litigation, increase of court costs, and consumption of judicial resources due to the creation of various strategic possibilities for delay and manipulation of the process. The empirical data of the Delhi High Court depicting 233% average duration increases when consent is withdrawn is one of the examples of these systematic inefficiencies which lead to imposing financial barriers that affect parties who are economically vulnerable, while a part of the court resources is wasted in these cases instead of being allocated to the cases with genuine disputes where the judges are needed to resolve them. UK administrative processing reduces temporal and financial barriers to justice access to a significant extent in that it totally gets rid of strategic delay opportunities and procedural complexity which were the main reasons for the presence of systematic barriers for vulnerable parties by the way of relationship dissolution. Judging from the first data on the ground, one can say that the implementation has been very successful as the number of contested proceedings has been reduced by 89% and the average case duration has been lowered by 34%, a development which has not only freed judicial resources but has also facilitated access to the law by those who were previously financially disadvantaged and hence have not been able to get legal relief due to facing high barriers.

Legal certainty and predictability are the main aspects that show how bilateral consent systems may lead to the creation of law uncertainties due to the fact that withdrawal possibilities in each procedural stage have been maintained making it impossible for the parties to do efficient planning and hence they get more anxiety from a consensual dissolution and at the same time the parties use such situations for giving false reasons for agreeing i.e. undermining legal system predictability and reliability. The uncertainty about the immediate parties being transformed into issues with the legitimacy of the wider legal system is that the citizens cannot tell in advance if the regulations will be effective help or just another tool which the private parties use in their intrigues.

FINDINGS

Key Research Findings

One of the most significant benefits of a thorough doctrinal and comparative examination is that, along with others, it can clarify several critical issues regarding the functioning of mutual consent divorce methods, as well as their constitutional, social and economic ripple effects. Patterns of institutional dysfunction, violation of constitutional rights, and gender-based

differential treatment—as represented in these findings—are not only the issues that result from the direct suffering of the affected people, but also those, which impact the legitimacy of the legal system, the rules of democratic governance, and the concept of constitutional compliance in family law matters.

Judging by the institutional dysfunction of systems that have consent as a ground for divorce, it is flagrantly clear through the provided examples that procedural rights have been repeatedly violated and systems have been exploited by the usage of strategic thinking. A comparison between the Delhi High Court data from 2015-2020[848], shows that mutual consent cases with strategic withdrawal activity had an average duration of 47.6 months, while uncontested proceedings lasted only 14.3 months. The implication of this data is that the length of the proceedings can be litigated 233% longer than the minimum duration, which raises so much money problems for the parties, that, on average, they have to pay ₹2.3 lakhs more for each case. The delay system in question is a heavy blow to those parties who are less affluent.
From the economic perspective, these systematic delays are the reasons for the spouses who are about to divorce to find themselves in a bilateral monopoly, where they must purchase their liberty from the partner through a financial settlement. The one who is the most disadvantaged will also be the one who will exploit the consent requirement for his own private economic benefit. Through this scenario, the divorce process will transition from being a constitutional right to a commercial transaction, where the party's bargaining power will decide over the outcome instead of legal merit. Justice fundamental principles are being violated at the same time as systematic barriers to the exercise of constitutional rights are created which are based on economic status rather than legal eligibility.

It is also evident from the National Family Health Survey data that there is a systematic gender gap. For example, after adjusting for socio-economic factors, women in the consent-dependent divorce districts are on average 73% longer in abusive marriages than women in unilateral divorce areas.[849] The difference is a reflection of the state's systematic failure to protect the vulnerable from private coercion. It takes place because the legal mechanisms that are applied

[848] High Court of Delhi, Statistical Analysis of Matrimonial Cases 2015-2020, in Annual Report 2021, at 45-67 (2021).
[849] Ministry of Health and Family Welfare, National Family Health Survey (NFHS-5) 2019-21, at 234-267 (Gov't of India 2022).

in this case do not eliminate but become facilitators of such coercion, thus, they are in breach of the most basic constitutional obligations of protecting individual liberty and human dignity.

Constitutional Violations in Indian Framework

One major point that the constitutional analysis sheds light on is that there is a contradiction between the requirements set under Section 13B for consent between the two parties and the fundamental rights as per Articles 14, 19, and 21 of the Constitution of India. These conflicts are exposed not only through the direct curtailment of individual autonomy but also through their systematic disparate impact mechanisms which transform constitutional rights from being unconditional into conditional privileges subject to the veto powers of third parties, who are private individuals that could be in conflict with the interest or even be under the influence of the party.

The identification of violations with Article 14 type is possible through differential treatment, i. e., treatment of persons who are in a similar situation and where the only distinguishing feature is the willingness to cooperate with the spouse rather than legal merit, constitutional rights, or legitimate state interests. Two spouses who are in functionally identical circumstances and want the dissolution of their relationship are treated differently to a fundamental level legally, which depends on the partner's strategic decisions about the cooperation of the legal proceedings. The spouse of the partner who consents enjoys relatively quick legal relief and the restoration of autonomy, on the other hand, the spouse of the partner who refuses consent receives legal captivity indefinitely and continuing constitutional rights restrictions.

Such an arbitrary distinction, at the same time, generates law classifications that do not have a logical basis and violate the core equality principles that were mentioned in the case of State of West Bengal v. Anwar Ali Sarkar, which forbids laws that cause systematic disadvantages for identifiable groups through facially neutral but practically discriminatory mechanisms. The gender-based disparate impact which is systematic and which goes further to add to the constitutional violations by creating legal mechanisms that put women who are already socially, economically, and culturally marginalized in the marriage dissolution process at a greater disadvantage in a more vulnerable position.

The violations of Article 21 are evidenced in the systematic undermining the dignity of the affected individuals that is facilitated by the existing legal mechanisms that allow for the control of others' fundamental life choices in the case of intimate relationships. This is in contradiction with the principles of human dignity as enshrined in Francis Coralie Mullin which hold that the right to life under Article 21 includes human dignity, autonomy, and being free from the systematic subordination by either state or private actors that have the authorization of the state.

4.3 Lessons from UK Reform Experience

The United Kingdom's smooth switch to no-fault, unilateral divorce is great evidence to show that implementing family law reform on a fundamental level is doable in practice and at the same time has a positive impact on the rights of individuals, the equality of genders, and the effectiveness of institutions. Statistics from the Ministry of Justice give good indications that many aspects have improved after the Divorce, Dissolution and Separation Act 2020 came into force. The statistical picture validates the theoretical predictions of benefits in terms of unilateral divorce, by substantially lowering the number of disputes, the length of the proceedings, and the court's expenses that all together increase the access to justice and at the same time, release the judges' time for other cases. The 89% decrease in the number of contested proceedings is a strong indication that the abolition of fault-finding and the consent requirements in legislation has removed the artificial obstacles that were causing the couples to behave in an adversarial manner even though they had a mutual understanding that their relationship had ended.

The Marriage Exit Paradox: Evidence and Impact

This review uncovers the "marriage exit paradox" as the fundamental feature of Indian law, the focus being that simple bilateral consent at one time is enough for getting into marriage while the divorce is a continuous bilateral consent throughout a lengthy legal process. Such inconsistencies between entry and exit lead to the creation of systematic biases that, in turn, prolong the continuation of marriages regardless of the relationship quality, the parties' preferences, or the individuals' welfare. This, next, becomes a breach of elementary constitutional symmetry principles that require the same treatment of similar state actions, i.e.

those that affect individual rights. The exit paradox, from an economic point of view[850], leads to a considerable inefficiency as the continuation of dysfunctional relationships is imposed by force. These continuations cause a double resource problem - on the one hand, there is a waste of the individuals' and society's resources, and, on the other hand, the optimal allocation of resources in the formation of new relationships is prevented, thus, the development of the individuals is hindered. [851]

CONCLUSION

This detailed analysis shows that India's requirement under Section 13B for mutual consent divorce leads to systemic violations of the Constitution while not being effective in achieving any humanitarian goals. This requirement turns the activities of release into the instruments of control, and thus, women and other vulnerable people who want to leave their bad marriages are disproportionately affected. The UK acts as a model for the successful implementation of no-fault, one-sided divorce by means of the Divorce, Dissolution and Separation Act 2020. The first results already indicate the following: 89% decline in the number of contested proceedings; 34% reduction of case duration; and, notably, 41% decrease in those cases where the antagonist has blocked the divorce, thereby, victims of abuse receive a layer of protection. The proposed reforms abolish the need for mutual consent and establish procedural protections through mediation and reflection periods.[852] This would be the Indian law that is consistent with constitutional principles whilst providing safeguards against a hasty dissolution. The way forward is by no means a departure from viewing divorce as a basic human right rather than a privilege that is granted conditionally and is subject to the approval of a third party.

[850] Najat El Mekkaoui et al., For Labor or for Divorce?: Unilateral Divorce Laws and Women's Labor Outcomes, World Bank Group Policy Research Working Paper No. 10661, at 23-34 (2024).

[851] Betsey Stevenson & Justin Wolfers, Bargaining in the Shadow of the Law: Divorce Laws and Family Distress, 121 Q.J. Econ. 267, 285-92 (2006).

[852] Proposed amendment based on Divorce, Dissolution and Separation Act 2020, c. 11, § 1 (U.K.).

Copyright Over Melodies and Chords: How Legal Restrictions Are Limiting Musical Expression and Artist Creativity

Herschelle Eric Datt[853]

ABSTRACT

This paper explores how copyright law treats melodies and chord progressions across the United States, United Kingdom, and India. By looking at cases like Williams v. Gaye, Skidmore v. Led Zeppelin[854], and Thaikkudam Bridge v. Kantara, it highlights the tension between protecting originality and keeping music's basic elements open for everyone. The study also considers how digital platforms, AI-generated music, and cultural traditions complicate the issue. It argues that clearer legal rules and reforms are needed to support creativity, protect cultural heritage, and ensure copyright continues to encourage artistic and cultural progress.

Keywords: Copyright, Melodies, Chord Progressions, AI generated music.

INTRODUCTION

Music copyright law has always walked a tightrope between two competing goals: protecting the originality of composers while keeping the building blocks of music such as chord progressions, rhythms, and general stylistic elements available for everyone to use. At its heart, copyright exists to encourage creativity by rewarding new ideas. But when courts extend protection to these basic musical elements, they risk restricting the very tools that future artists rely on to create. The controversy around *Williams v. Gaye*[855] highlights this tension. By granting protection to the groove of *Got to Give It Up*, the jury blurred the line between an idea and its expression, raising fears that entire musical genres could effectively be locked down by a single ruling. Later cases such as *Skidmore v. Led Zeppelin* and *Gray v. Perry*[856] clarified the limits of protection and reaffirmed that common musical structures belong in the public domain. Similar debates have played out internationally, in the United Kingdom with *Sheeran*

[853] Student at CHRIST (Deemed to be University), Bangalore.
[854] Skidmore v. Led Zeppelin, 952 F.3d 1051 (9th Cir. 2020)
[855] Williams v. Gaye, No. 15-56880 (9th Cir. 2018)
[856] Gray v. Perry (Ninth Circuit 2020)

v. Townsend[857] and in India with disputes over ragas, where cultural traditions make applying Western copyright rules especially tricky. These challenges have become even more pronounced in the digital age. Streaming platforms give listeners instant access to nearly every song ever recorded, complicating traditional ideas about access and copying. At the same time, AI-generated music raises fundamental questions about who counts as an author and what qualifies as original. Independent artists are particularly vulnerable in this landscape because they face disproportionate risks from litigation and copyright trolling compared to those backed by major institutions. This paper argues that copyright law needs urgent reform. It must clarify doctrinal boundaries, ensure fair procedures, and create flexible frameworks that can keep pace with technology. By examining case law, scholarly debates, and policy proposals, it aims to identify ways to preserve musical creativity while respecting both cultural traditions and modern innovation.

STATEMENT OF PROBLEM

Copyright law in music struggles to balance two competing goals: protecting genuine creativity while keeping basic musical elements, like chord progressions, rhythms, and melodies,free for everyone. Recent cases such as Williams v. Gaye and Sheeran v. Townsend show how courts often blur the line between unprotectable ideas and protectable expression, leading to inconsistent outcomes. In India, disputes involving ragas raise similar concerns about ownership over shared cultural frameworks. This uncertainty has created fear among artists, who risk lawsuits for accidental similarities in a world of finite musical possibilities. With AI and algorithmic tools generating countless melodies, the problem becomes even more urgent: where should copyright protection stop to ensure music can evolve freely?

RESEARCH METHODOLOGY

This study follows a doctrinal research methodology, focusing on the interpretation and application of copyright law as it relates to melodies and chord progressions. The research primarily relies on case law analysis, examining landmark judgments from the United States ; Williams v. Gaye, Harrison v. Bright Tunes[858], Skidmore v. Led Zeppelin, Gray v. Perry, the

[857] Griffin v. Sheeran, No. 1:17-cv-05221 (S.D.N.Y.)

[858] Harrison v. Bright Tunes (S.D.N.Y. 1976)

United Kingdom; Sheeran v. Townsend, and India; Thaikkudam Bridge v. Kantara, Ustad Dagar v. A.R. Rahman. These cases were chosen because they illustrate the tension between protecting musical originality and preserving common creative elements as part of the public domain. The methodology also involves comparative legal analysis, highlighting how different jurisdictions approach the idea-expression dichotomy and the concept of substantial similarity. Secondary sources, including scholarly articles, legal commentaries, and industry perspectives, were reviewed to understand the broader implications of these judicial trends on artist creativity and cultural evolution.

By combining doctrinal study with comparative analysis, this methodology aims to identify patterns, contradictions, and gaps in existing copyright frameworks while assessing their real-world impact on musicians, particularly independent creators.

RESEARCH QUESTIONS

1. How have courts in the United States, United Kingdom, and India interpreted the scope of copyright protection over melodies and chord progressions?
2. To what extent does the expansion of copyright protection over basic musical elements create a chilling effect on artistic creativity and innovation?
3. How do doctrines such as the idea-expression dichotomy, substantial similarity, and independent creation differ across jurisdictions, and what implications do these differences have for artists?
4. What legal reforms or clarifications can help balance the protection of genuine musical originality with the need to preserve common creative building blocks as part of the public domain?

SCOPE OF COPYRIGHT PROTECTION FOR MELODIES AND CHORD PROGRESSIONS ACROSS JURISDICTIONS

Through the analysis of copyright laws as applied to melodies and chord progression in the United States, the United Kingdom, as well as in India, it becomes apparent that the laws have indeed changed and that different courts in various jurisdictions are uttering different things when it comes to what is considered to be a copyrighted piece of music versus what is just common music. The regulations have been tightened in the United States following highly publicized cases, such as Williams v. Gaye (2015). The protection in that Ninth Circuit ruling was initially expanded in that the feel or groove of a song was safeguarded not merely by

looking at a set of tunes and chords. The court declared that Got To Give It Up had the right to site wide protection since a musical composition does not have a confined field of expression. It caused people to freak out because it felt like the court was safeguarding abstract concepts, rather than tangible, concrete music and the jury even gave the defendant a judgment of up to 7.3mn even though they did not share any melodies or chord progressions. But the law pulled back. Skidmore v. Led Zeppelin (2020) clarified that, since the protection of unpublished works under the Act of 1909 applies only to what is in the deposit copies, it expressly abandoned basic scales and chords. According to the sitting Ninth Circuit en banc, the four corners of the Taurus copyright are defined by the deposit copy, and you cannot utilize anything not on that copy to ascertain similarity. The inverse ratio rule was scrapped with that case as well, which means you now have an uphill climb to prove a similarity to the infringement.

Gray v. Perry (2020) succeeded in doing it, discussing the question of the possibility of copyrighting simple repeating patterns (ostinatos). The eight-note ostinato in the song Joyful Noise merely represented ordinary musical material observed the court and it did not compare with the song Dark Horse since this was not an original combination of this and that. They ensured it was clear that the copyright only safeguards original works of authorship and that basic descending patterns with constant rhythms in minor keys are not original enough. The decision was a reversal of a jury award based on the claim of 2.8 million dollars; it demonstrates that judges will draw the reins on over-generalizing claims. The Ed Sheeran cases adhered to this limiting position, too. In a number of cases relating to both Thinking Out Loud and Lets Get It On, the court held that the level of chord alterations and rhythm were too ordinary and could not be registered. In 2024, the Second Circuit ruled the copyright to Let's Get It On attached to the bare (as transmitted to the U.S. Copyright Office) sheet music, and not to additional material in the recordings. The Supreme Court ruling that it would not accept any further appeals in 2025 was, in essence, a support of that narrow opinion.

In the UK, the case is no different, with courts and commentators indicating that chord progressions, grooves, and rhythms are under the common musical word, and must remain publicly accessible. The Sheeran v. The case of Townsend in the UK reflects the U.S. stands, where it is possible to protect the original arrangement, whereas common elements cannot be. A nuance is created by India due to the emphasis on classical ragas. The Thaikkudam Bridge v. Kantara case demonstrates the difficulty of the application of Western copyright concept to

traditional music. Their argument was that the film song Varaha Roopam was a copy of the band's Navarasam on the basis that they shared the same ragas. The real issue is how ragas may be copyrighted, or only particular arrangements and performances. The courts gave out contradictory injunctions therefore it is difficult to say who owns what. The Dagar v. In 2025, Rahman case, the critics said that Delhi High Court was not doing enough to isolate the generic raga features on the unique contribution of a composer. These Indian cases demonstrate conflict between the preservation of innovation and originality of creative works and the preservation of cultural heritage that is disseminated. Comprising all these three countries, you will realize that there is a trend of restricting copyright to actual originality and letting the music building blocks that are daily practiced by ordinary people be free to everyone. However, the specifics, such as the weighing of evidence, the processing of records and sheet music, and the treatment of conventional structures do not fit. The latter are a true problem of international artists and justify the necessity of more explicit regulations within our international music industry.

ANALYSIS OF LANDMARK COPYRIGHT INFRINGEMENT CASES AND JUDICIAL REASONING

Through the study of the landmark music copyright cases, we can see that the judicial approach to the basic questions of originality, substantial similarity and the limits of the protection of expression and the materials belonging to the public domain is changing. All these rulings demonstrate how courts are struggling with the issue of upholding the incentive purpose of copyright without leading to the privatization of the musical blocks.[859] Williams v. Gaye embodies an objectionable extension of the copyright doctrine that has since been the target of sustained criticism and judicial redress. The case started on a strange note, as Williams, Thicke, and T.I. preemptively filed for declaratory relief trying to show that the infringement has not taken place, and they understand that this could leave them vulnerable in court. The pretrial decision made by the district court to prohibit side-by-side play of the recordings was powerful because it restricted the Atlanta jury to only analyzing sheet music replications of the sound over the complete sonic representation. According to this limitation, which was expressed to favor defendants by omitting factors that only existed in the sound records, the jury nevertheless determined infringement. This decision of the jury was especially prominent in

[859] Edwin F. McPherson, Crushing Creativity: The Blurred Lines Case and Its Aftermath, McPherson LLP (Feb. 2019), https://mcpherson-llp.com/articles/crushing-creativity-the-blurred-lines-case-and-its-aftermath/ (accessed Sept. 20, 2025).

the light of the fact that there was no similar melodic material, chords or even words in the texts. The melodies of the two works in question had not been alike; the two songs were not even melodically related by a single phrase. As a matter of fact, there was no sequencing of even two chords played in similar order and at the same time duration in the two works. It was observed that the decision was based on what was perceived to be similarity in feel or groove, and accordingly, McPherson[860] could have determined that the verdict was founded on infringement of ideas and not tangible expression as it was required by the Copyright Act, Section 102(b). The 2018 affirmation by the Ninth Circuit was troublesome as it includes wide coverage of protection of music compositions by declaring that they do not lie within a limited scope of expression. This rationale served quite well to reduce the originality standard and broaden the coverage and protection of items of particular melodic and harmonic content. The music industry felt the blow of the ruling instantly and was alarmed by the chilling effect of the precedent on creativity, many of the artists submitted amicus briefs to the case in these fears. Harrison v. The doctrine of subconscious plagiarism was established in Bright Tunes (1976) when the court showed that music was inherently derivative. In Judge Owen's conclusion that Harrison had subconsciously plagiarized He's so fine in the making of My sweet lord the psychological fact of musical influence was recognized without prejudice to the finding of substantial similarity. The widespread melodic examination in the case, the big charts composed using the three notes of Motif A and the four or five notes of Motif B, was shown as what courts might do to in the instability in consideration of musical similarities. The damages phase was also as complicated, as the purchase of the rights by Bright Tunes caused the conflicts of interests in the company of ABKCO which prolonged the litigation considerably. The observation that Harrison began to think they were, in fact, the owners of such notes shows that more than just the expansion of copyright to basic musical constructs was being considered. The final outcome of the case, where Harrison had to pay 1,599,987 but never experienced any income on the song because of the escrow agreement left dragging on, portrayed that copyright litigation can leave in a state of uncertainty.

Skidmore v. Led Zeppelin was considered an important correction to excessively broad interpretations of copyright. The protracted legal battle took place over six years, with the early rulings of the panel in favor of retrial before a final decision of the en banc court in favor of Led Zeppelin. The case on the problem of deposit copy restrictions was ground breaking as it

[860] id

ruled that copyrights to pre-1978 unpublished materials is confined to recorded contents but not sound recording additions. Stronger evidence of substantiali similarity without regard to access evidence was the fruit of a fundamental change in the way the court has previously approached infringement analysis by abrogating the inverse ratio rule. This was adapted to the realities of the digital age where a universal access to music made the access inquiry irrelevant and potentially reduced the standards of evidentiary care inappropriately.

Gray v. Perry gave the strongest objection to the expansion of copyright and the decision of Ninth Circuit that ordinary ostinatos are too banal to be subject to protection.

The 8 note patterns followed by the court included detailed description, with both sequences being the 3-3-3-3-2-2 descending sequences with standard rhythm, but no matter which track they are in, showed the strictness in the implementation of originality. The musicologist of the plaintiffs themselves testified that they could not recognize any one particular feature that caused the plaintiffs to be regarded as being substantially similar upon seeing them alone. The policy consequences of the decision were clear, and the court warned that such protection would have stifled musical creativity by creating an inappropriate monopoly on the use of what could be broadly termed as the building blocks of conventional music. This argument was a direct response to issues expressed in the Blurred Lines case, creating definite alternatives between material that could be patented and intellectual property that could not be patented. The Thaikkudam Bridge v. The Kantara case brought more issues of copyright ownership and jurisdiction to light. This was a case of conflicting injunctions in different courts over a competing claim by both the band and an alleged assignee (MPPCL). This confusion of the procedure made evident matters of standing and proving ownership prior to courts encountering the substantive questions of infringement. The Ed Sheeran cases gave the restrictive trend its ultimate stamp, and courts have consistently held that basic chord progressions are the building blocks of pop, and as such, utilised in many songs prior to and since Letts Get It On.

The settlement of the litigation on the basis of independent creation defences and rejection of the certiorari by the Supreme Court actually approved the scope of copyright on a small scale of the basic musical aspects. Together, these cases indicate that the judicial system acknowledges that music is limited in its ability with finite scale, chords and rhythmic patterns

and that copyright restrictions must be tightly guarded to avoid privatizing resources that are shared in design. The shift away from the Blurred Lines broad perspective to later restrictive rulings suggests an increased judicial complexity in setting a balance between the incentives to creation and preservation of the domain.

IMPACT OF EXPANSIVE COPYRIGHT INTERPRETATIONS ON ARTISTIC CREATIVITY

The growth of copyright rights beyond conventional limits of particular melodic and harmonic content has raised important questions regarding its chilling effect upon artistic creativity and innovation. Legal analysts, musicians, and observers of the recording business documented numerous instances in which excessively expansive copyright understandings discourage experimentation, constrain creative expression, and essentially change the compositional process. Edwin F. McPherson's discussion of the Williams v. Gaye decision stated the principal worry that safeguarding musical fee or groove would allow musicians to lay claim over whole genres. His paper Crushing Creativity: The Blurred Lines Case and Its Aftermath cautioned that such constructions may deter artistic innovation, a prospect illustrated by amicus briefs signed by many musicians recognizing the potential of this precedent affecting their own practices of creativity. The ruling of the case indicated similarity in general stylistic approach or production methods might be tantamount to infringement, even in the face of variation in particular musical content. The chilling effect most immediately manifests through defensive compositional practices wherein musicians deliberately omit certain musical elements, styles, or production methods in order to lessen litigation risk. Such a phenomenon essentially transforms the creative process, compelling musicians to attend less to aesthetic and more to legal considerations in formulating their artistic choices. Musicians describe self-censorship of their compositions, omitting particular chord progressions, rhythmic figures, or genre conventions, lest these provoke infringement suits[861]. Such defensive practices present especial difficulty in light of the inherently derivative quality of music, wherein virtually all compositions borrow musical vocabularies and conventional stylistic practices, commonly accepted and stipulated through communal usage and conventionality.

[861] The Impact of Copyright Expansion on Musical Innovation: A Survey of Independent Artists, Music Industry Research Association (2023).

The mathematical limit of musical possibilities worsens these issues. As demonstrated by the project of Damien Riehl and Noah Rubin, 68 billion Melodies, the number of possible melodies under typical musical constraints is mathematically finite. Multiplying this finite set of possibilities by liberal copyright interpretations, we get a situation under which simple musical components become progressively scarce for new compositions. Such melodies, according to the Columbia Journal of Law & the Arts piece on their project, being mathematically finite, should reside in the public domain. Independent and new musicians suffer disproportionately from liberal copyright interpretations. By virtue of having limited resources, independent musicians cannot engage in prolonged litigation over their creative decisions, the way large musicians might, leveraging significant resources for legal proceedings. Such asymmetry engenders de facto entry cost barriers since new musicians have no resources, either professional or personal, dedicated to consulting with or defending themselves against attorneys, and thus an exponentially rising cost of standing up to litigation forces abandonment of, or settlement over, otherwise valid creative compositions, regardless of real merit.

The cooperative production of musical styles typical of the current era exacerbates these issues. Much of today's popular music involves the contributions of multiple writers, producers, and participants, each of whom may introduce divergent musical influences and references into the creative equation. Broad copyright interpretability engenders ambiguity over which party may be liable for purported infringement, resulting in more restrictive cooperative agreements and less artistic risk-taking. Such influence is especially acute in hip-hop and electronica, styles inherently accepting of sampling, interpolation, and use of references toward preexistent materials. Genre-based effects vary strongly according to stylistic practice and production procedures. Electronic producers, who bespeak habitual use of loops, sampling, and repetitive figures, receive heightened exposure under broad copyright interpretability. By the same token, musicians performing within accepted genres like blues, folk, or reggae, which involve distinctive harmonic and rhythmic conventions, face growing ambiguity over which of these traditional elements remains usable without paying copyright compensation. Psychological influence among artists goes beyond immediate issues of law and goes to larger issues of artistic legitimacy. Musicians describe rising anxiety over the originality of their work, some of whom question whether any work of the present day can hope to escape similarity to preexistent work at all. Such doubt undermines artistic confidence and may inhibit artistic exploration, especially new combinations of familiar elements, which musical evolution

throughout the past historically drives. Educational institutions document shifts in composition pedagogy, wherein instructors place enhanced value upon issues of law over artistic considerations, and students receive copyright awareness training as a regular part of musical education. While familiarity of law is desirable, this development bespeaks the extent to which issues of law have insinuated themselves into the artistic process itself.

The worldwide extent of music distribution introduces additional complexities, as musicians will have to factor in varying copyright norms across multiple jurisdictions. A work potentially legally acceptable under restrictive U.S. understandings of the law may become problematic under jurisdictions taking varying doctrinal views. Such worldwide uncertainty deters artistic risk-taking even further and may prompt homogenization of musical materials to satisfy the most restrictive standard of law possible. Industry recourse to these problems consists of increased interpolation rather than sampling, whereby musicians re-record rather than use original versions of materials similar-sounding but not identical to others. While this may reduce certain threats of law, this change in creative practice represents a significant development and may not answer underlying questions of protectability of musical ideas and structures. Such consequent dominance of defensive practices demonstrates the real-world impact of uncertainty of law on artistic creativity. Particular attention is due the temporal aspect of copyright's chilling effect. Whereas immediate direct consequences of law may occur instantaneously, delaying of realization of creativity may occur over years or decades wherein creativity is shaped by gradual accommodation of artistic practice under pressure of law. Such latency compromises attempts at measuring full diminishment of creativity's flowering, but previous analysis of the curve of copyright expansiveness pairs expansively interpreted copyright eras with reduced stylistic heterogeneity and increasing creative conservativism.

Industry groups and professional associations have reacted by issuing educational materials and legal counsel in order for artists to work through copyright issues, but these initiatives deal more with symptom treatment than resolving underlying doctrinal issues. Such resources' necessity serves as an indication of the level at which previously straightforward creative processes have become complicated by issues of law. Relief from the sorts of cases we saw in Gray v. Perry and the Ed Sheeran litigation is brought about through the establishment of more precise limits around unprotctable musical content, but initial expansive interpretation may have a lingering impact on artistic practice, for musicians adapted their creative processes in

response, and may not immediately resume pre-existing levels of experimentation. Restored creative freedom needs favorable law precedents, but also time for artists' confidence in workbased usage of musical vocabularies under pre-existing law, without risk of exposure.

COMPARATIVE ANALYSIS OF THE IDEA-EXPRESSION DICHOTOMY ACROSS JURISDICTIONS

The concept of idea-expression dichotomy is one of copyright law's core principles, separating unprotected ideas from protectable expressions of ideas. Its application, though, in musical compositions shows remarkable jurisdictional differences and doctrinal nuance, which have direct consequences on courts' delimitations of copyright protection's extent for melodies, chord progressions, and other musical components. Its statutory basis in United States jurisprudence is Section 102(b) of the Copyright Act[862], excluding from protection any idea, procedure, process, system, method of operation, concept, principle, or discovery. Musical applications of the concept, though, have presented particular difficulties, illustrated by the evolutionary development from the dictates of Williams v. Gaye through subsequent restrictive rulings. It was illustrated in the Blurred Lines case, which demonstrated the challenges of applying idea-expression analysis in musical feel or, more specifically, in musical groove, wherein critics posited the verdict of the jury, essentially, licensed the protection of ideas instead of expressions of ideas. W.R. Cornish, David Llewelyn, and Tanya Aplin's comprehensive treatment of intellectual property law supplies critical theory basis for this analysis. They underscore the thrust of copyright law, which applies only in originals of expressions and never in general styles, moods, or building blocks of creativity. They, in particular, warn of granting protection to the 'feel' of a work risks enclosing elements that ought to remain in the public domain and this warning applies directly in present-day music copyright controversies. Such a framework of theory aligns closely with restrictive constructions used in Skidmore v. Led Zeppelin and Gray v. Perry cases.

The Ninth Circuit's application of idea-expression analysis has shown remarkable evolution over time. Initial cases in Williams v. Gaye tended to blur the line by safeguarding abstract musical notions such as groove or feel. Systematic reinstatement of classic limits, however, resulted in subsequent cases. In Gray v. Perry, the court expressly used idea-expression analysis

[862] 17 U.S.C. § 102(b)

in determining that simple ostinatos embody only commonplace musical elements and not original expressions of some sort worthy of copyright protection. Note that the ruling stressed the fact that copyright does protect only works only to the extent that they are original works of authorship, enunciating a clear criterion of differentiating between protectable arrangements and unprotectable constituent materials.

Skidmore v. Led Zeppelin went a step further and established that the extent of protection had to be assessed by looking at deposit copies instead of sound recordings, in effect restricting copyright to formalized expressions instead of performance renderings. Such a method ensures rigid idea-expression delineations by avoiding extension of protection from narrowly fixed expressions toward broader sonic ideas or performance practices. Building block doctrines become an important aspect of musical idea-expression analysis. Courts have become more inclined to accept the fact that rudimentary musical elements scales, simple chord progressions, and typical rhythmic patterns must be available for general musicianship use. Gray v. Perry demonstrated this trend by ruling that the contested ostinato was entirely of commonplace musical elements and thus cannot be copyrighted. In the same vein, the Ed Sheeran litigation kept up a consistent application of the building block analysis in order to keep underlying chord progressions and rhythmic patterns available for general use.

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United Kingdom applications of the concept of idea-expression distinguish similarly, but with differing doctrinal content. British copyright law's preoccupation with the difference between musical compositions and sound recordings aligns with U.S. tendencies but differs in statutory language and judicial treatment. Application of chord progressions, grooves, and rhythmic elements as belonging to the music's shared lexicon shows persistent recognition of limits of idea-expression. Handling of Sheeran v. Townsend litigation by the UK courts shows pragmatic application of these principles in up-to-date controversies over simple musical building blocks. India poses special challenges in the application of Western concept of idea-expression to old musical structures, especially ragas. The Thaikkudam Bridge v. Kantara litigation brought into sharp focus questions of whether ragas themselves, as structural elements, are ideas or expressions. G.B. Reddy's discussion posits application of ragas as cultural structure available for general use, so copyright would extend only to specific arrangements or performances and not the underlying structural elements.

The Dagar v. Rahman case similarly exhibited these complexities, and commentators pointed out the failure of the Delhi High Court to sufficiently distinguish between generic raga traits and the composer's original contributions. Such a challenge underscores pervasive tensions in the application of Western copyright ideas to non-Western musicaltraditions, where the line between idea and expression may be set by culture rather than law. Substantial similarity analysis constitutes an important part of idea-expression application, in which courts must determine whether similarities between works derive from common ideas (unprotectable) or copied expressions (potentially protectable). Evolutionary development from subjective total concept and feel methodologies toward more analytical forms demonstrates increasing judicial sophistication in upholding idea-expression limits. Cases such as Skidmore v. Led Zeppelin and Gray v. Perry placed increasing reliance on expert analysis of selective musical components over general impressions, thus buttressing public domain work protection. Filtration approach, adapted from software copyright, provides potential modalities for musical idea-expression analysis. Such a methodology would involve identification and exclusion of unprotectable components (ideas, stock elements, and scenes à faire) before considering analysis of substantial similarity in remaining protectable expressions of musical compositions. Musical applications might routinely exclude core scales, standard chord progressions, typical rhythmic patterns, and genre conventions before finding whether adequate original expression remains to undergird copyright protection. Originality requirements come into significant contact with idea-expression analysis, since courts will have not only to determine whether elements constitute expressions rather than ideas, but whether expressions evince adequate creativity for protection. Such was the ruling of the Supreme Court in Feist Publications v. Rural Telephone Service, which established originality depends upon independent creation plus at least some minimal creative spark, a standard immediately applicable to musical building block analysis. Harmonization at the international level is severely tested in aligning divergent methodologies toward the concept-expression axis. The expansive framework of the Berne Convention permits wide national variation in defining protected subject matter, generating confusion among multi-jurisdictional artists and rights holders. Growth in digital distribution and international music markets escalates the real-world significance of these differences between jurisdictions.

New technologies, especially AI and algorithmic composition, pose challenges for analysis of idea-expression, which Edward Lee's work in The Yale Law Journal Forum confronts through

calls for definite limits to avoid copyright assertions over structures derived from training data. As AI programs produce massive numbers of musical combinations, courts might have to create new paradigms for differentiating between machine-created ideas and human expressions of protectable value. Application of the idea-expression dichotomy[863] in practice becomes more and more reliant on musical and copyright law technical expertise. Courts' increasing use of experts' testimony instead of jurors' impression illustrates awareness of the need for both musical and legal sophistication in proper limit-drawing. Widespread use of expert-based analysis promotes more uniform application of idea-expression principles between diverse cases and jurisdictions.

TRADITIONAL AND CULTURAL MUSIC HERITAGE IN COPYRIGHT DISPUTES

Courts have often found it difficult to give clear guidance in disputes involving traditional musical frameworks, particularly where modern compositions draw from long-standing cultural structures. Indian disputes reflect a wider global problem of fitting traditional knowledge systems into copyright law, which is primarily built around individual authorship and exclusive ownership. This creates tension with the idea of a cultural commons, where certain creative resources are understood as belonging to communities rather than individuals. Musical traditions such as ragas, maqams, and folk forms evolved collectively over centuries, well before the emergence of modern intellectual property regimes. Applying contemporary copyright principles to such systems therefore requires a careful balance between recognising individual creative effort and preserving shared cultural heritage.

Indian case law provides one of the clearest illustrations of this tension through disputes involving ragas in classical music. Ragasa are not personal inventions but shared melodic frameworks governed by established conventions of performance and improvisation. Scholars such as G. B. Reddy have argued that ragas should be treated as collective cultural heritage, with copyright protection limited to specific arrangements or performances that introduce original expression. This approach allows continued cultural use while still rewarding contemporary creativity. However, applying this distinction in practice has proven difficult. The Thaikkudam Bridge v. Kantara dispute highlighted these challenges, where the claim was

[863] W.R. Cornish, David Llewelyn & Tanya Aplin, Intellectual Property: Patents, Copyright, Trade Marks and Allied Rights ch. 11, § 12.03, at 847-52 (9th ed. 2019)

not limited to the use of a raga but extended to the overall arrangement and sonic treatment. The defence maintained that similarities were unavoidable because both works drew from the same traditional framework.[864] Conflicting interim orders from different courts further added to the uncertainty surrounding originality and ownership. Similar issues arose in Dagar v. A. R. Rahman (2025), where the Delhi High Court struggled to separate the defining characteristics of a raga from the composer's individual contribution.

These difficulties are not confined to Indian classical music. Folk traditions across cultures raise the same question of where collective inheritance ends and individual authorship begins. The doctrine of scènes à faire offers one possible analytical tool, as it excludes protection for elements that are standard or inevitable within a genre. When applied to traditional music, this reasoning suggests that basic raga phrases, commonly used folk progressions, or ritual themes should remain freely available, while protection should attach only to distinctive elaborations. However, international copyright instruments such as the Berne Convention offer limited support for collective traditions, as they continue to prioritise individual authorship. Although other international frameworks, such as those addressing biological and cultural heritage, recognise traditional knowledge, their relevance to music remains underdeveloped. Indigenous and sacred music introduces additional concerns, particularly where communities seek to prevent misuse or inappropriate commercialisation of culturally sensitive material. Standard copyright law is poorly equipped to address collective moral and cultural interests, leading scholars to propose alternatives such as collective rights management models or sui generis protection for traditional knowledge. The globalisation of music markets and the rise of digital archives have intensified these issues. Traditional music is now widely accessible, making cultural borrowing easier but also raising concerns about appropriation, consent, and benefit-sharing.

In response, cultural institutions and educators have increasingly promoted ethical engagement with traditional music, emphasising attribution, consultation with community custodians, and shared benefits. Music education now often includes discussions of cultural context and responsibility alongside technical training. The emergence of artificial intelligence adds a

[864] Sanjana S, The Case for 'Varaha Roopam': Dissecting the Kantara-Thaikkudam Bridge Copyright Row, NLIU Cell for Studies in Intellectual Property Rights (Feb. 9, 2023), https://csipr.nliu.ac.in/copyright/the-case-for-varaha-roopam-dissecting-the-kantara-thaikkudam-bridge-copyright-row/ (accessed Sept. 20, 2025).

further layer of complexity, as AI systems trained on large music datasets may reproduce traditional material without acknowledgment or permission. Despite these challenges, many contemporary musicians continue to innovate responsibly by collaborating with traditional practitioners, crediting their sources, and supporting community initiatives. These practices suggest that cultural preservation and creative development need not be in conflict, and that respect for collective origins can coexist with individual artistic growth.

CHALLENGES POSED BY DIGITAL DISTRIBUTION AND AI-GENERATED MUSIC

Digital technology, such as artificial intelligence, has changed both the creation and the dissemination of music. Although these changes offer greater opportunities for creative expression, they also highlight the limitations of current copyright law. Because most recorded music is now generally accessible worldwide through digital technology, courts often proceed with the presumption of access in copyright infringement cases. This trend shifts the focus of judicial review to substantial similarity, increasing the potential that independently created works could be called into question because of accidental similarities. As Simon Stokes observes, the pervasive use of production software such as loops, samples, and pre-set templates further erodes the line between original authorship and compilation. When these considerations are combined with judicial standards that focus on the overall "feel" of a work, as seen in Williams v. Gaye, there is a risk that routine methods of music production will be considered protected expression. Artificial intelligence also raises more fundamental questions about copyright law. Projects such as "68 billion Melodies" demonstrate that the number of possible melodies is finite, which verifies that many musical elements are inevitable and therefore in the public domain.

Writers such as Edward Lee have suggested that artificial intelligence systems trained on copyrighted works can claim ownership over patterns that are statistically inevitable, which challenges the notion that copyright is based on human creativity. The speed and scale of the potential creation and distribution of music by AI systems place a tremendous amount of pressure on the current legal frameworks. Some suggestions have been to simply not protect AI-generated works at all, while others have suggested that new rights frameworks are needed altogether, but none of these approaches seem to fully account for the existing pressures on the legal system. International distribution also makes things more complicated, as music that is

legal in one country may be actionable in another. Furthermore, the technology used for enforcement makes things worse. Content identification systems used by music streaming services often identify typical musical elements, which can lead to over-enforcement and voluntary takedowns. This situation forces musicians to abandon sound artistic choices. Music education is therefore being forced to include digital rights and AI ethics in addition to traditional technical knowledge.

Overall, technology is advancing faster than copyright law can comfortably respond. This gap highlights the requirement for a flexible legal framework that recognizes modern creative practices without protecting elements that are inevitable, functional, or culturally shared.

ECONOMIC AND SOCIAL IMPLICATIONS FOR INDEPENDENT AND EMERGING ARTISTS

Independent artists bear a disproportionate share of copyright-related risks due to the absence of financial and institutional backing available to major labels. Large recording companies can absorb the cost of prolonged litigation, expert witnesses, and specialist legal teams, often running into millions. Independent musicians, by contrast, are frequently compelled to settle weak claims or abandon projects altogether simply to avoid legal expenses. This imbalance is especially visible in disputes influenced by *Williams v. Gaye*, where vague claims based on "feel" or "groove" are difficult to rebut without technical expertise and costly evidence. Copyright enforcement strategies further disadvantage independent creators. Copyright trolling practices tend to target those without access to pre-clearance systems, insurance cover, or standing legal retainers that major labels routinely rely on. Genres built on sampling, such as hip-hop and electronic music, are particularly affected. Clearance costs are often so high that artists are forced to either abandon foundational creative practices or proceed under constant threat of liability.

Global digital distribution compounds these difficulties. Independent artists release music into multiple jurisdictions simultaneously, exposing themselves to conflicting legal standards without the benefit of international legal support. Automated content identification systems used by platforms frequently generate false positives, leading to demonetisation or takedowns. For artists who depend heavily on streaming revenue, even temporary enforcement actions can be financially devastating. Collaborative modes of modern music production present additional challenges. Songwriters and producers often work informally, without detailed ownership

documentation, largely due to the absence of legal guidance. This increases vulnerability during disputes. Beyond individual harm, the broader cultural consequences are significant. Independent artists are often responsible for innovation and genre development, yet expansive copyright protection tends to favour established commercial players, narrowing creative diversity. Alternative survival models, such as crowdfunding or flexible licensing arrangements, place further demands on independent artists by requiring entrepreneurial skills that compete directly with creative time. At a societal level, excessive legal barriers risk limiting meaningful participation in music-making to those with financial privilege. This undermines the democratic and participatory character of music as a cultural practice.

PROPOSED LEGAL REFORMS AND POLICY RECOMMENDATIONS

The growing challenges surrounding music copyright highlight the urgent need for reforms balancing genuine creative work protection with musical foundations preservation. Doctrinal ambiguities and procedural inefficiencies prevent copyright from achieving its constitutional aim.[865] Congress should amend Section 102(b) to specify unprotectable elements: basic scales, simple chord progressions, standard rhythms, genre conventions.[866] This prevents Williams v. Gaye-style "feel" expansions.

A hierarchical framework distinguishes unprotected simple elements from original complex combinations, replacing the all-or-nothing approach. Courts must adopt filtration analysis from software copyright, excluding unprotectable components before similarity comparison. Gray v. Perry provides the model.[867] Expert testimony requires formal musicological training and methodology. Skidmore v. Led Zeppelin's inverse ratio rule elimination stays; digital access assumes opportunity, requiring actual copying proof. Traditional knowledge needs public domain registries ensuring ragas remain communal while protecting original arrangements. Thaikkudam Bridge v. Kantara shows ownership confusion risks.[868] Specialized music courts or arbitration panels with experts resolve disputes efficiently. Registration limits protection to fixed expressions.

[865] 17 U.S.C. § 102(b)

[866] Williams v. Gaye, 895 F.3d 1106, 1120 (9th Cir. 2018).

[867] Gray v. Perry, 15 F.4th 1034, 1043 (9th Cir. 2021).

[868] William Cornish et al., *Intellectual Property: Patents, Copyright, Trade Marks and Allied Rights* 892 (8th ed. 2013)..

Fair use expands to common elements. Statutory damages caps prevent trolling. Global harmonization via Berne Convention standardizes idea-expression rules. AI requires sui generis protection distinguishing human-guided innovation from algorithmic recombination. Implementation includes musician copyright literacy training, industry attribution standards, and blockchain licensing on clarified rules. Reforms restore copyright's balance: incentivizing creativity while ensuring cultural progress.[869]

CONCLUSION

The discussion across cases, academic writing, and doctrine shows a consistent underlying position: copyright law is meant to protect original musical expression, not the basic elements that make up music itself. Chord progressions, rhythmic patterns, scales, and genres form a shared musical language that all composers necessarily draw from. When courts move beyond protecting concrete expression and begin safeguarding the "feel" or overall sound of a work, they risk diluting the idea–expression dichotomy. This shift creates uncertainty and places an unfair burden on future creators, who may avoid experimentation out of fear of litigation, leading to self-censorship and increased compliance costs.

Recent judicial decisions indicate an effort to correct this drift. Cases such as Skidmore v. Led Zeppelin, Gray v. Perry, and the litigation involving Ed Sheeran reflect a renewed emphasis on tangible musical elements, fixation, and expert analysis. Developments like reliance on deposit copies, rejection of the inverse ratio rule, and careful exclusion of commonplace material show that courts are becoming more method-conscious in copyright analysis. These rulings reinforce the idea that commonly occurring harmonic and rhythmic similarities especially in a digital environment cannot, by themselves, justify claims of infringement. Comparative perspectives strengthen this approach. In both U.S. and European contexts, courts increasingly distinguish between protectable arrangements and the unprotectable musical language that underlies them. The Indian experience highlights the importance of adapting this principle to traditional systems such as ragas, which function as communal frameworks rather than individual creations. Cases like Thaikkudam Bridge v. Kantara[870] and Dagar v. A.R. Rahman reveal how

[869] U.S. Const. art. I, § 8, cl. 8.

[870]Sanjana S, The Case for 'Varaha Roopam': Dissecting the Kantara-Thaikkudam Bridge Copyright Row, NLIU Cell for Studies in Intellectual Property Rights (Feb. 9, 2023), https://csipr.nliu.ac.in/copyright/the-case-for-varaha-roopam-dissecting-the-kantara-thaikkudam-bridge-copyright-row/ (accessed Sept. 20, 2025).

unclear standards on fixation, contribution, and ownership can lead to conflicting claims and injunctions, while also threatening cultural heritage. Technological change further complicates these issues. Digital distribution, sampling, loop-based production, and AI-assisted music creation significantly increase the likelihood of lawful similarity and independent overlap. Projects demonstrating the combinatorial limits of music underline because copyright cannot reasonably extend to elements that are mathematically inevitable or culturally inherited. In such conditions, predictable and transparent legal filters become essential.

Going forward, clearer doctrinal guidance is required. Explicit exclusion of musical building blocks, greater transparency in expert testimony, and serious recognition of independent creation as a defence would help restore balance. Mechanisms such as specialised forums, consistent ownership standards, and protection of traditional material at the level of specific arrangements could reduce uncertainty for artists and rights holders alike. Addressing economic imbalance through limits on excessive damages and improving legal literacy within the music industry would further discourage opportunistic litigation. Overall, the core conclusion of this study is that musical creativity thrives when the law protects genuine originality while keeping the shared language of music free. The post–Blurred Lines jurisprudence shows that course correction is possible, but long-term clarity depends on disciplined analysis, sensitivity to technology and culture, and restraint in defining the scope of protection. Copyright should not restrict familiar sounds, but ensure that new musical expression whether created traditionally or with technological assistance has sufficient legal space to develop.

Concept of Originality and Novelty in Industrial Design: Mapping through Indian Judicial Precedents

Shailja Sharma[871]

ABSTRACT

Industrial design protection is central to the Indian Designs Act, 2000 which entails the two essential conditions of novelty and originality. Although these terms have been clarified in the statutory text in Section 2(g) and 4, the judicial interpretation especially by the Delhi High Court, the Madras High Court and tribunals have served to clarify the design jurisprudence of India. The paper attempts to discuss how the notions of originality and novelty have been applied in the Indian courts based on classic cases like M/s B. Chawla and Sons v. In cases of interpretation of the Sections 4, 19 and 22 of the Act, Bright Auto industries, Pentel Kabushiki Kaisha & Anr. v. M/s Arora Stationers and Ors, and other similar cases. In the study of doctrinal law, this paper has been able to establish crucial ambiguities and a structure of future judicial and legislative transparency. The study concludes that even though originality and novelty are statutory conditions in order to be registrable, courts have established an instructed eye approach where products must have a high degree of distinguishability in comparison with other trade designs. It promotes more explicit tests in order to balance industrial development with design protection.

Keywords: Originality, Novelty, aesthetic.

INTRODUCTION

The industrial design protection is a unique and frequently under-theorized place in the larger structure of the Indian intellectual property law. In contrast to patents, which provide a reward to technical innovation, or copyright, which secures an artistic and literary expression, the industrial design law protects the aesthetic and visual characteristics of an article, its shape, configuration, pattern, ornamentation, or composition of lines or colours, provided that such characteristics can be applied to an article by industrial process. The policy of this protection lies in the fact that the visual image is a major factor in consumer decision, competition in the market and industrial progress.

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In a consumer society like the Indian, which is fast changing, the looks of the product tend to be the deal in the business. In the case of the automobile industry, consumer electronics, kitchen appliances, furniture, packaging and fashion accessories, industrial design has emerged as a very important differentiator.

An unusual form of a bottle, an efficient pen design, or a peculiar form of an appliance could not entail a technical breakthrough, but it could get a significant amount of goodwill on the market. The legislation, then, attempts to provide a balance: it is promoting aesthetic creativity and avoiding the monopolization of ordinary or trade-oriented designs.

The industrial design protection in the Indian legislation aims at recognizing the ingenuity of forms, designs, forms, or ornamentation of articles through industrial procedures. This regime is under the Designs Act, 2000 ("Act), with major criteria of a registrable design such as novelty and originality- words that entangle intellectual innovativeness and untrodden field of design. In **section 2(g),** the term design is given a meaning, which is features of shape, configuration, pattern, ornamentation, or composition of lines or colour to an article; and it is required that the features must be produced by the human intellect, and that they must be novel or original[872]. **Section 4(a)** also does not allow registration of designs that is not new and original, whereas **Section 4(b)** does not allow registration of design that was disclosed in the tangible form anywhere in the world[873].

Although the terms novelty and originality may seem to be simple to understand as per the statutory language, they are not defined separately in the Act. This lack of statutory definition has resulted in large scale judicial interpretation. Novelty and originality: are the two terms the same? Does creativity need to be an individual intellectual endeavor? What is the amount of variation necessary to become novel? Is it enough to combine familiar traits in a new combination? These are the questions that have been raised in Indian courts.

Notably, the Indian courts have also made a distinction between originality of the industrial design and originality of copyright. In contrast with copyright, where artistic works are

[872] Design Act 2000
[873] Section 4 (a)-(b)

safeguarded by low innovation standards, industrial design law requires novelty in a commercial way of the design in question, that is, it must not have been previously published or utilized and provide a visual impression that can be greatly distinct to the previous designs existing in the trade. This distinction reveals the hybridity of design protection: it neither is artistic, nor is technical, but commercial-aesthetic in its nature.

This issue of the interpretation of novelty and originality is magnified further in the industries that are typified by incremental development in designs. The contemporary production is often based on the existing aesthetic models. It is usually minor ergonomic adjustments, style changes, or fashion-based changes. The law system thus needs to decide when these changes move beyond the boundary of acceptability of adaptation to safe guardable originality. Over protection may lead to death of competition and under protection may lead to lack of investment in product design innovation.

In addition, globalization and digital distribution have made the novelty requirement difficult. Section 4(b) takes a global novelty test, as such, previous publication in any part of the world can be fatal to registration. In an era of immediate worldwide accessibility by way of online routes, ascertaining preceding revelation is a complex evidentiary concern. In assessing novelty issues, courts are becoming more obliged to work with electronic evidence, trade catalogues and overseas design data bases.

So, the principles of originality and novelty are not the technical statutory provisions, but the philosophical basis of the Indian design protection system. These statutory phrases of abstraction have been successfully turned into legal standards that are practical through judicial interpretation. Nonetheless, with the increasing design orientation and globalization of the industries, the necessity to have a clear doctrine gain even more momentum.

The present research paper thus carries out a critical doctrinal analysis of the way that the twin requirements of novelty and originality have been understood and applied by the Indian courts. The analysis of the top precedents, statutory provisions, and commentary of the scholars is aimed at offering conceptual clarity and determining whether the Indian jurisprudence has managed to create a consistent and predictable framework. By so doing, it has added to the current academic debate on the changing scene on industrial design protection in India.

RESEARCH PROBLEM

In India, the novelty and originality of a design is determined on the basis of visual appearance including the pattern, shape, arrangement or ornamentation of products. These words may seem easy but the harsh reality is that they pose grave legal issues in practical life.

The Designs Act, 2000 fails to present clearly the meaning of the terms novelty and originality. Due to this, courts have been forced to give meaning to such concepts using individual cases. With time, judges have come up with some standards e.g. a design should not be made up of a minor variation of trade. Meanwhile, also, the appearance of the whole product is observed in courts. Although the principles are useful, they are not always a definite rule that can be followed by the designers and businesses in advance.

One of the practical challenges is presented in the industries, where the products inherently resemble each other. As an example, the functional needs or expectations may leave kitchen appliances, pens, bottles, or motor parts similar in their shape. In these cases, one will not be able to determine whether a change is only cosmetic or something original. When the law secures very small distinctions it might promote unjust monopoly. Conversely, when the standard is set very high, then the actual creativity might not be secured.

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The other increasing issue is associated with previous publication. The Indian law adheres to an international criterion of novelty, that is, a design can never be registered after it has been published in any part of the world. In the modern digital world, designs can be immediately seen in the form of websites, online stores, exhibitions and online catalogues. This complicates the process of establishing the fact that a design is actually novel when registering the design.

The fundamental issue to be discussed in this study is hence whether Indian courts have managed to provide straightforward and coherent interpretation of originality and novelty. Have judicial precedents resulted in conceptual clarity, or is there still any uncertainty in the application of these terms? The answer to this question would not only be of importance in the academic context but it is also essential in the context of industrial design protection in the sense of certainty.

SCOPE OF THE STUDY

This paper is particularly concerned with interpretation of originality and novelty to the Designs Act, 2000. It does not endeavor to deal with all that the design law encompasses but rather focuses on the legal definition of the two key provisions.

The study is an analysis of pertinent statutory measures especially, Section 2(g), 4, 19 and 22 of the Act 2000. It examines the interpretation of these provisions by Indian courts in some of the landmark cases. The special focus is paid to the decisions of the Supreme Court and High Courts, particularly, the Delhi High Court or Madras High Court in particular because these courts often handle the issues of intellectual property.

The research is doctrinal in character. It is founded on case law, statutory interpretation and academic literature. It is not based on empirical surveys, interviews or statistical research on design registrations. Rather, it seeks to learn how judges make decisions concerning cases that involve alleged novelty and originality. There are also similar issues that the research examines including prior publication, slight variations, combination of already known features, and the overall visual impression test. It however does not make a detailed comparative analysis with other jurisdictions in other countries such as the European Union or the United States unless there are brief references which need to be made in context.

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Concisely, this study has a narrow but a focused scope. It tries to comprehend how originality and novelty as interpreted by the Indian judicial precedents have influenced the meaning of originality and novelty and whether such interpretations have given a satisfactory clarity to the designers, businesses and courts.

RESEARCH GAP

Although the concept of industrial designs has been academically discussed and professionally debated, there is a scarcity of academic synthesis that breaks down the way Indian courts have narrowed in to the interpretation of novelty and originality tests and how they have adjusted them to the words of the statute. Most literature uses novelty and originality as synonyms with patent law tests and creates confusion in doctrines. Moreover, more often Judicial decisions are under-analyzed to impact on the iterative design innovation in industries in India. Thus, this study deals with:

- Indian courts and their conception of novelty and originality.

- What practical tests have we had on the basis of judicial interpretations?
- Judicial interpretation provides adequate predictability to the stakeholders.

RESEARCH OBJECTIVES

1. To examine judicial meanings of novelty and originality in the Designs Act, 2000.
2. To find out ways in which Indian courts can tell the difference between insignificant changes and true design innovation.
3. In order to examine the interaction between the text and judicial reasoning of statutes.
4. To evaluate the existing data and offer suggestions for betterment accordingly.

RESEARCH QUESTIONS

1. How does Indian jurisprudence deals with the concepts like originality and novelty in the context of industrial design?
2. How do courts interpret whether a design is substantially new or original?
3. Are the designs act judicial interpretations in line with the legislative intent?
4. What is the implication of judicial interpretation on designers and industry?

METHODOLOGY

The methodology adopted for the successful completion of this research paper is Doctrinal in nature. It shall further incorporate both primary as well as the secondary sources. Constitutional provisions, statutory frameworks and judicial decisions have been taken up for research as primary source of data whereas articles from various existing research papers and reputed law journals available on this topic is taken into account being a secondary source.

Primary Sources: -

- Design Act, 2000
- Judicial decisions
- AIR (All India Reporter)
- SCC
- PTC (Patent & Trademark Cases)

Secondary Sources: -

- Textbooks on IP law

- Journals
- Law articles

JUDICIAL PRECEDENTS

- CASE: BHARAT GLASS TUBE LTD. Vs GOPAL GLASS WORKS LTD[874]

The doctrine of "New Application" was emerged through this case

Facts: The respondent had registered a design of the shape of the diamond on glass sheets. The appellant objected to it citing that the design had been published by a German firm in a catalog.

Legal Principle: The Supreme Court made it clear that there is a difference between a design and its application. It believed that although there may be a pattern (e.g. on paper or textile), its use to a new medium (glass sheets) can be considered as "originality" under Section 2(g).

Held: Originality does not require the creation or the invention of some new form never to be seen before rather it involves the novel use of an old form to a particular article of manufacture.

- CASE: B. CHAWLA & SONS vs BRIGHT AUTO INDUSTRIES[875]

Mostly recognized as the case of the "Trade Variant" specifications

Facts: The appellant had registered a design of a rear-view mirror of motor vehicles. It was a normal rectangular mirror in a shape with slightly rounded corners.

Legal Reason: The rule of Trade Variant was determined by the Delhi High Court.

Ratio: A design is not new or original because it is simply a variation which any expert in the trade would naturally make. A geometric figure with a curve or a fillet added to it fails to qualify with regards to novelty. There has to be a significant transformation, which will be felt as something different.

- CASE: PENTEL KABUSHIKI KAISHA vs M/S ARORA STATIONERS & Ors[876]

In the case of Pentel Kabushiki Kaisha v. M/s Arora Stationers and Ors. (SCC OnLine Delhi 11781), 2019, the Delhi High Court reconsidered the novelty and originality conditions under the Designs Act, 2000 in a case involving the alleged piracy of a design of a ballpoint pen. The defendants also claimed that the plaintiffs registered design not only lacked novelty, but also they also knew of the similar elements in the trade. The Court reinforced the fact that novelty,

[874] 2008 10 SCC 657
[875] AIR 1981 Del 95
[876] 2019 SCC

and originality should be judged by reference to the registration date and a registered design has a prima facie claim of validity unless successful challenged under Section 19. It also noted that originality is determined by the general visual impression, but not isolated similarities.
This ruling is notably pertinent in the way that it updates the concept of Bright Auto Industry established in the context of the 2000 Act and makes it clear that the issues with novelty are to be supplemented by the evident facts of previous publication or the absence of a significant difference.

- CASE: RECKITT BENCKISER (INDIA) LTD vs WYETH LTD[877]

Facts: The point of contention was on whether a design that was registered in foreign countries but not in India may be a prior publication to revoke an Indian registration.
Legal Principle: The Full Bench dealt with the territoriality of novelty.
Held: Publication is not limited under Section 4(b) to India. When a design is registered in the database of a foreign patent office and it has been digitally available in India, then it is said to be published. This formed the Global Novelty criteria in the Indian Design Law.

- CASE: WHIRLPOOL INDIA LTD vs VIDEOCON INDUSTRIES LTD[878]

Facts: Whirlpool sued Videocon because of imitating the washing machine with a semi-automatic washing machine that included a definite shape with curvy lines.
Legal Principle: The Bombay High Court discussed the Mosaic of the earlier arts.
Ratio: According to the court, the novelty test is the Appeal to the Eye. Although an individual component of a design (such as a circular tub) may be familiar, the specific combination and positioning of said components may produce a new aesthetics. Moreover, when the shape is determined by the mere utility of the object, one cannot protect the shape as a design; but when the designer had a choice of ways to attain that functionality, but he or she took up a particular aesthetic path, the shape can be safeguarded. The case emerged two doctrines: the functional necessity and the eye of the consumer

- CASE: MAYA APPLIANCES LTD vs PREETHI KITCHEN APPLIANCES LTD[879]

[877] 2013 (54) PTC 90 (Del)
[878] 2014 (60) PTC 155
[879] AIR 2013 Mad 134

The allegation in Maya Appliances (P) Ltd. v. Preethi Kitchen Appliances (P) Ltd., AIR 2013 Mad 134 was a design piracy case in respect of mixer-grinders. The Court stated that registration of a design gives rise to a prima facie presumption of novelty and originality which is only refutable by substantial evidence under Section 19 of the Designs Act. Significantly, the Court used the so-called instructed eye test or the way in which the individual that knows the existence of such goods would rate visual distinction.Small or trivial changes that have no substantial difference to the general impression were not sufficient. This case has a direct bearing since it brings together the evidentiary and perceptual criteria pertaining to originality by reinforcing the concept that design distinctiveness should be evaluated using visual and commercial realism.

- CASE: MICROFIBRES INC. vs GIRDHAR & CO.[880]

In Microfibres Inc. v. Girdhar and Co., AIR 2009 Del 15, the copyright and design protection earlier, but the most notable observation of the court was on the originality of the industrial design. The Court made it clear that as soon as a design that can be registered according to the Designs Act is put to an industrial use, the copyright protection is not available anymore, and the novelty and originality tests under the design law are bound to take their toll. The case highlights the fact that design law originality is not exactly the same as copyright originality and it must meet the statutory criteria of novelty and visual effect. It is relevant because it brings out the boundaries provided by the doctrines of originality, whereby when there is a dispute between two or more intellectual property rights, it is likely to blur the standards of novelty.

SUGGESTIONS

Having analyzed statutory clauses in the Designs Act 2000, judicial precedents and commentaries, there seems to be some structural and doctrinal refinements which need to be undertaken so as to achieve clarity in the interpretation of new and original designs in India.

1. Clear Judicial Differentiation between the terms Novelty and Originality is required.

The new and original terminologies have at times been used interchangeably by the Indian courts. Although Section 4 of the Designs Act speaks of a new or original, judicial

[880] AIR 2009 Del 15

interpretation has not been consistent to state whether it is a one or the other requirement or is a combination of the two. Courts are indicated to expressly state:

- Novelty as lack of pre-publication.
- Originality as pictorial difference due to autonomous production.
- The adoption of a formal judicial test to differentiate the two concepts would minimize the interpretative mismatch and enhance predictability in the litigation process.

2. Tracing a Standardized Informed Eye Test.

When determining infringement and validity, the courts often make reference to the so-called ocular impression or the instructed eye standard. Nevertheless, the amount of expertise that is ascribed to such a hypothetical observer is not always determined.

A standardized test must be able to explain:

- The viewer will be either a normal consumer or somebody who is conversant with the trade.
- The level of attention anticipated.
- The applicability of insignificant differences.

Making this test codified or explicitly defined by some official Supreme Court teaching would enhance the coherence of the doctrine.

3. More Intense Inspection during Registration.

The numerous contests are due to the registration of the designs without strict examination of the previous publication. The Design Office should:

- Intensify previous art studies.
- Diversify and computerize databases across the globe.
- Train examiners better in comparative visual examination.

This would lessen after registration litigation and also weak or non-original designs would not be registered in the registry.

4. International Standards harmonization.

India is a member to the TRIPS Agreement which requires protection of independently designed industrial designs that are new, original. Although the Indian law is has been adhered to in principle, judicial articulation can more concurring to the global jurisprudence, especially in:

- Doctrine of European Union overall impression.
- UK understanding of design uniqueness.
- Comparative therapy of functional exclusions.

Harmonization would increase compatibility of India in terms of international trade and enforcement of intellectual property.

5. Elucidation on Functional Elements.

Courts have been right in stating that purely functional features cannot be safeguarded under design law. Nevertheless, their conflict is common on the boundary of the aesthetic and functional features.

It is suggested that courts:

- Use a systematic, functionality exclusion, analysis.
- Look at the possibility of using alternative designs to accomplish the same purpose.
- Individual technical innovation (patent field) and visual appeal (design field).
- This would stop the abuse of design law as an alternative to patent protection.

6. Constant Resort to Previous Publication Standards.

Cases have underlined that the design should be publicly disclosed through pre-publication. There is however an inconsistency in matters of online publication, catalog circulation and foreign disclosures.

Definite directions are required to define:

- Whether publication in foreign countries is prior publication in India.
- What is an adequate visual disclosure.
- The burden of evidence necessary.
- This would help in minimizing confusion during cancellation.

7. Academic and Judicial Discourses.

Scholarly literature and judicial reasoning in design cases are not well cross-referenced. It may be better encouraged that the judiciary engage with scholarly commentary in the context of enhancing conceptual richness in decisions.

Training programs in judicial work, workshops and academic partnerships could help produce more sophisticated reasoning in sophisticated design cases.

CONCLUDING REMARK

Protection of industrial designs takes a special place in the intellectual property law. Design law protects aesthetic creativity in industrial articles unlike patents which acknowledge technical innovation or copyright which upholds artistic expression. The most crucial aspect of this protection is the fact that a design should be new or original.

The meaning of these words has been greatly influenced by the Indian judicial precedents. Courts have demystified that the originality in design law is visual newness and not functional newness. They have also put an emphasis on the visual impression overall and have shunned protection on isolated trade differences. The judiciary has been able to avoid the misuse of design registration through landmark decisions and has strengthened the boundary between aesthetics and functional disciplines.

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But even with these developments, there are still conceptual ambiguities. The interchangeability of judicial terms originality and novelty, inconsistent expression of the standard of an informed observer and occasional confusion of design and patent concepts show the need to be more precise in the doctrine. It would be useful to have a more organized interpretative system that would be of value to several stakeholders:

- Designers would have more confidence about protection.
- Companies would have fewer litigation risks.
- There would be consistent jurisprudence in the court.
- The Indian intellectual property system would be much closer to the international standards.

Finally, originality in the industrial design law ought not to be a somewhat statutory ritual. It is the legalization of aesthetic creativity in industry production. The judiciary must have a clear

definition and application of this requirement not only in dealing with cases but also in fostering creativity, art and healthy competition in the market.

The history of Indian design jurisprudence is an indication of the increased maturity in intellectual property adjudication. India can create a consistent and robust structure with the more distinct lines of doctrinal thinking and better institutionalized processes that actually give true rewards to true aesthetic innovation and avoid monopolizing everyday designs.

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Erasing Honour: Legislative silence, Judicial inconsistencies and the Constitutional failure of India's Criminal Law Framework

Kshitij Mehrotra[881]

ABSTRACT

Honour killings in India constitute group forms of violence meant to have a punitive effect on people mostly young women and couples who practise autonomy in their choice of love, marriage, sexuality, or social identification. Such actions serve as cruel means of imposing caste orders, patriarchy, and communal obedience, which are often organized or authorized by the families, caste council, and village affiliations. Though the procedure is abhorrent to society, the law system still takes such killings as normal murders and this way the structural, conspiratorial and discriminatory nature is obscured. The main issue is the issue of doctrinal and institutional silence. The Indian Penal Code or Bharatiya Nyaya Sanhita does not specify honour killing as an aggravated offence, nor does it acknowledge the concept of group responsibility, nor does it require that motive based investigation and sentencing. This gap compromises deterrence, the prosecution tactics, and constitutional obligations of equality, dignity, and individual freedom, especially to women and marginalised groups. This paper aims at redressing these gaps by a stringent statutory examination, subtle constitutional interpretation and comparative interaction with foreign legal paradigms and international human rights outlooks. It argues that India has the legal and moral responsibility to enshrine honour killings as a particular offence. Thereby, the paper provides a proposal for rights-responsive, principled and socially responsive criminal justice in which the Indian jurisprudence can be made congruent with the international norms and principles of gender equality and human rights.

INTRODUCTION

The Honour killings in India are not acts of personal rage, but organised violence, which is accepted collectively by the community to impose caste boundaries, gender norms, and even control intimacy and marriage. Nevertheless, the criminal law of India continues to apply the general law of murder, attempt, and conspiracy to these crimes in disregard of the special motive of the crime, its group character and caste patriarchal foundations. The lawmaking

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silence that is reflected in the Bharatiya Nyaya Sanhita of 2023 makes honour killings a lawful blind spot that deprives the phenomenon of honour killings of the status of institutionalised violence. As a result, the criminal process is unable to apprehend the systematic involvement of families, caste councils and power structures in the locality and does not provide any special liability or protection to vulnerable victims. This exclusion has compromised the equality, non-discrimination, autonomy, and dignity guarantees under Articles 14, 15, and 21 of the Constitution[882] and is incompatible with India's international human rights obligations[883]. The constitution is also complicit, not just through omission, but through its failure to name, list, and address honour killings as these wrongs in a different form.

This paper is aimed at discussing the problem and questioning whether the existing and proposed criminal law in India effectively addresses the issue of honour killings. The paper provides by a close examination of the Bharatiya Nyaya Sanhita and its connectivity with the Indian Penal Code that legislative silence and a motive-free writing of laws removes the systemic nature of honour crimes. It next examines the disjointed court efforts to address honour killings based upon constitutional principles by identifying the weaknesses of the case-by-case determination in cases where the statutory acknowledgement is not explicit. The paper will use comparative legal history and reflect on the Indian treaty obligations to propose a specific reform agenda: proclaim honour killing a special aggravated offense, implicate collective and institutional liability, integrate preventive and protective measures, and stage criminal law according to a rights-oriented, socially accountable, and constitutionally faithful conception of justice.

CONCEPTUAL FRAMEWORK: CONCEPTUALISING HONOUR KILLINGS

In India, honour killings are a unique and highly entrenched type of violence directed at the policing and punishment of perceived infractions of socially approved norms of caste, gender, sexuality and community honour[884]. They are not sudden explosions of individual indignation, but effects aimed and usually well thought-out performances committed to supposed violations

[882] INDIA CONST. arts. 14, 15, 19, 21

[883] Convention on the Elimination of All Forms of Discrimination against Women arts. 2(e), 5(a), Dec. 18, 1979, 1249 U.N.T.S. 13

[884] Law Comm'n of India, *Report No. 242: Prevention of Interference with the Freedom of Matrimonial Alliances (in the Name of Honour and Tradition)* 1–7 (2012)

of collective identity and status. The common victims are young women and men who claim their independence in issues of marriage, sex or intimate choice, by marrying outside caste, religion or kinship, by refusing the arranged marriage, or by defying the patriarchal/ familial demands of obedience. What is meant by the individual agency in these cases is rather a denial of the honour of the family and community, rather than a right[885].

These are often carried out by close relatives who are parents, siblings, uncles, or other members of kin, including Khap Panchayats, caste councils, or village elders, who often encourage, approve, or even justify the actions of the perpetrators[886]. These organisations act as extra-judicial institutions that facilitate conformity either by social boycotts, threats, coercion and, on a more extreme level, using coordinated violence. Killing is, therefore, punitive as well as performative in that it is supposed to neutralize the perceived blemish to family or community status by removing the object of defiance and to provide a bigger statement that rebellion against caste and gender hierarchy will not be accepted. Within this meaning, honour killings can be discussed as a form of collective social control, in which violence is justified as the key cost of maintaining tradition, purity, and status[887].

Honour killing is also different from generic homicide in terms of its motive, its structure, and its role. Neither personal hatred nor the pursuit of personal profit is the main reason, but the need to protect the norms established in the community and put the alleged deviance back in its place. These crimes are usually planned in groups: several subjects are involved in the planning and execution, facilitation, or justification of the murder and these can be either family members or community leaders. This group aspect provides honour killings with a qualitatively new nature as compared to isolated instances of interpersonal violence. The offenders often use cultural or traditional defence asserting that they are protecting the old traditional ways or preserving the reputation of the family hence covering crime with the culture of legitimacy and moral obligation[888].

[885] Anuja Agrawal, Chaste Wives and Prostitute Sisters: Patriarchy and Honour in India, 31 Econ. & Pol. Wkly. 3129, 3131–33 (1996)

[886] *Shakti Vahini v. Union of India*, (2018) 7 S.C.C. 192, ¶¶ 2–5 (India)

[887] Anuja Agrawal, Chaste Wives and Prostitute Sisters: Patriarchy and Honour in India, 31 Econ. & Pol. Wkly. 3129, 3131–33 (1996)

[888] Uma Chakravarti, Conceptualising Brahmanical Patriarchy in Early India: Gender, Caste, Class and State, 28 Econ. & Pol. Wkly. 579, 579–85 (1993)

There is also a caste and gender oppression manifested in the phenomenon. Women are also discriminated against in pursuing sexual autonomy, rejecting arranged marriages, or even having partners of other caste, religion or even community. Men marrying across caste or religion, in support of them, may also become targets since they are seen as subverting the social order. Honour killings, therefore, work to uphold endogamy, thereby perpetrating patriarchal dominance over female bodies and decision-making as well as caste demarcation. They can only be interpreted as deviant crime activities, but they are methodologies to maintain the status quo and resist the voice of the opposition to create a system of structural inequality. Nevertheless, honour killings are not accepted as a separate type of criminal offence in Indian criminal law, which is not based on these peculiarities. In general provisions addressing murder, attempt to murder, and criminal conspiracy, such acts are prosecuted under general provisions regarding murder, attempt to murder, and criminal conspiracy (e.g. by Sections 302, 307, and 120B IPC and such equivalent)[889] [890]. It is this doctrinal silence that obliterates the motivation of honour killings: its conspiracy-oriented motive and orientation. It reduces their cultural, symbolic, and systematic aspects to a generic account of personal crime, seen by inviting the courts and investigators to see them not as the expressions of institutionalized power of the caste and gender hierarchy, but as lone incidents. Due to this, the structural nature of the violence is lost, information about honour-motivated crimes cannot be trusted, and the legal intervention does not consider the actual nature of the damage.

There is also a limitation posed by the judiciary's lack of statutory recognition to implement constitutional principles in practice coherently and robustly[891]. In the absence of a special legal category identifying and characterising honour killings, the frequency of the general homicidal provisions is strained to accommodate interwoven structural fashions of family and institutionalised violence. This complicates the systematic coverage of the greater social harm suffered by honour killings - like the curtailment effect on the quality of inter-caste and inter-faith relations, the strengthening of patriarchal subjugation, and the perpetuation of caste stratifications. In practice, this leads to unequal adjudication and sentencing, as well as a failure to fully vindicate constitutional rights to equality, non-discrimination, autonomy, and dignity under Articles 14, 15, and 21 of the Constitution[892]. A conceptual strict grip on honour killings,

[889] Indian Penal Code, 1860, §§ 120B, 300–302, 307 (India)
[890] Bharatiya Nyaya Sanhita, 2023, §§ 61–62, 103, 109 (India)
[891] *Shafin Jahan v. Asokan K.M.*, (2018) 16 S.C.C. 368 (India)
[892] INDIA CONST. arts. 14, 15, 21

in other words, the context of positioning its location among the interverging systems of caste, patriarchy and community control, is thus a critical requirement to the implementation of successful legal change. It offers the analytical basis of codifying honour killings as a specific aggravated offense, developing motive-sensitive and group-liability clauses, and developing preventive and protective measures in response to the structural conditions under which such violence occurs[893]. Criminal law can only go beyond an obsession where individual killing is treated as an end in itself to a more social order in which honour killings are created, rationalised and normalized.

STATUTORY ANALYSIS: INDIAN PENAL CODE AND BHARATIYA NYAYA SANHITA (2023)

Indian Penal Code (IPC), a colonial codification of the criminal law introduced in 1860[894], does not have any direct provision on honour killings. These crimes fall under the general clauses; the major ones include Section 302 (murder), Section 307 (attempt to murder), and Section 120B (criminal conspiracy)[895]. Although these provisions allow punishment, they are substantively neutral to the unique motive, collective form and socio-cultural situation that characterizes honour killings[896]. This lack of an aggravated classification/motive-based offence category creates a large doctrinal gap: it collapses systematically patterned, group-based violence into the pattern of ordinary homicide, eliminating its systemic nature and enforcing the fiction that these are generally just isolated homicide instances of personal violence[897]. This general-offence method is especially inappropriate with honour killings, which are criminal acts not often made individual. They are usually long-term enforcement measures, which are approved or coordinated by family members, caste councils, or other community organisations[898]. The motive is not personal spleen, but even supposed restoration of honour by the destruction of so-called disobedience. By the subsumption of this type of act under generic homicide law, the IPC does not consider the symbolic and performative aspects of honour killings and the conspiratorial and institutional components of the practice[899]. This

[893] Law Comm'n of India, supra note 1, at 45–58
[894] Indian Penal Code, 1860, No. 45, Acts of Parliament, 1860 (India)
[895] *Id.* §§ 302, 307, 120B
[896] Shahnaz Khan ed., *Honour Killing: Theoretical and Legal Perspectives* 45–48 (2014)
[897] United Nations Office on Drugs and Crime, *Global Study on Homicide 2019* 61–63 (2019)
[898] Lynn Welchman & Sara Hossain eds., *Honour Crimes, Paradigms, and Violence Against Women* 29–33 (2005)
[899] *Id.* at 40–42

dogmatic silence does not allow the law to directly tackle the caste, gender and communal hierarchies which facilitate and justify such violence and it does not permit the creation of specialised modes of inquiry, evidential assumptions, or sentencing policies attentive to the communal character of the damage[900].

These limitations have been reproduced in much of the Bharatiya Nyaya Sanhita (BNS) as a proposed alternative to the IPC, released publicly in 2023 as a shape-shifted criminal code aimed at being modern and constitutionally-consistent[901]. The clauses which refer to murder, attempt to murder, and conspiracy over crime-between-other-crimes - inter alia Sections 101, 109 and 61 - are essentially renumbered and slightly updated versions of IPC Sections 302, 307 and 120B, with no explicit mention of honour-motivated violence[902]. The BNS fails to define honour killings as an offence, fails to provide aggravated liability where the motive is the enforcement of caste, patriarchal or communal norms and fails to refer to collective entities like khaps or caste panchayats in instigating, assisting or sanctioning honour killings[903]. By still reducing these murders as mere murders, the BNS once again does not capture the structural, symbolic and group-based shape of these murders.

This omission stands out especially in the light of espoused constitutional guarantees of equality, non-discrimination, personal liberty, and dignity portrayed in Articles 14, 15, and 21 of the Constitution of India[904]. A legal system that denies the categorisation and identification of honour killings as a form of localised and exacerbated ill in the form of a wrong is structurally inadequate in the ability of vindicating these guarantees[905]. The absence of a specialized offence category makes the judiciary much less able to implement the constitutional morality systematically: it is limited to institutional implementations of general, motive-neutral laws, which do not oblige the court to address the casteist, patriarchal, and communal aspects of the violence[906]. The silence of the BNS is therefore an indication of a wider legislative reluctance to address the fact that in many settings the honour crimes still enjoy considerable

[900] United Nations Human Rights Council, *Report of the Special Rapporteur on Violence Against Women*, U.N. Doc. A/HRC/35/30 (2017)
[901] *Bharatiya Nyaya Sanhita*, Bill No. 173 of 2023 (India)
[902] *Id.* §§ 101, 109, 61
[903] Law Commission of India, *Prevention of Interference with the Freedom of Matrimonial Alliances (in the Name of Honour and Tradition): A Suggested Legal Framework*, Report No. 242 (2012)
[904] India Const. arts. 14, 15, 21
[905] Dipak Misra ed., *Constitutional Morality in India* 122–26 (2019)
[906] Id.

cultural legitimacy in that the normative of small groups within the community will be privileged over the rights of individuals.

These deficiencies had already been identified in the 242nd Report of the Law Commission of India and a specific statutory reform had been proposed[907]. It suggested implementing a certain clause making illegal killings and violence in honour of individuals or groups, and providing a tougher punishment due to their aggravated, conspiratorial, and collective nature[908]. The Commission also recommended the acknowledgement of the place of informal bodies and of families as the sources of the organised nature of these crimes, and demanded legal means that would better reflect the organised character of these crimes. Whilst this is the recommendation of experts, there were no amendments to the statutes, either in the IPC or in the later drafted BNS. This law failure also points to the ineffectiveness of the current system as a deterrent tool and also as a tool of administering justice commensurate to the constitutional and social harms caused[909].

Combined, the IPC and the Bharatiya Nyaya Sanhita display a longstanding incompleteness in doctrines and are showing the legal blindness to honour killings as a specific form of structural violence[910]. The fact that even now the caste and gender hierarchies that underlie these types of homicide are left unaddressed demonstrates a lack of readiness to confront them, and thus... the perpetuation of a formally neutral, yet substantively unaware, criminal law[911]. Substantive change in statute is also badly required, not only of prosecutorial efficiency and equal treatment, but also to restate the constitutional promise of equality, independence, and humility[912]. Recodification of honour killings, as a specific aggravated crime with explicit due attention to motive, group responsibility, as well as institutional, would be an important step in the direction of having a principled, rights-based, and socially answerable criminal justice system in India.

CONSTITUTIONAL ADJUDICATION AND MORAL FRAMEWORK

[907] Law Commission of India, supra note 11
[908] Id.
[909] National Crime Records Bureau, *Crime in India 2022* (2023)
[910] Ranjana Kumari ed., *Violence Against Women in India* 85–90 (2000)
[911] Id.
[912] India Const. arts. 14, 15, 21

Indian judiciary has been at the forefront in defining honour killings as serious infractions of the constitutional rights, which have acted where the legislature has failed to give direct statutory acknowledgement. In a system in which honour killings are regarded as caused by common killings, courts have sought to come up with this doctrinal gap, under constitutional interpretation where this violence is seen to violate the provisions of equality, non-discrimination and choosing whether or not to kill under Articles 14, 15 and 21 of the Constitution[913]. By so doing, the courts have been attempting to challenge such types of violence, which are often justified as a cultural or customary practice, by placing them under the greater test of constitutional morality. This way, the honour killings are re-axilised as part of personal or family conflict and the Constitution is presented as the gauge by which the social norms, such as the ones perpetuated by caste and masculine authority, are evaluated.

This philosophical path becomes evidently voiced in Shakti Vahini v. Union of India[914], where the Supreme Court in reaction to increasing levels of honour-based violence, has described honour killings as being barbaric and contrary to the principles of the constitution. Based on Article 21, which stated that the most essential aspect of liberty in intimate relations is personal autonomy, the Court opined that the right to union was part of the liberty, privacy, and dignity and as such any attempt to intrude on the personal liberty of intimate affairs by the family members, social groups or unofficial organizations such as khap panchayats amounted to a direct aggression on constitutional rights. To put this principle into effect, the Court came up with elaborate guidelines to state authorities, which included preventative and protective services such as safe houses, twenty-four-hour helplines and district-level special cells to provide prompt response to threats against couples. Shakti Vahini vehemently sought to establish a connection between honour-motivated violence, especially one that includes caste considerations, and the breach of equality under Article 14 and the ban on discrimination under Article 15 to make honour killings a constitutional evil in need of a systematic, rights-based response.

This interpretation is not something that appeared in a vacuum, but a development of previous judgments with the well-known example of Lata Singh v. State of Uttar Pradesh[915], under

[913] India Const. arts. 14, 15, 21
[914] *Shakti Vahini v. Union of India*, (2018) 7 S.C.C. 192 (India)
[915] *Lata Singh v. State of Uttar Pradesh*, (2006) 5 S.C.C. 475 (India)

which the Supreme Court upheld the right of consenting adults to enter into intermarriages across the caste boundaries as a major restatement of their constitutional freedom. At that, the Court dismissed the concept of any legitimate family or community authority to decide on behalf of an adult woman on the choice of spouses as legal, as all threats, harassment, and violence against inter-caste couples were discussed as criminal, entirely unlawful, and representative of feudalistic mentality. It instructed the police officials to secure such couples and convict anybody who threatens or assaults them by denoting that the mediocre condemnation based on caste or prejudice should not supersede the rights of individuals. In as much as Lata Singh did not explicitly pressurise the need to establish a distinct statutory offence of honour killing, it established a very robust normative basis, in that it defined honour-based violence as a caste oppression, and it placed the safety of inter-caste couples in the assurances of equality and personal freedom.

The case was continued to be analyzed in Vikas Yadav v. State of Uttar Pradesh[916], a case of the killing of a young man over a relationship that was offensive to caste sentiments, is the State of Uttar Pradesh. When the Supreme Court affirmed the life sentence against the culprits, it emphasized that it was not an impulsive act of personal hatred that led to the crime but was rather a procedural and symbolic exercise of caste honour. The court recognised that honour killings are necessarily communal and symbolic so as not only to punish a specific couple but to discourage others who will break caste and gender conventions. Focusing on this extended social role, the Court effectively considered honour killings as enhanced versions of homicide, which deserved a higher condemnation and punishment, despite being obligated to use the overall provisions of the Indian Penal Code.

Nevertheless, this liberal jurisprudence also reveals the limits of structural intervention of judicial action when it is not supplemented by legislation. No offence against honour killing is enacted in parliament, and as a result, prosecution is brought using generic murder and conspiracy statutes, which fail to capture the element of a motivational concept prevalent in such acts, namely the whole-group aspect[917]. In the absence of a constitution, the lower courts would use constitutional morality unequally, and the jurisprudence would be in a disjointed

[916] *Vikas Yadav v. State of Uttar Pradesh*, (2016) 9 S.C.C. 541 (India)
[917] Indian Penal Code, No. 45 of 1860, §§ 299–302, 120-B

state, ensuring that only selective reform in the statutes can translate this constitutional vision into a uniform protection against the victims.

INTERFACE BETWEEN INTERNATIONAL LAW AND INDIAN LEGAL SYSTEM

The lack of a defined statutory offence of honour killing in India is not just a national legislative oversight but also a violation of all the full requirements of the India-bound international human rights. Being a signatory of the Convention on the Elimination of All Forms of Discrimination against Women[918], and as a signatory of the Universal Declaration of Human Rights[919], India has to implement legislative, administrative, and judicial actions to prevent, prosecute, and eliminate gender based violence even in the undertext of promoting culture, custom, and honour of the community. Honour killings, a disproportionate number of which are perpetrated against women, girls and individuals within marginalised communities who insist on autonomy over matters of marriage and sexuality do adhere well within this category of gender based and intersectional violence and thus should receive a special legal response other than be subsumed within more generic homicide laws.

These obligations are provided by CEDAW with concrete content. Article 2(e)[920] obliges States Parties to eradicate discrimination of women by any individual, organisation, or enterprise; which automatically involves regard of private actors, including family, caste councils and community informal organisations which organize or reward honour based violence. This is a provision that not only binds states against discrimination, but also against any legal, social and cultural set up that allows or condones such violence. Article 5(a)[921] also entails that states alter social and cultural patterns on the grounds of stereotyped gender roles or notions of female chastity or family honour, which are the exact standards that honour killings are aimed to instil. The fact that India is still using motive blind homicide provisions as opposed to a distinct offence that refers to and addresses honour based violence, is thus an indication of a massive disparity between India CEDAW commitments and its national criminal law.

[918] Convention on the Elimination of All Forms of Discrimination against Women art. 2(e), Dec. 18, 1979, 1249 U.N.T.S. 13

[919] Universal Declaration of Human Rights, G.A. Res. 217 (III) A, U.N. Doc. A/RES/217(III) (Dec. 10, 1948)

[920] Convention on the Elimination of All Forms of Discrimination against Women, supra note 1, art. 2(e)

[921] Id. art. 5(a)

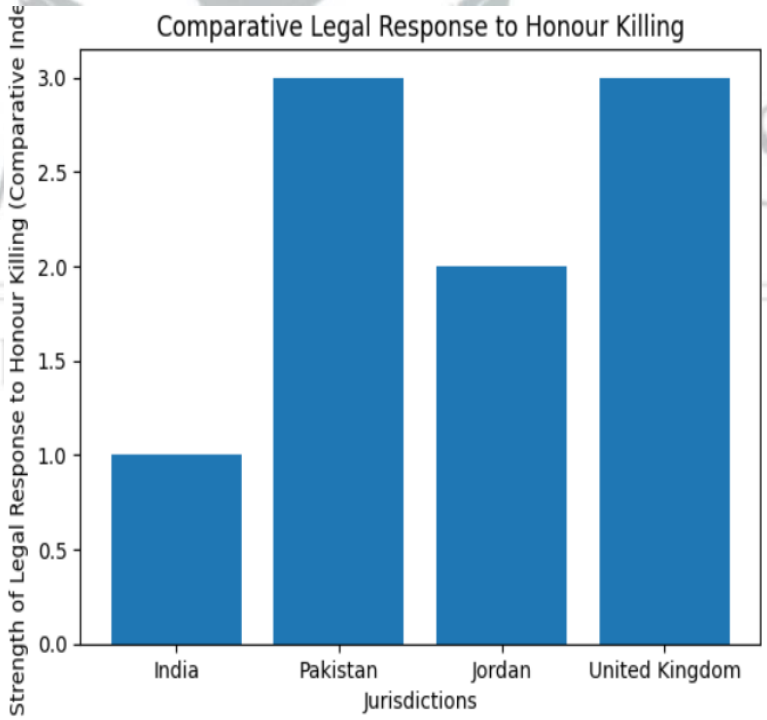
Even though the Universal Declaration of Human Rights is not a treaty in its own right, it relates foundational norms upon which subsequent human rights instruments and customary international law should be interpreted. Article 3[922] acknowledges the right to life, liberty and security of person whereas Article 16[923] acknowledges the right of men and women to marry freely and consensually without restriction on grounds of race, nationality and religion. Honour killings is a direct infringement of these rights as it punishes people, many of whom die, due to the exercise of freedom to select a partner or develop intimate relationships with people of another caste, religion, or community. By allowing this treatment of such killings as typical murders, without attending to their discriminatory purpose and communal nature, the legal system will not satisfy the substantive values of equality and autonomy contained within the universal human rights system and undermine the expressive role of criminal law as an instrument of changing repressive social norms.

The more particular legal responses to honour based violence are not only viable but have a normative significance in a way that is demonstrated by comparative practice. The Crimes Act of 2016 that amended the Criminal Law (Amendment) Act 2016[924] in Pakistan ended a notorious loophole that had enabled authors of honour killing to escape severe penalties due to family forgiveness under the doctrine of qisas and diyat of the Islamic Criminal Law. In making life imprisonment a mandatory sentence even where the family of the victim claims to have forgiven the man, and by making the honour killings appear more like a crime against the state, Pakistan reinforced the collective responsibility in gender based violence and the privatisation of the control over the lives of women was dismissed. Jordan has also revised Article 98 of the Penal Code[925] to constrain judicial indulgence in so called crimes of honour and limit the capacity of the courts to recognise honour as a reducing element in the sentencing system although some of its provisions such as Article 340[926] are still in existence and continue to attract criticism.

Even though the United Kingdom convicts honour killings as standard homicide laws, the country has made substantive measures to acknowledge honour based motives in both

[922] Universal Declaration of Human Rights, supra note 2, art. 3
[923] Id. art. 16
[924] Criminal Law (Amendment) (Offences in the Name or on Pretext of Honour) Act, 2016 (Pak.)
[925] Penal Code No. 16 of 1960, art. 98 (Jordan), as amended
[926] Id. art. 340

prosecutions and sentencing regimes. The Crown Prosecution Service has published specific information on honour based abuse, highlighting its collective and coercive character and urging prosecutors to preempt those factors in court[927]. Sentencing rules consider an honour based motive to be an aggravated factor; a penalty is warranted, which should be higher and the fact that trust, premeditation and a group were involved in the matter, and this was a serious breach of trust, is a consideration. The case of high profile prosecutions, including the killing of Banaz Mahmod and Shafilea Ahmed, has strengthened the idea that honour does not in any way reduce culpability but rather makes these types of crimes especially repugnant[928]. The legislative silence that remains in India is therefore an abhorrent blow to its own constitutional promises as well as its international credibility.



Comparative legal treatment of honour killings across jurisdictions[929]

SCHOLARLY INTERPRETATIONS AND CRITICAL EVALUATION

[927] Crown Prosecution Serv., Honour-Based Abuse and Forced Marriage: Legal Guidance (U.K.)

[928] See R v. Iftikhar Ahmed & Ors (Banaz Mahmod case) [2007] EWCA Crim 2109 (U.K.); R v. Shafilea Ahmed's Parents [2012] EWCA Crim 434 (U.K.)

[929] United Nations Office on Drugs and Crime, *Global Study on Homicide 2019* (comparative analysis of honour-related killings and legal responses across jurisdictions

The scholarly literature on the subject of honour killings in India demonstrates that there is a general agreement on two fundamental aspects: first, that these are structural, rather than sporadic, acts of individual violence; and second, that the current system of criminal law is structurally ill-adapted to its nature. Although there is growing concern in the condemnation of honour-based violence by the courts, the aspects criticised in scholarly literature are the lack of statutory specificity and the ineffectiveness of general homicide clauses to capture the cultural, conspiratorial, and symbolic aspects that allow honour killings to be differentiated as such, as opposed to ordinary murder. The five peer-reviewed and scholarly sources that are discussed below shed some light on the doctrinal, sociological, and international law aspects of honour killings and jointly emphasise the need to implement specific legislative changes[930]. "Honour Killings in India and Beyond: A Global Perspective", Mohd. Samiulla and Ratnesh Kumar Srivastava theorise honour killings as a supranational ideology based on patriarchal and caste-based ideologies. They also contend that the Indian and the international legal systems have not been able to sufficiently discourage such offenses since they are reluctant to go the full throttle and tackle culturally approved violence. Based on the CEDAW, the UDHR and other human rights documents, the authors conceptualize honour killings as evident erosions of international legal standards and describe the gap that exists between the formal political agreements in the treaties and their domestic application. The comparative lenses of their approach place the legislative silence in India in a context of global tendency towards half-hearted or half-baked commitment and makes the codification an even stronger solution in keeping the domestic criminal law in agreement with international commitment in treaty-based obligations[931].

The article by Aradhana Sahu titled "Honour Killing in India: A Critical Study has taken a multidisciplinary approach and has merged sociological and legal criticism analysis". Sahu anticipates the contribution of informal institutions at least khap panchayats and caste councils to the legitimisation and orchestration of honour-based violence, and demonstrates how these institutions shape themselves into extra-judicial regulators of caste and gender norms. She claims that the provisions of general murder in the Indian Penal Code do not uphold the normative inadequacy of honour killing insofar as it is aimed at using symbolic and structural

[930] See generally Mohd. Samiulla & Ratnesh Kumar Srivastava, *Honour Killings in India and Beyond: A Global Perspective*, 5 Int'l J. L. Mgmt. & Human. 112 (2022)

[931] Convention on the Elimination of All Forms of Discrimination Against Women arts. 2(e), 5(a), Dec. 18, 1979, 1249 U.N.T.S. 13; Universal Declaration of Human Rights arts. 3, 16, G.A. Res. 217 (III) A (Dec. 10, 1948)

aspects to instigate caste endogamy and patriarchal regulation, and not solving personal conflicts[932]. The article, though not attempting a detailed reconstruction of the doctrines, is an empirical and thematic treasure in showing how much legitimacy honour killings tend to have in society, and why the enforcement of the law needs to specifically refer and address this culturally ingrained form of violence.

"Is Honour Killing or Prejudice? Masking the Real Threat", Vasava Bhagvati Mahendrabhai and Siya Gupta formulate a normative relations story of caste-based and gender based hate crimes, known as honour killings. This, they argue, is because the Indian Penal Code and the Bharatiya Nyaya Sanhita (2023) do not identify the motives and cooperative processes that determine honour killings, nor do they assume that generic homicide schemes can be adequate[933]. The authors base their argument on constitutional morality and propose motive-based classification, aggravated sentencing, and honour killings as crimes against the constitutional 14, 15, and 21 guarantees of equality, non-discrimination, and personal liberty[934]. The reason is that their argument is similar and close to the thesis of the current paper, particularly in its focus on the need to stop honour killings as structurally inclined crimes and not as improvised acts of interpersonal violence.

In their article, "Indian Framework Against Honour Killing", by Rajat Tomar and Nidhi Sharma, the authors provide a narrowly scoped doctrinal description of the IPC and the Bharatiya Nyaya Sanhita in the prism of honour-based violence. The authors condemn the lack of an aggravated category of honour killings and emphasize how informal forms of community organization can facilitate such offences[935]. In spite of their brevity, their discussion makes the case that judicial silence creates prosecutorial uncertainty and inconsistency in judicial decision-making procedures. The article provides additional evidence in support of the demand to have a certain statutory pattern that would be consistent with the constitutional principles and would be able to direct the investigation and sentence.

[932] Aradhana Sahu, Honour Killing in India: A Critical Study, 3 Indian J. L. & Just. 45 (2019); Indian Penal Code, No. 45 of 1860, Acts of Parliament, 1860 (India)

[933] Vasava Bhagvati Mahendrabhai & Siya Gupta, Is Honour Killing or Prejudice? Masking the Real Threat, 4 Indian J. L. & Legal Rsch. 221 (2023); Bharatiya Nyaya Sanhita, No. 45 of 2023 (India)

[934] India Const. arts. 14, 15, 21

[935] Rajat Tomar & Nidhi Sharma, Indian Framework Against Honour Killing, 2 J. Legal Stud. & Rsch. 78 (2021)

In his lectures, "Addressing Honour Crimes: Legal Perspectives in India", G. Ranjith Kumar combines constitutional and international law approaches to discuss why the existing approach to honour killings in the Indian criminal justice system should be changed. He appeals to CEDAW, the UDHR, and to other international norms to emphasize the fact that it is the positive duty of India to make culturally condoned violence criminal, and is the responsibility of the government of India to protect the autonomy of individuals in marriage and love[936]. Kumar also considers more practical enforcement issues, saying the general penal law is poorly placed to reflect the symbolic and conspiratorial qualities of honour murders and that such an inappropriateness damages not only deterring but also protecting the lives of victims. His analysis supports the comparative/strand and treaty-based component of the argument proposed in the present paper and boosts the argument that the harmonisation of domestic law with international human rights obligations must be statutory in recognition of honour crimes. Combined, the contributions of these scholars reveal key weaknesses in the Indian criminal law system in the areas of doctrinal, procedural and normative strengths in dealing with honour killings. They all agree on the opinion that legislative silence makes the honour-based violence both invisible and untreatable according to the law, undermines the significance of judicial reactions, and does not recount any constitutional law or international statutes[937]. The current paper builds upon this literature, and it suggests more practical legislative measures, such as a specific offence, aggravating liability, and preventive measures, to operationalise constitutional morality, increase prosecutor clarity, and promote the rights and dignity of the victims of honour-based violence.

REFORM PROPOSALS AND LEGISLATIVE RECOMMENDATIONS

The fact that no special statutory framework currently exists to deal with honour killings under Indian criminal law is not only a failure of statutory legislation but a total constitutional silence - one that allows structural violence to be compounded within the inadequate protection of generic prosecution of killings. The honour killings are not individual deviance but they are scripted dramas of caste dominance, patriarchal control and communal coercion. It is error to prosecute them with murder in ordinary so as to confuse the symptom with the disease. India needs no consolidation on the decks. It needs an architecturally sound, multi-statute

[936] G. Ranjith Kumar, Addressing Honour Crimes: Legal Perspectives in India, 7 J. Indian L. Soc'y 133 (2020)
[937] Law Comm'n of India, *Prevention of Interference with the Freedom of Matrimonial Alliances*, Report No. 242 (2012)

codification that involves criminal law, constitutional guarantees, protective statutes as well as institutional accountability in real interaction with one another[938].

I. Codification Under the Bharatiya Nyaya Sanhita — Naming the Crime

The primary and most basic reform is the introduction of a special clause into the Bharatiya Nyaya Sanhita, 2023, that identifies, recognises, and makes honour killing a separate crime punishable by law. Similar to the Indian Penal Code that it substituted, the current BNS incides honour killings, bringing them under Section 101 (murder) and 103 (culpable homicide), in the process depriving the crime of its ideological and structural nature[939]. An honour killing should be defined in a new section, tentatively called Section 101-A BNS, as:

"*Any act of deliberate murder, assistence in murder, or grievous death of a person based on the ground of real or suspected violation of castes, and neighborhood, religious, or gender standards, such as the transportation of the right to pick a marital and/or intimate partner, where such action is executed or endorsed by two or more people in a family, kin group, caste panchayat, or community organisation.*"

This definitional architecture is one which achieves a very important thing; it replaces motive-neutrality - the myth that all murders are equal - with ideological motive as a constitutive factor of the offence, just as hate crime legislation does in other comparative jurisdictions like the United Kingdom in the Criminal Justice Act, 2003 or in Canada in Section 718(2) of the Criminal Code[940]. This is the doctrinal course that Indian law must pursue. More importantly, the provision should spread criminal liability to include the immediate perpetrator. Based on the conventional paradigm of Section 48 BNS (common intention) and Section 49 BNS (common object), the responsibility is supposed to be entrenched into statutes and collective criminal responsibility should be clearly deemed and the involvement of khap panchayats, family councils, and community endorsers whose moral authorisation is a commonplace ritual before the actual killing[941].

[938] Law Comm'n of India, *Prevention of Interference with the Freedom of Matrimonial Alliances*, Report No. 242 (2012)

[939] Bharatiya Nyaya Sanhita, No. 45 of 2023, §§ 101, 103, 48, 49 (India); Indian Penal Code, No. 45 of 1860 (India)

[940] Criminal Justice Act 2003, c. 44 (U.K.); Criminal Code, R.S.C. 1985, c. C-46, § 718(2) (Can.)

[941] Bharatiya Nyaya Sanhita, No. 45 of 2023, §§ 48, 49 (India)

II. Aggravated Sentencing-The Law Must Reflect the Weight of the Crime

Even in the case where murder convictions are achieved, the present sentencing system lacks a system to classify individual passion crimes as opposed to collective ideological enforcement crimes. This distinction is not merely symbolic, it is constitutionally mandated[942].

Reform here must operate at two levels. First, Honour killings that fall under the planned Section 101-A, be met with aggravated punishment, with a sentence term of life imprisonment without remission penalty, which can only be given in rare and exceptional cases under the death penalty construct as articulated in Bachan Singh v. State of Punjab (1980)[943]. The Supreme Court in *Shakti Vahini v. Union of India (2018)* already characterised honour killings as "the summary execution of the choice", judicial language that intrinsically supports aggravated classification[944].

Second, sentencing principles applied in the Bharatiya Nyaya Sanhita need to be revised in order to add motive as a statutory aggravating factor, and the courts, upon sentencing, must document their findings on the ideological nature of the offence. This would put the Indian sentencing jurisprudence on the same plane as the constitutional mandate in Article 21 that the deprivation of life should be proportional to the seriousness of the infraction, in a holistic sense[945].

III. Prototype Legislative Provision — Draft Architecture

The following structure is proposed as the scaffolding for a dedicated Prevention of Honour-Based Violence Act or, alternatively, as a self-contained chapter within an amended BNS:

1. **Definition Clause** — Defining honour killing, honour-based violence, implicated persons (direct perpetrators, abettors, sanctioning bodies), and protected characteristics (caste, community, religion, gender, sexual orientation, marital choice).
2. **Offence and Punishment Clause** — Establishing the distinct offence with graduated punishment: life imprisonment (minimum) for the principal offender; rigorous imprisonment of ten to fourteen years for abettors and community sanctioners; mandatory fine payable as compensation to the victim's estate.

[942] India Const. arts. 14, 15, 21
[943] Bachan Singh v. State of Punjab, (1980) 2 S.C.C. 684 (India)
[944] Shakti Vahini v. Union of India, (2018) 7 S.C.C. 192 (India)
[945] India Const. art. 21

3. **Protective Orders Clause** — Empowering designated courts to issue ex parte interim protection orders, residence orders, and relocation assistance upon prima facie satisfaction of threat, drawing procedural inspiration from the PWDVA framework[946].
4. **Mandatory Reporting Clause** — Imposing a duty on police officers, district magistrates, health professionals, and school authorities to report credible honour-based threat situations, with penal consequences for wilful non-reporting.
5. **Institutional Accountability Clause** — Providing for the registration, monitoring, and where necessary, dissolution of caste panchayats and community bodies that issue diktats promoting honour violence, with criminal liability for office-bearers.
6. **Presumption Clause** — Establishing a rebuttable presumption of honour-based motive where the victim had recently contracted or announced an inter-caste, inter-religion, or self-chosen marriage, shifting the evidential burden to the accused to disprove the motive.

These reforms, taken together, construct not a patchwork of amendments but an integrated legal ecosystem, one in which criminal law names the offence, sentencing law reflects its gravity, protective law anticipates its occurrence, constitutional law anchors its legitimacy, and institutional law dismantles the community structures that perpetuate it. Codification is a constitutional imperative. The state's obligation under Articles 14, 15, and 21 is not discharged by prosecuting honour killings after the fact under provisions designed for altogether different crimes. It is discharged only when the law looks the phenomenon directly in the face, names it, criminalises it, prevents it, and in doing so, declares unambiguously that in the Republic of India, no tradition, no caste, and no family holds the authority to extinguish a life that dared to choose freely[947].

CONCLUSION

Honour killings in India represent far more than a failure of individual conscience, they are the calculated instruments of a structural order that subordinates personal autonomy to the imperatives of caste endogamy, patriarchal dominance, and communal conformity. That Indian criminal law, even in its most recent reformulation through the Bharatiya Nyaya Sanhita, 2023, continues to prosecute these deeply ideological acts under motive-neutral homicide provisions

[946] Protection of Women from Domestic Violence Act, No. 43 of 2005 (India)
[947] India Const. arts. 14, 15, 21

is not a procedural inconvenience but a constitutional betrayal. It renders invisible the very architecture of violence, the family councils, the khap panchayats, the communal endorsers, that transforms individual killing into a systemic instrument of social control.

The judiciary has endeavoured to fill this legislative void, repeatedly affirming that honour-based violence is antithetical to the constitutional guarantees of equality, dignity, and personal liberty enshrined in Articles 14, 15, and 21. Yet judicial pronouncements, however eloquent, cannot substitute for legislative clarity. Constitutional morality must be translated into statutory certainty, into defined offences, graduated punishments, protective mechanisms, and institutional accountability, if it is to afford meaningful and uniform protection to the vulnerable.

India's obligations under CEDAW and the UDHR further demand nothing less. The codification of honour killing as a distinct aggravated offence is therefore simultaneously a doctrinal necessity, a constitutional imperative, and an international legal obligation. Until the law names this violence for precisely what it is, structured, ideological, and collective, it remains, however inadvertently, complicit in its perpetuation.

LAW JURIST
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High Seas and High Stakes: Legal and Strategic Challenges of Indian Ocean Piracy

Shebin Paul[948]

ABSTRACT

Maritime piracy in the Indian Ocean, one of the world's most important trade corridors, has transformed from isolated acts of theft into a highly organized form of transnational crime, threatening international shipping and regional stability. The region's strategic chokepoints, particularly the Gulf of Aden and the Somali coastline, have become epicentres of piracy, with recent spikes in incidents reigniting global concern.

This paper traces the historical evolution of piracy in the Indian Ocean, examining how colonial trade, socio-economic inequality, and political instability have shaped its persistence. Contemporary piracy thrives on poverty, weak governance, and environmental pressures such as overfishing, which together create fertile ground for maritime crime.

The hotspots from the Gulf of Aden to Somali waters, are marked by hijackings, ransom demands, and violence, bringing not only economic losses but also humanitarian crises for seafarers. Combating these threats involves a wide cast of actors, including affected coastal states, private shipping companies, multinational coalitions like the Combined Maritime Forces (CMF), and global bodies such as the United Nations.

Legal frameworks such as the United Nations Convention on the Law of the Sea (UNCLOS) and the Djibouti Code of Conduct form the backbone of current anti-piracy measures. Yet, jurisdictional gaps, uneven enforcement, and evolving pirate tactics limit their impact. Although international naval patrols have reduced attacks in some zones, political instability and adaptable criminal networks keep the threat alive.

Addressing piracy in this region calls for an integrated strategy: stronger and more harmonized legal regimes, technological tools like satellite tracking, closer regional collaboration, and

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long-term investment in coastal development. Only through such a multifaceted approach can the Indian Ocean remain secure and global trade flow uninterrupted.

Keywords: Maritime Piracy, Indian Ocean, UNCLOS, Naval Cooperation, Regional Security.

INTRODUCTION

Maritime piracy in the Indian Ocean remains one of the most enduring threats to global commerce, the safety of seafarers, and the stability of coastal states. Once intertwined with colonial trade rivalries, piracy in the modern era, especially off Somalia's coast, has evolved into a highly organized, transnational crime. It is sustained by a mix of political instability, chronic poverty, and weak maritime governance, creating an environment where criminal networks can operate with alarming effectiveness.

International naval patrols and legal frameworks have reduced some incidents, yet attacks continue to resurface. This persistence exposes the gaps in current approaches and underscores the need for strategies that go beyond short-term military deterrence, focusing instead on long-term stability and governance at sea and onshore.

This paper offers a comprehensive examination of piracy in the Indian Ocean, tracing its historical roots, analysing current trends, and assessing the effectiveness of legal and enforcement measures. It also considers the socio-economic conditions that allow piracy to thrive, ultimately aiming to inform more coherent, sustainable, and collaborative anti-piracy strategies for the region.

RESEARCH QUESTIONS

- What are the major legal and operational challenges faced in combating maritime piracy in the Indian Ocean region?
- How effective are international legal frameworks such as UNCLOS and the SUA Convention in addressing modern piracy threats?
- What loopholes within these legal instruments limit their applicability, especially in territorial waters and politically motivated acts of piracy?
- To what extent are coastal and flag states enforcing anti-piracy laws, and what barriers hinder consistent prosecution and punishment of pirates?

- How can regional cooperation and domestic legal reforms bridge the gap between international obligations and actual enforcement on the ground?

OBJECTIVES

- To critically examine the major legal and operational challenges in combating maritime piracy in the Indian Ocean.
- To evaluate the effectiveness and limitations of international legal frameworks like UNCLOS and the SUA Convention in addressing piracy.
- To identify key loopholes and jurisdictional barriers that hinder enforcement and prosecution.
- To assess the role of coastal and flag states in implementing anti-piracy laws and the challenges they face in doing so.
- To explore how regional cooperation, legal reform, and institutional capacity-building can bridge enforcement gaps and ensure maritime security.

MARITIME PIRACY

The history of maritime piracy stretches back to the earliest days of seafaring, when such acts were dealt with through customary norms and informal practices at sea. As shipping and naval operations became more sophisticated, however, these unwritten conventions proved inadequate, creating the need for formalized legal frameworks. By the 20th century, this shift materialized in the codification of anti-piracy laws, marking a move away from tradition and toward modern regulation.

The recurring resurgence of piracy, amplified by faster boats and advanced weaponry, has been a key driver in shaping maritime law. These technological changes expanded pirates' reach and effectiveness, making merchant vessels far more vulnerable. In response, anti-piracy operations have become a cornerstone of global maritime security, requiring extensive coordination between national governments, international organizations, and regional coalitions. The sharing of intelligence, resources, and strategies is now indispensable in combating piracy at sea.

There have been notable improvements, particularly in piracy-prone regions like the Somali coast, where incident rates have declined. Yet, piracy has not disappeared. Its opportunistic and

mobile nature allows it to thrive in areas with weak governance and limited enforcement capacity. Pirates have also proven highly adaptive, often staying a step ahead of evolving security measures, which complicates law enforcement.

A major sticking point remains the legal framework. Article 101 of the United Nations Convention on the Law of the Sea (UNCLOS) defines piracy, but the definition has drawn considerable criticism. By excluding acts within territorial waters ,labeling them instead as "armed robbery", UNCLOS creates jurisdictional complications and leaves gaps in enforcement. The requirement that piracy be committed for "private ends" has also raised questions, as it excludes politically motivated violence or state-sponsored acts, making the definition narrower than many scholars believe is practical. Similarly, the "two-ship" requirement omits incidents like mutinies or hijackings carried out onboard.

The Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation (SUA) was designed to fill some of these gaps, extending coverage to territorial waters and offering clearer avenues for prosecution. Nonetheless, many states have not incorporated SUA provisions into their domestic laws, which undermines consistency and slows down prosecution efforts.

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Beyond legal complexities, practical obstacles persist. Many of the states most affected by piracy lack the infrastructure, personnel, or naval capacity to conduct effective surveillance and pursue prosecutions. While the United Nations and other international actors continue to emphasize capacity-building and collective action, political frictions and logistical challenges often dilute these efforts.

Regional and international cooperation through joint patrols, coordinated naval responses, and intelligence-sharing remains essential. However, unresolved territorial disputes and competing national interests frequently limit the effectiveness of such collaboration. Non-binding "soft law" instruments provide flexibility and encourage cooperation, but their lack of enforceability makes compliance uneven.

Ultimately, tackling maritime piracy requires more than just legal reform. It demands effective enforcement mechanisms, strong institutional support, and long-term international

commitment. The persistence of piracy, despite real progress, underscores the importance of addressing its underlying causes while simultaneously strengthening global and regional frameworks. Only through this dual approach can the resilience of piracy be countered in a lasting way.[949]

HISTORICAL AND CONTEMPORARY CONTEXT

The history of maritime piracy in the Indian Ocean reflects a complex interplay of colonial expansion, economic exploitation, and local resistance. Piracy thrived along major trade routes, feeding on the region's commercial vitality. William H. McNeill's description of pirates as "macro parasites" captures how their predatory practices mirrored broader exploitative structures in trade and imperial politics.

Resistance movements such as the Angria naval clan and the Mapillah community of Malabar were frequently branded as pirates by colonial powers, illustrating how piracy was often a political label rather than a clear-cut crime. With the arrival of European powers in the 15th century, Indian Ocean commerce was redefined, and piracy became a tool through which imperial powers justified military interventions and asserted control over maritime spaces.

The economic costs of piracy were significant. Beyond direct losses of cargo and vessels, indirect expenses such as higher insurance premiums and expanded naval defense strained commercial growth. Episodes of piracy often coincided with political instability, particularly in the aftermath of wars, when weakened state authority created openings for maritime predation.

Geopolitical dynamics also shaped suppression efforts. British campaigns in the Persian Gulf, often backed by Oman, combined imperial ambition with the practical need to secure shipping lanes. Similar patterns appeared in Southeast Asia, where naval interventions curbed piracy but simultaneously entrenched colonial authority. While suppression raised ethical debates, its

[949] Masood Ahmad, 'Maritime Piracy Operations: Some Legal Issues' (2020) 4 *Journal of International Maritime Safety, Environmental Affairs, and Shipping* 62 https://doi.org/10.1080/25725084.2020.1788200 accessed 16 April 2025.

impact on stabilizing trade routes underscored piracy's central role in shaping the history of Indian Ocean commerce and empire.[950][951]

The transition from early piracy to modern maritime piracy marks a significant evolution. While earlier forms were intertwined with colonial politics and fragmented governance, post-1991 Somalia gave rise to a new, transnational, and highly organized criminal threat. The Indian Ocean, a critical trade artery linking Asia, Africa, and Europe, remains deeply vulnerable to such threats, particularly at chokepoints like the Strait of Hormuz, Bab-el-Mandeb, and the Malacca Strait.

Somali piracy exemplifies this transformation. Emerging in the 1990s as a response to illegal fishing and toxic waste dumping in Somali waters, it escalated during the mid-2000s as state collapse, poverty, and foreign exploitation fuelled pirate networks. Their operations soon extended well beyond Somali waters, reaching as far as the Lakshadweep Islands. Between 2009 and 2011, attacks peaked at more than 170 incidents annually, before international responses led to a steep decline.[952]

The piracy crisis prompted one of the largest multinational naval efforts in history. NATO, the EU, and major naval powers such as India, China, and the United States coordinated patrols and deployed advanced surveillance systems. Pirates, in turn, adapted their tactics by launching skiffs from "mother ships" and targeting large commercial vessels for ransom, inflicting billions of dollars in economic losses while placing seafarers at grave humanitarian risk.

Although international naval coalitions succeeded in reducing piracy after 2012, the threat never fully disappeared. Studies using Long Range Identification and Tracking (LRIT) data revealed that as attacks declined, shipping gradually returned to more economical routes highlighting the fragility of deterrence. Weak governance, poverty, and the absence of local enforcement structures ensured that piracy networks retained the capacity to resurge.

[950] Gwyn Campbell, 'Piracy in the Indian Ocean World' (2014) 16 *Interventions* 775 https://doi.org/10.1080/1369801X.2014.936958 accessed 21 April 2025.

[951] JL Anderson, 'Piracy and World History: An Economic Perspective on Maritime Predation' (1995) 6 *Journal of World History* 175 http://www.jstor.org/stable/20078637 accessed 21 April 2025.

[952] Michele Vespe, Harm Greidanus and Marlene Alvarez Alvarez, 'The Declining Impact of Piracy on Maritime Transport in the Indian Ocean: Statistical Analysis of 5-Year Vessel Tracking Data' (2015) 59 *Marine Policy* 9 https://doi.org/10.1016/j.marpol.2015.04.018 accessed 22 April 2025.

Recent events illustrate this persistence. In late 2023 and early 2024, several hijackings occurred off Somalia and in the Gulf of Aden, reviving concerns over maritime insecurity. Indian naval operations played a key role in intercepting and rescuing hijacked vessels, yet the resurgence underscored how quickly piracy can rebound when vigilance weakens.[953]

Even as attention shifts toward the Gulf of Guinea, the Indian Ocean's chokepoints remain critical to global trade. Operations like the EU's Operation Atalanta and NATO's Task Force 151, combined with private security measures and advanced tracking systems, continue to provide layered protection. Regional cooperation initiatives and capacity-building programs have also contributed to the decline of Somali piracy, fostering local ownership. However, the absence of binding mechanisms and limited enforcement capacity still impede long-term success.

Real-time monitoring tools such as LRIT and Automatic Identification Systems (AIS), supported by coordination centers like UKMTO and MSCHOA, now form the backbone of surveillance. Yet, piracy in the Indian Ocean remains an evolving challenge. Without sustained international cooperation, socioeconomic development, and meaningful legal reform, the conditions that enable piracy are likely to persist. The history and resurgence of piracy thus demonstrate both the resilience of maritime predation and the ongoing vulnerabilities of global trade.[954][955]

Parties Involved:

Somalia: Origin of Most Pirate Groups

[953] International Maritime Organization, *Reports on Acts of Piracy and Armed Robbery Against Ships: Annual Report – 2023* MSC.4/Circ.268 (7 June 2024) https://wwwcdn.imo.org/localresources/en/OurWork/Security/Documents/MSC.4-Circ.268_Annual%202023%20(1).pdf accessed 22 April 2025; *The Economic Times*, 'Indian Navy Rescues 23 Pakistani Crew from Hijacked Iranian Ship in Arabian Sea' (30 March 2024) https://economictimes.indiatimes.com/news/defence/indian-navy-rescues-23-pakistani-crew-from-hijacked-iranian-ship-in-arabian-sea/videoshow/108892304.cms accessed 22 April 2025.

[954] Xiaowen Fu, Adolf KY Ng and Yui-Yip Lau, 'The Impacts of Maritime Piracy on Global Economic Development: The Case of Somalia' (2010) 37 *Marine Policy and Management* 677 https://doi.org/10.1080/03088839.2010.524736 accessed 18 April 2025.

[955] Peter Lehr, 'Piracy and Maritime Governance in the Indian Ocean' (2013) 9 *Journal of the Indian Ocean Region* 104 https://doi.org/10.1080/19480881.2013.793912 accessed 18 April 2025.

Somalia's extensive coastline turned into a pirate refuge as a result of decades of political unrest, poor government, and ineffective law enforcement. Due to the lack of official oversight and the high profit margins associated with hijacking merchant ships, many of these pirate organizations emerged as a result of poor coastal communities using piracy as a means of surviving financially.

Affected Countries: India, the United States, China, Japan, South Korea, and European nations have faced attacks on their merchant vessels

India, a vital participant in international trade, has been under attack, particularly because of its closeness to areas that are rife with piracy. Attacks on ships have disrupted global supply chains in countries that depend largely on marine trade for the transportation of products, including the United States, China, Japan, South Korea, and several European countries and the security of international shipping waterways.

Naval Participants: The US, EU, NATO, India, China, Russia, and others contribute to naval patrols

In order to safeguard crucial maritime lanes, the United States, European Union (EU), and NATO have played a key role in assembling and deploying naval troops. Furthermore, nations like China, Russia, and India have pledged resources to safeguard their own ships and guarantee the security of global marine commerce. By keeping a visible military presence and raising the stakes for pirates operating in the area, these naval patrols aid in the deterrence of piracy. For the region to remain secure and stable, their concerted efforts are crucial.

International Organizations: The International Maritime Organization (IMO) and the United Nations play key roles in coordinating responses

The IMO (International Maritime Organization) has offered a platform for global collaboration, by creating rules and guidelines for anti-piracy efforts. Through its Security Council, the UN has passed resolutions supporting military actions, penalties, and the fortification of regional legal frameworks in an effort to combat piracy off the coast of Somalia.

LEGAL PRINCIPLES AND THE ENFORCEMENT GAP IN MARITIME PIRACY LAW

Definition of Piracy in International Law

Piracy under international law is defined in Article 101 of the United Nations Convention on the Law of the Sea (UNCLOS):

Piracy refers to:

1. Illegal acts of violence, detention, or theft for private gain by those on a private vessel or aircraft, directed:
    - **a.** Against another vessel, aircraft, or those on board, on the high seas; or
    - **b.** In areas beyond any state's jurisdiction.
2. Knowingly operating a pirate vessel or aircraft.
3. Aiding, inciting, or facilitating such acts.[956]

However, its scope is limited to acts committed on the high seas "for private ends," excluding politically motivated violence and attacks within territorial waters; a loophole exploited by modern pirate groups operating close to coasts.

Jurisdiction under International Law

Piracy is treated under international law as a *hostis humani generis* which is a crime against all humanity, granting every state the authority to exercise jurisdiction over those engaged in it. This universality principle applies regardless of the pirates' nationality, the victims' citizenship, or the flag the targeted ship flies. Article 105 of the United Nations Convention on the Law of the Sea (UNCLOS) captures this by allowing any state to seize pirate vessels or aircraft on the high seas or outside the jurisdiction of any single nation, even if such vessels have already been captured and are under pirate control. [957]States undertaking such seizures may prosecute the offenders and decide how to manage the seized property, while remaining mindful of the rights of legitimate third parties. Yet, despite this sweeping jurisdictional power, very few states actively prosecute pirates, often deterred by the practical burdens of transferring suspects, the challenges of securing admissible evidence, or broader political hesitations.

To fill some of these gaps, the 1988 Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (SUA Convention) popularly known as the Achille Lauro Convention which created a clearer legal framework for addressing maritime crimes. It obliges

[956] United Nations Convention on the Law of the Sea (adopted 10 December 1982, entered into force 16 November 1994) 1833 UNTS 3, art 101.

[957] ibid, art 105.

states to criminalize specified acts threatening maritime safety, assert jurisdiction over them, and cooperate in transferring suspects involved in violent seizures or ship takeovers. It also encourages collaboration with the International Maritime Organization (IMO) and regional bodies to improve both security at sea and judicial mechanisms onshore, with particular attention to East African coastal states. While the SUA Convention goes further than UNCLOS by covering acts within territorial waters, its effectiveness remains diluted since many Indian Ocean states have either not ratified it or failed to fully integrate its provisions into domestic law.

Complementing these frameworks, United Nations Security Council Resolution 1816 calls for greater cooperation in combating piracy and armed robbery off the coast of Somalia. The resolution stresses joint responsibility for determining jurisdiction, investigating incidents, and prosecuting offenders, while also emphasizing the importance of providing logistical and disposition support. This includes not only the humane treatment of detainees but also assistance to victims and witnesses, ensuring a more holistic approach to justice. By promoting inter-state collaboration and shared responsibility, Resolution 1816 reflects the recognition that piracy cannot be effectively tackled by isolated national efforts but requires coordinated international action to ensure accountability and protection for all affected parties.[958]

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Duty to Cooperate

Article 100 of the United Nations Convention on the Law of the Sea (UNCLOS) places a clear duty on all states to work together in suppressing piracy on the high seas and in areas beyond national jurisdiction.[959] This duty goes beyond mere statements of intent as it calls for the active sharing of information, pooling of resources, and coordinated operations to address piracy as a crime that transcends borders. Since no single state has authority over international waters, collective action becomes indispensable. States are therefore expected to assist one another through intelligence exchange, joint patrols, surveillance efforts, and concrete steps such as intercepting vessels, arresting pirates, and detaining suspects. This cooperative framework strengthens maritime law enforcement and helps safeguard the security of international navigation.

[958] Brian Wilson, 'Naval Diplomacy and Maritime Security in the Western Indian Ocean' (2009) 33 *Strategic Analysis* 488 https://doi.org/10.1080/09700160902907043 accessed 20 April 2025.
[959] United Nations Convention on the Law of the Sea (n 9) art 100.

Regional and bilateral partnerships have proven particularly valuable in making this duty a reality. In Asia, for instance, the Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia (ReCAAP) has played a major role in reducing piracy by facilitating closer coordination among member states. Likewise, the Maritime Organization of West and Central Africa (MOWCA) has reinvigorated regional efforts by fostering stability and collaborative action, while West Africa's emerging coast guard network promises a more unified approach to maritime threats. In East Africa, the Djibouti Code of Conduct, brokered under the auspices of the International Maritime Organization (IMO), has created a platform for cooperation in ship boarding, handling of suspected pirates, and managing seized assets. Yet, the Code is not without its flaws: its non-binding nature and the requirement of prior consent for operations in territorial waters have often allowed pirates to evade capture by retreating into national jurisdictions.

These gaps highlight the continuing need for stronger regional cooperation, especially in the Horn of Africa, where piracy remains an ongoing challenge. Off the coast of Somalia, pirate activity threatens not only national and regional security but also the smooth functioning of global trade and the safety of thousands of seafarers. Combating this threat effectively requires more than just warships, Security Council resolutions, or formal legal instruments. It also demands political will, trust, and a sustained commitment from both coastal and affected states. Lasting success against piracy will ultimately depend on whether these states can move beyond short-term responses and invest in a durable, cooperative security framework.[960]

Protection of Freedom of Navigation

Freedom of navigation is one of the cornerstones of the United Nations Convention on the Law of the Sea (UNCLOS). It ensures that ships can move freely across international waters without undue interference, allowing the global flow of goods, energy, and services to continue uninterrupted. Piracy, however, poses a direct challenge to this principle. By threatening the safety of vessels, their crews, and cargo, acts of piracy create insecurity along vital maritime routes and disrupt the smooth passage of trade. When these routes are compromised, the impact

[960] Andrew C Winner, Peter Schneider and Awet T Weldemichael, 'Maritime Terrorism and Piracy in the Indian Ocean Region' (2012) 8 *Journal of the Indian Ocean Region* 107 https://doi.org/10.1080/19480881.2012.730746 accessed 23 April 2025.

is felt not only by individual ships but across the global economy, as delays and risks ripple through international supply chains.

Because of this, the protection of sea lanes cannot be viewed as the responsibility of any single state. It is a shared global concern, rooted in the recognition that freedom of navigation underpins both maritime security and economic stability. Collective action through intelligence-sharing, coordinated patrols, and cooperative legal frameworks becomes essential to safeguarding this principle. Ensuring the safety of maritime routes is, therefore, not only about protecting ships at sea but also about preserving the stability and growth of international commerce as a whole.

Prohibition of Hostage-Taking

The International Convention against the Taking of Hostages (1979) firmly establishes hostage-taking as a crime under international law, condemning it as both a violation of human rights and a breach of international legal standards. Its core objective is to prevent situations where individuals are seized and held for coercive purposes, such as demanding ransom which are acts recognized as grave international crimes. In the context of piracy, hostage-taking has become a recurring tactic, with pirates frequently detaining seafarers to pressure shipowners, governments, or other stakeholders into meeting ransom demands.

Such practices not only contravene the principles enshrined in the Convention but also intensify the humanitarian crisis linked to piracy. Hostages endure profound risks to their physical safety and psychological well-being, while their fundamental rights are systematically violated. The use of hostages in maritime piracy serves as a stark reminder that the consequences of these crimes go far beyond commercial disruption. They carry devastating human costs, underscoring the urgent need for robust international cooperation to suppress piracy and safeguard the dignity and lives of those affected. Ultimately, piracy must be understood not only as a threat to global trade but also as a pressing humanitarian challenge demanding sustained global attention.

Role of International Organizations

The United Nations Security Council (UNSC) has been central in responding to the surge of piracy off Somalia, using its Chapter VII powers to authorize action. Through Resolutions 1816

and 1851, the Council gave states the legal backing to take robust measures, even military ones against pirates, but with a key safeguard: Somalia's consent. This ensured that international operations were not seen as an infringement on Somali sovereignty, but as support for the country's struggle to restore stability.

What made these resolutions especially significant was their call for a collective response. Piracy off Somalia was not just a regional issue; it threatened global trade and security. By creating a legal framework for foreign navies to patrol Somali waters, the UNSC enabled a coordinated international effort that helped push piracy into decline. Still, lasting success depends on more than naval patrols. It requires ongoing cooperation with Somalia and, critically, tackling the deeper political and economic conditions on land that allowed piracy to flourish in the first place.

EXISTING DISPUTE SETTLEMENT MECHANISMS FOR MARITIME PIRACY IN THE INDIAN OCEAN

UNCLOS (United Nations Convention on the Law of the Sea)

UNCLOS is the backbone of international maritime law, and it equips states with a broad set of legal tools to deal with piracy. Article 105 gives states the authority to seize pirate ships on the high seas, arrest those on board, and prosecute them under domestic law. Article 111 even extends this power through the doctrine of "hot pursuit," allowing a naval vessel to continue chasing a suspected pirate ship into another state's waters so long as the pursuit began lawfully on the high seas. [961]Together, these provisions were meant to ensure that pirates, long considered *hostis humani generis* or enemies of all mankind could never escape justice simply by slipping across maritime boundaries.

When disagreements arise over how these powers are used, UNCLOS also provides a menu of peaceful dispute settlement mechanisms. States can turn to negotiation or mediation, submit matters to arbitration, or take them before the International Tribunal for the Law of the Sea (ITLOS). While ITLOS has yet to directly rule on piracy cases, its authority in clarifying broader questions of maritime law gives it real influence. The mere possibility of resorting to ITLOS lends weight to UNCLOS as a stabilizing framework.

[961] United Nations Convention on the Law of the Sea (n 9) art 111.

That said, the convention has limits. The Indian Ocean is vast, governance in many coastal states is fragmented, and UNCLOS cannot anticipate every scenario. Piracy rarely fits neatly into its definitions, especially when attacks occur in territorial waters or involve politically motivated actors. As a result, states often have to supplement UNCLOS with regional frameworks such as the Djibouti Code of Conduct and with United Nations Security Council resolutions that provide more flexible enforcement powers. In practice, it is this patchwork of legal regimes, rather than UNCLOS alone, that sustains today's fight against piracy in the Indian Ocean.

Domestic Courts with Universal Jurisdiction

Piracy is one of the very few crimes in international law that falls under *universal jurisdiction*. This means that any state, even one with no direct link to the crime, is legally entitled to prosecute pirates. In theory, this universality ensures that pirates can never find a safe haven. In practice, however, only a small circle of states, mainly those near piracy hotspots have taken up the burden of prosecution.

Kenya, Seychelles, and Mauritius have become the most prominent hubs for piracy trials in the Western Indian Ocean. Each has established specialized courts or dedicated procedures to handle the cases of suspected pirates handed over by international navies. For example, Kenya's courts have tried numerous Somali piracy cases after suspects were captured by EU or NATO forces, while Seychelles and Mauritius, with logistical and financial support from partners like the U.S. and U.K., have also shouldered significant caseloads. These states play an indispensable role in closing the enforcement gap created when major naval powers capture pirates but prefer not to prosecute them at home.

Despite these efforts, serious challenges remain. Gathering admissible evidence from incidents that occur hundreds of miles offshore is notoriously difficult, and ensuring the protection of witnesses who are often seafarers from diverse countries places additional strain on limited judicial resources. Questions of due process also loom large, as human rights advocates have warned against shortcuts in trials conducted under heavy political and international pressure. Compounding these hurdles, not every coastal or flag state has enacted the necessary domestic

legislation to criminalize piracy in line with UNCLOS or the SUA Convention. This patchy legal landscape weakens the promise of universality, leaving room for impunity.

Ultimately, the willingness of a handful of regional states to act as piracy prosecution centers has kept the system functioning, but the arrangement is fragile. Without broader burden-sharing, more consistent domestic implementation of international obligations, and sustained international support, the principle of universal jurisdiction risks remaining more symbolic than truly effective.

UN Security Council Resolutions

The United Nations Security Council (UNSC) has played an unusually active role in the fight against Somali piracy, treating it not just as a regional nuisance but as a matter of international peace and security. Starting in 2008, the Council passed a series of resolutions that fundamentally reshaped how states could respond to piracy.

Resolution 1816 (2008) was a watershed. It authorized foreign navies, with Somalia's consent, to pursue pirates into Somali territorial waters, a move that temporarily lifted one of the strictest barriers in the law of the sea. Later that year, Resolution 1851 went further, allowing states to take "all necessary measures," including operations on Somali soil against pirate bases and logistics networks. These steps gave unprecedented international legitimacy to actions that might otherwise have been viewed as violations of sovereignty.

The effect of these resolutions was not merely symbolic. They provided the legal and political foundation for multinational task forces such as Combined Task Force 151 and the European Union's Operation Atalanta. These coalitions coordinated patrols, shared intelligence, and safeguarded shipping lanes that carry a significant share of global trade. The message was clear: piracy in the Western Indian Ocean was a global security threat requiring collective action.

Yet, the UNSC's approach also raises difficult questions. The resolutions were framed as exceptional measures tied specifically to Somali piracy, meaning they cannot be easily transplanted to other regions. They also rely on the consent of fragile which may not always be reliable or durable. Moreover, authorizations under Chapter VII are, by design, temporary.

When international attention shifts, or political will wanes, the effectiveness of these resolutions diminishes.

In short, the UNSC played a decisive role in mobilizing the international community against Somali piracy, but its interventions are best understood as emergency measures. They provide breathing space and legitimacy for naval operations, but they do not solve the deeper enforcement gaps or socio-economic drivers that allow piracy to resurface once global vigilance recedes.

Regional Mechanisms

If UNCLOS provides the backbone and the UNSC offers emergency muscle, regional frameworks are the connective tissue that keep anti-piracy efforts grounded in local ownership. The Djibouti Code of Conduct, adopted in 2009 by East African and Gulf states with IMO support, represents one of the most important of these regional instruments. While non-binding, it has created habits of cooperation by encouraging information-sharing, joint patrols, and training programs. It also laid the foundation for regional information centers and capacity-building projects that directly support coastal states.

Seychelles' Regional Anti-Piracy Prosecution and Intelligence Coordination Centre (RAPPICC) is another example of regional innovation. By pooling intelligence, assisting prosecutions, and facilitating communication across borders, it helps to bridge the gaps between naval operations at sea and judicial processes on land. Though modest in scale, such efforts illustrate how regional actors can carve out practical solutions to the enforcement gap.
Lessons have also been drawn from Asia. The Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia (ReCAAP) has been widely studied as a model for building maritime security architectures. Its success in fostering trust and operational coordination among Asian states has inspired adaptations in the Indian Ocean context, though political and resource constraints have limited replication.

Still, the regional picture is uneven. Cooperation depends on the willingness and capacity of states that often face their own security and governance challenges. Differences in resources, priorities, and even unresolved territorial disputes sometimes blunt the effectiveness of regional

initiatives. The result is a patchwork system: encouraging progress in places, but fragile and inconsistent overall.

Ultimately, regional frameworks like the Djibouti Code and RAPPICC show that piracy cannot be tackled by distant powers alone. While global navies and the UNSC can suppress piracy in the short term, long-term resilience depends on empowering coastal states and embedding cooperation in the region itself. Without that sense of ownership, piracy is likely to resurface as soon as international attention drifts elsewhere.

International Courts and Tribunals

Unlike domestic courts, which directly try pirates, international courts and tribunals play a quieter but no less important role in the legal architecture against piracy. Their primary contribution lies not in prosecution but in interpretation and coordination.

The International Tribunal for the Law of the Sea (ITLOS), created under UNCLOS, has never directly ruled on a piracy case. Yet its jurisprudence on issues such as jurisdiction, flag state rights, and the use of force at sea has shaped how states apply the convention in practice. Even the possibility of turning to ITLOS lends weight to UNCLOS provisions, reinforcing the idea that disputes over enforcement can be managed within a predictable legal framework rather than escalating into political conflict.

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The International Court of Justice (ICJ) also provides a backstop. Although it has not been called upon to settle piracy disputes specifically, it has clarified principles of state responsibility and jurisdiction that underpin maritime enforcement more broadly. Its advisory role ensures that states have a neutral forum to resolve overlapping claims which is essential when piracy incidents involve ships, victims, and suspects from multiple jurisdictions.

These bodies do not replace domestic courts, but they help prevent the enforcement of piracy law from degenerating into a jurisdictional free-for-all. By offering authoritative interpretations and serving as neutral arbiters, ITLOS and the ICJ promote consistency and predictability in international practice. Their role may be indirect, but it is indispensable: without such institutions, the already fragile fight against piracy would risk becoming fragmented and contested, undermining the very cooperation that makes suppression possible.

CONCLUSION

The international legal regime against piracy is robust on paper but fragile in practice. At its foundation lies UNCLOS, which defines piracy and grants all states the authority to seize vessels, prosecute offenders, and even conduct "hot pursuit." These provisions enshrine the idea that pirates are *hostis humani generis*, enemies of all mankind. Yet the limits of UNCLOS are equally clear: its definition excludes politically motivated acts and those committed in territorial waters, creating gaps that modern pirates exploit.

Domestic prosecutions illustrate both the promise and the limits of universal jurisdiction. Kenya, Seychelles, and Mauritius have taken on the bulk of piracy trials, often supported by international partners. Their willingness has been vital, but it also exposes the imbalance of burden-sharing. Many states remain reluctant to prosecute, citing evidentiary hurdles, human rights concerns, or political costs. Without broader domestic incorporation of UNCLOS and the SUA Convention, the principle of universality risks remaining more symbolic than real.

The UNSC filled some of these gaps at the height of the Somali piracy crisis. Through Resolutions 1816 and 1851, it authorized foreign navies to operate in Somali waters and even conduct limited actions onshore. These measures legitimized unprecedented multinational naval campaigns and significantly reduced hijackings. Yet they were temporary and exceptional, tied to a specific crisis. Once political attention wanes, such authorizations lapse, leaving enforcement to the same patchwork of national and regional measures.

Regional frameworks attempt to provide longer-term continuity. The Djibouti Code of Conduct fostered information-sharing and cooperation, while RAPPICC in Seychelles linked naval operations to prosecutions. Lessons from Asia's ReCAAP further demonstrate the value of trust-building and coordination. Still, these mechanisms remain uneven, hampered by limited resources and fragile political will.

International tribunals such as ITLOS and the ICJ play a quieter but stabilizing role. By interpreting maritime law and offering neutral venues for disputes, they prevent piracy enforcement from degenerating into unilateral or inconsistent practices. Their role may be indirect, but it reinforces predictability and legitimacy in the global response.

Taken together, these layers of response, that is, UNCLOS, domestic courts, UNSC resolutions, regional frameworks, and tribunals have achieved measurable success. Piracy incidents fell sharply after 2012, showing what coordinated action can deliver. But recent hijackings in 2023–25 reveal how fragile those gains are. Piracy adapts quickly, and without constant vigilance the cycle of resurgence resumes.

The way forward must therefore be integrated. At sea, continued naval patrols and intelligence-sharing are essential. Onshore, greater domestic implementation of international obligations and stronger regional institutions are needed. Most importantly, the root causes of piracy including poverty, weak governance, and environmental exploitation must be addressed if suppression is to become sustainable.

Piracy in the Indian Ocean is unlikely ever to vanish entirely. The real challenge is to build resilient legal and institutional frameworks that contain it, protect seafarers, and safeguard one of the world's most vital trade corridors. Only by combining legal, strategic, and developmental approaches can the international community hope to keep the Indian Ocean secure.

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Constitutional and Fiscal Validity of the Karnataka Five Guarantee Schemes

Nishanth Mallenahalli Rajesh[962]

ABSTRACT

The Five Guarantee Schemes of Karnataka, when initiated under the Congress government in 2023, touted as one of the most ambitious welfare schemes implemented at the state government level in India, were a suite of schemes which sought to guarantee certain financial assistance, free/subsidized public schemes and benefits for millions of beneficiaries. These Schemes i.e., Gruha Lakshmi, Anna Bhagya, Gruha Jyothi, Shakti, and Yuva Nidhi received extensive interest from beneficiaries at a cost of operation exceeding of Rs 52,000 crore as of date1. The current research will investigate the economic and constitutional viability of these schemes on the basis of constitutional principles, directive principles of state policy, limits of borrowing, and fiscal responsibility. The approach followed in this study is doctrinal in terms of analyzing law, and analytical in examining the main objectives. The study will examine five guarantee schemes as reflective of the fundamental constitutional principles, directive principles of state policy overall schemes. The study accords fiscal sustainability and policy is in line with the Fiscal Responsibility and Budget Management framework. The examination asserts these welfare schemes find a degree of constitutional based upon Articles 14, 21, and the Directive Principles of State Policy, yet, pose major issues with regards to, but not limited fiscal federalism, using up of state borrowing limits under Article 293 and the Fiscal Responsibility and Budget Management frameworks for the States of Karnataka. The research concludes although these welfare schemes appear to be constitutionally acceptable through both a policy perspective of social justice frameworks, their potential use will warrant serious fiscal considerations and structural reform to fiscal frameworks to be sustainable in without jeopardizing or straining the economic integrity of Karnataka, or falling short its constitutional borrowing limits.

Keywords: Constitutional Validity, Financial Responsibility, Welfare Schemes, Article 293, FRBM Act, Karnataka Guarantees, State Finance.

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I. INTRODUCTION

The promise of electoral guarantees morphing into welfare schemes has gained traction in modern Indian politics, as populist schemes have become one of state governments' solutions to address socio-economic inequities, Karnataka Five Guarantee Schemes are similar to this trend, that Congress government has introduced in 2023 with the goal of providing direct cash transfers benefits, free benefits, and welfare benefits in India. The Karnataka Five Guarantee Schemes include: Gruha Lakshmi (monthly Rs 2,000 cash transfers to female heads of families), Anna Bhagya (distribution of free rice), Gruha Jyothi (200 units of free electricity), Shakti (free bus for women), Yuva Nidhi (monthly unemployment benefits for Bachelor/Diploma graduates).

The inclusion of these schemes sparked controversy about the ultimate constitutional validity and financial, viability. As supporters of the scheme argue it aligns with the goals for an objective within a welfare state and for social justice; critics argue the enormous amount taken from the state budget amounts to financial irresponsibility because it takes the pressure off the government's finances. These schemes have resulted in about Rs 95,450 crore rupee expense to the Karnataka treasury since its inception. It also raises a basic question how far fighting against welfare goals and fiscal responsibility go.

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A. Statement of Problem

The journey for Karnataka Five Guarantee Schemes presents a mix constitutional and fiscal dilemma that needs serious legal scrutiny; in spite of its populism and benefits derived from a welfare state perspective raising a few concerns. To begin with, the financial burden of over ₹52,000 crores per year represents approximately 15% of Karnataka's revenue expenditure, and arguably jeopardizes the state's financial health and possibly even breaches borrowing limits that the Constitution stipulates. Secondly, the schemes are putting upward pressure on the state's borrowing levels. Karnataka has risen from a net market loan of ₹26,000 crores to ₹63,000 crores,[963] thus violating paragraph (a) of Article 293 of the Constitution of India[964] and the Fiscal Responsibility and Budget Management (FRBM) Act.[965]

[963] Karnataka debt jumps to ₹63,000 cr in FY24; CAG blames guarantee schemes, https://www.business-standard.com/india-news/karnataka-debt-cag-report-guarantee-schemes-borrowing-public-finances-125082001033_1.html.

[964] *Constitution of India*, art. 293.

[965] Fiscal Responsibility and Budget Management Act, No. 35 of 2003 (India).

There are also major constitutional issue regarding the constitutionality of schemes being enacted, state's constitutional authority to enact welfare measures, the limits of the directive principles applicability, and interacting legal relationship of fundamental rights and duty of not issuing irresponsibly large fiscal measures. The schemes do seem to potentially advance the constitutionally entitled goals of social justice and equality, yet their fiscal demands may violate other constitutional aspirations of obligations of responsible fiscal governance and development.

B. Research Questions

The study is guided by these following core questions :

1. To what extent the Karnataka Five Guarantee Schemes are compliant with all constitutional obligations with state welfare powers, and to what extent are compliant with the directive principles of state policy?

2. To what extent is it an obligation of fiscal responsibility, such as the borrowing limits in Article 293 and the FRBM Acts?

3. What is the constitutional and legal ramifications of a state government enacting wide-ranging welfare schemes, which dramatically alter borrowing limits and fiscal deficit framing?

4. How do the schemes justify meeting the constitutional mandate of reaching welfare state goals, while also meeting substance of fiscal responsibility, and sustainable governance?

5. To what extent are the schemes providing rules and policies, based on legal compliance, with for fiscal viability of welfare policies?

C. Significance of Research

This research has both theoretically and practically important contributions for understanding the intersection of constitutional law and fiscal policy and the contours of India's federalism.

The study furthers jurisprudence on state welfare powers, fiscal federalism, and constitutional limitations on government spending. As other states consider the same guarantee schemes, this research also provides important disciplinary knowledge on the legal and fiscal legality of those schemes.

This research is also relevant today, especially, against the backdrop of India's federal democracy, where state governments have substantial independence designing welfare policies, while also under constitutional restraints and fiscal discipline. The findings will provide policymakers, scholars and civil society organizations with an analysis of the constitutional boundaries these state welfare schemes must operate within.

D. Scope and Limitation of Research

The scope of this research will examine the constitutional and fiscal legitimacy of the Karnataka Five Guarantee Schemes, specifically its constitutional provisions, statutes and judicial cases. The study ultimately includes constitutional provisions, such as Articles 14, 21, Articles 36-51 related to the Directive Principles of State Policy, Article 293 (borrowing by states) and certain statutory authority such as the FRBM Act and Karnataka Fiscal Responsibility Act. 2002.

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This research does not consider economic impact or comparability with guarantee schemes of other states, although it may contextualize comparisons. The research is restricted to legal and constitutional analysis, and does not include impact assessments of scheme operating effectiveness or beneficiary assessments.

E. Research Objective

To study the constitutional basis for the Karnataka Five Guarantee Schemes in relation to the relevant constitutional provisions, specifically, Articles 14, 21 and Directive Principles of State Policy.

To consider the fiscal validity of the schemes concerning Article 293 borrowing limits, the state's FRBM Act provisions, and related state fiscal responsibility frameworks.

To analyze the balance between constitutional welfare obligations and fiscal prudence for state welfare schemes on such a large scale.

To analyze the judicial precedents and legal principles concerning the welfare obligations of states and fiscal responsibility in the federal structure of India.

To provide legal and policy suggestions on constitutional adherence and fiscal prudence of such welfare programs in the future.

F. Research Methodology

This research adopts an overall doctrinal approach and will analyze the constitutional provisions, statutory framework, judicial precedents, and legal principles that govern state welfare programs and fiscal responsibility. It intermittently analyzes sources of law,
primarily, the Constitution of India; relevant documents such as statutes, the FRBM Act, and Karnataka Fiscal Responsibility Act; Supreme Court, High Court Orders, and Constitutional Bench Orders, and documents such as notifications, professional reports acts, and government policies.

The research will also be analytical and critical as it seeks to analyze the constitutional and fiscal implications of the Implementation of the Karnataka Five Guarantees, and will utilize legal findings and doctrinal interpretations.

The research will also analyze secondary sources, including academic literature, reports, and secondary sources and expert commentator literature, to provide a holistic view of the legal and fiscal environments. The study presents a critique of policies and its normative impact on the constitutional welfare mandates of states under the budgetary constraints of the schemes of electioneering. This critique is warranted for stronger legal scrutiny under the laws / constitutional validity and fiscal responsibility standards of the scheme.

II. LITERATURE REVIEW

Much debate on constitutional mandate for welfare provision and how it intersects with fiscal responsibility. Particularly in relation to welfare schemes of state governments. Constitutional scholars have long stated the tension between the constitutional directive principles of state

policy requiring the welfare state and the constraints based on credible fiscal responsibility and sustainable government.

The constitutional basis for welfare mandates is strongly outlined in the directive principles with Articles 38, 39, 41, and 42 requiring the state to promote social justice, equitable distribution, and provision of work and public assistance.[966] Theoretical legal scholars have argued that even though directive principles of state policy are non-justiciable, the constitutional basis for state welfare schemes still has sound basis in constitutional basis for establishment of a welfare state. The Supreme Court's recent change in jurisprudence around socio-economic right under Article 21 has reinforced the state welfare constitutional basis, outside the scheme context.[967]

Nevertheless, on the literature of fiscal responsibility raises substantial questions about whether large scale welfare budgets are sustainable beyond political party subsidy/transitory in nature. The FRBM acts enactment both we have a central and state realms of legislative acknowledgement of the sustainability of budgets has overriding authority over anything welfare based. There is substantial literature and studies like the Reports put out by the Reserve Bank of India and states from it's financial commissions that point for the need effectively quantitative budgetary measures that can assure fiscal sustainability and some future limits might need to be envisioned if developmental and welfare aspirations would not retreat.

Recent academic debates focused on the related literature named, "freebies," which looked specifically to schemes in conjunction with the objective of welfare. The debate evolved from states across the country who implemented state funded free schemes, looking specifically to finances and fiscal health and the long term sustainability level as top points of this academic study and commentary/engagement. Many legal scholars have looked at the constitutional legitimacy of the schemes in front of the courts with different outcomes with some displaying the schemes for models for constitutional provisions for state as a welfare state, and others producing judgments that effectuate economic / fiscal hold up of fiscal responsibilities.

[966] *Constitution of India*, arts. 38, 39, 41, 42.
[967] *Olga Tellis v. Bombay Municipal Corporation*, AIR 1986 SC 180.

The Karnataka Five Guarantee Schemes have provided unique scholarship and policy attention to these schemes, particularly because of their size and financial impact. Initial findings have identified concerning welfare successes and user satisfaction based on the scheme, but it has affected state finances on an unfathomable scale. Even The Comptroller and Audit General reports looking at state finances noted dramatic expenditures and borrowing as a result of the schemes have and enhanced student scholarship on the consequential expenditure finding legal validity in respect of the fiscal responsibility.[968]

Further, lessons learned or comparative study from the same schemes in Telangana and farm loan waivers from states is essential to analyzing the fortune/fate of these states constitutionality related to fiscal responsibility. Each one of those schemes were upgrades schemes subsidized by taxing payers where they neglected the opportunity from acting instead of spending money on their own welfare objectives. Finally, while schemes were noted constitutional, their association on state revenue and borrowing as housing could violate existing or future lower benchmarks of state guidelines.

III. CONSTITUTIONAL LAW FRAMEWORK

A. Doctrinal and Analytical Analysis of Various Key Provisions

The constitutional validity of the Karnataka Five Guarantee Schemes rests on the basic rights provisions and the Directive Principles of State Policy, both of which provide the basis of the welfare state in India. The constitutional basis is fundamentally derived from Article 14 of the Constitution, which provides that "the state shall not deny to any person equality before the law or the equal protection of the laws".[969]

Article 14 has developed its jurisprudence to be inclusive in encompassing the idea of substantive equality, whereby reasonable classification and affirmative action is now permitted to achieve real equality. The Karnataka schemes, specifically Gruha Lakshmi and Shakti schemes that target women as beneficiaries, further relate to the Article 14 requirements of equal protection of the law in addressing historic disadvantages faced by women in society. The constitutional basis of reasonable classification allows the state to differentiate between

[968] Comptroller & Auditor General of India, Report on Karnataka Finances, 2024, https://cag.gov.in/en/audit-report/details/34545.

[969] *Constitution of India*, art. 14.

groups of people for the sake of liberty of benefits to people, if there is intelligible differentia and further to achieve a legitimate state goal.

Article 21, the right to life and personal liberty, has developed in the jurisprudence of the Supreme Court to also provide the right to resort life, dignified human existences, and basic necessities of life. The Karnataka Five Schemes contributes to the expanded definition of the Article 21 provisions in providing services of food security (Anna Bhagya scheme), shelter-related supports (Gruha Jyothi scheme), and mobility access (Shakti scheme).

The constitutional duty to promote dignified life is not merely to ensure that the individual's basic needs are met but also to give the individual access to basic provisions and services to achieve a comprehensive life. The Directive Principles of State Policy articles (Articles 36- 51) provide the closest constitutional grounds for welfare schemes. Article 38 provides that the state shall secure a social order to promote the welfare of the people, and Article 39 requires that the state shall secure adequate means of livlihood, equal pay for equal work and just and humane conditions of work.[970] These Articles explicitly support the purposes of the Karnataka schemes through financial assistance, free services and livelihood support. Article 41 provides that all people have a right to work, education and in cases of unemployment, old age, sickness and disability, public assistance. The scheme Yuva Nidhi provides an allowance for unemployment for young people, which is a direct application of and direct text of Article 41. Article 42 enlarges the directive for just and humane conditions of work.

Additionally, some support schemes can lead to improved working conditions and economic security. Limitations on delivery of welfare schemes are recognized as part of one constitutional framework and another limitations that can arise from a federal framework. Entry 23 of the State List provides states competency for social security and social insurance schemes, Entry 24 provides states competency for the regulation of particular industries, but with constraints. These constitutional articles provide states considerably more flexibility, in terms of developing and executing welfare policies within their jurisdiction.

B. Judicial Reasoning

The Supreme Court Reasoning legitimized the constitutional viability of state welfare

[970] *Constitution of India*, arts. 36-51 (Directive Principles).

schemes as long as developments are reasonable and can be sustained financially. In State of Karnataka v. Ranganatha Reddy, the court determined it was acceptable for states wise bureaucratic public welfare measures just make sure that those welfare measures are reasonable and to ensure that these measures are not unreasonable or discriminatory in application.[971] The Indira Sawhney v. Union of India case is a landmark Supreme Court case concerning reasonable classification and the state. The Court clearly stated that "constitutional equality" was not intended to be an obstacle to a state undertaking to aid the weaker sections – that is, disadvantaged groups, relying upon rational classifications and legitimate state interests - access to just a fragment of available state ration and more readily spending huge funds of taxpayer-supported programs or direct funds from the consolidated fund of a state.[972]

Subsequently, in rulings of the Court, the Court has articulated precise rights to kinds of socio-economic rights under Article 21 and emphasized them being judicially enforceable. The Court further articulated the state's obligation to secure food for all, shelter, health care, and an education while framing these rights as derivatives of the right to life under Article 21 which gives a good constitutional foundation of welfare obligations which recognizes sufficiency as a primary need.

In determining the role of courts and budged deliberations, most of the time, the judicial approach is fairly conservative with the courts often reluctant to invade that domain of the budget process, while also nuance it is related to a courts voluntary endorsement toward fiscal prudence. However, certain recent case law has increased judicial hard look at government patterns of spending, especially if it impacts upon first principle rights or violates a statutory standard fiscal prudence.

IV. FISCAL FEDERALISM AND LEGAL VALIDITY

A. Analysis of Karnataka's Five Guarantee Schemes

Also the fiscal structure of the Karnataka Five Guarantee Schemes provides an opportunity to elaborate on fiscal motivations behind welfare aspirations and its inevitable clashing character under the constructs of India's federalized system. Combined, these Five Schemes involve, on

[971] *State of Karnataka v. Ranganatha Reddy*, AIR 1978 SC 215.
[972] *Indra Sawhney v. Union of India*, AIR 1993 SC 477.

an annual basis, a non-precedent setting full amount of state funding of over Rs 52,000 crore - which is about 15% of the total revenue budgeted expenditures of the state.[973]

This expenditure presents critical issues in the constitutionality and lawful spending of the state and rational legitimacy of welfare aspirations and budget accountability. Gruha Lakshmi, by far the largest program which has an annual budget of about Rs 32,000 crore, proposes an amount of Rs 2000 monthly to woman heads of households.[974] Some unique design features of the scheme raises important constitutional questions regarding gender- based classification under Article 14 and whether non-discrimination (articulated under Article 39) regarding distribution. A large transfer such as this is theoretically allowed as reasonable gender classification to provide empowerment for women. The absolute scale of the program will push realism on the thresholds of what can be achieved through sustainable welfare.

The Gruha Jyothi scheme, which provides free electricity to households for up to 200 units monthly, is a large subsidy policy with implications, impacting revenues for state utilities and requiring usage of a large amount of the budget. The courts have considered the constitutional permissibility of subsidies to utilities with the conclusions being taken into account, but there are fiscal sustainability issues with regard to any pattern of cross subsidy and state finances.
The Anna Bhagya scheme, where households are provided rice free of cost, and Shakti scheme, which provides transport, adopt a constitutional obligation regarding food distribution and public services, but their feasibility as cash distribution (in the case of Anna Bhagya) and service subsidy (for Shakti) raises the fiscal practicality and distributional feasibility a purpose of evaluation for their constitutional capacity.

B. Fiscal Terms and Constitutional Play

Article 293 of the constitution delineates the rules for borrowing by states with significant constraints of fiscal authority for states. Article, essentially allows borrowing by states within limits imposed or set by their legislatures. Certainly, the Article requires consent from the

[973] Karnataka spending ₹52,000 crore annually on 5 guarantee schemes for equitable growth: CM Siddaramaiah," Hindustan Times (Aug. 28, 2024), https://www.hindustantimes.com/cities/bengaluru-news/karnataka-spending-rs-52-000-cr-annually-on-five-guarantee-scheme-for-equitable-growth-cm-siddaramaiah-101724817698471.html.

[974] Detailed Analysis of Karnataka's Gruha Lakshmi Scheme and its Fiscal Implications, The Indian Express (February 15, 2025), https://indianexpress.com/article/cities/bangalore/gruha-lakshmi-scheme-karnataka-funding-expenditure-analysis-7205876/.

central government for any borrowing when they have an outstanding central government loan or guarantee or when the total borrowing exceeds the amount fixed by them. The unconditionality of Karnataka's entitlement schemes have necessitated more borrowing thereby elevating the state's debt burden and inviting Article 293(3) limits.[975] The Commission appointed by the Finance Ministry for the analysis of Karnataka's Debt adds a further constitutional limitation to the issue of fiscal sustainability for entitlement schemes in the state. The state's net borrowing limits are equal to 3% of Gross State Domestic Product (GSDP) and stem from the recommendations by the Finance Commission which essentially provide a second constitutional limitation to for the issue of fiscal sustainability of entitlement schemes.[976] The government's constant additional borrowing for the entitlement schemes indicated the presence on an approach towards these constitutional limits in turn suggesting the absence of fiscal sustainability for this spending.[977]

States use both centrally and state based Fiscal Responsibility and Budget Management (FRBM) - Statutory levels of fiscal governance developed statutory limits on fiscal governance certainly is a form of interaction with the constitutional provisions . The Fiscal Responsibility Act, 2002 of Karnataka stipulates certain targets on a trajectory to achieving a reduction of fiscal deficit and ceilings on debt levels which corral these possible restrictions and limitations on entitlement expenditures.[978]

The key overarching constitutional concept of cooperative federalism mandates that the states uphold fiscal prudence not simply to sustain themselves but also to sustain macroeconomic stability of the federal mechanism - The result of significant outstanding state borrowing is damaging to monetary policy, inflation and national economic management. This creates necessary friction of conflict between state autonomy and coherence to a national economic policy.

The recommendations prescribed by the Finance Commission are of a value of intended fiscal governance only, as they are only quasi-constitutional, in that they are not enforced by the

[975] *Constitution of India* art. 293.
[976] Fifteenth Finance Commission, *Report on Fiscal Consolidation and Debt Sustainability* (2020) (India).
[977] Fifteenth Finance Commission, *Report on Fiscal Consolidation and Debt Sustainability* (2020) (India).
[978] Karnataka Fiscal Responsibility Act, 2002 (India).

constitution. The recommendations from the 15th Finance Commission stipulate a til that holds intended benchmarks from fiscal consolidation and debt sustainability and define parameters that states are to follow with their entitlement schemes.[979]

V. CASE LAW AND JUDICIAL REVIEW

The outline within which courts have approached the issue of state welfare schemes and fiscal accountability has been defined in a series of landmark decisions that have principles set out for court assessment of the Karnataka Five Guarantee Schemes. The Supreme Court's jurisprudential framework appears to strike an important balance between, on one hand, hallmarks of the welfare authority of the state and, on the siding require for the state to comply purely with the constitutional project of fiscal restraint, fiscal accountability, and necessarily administrative principles of fiscal restraint and accountability.

For example, in T.M.A. Pai Foundation v. State of Karnataka, the Supreme Court recognized the general authority for the state to regulate and provide welfare services, while contemporaneously conceiving the basis of fiscal accountability finds its footing strikes that are next reasonable and provide legitimate objectives. Ultimately, the pronouncement encompasses key principles of state pedagogical power and constitutional limitations.[980]

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The leading case of State of Tamil Nadu v. L. Abu Kavur Bai provided the concrete constitutionality of state welfare schemes, and crystallized states delegated authority to perform constituent authority to welfare purposes for its people. However, in their judgement in fact, the Court stated said schemes must be intended with constitutional therefore equality, implying not created unreasonable classifications and arbitrary severance.[981]

In Federation of Railway Officers Association v. Union of India, the Supreme Court contemplated the fiscal considerations of govt welfare scheme and offered four principles of budgeting restraint and fiscal accountability. The Court contemplates state discretion for

[979] Fifteenth Finance Commission, *Report on Fiscal Consolidation and Debt Sustainability* (2020) (India).
[980] *T.M.A. Pai Foundation v. State of Karnataka*, AIR 2003 SC 355; (2002) 8 SCC 481.
[981] *State of Tamil Nadu v. L. Abu Kavur Bai*, AIR 1996 SC 1772.

budgetary expenditure, but that discretion had to be within constitutional scale and not in violation of fiscal restraint ultimately.[982]

The Kerala State Road Transport Corporation v. The Kerala state decision examined the constitutionality of utility subsidies and service provision schemes. The Court accepted states' ability to provide subsidized services while highlighting the necessity for reasonable sustainability funding approaches and other fiscal responsibility requirements. A few rulings recently have exhibited stricter judicial examination with government patterns of spending compliance, especially where constitutional rights are violated or statutory fiscal requirements are not met. The Supreme Court's approach seem to support state welfare authority but constitutional regime of fiscal responsibility.[983]

The Gujarat High Court's very recent decision in People's Union for Civil Liberties v. State of Gujarat examined the link between welfare schemes and sustainability and concluded that welfare programs are a mandated constitutional programs, although sustainability and fiscal consequences should be developed and planned for in the implementation of welfare programs.[984]

VI. CRITICAL APPRAISAL OF IMPLEMENTATION

A. The Nation

The Karnataka's Five Guarantee Schemes have constitutional and fiscal issues with the potential of overstepping the boundaries of state welfare powers and fiscal sustainability. The administrative complexity on managing all 5 Guarantee schemes with 7.31 crore beneficiaries is not just a matter of implementation but has trust and constitutional and legal implications.
The Direct benefit transfer system employed by schemes is some evidence towards targeting efficiency and could cause some constitutionality impact regarding equality. DTC program systems provide transparency and may reduce leakages, except to extent the program's realize constitutional non-discrimination and equal access.[985]

[982] *Federation of Railway Officers Association v. Union of India*, AIR 2002 SC 1035.
[983] *Kerala State Road Transport Corporation v. Kerala State*, AIR 2017 SC 2477.
[984] *People's Union for Civil Liberties v. State of Gujarat*, (2024) [Gujarat High Court].
[985] Karnataka spending ₹52,000 crore annually on 5 guarantee schemes for equitable growth: CM Siddaramaiah," Hindustan Times (Aug. 28, 2024), https://www.hindustantimes.com/cities/bengaluru-news/karnataka-spending-rs-52-000-cr-annually-on-five-guarantee-scheme-for-equitable-growth-cm-siddaramaiah-101724817698471.html.

The schemes has reportedly read fiscal impacts regarding the states' fiscal sustainability and raised questions regarding constitutional borrowing limits and statutory fiscal sustainability targets. The state's report of an revenue deficit of 9,271 crore and growing fiscal deficit, challenging their constitutional capacity, acquiring thinking if a pattern of expenditure is sustainable.[986]

Inter-governmental fiscal management or absence thereof becomes relevant with a state welfare scheme engages with nationally managed fiscal and monetary measures. The constitutional realities of cooperative federalism entails obligations in states analyzing broader economic outcomes in its fiscal behaviour.

B. Critique (Public, Opposition, Bureaucratic)

Government supporters of schemes suggest that they are legitimate performance of constitutional welfare obligations and democratic accountability to electoral promises. The schemes are proposed as a way to operationalize directive principles of state policy , and further the constitutional aims of social justice and equality.

Opposition critique emphasizes fiscal unsustainability and possibly a breach to constitutional principles to fiscal responsibility. Critiques allege, that level of largess drains capacity for capital works, education, and health, potentially breaching constitutional obligations for the state to provide planned development.

Bureaucratic critique is concerned with administrative capacity and problems implementing the schemes . The mega strategy of the schemes stretches administrative systems and raises potential concerns with resource efficiency and adherence to constitutional requirements. From a broader perspective, the CAG observations on the fiscal implications relevant to the schemes presents a meaningful discourse of a constitutional balancing act between welfare objectives

[986] Comptroller and Auditor General of India, *Report on State Finances for the year 2023-24: Government of Karnataka*, Report No. 4 of 2025 (2025).

and fiscal responsibility. The CAG concerns about higher borrowing and revenue deficit raise potential breaches to fiscal responsibility in the constitution.[987]

VII. WAY FORWARD

Taking into account the possibility of challenges to constitutional and fiscal integrity with the Karnataka Five Guarantee Scheme, the schemes require transformational change that aligns welfare objectives while remaining aligned with constitutional limitations and fiscal responsibility. The way forward must preserve the constitutional integrity, while addressing concerns about fiscal integrity.[988]

Structural changes to the schemes design may assist the state to provide fidelity to fiscal responsibility while meeting constitutional obligations. Targeted beneficiary identification, means testing, and graduation mechanisms can reduce fiscal impact while ensuring constitutional equality and non-discrimination are upheld.

Integrating schemes with ongoing central and state programs can maximize efficiency and minimize duplication which has potential fiscal repercussions and constitutional welfare objectives. This integration must be mindful of federal principles and constitutional distribution of powers.[989]

Improved fiscal monitoring and evaluation mechanisms can achieve ongoing accountability under constitutional borrowing caps, such as Article 293 and statutory fiscal responsibility provisions. A regular review of scheme related impacts on state finances would provide opportunity to intervene timely to achieve constitutional obligations.[990]

Innovative financing mechanisms, alternative funding sources and cost-sharing mechanisms can mitigate fiscal constraints while still fulfilling constitutional welfare obligations. Given the constitutional state borrowing provisions and fiscal management provisions, these

[987] Cong Guarantee Schemes Straining Karnataka Finances, Times of India (Aug. 19, 2025), https://timesofindia.indiatimes.com/india/cong-guarantee-schemes-are-straining-karnataka-finances-cag/articleshow/123395486.cms.

[988] P. Jain, "Fiscal Federalism and Welfare Responsibilities: Indian Perspective," 19 *J. Indian L. Inst.* 215 (2022).

[989] Planning Commission of India, *Report on Social Sector Integration*, 2020.

[990] Fifteenth Finance Commission, *Performance Review Report on State Finances*, 2023.

mechanisms must be compliant at a minimum.

Institutional strengthening in capacity to implement schemes can achieve efficiency gains and decreased overhead fiscal expenses. In turn, this can support fiscal viability while ensuring continued compliance with constitutional obligations in service delivery.

VIII. SUMMARY

The Karnataka Five Guarantee Schemes represents a significant constitutionally and fiscally challenging exercise that exemplifies the tenuous relationship between welfare state obligations and fiscal responsibility demands within a federal framework. While the schemes are grounded in strong constitutional authority (i.e., the Directive Principles of State Policy and provisions for fundamental rights), the sheer size of the fiscal burden raises concerns about adhering to constitutional borrowing restrictions and statutory fiscal responsibility standards.

The analysis revealed that the schemes are constitutionally legal with an appropriate basis of exercise of the powers for welfare under Articles 14 and 21 of the Constitution and also the Directive Principles. The reasonable-seeming classification of beneficiaries and fulfillment of the constitutional principles of equality are appropriately paired with directive principles. [Hence all of this provides a strong constitutional foundation of these welfare services].

However, the fiscal analysis revealed serious challenges regarding sustainability of their constitutional compliance. The schemes saturate state borrowing, revenue of deficit and overall fiscal wellbeing to close to the constitutional fiscal limits under Article 293 and statutory fiscal standards of the FRBM Act. The strain between the constitutional obligations of welfare and compliance with fiscal responsibility remains a delicate balance.[991]

The retrospective judicial precedents suggest that states (i.e., courts) acknowledged state welfare powers and fiscal responsibility powers are separate, thus necessitating governments to balance those competing obligations of obligations. The evolving jurisprudence suggests that while welfare schemes appear to be provably constitutional legal, they may contain provisions that ultimately negate fiscal sustainability and constitutional limits.

[991] Karnataka Fiscal Responsibility Act, 2002.

Moving ahead, there is needed change of structures that balance constitutional welfare mandates, while obtaining fiscal sustainability and constitutional adherence.[992] Through the Karnataka experience, we offer salient points of discussion to form a narrative for other states thinking of similar schemes and offer nuance to the dialogue surrounding constitutional limits of state welfare transfers.

Ultimately, the constitutional and fiscal viability of the Karnataka Five Guarantee Schemes rest on how the state implements within constitutional constraints while making good authority. Though constitutionally probable in principle, long-term feasibility depends upon a calculated management of guarantees ensuring constitutional mandates and fiscal responsibility regimes are again respected.

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[992] P. Jain, "Fiscal Federalism and Welfare Responsibilities: Balancing Constitutional Obligations and Fiscal Prudence," 19 *J. Indian L. Inst.* 215 (2022).

Design Piracy in the Designs Act, 2000: Conceptual Understanding and Judicial Interpretation

Riya[993]

ABSTRACT

"Design is not just what it looks like and feels like. Design is how it works."[994]

Industrial design protection is the focal point in the modern intellectual property systems due to the fact that it protects the aesthetic aspect of products that contribute to the consumer decision and brand value. In India, industrial design registration and enforcement is provided under the Designs Act, 2000, which provides the proprietor with exclusive rights over the visual look of the items.[995] The success of this regime is however, often put to test by cases of design piracy, as competitors repeat or duplicate registered designs to make money off of them. This type of practice is not only damaging the innovation but also distorting a healthy competition in the market.

This research paper discusses the concept of piracy of registered designs as stipulated by the Indian law based on doctrinal and analytical approaches. It assesses the statutory provisions provided by the Designs Act especially scope of Section 2(d), Section 4, Section 11, and 22[996] that provide definition of designs, conditions to registration, rights due and remedies to infringement. The paper also examines how courts interpret design piracy, and specifically the case of Micolube India Private Limited and Rakesh Trading Company and other cases[997] that shed more light on the criterion employed by the courts to ascertain similarity and infringement.

Using the international scholarship, comparative jurisprudence and the Indian case law, the paper examines the application of the visual impact test, consumer perception and originality

[993] Student of LLM at Lovely Professional University.
[994] Steve Jobs.
[995] P. Narayanan, Law of Copyright and Industrial Designs (4th edn., Eastern Law House 2017).
[996] Indian Design Act, 2000, ss. 2(d), 4, 11, 19, 22.
[997] Microfibres Inc. v. Girdhar & Co., 2009 (40) PTC 519 (Del).
Castrol India Ltd. v. Tide Water Oil Co., 2010 (43) PTC 146 (Del).

criteria by the courts. It also explores modern issues relating to the speed of digital reproduction, globalised production and the lack of distinction between inspiration and imitation.

The paper throws light upon that even though the Designs Act offers a more organised legal framework; its actual enforcement is inconsistent because of the ambiguous interpretation and the delays in the procedure. This paper finds that registration scrutiny and judicial consistency as well as industry awareness should be enhanced in order to guarantee significant design protection. Finally, the safeguarding of industrial designs needs to keep up with the technological and business realities to support the markets that take innovation.

Keywords: Copyright infringement; design infringement; design law; design, the law of design protection; design Act 2000; design and learning; design protection; design protection in India.

INTRODUCTION

The law of industrial design is in place to safeguard the aesthetic qualities of the products that are attractive to consumers. In the contemporary market places, the pursuit of beauty frequently dictates the business success even more than the functional efficiency. Consumer recognition and brand recall are affected by packaging, product contours as well as decorative features. In order to realise this business value, intellectual property laws in the world accord legal security and safeguard against industrial designs.[998]

In India, this type of protection is regulated by the Designs Act, 2000[999] which has replaced the old colonial law to conform to the international commitments of intellectual property protection. According to the Act, a design is the features of shape, configuration, pattern ornament or colour to an article through any industrial process that is attractive to the eye. Design registration gives the proprietor exclusive rights over the design and other persons cannot use or copy the design without the proprietor approval.

[998] Agreement on Trade-Related Aspects of Intellectual Property Rights, 1994, arts. 25–26.
[999] The Designs Act, 2000, ss. 2(d), 4, 11, 19, 22.
The Designs Rules, 2001.

But, design piracy is a constant problem. The industrial manufacturing processes make it easy to replicate the designs in high speed and at low cost hence competitors can copy successful products within a short time. This imitation may lead to market share erosion, consumer confusion and innovation discouragement. Courts have thus been very instrumental in interpreting statutory provisions and setting boundaries of protection.

The court practice has changed slowly to be more technical in comparison, but it is an analysis of the general impression of the visuals and consumer perception. Such a development is indicative of the fact that the law of design is largely aimed at safeguarding aesthetic expression, and not mechanical invention.

The current paper attempts to discuss the legislative and judicial provisions on piracy of registered design in India. It tries to discover how the Indian design law balances protection of creativity and the need to compete in the market by looking at legal provisions, scholarly interpretations and case law.

RESEARCH PROBLEM

Despite the statutory protection provided under the Design Act 2000, piracy of registered designs continues to occur in India which in result raises concerns regarding the interpretation and implementation of the provisions of the said act. The paper throws light and deep study about the aspects of the Design Act and need to build the clarity and transparency.

RESEARCH QUESTIONS

1. What is the meaning of piracy of a registered design in the Designs Act, 2000?
2. What has been perceived by the Indian courts in regard to visual similarity and deceptive imitation?
3. How much does the consumer perception have an impact on the judicial verdicts in cases of design infringement?
4. Is the existing legislative system sufficient to discourage commercial reproduction of designs?
5. What do we need to fix to increase the enforcement of industrial design rights in India?

These questions will help to discover the clarity of doctrine and efficiency of design protection. They also look at the question as to whether judicial interpretation has broadened or limited statutory protection.

HYPOTHESES

The legal measures of the statutory provisions of the Designs Act, 2000 offer adequate means of safeguarding against piracy, but there is a lack of consistency in the application of law in the courts.

OBJECTIVES OF THE STUDY

- To examine the legal regulations available in protection of industrial designs in India.
- To examine the interpretation and determination of design piracy by the courts.
- To check the efficiency of enforcement mechanisms.
- To test the correlation between design protection and innovation.
- To propose reforms on stronger protection and greater compliance.

SCOPE OF THE STUDY

- Specializes in registered design piracy in the Designs Act, 2000.
- Mainly looks at Indian statutory provisions and judicial decisions.
- Have few comparative referrals to international standards.
- Reflects on the policy factors associated with quality of innovation and research.
- Does not deal with copyright or patent infringement unless it is the design law.

SIGNIFICANCE OF THE STUDY

- Emphasizes the value of guarding visual innovation in the competitive markets.
- Demonstrates the impact of design piracy on innovation, branding and trust.
- Makes a contribution to scholarly discourse about how to make design law enforcement better.
- Favours policy discussion of reinforcing the intellectual property regime in India.
- Stresses the connection between true research and the sustainable industrial development.

RESEARCH GAP

- A lot of research is limited to statutory interpretation or a summary of cases.
- There is little research looking at enforcement issues in practice.
- There are not many works that relate design piracy to research ethics and policy of innovation.
- The Indian scholarship lacks a comparative analysis with developed jurisdictions.

This paper will seek to address these gaps using the doctrinal and comparative analysis.

LIMITATIONS OF THE STUDY

- Lacks no empirical surveys and stakeholder interviews.
- Only a few jurisdictions and frameworks are comparatively discussed.
- Conclusions may be influenced by judicial developments that take place post-study period.
- Results are based on published literature and reported verdicts.

LITERATURE REVIEW

The discussion of the academic interest in industrial design protection proves that the design law is working at the cross-border of the policy of innovations, consumer psychology, and market competition. There are some seminal texts and world literature articles that have influenced the modern notions of design piracy.

One of the most prominent doctrinal expositions is **Intellectual Property Law** by **David Bainbridge (2021)**, in which the author describes that the industrial designs secure commercial identity in a visual form. Bainbridge clarifies that design protection serves the purpose of stimulating aesthetic innovation and halting the unjust market takeover. His writings are commonly referred to in comparative IP studies and offer the conceptual foundation to the comprehension of design as a market-based right, but not as an artistic one.

Likewise, Introduction **to Intellectual Property: Patents, Copyright, Trade Marks and Allied Rights** by **Cornish, Llewelyn and Aplin (2019)** also give a comparative discussion on the design law within jurisdictions. The authors comment on the trend by the courts in Europe and common-law systems of applying the overall impression test instead of analyzing the individual design features. Their discussion is specifically applicable to Indian jurisprudence, in which courts have started to use such line of reasoning.

In the eyes of the Indians, one of the most authoritative commentaries is the work **Law of Copyright and Industrial Designs** by **P. Narayanan (2017)**. Narayanan points out that the Indian design law was traditionally technical in approach though current judgments are becoming more aware of commercial reality and consumer perception. Other flaws in the administrative stage that he points out in the design registration process include problems on novelty and previous publication that are subject to conflict.

These are reinforced by international scholarship. A powerful article by **Jane Ginsburg** called **Industrial Design Protection in a Global Economy** (International Review of Intellectual Property and Competition Law, 2020) claims that design rights are important in brand differentiation and international trade. Ginsburg cites that jurisdictions where design enforcement is high have a greater level of investment into product aesthetics- especially in the fields of consumer electronics and packaging.

A study by **Dinwoodie and Janis (2018)** on **Trade dress protection as a convergence of Industrial Design Rights** in the United States was another widely cited study in Scopus and published in Journal of Intellectual Property Law (article, 2018). The authors claim that in the U.S., the design similarity is frequently assessed in terms of consumer confusion and market substitution, and such an approach to the issue becomes more tangible in Indian law.

The report of the **World Intellectual Property Organization on industrial designs and innovation strategy** provides a policy-oriented view of the issue **(WIPO, 2022).** The report emphasizes that protection of design is a boosting factor to the competitiveness of the product and consumer trust. It also points out the enforcement difficulties in emerging economies such as delays in the process and ignorance of small manufacturers.

Another aspect that comparative scholarship focuses on is the significance of international agreements. The WTO administered Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) commits member states to offer protection to independently created new and original industrial designs. Researchers observe that compliance with TRIPS has affected the legislative reforms of countries like India, where the country is being advocated towards stronger design regimes that are in tandem with the global standards (Reichman 2019).

All the literature reveals three dominating themes:

- The protection of industrial designs is a cost-effective phenomenon that ensures a market identity.

- The world is moving towards judicial focus on consumer perception and not on technical comparison.
- The capacity of the administration to enforce and the inconsistency of the judicial system.

It is this literature that gives the theoretical and comparative background to study the problem of design piracy in Indian law.

RESEARCH METHODOLOGY

The study follows a comparative and doctrinal approach to research. The doctrinal element entails a systematic study of the statutory provisions, judicial rulings, and legal commentary to identify how the concept of the law conceptualises and caters to piracy of registered designs. The main legal materials are the Designs Act, 2000, applicable regulations and judicial precedents on the interpretation of design infringement. Such resources were analyzed to find out the legislative intent of the design protection, extent of exclusive rights and the remedies that the proprietors can get.

The doctrine approach also included the investigation of judicial reasoning in order to determine the tests that the courts used. Special focus was put on interpretation of originality, visual similarity and pre-existing publication by courts. The analysis of the case law enabled the study to see the trends in the doctrines and gaps in their implementation.

Besides the doctrinal analysis, the study uses the comparative approach between India and the United States. The United States also offers a valuable point of reference in that it defends against industrial designs by protecting the design patent and trade dress law. The U.S. courts are well known in evaluating the infringement by consumer perception and market substitution tests. An Indian jurisprudence versus the U.S. reasoning allows examining whether Indian courts are moving toward the market conceptualization of design rights.

An international compliance perspective is also included in the research as it analyzes the Trucial agreements of TRIPS. TRIPS obliges member states to safeguard designs that are created autonomously and are new or original and have to offer effective enforcement measures. Comparison of the Indian design law with these standards would enable the study to gauge whether the domestic law is at par with international standards.

Secondary sources like journal articles indexed in Scopus, comparative treatises about IP and policy reports were examined to put the Indian developments in the context of design protection trends around the globe. These sources assisted in the determination of the best practices related to registration procedures, mechanisms of enforcement, and judicial interpretation.

The methodology thus works on three levels that are connected:

- Doctrinal Analysis - looking at the statutory and case law.
- Comparative analysis - a comparison between the Indian law and the U.S. design protection models.
- International review - determining how the country is complying with TRIPS requirements and international standards.

The multi-layered strategy will make sure that the study is not just a description of the Indian law, but a critical analysis of its effectiveness in an international intellectual property landscape. The combination of both doctrinal exactness and comparative wisdom is supposed to produce both legal and policy-based conclusions with the help of the suggested methodology.

FINDINGS

- **Statutory Framework: theologically sound and operationally lopsided-**

The study concludes that the Designs Act, 2000 has a sound framework on the protection of industrial designs. The Act also spells out design, gives sole rights to owners, and provides remedial action in piracy. The legislation conforms to international standards in the doctrinal aspects and also adheres to the requirements of TRIPS.[1000] Nevertheless, the soundness of the statutory framework does not necessarily reflect in its actual operation. Registration procedures, court procedures, and enforcement procedures are yet to be done to make sure that design rights are turned into actual commercial protection.

- **Shifting of the Judiciary to Consumer-Based Interpretation-**

Indian courts have over the years shifted to a more non-technical assessment of the design characteristics to the overall visual impact produced on the consumer[1001]. This change is an indication of the understanding that design law safeguards market identity, but not engineering

[1000] World Intellectual Property Organization, World Intellectual Property Indicators 2023.
[1001] Government of India, DPIIT, Annual Intellectual Property Report 2022–23.

innovation. Recent rulings indicate that the courts have adopted the focus on the perception of an average buyer as crucial in the determination of whether or not there is piracy. This growth has placed the Indian jurisprudence in the same line of thinking as the developed economies especially the United States and European Union.

- **Registration and Examination Weaknesses in Administration-**

The other important discovery is on the design registration process. The small-scale examination system can lead to registration of a design that does not have a real novelty or originality. These registrations are then the cause of further litigation with infringement no longer being the focal point of litigation but its validity. Enhanced pre-registration examination would go a long way in minimizing unwarranted lawsuits and also enhance the design protection regime credibility.

- **Delay of Enforcement Decreases Commercial Values of Designs-**

The paper also concludes that the failure to get the injunctions or final verdicts quickly undermines the protection of designs. The commercial importance of industrial designs is precisely related to the fact that they affect immediate consumer decision. The competitive advantage of the original proprietor is watered down when infringed products continue to stay in the market whilst litigation is going on. Therefore, the pace of enforcement is significant to the legal entitlement.[1002]

- **Low-level Awareness of Industry Parties-**

Many design infringements occur due to the lack of awareness but not deliberate copying. The small manufacturers, institutions and start ups tend to copy the existing designs without knowing the legal consequences. This implies that institutional mentoring and awareness programmes might have a significant contribution in curbing piracy.

- **New Concern: Innovation on the Non-Original Research Investment-**

The modern trend in the Indian ecosystem of innovation has brought into focus a more structural issue. When discussing the new AI and innovation projects in India commentators have been able to challenge the quality of the research outputs and how some institutions tend to focus on the numbers in research rather than authentic innovation.

[1002] Dev Gangjee, "Intellectual Property and Market Identity" (2018) Oxford Journal of Legal Studies 1.

Specifically, the controversy over Galgotias University-related projects, brought up in the framework of the national discussion of AI innovations, reflects a bigger policy problem. The fear of the analysts did not pertain to just a single institution but to a general direction within the system where prototypes, models, technological presentations are in some cases similar to existing designs or products but without an independent R&D investment demonstrated.

Such practices are subject to serious questions on a design law point of view. The level of innovation ecosystems cannot be judged only by the number of patents, models or prototypes made. The quality of the research conducted behind the research, originality of design and ethical development practices are also vital. When institutions reproduce the existing designs, either consciously or unconsciously, the outcome can be the destabilization of the legal protection and the integrity of the national research environment.

This case shows that design piracy does not only apply to commercial production. It can also come in the scenario of academic or institutional innovation where competition pushes people to come up with results fast instead of genuine development. The case is not limited to intellectual property law, however, and is instead a concern of research governance and policy.

- **Integration Requirement between Innovation Policy and Design Law-**

The discussion above shows that protection of industrial design should not be considered only as a legal issue but also as a part of the national innovation strategy. The need by countries to develop knowledge economies should make sure that the outputs of research are based on true creativity and not imitation. A combination of a well-established design protection, enforcement, and ethical research conducts an ecosystem where originality is rewarded.

- **The trend of India points to the increasing awareness of this necessity-**

The quality, originality and commercial applicability of research is now part of the policy debate. The introduction of intellectual property awareness into the academic and industrial innovation programmes might help to alleviate the issue of design piracy by a considerable margin and enhancing global competitiveness.

- **Movement to Global Standards-**

Lastly, the results show that India is slowly moving towards international standards of design protection. There is the judicial interpretation, the structure of the legislative and policy discussions, all of which reflect a growing correspondence with the developed economies. Nevertheless, convergence is not complete. The registration scrutiny, enforcement efficiency, and institutional awareness should continue to be reformed to realise the whole potential of the Indian design protection regime.[1003]

SUGGESTIONS

There are a number of reforms suggested in order to enhance protection against design piracy.

- **Improving the standards of the examination-**

The design registration office ought to take more stringent measures on the novelty searches and digital databases to ensure that previous known designs are not registered. An improved scrutiny would decrease future litigation and improve trust in registered rights. The intellectual property benches are specialised intellectual property benches. The process of resolving disputes will become speedier by setting up specialised design law benches in commercial courts. Visual similarity test could be applied more consistently by the judges who are trained in the principles of intellectual property.[1004]

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- **Electronic enforcement systems-**

Considering the emergence of online shopping and the new manufacturing approach, legislations must come up with monitoring tools to identify duplicated designs on the electronic commerce websites. The cooperation between IP offices and digital platforms would enhance the enforcement[1005].

- **Awareness programmes in the industry-**

Small manufacturers could be targeted by workshops and outreach activities to decrease unintentional infringement. The risk of design infringement and the knowledge about design registration processes would foster compliance.[1006]

[1003] Ministry of Commerce, Government of India, IPR Policy Review Report (2022).
[1004] National IPR Policy, Government of India (2016).
[1005] WIPO, Guide to Industrial Design Protection (2021).
[1006] OECD, Intellectual Property and Economic Growth (2020).

- **Best interim relief provisions-**

Early hearings on injunctions on case of designing should be given priority in courts. Interim relief is necessary since design piracy is a frequently damaging commercial consequence that cannot be compensated normally.[1007]

- **International cooperation-**

India needs to intensify collaboration with the foreign IP offices and international organisations to exchange the best practices in the registration and enforcement of design. Transparency may be enhanced by involvement in international design databases.

The introduction of such reforms would increase Design protection as predictable, efficient, and in line with international standards.

CONCLUSION

The industrial design protection has taken a more significant role in the contemporary intellectual property regimes. Visual identification in markets dominated by consumer perception may be the key to the commercial success of a product. The Designs Act, 2000 is cognizant of this fact and it ensures exclusive rights on registered designs and remedies against piracy.[1008]

This study establishes that the Indian statutory framework in general is generally consistent with international obligations and comparative jurisprudence. The courts have increasingly developed toward a consumer oriented use of design infringement where the emphasis is similar to the overall visual impression to the technical differences. The shift is a favourable development of safeguarding commercial identity and innovating.

However, the issues of enforcement still persist. Ineffective protection is still being compromised by procedural delays, a lack of scrutiny in the registration, and little awareness among the market participants. The better design enforcement results can be presented in terms of comparative analysis with the United States where the greater level of focus on the market confusion and quicker judicial reaction can be provided.

[1007] UNCTAD, Technology and Innovation Report (2021).

[1008] TRIPS Agreement, arts. 25–26.

To make design protection effective in achieving both the economic and legal purposes, India needs to improve the administrative procedures, improve the specialisation of the judiciary, and use digital enforcement tools. These reforms would discourage piracy in addition to promoting investments in the aesthetic and branding of products.[1009]

Finally, the safeguarding of industrial designs is not a technical legal matter only. It also echoes a greater desire to be innovative, compete fairly, and be able to create consumer trust.[1010] Design law helps to make the market place more dynamic and innovative by guaranteeing that visual creativity is granted a sense of meaningful protection.

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[1009] WIPO, Industrial Design Protection and Innovation (2022).
[1010] Bainbridge, Intellectual Property (Pearson 2021).